

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

National Association for the Advancement of
Colored People Minnesota-Dakotas Area State
Conference; Susan Bergquist; Eleanor Wagner,

Case Type: Other Civil
File No.

Plaintiffs,

SUMMONS

v.

Minnesota Secretary of State, Steve Simon, in
his official capacity,

Defendant.

THIS SUMMONS IS DIRECTED TO THE DEFENDANT NAMED HEREIN:

1. YOU ARE BEING SUED. The Plaintiffs' have started a lawsuit against you. The Plaintiffs' Complaint against you is attached to this Summons. Do not throw these papers away. They are official papers that affect your rights. You must respond to this lawsuit even though it may not yet be filed with the Court and there may be no court file number on this summons.

2. YOU MUST REPLY WITHIN 20 DAYS TO PROTECT YOUR RIGHTS. You must give or mail to the person who signed this summons **a written response** called an Answer within 20 days of the date on which you received this Summons. You must send a copy of your Answer to the person who signed this summons located at 2200 Wells Fargo Center, 90 South Seventh Street, Minneapolis, Minnesota 55402-3901.

3. YOU MUST RESPOND TO EACH CLAIM. The Answer is your written response to the Plaintiffs' Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiffs' should not be given everything asked for in the Complaint, you must say so in your Answer.

4. YOU WILL LOSE YOUR CASE IF YOU DO NOT SEND A WRITTEN RESPONSE TO THE COMPLAINT TO THE PERSON WHO SIGNED THIS SUMMONS. If you do not Answer within 20 days, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiffs everything asked for in the Complaint. If you do not want to contest the claims stated in the Complaint, you do not need to respond. A default judgment can then be entered against you for the relief requested in the Complaint.

5. LEGAL ASSISTANCE. You may wish to get legal help from a lawyer. If you do not have a lawyer, the Court Administrator may have information about places where you can get legal assistance. **Even if you cannot get legal help, you must still provide a written Answer to protect your rights or you may lose the case.**

6. ALTERNATIVE DISPUTE RESOLUTION. The parties may agree to or be ordered to participate in an alternative dispute resolution process under Rule 114 of the Minnesota General Rules of Practice. You must still send your written response to the Complaint even if you expect to use alternative means of resolving this dispute.

Dated: June 4, 2020

/s/ Craig S. Coleman

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STATE OF MINNESOTA

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COUNTY OF RAMSEY

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National Association for the Advancement of
Colored People Minnesota-Dakotas Area State
Conference; Susan Bergquist; Eleanor Wagner,

Case Type: Other Civil
File No.

Plaintiffs,

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

v.

Minnesota Secretary of State, Steve Simon, in
his official capacity,

Defendant.

1. Minnesota Secretary of State Steve Simon said, “No one should have to choose between their health and their right to vote.”¹ Plaintiffs National Association for the Advancement of Colored People Minnesota-Dakotas Area State Conference (“NAACP”)², Susan Bergquist, and Eleanor Wagner (collectively “Plaintiffs”) bring this lawsuit because they agree. Yet the dire circumstances created by conducting an election during a pandemic threatens voters with precisely that impossible choice unless actions are taken to ensure and streamline voting by absentee ballot.

2. Minnesota is in the throes of a pandemic of a respiratory disease known as the coronavirus disease 2019 (“COVID-19”), caused by the spread of a novel coronavirus, SARS-CoV-2. The disease continues to spread throughout the State, as it regularly sets new high-water marks for daily deaths and hospitalizations caused by the disease. For the many Minnesotans

¹ Press Release, Office of the Minn. Sec’y of State, Secretary Simon Statement on Elections amid COVID-19 Pandemic (Mar. 26, 2020), <https://www.sos.state.mn.us/about-the-office/news-room/secretary-simon-statement-on-elections-amid-covid-19-pandemic/>.

² Throughout the Complaint, the “NAACP” is used at times to refer to the national nonprofit organization and at times to refer to its Minnesota-Dakota’s Area State Conference.

vulnerable to the ravages of the disease based on age, health status, or other factors, contracting the disease is a matter of life and death.

3. The right to vote is a fundamental right under the Minnesota Constitution. Indeed, the Minnesota Supreme Court recognizes that “no right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live.” *Erlandson v. Kiffmeyer*, 659 N.W.2d 724, 729 (Minn. 2003). As elected officials make decisions of extraordinary impact to the lives and welfare of the State’s residents, the pandemic has only magnified the critical importance of the right to participate in our elections. Despite widespread public support for voting by mail, the Legislature has nonetheless refused to make any accommodation to ensure that the right to vote is not unnecessarily or unreasonably burdened by the profound risks to individual health, public health, and access to the ballot box caused by the COVID-19 pandemic.

4. Plaintiffs therefore bring this action under the Minnesota Constitution to safeguard the fundamental right to vote during the State’s ongoing public health crisis. Specifically, Plaintiffs seek an order of the Court directing Defendants to: 1) suspend the requirement that each voter submitting an absentee or other mail ballot³ have another individual witness and sign their ballot envelope; and 2) mail an absentee ballot to every registered voter. In conjunction with continued access to in-person polling locations, these actions offer the only path to minimizing risks to public health and ensuring that individuals have the freedom to vote without facing serious risks to their health.

5. Given the extraordinary circumstances created by the COVID-19 pandemic, this relief is required by the Minnesota Constitution to preserve Plaintiffs’ and many other

³ See Minn. Stat. § 203B.07, subdiv. 3, Minn. St. § 204B.45 - .46, and Minn. Admin. R. R. 8210.3000.

Minnesotans' fundamental right to vote. The fundamental right to vote depends on access to the ballot box, and it is unlawful to suppress the right to vote by forcing voters to jeopardize their health in order to exercise the franchise. Plaintiffs and all Minnesotans have an overwhelming constitutional interest in procedures ensuring timely and certain access to absentee or mail-in ballots and protecting their ability to vote by mail without unnecessary obstructions.

6. Without relief, the extreme burden the Witness Requirement places on voters in the current environment far outweighs any marginal benefit to the State in retaining it. And refusal to mail ballots to voters places the electoral participation of countless Minnesotans unnecessarily and unjustifiably at risk, while jeopardizing the health and safety of individual voters, poll workers, and the public.

7. The “United States is now the ‘epicenter’ of the global pandemic and has far more confirmed COVID-19 cases than any other nation.”⁴ The Centers for Disease Control and Prevention (“CDC”) and the Minnesota Department of Health have both urged people to avoid coming within at least six feet of individuals with whom they do not reside, as a means to both slowing the spread of the virus and keeping individuals healthy. Cases in Minnesota have only been rising. As of June 3, 2020, there have been over 25,000 confirmed cases in Minnesota and over 1000 deaths.⁵ And many experts predict that, even if the pace of new cases slows over the summer, it will likely surge in the fall as the election coincides with the return of cold and flu season.⁶

⁴ General Order No. 2020-11, *In re: Court Operations Under the Exigent Circumstances Created by the Outbreak of Coronavirus Disease (COVID-19): Temporary Policy for Remote Proceedings and Public Access to Such Proceedings*, Case No. 2:20-mc-7 (E.D. Va. Apr. 6, 2020).

⁵ Situation Update, Minn. Dep’t of Health, <https://www.health.state.mn.us/diseases/coronavirus/situation.html> (last visited June 4, 2020).

⁶ Kristine A. Moore et al., *Part 1: The Future of the COVID-9 Pandemic: Lessons Learned from Pandemic Influenza*, in *COVID-19: THE CIDRAP VIEWPOINT 6* (Ctr. for Infectious Disease Research and Policy, 2020), https://www.cidrap.umn.edu/sites/default/files/public/downloads/cidrap-covid19-viewpoint-part1_0.pdf.

8. In the midst of this crisis, Minnesota requires that every voter completing an absentee ballot or other mail ballot obtain the assistance of a witness who is a registered voter, a notary public, or a person with the authority to administer oaths amounts to an unconstitutional burden on the right to vote. This is true for both Minnesota’s primary in August and the November general election.

9. The COVID-19 outbreak means that the Witness Requirement will disenfranchise countless Minnesotans, like members of the NAACP and individual Plaintiffs, who cannot risk contact with other individuals to vote in person or obtain a witness signature on their absentee or mail ballot. Over a quarter of Minnesotans age 18 and over live by themselves, and nearly 40% of Minnesotans over 65 years of age—one of the groups most vulnerable to COVID-19—live alone.⁷ For many of these people, obtaining a witness presents an obstacle to voting even under normal circumstances, but the requirement during a pandemic poses a direct threat to their health because of the COVID-19 threat. And the adverse impact of this requirement falls more heavily on elderly Minnesotans, Minnesotans with disabilities, and African American and indigenous Minnesotans, who all live alone in larger percentages than the population as a whole.⁸

10. The Witness Requirement causes an increased risk of harm to African Americans during the COVID-19 pandemic, though, because they face greater rates of severe health complications and death from COVID-19. Likewise, indigenous people also face an increased risk of harm as they suffer greater rates of conditions that place them at particular risk.⁹

⁷ 2018 Current Population Survey, U.S. Census Bureau, statistics accessed by using the Census Bureau Current Population Survey Table Creator tool at <https://www.census.gov/cps/data/cpstablecreator.html>.

⁸ *Id.*

⁹ Centers for Disease Control and Prevention (“CDC”), *Most Recent National Asthma Data*, https://www.cdc.gov/asthma/most_recent_national_asthma_data.htm (last visited May 6, 2020) (African Americans and Native Americans have the highest rates of asthma of any populations in the United States).

Minnesota courts ensure that heightened scrutiny applies to a statutory scheme that places such a “disproportionate burden on the very class of persons whose history inspired the principles of equal protection.” *State v. Russell*, 477 N.W.2d 886, 889 n.3 (Minn. 1991).

11. The impediment to voting created by the Witness Requirement will be magnified this year given the need and demand for voting by mail during a pandemic. Nearly 900,000 Minnesotans cast ballots in the March 2020 primary, and over 2.94 million Minnesotans cast ballots in the November 2016 general election. The Minnesotans who live alone and would have otherwise voted in the upcoming elections but will not, or those whose absentee or other mail ballots will be rejected, will therefore likely number in the tens of thousands, if not hundreds of thousands, given the health risks associated with in-person voting.

12. There is no sound rationale for the Witness Requirement that justifies this massive disenfranchisement of Minnesota voters and its disproportionate harm to elderly voters, African American voters, indigenous voters, and voters with disabilities. The Witness Requirement does very little if anything—and it is certainly not narrowly tailored—to protect electoral integrity in light of the many other provisions of Minnesota law that safeguard absentee voting and penalize those who abuse the process. The fact that Minnesota is one of only 11 states that require an individual submitting an absentee ballot or a mail ballot to have a witness sign their ballot envelope further underscores the requirement’s lack of necessity.¹⁰ While no evidence exists indicating that the Witness Requirement protects electoral integrity, the requirement creates an impediment to the right to vote and risks disenfranchising vulnerable voters. And for ballots

¹⁰ Moreover, courts in two of those states have ordered elimination of the witness requirement in light of COVID-19. *See, e.g., Thomas v. Andino*, No. 3:20-CV-01552-JMC, 2020 WL 2617329, at *30 (D.S.C. May 25, 2020) (granting preliminary injunction to enjoin defendants from enforcing South Carolina’s witness requirement); *League of Women Voters of Virginia v. Virginia State Bd. of Elections*, No. 6:20-CV-00024, 2020 WL 2158249, at *14 (W.D. Va. May 5, 2020) (approving a consent decree removing the witness requirement for absentee ballots in Virginia for its June primaries).

received close in time to the election, the lack of an opportunity to cure a missing witness signature further compounds the burden.

13. Likewise, no valid or sufficient reason justifies the State’s failure to ensure that every Minnesotan will have a ballot in hand with time to ensure it can be mailed and counted by Election Day. To the contrary, Minnesota Statute Section 204B.45 provides for balloting by mail for cities “having fewer than 400 registered voters,” so the State has already approved mailed ballots as a valid, legitimate mechanism to conduct an election. Plaintiffs simply ask that the State ensure that every Minnesotan is guaranteed that right. At a time when schools, businesses, sports leagues, and religious institutions are all struggling with tremendous uncertainty about whether and how to operate in coming months, the State must act to preserve the ability of all Minnesotans to vote by absentee or mailed ballot.

14. Plaintiffs therefore ask that, under Articles I and VII of the Minnesota Constitution, the Court enjoin Minnesota’s Witness Requirement for absentee and mail balloting and require Defendant to mail ballots to all registered voters to protect the right of all eligible voters to participate in the elections during the COVID-19 pandemic.

PARTIES

15. The Minnesota-Dakotas Area State Conference of the NAACP is the state chapter of the National Association of the Advancement of Colored People, which is the nation’s oldest, largest, and most widely recognized civil-rights organization dedicated to racial justice. Founded in 1909, the NAACP has more than half a million members in the United States and throughout the world,¹¹ with members throughout Minnesota. The NAACP’s mission is to “secure the

¹¹ *Nation’s Premier Civil Rights Organization*, NAACP, <https://www.naacp.org/nations-premier-civil-rights-organization/> (last visited June 2, 2020).

political, educational, social, and economic equality of rights in order to eliminate race-based discrimination and ensure the health and well-being of all persons.”¹²

16. One of the six pillars of the NAACP’s strategic plan is to protect and enhance voting rights and fair representation.¹³ To that end, the NAACP works to improve access to the ballot box, expand participation in elections, and support voter turnout in African American communities.¹⁴ Many NAACP members, including those in Minnesota, are committed to serving as election judges and working the polls on election day, and the NAACP has an interest in protecting the safety and security of all of its members committed to supporting free and fair elections.

17. The State Conference exists to fulfill the NAACP’s mission and execute its strategic plan in Minnesota and the Dakotas. It has local chapters in Saint Paul, Minneapolis, Duluth, and Rochester. Its members strive to protect and increase participation in elections, and the commitment of many of its members to election fairness includes working the polls. As a robust membership organization, NAACP-MN also has members who are undertaking social distancing who will be unable to vote in the general election as they cannot safely vote in person or risk coming into contact with someone they do not live with to witness their absentee ballots.

18. Plaintiff Susan Bergquist is a resident of Apple Valley, Minnesota. She is 68 years old and lives alone. She moved to Minnesota in 2017 and registered to vote in Minnesota the same year. Prior to moving to Minnesota, she lived in North Dakota, where she was a voter for decades. Ms. Bergquist has consistently voted in both state and federal elections. She has also

¹² *What is the Mission of the NAACP?*, NAACP, <https://www.naacp.org/about-us/> (last visited June 2, 2020).

¹³ *NAACP Strategic Plan: Game Changers for the 21st Century*, NAACP, <https://www.naacp.org/about-us/game-changers/> (last visited June 2, 2020).

¹⁴ *Our Vote, Our Voice: We Need to Mobilize Millions to Ensure the Highest Turnout Ever!*, NAACP, <https://www.naacp.org/vote/> (last visited June 2, 2020).

served as an election judge in six different electoral cycles. She believes voting is one of her most important civic duties.

19. Ms. Bergquist intends on voting in the August 2020 primary election and the November 2020 general election. She had been planning to serve as an election judge in the November general election. But because of the COVID-19 outbreak, Ms. Bergquist does not feel safe voting in person, voting absentee, or serving as an election judge. In addition to her age, Ms. Bergquist has a medical condition that puts her at higher risk for contracting COVID-19 and facing serious medical consequences if she does. Having been diagnosed with Psoriatic Arthritis, Ms. Bergquist undergoes infusions of Remicade and takes Arava, both of which are strong immunosuppressant drugs. As a result, she has a compromised immune system and a low white blood cell count, making her unlikely to be able to fight COVID-19 if she were to be infected by the virus. She therefore practices strict social distancing measures and will continue to do so until she faces no serious risk of contracting COVID-19.

20. Given the need for extreme social distancing, Ms. Bergquist will be unable to vote in the general election unless she breaks the distancing practices that protect her life, severely jeopardizing her health and safety. She cannot vote in person without breaking her strict social distancing practices and risking coming into contact with infected individuals. Nor can she vote absentee. Because she lives alone, she would have to break the same social distancing practices to find someone to witness her absentee ballot. If the Witness Requirement were lifted, she would vote by absentee ballot in the November general election.

21. Plaintiff Eleanor Wagner is a resident of Edina, Minnesota, where she is a registered voter. She is 78 years old and lives alone. Ms. Wagner has voted in-person in state and federal elections regularly throughout her entire adult life. She takes great pride in going to her

polling place and marking the ballot. She has only voted absentee once, in November 1971, when she was pregnant.

22. Ms. Wagner intends on voting in the August 2020 primary election and the November 2020 general election. But because of the COVID-19 outbreak, Ms. Wagner does not feel safe voting in person or voting absentee. In addition to her age, Ms. Wagner has several health conditions that put her at higher risk for contracting COVID-19 and facing serious medical consequences if she does. She has a history of plaque in her arteries, is pre-diabetic, has been diagnosed with borderline asthma. Moreover, she was just diagnosed with pancreatic cancer that has spread to her liver. Her doctors are putting together a treatment plan, which will likely include chemotherapy and possible surgery and/or radiation. Any one of, if not a combination of, these treatments, will greatly reduce her immune system and her ability to fight any infection, let alone the COVID-19 virus. As a result, she currently practices strict social distancing measures and will continue to do so until she has access to a reliable COVID-19 vaccine.

23. Ms. Wagner will severely jeopardize her health and safety by voting in the primary election or the general election. She cannot vote in person without breaking her strict social distancing practices and risking coming into contact with infected individuals. With the current witness requirement in place, she will also severely jeopardize her health and safety by voting absentee. Because she lives alone, she would have to break the same social distancing practices to find a witness to sign her absentee ballot. If the witness requirement were lifted, she would more safely vote by absentee ballot in the August primary election and the November general election.

24. Defendant Steve Simon is sued in his official capacity as the Minnesota Secretary of State (the “Secretary”). The Secretary has sworn under oath to uphold the Constitution of the

State of Minnesota in carrying out his duties, which include serving as the chief election officer of the State and overseeing elections and election laws in the State.

25. The Secretary acts on behalf of the State of Minnesota in exercising his duties regarding federal, state, county, and local elections, promulgating and executing election laws within the State, and upholding the constitutionally protected right to vote.

JURISDICTION AND VENUE

26. This Complaint raises claims under the Minnesota Constitution and laws of the State of Minnesota. Thus, this Court has jurisdiction over all of Plaintiffs' claims.

27. This Court is authorized to grant declaratory relief pursuant to the Declaratory Judgments Act, Minn. Stat. § 555.01. The Declaratory Judgments Act "is remedial, intended to settle and to afford relief from uncertainty with respect to rights, status, and other legal relations." *Holiday Acres No. 3 v. Midwest Fed. Savs. & Loan Ass'n of Minneapolis*, 271 N.W.2d 445, 447 n.2 (Minn. 1978); *see also* Minn. Stat. § 555.12 (stating that the Act "is to be liberally construed and administered").

28. District Courts of Minnesota are courts of general jurisdiction. Minn. Stat. § 484.01; Minn. Const. art. VI, § 3. Under Minnesota Rule of Civil Procedure 65 district courts also have the authority to grant injunctive relief.

29. Venue in Ramsey County is proper under Minn. Stat. § 542.03.

LEGAL BACKGROUND

30. Article I of the Minnesota Constitution guarantees the right to vote and the equal protection of the State's citizens. Section 2 provides that "[n]o member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by law of the land or the judgment of his peers." In addition to broadly affirming the right to

vote, the Minnesota Supreme Court recognizes that this provision guarantees equal protection under the law. *State v. Holloway*, 916 N.W.2d 338, 347 (Minn. 2018).

31. Article VII of the Minnesota Constitution mandates universal suffrage—subject to very narrow exceptions—for residents over 18 and provides explicit protections to ensure access to the right to vote. Section 1 declares that any “person 18 years of age or more who has been a citizen of the United States for three months and who has resided in the precinct for 30 days next preceding an election shall be entitled to vote in that precinct.” Section 2 mandates that no person loses residency based solely on military service, status as a student, or presence in an almshouse, asylum, or prison. Section 3 provides for the administration of a uniform oath at elections, while forbidding “any other or different form of oath.” Section 4 declares that a citizen may not be arrested by virtue of any civil process on election day. Section 5 requires elections to be conducted by ballot. The remaining sections of Article VII prescribe rules for eligibility to hold office, the official year of the state, canvassing of election returns, and campaign spending limits.

32. The Minnesota Supreme Court has held that “[i]t is undisputed that the right to vote is a fundamental right” under the Minnesota Constitution. *Kahn v. Griffin*, 701 N.W.2d 815, 832 (Minn. 2005)

33. Minnesota law allows for voting by absentee ballot with extensive procedural safeguards set forth in Chapter 203B of the Minnesota Statutes. Any eligible voter may vote by absentee ballot. *Id.* § 203B.02. Voters may apply for absentee ballots up to one day before an election. *Id.* § 203B.04, Subd. 1. Applications for an absentee ballot may be submitted online, by mail, email, or fax. *Id.* § 203B.04, Subd. 1(a). The application must be signed and dated by the applicant, contain the applicant’s name and mailing address, and include either a Minnesota

driver's license number, Minnesota state identification card number, the last four digits of the applicant's Social Security Number, or a statement that the applicant does not have any of these numbers. *Id.*

34. When applying, individuals must include "an oath that the information contained on the form is accurate . . . and that the applicant is signing the form under penalty of perjury." *Id.* § 203B.04 subdiv.1(c).

35. When the county auditor or municipal clerk receives an absentee ballot application and verifies that the individual properly completed the application and is a registered voter in the jurisdiction or has registered at the time of the application, the registrar mails to the individual:

- a. A sealed envelope containing the unmarked ballot;
- b. Instructions on how to fill out the ballot; and
- c. An envelope for resealing the marked ballot which either contains "an additional flap that when sealed, conceals the signature, identification, and other information" of the voter or which is of sufficient size to include an additional envelope that hides the voter's signature and information. This envelope shall have "[a] certificate of eligibility to vote by absentee ballot . . . printed on the back" which contains space for the voter to include their personal identification information, such as their social security or driver's license number. Additionally, this certificate "must also contain a statement to be signed and sworn by the voter indicating that the voter meets all the requirements established by law for voting by absentee ballot." Finally, the certificate must include space for a witness signature.

“Printed instructions for completing the ballot and statement on the envelope and returning the ballot.”

Id. § 203B.07, subdiv. 1–3.

36. Upon accepting an application for an absentee ballot, the county auditor or municipal clerk must record the voter’s name, date of birth, address, identification number, or last four digits of the voter’s social security number in the statewide voter registration system. Minn. Stat. § 203B.065. If the application includes an address inconsistent with the voter’s previously recorded address, the voter registration recorded with the previous address must be challenged. *Id.* All absentee ballots sent to voters must be recorded by election officials along with the method of transmission. *Id.* When an absentee ballot has been returned, election officials must record in the statewide voter registration system that the voter has returned the ballot. *Id.* And labels for envelopes to and from absentee ballots must include bar codes for tracking against the statewide voter registration system. *Id.*

37. Absentee voters must swear that they meet requirements established by law to vote by absentee ballot. Minn. Stat. § 203B.07, subd. 3. Moreover, Minnesota’s absentee voting statute makes it is a felony to, *inter alia*, intentionally make any false statement regarding absentee voting, to apply for an absentee ballot more than once with the intent to cast an illegal ballot, to cast an illegal vote or aid others to cast an illegal vote, solicit the vote of an absentee voter during the act of voting, or alter an absentee ballot application after it has been signed by the voter. Minn. Stat. § 203B.03. No person may deliver or return more than three absentee ballots in any election. Minn. Stat. § 203B.08, subd. 1.

38. When the absentee ballot process counting begins, two or more election officers collected together as a “ballot board” examine each absentee ballot envelope to determine

whether to accept the ballot for counting. Minn. Stat. § 203B.121, subdiv. 1. Section 203B.121 of the Minnesota Statutes provides that the board “shall mark the return envelope ‘Accepted’ . . . if a majority of the members of the ballot board examining the envelope are satisfied that” the voter’s name and address match their application, the voter signed the envelope with identification numbers matching their application, “the certificate has been completed as prescribed in the directions for casting an absentee ballot,” and the voter is not voting twice in that election. *Id.* subdiv. 2(b)(1-6). A determination by the majority of the ballot board that a voter has failed on any of these individual criteria results in the ballot being marked “Rejected,” the reason for rejection is listed on the envelope, and it is sent back to the county auditor. *Id.* subdiv. 2(c)(1).

39. If this rejection occurs at least five days before the election, the envelope must “remain sealed” and the voter provided with a replacement ballot. *Id.* subdiv. 2(c)(2). If the rejection occurs within five days of the election, “the official in charge of the ballot board must attempt to contact the voter and notify them of their ballot’s rejection.” *Id.* subdiv. 2(c)(3). Depending on the success and timing of this notification, the voter might be able to still vote only by appearing at their polling location in person. Six to 10 weeks following an election, the official leading the ballot board must mail notice to those whose absentee ballots were rejected. *Id.* subdiv. 2(d).

40. The statute adds the involvement of third-party witnesses to all of these other requirements and procedures. The statute requires absentee voters to obtain a signed sworn statement from a third-party witness on the return envelope containing the absentee ballot. Minn. Stat. § 203B.07, subd. 3. The witness must be either be a registered voter in Minnesota, a notary public, or an individual authorized to administer oaths. *Id.* The statement must swear that:

- a. the ballots were displayed to that individual unmarked;
- b. the voter marked the ballots in that individual's presence without showing how they were marked or, if the voter was physically unable to mark them, that the voter directed another individual to mark them; and
- c. if the voter was not previously registered, the voter has provided proof of residence as required by section 201.061, subdivision 3.

Id. (hereinafter "Witness Requirement").

41. Third-party witnesses are not required for absentee voters serving in the military or living abroad. Minn. Stat. § 203B.21, subd. 3. Instead, ballots for such voters require only a signed oath from the voter related to eligibility requirements. *Id.*

42. Absentee ballots are not the only option for voting remotely in Minnesota. Minnesota Statute Section 204B.45 allows any town not located in a metropolitan county or any city having fewer than 400 registered voters to provide balloting by mail without providing a physical polling place, other than the clerk's office. Minn. Stat. § 204B.45, subd. 1. The statute sets forth a procedure for voting by mail, instructing participating government bodies to mail ballots to all voters and provide pre-addressed ballot return envelopes with pre-paid postage. *Id.* at subd. 2.

43. Minnesota law accounts for unforeseen circumstances that may require a change in election procedures. Minnesota Statute Section 204B.47 provides that "[w]hen a provision of the Minnesota Election Law cannot be implemented as a result of an order of a state or federal court, the secretary of state shall adopt alternative election procedures to permit administration of any election affected by the order." Minn. Stat. § 204B.47.

FACTS

Transmission of COVID-19 and Public Health Guidelines

44. The novel coronavirus, SARS-CoV-2, is the virus that causes COVID-19, a deadly disease that is now a global pandemic.¹⁵

45. According to the CDC, this coronavirus spreads aggressively and asymptomatic people can spread it.¹⁶ All age groups have contracted the disease.¹⁷ There is no vaccine, and there is no cure.

46. As of early April, the United States led the world in the total number of COVID-19 cases, surpassing China and Italy before spread of the virus had even peaked here. More than 200,000 people in the United States may die from COVID-19 during the current outbreak, even after existing governmental and public health interventions.¹⁸

47. The World Health Organization (“WHO”) estimates that approximately 20 percent of those infected by SARS-CoV-2 require hospitalization.¹⁹ This is because COVID-19 can severely damage lung tissue, cause a permanent loss of respiratory capacity, and also damage tissues in the kidney, heart, and liver.²⁰

¹⁵ Betsy McKay et al., *Coronavirus Declared Pandemic by World Health Organization*, WALL ST. J. (Mar. 11, 2020, 11:59 PM), <https://www.wsj.com/articles/u-s-coronavirus-cases-top-1-000-11583917794>.

¹⁶ CDC, *How Coronavirus Spreads*, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last visited Apr. 15, 2020).

¹⁷ Robert Verity, Ph.D., et al., *Estimates of the Severity of Coronavirus Disease 2019: A Model-Based Analysis*, THE LANCET: INFECTIOUS DISEASES 6 (March 30, 2020), [https://www.thelancet.com/pdfs/journals/laninf/PIIS1473-3099\(20\)30243-7.pdf](https://www.thelancet.com/pdfs/journals/laninf/PIIS1473-3099(20)30243-7.pdf).

¹⁸ Rick Noack et al., *White House Task Force Projects 100,000 to 240,000 Deaths in U.S., Even With Mitigation Efforts*, WASH. POST (April 1, 2020, 12:02 AM), <https://www.washingtonpost.com/world/2020/03/31/coronavirus-latest-news/>.

¹⁹ World Health Organization, Q&A on Coronaviruses (COVID-19), “Should I Worry About COVID-19?,” <https://www.who.int/news-room/q-a-detail/q-a-coronaviruses>.

²⁰ CDC, *Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19)*, <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html> (last visited Apr. 15, 2020).

48. Despite some initial comparisons to seasonal influenza, estimates from early March put the fatality rate for people infected with COVID-19 at approximately ten times higher than a severe flu season, including in countries with advanced health care systems.²¹

49. While people of all ages have contracted and died from COVID-19, it is particularly fatal for older individuals. Preliminary reports based on WHO data show a 3.6% mortality rate for individuals between 60-69 years old, an 8% mortality rate for those 70-79 years old, and a 14.8% mortality rate for those who are 80 years old or older.²² COVID-19 also poses greater risks for people with preexisting heart and respiratory conditions, individuals with compromised immune systems, and those with many other conditions.²³ This is particularly true for cancer patients. According to a recent study of over 900 patients, cancer patients are more likely to die from COVID-19 than the general public.²⁴ Cancer patients have a 13% chance of dying from COVID-19 within 30 days.

50. The effects of the pandemic on social life will last well into the summer and fall of 2020, if not much longer. While there is some reason to believe that transmission may taper somewhat in the summer months, experts have indicated that COVID-19 “will face less immunity and thus transmit more readily even outside of the winter season,” and that seasonal

²¹ Betsy McKay, *Coronavirus vs. Flu Which Virus is Deadlier*, WALL ST. J. (Mar. 10, 2020, 12:49 PM), <https://www.wsj.com/articles/coronavirus-vs-flu-which-virus-is-deadlier-11583856879>.

²² CDC, *Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19)*, <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html> (last visited June 4, 2020).

²³ CDC, *Groups at Higher Risk of Severe Illness*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html> (last visited Apr. 15, 2020).

²⁴ Nicole M Kuderer, et al., *Clinical Impact of COVID-19 on Patients With Cancer (CCC19): a Cohort Study*, THE LANCET (May 28, 2020), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)31187-9/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)31187-9/fulltext).

changes are “unlikely to stop transmission.”²⁵ Further, even those who develop an immune response to the virus after an infection are not necessarily safe from reinfection, as we do not yet have sufficient data about how long immunity to the virus will last.²⁶ In April, Dr. Anthony Fauci, head of the National Institute of Allergy and Infectious Diseases, said that he “can’t guarantee” in-person voting will be safe in November, because of a potential resurgence of COVID-19 in the fall.²⁷

51. Because there is no vaccine, social distancing measures, including maintaining at least six feet of space between people (as well as consistent hygiene practices), are the only known effective measures for protecting against transmission of COVID-19.²⁸ As Governor Walz put it, “[s]taying home is the only vaccine we have right now.”²⁹ The CDC has issued guidance informing individuals in higher-risk populations to avoid gatherings of more than ten people, and it notes that public gatherings “contribute to the spread of COVID-19 in the United States.”³⁰

52. For this reason, the CDC has issued specific guidelines concerning voting during the COVID-19 pandemic. Among other things, it recommends that states “[e]ncourage voters to

²⁵ Marc Lipsitch, DPhil, Professor of Epidemiology and Director, Center for Communicable Disease Dynamics, Harvard T.H. Chan School of Public Health, *Seasonality of SARS-CoV-2: Will COVID-19 go away on its own in warmer weather?*, <https://ccdd.hsph.harvard.edu/will-covid-19-go-away-on-its-own-in-warmer-weather/>.

²⁶ Apoorva Mandavilli and Katie Thomas, *Will an Antibody Test Allow Us to Go Back to School or Work?*, N.Y. TIMES (Apr. 11, 2020), <https://www.nytimes.com/2020/04/10/health/coronavirus-antibody-test.html>

²⁷ Jason Silverstein, *Fauci says he “can’t guarantee” in-person voting in November will be safe*, CBSNEWS.COM (Apr. 13, 2020), <https://www.cbsnews.com/news/coronavirus-fauci-says-he-cant-guarantee-in-person-voting-in-november-will-be-safe/?tag=CNM-00-10aac3a>.

²⁸ Johns Hopkins University, *Coronavirus, Social Distancing and Self-Quarantine*, <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/coronavirus-social-distancing-and-self-quarantine> (last visited Apr. 15, 2020); Declaration of Dr. Jonathan Louis Golob at ¶ 8, ECF No. 5; *Dawson v. Asher*, 2:20-cv-00409-JLRMAT (W.D. Wash. Mar. 16, 2020).

²⁹ *State of the State Address: Governor Walz Remarks as Prepared*, MN.gov (Apr. 5, 2020), <https://mn.gov/governor/covid-19/news/#/detail/appld/1/id/426785> (last visited Apr. 27, 2020).

³⁰ CDC, *Interim Guidance for Coronavirus Disease 2019 (COVID-19)* (updated Mar. 15, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/mass-gatherings-ready-for-covid-19.html>.

use voting methods that minimize direct contact with other people and reduce crowd size at polling stations” including “mail-in methods of voting if allowed in the jurisdiction.”³¹

53. These recommendations make sense, given the relative risks of voting in person during the pandemic versus voting by mail. There is no evidence that SARS-CoV-2 can be spread through the mail, and the U.S. Postal Service has further changed their policies to “eliminate the requirement that customers sign our Mobile Delivery Devices for delivery” and now require the customer “to step back a safe distance or close the screen door/door so that they may leave the item in the mail receptacle or appropriate location by the customer door.”³²

54. In contrast, the risks of interpersonal interaction while voting have already borne out unfortunate results. In Illinois, a person who worked at a Chicago polling place during the March 17 primary died from COVID-19,³³ while another tested positive after voting in person.³⁴ And during Florida’s recent primary, two Broward County poll workers tested positive for COVID-19, one of whom was handling driver’s licenses as part of the identification verification process.³⁵

55. In Milwaukee and Green Bay, Wisconsin, voters experienced multi-hour waits and lines stretching blocks upon blocks because government officials there were unable to create

³¹ CDC, *Recommendations for Election Polling Locations: Interim guidance to prevent spread of coronavirus disease 2019 (COVID-19)* (updated Mar. 27, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>.

³² United States Postal Service, *USPS Statement on Coronavirus* (Apr. 2, 2020), <https://about.usps.com/newsroom/statements/usps-statement-on-coronavirus.htm> (citing guidance from World Health Organization, CDC, and Surgeon General).

³³ Mary Ann Ahern, *Poll Worker at Chicago Voting Site Dies of Coronavirus, Election Officials Say*, NBC CHICAGO (Apr. 13, 2020, 10:59 AM), <https://www.nbcchicago.com/news/local/chicago-politics/poll-worker-at-chicago-voting-site-dies-of-coronavirus-election-officials-say/2255072/>.

³⁴ Gov. Pritzker Encourages Illinoisans to Vote by Mail After In-Person Voter Tests Positive for Coronavirus, NBC CHICAGO (Apr. 12, 2020, 6:07 PM), <https://www.nbcchicago.com/news/local/gov-pritzker-encourages-illinoisans-to-vote-by-mail-in-upcoming-general-election/2254687/>.

³⁵ Anthony Man, *Two Broward poll workers, including one who handled voters’ driver licenses, test positive for coronavirus*, S. FLA. SUN SENTINEL (Mar. 26, 2020), <https://www.sun-sentinel.com/coronavirus/fl-ne-broward-elections-poll-workers-coronavirus-20200326-wmgj775dvjc5jis2oagxlpmlule-story.html>.

a viable vote-by-mail process for all voters.³⁶ And since then, state officials have now reported that at least 50 people who voted in-person last month's primary have been diagnosed with COVID-19.³⁷ In a recent study, the National Bureau of Economic Research confirmed the link between in-person voting and the spread of COVID-19.³⁸ The study also found a negative relationship between absentee voting and positive COVID-19 tests. These are the opposite of constitutionally appropriate conditions called for in an infectious disease pandemic.³⁹ Minnesota must avoid them.

COVID-19 in Minnesota

56. Minnesota faces a steadily rising number of COVID-19 cases. As of April 21, the Minnesota Department of Health ("MDH") recognized "community transmission [was] becom[ing] more prevalent in Minnesota."⁴⁰ And as of June 3, MDH reported 25,870 COVID-19 diagnoses in Minnesota, resulting in 3,203 hospitalizations and 1,086 deaths.⁴¹ Moreover, as of

³⁶ Parker Schorr, *Wisconsin's pandemic election: Long waits, face masks as voters go to polls*, THE CAP TIMES (Apr. 8, 2020), https://madison.com/ct/news/local/govt-and-politics/wisconsin-s-pandemic-election-long-waits-face-masks-as-voters-go-to-polls/article_bfd2c391-f390-5364-8c14-a88b548fe017.html; Benjamin Swasey, *Wisconsin Vote Ends As Trump Blames Governor For Long Lines*, NPR (Apr. 7, 2020 12:23 PM), <https://www.npr.org/2020/04/07/828835153/long-lines-masks-and-plexiglas-barriers-greet-wisconsin-voters-at-polls>.

³⁷ *The Latest: 52 positive cases tied to Wisconsin election*, ASSOCIATED PRESS (Apr. 28, 2020), <https://apnews.com/b1503b5591c682530d1005e58ec8c267>.

³⁸ Chad D. Cotti, et al., *The Relationship Between In-Person voting, Consolidated Polling Locations, and Absentee Voting on Evidence from the Wisconsin Primary*, NAT'L BUREAU OF ECON. RESEARCH (May 2020), <https://www.nber.org/papers/w27187.pdf>.

³⁹ Devi Shastri, *In-person voting was likely a 'disaster' for Wisconsin's efforts to flatten coronavirus curve, national experts say*, MILWAUKEE JOURNAL SENTINEL (Apr. 8, 4:51 PM), <https://www.jsonline.com/story/news/politics/elections/2020/04/08/coronavirus-wisconsin-election-likely-hurt-effort-flatten-curve/2961718001/>.

⁴⁰ Minn. Dep't of Health, *Responding to and Monitoring COVID-19 Exposures in Health Care Settings*, <https://www.health.state.mn.us/diseases/coronavirus/hcp/response.pdf> (last visited Apr. 30, 2020).

⁴¹ See *supra* note 4.

late April, “the Minnesota death rate per case is even higher than the hardest-hit state of New York.”⁴²

57. Since early March, Governor Walz has taken a series of actions in response to the growing threat posed by the virus, including an emergency declaration and numerous executive orders. Even as Minnesota has taken measures to relax strict stay-at-home orders, the MDH has instructed all Minnesotans that the protection of individual and public health requires all persons to “practice social distancing (keep 6 feet apart from other people as much as possible).”⁴³

58. Notably, on March 13, 2020, Governor Walz declared a State of Emergency for Minnesota “to protect all Minnesotans by slowing the spread of COVID-19” as “[l]ocal resources are inadequate to fully address the COVID-19 pandemic.”⁴⁴

59. On March 15, he closed all Minnesota K-12 schools for a week and a half, and has now extended that order for the remainder of the academic year.⁴⁵

60. Governor Walz advised on March 25 that that “elderly people and those with underlying health conditions . . . are strongly urged to stay in their home” and closed all Driver

⁴² Esme Murphy, *Coronavirus Impact: Why Minnesota Has a Higher COVID-19 Death Rate than Wisconsin*, CBS MINNESOTA (Apr. 27, 2020), <https://minnesota.cbslocal.com/2020/04/27/coronavirus-impact-why-minnesota-has-a-higher-covid-19-death-rate-than-wisconsin/>.

⁴³ Minn. Dep’t of Health, *Strategies to Slow the Spread of COVID-19 in Minnesota*, <https://www.health.state.mn.us/diseases/coronavirus/action.html> (last updated Apr. 30, 2020; last visited May 1, 2020).

⁴⁴ Minn. Exec. Order No. 20-01 (Mar. 13, 2020), available at https://mn.gov/governor/assets/EO%2020-01_tcm1055-422957.pdf.

⁴⁵ Minn. Exec. Order No. 20-41 (Apr. 23, 2020), available at https://mn.gov/governor/assets/EO%2020-41%20Final_tcm1055-429563.pdf

and Vehicle Services offices until May 4.⁴⁶ Governor Walz also ordered all non-essential businesses closed until at least May 3.⁴⁷

61. On March 25, Governor Walz issued a statewide “Stay at Home” order, directing all Minnesotans to stay at home except under extremely limited circumstances until April 10, this order included reliance on federal guidance limiting all gatherings to ten people.⁴⁸ This order was extended until May 17, with a fine up to \$3000 imposed for those who willfully violate its terms.⁴⁹ As Governor Walz put it, “[s]taying home is the only vaccine we have right now.”⁵⁰ Even in modifying some of the provisions of previous orders, Governor Walz continued to ban gatherings of more than ten people.⁵¹

62. Governor Walz allowed the existing “Stay at Home” order to expire on May 17, 2020. He then issued a new “Stay Safe MN” order. The executive order allowed gatherings of up to 10 people and allowed certain retail stores to open.⁵² Minnesotans are still urged to practice social distancing and must telework if able.

63. Lead researchers from the University of Minnesota have predicted that the risks from COVID-10 will persist long in the future and will remain severe. Michael Osterholm, director of the Center for Infectious Disease Research and Policy at the University of Minnesota,

⁴⁶ Minn. Exec. Order No. 20-20 (March 25, 2020), available at <https://www.leg.state.mn.us/archive/execorders/20-20.pdf>; Minn. Dep’t of Public Safety, *Frequently Asked Questions about the Stay Home Order*, <https://dps.mn.gov/Pages/default.aspx> (last visited Apr. 27, 2020).

⁴⁷ Minn. Exec. Order No. 20-33 (Apr. 8, 2020), available at https://mn.gov/governor/assets/2a.%20EO%2020-33%20Final_tcm1055-427370.pdf.

⁴⁸ Minn. Exec. Order No. 20-20.

⁴⁹ Minn. Exec. Order No. 20-33.

⁵⁰ *State of the State Address: Governor Walz Remarks as Prepared*, MN.GOV (Apr. 5, 2020), <https://mn.gov/governor/covid-19/news/#/detail/appId/1/id/426785>.

⁵¹ Minn. Exec. Order 20-48 (Apr. 30, 2020), available at https://mn.gov/governor/assets/EO%2020-48%20Final_tcm1055-430499.pdf (continuing to limit even funerals and weddings to 10 or fewer attendees).

⁵² Minn. Exec. Order No. 20-56.

and his team of researchers have reported that COVID-19 outbreaks could continue to resurge for the next two years.⁵³

64. Minnesota received a Major Disaster Declaration from the federal government on April 6.⁵⁴

65. Notwithstanding Minnesota's loosened restrictions on commerce, the state remains in the early stages of an ongoing and escalating pandemic. Researchers from the University of Minnesota and the MDH have projected the end of June as the most likely peak for COVID-19 in the State.⁵⁵ Indeed, far from abating, daily data regarding new cases, hospitalizations, mortality, and other critical indicators show that the disease continues to steadily expand in the State.⁵⁶

66. Faced with local elections in some parts of Minnesota in May, and a primary in August, with early voting beginning in June, the State has begun to take some steps in recognition of the dual priorities of public health and representative government.

67. The Secretary of State is "encouraging" Minnesotans to make use of their option for no-excuse absentee voting by mail.⁵⁷

68. The Minnesota courts have taken similar steps in light of the pandemic. Beginning on March 20, 2020, and subsequently extended by a series of additional orders, most recently on April 9, the Supreme Court restricted in-person court proceedings, ordering that no

⁵³ See *supra* note 5 at 6.

⁵⁴ *Disaster Declarations by State/Tribal Government*, FEMA.GOV, <https://www.fema.gov/disasters/state-tribal-government/0/MN> (last visited Apr. 27, 2020).

⁵⁵ Minn. Dep't of Health, *SARS-CoV-2 (COVID-19) Modeling (Version 3.0)* (May. 13, 2020), https://mn.gov/covid19/assets/MNmodel_PPT%205.13.20_FINAL%20915AM_tcm1148-431824.pdf (last visited May 28, 2020).

⁵⁶ See *supra* note 4.

⁵⁷ Minn. Dep't of Health, *2020 Elections and COVID-19*, <https://www.sos.state.mn.us/election-administration-campaigns/elections-calendar/2020-elections-and-covid-19/> (last visited May 1, 2020).

juries or grand juries commence before May 4, 2020 and ordering that “all proceedings in all case types shall be held by ITV or any other remote technology that permits the parties and attorneys to appear without being in the courtroom or by review of the parties' submissions without oral argument,” with exceptions for certain matters where an individual was already in custody or that otherwise posed an “individual or public health or safety risk.”⁵⁸

COVID-19’s Disproportionate Impact on African American and Indigenous Minnesotans

69. Nationally, the COVID-19 epidemic has had a particularly devastating effect in African-American communities. A recent analysis—one of the first attempts to examine the racial disparities of COVID-19 cases and deaths nationwide—found that, in areas where the demographic data has been publicly shared by government officials, African-Americans have comprised 42% of people who have died from COVID-19, despite accounting for roughly only 21% of the total population in these areas.⁵⁹

70. Courtney Cogburn, an associate professor at the Columbia University School of Social Work, noted that “[t]here are patterns at this intersection of race and socioeconomic status that make it very clear this is just not a story about poverty.” That is, racial disparities in serious illness and death due to COVID-19 are inextricably linked to a long history and ongoing patterns of racial discrimination against African Americans:

A history of systemic racism and inequity in access to health care and economic opportunity has made many African Americans far more vulnerable to the virus. Black adults suffer from higher rates of obesity, diabetes and asthma, which make them more

⁵⁸ *Continuing Operations of the Minnesota Judicial Branch Under Emergency Executive Order No. 20-33*, No. ADM20-8001 (Minn. filed Apr. 9, 2020), available at <http://www.mncourts.gov/mncourtsgov/media/CIOMediaLibrary/News%20and%20Public%20Notices/Orders/Administrative-Order-Continuing-Operations-of-the-Minnesota-Judicial-Branch-Under-Emergency-Executive-Order-No-20-33.pdf>.

⁵⁹ Kat Stafford, et al., *Outcry over racial data grows as virus slams black Americans*, ASSOCIATED PRESS, (Apr. 8, 2020), https://apnews.com/71d952faad4a2a5d14441534f7230c7c?fbclid=IwAR1plunY_qfeA2KrSU-PA1TuJobAwQh53a_Qlkf5dw0dWjz-iz85GA1FOt4.

susceptible, and also are more likely to be uninsured. They also often report that medical professionals take their ailments less seriously when they seek treatment.⁶⁰

71. Minnesota has seen these patterns reflected in the incident rates of COVID-19, with MDH reporting “24 cases of COVID-19 per 100,000 thousand whites in the state. But, 42 cases per 100,000 blacks.”⁶¹ Kris Ehresmann, MDH’s Director of Infectious Diseases and Epidemiology, has acknowledged these disparities.⁶²

72. Lieutenant Governor Peggy Flanagan has acknowledged, “communities of color and American Indians” are especially vulnerable populations in the current crisis.⁶³

Minnesota’s Witness Requirement Unnecessarily Burdens the Right to Vote

73. In 2014, Minnesota moved to “no-excuse” mail absentee voting whereby voters can petition their board of elections for an absentee ballot without needing to provide some reason for doing so.⁶⁴ Since adoption, absentee voting has been a safe, effective, secure way for many voters to exercise the franchise.

74. While Minnesota has used absentee and mail ballots as a critical mechanism to facilitate the right to vote, the Witness Requirement presents an unconstitutional obstacle to voting during the COVID-19 pandemic.

⁶⁰ *Id.*

⁶¹ Liz Collin, *WCCO Investigates: Which Neighborhoods Are At High Risk For COVID-19*, CBS MINNESOTA (Apr. 23, 2020), <https://minnesota.cbslocal.com/2020/04/23/wcco-investigates-which-neighborhoods-are-at-high-risk-for-covid-19/> (last visited May 1, 2020).

⁶² *Id.*

⁶³ Minn. Office of Governor Tim Walz & Lt. Governor Peggy Flanagan, *Governor Walz, Mayo, U of M Announce COVID-19 Testing Breakthrough* (Apr. 22, 2020), <https://mn.gov/governor/covid-19/news/#/detail/appId/1/id/429435> (last visited Apr. 27, 2020); *see also* Most Recent National Asthma Data, *supra* note 9.

⁶⁴ Office of the Minn. Sec’y of State, *Secretary Simon Updates Absentee Voting Participation Numbers Five Days Before Election Day* (Nov. 1, 2018), <https://www.sos.state.mn.us/about-the-office/news-room/secretary-simon-updates-absentee-voting-participation-numbers-five-days-before-election-day/>.

75. As noted, election officials currently have no discretion under Minnesota law as to whether to count an unwitnessed absentee ballot—they must reject such a ballot, and depending on the timing of the rejection, might not inform the voter of such rejection until 6 to 10 weeks after the election. Voters unable to comply fully with the Witness Requirement, or who fail to comply based on a technicality, are at serious risk of disenfranchisement.

76. Yet in the current pandemic, individuals living alone put their health at risk by having another individual participate in the absentee and other mail ballot voting process. Under Governor Walz’s orders, individuals should maintain at least six feet of distance from others with whom they do not live. These orders also reflect the consensus of doctors and public health officials.

77. Older Minnesotans and those with certain preexisting medical conditions face even more grave risks by interacting with another individual to obtain a witness signature. But because COVID-19 can strike and kill individuals of any age and those without preexisting conditions, any individual living alone faces a real risk by seeking someone to witness their ballot.

78. Enforcing the Witness Requirement in an environment in which COVID-19 is still being transmitted will likely prevent thousands of Minnesotans who are eligible to vote from casting ballots.

79. As of May 1, 2020, Minnesota had over 3.39 million registered voters. In the March 2020 presidential primary, nearly 900,000 Minnesotans cast ballots. And in the November 2016 general election, over 2.94 million Minnesotans cast ballots. While many of these individuals voted in-person, the combination of the COVID-19 outbreak and the examples from states like Wisconsin—where absentee ballot requests were five times higher in this year’s

primary than in the 2016 primary⁶⁵—indicate that voting by mail will explode in Minnesota this year.

80. According to 2018 Current Population Survey (“CPS”) statistics from the Census Bureau,⁶⁶ 26% of Minnesotans age 18 and older live alone. Assuming similar numbers in the 2020 August primary as in March, nearly 230,000 Minnesotans will face the choice of either risking their health by voting in person or finding a witness for their absentee ballots, or not voting at all. For the general election, over 765,000 Minnesotans will fall into this category. Like some members of the NAACP and individual Plaintiffs, many of them will be forced to risk their (and others’) health in order to vote.

81. To make matters worse, this burden on the right to vote will fall more heavily upon certain groups—older Minnesotans, Minnesotans with disabilities, and indigenous Minnesotans, among others.

82. According to the CPS, over 36.5% of Minnesotans age 65 and older live alone compared to 26% of the general population. 47% of Minnesotans 18 and older with a disability live alone and 53.3% of Minnesotans aged 65 and older with a disability live alone. And 58% of indigenous Minnesotans 18 and older live alone.

83. As noted above, older individuals already face higher rates of infection and death from COVID-19, further magnifying its impact. And the CDC has found that “some people with

⁶⁵ Compare Wisc. Election Comm’n, *Absentee Ballot Report - April 7, 2020 Spring Election and Presidential Preference Primary*, <https://elections.wi.gov/node/6833> (reporting over 1.28 million absentee ballots requested for April 7, 2020 primary) with Riley Vetterkind, *Absentee ballot requests in Wisconsin already exceed number in recent spring elections*, WISC. STATE JOURNAL (Mar. 18, 2020), https://madison.com/wsj/news/local/govt-and-politics/absentee-ballot-requests-in-wisconsin-already-exceed-number-in-recent-spring-elections/article_dfb34fc5-6aa8-5428-90c3-26c3f82a1d70.html (noting that just under 250,000 absentee ballots were requested for spring 2016 Wisconsin primary).

⁶⁶ 2018 Current Population Survey, U.S. Census Bureau, statistics accessed by using the Census Bureau Current Population Survey Table Creator tool at <https://www.census.gov/cps/data/cpstablecreator.html>.

disabilities might be at a higher risk of infection or severe illness because of their underlying medical conditions.”⁶⁷

84. Recent evidence also revealed racial disparities in the impact of COVID-19—disparities that will also likely transfer to burdens on voting. MDH has recently reported “24 cases of COVID-19 per 100,000 thousand whites in the state. But, 42 cases per 100,000 blacks.”⁶⁸

85. Minnesota’s Witness Requirement will therefore likely prevent tens of thousands of Minnesotans who might otherwise cast absentee ballots from doing so this year, with a disproportionate impact on older Minnesotans, Minnesotans with a disability, and communities of color.

86. While protecting election integrity and preventing improper use of absentee ballots certainly are valid governmental interests, maintaining the Witness Requirement during this pandemic fails to even serve these interests, let alone present a narrowly tailored method of doing so. And to the extent it does serve these or any other governmental interests, it is substantially outweighed by its massive burden on Minnesota voters and other Minnesota procedures that serve the same interests.

87. Given Minnesota’s other stringent procedural safeguards for absentee ballots, the Witness Requirement serves no valid purpose. Indeed, only 10 other states include such a

⁶⁷ CDC, *People Who Need Extra Precautions: People with Disabilities*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-disabilities.html> (last visited Apr. 15, 2020).

⁶⁸ Liz Collin, *WCCO Investigates: Which Neighborhoods Are At High Risk For COVID-19*, CBS Minnesota (Apr. 23, 2020), <https://minnesota.cbslocal.com/2020/04/23/wcco-investigates-which-neighborhoods-are-at-high-risk-for-covid-19>.

requirement in their state laws, yet the states without this requirement still have absentee balloting systems not undermined by fraud.⁶⁹

88. Meanwhile, Minnesota has several other mechanisms to both confirm the legitimacy of the absentee ballot cast and disincentivize fraudulent use of absentee ballots.

89. For one, absentee ballot envelopes must contain several other pieces of identifying information about the voters themselves—such as their first and last name, house number, street name or rural route address, city, and zip code, as well as either their state identification or driver’s license number or their social security number—the omission of any of which results in their vote being rejected. Minn. Stat. § 203B.121, subdiv. 2(c)(1).

90. Most directly, voters themselves must also attest under penalty of perjury that they are who they say they are, they live where they say they live, and that they did not double vote when they send in their ballot. *See id.* §§ 203B.04, subdiv. 1(c); 203B.02, subdiv. 1

91. Further, Minnesota laws make it a felony to intentionally make “any false or untrue statement on an absentee application. *Id.* § 203B.0, subdiv. 1(a)(2).

92. Similarly, intentionally showing one’s marked ballot to another, double voting, and applying for a ballot with the intent to cast an illegal ballot are felonies. *Id.* § 203B.03 subdiv. 1(a).

93. In light of these attestation and verification requirements and criminal penalties associated with misusing absentee ballots, the additional step of requiring a witness signature adds little on top of these safeguards. And while instances of fraud are rare, an individual determined to break these laws and risk the penalties can just as easily forge the signature of

⁶⁹ See Chart, “Verifying Authenticity of Absentee/Mailed Ballots,” *Voting Outside the Polling Place: Absentee, All-Mail and other Voting at Home Options*, Nat’l Conf. of State Legislatures (Apr. 3, 2020), <https://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>.

another individual as they can falsely attest when they sign their own name. Indeed, the Witness Requirement has little if any practical utility for election integrity because Minnesota law does not call for a ballot to be rejected even if the witness signature is illegible or the witness was in fact not eligible to serve as a witness under Minnesota law. *See* Minn. Admin. R. 8210.2450, subp. 5.

94. The burden on the voting rights of the many thousands of Minnesotans who will be prevented from either casting their ballots safely or having them counted by retaining the Witness Requirement far outweighs any purpose served by the requirement, if any.

The Right to Vote During a Pandemic Depends on Universal Access to Absentee Ballots

95. COVID-19 looms as the largest potential cause of voter suppression in the State's recent history, and Secretary of State Simon has expressed concern about potentially facing a "real disaster of an election season."⁷⁰

96. The timing required to respond to all requests for absentee ballots, the unpredictability of the pandemic, and the certain increase in demands on the State's system for absentee voting combine to make it imperative that the State mail ballots to all registered voters to safeguard their right to vote. While the option of in-person polling remains critical to ensuring access to the ballot box, it is simply impossible under the circumstances for the State to guarantee that its system for absentee ballots will not result in widespread disenfranchisement.

97. As discussed *supra*, ongoing outbreaks of COVID-19 are highly likely to occur in coming months, with unpredictable impacts to all aspects of life in Minnesota. Experts generally

⁷⁰ Peter Callaghan, *Minnesota Secretary of State Wants to Have All Minnesotans Vote By Mail. GOP Lawmakers Are Having None of It*, MINNPOST, April 9, 2020, <https://www.minnpost.com/state-government/2020/04/minnesota-secretary-of-state-steve-simon-wants-to-let-minnesotans-vote-by-mail-gop-lawmakers-are-having-none-of-it/>.

agree that disease is likely to increase as we near Election Day. The relevant indicators for the severity of the diseases have only worsened in Minnesota since March.

98. Even without a dramatic surge in cases of COVID-19, it is a certainty that Minnesotans will be preparing to vote in the August 2020 primary and November 2020 general election during an ongoing pandemic. These elections will occur when personal contact between persons poses a serious threat to health, welfare, and life. And the basic facts of this pandemic will not change before the general election.

99. For many voters, in-person voting remains essential to exercising the right to vote. It is particularly significant to voters with certain disabilities who depend on the assistance available at an in-person polling station or those without reliable U.S. Mail service. But the need to provide in-person polling locations for some Minnesotans makes it all the more imperative to ensure that as many voters as possible vote remotely by mail to limit lines, preserve social distancing, operate safe and disinfected polling places, and protect election judges who staff the polls.

100. In-person voting presents acute risks to both voters and election judges. Voting in-person exposes voters to inherent risk, and no voter should be forced to incur that risk to exercise their right to vote.

101. Protecting voters who attend the polls will pose extraordinary logistical challenges. To ensure that the right to vote is not burdened or denied by health risks, the State must ensure safe, well-ventilated, and sufficiently staffed polling locations. Polling locations will need to limit lines and traffic through the polls, while also taking precautions to disinfect voting machines, pens, and surfaces. Without widespread early voting by mail, the extreme operational challenges involved in minimizing public health risks while protecting access to the ballot box

will become unmanageable. The result will be a constitutionally unacceptable choice between insufficient and inadequate polling facilities or confronting voters with the specter of crowded, dangerous polls on Election Day. The Constitution cannot tolerate suppressing access to the ballot box by forcing its citizens to endanger their lives to vote.

102. Despite certain overwhelming demand for absentee ballots and the electoral system's obvious need to facilitate voting by mail, the strict requirements for absentee voting and timing limitations in Chapter 203B, along with issues with access to internet or physical mail make widespread disenfranchisement inevitable if ballots are not mailed to eligible voters in a timely fashion and well in advance of the election.

103. For many vulnerable, sick, or isolated voters, casting a vote by mail or identifying an agent to deliver an absentee ballot poses a significant obstacle to voting. That challenge becomes insurmountable as time passes, demands on the State's electoral system expand, and constraints on resources to support voting increase. Particularly if news regarding COVID-19 worsens in weeks leading up to the primary or general election, the strain on the absentee ballot system will result in innumerable late, unperfected, and rejected ballots.

104. The State's absentee voting system is not well designed to fulfill the need for voting by mail created by a pandemic. Voters must first be aware of the option to vote by absentee ballot and the process for timely obtaining a ballot. And on top of that, they must have the means to request a ballot electronically or by mail. For many Minnesotans, these obstacles will discourage or prevent them from voting when they otherwise would have, especially as the general election draws closer.

105. Moreover, Minnesota is currently reporting hundreds of new cases of COVID-19 every day.⁷¹ Thousands of voters will contract COVID-19 during the 14-day quarantine period prior to Election Day when they may become sick with the disease and will certainly be unable to safely have any interpersonal contact. Ensuring that all such voters have a ballot already in hand is the only way to guarantee that they can safely vote, endangering neither themselves or others at the polling locations.

106. The greatest burden on the right to vote during this pandemic will be inflicted on those at highest risk from the effects of COVID-19. This includes elderly individuals, immunosuppressed individuals, and individuals with pre-existing conditions. And it includes African American and indigenous Minnesotans who are statistically more likely to have worse outcomes from COVID-19. Minnesota's robust constitutional guarantee of universal suffrage cannot be squared with imposing on these voters the choice between their health and their vote. The surest way to avoid that choice as Election Day approaches is to ensure that all voters have a ballot.

107. Barriers to successfully voting by mail are likely to disproportionately affect marginalized communities. Voters with lower incomes, no or limited access internet or computer resources, geographic or social isolation, language barriers, and/or mental or physical disabilities are all at significantly greater risk of failing to timely obtain and submit an absentee ballot. As one example of the challenges facing voters, public libraries offer one of the few ways that voters without internet access in their homes can access the internet, but public libraries remain closed due to the pandemic. All of these challenges will make absentee voting all but impossible for these persons should COVID-19 cases accelerate in coming months, leaving voters

⁷¹ See *supra* note 33.

scrambling to navigate the absentee ballot system at the last minute. While the Minnesota Constitution welcomes all eligible voters to cast their ballots, countless such persons will lose the right to vote safely unless ballots are mailed.

108. Mailing an absentee ballot to all registered voters is not only feasible but requires no burden on the State, other than expense, if done in a timely manner. The State is facing the need for dramatic increases in absentee voting in any case, and universal mailed ballots simply ensures that the system is executed early and seamlessly. Indeed, mailing ballots to all registered voters might even decrease burdens on the State by lessening the demands on the in-person voting system.

109. Indeed, far from a novel concept, multiple states already provide for universal mail-in voting.⁷² Minnesota itself already allows for universal mail-in voting for towns with less than 400 voters. *See* Minn. Stat. § 204B.45. The statewide voter registration system, maintained by statute and administered by Defendant, means that Defendant can mail a ballot to all registered voters with no significant burden. While not imposing a significant burden on the State, ensuring that all registered voters have ballots in hand well before the election protects the fundamental right to vote, as well as the health of individual voters and the public.

⁷² *See* Colorado (CRS §1-5-401); Hawaii (Hawaii Stat. §11-101); Oregon (ORS §254.465); Utah (Utah Code Ann. §20A-3a-302); Washington (Rev. Code of Wash. 29A.40.010).

CLAIMS FOR RELIEF

COUNT I: WITNESS REQUIREMENT

Violation of the Fundamental Right to Vote Article I and Article VII of the Minnesota Constitution

110. Plaintiffs incorporate by reference the foregoing paragraphs as though fully set forth herein.

111. Eligible individuals have a fundamental right to vote under Article I, § 2 and Article VII, § 1 of the Minnesota Constitution. Under the Constitution, “[i]t is undisputed that the right to vote is a fundamental right.” *Kahn v. Griffin*, 701 N.W.2d 815, 832 (Minn. 2005).

112. In light of the COVID-19 pandemic, Minnesota’s Witness Requirement and its enforcement severely and unreasonably burdens the fundamental right to vote of Minnesota voters. This requirement threatens to prevent thousands of eligible Minnesotans from casting ballots, with particularly heavy burdens on older Minnesotans, Minnesotans with disabilities, and African American and indigenous Minnesotans.

113. The Witness Requirement does not further any government interest in a constitutionally permissible manner. The Witness Requirement is not narrowly tailored to address the state’s general interest in the integrity of its elections, especially in light of the substantial other protections against fraudulent submission of ballots, safeguards that ensure voters only vote once, and procedures to expose abuse of the absentee voting system. Nor does any valid reason exist to impose the Witness Requirement on the State’s most vulnerable voters while not doing so for voters absent while serving in the military or residing overseas. Whatever interests the Witness Requirement may serve pales in comparison to the substantial burden on voters during the COVID-19 pandemic.

114. Particularly during the COVID-19 pandemic, the Witness Requirement amounts to additional and unconstitutional oath under Article VII.

115. Therefore, Defendant, acting under color of state law, has and will continue to deprive Plaintiffs of rights secured to them by the Minnesota Constitution—namely, the fundamental right to vote—by enforcing the Witness Requirement during the COVID-19 pandemic.

COUNT II: WITNESS REQUIREMENT

Violations of the Equal Protection Guarantee of the Minnesota Constitution

116. Plaintiffs incorporate by reference the foregoing paragraphs as though fully set forth herein.

117. Article VII, § 1 of the Minnesota Constitution secures the right of Minnesota citizens to vote and Article I, § 2 inherently guarantees equal protection.

118. By requiring voters who live alone to place their lives and health in danger in order to exercise their fundamental right to vote, the Witness Requirement impermissibly and irrationally denies the fundamental right to vote to those individuals while there is still ongoing community transmission of COVID-19. This requirement places particularly heavy burdens on older Minnesotans, Minnesotans with disabilities, and African American and indigenous Minnesotans.

119. The Witness Requirement, if not declared illegal and enjoined, will materially burden the right to vote, and will have an adverse and disparate impact on older Minnesotans, Minnesotans with disabilities, and African American and indigenous Minnesotans. African American and indigenous Minnesotans are more likely to suffer from severe health complications and to die from COVID-19, and are therefore more significantly burdened by the Witness Requirement.

120. No sufficient purpose justifies the disparate burden caused by the Witness Requirement.

121. During the current health crisis, the Witness Requirement and enforcement of it violate the inherent but unenumerated Equal Protection guarantee of Article I, § 2 of the Minnesota Constitution.

COUNT III: UNIVERSAL ABSENTEE BALLOTS

Violation of the Fundamental Right to Vote Article I and Article VII of the Minnesota Constitution

122. Plaintiffs incorporate by reference the foregoing paragraphs as though fully set forth herein.

123. Eligible individuals have a fundamental right to vote under Article I, § 2 and Article VII, § 1 of the Minnesota Constitution. Under the Constitution, “[i]t is undisputed that the right to vote is a fundamental right.” *Kahn*, 701 N.W.2d at 832.

124. The right to vote depends on electoral procedures, facilities, and options that ensure that all individuals have the opportunity to exercise that right. During the COVID-19 pandemic when Minnesotans have been ordered to stay home and avoid social contact, and consistent public health guidance mandates the same even when the governmental orders expire, widespread voting by mail is essential to ensure that voters do not have to choose between protecting their health and that of their communities and exercising the franchise. Mailing a ballot to every registered ballot is necessary to avoid widespread voter disenfranchisement that will otherwise inevitably occur under the circumstances due to obstacles to absentee voting, health risks of voting in person, and constraints on the State’s electoral system.

125. Even if the Witness Requirement did not exist, the process of obtaining, completing, and submitting an absentee ballot poses significant obstacles to many Minnesota

voters and certainly to the thousands of voters likely to contract COVID-19 in the weeks prior to the primary and general election.

126. Faced with the obstacles associated with voting absentee and the health risks associated with voting in-person, the State's failure to provide absentee ballots to all registered voters will result in many Minnesota voters simply staying home, resulting in a widespread denial of the right to vote.

127. Meanwhile, Defendant is aware that mailing a ballot to every registered voter is a simple, effective solution that protects the fundamental right to vote. Universal mailing of absentee ballots is a reasonable, feasible means to avoid placing an unnecessary burden on the right to vote during a pandemic.

128. Therefore, Articles I and VII of the Minnesota Constitution require Defendant to mail absentee ballots to every registered voter during the COVID-19 pandemic.

COUNT IV: UNIVERSAL ABSENTEE BALLOTS

Violations of the Equal Protection Guarantee of the Minnesota Constitution

129. Plaintiffs incorporate by reference the foregoing paragraphs as though fully set forth herein.

130. Article VII, § 1 of the Minnesota Constitution secures the right of Minnesota citizens to vote Article I, § 2 inherently guarantees equal protection.

131. Failing to ensure that all registered voters have timely access to absentee ballots places an unnecessary and unjustified burden on the fundamental right to vote during the COVID-19 pandemic.

132. The burdens associated with applying for absentee ballots during the COVID-19 pandemic disproportionately and adversely affect vulnerable, marginalized, and/or minority

voters who are less likely to have access to information about mail-in voting, resources to facilitate access to absentee ballots, or the means to request a ballot online or by mail.

133. Mailing absentee ballots to all registered voters ensures that during the COVID-19 pandemic the fundamental right to vote is not unreasonably burdened in violation of the equal protection guarantee set forth in Article I, § 2 of the Minnesota Constitution.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully requests that this Court:

- A. Declare that Minnesota's enforcement of the Witness Requirements of Minn. Stat. § 203B.07, subdiv. 3, Minn. Stat. § 204B.45 - .46, and Minn. Admin. R. 8210.3000 violates the fundamental right to vote under Article VII and the equal protection guarantee of the Minnesota Constitution at least until an FDA-approved vaccine for COVID-19 has been identified, is easily accessible to Minnesotans, and its use has been sufficiently widespread such that community transmission is no longer continuing.
- B. Issue a preliminary and permanent injunction that orders relief including:
 - 1. Prohibiting Defendant from enforcing or acting on the Witness Requirement of Minn. Stat. § 203B.07, subdiv. 3, Minn. Stat. § 204B.45 - .46, and Minn. Admin. R. 8210.3000 for all Minnesota voters, especially for voters at risk of health complications arising from COVID-19 exposure, at least until an FDA-approved vaccine for COVID-19 has been identified is easily accessible to Minnesotans, and its use has been sufficiently widespread such that community transmission is no longer continuing;

2. Ordering Defendant to issue guidance instructing city and county election officials to count otherwise validly cast absentee ballots and mail ballots that are missing a witness signature for Minnesota's elections in 2020;
 3. Ordering Defendant to conduct a public information campaign informing Minnesota voters about the elimination of the Witness Requirement, in coordination with city and county election officials; and
 4. Ordering Defendant to take all steps necessary to mail absentee ballots to all registered voters at least 30 days prior to any election conducted before an FDA-approved vaccine for COVID-19 has been identified and is easily accessible to Minnesotans, and its use has been sufficiently widespread such that community transmission is no longer continuing.
- B. Plaintiffs stress that the relief they seek does not affect the State's duty to provide safe, efficient polling locations to facilitate in-person voting. To the contrary, the foregoing relief will further the State's ability to fulfill that constitutional obligation.
- C. Award Plaintiffs attorneys' fees in this action.
- D. Award Plaintiffs their costs of suit.
- E. Grant such other and further relief as this Court deems just and proper in the circumstances.

Respectfully submitted,

Dated: June 4, 2020

/s/ Craig S. Coleman

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ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. § 549.211, subd. 2, against a party for claims made in violation of that statute.

/s/ Craig S. Coleman

Craig S. Coleman