State of Minnesota
In Supreme Court

A20-1294
A20-1295

Minnesota Voters Alliance, Republican Party of Minnesota, Dan McGrath, Tony W. Ward, Thomas Polachek, and Robert McDonald, on behalf of themselves and all others similarly situated,
Petitioners,

vs.

County of Ramsey, Minnesota, its Board of Commissioners, and its County Auditor, Christopher A. Samuel, or their successors, (A20-1294)
Respondents.

County of Olmsted, Minnesota, its Board of Commissioners, and Mark Krupski, Director of Property Records and Licensing or their successors, (A20-1295)
Respondents.

APPELLANTS' REPLY BRIEF

Gregory J. Joseph, No. 0346779
Joseph Law Office PLLC
300 E. Frontage Road, Suite A
Waconia, Minnesota 55387
Telephone: (612) 968-1397
Email: josephlawoffice@protonmail.com

Robert B. Roche (#0289589)
Assistant Ramsey County Attorneys
121 7th Place East, Ste. 4500
St. Paul, MN 55101
Direct: (651) 266-3230
robert.roche@co.ramsey.mn.us
Attorney for Ramsey County Respondents

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Erick G. Kaardal, 229647
Mohrman, Kaardal & Erickson, P.A.
150 South Fifth Street, Suite 3100
Minneapolis, Minnesota 55402
Telephone: 612-341-1074
Email: kaardal@mklaw.com
Attorney for Appellants

Jennifer D. Plante, Atty. No. 0391464
Senior Assistant Olmsted County Attorney
Olmsted County Attorney's Office
151 Fourth Street Southeast
Rochester, Minnesota 55904
Telephone: (507) 923-7073
plante.jennifer@co.olmsted.mn.us
Attorney for Olmsted County Respondents

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INTRODUCTION

Minnesota Statutes § 203B.121 imposes clear duties on local governing bodies to establish absentee ballot boards for the acceptance and rejection of ballots, with party balance, consisting of enough election judges to accept and reject all ballots. The intentional acts of Respondents, under the guise of propriety furnished by Amicus Secretary of State, are in direct conflict with this duty. In their vain attempts to justify their unlawful actions, Respondents use linguistic gimmickry and arguments that amount to no more than obfuscation and misdirection. No attempt has been made to reconcile language that would render their interpretation impossible to carry out, and what's left after their misconstruction of the statute only leads to more confusion. This Court should recognize the clear duties imposed by § 203B.121 and Respondents' breach thereof, and grant mandamus relief to Petitioners.

ARGUMENT

Three distinct duties are imposed by Section 203B.121: The responsibility of a governing body to establish a ballot board and not delegate it, the duty to appoint a sufficient number of election judges to accept and reject all absentee ballots to the ballot board, and the requirement that election judges performing the duties in this statute be party balanced. Each of these duties is clear, and Petitioners ask for writs of mandamus on each.

A writ of mandamus may issue "to compel the performance of an act which the law specially enjoins as a duty." Minn. Stat. § 586.01 (2016). *Madison Equities, Inc. v. Crockarell*, 889 N.W.2d 568, 571 (Minn. 2017). Further, a writ of mandamus "shall not issue in any case where there is a plain, speedy, and adequate remedy in the ordinary course of law." Minn. Stat. § 586.02 (2016). Id. To obtain a writ of mandamus, Petitioners must show (1) the failure "to perform an official duty clearly imposed by law," (2) "which caused a public wrong specifically injurious" to Petitioners, and (3) for which there is no other adequate legal remedy. *Id.*, citing *N. States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485, 491 (Minn. 2004)(citation omitted).

The Court reviews de novo "a decision on a writ of mandamus . . . based solely on a legal determination." *Id., citing Breza v. City of Minnetrista*, 725 N.W.2d 106, 110 (Minn. 2006).

I. Minnesota Statute § 203B.121 imposes a clear duty upon Respondent governing bodies to establish absentee ballot boards and to appoint election judges thereto.

The first clause in Section 203B.121 reads as follows: "The governing body of each county, municipality, and school district with responsibility to accept and reject absentee ballots must, by ordinance or resolution, establish a ballot board." This sentence imposes two clear duties: First, it requires that a ballot board be

established; Second, it requires the governing body to do it. Both of these clear duties were breached by Respondents in different ways.

"When interpreting a rule, we look first to the plain language of the rule and its purpose." 889 N.W.2d at 571-72 (Minn. 2017), citing *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 601 (Minn. 2014). If a statute is unambiguous, "then we must apply the statute's plain meaning." *State v. Thonesavanh*, 904 N.W.2d 432,435 (Minn. 2017), citing *State v. Nelson*, 842 N.W.2d 433, 436 (Minn. 2014). "'A statute is ambiguous only if it is subject to more than one reasonable interpretation.'" *Id.* (citation omitted).

Here, the first requirement imposed in § 203B.121 Subd. 1(a) is stark: it requires the governing body to "establish" a ballot board. Respondents are actually arguing that the duty imposed by the legislature was to "establish" an absentee ballot board, and this does not concern whether people actually populate the board. Respondents fail to define "establishment," of an absentee ballot board under their interpretation, other than waving a hand and anointing one, as though this is the duty imposed by 203B.121. If this were the case, then the rest of the ballot board statute would be meaningless, and the duty would be satisfied after the first sentence.

Yet, the only way to make sense of the notion that delegation of authority in context of the absentee ballot board statute by a local governing body could

conceivably be possible is to separate the "establishment" of a ballot board from the act of actually putting people on it. This is both a logical absurdity and wholly inconsistent with the duty established by the plain language in § 203B.121. Nevertheless, both Respondents stridently assert that to "establish" a ballot board is to undertake a separate and distinct process, and a local governing body is free to require another entity to staff it. There is no authority for this position.

A. Delegation of authority is not authorized under 203B.121, the Ramsey County Charter, Minn. Stat. § 373.02, or any other source.

Respondent Ramsey County is in breach of its duty because it assigns to itself the authority to delegate establishment of the ballot board to the County Auditor. When the legislature intends to grant a county board authority to delegate its decision-making power, it says so. For example:

- Minnesota Statutes § 261.231: "The county board of any county in this state is hereby authorized to delegate to the local social services agency of such county…" authority to regulate hospitalization of indigent persons.
- Minnesota Statutes § 282.135: "…the county board may delegate to the county auditor any authority, power, or responsibility relating generally to the administration of tax-forfeited land assigned to the county board this chapter."
- Minnesota Statutes § 375.18: "A county board, at its discretion, may delegate its authority to pay certain claims made against the county to a county administrative official."
- Minnesota Statutes § 375.192: "Notwithstanding any law to the contrary, the county board may delegate to the county auditor any authority…" to reduce or abate valuations or taxes.

- Minnesota Statutes § 383B.213: "The board may delegate authority and responsibility to the county administrator…" certain powers related to the creation of health boards.

If the legislature wanted to allow a county board of commissioners (or a city council for that matter) specifically tasked with the "…responsibility to accept and reject absentee ballots…" under § 203B.121 to delegate this power to another party, it would have used language to this effect. Tellingly, nothing in this statute, or among § 204B.19 - .22, confers or even suggests this authority.

The existence of a county charter does not convey special authority in Election Law unless it is specifically provided for. Minnesota Statutes § 200.015 provides: "The Minnesota Election Law applies to all elections held in this state unless otherwise specifically provided by law." Moreover, § 203B.121, subdivision 1(c) provides "Except as otherwise provided by this section, all provisions of the Minnesota Election Law apply to a ballot board." Because no language exists in § 203B.121 reserving the exercise of charter authority for a county board, the authority under which ballot boards are established must be the same for all cities and counties, with or without charters. Again, if the legislature had intended to endow a charter county with the authority to come up with its own definitions and rules within § 203B.121, it would have done so. Again, we see no such language here.

Next, Respondents claim that Minn. Stat. § 373.02, which generally

authorizes the exercise of power by *any* party "…in pursuance of a resolution adopted by the county board," allows it to choose whomever it wishes to appoint members to the absentee ballot board. Ramsey Br. at 9. The standard set in *Crockarell* and *Walsh* demonstrates that the plain language controls, and we need not look to the legislative intent. Moreover, the recognition of such sweeping power within the confines of this narrowly drawn statute would open the door to rampant abuse worse than that already before this Court.

Finally, Respondents insist that their application of the statute, pursuant to the "guidance" by amicus, is evidence of multiple reasonable interpretations of § 203B.121, and thus precludes the existence of a "clear duty" so as to justify mandamus relief. But misapplication of a law is not evidence of alternative reasonable interpretations of it. Respondents fail to cite any specific *language* in § 203B.121, or elsewhere in the Election Law, that could possibly give a county board the authority to delegate, because the statute doesn't allow for it. So, these delegation "arguments" boil down to, "It doesn't say we can't." This is improper and not a grant of authority.

B. Respondents have a clear duty to appoint election judges to the ballot board pursuant to Sections 204B.19 – 204B.22.

Respondents are asking the Court to interpret Section 203B.121 as granting the authority to determine how many election judges they *want* on their absentee ballot board, not how many are sufficient, or necessary, to accept and reject all the

absentee ballots. In other words, they seek validation of their practice of remedying the shortfall they created for themselves. This is problematic for several reasons, among which is the ability to ignore the party balance requirement imposed upon election judges who make up the ballot board in favor of hand-picked partisan "deputies." There is no duty to appoint deputies, and no support for this position.

Applying the plain language rule in *Walsh* and *Crockarell*, we see that the legislature provided several mechanisms in Section 204B.21, Subdivisions 1 and 2 to appoint an ample number of party balanced election judges to the position. These are discussed at length in Petitioners' primary brief and so unnecessary repetition will be avoided here. Notably absent is any language making reference in any capacity to "deputy county auditors" or "deputy city clerks," neither of which is mentioned as a substitute for an election judge anywhere in the Election Law. Once election judges are appointed pursuant to these statutes, they must be included in sufficient number to accept and reject all absentee ballots on the board in Section 203B.121. This is not subject to any other reasonable interpretation.

In choosing the words "sufficient number," the absentee ballot board statute grants discretion to determine how many election judges are needed to accept and reject absentee ballots under Section 203B.121, *and no more*. "Mandamus may… compel the exercise of discretion when required by law. *Mendota Golf, LLP v. City*

of Mendota Heights, 708 N.W.2d 162, 171 (Minn. 2006). But a writ of mandamus "does not control the particular manner in which a duty is to be performed and does not dictate how discretion is to be exercised." *Id.*

Here, Petitioners do not ask this Court to take away from local governing bodies the discretion to determine the "sufficient number" of election judges necessary to accept and reject all the absentee ballots on their respective ballot boards in Section 203B.121. Rather, we ask that the Court *not* recognize as lawful the authority Respondents have stolen for themselves - - the authority to choose whether to include election judges at all, or whether they would prefer "deputies" to displace them.[1]

II. Petitioners were specifically injured by the public wrong caused by Respondents.

The second element necessary to demonstrate for mandamus relief is that "the petitioner suffered a public wrong specifically injurious to the petitioner." *N. States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485, 487 (Minn. 2004). Respondents assert that no such harm has been established. Not so.

Petitioner Republican Party of Minnesota is a "major political party" within the meaning of Section 204B.21. As required by this statute, it furnishes a list of

[1] Amicus Secretary endorses this practice and actually encourages the use of "deputies" to displace election judges for reasons of cost and convenience, which is inconsistent with Respondents' clear duty. Simon Br. at 5.

party members who desire to be election judges to the Minnesota Secretary of State. Section 203B.21 directs that absentee ballot boards established by local governing bodies "must consist of" election judges who were appointed from this list, and those other lists provided by other major political parties. These election judges must be a balance of party members.

Respondent Olmsted County committed a public wrong which specifically injured Petitioner when it staffed its absentee ballot board entirely with "deputy county auditors." The Olmsted County Board of Commissioners, in July, 2020, passed the following resolution to:

> Establish an Absentee Ballot Board for the 2020 primary and general election consisting of all members of the Olmsted County Property Records & Licensing elections staff that have been appointed as deputy county auditors by the Director of Property Records and Licensing as provided in sections 2094B.19 to 204B.22 to perform the task.

Apps. Add. 81. The Resolution, 20-139, went on to name 21 persons to occupy the absentee ballot board, none of which were election judges. *Id.* This act specifically injured the Party because it had an expectation that its list of election judges be used to appoint ballot board members who would accept and reject ballots.

Respondent Ramsey County is in breach of its clear statutory duty because it delegated authority to the County Auditor to establish the ballot board. When it did so, the County Board abdicated its duty to determine a sufficient number of

election judges from the party list to accept and reject absentee ballots. Apps. Add. 78. Importantly, the "sufficient number" of election judges had not been determined by the board prior to delegation, a duty with which it was specifically charged, and which ensures party balance.

The individual named Petitioners are both members of the Minnesota Voters Alliance and the Republican Party of Minnesota. The alleged public wrong here is especially injurious to Petitioners because the state law requires the appointment of an independent absentee ballot board with party balance—including Republican Party of Minnesota election judges. The refusal of the Respondents to appoint an independent absentee ballot board with party balance has "especially injured" Petitioners. The named petitioners have a specific right under state law to be appointed as a part of the statutorily-required independent absentee ballot boards with party balance.

III. Mandamus is proper because no other adequate legal remedy exists.

The third prong to be satisfied to afford mandamus relief is the absence of any other available legal remedy. Respondents contend that a writ of mandamus in this case is improper because possible alternative avenues exist to pursue a remedy, but this is not the case. These contentions include, specifically, relief through a declaratory judgment action, a ballot errors and omissions petition under Minn.

Stat. § 204B.44, and/or the Administrative Procedures Act.[2] None of these three options were available to Petitioners, and none can afford the "adequate" relief that mandamus can. Because no adequate remedy existed at the time this matter was brought, and none exists now, denial of mandamus is improper on these grounds.

A. A Declaratory judgment is not an available avenue of relief.

Declaratory relief under the UDJA was not available to Petitioners because Respondents are governmental entities. Minnesota courts have long held that the state is immune from suit unless it consents to the same. *Nichols v. State*, 858 N.W.2d 773, 775 (Minn. 2015)(citations omitted). In 1941 the Legislature enacted Minn. Stat. § 645.27, which describes under what circumstances the Legislature intends to waive sovereign immunity for statutory claims: "The state is not bound by the passage of a law [1] unless named therein, or [2] unless the words of the act are so plain, clear, and unmistakable as to leave no doubt as to the intention of the legislature." Minn. Stat. § 645.27. In other words, sovereign immunity is waived only if the statute demonstrates the Legislature's express intent to allow suit against the State. *See Holmberg v. Holmberg*, 588 N.W.2d 720, 727 (Minn. 1999), cited in *Nichols*, 858 N.W.2d 773, 775-6 (Minn. 2015) (citations omitted).

In this case, there is no language in either Section 203B.121, or Chapter 203B generally, which contains an express or an implied private cause of action.

[2] *See gen.* Olmsted Br. at 16-18; Ramsey Br. at 21-23.

Sovereign immunity is not waived. So, the provisions required to allow suit against the government are absent here. The Minnesota Constitution does not provide a general private cause of action to sue under Chapter 203B, either. So, we next look to the Uniform Declaratory Judgment Act, which Respondents contend could provide an alternative remedy. Not so. Minnesota Statutes § 555.02 provides:

> Any person… whose rights, status, or other legal relations are affected by a statute… may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.

While it may appear at first blush that this language could afford the relief sought, case law makes it explicitly clear that it cannot: "The Uniform Declaratory Judgment Act… gives courts "within their respective jurisdictions" the power to "declare rights, status, and other legal relations." Minn. Stat. § 555.01 (2006). But the UDJA "cannot create a cause of action that does not otherwise exist." *Hoeft v. Hennepin Cty.*, 754 N.W.2d 717, 722 (Minn. Ct. App. 2008), citing *Alliance for Metro. Stability v. Metro. Council*, 671 N.W.2d 905, 916 (Minn. App. 2003). In this case, the rule is very clear – no cause of action exists to enforce Section 203B.121, and the UDJA cannot create one. So, because Petitioners cannot be afforded relief under the UDJA, a writ of mandamus under Chapter 586 is the only available remedy in the dispute at bar.

This is not the only manner in which a declaratory judgment is an insufficient alternative remedy. The Minnesota Court of Appeals in *Kramer v. Otter Tail County Board of Comm'rs* has clarified the meaning of "plain, speedy, and adequate" in context of the mandamus law. 647 N.W.2d 23, 26 (Minn. Ct. App. 2002). "(T)he remedy which will preclude mandamus must be equally as convenient, complete, beneficial, and effective as would be mandamus, and be sufficiently speedy to prevent material injury." *Id*., citing 52 Am. Jur. 2d *Mandamus* § 49 at 374 (1970)(citation omitted).

Mandamus affords the possibility of a peremptory writ. *See gen*. Minn. Stat. § 586.03 - .04. This is particularly relevant in this case, because Petitioners brought suit in July, 2020, just over three months prior to the November, 2020 election. *See* App. Add. 28-31. Petitioners contend that the absentee ballot boards have been illegally established. Had the District Court agreed that the circumstances in the case at bar were appropriate, and "no valid excuse for nonperformance (could) be given," it could have afforded *immediate* relief in the form of a writ or order to show cause. This is not a possibility under the UDJA, and thus the only sufficiently speedy remedy to prevent material injury is a writ of mandamus.

B. Minnesota Statute § 204B.44 can afford no possible relief.

Respondents contend, wrongly, that an Errors and Omissions petition under

Minn. Stat. § 204B.44 is an adequate remedy to address the improper conduct in the case at bar. Not so. As this Court has long held, § 204B.44 is designed to remedy misconduct which has occurred or is likely to occur as related to a single, specific election. That is not the case here. Not only has the language in § 203B.121 remained unchanged since 2013, but the current misapplication of the law is certain to continue going forward unless a writ of mandamus issues.

This court has made it clear that, despite the expansive language in § 204B.44 concerning correction of ballot errors, "…we have not viewed the original jurisdiction provided by section 204B.44(a)(4) broadly." *Minn. Voters Alliance v. Simon*, 885 N.W.2d 660, 664 (Minn. 2016). As applied to Subdivision (a)(4) in particular, which Respondents cited as a viable alternative legal remedy in this case, this Court held that a petition under § 204B.44 is not designed to pertain to elections in general, but rather to a single election. *Id.* at 665, *citing Minn. Majority v. Ritchie*, No. A09–0950, Order at 5–6 (Minn. filed July 22, 2009 (concluding that the duties the respondents were alleged to have breached, "while related to elections, d[id] not concern 'an' election")).

Contrary to Respondents' claim that "…the alleged harms Petitioners have articulated amount to nothing more than a concern that the recently concluded election be administered lawfully and fairly,"[3] the duties imposed upon local

[3] Ramsey Br. at 21.

governments by the plain language in the absentee ballot board statute have not changed. So, although the administration of the 2020 general election provides an excellent example of the unlawful construction of absentee ballot boards under § 203B.121, the problem is by no means limited to that election. Therefore, § 204B.44 is not a remedy available to Petitioners.

C. The Administrative Procedures Act does not govern challenges to Minnesota Statutes.

Citing Administrative Rule 8210.2450, Respondents argue that the present action directing the carrying out of the clear duty established by Minnesota Statue § 203B.121 could somehow have been brought under the Administrative Procedures Act in Minn. Stat. § 14.44. Respondents fail to explain, however, how determining whether a "…rule, or its threatened application, interferes with or threatens to interfere with or impair the legal rights or privileges of the petitioner." Minn. Stat. § 14.44. A judicial determination on the validity of the administrative rule would not address the clear duties, or the multiple breaches of those duties by Respondents, in Section 203B.121. Rather, the limit of this Court's ability under such a challenge would be to strike down the rule as contradictory to the statute; Petitioners' rights under the statute, and the clear duties established thereby, would be left to be determined. This does not provide an adequate avenue of relief so as to invalidate mandamus.

Moreover, amicus Secretary has already demonstrated a clear willingness to disregard the clear mandates in the absentee ballot board statute by recognizing local authority to choose whether election judges or hand-selected "deputies" accept and reject ballots. Striking down one administrative rule without a clear directive about the duties in the underlying statute would likely only give rise to another rule recognizing authority that doesn't exist.

IV. Cost and convenience are not valid grounds to ignore the mandate in the ballot board statute.

Neither of the Respondents nor amicus Secretary makes any attempt at all to explain the clear duty imposed upon local governing bodies to create an absentee ballot board that "must consist of" election judges.[4] Instead, the Secretary of State provides "guidance" that local governing bodies should prioritize cost and convenience above the mandates in the ballot board statutes by assuming the power to appoint election judges and "deputies" interchangeably. *See* Amicus Br. at 3-5. This is both wrong and careless, and neither the legislature nor the courts agree with this premise.[5]

[4] Contrast the language in Minn. Stat. § 204B.45, where a ballot board for rural mail balloting "*may consist of* deputy county auditors or deputy municipal clerks who have received training in the processing and counting of mail ballots…" (emphasis added).

[5] This carelessness is also evident in the multiple references throughout Amicus Secretary's brief to "amicus curiae American Enterprise Institute (AEI)." The Center of the American Experiment, an actual amicus curiae in this case, is in no way affiliated with the American Enterprise Institute (AEI).

We cannot permit a municipality to bend the letter of the statute for the sake of administrative ease. *Cf. Olympia Brewing Co. v. Commissioner of Revenue*, 326 N.W.2d 642, 648 (Minn. 1982) (recognizing administrative ease, while a legitimate concern, "does not justify an interpretation of a statute which is inconsistent with its purpose" (citation omitted)). *Demolition Landfill Servs., L.L.C. v. City of Duluth*, 609 N.W.2d 278, 281 (Minn. Ct. App. 2000).

Here, neither cost nor convenience is a factor to be considered by local governing bodies, much less a basis to disregard the clear mandate in Section 203B.121. While Respondent Olmsted County claims it applied a "reasonable interpretation" of the ballot board statute which is "permitted by the chief election official in the state," the purpose and clear duty behind the law – to create a fair and balanced method of accepting and rejecting absentee ballots – has been destroyed. Olmsted Br. at 22-3. "Guidance" by amicus Secretary that runs contrary to the purpose and language of a statute, as here, is not evidence of an alternative reasonable interpretation.

V. A "precinct" exists in both municipalities and counties.

Section 204B.21 poses a problem for Respondents because Section 203B.121 makes explicit reference to it as the required appointment process for election judges which must make up the absentee ballot board. To get around this, both Respondents use word tricks to redefine this process as only applicable to

"precincts," which they argue only exist in municipalities. Ramsey Br. at 10, 11; Olmsted Br. at 9, 10. This is not the case.

Every piece of land in Minnesota falls within a precinct. When the legislature refers to a precinct, it is a simple way of describing an area in which a voter lives, which falls under the jurisdiction of the local governing body in an Election Law context, whether a county board or a city council. "Precinct" means a geographical area the boundaries of which are established for election purposes in accordance with section 204B.14. Minn. Stat. § 200.02 Subd. 11. Section 204B.14, Subdivision 1 provides as follows: "The governing body of each municipality shall establish the boundaries of the election precincts in the municipality. *The governing body of a county shall establish the boundaries of precincts in unorganized territory in the county*." (emphasis added). Thus, the requirement of county boards in Section 203B.121 that an absentee ballot board "must consist of… election judges appointed as provided in (§ 204B.21)," fits neatly within the confines of this statute.

VI. "Staff" may not be appointed to absentee ballot boards.

Election judges are required to make up a ballot board, and this clear duty is imposed by Section 203B.121. But, regardless of how this Court ultimately decides the question at bar, there are only two subsets of people who could possibly be included on an absentee ballot board: Election judges, and "deputies."

Yet, inexplicably and throughout its brief, Respondent Olmsted County argues that "…Section 203B.121 expressly permits the use of trained staff…" to perform the tasks assigned to the ballot board. Olmsted Br. at 12.[6] As Respondent Ramsey County correctly pointed out, the 2013 amendments to Section 203B.121 expressly eliminated "staff" from the ballot board statute. Ramsey Br. at 19. This alone reflects the breach of a clearly imposed duty.

But Respondents' misapplication reflects a deeper problem. Why would the legislature prioritize labeling someone a "deputy county auditor?" Hand-chosen staff members, which these counterfeit "deputies" admittedly are per Respondents themselves,[7] and which the legislature expressed a clear intention to exclude from absentee ballot boards in 2013, do not undergo a metaphysical transformation when a governing body dubs them "deputies," rather than "staff" or "employees." So, the notion that the number of deputies may be infinitely expanded under the authority of either Section 203B.121 or 384.08 at the direction of governing bodies in this context solely to occupy the ballot board is impossible to reconcile with Section 203B.121. Put differently, if Respondents are correct and Section 203B.121 permits an unlimited number of county or city *staff* to occupy the absentee ballot board so long as they are titled properly, why would the legislature bother with the additional step of naming staffers deputies?

[6] *See also* Olmsted Br. at 13, 14, 18, 22.
[7] Olmsted Br. at 12, 13, 14, 18, 22; Ramsey Br. at 15.

Although amicus Secretary makes repeated reference to "professional, nonpartisan county or municipal employees,"[8] the legislature is not so naïve as to believe that staff who in many cases are supervised by the very people whose names appear on the ballot have no partisan preference.

Plainly, the Secretary of State has no regard for impartiality on ballot boards and has issued directives to ignore the legislature's attempts to achieve it.[9] The Secretary cites "only a handful" of statutes in the Election Law – nine – to support the proposition that party balance has no place in Minnesota's Election Law. Simon Br. at 7-8. By contrast, the dispute before the Court stems from Respondents' claim that a *single sentence* in Section 203B.121, which references the discretionary authority to include deputy county auditors or deputy city clerks[10] on an absentee ballot board, also grants the sweeping power to upend the rest of the statute, along with Sections 204B.19 through -.22.

CONCLUSION

The misapplication of Section 203B.121 has resulted in the destruction of the party balance requirement on absentee ballot boards across the State of Minnesota. Although it is impossible to quantify the damage done, there is no question Petitioners have been injured. Respondents and amicus Secretary have

[8] Amicus Br. at 3-5.
[9] *See* Admin. Rule 8210.2450, which is itself the subject of litigation.
[10] This is the only time these "deputies" are referenced in the entirety of the ballot board statute or Sections 204B.19 through 204B.22.

demonstrated that it will certainly continue unless this Court puts an end to it and restores party balance by issuing writs of mandamus, the only available remedy in this case. Petitioners ask that this Court determine the proper application of Section 203B.121 and direct performance of the clear duties it requires: establishment by the governing body, party balance, and election judges in sufficient number to accept and reject all ballots.

Dated: December 6, 2021

/s/Gregory J. Joseph

Gregory J. Joseph, No. 0346779
Joseph Law Office PLLC
300 E. Frontage Road, Suite A
Waconia, Minnesota 55387
Telephone: (612) 968-1397
Email: josephlawoffice@protonmail.com

Erick G. Kaardal, 229647
Mohrman, Kaardal & Erickson, P.A.
150 South Fifth Street, Suite 3100
Minneapolis, Minnesota 55402
Telephone: 612-341-1074
Email: kaardal@mklaw.com

Attorney for Appellants

CERTIFICATE OF COMPLIANCE
WITH MINN. R. APP. P. 132.01, Subd. 3

The undersigned certifies that the Petition submitted herein contains 4,878 words and complies with the type/volume limitations of the Minnesota Rules of Appellate Procedure 132. This Brief was prepared using a proportional space font size of 14 pt. The word count is stated in reliance on Microsoft Word 2016, the word processing system used to prepare this Brief.

Dated: December 6, 2021

/s/Gregory J. Joseph
Gregory J. Joseph