

**STATE OF MINNESOTA**

**DISTRICT COURT**

**COUNTY OF ST. LOUIS**

**SIXTH JUDICIAL DISTRICT**

Minnesota Voters Alliance, Republican Party of Minnesota, Donna Bergstrom, Sharon Bergquist, Carla Bayerl, and Timothy P. Carter, on behalf of themselves and all others similarly situated,

Court File No. \_\_\_\_\_

Petitioners,

**PETITION FOR A WRIT OF MANDAMUS**

vs.

City of Duluth, Minnesota, a municipality, its City Council, and the City Clerk, Chelsea J. Helmer, or their successors,

Respondents.

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## INTRODUCTION

The Respondents City of Duluth, the Duluth City Council, and the City Clerk have failed to comply with legislative statutory mandates regarding ballot board election judges. Ignoring specific legislative mandates for party balance of election judges and using City Clerk staff to accept or reject absentee ballots, Duluth governmental officials have acted contrary to the Legislature's express public policy demanding party balance for election judges in performing their expressed statutory duties. The City's actions must be compelled to comply with their mandatory statutory duties.

The Petitioners Minnesota Voters Alliance, the Republican Party of Minnesota, Donna Bergstrom, Sharon Bergquist, Carly Bayerl, and Timothy P. Carter, petition this Court for a writ of mandamus, under Minnesota Statutes §§ 586.01, et. seq. The writ is sought to compel the City Council, and the City Clerk, to comply with the governing provisions of Minnesota Statutes § 203B.121, subdivisions 1 and 2 and § 204B.21, subdivision 2 for the City's ballot board. In this regard, the City Council, as a matter of policy for the November 2020 general election, has failed to act as the appointing authority as to its mandatory statutory duties:

- to appoint election judges to the Duluth ballot board; Minn. Stat. § 203B.121, subd. 1;
- to exhaust all major political party lists regarding appointments to the Duluth ballot board; Minn. Stat. § 204B.21, subd. 2;
- to obtain from the City Clerk, from any individual to be considered as an appointment to the ballot board as an election judge, a statement of their major party affiliation or a statement of non-major party affiliation; Minn. Stat. § 204B.21, subd. 2.

The City Clerk, as a matter of policy for the November 2020 general election, failed to act in accordance with the mandates of § 203B.121 that expressly provides for ballot board election judge duties. Here, the City Clerk failed to act as to her mandatory statutory duties:

- to ensure that at least two election judges who accept or reject absentee ballots are from different major political parties; Minn. Stat. § 203B.121, subdivision 2;
- to obtain from each individual, before their appointment as an election judge to the ballot board, a statement of their major party affiliation or a statement of non-party affiliation; Minn. Stat. § 204B.21;
- to exclude from serving on the ballot board any individual who fails to provide a statement of their major party affiliation or a statement of non-party affiliation as an election judge; Minn. Stat. § 204B.21; and
- to prohibit either temporary, part-time, or permanent City Clerk Office staff from serving as ballot board members wherein governing statutes for ballot boards mandate that only ballot board election judges or deputy city clerks serving as election judges are to accept or reject absentee ballots and perform other prescribed statutory duties; Minn. Stat. § 203B.121, subd. 2.

The writ is needed to require the City of Duluth, through its City Council and the Duluth City Clerk's Office, to act in accordance with the legislative mandates for the municipality's ballot board under Minnesota Statutes § 203B.121. No other legal remedy is available to immediately correct the actions of these City officials.

## **JURISDICTION**

Jurisdiction of the district court over this petition for a writ of mandamus is conferred under Article VI, § 3 of the Minnesota Constitution. Minnesota Statutes §§

117.045 and 586.01 statutorily confer the district court's jurisdiction. There are no other alternative remedies at law for the relief requested.

This Court also has jurisdiction over class actions under Rule 23 of the Minnesota Rules of Civil Procedure.

## **PARTIES**

### **Petitioner Minnesota Voters Alliance**

1. The Minnesota Voters Alliance is an organization with members who seek to ensure, as part of their association objectives, public confidence in the integrity of Minnesota's elections, in election results and election systems, processes, procedures, and enforcement, and also that public officials act in accordance with the law in exercising their obligations to the people of the State of Minnesota. Its membership also includes election judges of major Minnesota political parties. The Minnesota Voters Alliance also works to protect the rights of its members whenever laws, statutes, rules, regulations, or government actions threaten or impede implied or expressed rights or privileges afforded to them under our constitutions or laws or both. Its membership includes candidates seeking elective offices.

### **Petitioner Republican Party of Minnesota**

2. The Republican Party of Minnesota is a major political party. The Republican Party does present to the Secretary of State a list of Republican Party members who desire to be election judges. As part of this process, the Republican Party has expectations that as a major party, members will be appointed as election judges to ballot boards including the City of Duluth to ensure major political party balance when absentee ballots are accepted or

rejected, as required by law under Minnesota Statutes § 203B.121 and as the Legislature specifically intended.

**Petitioner Donna Bergstrom, Minnesota Senate Candidate**

3. Donna Bergstrom is presently a candidate for elected office as a Minnesota State Senator, District 7, in the November 2020 general election. She is a Republican and member of a major political party, the Republican Party of Minnesota, and a member of the Minnesota Voters Alliance. Bergstrom resides in Duluth, Minnesota and is an eligible and registered voter. She plans to vote absentee due to the current COVID-19 health crisis and Governor's Executive Orders which have also impeded and curtailed her campaign practices. Nevertheless, if elected to office, Bergstrom will have a legal right or privilege to take the public office as a result of the election outcome. In light of the COVID-19 health crisis and the Governor's Executive Orders, Bergstrom anticipates that many of her supporters, as a necessity, will resort to absentee balloting to cast their ballots. Because the ballot board in Duluth will play a significant role in the upcoming election contest, for any governmental entity or election official not to abide by the mandatory requirements of the law can and will have an effect on the outcome of the election and any deviation from the election laws will undermine the credibility of the November election result. Notably, failing to follow the laws related to the acceptance, rejection, and counting of absentee ballots in Duluth can have a direct impact on Bergstrom's legal right or privilege to take public office as a result of the election outcome.

4. In this November's election, however, Bergstrom needs to avoid the possibility of being infected in the polling place, so she intends to vote absentee. But, she

believes voting absentee may not bring to her the same level of certainty that her vote will be properly tabulated and will not undergo a process of rejection where at the polling place any uncertainty can be immediately addressed. By this petition, she invokes her right to have her absentee ballot processed in full compliance with the laws for tabulating absentee ballots because those laws reduce additional risk that his ballot may be improperly rejected.

**Petitioners Sharon Bergquist, Carla Bayerl, and Timothy P. Carter**

5. Sharon Bergquist, Carla Bayerl, and Timothy P. Carter are election judges and are on major political party lists for selection with the City of Duluth Elections for the 2020 general election. All are registered eligible voters who reside in Duluth and are members of the Minnesota Voters Alliance. They also seek appointment, as election judges, to the Duluth ballot board under Minnesota Statutes § 203B.121, subdivision 1. However, appointment to the ballot board by City Council is denied when, contrary to § 203B.121, subdivision 1, appointments are made solely by the City Clerk, without regard to party list exhaustion. They are denied the opportunity to seek City Council appointment to the ballot board by the City Clerk, and, thereby, are prevented from the possibility of performing the duties of the ballot board, including accepting and rejecting absentee ballots. Minn. Stat. § 203B.121, subd. 2. Instead, the City Clerk has staff, or temporary staff, do the accepting or rejecting of absentee ballots.

**Respondent City of Duluth City Council**

6. The Duluth City Council, acting for the City of Duluth, is the municipal governing body under Minnesota Statutes § 203B.121, subdivision 1 that, by ordinance or resolution, establishes a ballot board. Under subdivision 1, the board is responsible for

handling absentee ballots. The board is required to include election judges trained in handling absentee ballots and appointed in accordance with §§ 204B.19 to 204B.22. The City Council, as the appointing authority, must appoint election judges to the board. Minn. Stat. § 204B.21, subd. 1.

**Respondent Duluth City Clerk, Chelsea J. Helmer**

7. Chelsea J. Helmer is the City Clerk for the City of Duluth. Helmer is responsible for all matters relating or regarding elections within the jurisdiction of the City of Duluth for the November 2020 general elections. She is responsible for all City Clerk Office employees, including but not limited to, all assistant City Clerks. She is responsible for the administrative and management support of the City Council’s appointed ballot board and all individuals engaged by her as City Clerk for all duties related to the election processes.

**FACTUAL BACKGROUND**

**I. Minnesota voters may cast a vote by absentee ballot.**

8. Minnesota will hold general elections on November 3, 2020.

9. Prior to the date of the election, eligible Minnesota voters will be allowed the privilege to vote by absentee ballot.

**II. The Duluth City Council establishes the ballot board for absentee ballots.**

10. In Duluth, Minnesota, the absentee ballot process will include a ballot board. Minn. Stat. § 203B.121.

11. Under Minnesota Statutes § 203B.121 subdivision 1, the governing body of each county and municipality, as the governing authority, is to establish a ballot board.

12. The governing body of the City of Duluth is the City Council. Its actions are done, in part, by resolution or by adoption of City Code ordinances. The City Council establishes the ballot board. Minn. Stat. §203B.121, subd. 1.

13. Only election judges may serve on the ballot board under § 203B.121.

### **III. Election judges must be on the ballot board.**

14. Under Minnesota Statutes § 203B.121, subdivision 1(a), the Legislature mandated as to who “must” be on the ballot board: “the board must consist of a sufficient number of election judges trained in the handling of absentee ballots and appointed as provided in sections 204B.19 to 204B.22.” Sections 204B.19 to 204B.22 govern election judges, from qualifications to numbers required:

- § 204B.19 refers to election judge qualifications;
- § 204B.195 refers to time off from work to serve as an election judge;
- § 204B.20 refers to the head election judge and duties;
- § 204B.21 refers to the appointment of election judges; and
- § 204B.22 refers to the number of election judges required.

15. Although the statutes identified apply to precincts, the statutes are applicable to the appointment of election judges to the ballot board. Minn. Stat. § 203B.121, subd. 1.

16. The phrase “sufficient number of election judges” in § 203B.121, subdivision 1 refers to the minimum number of election judges needed to carry out the mandated duties under § 203B.121, subdivision 2. The minimum number is found under §204B.21, subdivision 2:

“At least two election judges...must be affiliated with different major political parties.”

17. The “sufficient number” is consistent with one provision of Minnesota Rule 8210.2450 regarding election judges reviewing absentee ballots:

“Two or more ballot board members from different major political parties must review the absentee ballots returned...”

**IV. Section 204B.19 allows for any eligible voter to be appointed an election judge provided other qualifications are met.**

18. Election judges are statutorily defined under Minnesota Statutes § 204B.19, subdivision 1, as “any individual who is eligible to vote in this state is qualified to be appointed as an election judge.”

19. Under Minnesota Statutes § 204B.19, subdivision 4, “the appointing authority may establish additional qualifications which are not inconsistent with the provisions of this section and which relate to the ability of an individual to perform the duties of an election judge. The appointing authority may examine any individual who seeks appointment as an election judge to determine whether the individual meets any qualification established under this section.”

20. The Duluth City Council has no other additional qualifications for election judges.

21. Under Minnesota Statutes § 204B.21, subdivision 2, election judges are to be *appointed* by the governing body of the municipality. Here, it is the Duluth City Council. There is no provision under either §§ 203B.121, subdivision 1 or 204B.21, that allows for the delegation of the City Council’s appointing authority to be given to any other individual or government official.

22. Notably, Minnesota Statutes § 204B.21, subdivision 2, describes how election judges are to be appointed by the appointing authority. Under subdivision 1, in the first instance, major political party lists<sup>1</sup> are provided to the Secretary of State, who in turn provides them to the county auditor and then from the county auditor to the municipal clerk. Minn. Stat. § 204B.21, subd. 1.

23. With few exceptions, as provided in § 204B.21, subdivision 2, the appointment of election judges is made from the major political party lists. If no lists are furnished or if the lists are exhausted, the appointing authority may appoint other individuals who meet the qualifications to serve as an election judge. *Id. See also*, Minn. Stat. § 204B.19.

24. Furthermore, if an individual is appointed from a source other than the furnished major political party lists as required under § 204B.21, subdivision 1, that individual “must provide to the appointing authority the individual’s major political party affiliation or a statement that the individual does not affiliate with any major political party.” Minn. Stat. § 204B.21, subd. 2. An individual who refuses to provide the statement of party affiliation or non-party affiliation “must not be appointed as an election judge.” *Id.*

**V. If a city has “deputy city clerks” they may be included on a ballot board, but Duluth has no “deputy city clerk.”**

25. Under Minnesota Statutes § 203B.121, subdivision 1(a), the ballot board “may include deputy county clerks or deputy city clerks who have received training in the processing and counting of absentee ballots.”

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<sup>1</sup> In Minnesota, there are four major political parties; the Minnesota Democratic–Farmer–Labor Party (DFL), the Republican Party of Minnesota, Grassroots-Legalize Cannabis Party, and the Legal Marijuana Now Party. Minn. Sec. of State; <https://www.sos.state.mn.us/elections-voting/how-elections-work/political-parties/> (last visited June 16, 2020).

26. If a “deputy city clerk” is appointed and serves on a ballot board, the person must serve as an “election judge” regardless of the title “deputy city clerk.”

27. Section 203B.121(a) is consistent with § 204B.21, subdivision 2; appointments of “deputy clerks” to the ballot board are to be made by the City Council

28. To the extent Duluth does have “deputy city clerks,” the mandatory statutory provisions charged against the City, the City Council, and the Clerk remain applicable for prosecution here. Duluth City Code (Minn.) § 2-1-1. There is no evidence that a person holds the title “deputy city clerk” as identified under §203B.121, subdivision 1.

29. Nevertheless, while a “deputy city clerk” may serve on a ballot board, the City Clerk may not. No provision allows for a city clerk to serve on a ballot board.

30. The Duluth City Clerk’s office has at least one identified Assistant City Clerk, Carmel Petersson. There is no provision under §203B.121, subdivision 1, that explicitly allows for an assistant city clerk to serve on a ballot board. Nevertheless, to the extent the Duluth Assistant City Clerk has the same duties or similar authority as the City Clerk and would be considered a “deputy city clerk,” the law remains the same as described. Any appointment to the ballot board must be made by the City Council, after the exhaustion of major political party lists for election judges; the person must meet the requirements of an election judge as found under § 204B.21, including the disclosure of the person’s major political party affiliation or a statement of non-party affiliation.

31. Likewise, if the Duluth Assistant City Clerk has been delegated the authority by the City Clerk to appoint election judges to the Duluth ballot board, the person is acting contrary to the law. There is no provision under §203B.121, subdivision 1 that authorizes the

delegation of the authority to appoint election judges to the ballot board as found under § 204B.21.

32. To the extent the Duluth Assistant City Clerk is doing any other duty or delegating any other responsibility as found under § 203B.121, the actions attributed to the City Clerk as stated in this Petition, are also attributed to the Assistant City Clerk.

33. Meanwhile, without waiving any argument presented as it pertains to the Legislature's specific designation of "deputy city clerks," there is no provision under § 203B.121 that allows other City Clerk staff, who are not a "deputy city clerk," either permanent or temporary employees, to serve on the ballot board or otherwise perform the duties of election judges. In other words, a person designated as a staff person or employee of the City Clerk's office *may not* either serve on the ballot board *or* perform any duty of an election judge mandated under § 203B.121, subdivision 2.

**VI. Specific statutory mandates govern accepting or rejecting absentee ballots.**

**Party partisan election judges perform the duties of accepting or rejecting absentee ballots since the Legislature requires party balance for those decisions which excludes all city clerk officials and staff.**

34. Under Minnesota Statutes § 203B.121, subdivision 1, a sufficient number of election judges must be appointed to a ballot board to perform the duties under subdivision 2 who are trained in the handling of absentee ballots "*and appointed as provided in sections 204B.19 to 204B.22.*" Emphasis added.

35. Election judges performing the statutory duties under § 203B.121, subdivision 2, must be from two different major political parties:

“Election judges performing the duties in this section must be of different major political parties....”

36. Under Minnesota Statutes § 204B.21, subdivision 2, election judges are to be first selected from previously provided major political party lists. Minn. Stat. § 204B.21.

37. Further, under § 204B.21, subdivision 2, “if no lists have been furnished or if additional election judges are required after all listed names in the municipality have been exhausted, the appointing authority may appoint other individuals who meet the qualifications to serve as an election judge.” The municipality is Duluth. The appointing authority is the Duluth City Council.

38. Therefore, until the major political party lists are exhausted, no other ballot board member may be appointed as an election judge, including deputy clerks to serve on a ballot board. Furthermore, there is no provision under § 203B.121 that allows a City Clerk official, staff person, or another employee of the Clerk’s office to either be appointed to the board or do any work prescribed expressly to an election judge.

39. Under § 204B.21, subdivision 2, “an individual who is appointed from a source other than the list furnished pursuant to [§204B.21] subdivision 1 *must* provide to the appointing authority the individual’s major political party affiliation or a statement that the individual does not affiliate with a major political party.” Emphasis added. An individual who refuses to provide their major political party affiliation or a statement that the individual does not affiliate with a major political party “*must not* be appointed as an election judge.” *Id.* Emphasis added.

40. “Must” means “be obligated to; should...used to insist on something.” Oxford American Desk Dictionary & Thesaurus 523 (3rd ed. Oxford University Press (2010)).

41. Minnesota Statutes § 203B.121, subdivision 2, defining the duties of ballot board election judges, requires that they “*must be* of different major political parties....” Emphasis added. The mandate reflects the Legislature’s intent to ensure party balance in the performance of duties related to the decision-making process to accept or reject absentee ballots. Minn. Stat. § 203B.121, subd. 1.

42. Further, while a “deputy clerk” may swear as an employee of the City Clerk’s office to be non-partisan, the mandate of the Legislature requires the disclosure of the person’s major political party affiliation when a deputy clerk is appointed to the ballot board and hence, is acting as an election judge in the acceptance or rejection of absentee ballots or other duties under § 203B.121, subdivision 2. As § 203B.121, subdivision 2 mandates, only election judges from different major political parties may accept or reject absentee ballots. Hence, there can be no claim that non-partisanship is acceptable to perform election judge duties under § 203B.121, subdivision 2.

43. However, should there be appointed an election judge to the ballot board who has provided a statement of non-major party affiliation, the individual may do limited election judge duties as prescribed under, for instance, § 203B.121, subdivision 5 (*e.g.*, counting ballots).

44. Meanwhile, after the exhaustion of major political party lists, the City Council may appoint other individuals who meet the qualifications to serve as an election judge.

However, any such individual must provide the appointing authority the individual's major party affiliation or a statement that the individual does not affiliate with any major political party. Minn. Stat. § 204B.21, subd. 2. Failure to do so means that the individual may not serve as an election judge. *Id.* Regardless, under § 203B.121, subdivision 2, only election judges may accept or reject absentee ballots *and* those election judges must be from different major political parties. Non-partisanship is *not* an option for duties mandated under subdivision 2.

45. The oath for election judges, found under Minnesota Statutes § 204B.24, taken before assuming the duties of the office, relates *only* to the acceptable and expected *performance* of the election judge, for example: "I will perform my duties in a fair and impartial manner and not attempt to create an advantage for *my party* or for any candidate." Emphasis added. The oath *is not* a statement of an election judge's major political party affiliation or non-major political party affiliation.

46. For the City of Duluth, party partisanship of election judges to accept or reject absentee ballots for ballot boards is an expressed legislative public policy as mandated under §203B.121, subdivision 2.

47. Section 203B.121, subdivision 2, mandates that election judges perform specific duties related to absentee ballots upon the municipality's receipt of those ballots:

Upon receipt from the county auditor, municipal clerk...[of absentee ballots] two or more members of the ballot board shall examine each return envelope and *shall* mark it accepted or rejected in the manner provided *in this subdivision.*<sup>2</sup>

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<sup>2</sup> Emphasis added.

48. “Subdivision” refers to § 203B.121, subdivision 2.

*Election judges performing the duties in this section must be of different major political parties, unless they are exempt from that requirement under section 205.075, subdivision 4, or section 205A.10, subdivision 2.*<sup>3</sup>

Emphasis added.

49. “Section” refers to § 203B.121, subdivision 2.

50. Section 203B.121, subdivision 2 mandates that election judges are to handle the decisions regarding the accepting or rejecting of absentee ballots.

51. Thus, for instance, even if Duluth had a “deputy city clerk” on a ballot board who had been appointed *after* all major political party lists were exhausted, whenever deputy clerks are processing absentee ballots engaged in accepting or rejecting absentee ballots, they are acting as election judges.

52. Because appointed deputy clerks are acting as election judges, *all* ballot board election judges performing these and all other duties under §203B.121, subdivision 2 *must* be from *different major political parties*. Therefore, at the time of a deputy clerk’s appointment to the ballot board, the deputy clerks must state, as mandated under § 204B.21, subdivision 2, their major political party affiliation or non-major party affiliation, otherwise they cannot serve as election judges on the ballot board or carry out the mandate of the Legislature of accepting or rejecting absentee ballots as political party partisans.

53. There are no exemptions for deputy city clerks, if Duluth had deputy city clerks. However, if a deputy city clerk or an election judge (after party lists had been

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<sup>3</sup> *Id.*

exhausted) provided a statement of non-major political affiliation, as a ballot board election judge, that individual could still perform other duties found within the statute but not for accepting or rejecting absentee ballots.

**VII. When the Legislature provides for an exception to the law, it expressly states the exception.**

**Only in a few instances has the Legislature expressly excused party balance for election judge duties.**

54. Section 203B.121, subdivision 2, also references § 205.075, subdivision 4 and § 205A.10, subdivision 2. They are not applicable for county or municipal ballot boards. For example, § 205.075, subdivision 4, refers to general town elections. Party balance for duties performed by election judges is excused *if* not in conjunction with statewide elections:

The provisions of sections 204B.19, subdivision 5; 204B.21, subdivision 2; 204C.15; 204C.19; 206.83; and 206.86, subdivision 2, relating to party balance in the appointment of judges and to duties to be performed by judges of different major political parties do not apply to a town election not held in conjunction with a statewide election.

55. Likewise, § 205A.10, subdivision 2, governs school district elections. Party balance for duties performed by election judges is excused *if* not in conjunction with statewide elections.

For school district elections not held in conjunction with a statewide election, the school board shall appoint election judges as provided in section 204B.21, subdivision 2. The provisions of sections 204B.19, subdivision 5; 204B.21, subdivision 2; 204C.15; 204C.19; 206.83; and 206.86, subdivision 2, relating to party balance in appointment of judges and to duties to be performed by judges of different major political parties do not apply to school district elections not held in conjunction with a statewide election.

56. As §§ 205.075, subdivision 4 and 205A.10, subdivision 2 show, when the Legislature seeks to have an exception to party partisanship, it explicitly states the exception.

57. Another example of an exception to party partisanship, as a matter of public policy, is found in the ballot board for military and oversea absentee ballots, which is under the exclusive control of the counties.

58. The governing statute for the ballot board of military and overseas absentee ballots is § 203B.23. Subdivision 1, specifically excludes the need for election judge party balance:

The county auditor must establish an absentee ballot board for ballots issued under sections 203B.16 to 203B.27. The board may consist of staff trained as election judges, in which case, *the board is exempt* from sections 204B.19, subdivision 5, and 204C.15, *relating to party balance in appointment of judges and to duties to be performed* by judges of different major political parties.

Emphasis added.

59. If the ballot board contains election judges who have stated they are not affiliated with a major political party, they may nonetheless perform duties that do not require party partisanship, such as that found under 203B.121, subdivision 5, which involves other duties including counting.

#### **VIII. The Duluth City Council failed to appoint election judges to the ballot board.**

60. On June 23, 2020, the Duluth City Council passed Resolution 20-0497R. The Resolution designated polling places for the November 3, 2020 general election (and the August 11, 2020 primary election).

61. In addition, Resolution 20-0497R purported to establish an absentee ballot board under the authority of Duluth's Ordinance 8728 enacted in April 1985.

62. Ordinance 8728 allows the Duluth City Council to “authorize[] absentee ballot counting boards, as described in Minnesota Statute Section 203B.13 to be established...” Duluth City Ord. (Minn.) 8782 (1985).

63. Minnesota Statutes § 203B.13 has been repealed and replaced with § 203B.121. There are significant differences between the statutes, specifically as it relates to duties of the ballot board and election judges.

64. Despite the repeal upon which the Duluth City Council and City Clerk relies upon and antiquated language, City Ordinance 8782 also states that in “performing all other duties, absentee ballot counting boards shall adhere to all applicable section of Minnesota Statutes and any rules promulgated by the Secretary of State relating to its duties.” Duluth City Ord. (Minn.) 8782 § 3 (1985).

65. Moreover, under Resolution 20-0497R, the Duluth City Council adopted the Legislature’s intent regarding ballot boards under Minnesota Statutes § 203B.121, and § 204B.21 when it stated that “an absentee ballot board shall be in effect as allowed under Minnesota Statutes, for the... November 3, 2020 elections....”

66. As a matter of policy, the Duluth City Council failed to appoint election judges to the ballot board. As a matter of policy, the City Council failed to act in accordance with Minnesota Statutes § 203B.121, subdivision 1 and § 204B.21, subdivision 2.

67. In addition, the City Council failed to obtain the major political party affiliation of each election judge or statement of non-party affiliation. Failure to make the party affiliation, or non-affiliation, disclosure to the appointing authority, excludes the individual as an election judge as the Legislature has mandated:

An individual who refuses to provide the individual's major political party affiliation or a statement that the individual does not affiliate with a major political party *must not* be appointed as an election judge.

Minn. Stat. § 204B.21, subd. 2. Emphasis added.

68. As a matter of policy, the Duluth City Council delegates its authority to appoint election judges to the ballot board to the City Clerk. Only the appointing authority may make election judge appointments. *See* Minn. Stat. § 204B.21, subd. 2 and § 203B.121, subd. 1. The delegation by the appointing authority is contrary to the law.

69. The Minnesota Secretary of State's Office has adopted a state-wide policy under Secretary Steve Simon's published Absentee Voting Administration Guide for 2020 that "the governing body of a county, municipality...*must authorize* an absentee ballot board by ordinance or resolution to process returned regular absentee ballots." Absentee Voting Administration Guide, § 4.2, (Minn. Sec. of State 2020). Emphasis added. The policy stating "must authorize" contradicts the legislative mandate that the governing body "must establish."

70. The phrase "must authorize" allows the Duluth City Council to delegate to the City Clerk authority to appoint election judges to the ballot board.

71. The statutory language and phrase "must establish" the ballot board is consistent with the corresponding mandates of § 204B.21, that require the appointing authority here, the Duluth City Council, to appoint election judges to the ballot board as the Legislature intended.

72. The City Council and City Clerk failed to comply with the legislative mandates for Duluth's ballot board.

**IX. The City Clerk allows staff, either temporary or permanent employees, to perform duties specifically delegated to election judges of different major political parties under § 203B.121, subdivision 2.**

73. There is no provision under § 203B.121, subdivisions 1 and 2 that allows either city staff—whether full-time, part-time, or temporary—or county staff, to serve on a municipal ballot board or accept or reject absentee ballots. Those duties are expressly assigned to election judges from different major political parties:

Election judges performing the duties in this section [subdivision 2] must be of different political parties, unless they are exempt from that requirement under section 205.075, subdivision 4, or section 205A.10, subdivision 2.

Minn. Stat. §203B.121, subd. 2.

74. Chelsea J. Helmer, as the City Clerk is designated to administer absentee voting laws, specifically, provisions of Minnesota Statutes §§ 203B.04 to 203B.15. Minn. Stat. § 203B.05.

75. There is no evidence that Chelsea J. Helmer, as the City Clerk, advised the City Council that the names of election judges presented to the Council reflected the exhaustion of major political party lists provided to Duluth in accordance with Minnesota Statutes § 204B.21, subdivision 2.

The Duluth City Council passed the resolution on June 23, 2020, that implied the establishment of a ballot board. However, the City Council did not identify any specific individual member of the ballot board as required under Minnesota Statutes § 203B.121, subdivision 1.

76. It is the policy of the City Council not to appoint election judges to the ballot board and failed to act in accordance with governing statutes. Minnesota Statutes §

203B.121, subdivision 1 is not referenced. Neither Resolution 20-0497R nor City Code 8728 speak to the election judge appointments to the Duluth ballot board.

77. To the extent the Duluth City Council delegated the authority to appoint election judges to the ballot board, it is contrary to the law, specifically Minnesota Statutes §§ 203B.121, subdivision 1 and § 204B.21.

78. To the extent the Duluth City Council appoints election judges to the Duluth ballot board to accept or reject absentee ballots, it is contrary to the law, specifically Minnesota Statutes §§ 203B.121, subdivision 1 and § 204B.21.

79. The Duluth City Clerk has failed to have election judges who serve on the ballot board identify their respective party affiliations or provide a statement of non-party affiliation, it is contrary to the law, specifically Minnesota Statutes §§ 203B.121, subdivision 1 and § 204B.21.

80. In addition, only the City Council, as the appointing authority, can within the 25-day period before the election, authorizing the appointment of additional election judges to the ballot board, and only if a determination of the need for additional election judges is made by the appointing authority, here, the City Council, as § 204B.21, subdivision 2, states:

The appointments shall be made at least 25 days before the election at which the election judges will serve, except that the appointing authority may pass a resolution authorizing the appointment of additional election judges within the 25 days before the election if the appointing authority determines that additional election judges will be required.

81. The Duluth City Council, through Resolution 20-0497R, requires the Council to appoint additional election judges “as necessary.” The City Council made no findings that additional election judges would be needed within the 25 days before the election. The City

Council does not have the authority to delegate the appointment of election judges to the ballot board to the City Clerk.

82. Chelsea J. Helmer, Duluth's City Clerk, appointed the members to the City's ballot board for the primary elections in 2020. She is appointing election judges to the ballot board for the November 2020 general election. To do so is contrary to the law.

83. Likewise, for the 2020 primary elections, employed City Clerk staff persons performed duties of election judges in accepting or rejecting absentee ballots. It is Helmer's continuing policy to have City Clerk employees, whether permanent, temporary, or part-time staff, to accept or reject absentee ballots for the November 2020 general election. To do so is contrary to the law, specifically under § 203B.121, subdivision 2.

84. Consistent with Helmer's policy for the 2020 primary elections, Helmer allows non-Council-appointed individuals to serve as if members of the ballot board to perform duties of election judges under § 203B.121, subdivision 2 in accepting or rejecting absentee ballots. She is acting in the same manner for the November 2020 general election which is contrary to the law.

85. Helmer has no authority to appoint members to the City's ballot board.

86. Helmer has no authority to allow any City Clerk staff—full-time, part-time, or temporary individual or official—to perform duties of election judges under § 203B.121, subdivision 2 in accepting or rejecting absentee ballots.

87. Even within the 25 days before the election, to add election judges to the existing ballot board members, Helmer must seek the appointments through the approval of the City Council. She has failed to do so and it is Helmer's policy not to do so. Again, only

the City Council has the authority to appoint ballot board members. Minn. Stat. § 203B.121, subd. 1; §204B.21, subd. 2. Helmer's policy and actions are contrary to the law.

88. It is Helmer's policy for the 2020 primary elections and ongoing, as City Clerk, to have City Clerk staff, who are not appointed by the City Council to serve and perform duties of election judges as if they were members of the ballot board, not to require the disclosure of their respective major political party affiliation when they are to accept or reject absentee ballots.

89. In 2020, Helmer, as City Clerk, declared that as a matter of policy she will allow individuals who do not disclose their respective major political party affiliation to accept or reject absentee ballots.

90. Throughout 2020 to the present, Helmer, as City Clerk, fails to comply with the election laws under Minnesota Statutes §§ 203B.121 and 204B.21 despite Resolution 20-0497R and Ordinance 88728 requiring her to follow the legislative mandates of Minnesota statutes including §§ 203B.121 and 204B.21.

91. There will be a general election on November 3, 2020.

92. Chelsea J. Helmer, as City Clerk, has affirmed that the procedures she used to make appointments to the ballot board in 2020 will be exactly as those procedures she is following for the 2020 primary elections.

93. In other words, in 2020, Helmer is acting contrary to legislative mandates found within the election laws governing municipal ballot boards.

94. Helmer's affirmation to follow her 2020 primary election procedures also means that she will appoint staff to perform the duties expressly limited to ballot board

election judges and to perform those duties without identifying their respective major political party affiliations or state that they do not affiliate with any major political party. This is contrary to the law, specifically under Minnesota Statutes § 204B.21, subdivision 2. Staff, temporary or permanent, may not perform the duties of election judges and it remains the express legislative policy that ballot board election judge duties are to be performed with party balance.

95. Minnesota Statutes § 203B.121, subdivision 1, does not provide for any exceptions or exemptions from 204B.21, subdivision 2. If the Legislature intended to make an exception to the party affiliation or non-affiliation disclosure it would have expressly stated so. The Legislature’s intent under subdivision 2 is to maintain party balance in the election absentee ballot process.

96. As previously stated, the Legislature will expressly state ballot board exemptions or exceptions. As an example, under Minnesota Statutes § 203B.23, the appointment of absentee ballot board members for ballots from overseas and military individuals, may include “staff trained as election judges, in which case, *the board is exempt* from sections 204B.19, subdivision 5, and 204C.15, relating to party balance in appointment of judges and to duties to be performed by judges of different major political parties.” Emphasis added.

97. Likewise, Minnesota Statutes § 204B.45 governing mail balloting for certain towns and cities located outside the metropolitan area, with few exceptions, allows for a ballot board to be appointed by an auditor or clerk to examine mail and absentee ballot return envelopes to mark them “accepted” or “rejected.”

98. Under § 204B.45, the ballot board may consist of deputy county auditors or deputy municipal clerks “who have received training in the processing and counting of mail ballots, who need not be affiliated with a major political party.” No similar exemptions or exceptions are found under § 203B.121. Section 204B.45 does not apply to the City of Duluth.

99. Helmer’s affirmations indicate a continuing policy for the 2020 primary elections to the present day as applied to the November 3, 2020, general election, that deputy city clerks or any other temporary or permanent city clerk staff persons that she appoints to the ballot board or if not appointed, do the work of election judges as mandated under § 203B.121, subdivision 2, but, will not have those persons disclose their party affiliation or non-affiliation, nor will they or other board “staff members” be of differing major political parties in the accepting or rejecting of absentee ballots.

100. For the 2020 primary elections, Helmer did not have election judges from different political parties accept or reject absentee ballots and has expressed that in 2020 it is her continuing policy not do so, regardless of the requisites of statutory law. Minn. Stat. § 203B.121, subd. 2.

101. For the 2020 primary elections, Helmer appointed election judges to the Ballot Board, including staff, and did not seek and did not obtain those individuals’ major political party affiliations or statements that the individuals did not affiliate with any major political party.

102. In 2020, Chelsea J. Helmer stated that her process for accepting and rejecting absentee ballot envelopes is carried out only by staff.

103. For the 2020 November election, Chelsea J. Helmer, as the Duluth City Clerk, has taken the position that the 2020 primary election process is valid and will be used for the forthcoming 2020 November general elections.

104. For the 2020 November election, Helmer, as City Clerk, has taken the position, as she did for the 2020 primary elections, that staff, acting as election judges, will handle and make the decisions to accept or reject absentee ballots even though they have not been appointed as election judges in the manner required under § 204B.21, subdivision 2.

105. For the 2020 November elections, the Duluth City Clerk, Chelsea J. Helmer has taken the same position that she did for the 2020 primary elections, that she will use City Clerk staff to handle and make the decisions to accept or reject absentee ballots even though they have not been appointed in the manner required under § 204B.21, subdivision 2.

106. For the 2020 November election, Helmer has stated that she will implement policies that do not follow the law.

107. “Mandamus is an extraordinary legal remedy.”<sup>4</sup>

108. “The authority to issue a writ of mandamus is statutory.”<sup>5</sup> The two primary uses of mandamus are (1) to compel the performance of an official duty clearly imposed by law and (2) to compel the exercise of discretion when that exercise is required by law.<sup>6</sup>

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<sup>4</sup> *Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162, 171 (Minn. 2006) quoting *State v. Pero*, 590 N.W.2d 319, 323 (Minn. 1999).

<sup>5</sup> *Id.*, *State v. Wilson*, 632 N.W.2d 225, 227 (Minn. 2001); see Minn. Stat. §§ 586.01–586.12 (2004).

<sup>6</sup> *Mendota Golf, LLP*, 708 N.W.2d at 171, citing Minn. Stat. § 586.01; *N. States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485, 491 (Minn. 2004).

109. However, 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.<sup>7</sup>

110. In addition, 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.”<sup>8</sup>

111. The Petitioner Republican Party of Minnesota seeks a writ of mandamus as a major political party to ensure the City of Duluth, its City Council, and the City Clerk perform the legislative mandates of Minnesota Statutes §§ 203B.121 and 204B.21 which the Respondents have affirmed they will not follow.

112. The Petitioner Minnesota Voters Alliance seeks a writ of mandamus as an association consisting of Duluth election judges, members of a major political party to ensure the City of Duluth, its City Council, and the City Clerk perform the legislative mandates of Minnesota Statutes §§ 203B.121 and 204B.21 which the Respondents have affirmed they will not follow.

113. The Petitioners Sharon Bergquist, Carla Bayerl, and Timothy P. Carter submit this petition on behalf of themselves and all others similarly situated as election judges as for all allegations and claims asserted, under all applicable provisions of Rules 23.01 and 23.02 of the Minnesota Rules of Civil Procedure governing class actions.

114. The proposed class of election judges the Petitioners Sharon Bergquist, Carla Bayerl, and Timothy P. Carter seek to represent is composed of election judges on major

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<sup>7</sup> *Mendota Golf, LLP*, 708 N.W.2d at 171, *citing e.g., State v. Davis*, 592 N.W.2d 457, 459 (Minn. 1999); *State ex rel. S. St. Paul v. Hetherington*, 240 Minn. 298, 301, 61 N.W.2d 737, 740 (1953); *State ex rel. Laurisch v. Pohl*, 214 Minn. 221, 226, 8 N.W.2d 227, 231 (1943).

<sup>8</sup> *Mendota Golf, LLP*, 708 N.W.2d at 171, *quoting* Minn. Stat. § 586.02.

political party lists who seek appointment by the City of Duluth City Council and further seek appointment by the City Council as ballot board members under Minnesota Statutes § 203B.121. Alternatively, should it be found that any of the Petitioners' allegations or claims could not be certified as a whole, then the Petitioners seek certification of any subclass so identified.

115. The class of election judges satisfies all requirements under Rule 23.01 and Rule 23.02 of the Minnesota Rules of Civil Procedure, including, but not limited to, the elements commonly known as numerosity, commonality, typicality, adequacy, and superiority.

- a. The proposed class is so numerous that joinder of all members is impracticable, since the election judges will number in the hundreds many of which are yet to be named and determined to be appointed as election judges.
- b. The claims of the proposed class share common questions of law or fact. The named Defendants have engaged in a common course of misconduct regarding the ballot board appointments and duties under Minnesota Statutes § 203B.121 that affect all potential members of the board which are to be appointed as election judges. The Duluth City Clerk, Chelsea J. Helmer, in particular has not identified, and has announced that she will not identify to the City Council the major party affiliations or their statements of non-affiliation of election judges as required by law

(albeit not public data per statutory law but, nonetheless, a necessary disclosure to the City Council). Meanwhile, the City Council has not appointed ballot board members and has unlawfully delegated that authority to the Duluth City Clerk. In turn, among other things, the Duluth City Clerk has not selected, and has announced that she will not select, ballot board election judge members from party lists provided to the City Clerk. The common course of misconduct and resultant injury to the Petitioners and the other members of the proposed class and the commonality of remedies available demonstrate the propriety of class certification.

- c. The claims of the proposed Class Representatives are typical of the class. Each Petitioner is an election judge and is on a major political party list. Their allegations and claims arise out of the same misconduct perpetrated by each Defendant against the Petitioner election judge Plaintiffs and other members of the proposed class. Thus, Petitioners' theories and evidence will be practically identical to those underlying the claims of the other members of the proposed class.
- d. The Petitioners will fairly and adequately protect the interests of the proposed class. The Petitioners have no adverse or

conflicting interests, and have retained experienced and competent counsel to adequately litigate a class action.

- e. In addition, adjudication by individual members of the proposed class would create a risk of inconsistent adjudications with respect to individual members of the class, and as a practical matter, would be dispositive of the interests of other members not parties to the adjudications. If Petitioners prevail against Defendants, the claims of the other members of the proposed class would be substantially affected.
- f. Further, the common questions of law or fact predominate over any questions affecting individual proposed class members, and the class action is superior to other available methods. Adjudication of this proposed class action in a single forum would obviate the potential for inconsistent results for the proposed class members. The Petitioners are not aware of any difficulties likely to be encountered in managing this litigation as a class action.
- g. Proper and sufficient notice of this action may be provided to the proposed class members through actual notice to participants as election judges as contacted through the information kept on record by all major political parties and the Duluth City Clerk.

- h. The Petitioner election judges are suffering statutory harm as a result of Defendants' illegal conduct. Election judges on major political party lists are not selected as required in the first instance for the statutory duties under Minnesota Statutes § 203B.121. Absent representative action, the members of the proposed class will continue to suffer the statutory harm embodied within the statutory commands imposed upon the Duluth City Clerk if the violations of the law are allowed to continue with impunity.

#### **Claim for a Writ of Mandamus Ruling**

116. The preceding paragraphs are incorporated in their entirety by reference as if fully restated to support the claim asserted.

117. The Duluth City Council is acting contrary to Minnesota Statutes § 203B.121, subdivision 1, that states the Council must establish a ballot board that consists of a sufficient number of election judges. The Council did not appoint election judges to the ballot board for the 2020 primary elections and as a matter of policy will not appoint election judges to the ballot board for the November 2020 general election.

118. The Duluth City Council has improperly delegated its statutory authority for appointing ballot board election judges to the City Clerk. The Council delegated its statutory authority to the Duluth City Clerk for the 2020 primaries and as a matter of adopted policy will do so for the November 2020 general election.

119. The Duluth City Clerk affirmed that neither she nor the City Council use major political party lists, inclusive of those from the Republican Party of Minnesota, to appoint election judges to the ballot board, if the City Clerk has any such authority.

120. Minnesota Statutes § 203B.121 states that the ballot board may include deputy city clerks as election judges.

121. Provided party lists have been exhausted, any other individual, if he or she qualifies as an election judge, may be appointed as an election judge to the Duluth ballot board. This also includes deputy city clerks. Before a deputy city clerk is appointed to the municipality's ballot board, the provided major political party lists must be exhausted.

122. Even if Duluth designates a staff person as an assistant city clerk with similar responsibilities of a deputy city clerk, their duties as assistant city clerks are different than the duties statutorily imposed upon election judges. If appointed to the ballot board they must act and make the necessary statutory disclosures as required under Minnesota Statutes § 204B.21 and perform election judge duties as statutorily mandated under § 203B.121, subdivision 2.

123. There is no provision under Minnesota Statutes § 203B.121 that allows for the appointment of a City Clerk staff person to the ballot board by either the City Council, or the City Clerk, regardless of whether the person is designated as “full-time staff” or “temporary staff,” to accept or reject absentee ballots.

124. The Duluth City Clerk does assign “full-time staff” or “temporary staff” to accept or reject absentee ballots. This is contrary to the law. Only election judges from different major political parties may accept or reject absentee ballots.

125. The Duluth City Clerk fails to require that at least two election judges from different major political parties to accept or reject absentee ballots. This is contrary to the law.

126. If appointed to the ballot boards, all election judges must declare their party affiliations or provide statements of non-affiliation if they are to perform the duties of election judges as described under § 204B.21 as directed by §203B.121, subdivision 1.

127. Failure to act in compliance with the statutory requirements of Minnesota Statutes §§ 203B.121, subdivisions 1 and 2, and § 204B.21, is contrary to the legislative intent of the statutes as expressed within those statutes as it relates to fair elections and fair election processes. The Legislature expressly provided for party balance—partisanship—for duties related to the acceptance or rejection of absentee ballots.

128. There is no other statutory mechanism to challenge and direct the offending City officials to adhere to their specific duties imposed under §§ 203B.121 and 204B.21.

129. The alleged harms and their irreversible potential impacts on the November 2020 elections are significant and cannot be remedied after they have occurred.

130. The Minnesota Voters Alliance seeks as part of its association objectives, public confidence in the integrity of Minnesota’s elections, in election results and election systems, processes, procedures, and enforcement, and also that public officials act in accordance with the law in exercising their obligations to the people of the State of Minnesota.

131. The Minnesota Voters Alliance membership also includes election judges of major Minnesota political parties. The Voters Alliance also works to protect the rights of its

members whenever laws, statutes, rules, regulations, or government actions threaten or impede implied or expressed rights or privileges afforded to them under our constitutions or laws or both. Its membership includes candidates seeking elective offices.

132. The Republican Party of Minnesota has expectations that as a major political party, members will be appointed as election judges to ballot boards including the City of Duluth's to ensure major political party balance when absentee ballots are accepted or rejected, as required by law under Minnesota Statutes § 203B.121 and as the Legislature specifically intended.

133. Because the ballot board in the City of Duluth will play a significant role in the upcoming election contest, for any governmental entity or election official to fail to comply with the mandatory requirements of the law can and will have an effect on the outcome of the election and any deviation from the election laws will undermine the credibility of the November election result. As a result, City officials' actions that are contrary to the law will directly affect the members of the Minnesota Voters Alliance and the Republican Party of Minnesota.

134. Donna Bergstrom is presently a candidate for elected office as a Minnesota State Senator, District 7, in the November 2020 general election. She is a Republican and member of a major political party, the Republican Party of Minnesota. Bergstrom resides in Duluth, Minnesota, and is an eligible and registered voter.

135. Bergstrom plans to vote absentee due to the current COVID-19 health crisis and the Governor's Executive Orders which have also impeded and curtailed her campaign practices. Nevertheless, if elected to office, Bergstrom will have a legal right or privilege to

take the public office as a result of the election outcome. In light of the COVID-19 health crisis and the Governor's Executive Orders, Bergstrom anticipates that many of her supporters, as a necessity, will resort to absentee balloting to cast their ballots.

136. Because the ballot board in the City of Duluth will play a significant role in the upcoming election contest, for any governmental entity or election official not to abide by the mandatory requirements of the law can and will have an effect on the outcome of the election and any deviation from the election laws will undermine the credibility of the November election result. Notably, failing to act in compliance with the laws related to the acceptance, rejection, and counting of absentee ballots in the City of Duluth can have a direct impact on Bergstrom's legal right or privilege to take the public office as a result of the election outcome.

137. Sharon Bergquist, Carla Bayerl, and Timothy P. Carter are election judges and are on a major political party list for selection with the City of Duluth for the 2020 general election. Bergquist, Bayerl, and Carter are registered eligible voters and reside in Duluth. They also seek appointment, as election judges, to the Duluth ballot board under Minnesota Statutes § 203B.121, subdivision 1.

138. However, appointment to the ballot board by the City Council is denied to Sharon Bergquist, Carla Bayerl, , and Timothy P. Carter when, contrary to § 203B.121, subdivision 1, appointments are made solely by the City Clerk, without regard to party list exhaustion, for the 2020 primary election. That same process is being used in 2020 for the November 2020 general election. They are denied the opportunity to seek City Council appointment to the ballot board by the City Clerk.

139. Meanwhile, Sharon Bergquist, Carla Bayerl, and Timothy P. Carter will be voting absentee, in part due to the current COVID-19 health crisis and the Governor's Executive Orders.

140. Sharon Bergquist, Carla Bayerl, and Timothy Carter are election judges and are on a major political party list for selection with the City of Duluth for the 2020 general election. Bergquist, Bayerl, and Carter are registered eligible voters and reside in Duluth. They also seek appointment, as election judges, to the Duluth ballot board under Minnesota Statutes § 203B.121, subdivision 1.

### **Relief Requested**

The Petitioners Minnesota Voters Alliance, the Republican Party of Minnesota Donna Bergstrom, Sharon Bergquist, Carla Bayerl, and Timothy P. Carter, respectfully request judgment against the City Council and the City Clerk from this Court:

1. Granting the writ of mandamus;
2. Directing the Duluth City Council to appoint election judges to the Duluth ballot board;
3. Directing the Duluth City Council not to delegate to the City Clerk the Council's statutory mandate to appoint election judges to the ballot board;
4. Directing the Duluth City Council to appoint election judges to the Duluth ballot board in accordance with Minnesota Statutes §§ 204B.21;
5. Directing the Duluth City Council, if additional election judges are necessary, to adhere to the provisions of Minnesota Statutes § 204B.21, subdivision 2, regarding the need for a determination of the election judge requirement for additional judges;

6. Directing the City to obtain from each election judge before their appointment by the City Council, a statement of their major political party affiliation or a statement of non-major political affiliation;

7. Directing the City Clerk to adhere to the provisions of Minnesota Statutes § 203B.121 under which staff of the Clerk's office, whether full-time, part-time, or temporary, (a) may not serve on the Duluth ballot board; and (b) may not perform any duties of election judges as provided under § 203B.121, subdivision 2;

8. Directing the City Clerk that only when the major political party lists are exhausted as required under § 204B.21, may the City Clerk official request the City Council to appoint other election judges to the ballot board to perform the statutory duties found under § 203B.121, provided those individuals have complied with the mandates of § 204B.21 governing election judges; and

9. Directing the City Clerk to adhere to the provisions of Minnesota Statutes § 203B.121, subdivision 2, in which at least two ballot board election judges are to accept or reject absentee ballots, who are also from different major political parties.

Dated: July 15, 2020

/s/Erick G. Kaardal  
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**Minnesota Statute § 549.211 Acknowledgement**

The undersigned, hereby acknowledges that pursuant to Minnesota Statute §549.21(1), costs, disbursements, and reasonable attorney fees and witness fees may be awarded to the opposing party or parties in this litigation if the Court should find that the undersigned acted in bad faith, asserted a claim or defense that is frivolous and that is costly to the other party, asserted an unfounded position solely to delay the course of the proceedings; or committed fraud upon the Court.

Dated: July 15, 2020

/s/Erick G. Kaardal  
Erick G. Kaardal