

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
Case No. \_\_\_\_\_**

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Minnesota Voters Alliance, Mary Franson, Duane Quam, Eric Lucero, Susan Jeffers, Lona Lee Schreier, Charles Halverson, and Colin L. Wilkinson,

Petitioners,

vs.

State of Minnesota, Office of the Secretary of State, and Secretary of State Steve Simon,  
in his official capacity, or his successor,

Respondents.

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**PETITIONERS' STATEMENT OF THE CASE**

**MINNESOTA STATUTES § 14.44 CHALLENGE TO  
MINNESOTA RULE 8210.2450**

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The Petitioners Minnesota Voters Alliance, Mary Franson, Cindy Pugh, Duane Quam, Eric Lucero, Susan Jeffers, Lona Lee Schreier, Charles Halverson, and Colin L. Wilkinson, through their attorney, submit this statement of case for appellate review of Minnesota Rule 8210.2450.

- 1. Court or agency of case origination and name of presiding judge or hearing officer:** Not applicable. (Secretary of State promulgated rule).
- 2. Jurisdictional statement:**
  - (A) Appeal from district court.** Not applicable.
    - **Statute, rule or other authority authorizing appeal:** Minnesota Statutes § 14.44, Rule 114.01 of the Minnesota Rules of Civil Appellate Procedure.
    - **Date of entry of judgment or date of service of notice of filing of order from which appeal is taken:** Not applicable.

- **Authority fixing time limit for filing notice of appeal (specify applicable rule or statute):** Not applicable.
- **Date of filing any motion that tolls appeal time:** Not applicable.
- **Date of filing of order deciding tolling motion and date of service of notice of filing:** Not applicable.

**(B) Certiorari appeal.**

**Authority fixing time limit for certiorari review:** Not applicable.

- **Statute, rule or other authority authorizing certiorari appeal:**  
Not applicable.
- **Authority fixing time limit for obtaining certiorari review (cite statutory section and date of event triggering appeal item, *i.e.*, mailing of decision, receipt of decision, or receipt of other notice):**  
Not applicable.
- **Other Appellate proceedings.**  
Not applicable.

**Statute, rule or other authority authorizing appellate proceeding:**  
Not applicable.

- **Authority fixing time limit for appellate review (cite statutory section and date of event triggering appeal item, *i.e.*, mailing of decision, receipt of decision, or receipt of other notice):**  
Not applicable.

**(C) Finality of order.**

- **Does the order to be reviewed dispose of all claims by and against all parties, including attorney fees? Yes ( not applicable )  
No ( )**

The Minnesota Secretary of State promulgated Rule 8210.2450, governing duties of ballot board members, when examining returned absentee ballot envelopes under Minnesota Statutes § 203B.121 which will have an effect on the election process when absentee balloting begins on September 18, 2020, for the 2020 general elections.

- **If no:**

**Did the district court order entry of a final partial judgment for immediate appeal pursuant to MINN. R. CIV. APP. P. 104.01?**

Yes ( ) No (x)

- **If yes, provide date of order:** Not applicable.
- **If no, is the order or judgment appealed from reviewable under any exception to the finality rules? Yes ( ) No ( ) Not applicable.**
- **If yes, cite rule, statute, or other authority authorizing appeal:** Not applicable.

**(D) Criminal only:** Not applicable.

- **Has a sentence been imposed or imposition of sentence stayed?** Yes ( ) No ( )
- **If no, cite statute or rule authorizing interlocutory appeal:**

**3. State type of litigation and designate any statutes at issue.**

The Petition seeks declaratory judgment regarding Minnesota Rule 8210.2450 return absentee ballot envelopes. The Rule contradicts the legislative mandates of Minnesota Statutes § 203B.121 and § 204B.21, subdivision 2.

**4. Brief description of claims, defenses, and issues litigated and result below.**

The Minnesota Secretary of State has promulgated Minnesota Rule 8210.2450 governing the duties of ballot board members when examining returned absentee ballot envelopes in direct conflict with statutory law under Minnesota Statutes § 203B.12 and § 204B.21, subdivision 2.

The Rule at issue states that:

Two or more ballot board members from different major political parties must review the absentee ballots returned for the precinct under Minnesota Statutes, section 203B.121, *unless they are deputy county auditors or deputy city clerks who have received training in the processing and counting of absentee ballots*, or are exempt from that requirement under Minnesota Statutes, section 205.075, subdivision 4, or Minnesota Statutes, section 205A.10, subdivision 2.

(Emphasis added.)

Section 203B.121, subdivision 1(a), governs the establishment of ballot boards. The statute is explicit:

- (a) The governing body of each county, municipality...*must* by ordinance or resolution, establish a ballot board;
- (b) The board *must* consist of a sufficient number of election judges; and
- (c) The board *may include* deputy clerks or deputy city clerks as election judges.

Minnesota Statutes § 204B.21, subdivision 2, requires that election judges appointed from any source other than a furnished major political party list

*“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.”*

Refusal to do so eliminates that person from consideration as an election judge.

Rule 8210.2450 grants an exception where none exists. County auditors are using the rule to circumvent the statutory requirements under §§ 203B.121 and 204B.21, subdivision 2 to allow staff or hired temporary staff to act as election judges without appointment of the governing body or disclosure of their party affiliation, if any. Legislative history also reveals that the object of § 203B.121, subdivision 1, was to maintain the election integrity of how absentee ballots are to be reviewed. The statute does not allow election judges who are deputy clerks to be exempt from *all* requirements under the law to be an election judge and perform those duties as members of the ballot board.

**List specific issues to be raised on appeal.**

The Petitioners request that this Court issue a declaratory judgment on the following issues:

- whether the Secretary of State’s promulgated Rule 8210.2450 is contrary to Minnesota Statutes §§ 203B.121 and 204B.21, subdivision 2, when processing and counting absentee ballots;
- whether the Secretary of State’s promulgated Rule 8210.2450 improperly allows the appointment of deputy clerks, staff, or temporary staff as election judges without

disclosure of their major party affiliation or statement of non-affiliation with the appointing authority as required under Minnesota Statutes § 204B.21, subdivision 2;

- whether the Secretary of State's promulgated Rule 8210.2450 improperly allows the designation of deputy clerks, staff, or hiring of temporary staff as election judges without appointment by the governing body, as required under both Minnesota Statutes § 203B.121, subdivision 1(a) and § 204B.21, subdivision 2; and
- whether the Secretary of State's promulgated Rule 8210.2450 improperly allows the use of designated deputy clerks, staff, or temporary staff as election judges to examine returned absentee ballot envelopes who are not from different major political parties as required under subdivision 2.

**5. Related Appeals: List all prior or pending appeals arising from the same action as this appeal. List any known pending appeals in separate actions raising similar issues to this appeal. In none are known, so state.**

None to the best of counsel's knowledge.

**6. Contents of Record.**

- **Is a transcript necessary to review the issues on appeal?** No.
- **If a transcript is unavailable, is a statement of the proceedings necessary under Rule 110.03 necessary?** No.
- **In lieu of the record as defined in Rule 110.01, have the parties agreed to prepare a statement of the record pursuant to Rule 110.04?** No.

**7. Is oral argument requested?** Yes.

- **If so, is argument requested at a location other than that provided in Rule 134.09, subd. 2?** No.
- **If yes, state where argument is requested.** Not applicable.

8. Identify the type of brief to be filed.

- Formal brief under Rule 128.02 ( Yes )
- Informal brief under Rule 128.01, subd. 1 (must be accompanied by motion to accept unless submitted by claimant for reemployment benefits (Not applicable)
- Trial memoranda, supplemented by a short letter argument, under Rule 128.01, subd. 2. (Not applicable)

9. Names and addresses, zip codes, and telephone numbers for appellants and respondents.

*Petitioners:* Minnesota Voters Alliance, Mary Franson, Duane Quam, Eric Lucero, Susan Jeffers, Lona Lee Schreier, Charles Halverson, and Colin L. Wilkinson

Mohrman, Kaardal & Erickson, P.A.  
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*Respondent:* State of Minnesota, Office of the Secretary of State, and Secretary of State Steve Simon, in his official capacity, or his successor:

Unknown

Dated: April 16, 2020

/s/Erick G. Kaardal  
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*Attorney for Petitioners Minnesota Voters Alliance, Mary Franson, Duane Quam, Eric Lucero, Susan Jeffers, Lona Lee Schreier, Charles Halverson, and Colin L. Wilkinson*

## MINNESOTA RULE AT ISSUE

### **Minnesota Rule 8210.2450, subpart 1:**

Two or more ballot board members from different major political parties must review the absentee ballots returned for the precinct under Minnesota Statutes, section 203B.121, unless they are deputy county auditors or deputy city clerks who have received training in the processing and counting of absentee ballots, or are exempt from that requirement under Minnesota Statutes, section 205.075, subdivision 4, or Minnesota Statutes, section 205A.10, subdivision 2.