

FILED

October 27, 2020

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

**Republican Party of Minnesota; and
Cheryl Nyquist**)

Petitioners,)

v.)

**Jeff Narabrook, City of Minneapolis
Administrator of Elections; and Ginny
Gelms, in her official capacity as
Hennepin County Elections Manager**)

Respondents.)

Supreme Court No. _____

**PETITION PURSUANT TO
MINN. STAT. § 204B.44 FOR
ORDER TO SHOW CAUSE**

The Republican Party of Minnesota and Cheryl Nyquist, Eligible Voter (“Petitioners”) for their Petition against City of Minneapolis Administrator of Elections Jeff Narabrook and Hennepin County Elections Manager Ginny Gelms (“Respondents”), allege as follows:

INTRODUCTION

Transparency and accountability are hallmarks of election integrity. Long ago, the Supreme Court noted: “[S]unlight,” as has so often been observed, “is the most powerful of all disinfectants.” *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 305 (1964). Indeed, “openness of the voting process helps prevent election fraud, voter intimidation, and various other kinds of electoral evils.” *PG Publishing Co. v. Aichele*, 705 F.3d 91 (3d Cir. 2013).

Minnesota state law mandates the public counting of absentee ballots to ensure fairness to the absentee voter as well as fairness to all eligible voters in the State of Minnesota.

Minnesota election law mandates strict counting procedures must be followed by election judges (or election employees) of each Minnesota county to ensure the fairness and integrity of the process. While proper counting of absentee ballots is of the utmost importance in every election, the proper counting of the additional millions of absentee ballots likely to occur in 2020 due to the circumstances of the Covid-19 pandemic add to the grave importance of ensuring fairness and integrity in the proper counting process through public observation.

PARTIES

1. The Republican Party of Minnesota is a Minnesota unincorporated association with its principal place of business at 7400 Metro Boulevard, Suite 424, Edina, MN 55439.
2. Cheryl Nyquist is a citizen of Hennepin County. She resides at 11201 Wisconsin Avenue North, Champlin, Minnesota, 55316.
3. The City of Minneapolis Administrator of Elections, Jeff Narabrook, is the representative of the government of the City of Minneapolis and has authority over the public counting of absentee ballots in Minneapolis. The City of Minneapolis Elections and Services office is located at 980 Hennepin Avenue East, Minneapolis, Minnesota, 55414.
4. The Hennepin County Elections Manager, Ginny Gelms, is a representative of the government of Hennepin County and has authority over the public counting of absentee ballots in Hennepin County, pursuant to Minn. Stat. § 203B.121. The Hennepin County Elections Office is located at 300 South Sixth Street, Minneapolis, Minnesota, 55487.

JURISDICTION

5. The Minnesota Supreme Court is vested with original jurisdiction in this matter under Minn. Stat. § 204B.44, which provides that a petition alleging any “wrongful act,

omission, or error of any . . . county auditor . . . or any other individual charged with any duty concerning an election . . . shall be filed with any judge of the supreme court in this case of an election for state or federal office. . . .” This jurisdiction allows the Court to remedy any “errors, omissions, or wrongful acts which have occurred or **are about to occur.**” Minn. Stat. § 204B.44(a).

6. Petitioners bring this action to ensure the public counting of absentee ballots before, on and after the November 3, 2020 election. Additionally, this petition is brought to ensure that the state and local governments are in full compliance with applicable absentee ballot provisions in Minnesota election law.

FACTUAL BACKGROUND

7. On May 12, 2020, Session Law 77 (May 12, 2020) was passed ensuring a change in Minnesota law that an “applicable ballot board, must begin processing absentee ballots 14 days prior to the date of the election.” *Id.* at § 1 subd. 3.
8. On July 17, 2020, the Secretary of State entered into a consent decree regarding the 2020 General Election which vastly changed the absentee ballot counting process in Minnesota. The July 17, 2020 consent decree also made changes to Minnesota’s election law by stating that the Secretary of State “shall issue guidance instructing all relevant local election officials to count all mail-in ballots in the November General Election that are otherwise validly cast and postmarked on or before Election Day but received by 8 p.m. within 5 business days of Election Day (i.e., seven calendar days, or one week).” *Id.* at VI.D; *see generally LaRose v. Simon*, 62-CV-20-3149.
9. The crux of the Consent Decree and Session Law 77 (May 12, 2020) is that unlike previous elections, where ballot counting began seven days prior to election night, Minn.

Stat. § 203B.121, subd. 4–5, ballot counting began on October 20, 2020, and ends on November 10, 2020.¹ However, despite the interplay between the Consent Decree and Session Law 77, Minn. Stat. § 203B.121, subd. 5(b), is clear, “[t]he count [of absentee ballots] shall be public.”²

10. Minneapolis and Hennepin County ballot boards began counting absentee ballots on October 20, 2020. Additionally, absentee ballots are allowed to be delivered to County elections offices after November 3, 2020 and absentee ballot boards will be obligated to comply with the provisions of Minn. Stat. § 203B.121. Strict compliance with proper counting procedures will be critical in ensuring that only votes properly cast by eligible voters are counted. Additionally, ensuring that this work is done in public will be critical in ensuring confidence in the process and the results of the 2020 general election.
11. On October 22, 2020, members of the Republican Party of Minnesota acting as absentee ballot process observers arrived at the Minneapolis Convention Center to observe the public counting of absentee ballots. Willingham Decl. ¶ 4.
12. A Minneapolis city employee informed the observers that absentee ballot counting would cease at 12:00 p.m. and not begin again until Monday, October 26, 2020. Willingham Decl. ¶ 5. Upon further questioning, the city employee told observers that the counting

¹ A court’s “task is to fit, if possible, all parts [of a statute] into an harmonious whole.” *Roberts v. Sea-Land Servs., Inc.*, 566 U.S. 93, 100 (2012) (quoting *FTC v. Mandel Bros., Inc.*, 359 U.S. 385, 389 (1959)); see also *Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (“A court must therefore interpret the statute ‘as a symmetrical and coherent regulatory scheme,’ and ‘fit, if possible, all parts into an harmonious whole.’” (citations omitted)).

² Subdivision 4 of Section 203B.121 was added after the Coleman Franken recount to centralize absentee ballot counting, and permit elections officials more time to count absentee votes. The Legislature did not remove subdivision 5 of Section 203B.121, which was the previous method for counting absentee ballots. Importantly, the Legislature left clause three of Subdivision 5(b) untouched which requires counting to be public.

had been “too efficient” and “too many ballots” had been “processed.” Willingham Decl. ¶ 6. The city employee indicated that the counted ballots would be fed into the ballot scanning machines (which tabulate vote totals) by a reduced staff over the weekend. No public visitors would be allowed on the weekend. Willingham Decl. ¶ 7. Any public viewing would be through the Youtube livestream. Willingham Decl. ¶ 9. However, the livestream’s camera would be facing away from the scanning machines. Willingham Decl. ¶ 10.

13. Upon communication with Grace Wachlarowicz, Asst. City Clerk, Elections & Voter Services, the observer was told that the laptop would not be turned around, and that the City of Minneapolis would not be moving the laptop, nor purchasing a second laptop to show the ballots being scanned. Willingham Decl. ¶ 12.
14. Further, on or about the same time, another observer witnessed in person that, at times, only one election judge was examining each envelope. Nyquist Decl. ¶ 8–9. Per Minn. Stat. § 203B.121, subd. 2(a), each ballot must be examined by **two** election judges. This violation was brought to the attention of City of Minneapolis officials and they acknowledged the error. *Id.*
15. Additionally, an observer witnessed through the Youtube livestream that some Hennepin County election judges were not marking the ballot roster before opening the secrecy envelope and examining the ballot. Nyquist Decl. ¶ 7. In a general election, the voter roster must be marked prior to opening and counting the ballot. Minn. Stat, § 203B.121, subd. 3(a)-(b).

16. The observer also witnessed Hennepin County election officials failing to check signatures on absentee ballots and not initialing absentee ballots. Nyquist Decl. ¶ 5–6. Both of these acts are required under Minn. Stat. § 203B.121, subd. 2(b).
17. The purpose of Minnesota elections laws is to ensure a fair and competitive system which each voter perceives to be fair. The fact that election laws are not being complied with in the City of Minneapolis or Hennepin County is improper and casts a pall on the public counting of absentee ballots.
18. The 2020 General Election is scheduled for November 3, 2020, with an additional seven days of absentee ballot counting to occur until November 10, 2020. The ballot lists candidates for local, state, and federal offices. Time is of the essence in resolving this manner and ensuring election law compliance.

COUNT I

Violation of Minnesota Election Laws (Minn. Stat. § 203B.121, subd. 5(b))

19. Petitioners re-allege and incorporate by reference the allegations in paragraphs 1–20 above.
20. Respondents possess a statutory duty under Minn. Stat. § 203B.121, subd. 5(b) to ensure a public counting of absentee ballots.
21. On information and belief, observers, including William Willingham were not allowed and are likely, based on information belief and experience, to again be denied permission to observe all absentee ballot counting in Minneapolis. Willingham Decl. ¶ 5–16.
22. Respondents' failure to ensure a public counting of absentee ballots violates Minn. Stat. § 203B.121, subd. 5(b).

23. Petitioners are entitled to a declaratory order stating that Respondents (and similarly situated government authorities) must follow the dictates of Minn. Stat. § 203B.121, subd. 5(b).

COUNT II

Violation of Minnesota Election Laws (Minn. Stat. § 203B.121, subd. 2)

24. Petitioners re-allege and incorporate by reference the allegations in paragraphs 1--20 above.
25. Respondents possess a duty to ensure that statutorily mandated procedures under Minn. Stat. § 203B.121, subd. 2, are followed by the appointed election judges and/or election employees hired by the Respondents.
26. Based on the observations of Cheryl Nyquist, some Minneapolis election judges failed to examine ballot return envelopes in teams of two. Nyquist Decl. ¶ 8-9. Also, some Hennepin County election judges failed to check ballot signatures and failed to initial ballots. Nyquist Decl. ¶ 5-6. The failure of City and County elections officials to ensure a statutorily mandated counting of absentee ballots violates Minn. Stat § 203B.121, subd. 2.
27. Petitioners are entitled to a declaratory order stated that Respondents (and similarly situated government authorities) must follow the dictates of Minn. Stat. § 203B.121 subd. 2(a)-(b).

COUNT III

Violation of Minnesota Election Laws (Minn. Stat. § 203B.121, subd. 3(a)-(b))

28. Petitioners re-allege and incorporate by reference the allegations in paragraphs 1–20 above.
29. Respondents possess a duty to ensure that statutorily mandated procedures under Minn. Stat. § 203B.121, subd. 3(a)-(b), are followed by the appointed election judges and/or election employees hired by the Respondents.
30. Based on observations by Cheryl Nyquist, some of the election judges and/or election employees are not following the statutorily mandated procedure for marking the roster while counting the absentee ballots. Nyquist Decl. ¶ 7.
31. The Auditors’ failure to ensure a statutorily mandated counting of absentee ballots violates Section 203B.121, subd. 3(a)-(b).
32. Petitioners are entitled to a declaratory order stated that Respondents (and similarly situated government authorities) must follow the dictates of Minn. Stat. § 203B.121, subd. 3(a)-(b).

RELIEF SOUGHT

WHEREFORE, Petitioners request that this Court enter Judgment against Respondents as follows:

Pursuant to Minn. Stat. § 203B.121, subd. 5(b), declaring that Respondents (and other similarly situated government authorities) must take all necessary steps to ensure that ballot observers are permitted to witness the entirety of the absentee ballot counting process, including (but not limited to) the ability to witness the ballots being processed through the final scanner.

Pursuant to Minn. Stat. § 203B.121, subd. 2, declaring that Respondents (and other similarly situated government authorities) must take all necessary steps to ensure that all

of the election judges and/or election employees are following statutorily mandated procedures by checking the signatures, assuring that two or more members of election board examine each return envelope, and by initialing the absentee ballots.

Pursuant to Minn. Stat. § 203B.121, subd. 3(a)-(b), declaring that Respondents (and other similarly situated government authorities) must take all necessary steps to ensure that all of the election judges and/or election employees are following statutorily mandated procedures by marking the roster while counting the absentee ballots

Awarding any and all other relief the Court deems just and equitable.

Dated: October 27, 2020

Respectfully submitted,

By: /s/ 
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