

STATE OF MINNESOTA

IN SUPREME COURT

A20-1294

A20-1295

A20-1296

Court of Appeals

Anderson, J.

Minnesota Voters Alliance, et al.,

Appellants,

vs.

Filed: March 16, 2022  
Office of Appellate Courts

County of Ramsey, et al.,

Respondents (A20-1294),

County of Olmsted, Minnesota Board of Commissioners, et al.,

Respondents (A20-1295),

City of Duluth et al.,

Respondents (A20-1296).

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Erick G. Kaardal, Mohrman, Kaardal & Erickson, P.A., Minneapolis, Minnesota, for appellants.

John J. Choi, Ramsey County Attorney, Robert B. Roche, Assistant County Attorney, Saint Paul, Minnesota, for respondents County of Ramsey, et al.

Mark A. Ostrem, Olmsted County Attorney, Jennifer D. Plante, Senior Assistant County Attorney, Rochester, Minnesota, for respondents County of Olmsted, et al.

Keith Ellison, Attorney General, Nathan J. Hartshorn, Assistant Attorney General, Saint Paul, Minnesota, for amicus curiae Minnesota Secretary of State Steve Simon.

Douglas P. Seaton, James V.F. Dickey, Upper Midwest Law Center, Golden Valley, Minnesota, for amicus curiae Center of the American Experiment.

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## S Y L L A B U S

1. Deputy county auditors serving on absentee ballot boards are not bound by the statutory restrictions governing the appointment of election judges.

2. Minnesota Statutes section 203B.121 (2020) does not clearly establish a limited category of “bona fide” deputy county auditors.

Affirmed.

## O P I N I O N

ANDERSON, Justice.

To promote accurate and secure elections, Minnesota law sets uniform requirements for processing and counting absentee ballots. The statute that governs this process, Minn. Stat. § 203B.121 (2020), requires the establishment of absentee ballot boards in each jurisdiction conducting an election. The statute describes two types of members for absentee ballot boards. First, the absentee ballot 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.” *Id.*, subd. 1(a). Second, the absentee ballot board “may include deputy county auditors or deputy city clerks who have received training in the processing and counting of absentee ballots.” *Id.*

In July 2020, appellants Minnesota Voters Alliance, et al.<sup>1</sup> (collectively the Alliance), filed petitions for writs of mandamus. The Alliance alleged that respondents Ramsey County and Olmsted County, among other entities,<sup>2</sup> violated their statutory obligations for appointing members to absentee ballot boards during the 2020 general election. At its heart, the Alliance argued that the statutory requirements for election judges—that they be “appointed as provided in sections 204B.19 to 204B.22”—also apply to deputy county auditors. But we are bound by the plain language of the statute. The text of section 203B.121 distinguishes between deputy county auditors and election judges. Further, the statute specifically applies statutory restrictions to election judges, and in the very next sentence does not apply those same statutory restrictions to deputy county auditors. The Alliance also argues that the statute restricts absentee ballot board

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<sup>1</sup> Appellant Minnesota Voters Alliance is an organization that describes itself as seeking to safeguard “public confidence in the integrity of Minnesota’s elections.” Appellant the Republican Party of Minnesota is a “major political party” under Minnesota election law. Minn. Stat. § 200.02, subd. 7, (2020) (defining “major political party”) [opinion attachment]; *see also* Office of the Minnesota Secretary of State, *Political Parties*, <https://www.sos.state.mn.us/elections-voting/how-elections-work/political-parties/> (last visited Mar. 8, 2022) (listing the current major political parties). Appellants Dan McGrath, Tony W. Ward, Thomas Polachek, and Robert McDonald are residents of Ramsey County and members of Minnesota Voters Alliance and the Republican Party of Minnesota. Appellants Thomas Blondell, Larry F. Mattson, and Wayne Delano Harris are residents of Olmsted County and members of Minnesota Voters Alliance and the Republican Party of Minnesota. Appellant Duane Quam is a member of the Minnesota House of Representatives who lives and votes in Olmsted County.

<sup>2</sup> The Alliance filed four petitions, naming as defendants Ramsey County, Olmsted County, the City of Duluth, and the City of Minneapolis. The actions were consolidated, and the district court dismissed all 4 petitions. The Alliance did not appeal the petition regarding the City of Minneapolis to the court of appeals and did not include the petition regarding the City of Duluth in its petition for review here.

membership to some limited group of “bona fide” deputy county auditors. Similarly, however, nothing in the language of the statute clearly limits membership to some limited group of “bona fide” deputy county auditors. We therefore hold that the Alliance has not shown the violation of a duty clearly established by law and that the district court properly dismissed the Alliance’s mandamus petitions. Consequently, we affirm the decision of the court of appeals.

## **FACTS**

The Alliance alleges that the failure to follow Minnesota election laws specifically injures its interests as an organization, and its members’ interests as potential election judges, voters, and candidates for office. Absentee voting in Minnesota is governed by its own chapter of Minnesota Statutes, chapter 203B. Minn. Stat. §§ 203B.001–.28 (2020). The absentee voting chapter also incorporates by reference some requirements from the general election administration provisions, chapter 204B. Minn. Stat. §§ 204B.001–.49 (2020). The absentee ballot board statute requires the appointment of “a sufficient number of election judges . . . appointed as provided in sections 204B.19 to 204B.22” and permits the appointment of “deputy county auditors.” Minn. Stat. § 203B.121, subd. 1(a). Election judges must be appointed from a list of candidates supplied by major political parties and must disclose their personal political affiliation. Minn. Stat. § 204B.21, subd. 2. The Alliance asserts that these statutory requirements for election judges also apply to deputy county auditors serving on absentee ballot boards.

Respondent Ramsey County claims that it satisfied its obligations under the absentee ballot board statute. In presidential election years, Ramsey County hires

approximately 2,000 election judges, including 60 to 100 who typically serve on the ballot board. On July 7, 2020, the Ramsey County Board of Commissioners established an absentee ballot board for the 2020 elections. To fill these vacancies, the Ramsey County elections office contacted every individual on the major party election judge candidate lists to ask whether those individuals would serve as election judges in the 2020 general election. All who responded that they were available to serve as an election judge were sent a second communication asking them to serve on the ballot board. Ramsey County received only seven responses showing interest in serving on the ballot board. Scheduling conflicts meant that only three of those seven were able to serve on the ballot board; all three available election judges were appointed to the ballot board. Having exhausted the major party lists, Ramsey County turned to other sources for additional election judges, such as individuals who had served in past elections. Ramsey County's final ballot board consisted of 62 election judges—the three from the major party lists and 59 from other sources—and five deputy county auditors. No more than half of the 62 election judges on the ballot board were affiliated with the same major party; all election judges disclosed their major party affiliation or non-affiliation. Ramsey County did not collect statements of party affiliation from the deputy county auditors.

Likewise, respondent Olmsted County argues that it satisfied its obligations under the absentee ballot board statute. On July 21, 2020, the Olmsted County Board of Commissioners passed a resolution establishing an absentee ballot board. This resolution identified the board as consisting of “all members of the Olmsted County Property Records & Licensing Elections staff that have been appointed as deputy county auditors.” The

resolution then lists these staff by name, resulting in a total of 21 individuals. A subsequent section of this resolution appointed 18 of these 21 individuals as election judges. The County collected statements of party affiliation from these election judges, though it asserts that it was not required to do so. No more than half of the election judges were affiliated with any single major political party.

After Olmsted County appointed the elections staff to the ballot board, it determined that it needed additional election judges. Using the major party lists, the County contacted 87 individuals. Of these 87 individuals, only eight—four each from the Democratic-Farmer-Labor Party (DFL) and the Republican Party of Minnesota, the only two major parties that submitted candidates to Olmsted County—were able to serve on the ballot board. All eight did so.

In June and July 2020, the Alliance filed separate mandamus petitions in four different judicial districts, alleging violations of Minn. Stat. § 203B.121. The respective defendants were the governing bodies of the County of Ramsey and the Ramsey County Auditor, Christopher Samuel; the City of Duluth; the City of Minneapolis; and the County of Olmsted and the Olmsted County Director of Property Records and Licensing, Mark Krupski. These cases were consolidated into a single action in Ramsey County district court.

The Alliance did not make any allegations of misconduct, fraud, or negligence by any members of any absentee ballot boards. Nor did it present any evidence of the same. Rather, the Alliance's petitions concerned who had been appointed to the absentee ballot boards. The Alliance argued that the defendant government entities had impermissibly

appointed ineligible individuals to serve on their absentee ballot boards. In September 2020, the district court dismissed all four petitions, finding that the Alliance had not proven any of the three elements required for a writ of mandamus: a violation of a duty clearly imposed by law, a public wrong specifically injurious to the Alliance, and a lack of other adequate remedies at law.

In October 2020, the Alliance appealed the dismissal of its petitions relating to Ramsey County, Olmsted County, and the City of Duluth. The court of appeals consolidated the appeals into a single case, which remained pending after the November 2020 general election occurred. The court affirmed. *Minn. Voters All. v. County of Ramsey*, 962 N.W.2d 667, 670 (Minn. App. 2021). It held that the Alliance’s claims were not moot because, although the 2020 election had passed, the issues raised were capable of repetition yet evading review. *Id.* at 671. But the court of appeals held that the Alliance had failed to show the violation of a duty clearly established by law. *Id.* at 672–75. Because this conclusion was sufficient to affirm the dismissal of the Alliance’s petitions, the court did not consider the “specifically injured” or “adequate legal remedy” elements required for a writ of mandamus. *Id.* at 672, 675. The Alliance then petitioned for review of the cases relating to Ramsey County and Olmsted County, and we granted the Alliance’s petition for review.

## ANALYSIS

The Alliance challenges the court of appeals decision affirming the dismissal of its petitions for a writ of mandamus. The court of appeals based its decision on legal analysis of section 203B.121. *Id.* at 672–75. When a court grants or denies a writ of mandamus

based solely on a legal determination, we review that decision de novo. *Madison Equities, Inc. v. Crockarell*, 889 N.W.2d 568, 571 (Minn. 2017). The Alliance’s petitions are based on questions of statutory interpretation, which we also review de novo. *Breza v. City of Minnetrista*, 725 N.W.2d 106, 110 (Minn. 2006).

“The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature.” Minn. Stat. § 645.16 (2020); *accord Hagen v. Steven Scott Mgmt., Inc.*, 963 N.W.2d 164, 169 (Minn. 2021). The first step is to examine the text and structure of the statute. *Hagen*, 963 N.W.2d at 169–70. When a statute is unambiguous, we apply the plain meaning of the statute. *Id.* at 169. We will not “go beyond the plain language of the statute to determine the intent of the legislature” when the language is unambiguous. *Rohmiller v. Hart*, 811 N.W.2d 585, 589 (Minn. 2012).

Further, the Alliance seeks a writ of mandamus. “Mandamus is an extraordinary remedy.” *N. States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485, 491 (Minn. 2004). A “writ of mandamus may be issued to . . . compel the performance of an act which the law specially enjoins as a duty.” Minn. Stat. § 586.01 (2020). To obtain a writ of mandamus, the Alliance must show that (1) the Counties failed to perform a duty clearly imposed by the law; (2) because of this, the Alliance has suffered a public wrong that is specifically injurious to it; and (3) the Alliance has no other adequate remedy at law. *See N. States Power Co.*, 684 N.W.2d at 491. Mandamus may compel the performance of an official duty where there is “no discretion” and “only one course of action is open.” *State ex rel. Gresham v. Delaney*, 6 N.W.2d 97, 98 (Minn. 1942). Mandamus “does not control the particular manner in which a duty is to be performed” or “dictate how discretion is to

be exercised.” *Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162, 171 (Minn. 2006). When an official has some discretion in how to perform a duty, then at most mandamus may compel the exercise of that discretion—mandamus may not compel a particular outcome. *Id.*

The Alliance disputes who may serve as members of an absentee ballot board. The Alliance raises several statutory arguments about the membership of absentee ballot boards.<sup>3</sup> The existence and membership of absentee ballot boards is controlled by a specific statute, which reads:

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. 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. The board may include deputy county auditors or deputy city clerks who have received training in the processing and counting of absentee ballots.

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<sup>3</sup> As to who has appointment authority, the Alliance claims that Ramsey County improperly delegated its authority to appoint absentee ballot board members. The Ramsey County Board of Commissioners delegated that authority to the County Auditor, rather than directly appointing absentee board members. The Alliance raised this delegation argument before the district court. But the Alliance then narrowed its challenges on appeal and did not raise this argument either before the court of appeals or in the petition for review to our court. A party may forfeit an argument by failing to raise it before the court of appeals, *State v. Myhre*, 875 N.W.2d 799, 806 (Minn. 2016), or by failing to include it in the petition for review to the supreme court, *Garcia-Mendoza v. 2003 Chevy Tahoe*, 852 N.W.2d 659, 668 (Minn. 2014). By failing to do both—indeed, by failing to do either—the Alliance has forfeited this argument.

Minn. Stat. § 203B.121, subd. 1(a).<sup>4</sup> This statute requires the appointment of “a sufficient number of election judges” pursuant to sections 204B.19 to 204B.22 and permits the appointment of “deputy county auditors.”<sup>5</sup> *Id.*

The Alliance argues that, to the extent that the Counties can appoint deputy county auditors, these deputy county auditors must be appointed subject to the same statutory requirements as election judges—i.e., deputy county auditors also must be “appointed as provided in sections 204B.19 to 204B.22.” *See id.* (describing the appointment requirements for election judges). Further, the Alliance argues that the Counties may appoint only “bona fide” deputy county auditors to serve on the absentee ballot board. We consider each argument in turn.

## I.

Election judges serving on absentee ballot boards must be “appointed as provided in sections 204B.19 to 204B.22.” *Id.* Minnesota Statutes sections 204B.19 to 204B.22 in turn impose several requirements on those serving as election judges. In election years, each major political party may submit a list of potential election judges, which the secretary

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<sup>4</sup> This case involves the 2020 version of the statute, which was in effect during the 2020 election. The Legislature amended the statute in 2021 but this amendment does not affect our analysis. The 2021 amendment removed the requirement that election judges be “trained in the handling of absentee ballots,” and now states that all members of the ballot board must be so trained. Act of June 30, 2021, ch. 12, art. 4, § 6, 2021 Minn. Laws 1st Spec. Sess. 1, 44. The 2021 amendment also specified the required kinds of training in more detail. *Id.* The Alliance does not dispute the training requirements.

<sup>5</sup> The statutory language discusses “deputy county auditors” and “deputy city clerks.” Minn. Stat. § 203B.121, subd. 1(a). Our discussion here exclusively concerns deputy county auditors because the remaining respondents in this case are exclusively counties.

of state compiles and distributes to each county and municipality. Minn. Stat. § 204B.21, subd. 1. The governing body of each county or municipality appoints election judges from this list. *Id.*, subd. 2. The governing body may appoint election judges not appearing on the major party lists only after it has exhausted the candidates on the list.<sup>6</sup> *Id.* All election judges must disclose their major party affiliation or non-affiliation; individuals who will not disclose their affiliation or non-affiliation may not serve as election judges. *Id.* No more than half the election judges in a precinct may be affiliated with the same major political party.<sup>7</sup> Minn. Stat. § 204B.19, subd. 5.

The Counties appointed deputy county auditors to their respective absentee ballot boards. Olmsted County did so without first exhausting the political party election judge nominees, and neither County collected statements of party affiliation from its respective

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<sup>6</sup> Olmsted County initially appointed 19 deputy county auditors to serve as election judges. Although nothing in any of the statutes cited by the parties prevents deputy county auditors from also serving as election judges, these 19 individuals were not on the major political party lists (and Olmsted County had not first exhausted the partisan lists). But, even if these appointments were invalid as election judges, these 19 individuals were still legitimate members of the Olmsted County absentee ballot board as deputy county auditors. And Olmsted County later appointed eight election judges, including some of the named appellants in this litigation, from the political party lists. No more than half of these individuals affiliated with the same political party. Olmsted County therefore had at least eight validly appointed election judges serving on its absentee ballot board.

<sup>7</sup> “No more than half of the election judges in a precinct” for in-person voting may be affiliated with the same major political party. Minn. Stat. § 204B.19, subd. 5. Because chapter 204B governs in-person voting, and section 203B.121, subdivision 1(a) requires the same procedure for appointing election judges to absentee ballot boards, it could be argued that election judges serving on absentee ballot boards are also subject to this partisan affiliation balance requirement. But, regardless of whether the Counties were *required* to ensure that no more than half of the election judges on their absentee ballot boards affiliated with the same political party, the Counties in fact did so.

deputy county auditors. The Alliance believes that in doing so, the Counties violated a clear legal duty because they did not follow the statutory procedures for appointing election judges.

The Legislature explicitly stated that the requirements of sections 204B.19 to 204B.22 apply to election judges; the Legislature did not include those requirements in the very next sentence of the statute addressing deputy county auditors. Minn. Stat. § 203B.121, subd. 1(a). We will not read in requirements to a statute where none exist. *See Hans Hagen Homes, Inc. v. City of Minnetrista*, 728 N.W.2d 536, 539 (Minn. 2007) (“Where the legislature’s intent is clearly discernable from plain and unambiguous language, statutory construction is neither necessary nor permitted.”). The Alliance raises several arguments for why we should nevertheless interpret section 203B.121 as imposing the requirements of chapter 204B to both election judges and deputy county auditors.

First, the Alliance asserts that the absentee ballot board statute, Minn. Stat. § 203B.121, does not distinguish between deputy county auditors and election judges, meaning that all members of the absentee ballot board are election judges. Second, the Alliance asserts that section 203B.121 allows the appointment of deputy county auditors only as a “last resort,” and to protect the asserted primacy of election judges the appointment procedures for election judges must also apply to deputy county auditors. The Alliance argues that this is so because the absentee ballot board “must” consist of election judges but only “may” contain deputy county auditors. *See* Minn. Stat. § 203B.121, subd. 1(a) (“The board *must* consist of a sufficient number of election judges . . . .The board *may* include deputy county auditors.” (emphasis added)). Additionally, the absentee ballot

board must contain a “sufficient number” of election judges, *id.*, and the Alliance argues that “sufficient” must mean sufficient to handle the board’s entire workload. Third and finally, the Alliance argues that deputy county auditors must be subject to the election judge appointment restrictions to ensure that all absentee ballots are inspected by members of differing political parties.

A.

The Alliance argues that deputy county auditors must be appointed subject to the same restrictions as election judges because deputy county auditors are election judges. The Alliance asserts that the absentee ballot board statute, Minn. Stat. § 203B.121, requires that absentee ballot boards contain election judges and recognizes no other category of membership. The Alliance argues that this is so because Minnesota law prioritizes balanced, partisan involvement in elections.

This assertion cannot overcome the plain language of the statute. In drafting Section 203B.121, the Legislature described two different groups of absentee ballot board members in two different sentences. First, the absentee ballot board must include “a sufficient number of election judges . . . appointed as provided in sections 204B.19 to 204B.22.” *Id.* Second, the absentee ballot board also “may include deputy county auditors.” *Id.* The Alliance asserts that these two sentences create only a single category of membership for absentee ballot boards: election judges.

When interpreting a statute “no word, phrase, or sentence should be deemed superfluous, void, or insignificant” whenever possible. *Amaral v. Saint Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999). And when “the Legislature uses different words, we

normally presume that those words have different meanings.” *Nelson v. Schlener*, 859 N.W.2d 288, 294 (Minn. 2015). The statute separately allows for both “election judges” and “deputy county auditors.” See Minn. Stat. § 203B.121, subd. 1(a) (“The board must consist of a sufficient number of election judges . . . .The board may include deputy county auditors.”). Additionally, thereafter the statute largely refers not to election judges or deputy county auditors but to “members of the ballot board.” See, e.g., *id.*, subds. 1(b) (“Each jurisdiction must pay a reasonable compensation to each member of that jurisdiction’s ballot board for services rendered during an election.”), 2(a) (“The members of the ballot board shall take possession of all return envelopes delivered to them in accordance with section 203B.08.”). If all deputy county auditors became election judges, *all* “members of the ballot board” would therefore be election judges, and the “members of the ballot board” language would be superfluous. The plain language of the statute distinguishes between election judges and deputy county auditors and permits both to serve on absentee ballot boards.

## B.

Next, the Alliance argues that following the same procedure for appointing election judges when appointing deputy county auditors is necessary to ensure that deputy county auditors remain no more than “last resort” members on absentee ballot boards. The Alliance argues that if deputy county auditors may be appointed without following the restrictions applicable to election judges, then the Counties may prefer to use deputy county auditors instead of election judges. The Alliance argues that this preference is forbidden for two reasons. First, the absentee ballot board “must” contain election judges but only

“may” contain deputy county auditors. And second, the Alliance argues that a “sufficient number” of election judges must mean sufficient to perform *all* the absentee ballot board’s duties.

1.

The Alliance points out that absentee ballot boards “must” consist of election judges, but only “may” contain deputy county auditors. Minn. Stat. § 203B.121, subd. 1(a). “Must” is mandatory while “may” is permissive. Minn. Stat. § 645.44, subds. 15–15a (2020). The Alliance argues that the Legislature therefore intended that election judges be the primary members of absentee ballot boards and that the Counties may appoint deputy county auditors only after exhausting the list of election judge candidates.

But this argument misses both the context of what the statute requires and other statutory language. In interpreting the plain language of a statute, we read words in context. *In re Krogstad*, 958 N.W.2d 331, 335 (Minn. 2021). What an absentee ballot board “must” contain is not just “election judges” but rather a “sufficient number of election judges.” Minn. Stat. § 203B.121, subd. 1(a). The statute does not define “sufficient number.” The Alliance argues that a “sufficient number” does not mean a “minimum number,” but neither does it mean “only and exclusively.” And the Legislature did not say that an absentee ballot board “may include deputy county auditors *if there are no election judges available*,” it merely said that it “may include deputy county auditors.” *Id.* The language of section 203B.121 does not clearly establish that the Counties must primarily appoint election judges to absentee ballot boards.

The Alliance next turns to the definition of a “sufficient number” of election judges. At oral argument, the Alliance acknowledged that the Counties have discretion to determine what constitutes a “sufficient” number. But it argues that “sufficient” must mean “sufficient to do *all* of the ballot board’s work,” and the Counties’ discretion is limited to determining the number of members the absentee ballot board needs. Once the Counties determine the number of board members required to perform board duties, the Alliance argues, the Counties have a legal duty to fill these positions with election judges. To ensure that this happens, the Alliance argues that deputy county auditors must be appointed following the same procedures as election judges.

But the Alliance’s reading of “sufficient” is not persuasive. If the absentee ballot board could contain only election judges, then it would not be true that it “may include deputy county auditors”—which impermissibly reads statutory language out of existence. At oral argument, the Alliance argued that the “may include deputy county auditors” provision is a safety valve, allowing the appointment of deputy county auditors if not enough election judges are available. But chapter 204B already contains a safety valve, allowing local governments to appoint “other individuals” as election judges after exhausting the partisan lists. Minn. Stat. § 204B.21, subd. 2. Under the Alliance’s interpretation, the statute’s “may include” language would be impermissibly superfluous. The absentee ballot board statute leaves the Counties with the discretion to decide what constitutes a “sufficient number” of election judges and to otherwise appoint deputy county auditors.

The Alliance further argues that the Counties violated a duty to appoint “a sufficient number of election judges” because, it asserts, the Counties appointed no election judges at all. There is at least one duty that is statutorily assigned exclusively to election judges. In inspecting the absentee ballot signature envelopes, members of the ballot board verify listed criteria. Minn. Stat. § 203B.121, subd. 2(b). These criteria include confirming that “the voter’s Minnesota driver’s license, state identification number, or the last four digits of the voter’s Social Security number” match the number on record for that voter. *Id.*, subd. 2(b)(3). “If the number does not match, *the election judges* must compare the signature provided by the applicant to determine whether the ballots were returned by the same person to whom they were transmitted.” *Id.* (emphasis added). This task is committed to election judges alone, and the absentee ballot board must therefore include a sufficient number of election judges to handle this duty. But the Counties here appointed some election judges: Ramsey County appointed 62, and Olmsted County appointed at least eight. The Counties, under the relevant statutes, had discretion to determine the number of election judges that were sufficient. Nothing in the record before us establishes that the number of election judges appointed by the Counties was insufficient for the required tasks.

C.

Finally, the Alliance directs our attention to section 203B.121, subdivision 2. This subdivision governs the inspection and acceptance of absentee ballots and states that “[e]lection judges performing the duties in this section must be of different major political parties.” *Id.*, subd. 2(a). The Alliance asserts that this requirement applies whenever

absentee ballots are inspected and accepted, otherwise the ballots could be processed without supervision by balanced, partisan-approved election judges.

Again, however, the Alliance cannot overcome the plain language of section 203B.121. Absentee ballot boards may include either election judges or deputy county auditors. *Id.*, subd. 1(a). At least two “members of the ballot board” must inspect the signature envelope of each ballot. *Id.*, subd. 2(a). These “members of the ballot board” must verify six listed criteria. *Id.*, subd. 2(b)(1)–(6). When an envelope meets the requirements, the “members of the ballot board” mark the ballot as accepted. *Id.* When an envelope does not meet any requirement, the “members of the ballot board” mark it as rejected. *Id.*, subd. 2(c)(1). The “different major political parties” requirement applies only, and specifically, to election judges who examine the signature envelopes. *Id.*, subd. 2(a). It may well be, as the Alliance argues, that some or all of the specific duties of the ballot board would be best performed by election judges balanced by political party rather than deputy county auditors. But no language in the statute at issue here so requires, and the issue of how ballot boards should operate belongs to the Legislature as the elected representatives of the people.

## II.

The Alliance also argues that the absentee ballot board statute, Minn. Stat. § 203B.121, restricts ballot board membership to a limited group of “bona fide” deputy county auditors. The Alliance argues that the statute refers to pre-existing county officers. And deputy county auditors “may sign all papers and do all other things which county auditors may do.” Minn. Stat. § 384.08 (2020). The Alliance therefore argues that deputy

county auditors are “bona fide” deputies only when they can perform all the duties of the county auditor. The Alliance argues that the Counties violated a clear legal duty to appoint only “bona fide” deputy county auditors because the Counties appointed deputy county auditors who did not possess the full powers of the county auditor.

This analysis again overlooks the plain language of section 203B.121; nowhere does the statute restrict ballot board membership to preexisting deputy county auditors. And section 384.08 does not define “deputy county auditor”; it merely establishes a procedure for appointing deputies. That deputy county auditors “may” do any task the county auditor can does not establish that all deputy county auditors must personally be able to perform all such tasks. The Legislature certainly could so require; it has not chosen to do so here.

In sum, the Alliance argues that when absentee ballot boards contain deputy county auditors those deputies must be appointed subject to the same requirements as election judges. And the Alliance argues that only a limited group of pre-existing “bona fide” deputy auditors may serve on absentee ballot boards. Both arguments fail.<sup>8</sup> We therefore

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<sup>8</sup> The core of the Alliance’s argument is the claimed inherent value in using partisan-balanced election judges for counting most ballots. The relevant language of section 203B.121 was last amended in 2013. *See* Act of May 23, 2013, ch. 131, Art. 2, § 17, 2013 Minnesota Laws 1, 12 (codified as amended at Minn. Stat. § 203B.121). At that time, absentee voting comprised a small portion—just over 9 percent—of total votes cast in Minnesota. *Historical Voter Turnout Statistics*, <https://sos.state.mn.us/election-administration-campaigns/data-maps/historical-voter-turnout-statistics/> (last visited on Mar. 8, 2022) (follow links for “Maps of voter turnout within Minnesota,” then “Absentee Voting”) (hereinafter *Historical Voter Statistics*) [opinion attachment]. In-person voting is administered entirely by election judges. *See, e.g.*, Minn. Stat. § 204C.09 (2020) (requiring election judges to prepare ballots for in-person voting); Minn. Stat. § 204C.19 (2020) (requiring election judges to count ballots “immediately” after in-person voting has concluded). Thus prior to 2013, in practice election judges processed and counted most

hold that the Alliance has failed to prove the violation of a duty clearly established by law. Because this is sufficient to dismiss the Alliance’s petition for a writ of mandamus, we need not reach the second and third mandamus elements: whether the Alliance suffered a public wrong that specifically injured it and whether the Alliance had other adequate

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votes cast in Minnesota elections. But the popularity of absentee voting has grown explosively since 2013. By the 2016 general election, the share of absentee ballots had more than doubled, to nearly 21 percent. *Historical Voter Statistics*. And by the 2020 general election, the share of absentee ballots more than doubled again, to over 52 percent of all ballots cast. *Id.* This means that potentially significantly more votes are processed by deputy county auditors now than in 2013. In essence, the Alliance appears to believe that this change in voting behavior requires a commensurate change in voting law to ensure that election judges continue to process most of the votes in Minnesota.

But the current law represents the careful thought and compromise of the Legislature. The Legislature has a long history of regulating voting. The Legislature adopted the secret ballot in 1891. Minn. Gen. Stat. § 139–40, 149 (1891). It was also the Legislature that first adopted the use of election judges nominated by political parties more than a century ago. *See, e.g.*, Minn. Gen. Stat. § 363 (1923). And the Legislature has defined and redefined the role that government employees take in administering elections. In 1923, the election statutes explicitly prohibited government staff members from serving on election boards. Minn. Gen. Stat. § 361 (1923) (“Public employes [sic] not to act as judge or clerk of election boards.”). Today, the Legislature allows for participation by deputy county auditors under Minn. Stat. § 203B.121.

It is true that the use of absentee ballots has grown in the last decade. But it is also true that the Legislature has not found it necessary to amend section 203B.121. Our role is limited to interpreting the current law; it is not our place to decide whether a law represents appropriate or preferred policy. *State v. Khalil*, 956 N.W.2d 627, 633 (Minn. 2021) (“[Our role] also reflects a structural understanding that legislators are the elected representatives of the people and that legislative bodies are institutionally better positioned than courts to sort out conflicting interests and information surrounding complex public policy issues.”); *Red Owl Stores, Inc. v. Comm’r of Agric.*, 310 N.W.2d 99, 104 (Minn. 1981) (“[I]t is not our role to decide whether [a law] is sound policy or whether it appropriately balances [competing interests].”); *S.C. State Highway Dep’t v. Barnwell Bros.*, 303 U.S. 177, 191 (1938) (“[F]airly debatable questions as to [a law’s] reasonableness, wisdom, and propriety are not for the determination of courts, but for the legislative body.”). Whether changes in how Minnesotans cast their ballots are issues of concern, and what amendments, if any, should be made to the voting framework in our state, are matters for legislative consideration and not action by our court.

remedies at law. *See Breza v. City of Minnetrista*, 725 N.W.2d 106, 114 (Minn. 2006) (declining to address the second or third mandamus element after finding that the petitioner had failed to prove the first).

### **CONCLUSION**

For the foregoing reasons, we affirm the decision of the court of appeals.

Affirmed.

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## POLITICAL PARTIES

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### Major Parties

See [Minnesota Statutes 200.02, subd. 7](#) for a definition of "Major Party."

#### [Democratic-Farmer-Labor Party](#)

255 E Plato Blvd  
Saint Paul, MN 55107  
(651) 293-1200

#### [Grassroots-Legalize Cannabis Party](#)

2114 E 35th St  
Minneapolis, MN 55407  
(651) 280-7922

#### [Legal Marijuana Now Party](#)

1717 Tyler St NE  
Minneapolis, MN 55413  
(763) 742-6198

#### [Republican Party of Minnesota](#)

7400 Metro Blvd, Suite 424  
Edina, MN 55439  
(651) 222-0022

### Minor Parties

See [Minnesota Statutes 200.02 subd. 23](#), for a definition of "Minor Party."

#### [Green Party of Minnesota](#)

4200 Cedar Ave S, Suite 8  
Minneapolis, MN 55407

(651) 288-2820

**Independence Party of Minnesota**

P.O. Box 40495

Saint Paul, MN 55104

(651) 998-9156

**Libertarian Party of Minnesota**

1710 Douglas Drive N, Ste 225U

Golden Valley, MN 55422

(612) 440-1776

## **Political Party Recognition Petitions**

**Major Political Party Recognition Petition** (print on 8.5" x 14" (legal size) paper)

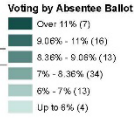
**Minor Political Party Recognition Petition** (print on 8.5" x 14" (legal size) paper)

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## Accepted absentee ballots as percent of Total Voting

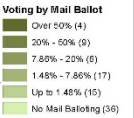


Accepted, although both states are still voting for more restrictions as reported in the State Commission Report by county committee members. Woodford counties with high percentages of absentee voting will have relatively low percentages of voting in the polling place or else mail ballot.

half-price percent in the beta column is 1.61 percent. It should be noted that beta values can be found by beta values chart. Country average is 1.61 percent, percentage average is 1.67 percent.

100

## Accepted mail ballots as percent of Total voting

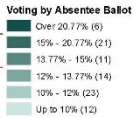


Average mail ballots and total voting from voting stations as reported to the State Commission. Briefly county canvassing boards. Note that counties with high percentages of absentee voting will have relatively low percentages of voting via voting place and/or mail ballot.

Global trade openness is the total export plus import share of GDP divided by total GDP, per country. Country average is the average percentage among all 87 countries.

Minnesota Secretary of State

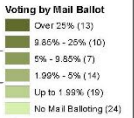
## Accepted absentee ballots as percent of Total Voting

[illegible]

Statewide average is the total amount of calls divided by total votes cast. County average is the average amount among all 37 counties.

1

## Accepted mail ballots as percent of Total voting



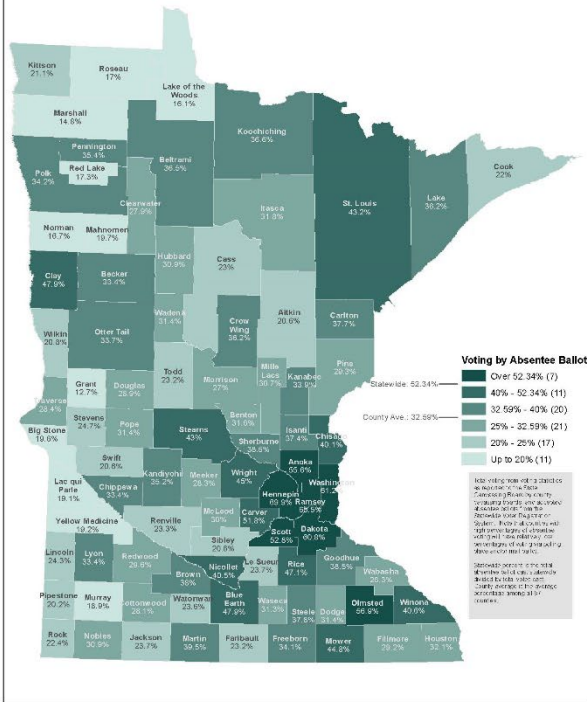
...and from being criticized as rapacious by the State Government for the money coming through, and a second and larger loan from Statewide voter registration agencies as of 2007. While the court with high percentages of voting by mail has not increased the actual use percentages of voting by mail, it has made it more difficult

Staten Island is the third most densely populated borough, with 16,000 people per square mile, and the second most densely populated county, with 12,000 people per square mile.



## 2020 General Election Absentee Balloting

Accepted absentee ballots as percent of Total Voting



## 2020 General Election Mail Balloting

Accepted mail ballots as percent of Total voting

