

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

In re Petitions by the Minnesota Voters
Alliance, et al. for Writs of Mandamus

Court File No.: 62-CV-20-4124
27-CV-20-9085
69DU-CV-20-1252
55-CV-20-4446

Case Type: Civil – Other/Misc.

ORDER & MEMORANDUM

This matter came before the undersigned on August 26, 2020, upon Petitioners' application for writs of mandamus and Respondents' motion to dismiss. Petitioners in all cases appeared by their Attorney Erick G. Kaardal. The Ramsey County Respondents appeared by Assistant Ramsey County Attorney Robert Roche. The Duluth Respondents appeared by Assistant City Attorney Elizabeth A. Sellers. The Olmsted County Respondents appeared by Senior Olmsted County Attorney Jennifer D. Plante. The Minneapolis Respondents appeared by Assistant City Attorney City Attorneys Gregory P. Sautter and Caroline M. Bachun.

Based on the records, filings, proceedings herein, **IT IS HEREBY ORDERED:**

1. The motion to dismiss the Petition for a Writ of Mandamus in 62-CV-20-4124 is **GRANTED.**
2. The motion to dismiss the Petition for a Writ of Mandamus in 27-CV-20-9085 is **GRANTED.**
3. The motion to dismiss the Petition for a Writ of Mandamus in 69DU-CV-20-1252 is **GRANTED.**
4. The motion to dismiss the Petition for a Writ of Mandamus in 55-CV-20-4446 is **GRANTED.**
5. The attached Memorandum is incorporated into this Order by reference.

LET JUDGMENT BE ENTERED ACCORDINGLY

BY THE COURT:

Dated: September 24, 2020

THOMAS A. GILLIGAN, JR.
JUDGE OF DISTRICT COURT

MEMORANDUM

The Petitioners filed Petitions for Writs of Mandamus in four different judicial districts, against various municipalities and counties, their governing bodies, and election officials. Each Petition alleges that Respondents are acting contrary to various election laws that govern the composition of absentee ballot boards.¹ Generally, Petitioners contend that various Respondents are: (1) improperly delegating their authority; (2) improperly appointing municipal or county employees to the absentee ballot boards; and (3) failing to appoint partisan election judges to the absentee ballot boards to ensure party balance and to ensure proper acceptance or rejection of absentee ballots.

The four Petitions were consolidated before this court on July 31, 2020 by Order of Chief Justice Lorie S. Gildea. This court ordered the Court Administrators in the jurisdiction where the Petitions were filed to issue Alternative Writs of Mandamus (“Alternative Writs”) in each matter on August 3, 2020. Alternative Writs were then issued in each matter and directed Respondents to show cause as to why they should not be required to comply with the relief sought by the Petitions or to otherwise respond to the Petitions in compliance with Minn. Stat. § 586.06. Each Respondent filed an Answer in response to the Petition filed against them. This court held a scheduling conference on August 7, 2020 and set an expedited briefing schedule and oral argument on the Petitions. The court held oral argument via Zoom on August 26, 2020 and took the matters under advisement.

THE DULUTH PETITION

On July 15, 2020, Petitioners Minnesota Voters Alliance (“MVA”), the Republican Party of Minnesota (“Republican Party”), Donna Bergstrom (“Bergstrom”), Sharon Bergquist (“Bergquist”), Carla Bayerl (“Bayerl”) and Timothy P. Carter (“Carter”) (collectively, the “Duluth Petitioners”) filed their Petition against Respondents City of Duluth (“Duluth”), its City Council (“Duluth City Council”) and City Clerk Chelsea J. Helmer (“Duluth City Clerk”)(collectively, the “Duluth Respondents”).

¹ While Minn. Stat. § 203B.121 calls the board which is responsible for the collection, processing, acceptance or rejection, storage, and counting of absentee ballots a “ballot board,” this court will refer to “ballot board” as “absentee ballot board” in this Memorandum.

MVA is an organization which claims to ensure “public confidence in the integrity of Minnesota’s elections,” and “that public officials act in accordance with the law in exercising their obligations to” the people of Minnesota. MVA also seeks to protect the rights of its members. It contends that its membership includes election judges of major Minnesota political parties, as well as candidates seeking elective office. The Republican Party is a major Minnesota political party that presented a list of its party members to the Minnesota Secretary of State for appointment as election judges. It claims to have an expectation that its members will be appointed as election judge to the absentee ballot boards, including the Duluth Absentee Ballot Board for the 2020 general election. Bergstrom claims to be a Duluth resident and Republican candidate for the Minnesota State Senate in the 2020 general election. She intends to vote absentee, has concerns about whether her vote will be properly tabulated, and believes that the Duluth Respondents’ failure to follow election laws “related to the acceptance, rejection and counting of absentee ballots in Duluth can have a direct impact on [her] legal right or privilege to take public office as a result of the election outcome.” Bergquist, Bayerl, and Carter all claim that they are members of MVA, are election judges, seek appointment to the Duluth Absentee Ballot Board, and have been denied such appointment by certain actions of the Duluth City Council or Duluth City Clerk.²

The Duluth Petitioners claim that the Duluth City Council acts for Duluth and is the municipal governing body which establishes the Duluth Absentee Ballot Board, and which must appoint election judges to it. They also claim that the Duluth City Clerk is responsible for: (1) “all matters relating or regarding elections within the jurisdiction” of Duluth for the 2020 general election; (2) all of the Duluth City Clerk’s employees; and (3) administrative and management support for the Duluth Absentee Ballot Board.

² The Petitions in each matter contend that they are also being brought on behalf “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.” Analysis of such a class is not necessary in light of the fact that the Petition fails to state a claim upon which relief can be granted.

The Duluth Petitioners contend that the Duluth City Council has failed to act as the appointing authority to do its mandatory statutory duties by failing: (1) to properly appoint election judges to the Duluth Absentee Ballot Board under Minn. Stat. § 203B.121, subd. 1; (2) to exhaust all major political party lists regarding appointments to the Duluth Absentee Ballot Board under Minn. Stat. § 204B.21, subd. 2; and (3) to ensure that the Duluth City Clerk obtains a statement of major party/non-major party affiliation from individuals considered for appointment to the Duluth Absentee Ballot Board as an election judge. The Duluth Petitioners contend that the Duluth City Clerk has failed to do their mandatory statutory duties by failing: (1) to ensure that at least two election judges who accept or reject absentee ballots are from different major political parties under Minn. Stat. § 203B.121, subd. 2; (2) to obtain a statement of major party/non-major party affiliation from individuals considered for appointment to the Duluth Absentee Ballot Board as an election judge under Minn. Stat. § 204B.21 and exclude any individual who fails to provide such a statement; and (3) to prohibit temporary, part-time, or permanent staff of the Duluth City Clerk from serving on the Duluth Absentee Ballot Board under Minn. Stat. § 203B.121, subd. 2.

The Duluth Petitioners claim that on June 23, 2020, the Duluth City Council passed Resolution 20-0497R, which purported to establish the Duluth Absentee Ballot Board for the 2020 general election. They contend that Resolution 20-0497R delegates the authority of appointments to the Duluth Absentee Ballot Board to the City Clerk and that the Duluth City Council did not make any of its own appointments. Finally, they contend that there are no “deputy city clerks” in Duluth who could be appointed to the Duluth Absentee Ballot Board.

The Duluth Petitioners maintain that they are entitled to mandamus relief because the election laws allegedly being violated by the Duluth Respondents created an official duty clearly imposed by law, that they suffered a public wrong especially injurious to them, and that they have no other adequate, specific legal remedy. They demand that this court direct the Duluth Respondents to adhere to the election laws at issue.

The Duluth Respondents respond that the Petition is wrong on the essential facts and wrong on the construction of the election laws at issue. They contend that the Duluth City Council passed Resolution 20-533R on July 20, 2020, which appointed election judges to precincts, and which appointed election judges to the Duluth Absentee Ballot Board for the 2020 general election. The election judges appointed to the Duluth Absentee Ballot Board include two Republicans, two Democrats, and two who are not affiliated with any major political party. Resolution 20-533R also appointed Duluth City Clerk's staff to the Duluth Absentee Ballot Board and empowered the Duluth City Clerk to "appoint additional qualified election judges as may be needed to ensure mandatory precinct staffing levels." Duluth expects that the Duluth City Council will amend Resolution 20-533R more than 25 days in advance of the 2020 general election to, among other things, appoint additional election judges, update the Duluth Absentee Ballot Board roster, and renew the authorization of the Duluth City Clerk to appoint additional election judges to accommodate last minute needs within 25 days of the 2020 general election.

In an affidavit, the Duluth City Clerk described the process for the selection of election judges and their appointment to the Duluth Absentee Ballot Board, as well as the appointment of their staff to the Duluth Absentee Ballot Board. The recommendations of the Duluth City Clerk were adopted by the Duluth City Council in Resolution 20-533R. The affidavit also explained the election judge needs, the effects of the COVID-19 pandemic on those needs, the election training received by the Duluth City Clerk, staff (known in Duluth as "election administrators" rather than "deputy city clerks") and election judges, and the technical and security reasons for staff being on the Duluth Absentee Ballot Board.

According to the Duluth City Clerk, neither they nor their staff provide statements of party affiliation/non-affiliation for the purpose of their election work or for any other purpose. They contend that this neutrality is necessary to ensuring public trust in their work and in fair results.

The Duluth Respondents also maintain that some of the facts about several of the Duluth Petitioners are either incorrect or are incomplete. Bayerl did not request to serve on the Duluth Absentee Ballot Board for the 2020 election, but the Duluth City Council did appoint Bayerl to serve as an election judge. Bergquist was appointed to serve as both a head precinct election judge and as an election judge on the Duluth Absentee Ballot Board for the 2020 election. Carter applied to be an election judge for the 2020 election but did not express interest in appointment to the Duluth Absentee Ballot Board. Carter has been appointed by the Duluth City Council to serve as an election judge but has not yet been assigned to any precinct or to the Duluth Absentee Ballot Board for the 2020 election.

The Duluth Petitioners sought, and were granted the opportunity, to submit additional Declarations on behalf of Bayerl, Bergquist, and Carter.³ Bayerl's Declaration affirms her interest in "full compliance with the election laws by election officials and governing bodies." She also declares that "the credibility and validity of elections are particularly important" to her. Bergquist's Declaration makes similar statements and also affirms that she is "especially concerned that not all (or any) of the absentee ballots may be reviewed by persons who have declared that they are affiliated with a major political party and who are election judges." Carter contends that he did express an interest "in helping out with the absentee ballots." Otherwise, he expressed similar statements and affirmations as Bayerl and Bergquist.

The Duluth Respondents contend that these Declarations do not establish standing for the Duluth Petitioners, nor do they affect any of the Duluth Respondents' other arguments in support of their motion to dismiss.

³ The Petitioners did not make this request until the day of the August 26, 2020 hearing. Counsel for Petitioners had previously represented to the court at its August 7, 2020, scheduling conference that the briefing schedule which the court established was acceptable, so this request was unexpected. Over the objections of Respondents, this court allowed supplementation of the record to include Petitioners' Declarations and brief responses to them by Respondents. As a result, the record for the motions in these matters was not complete until September 18, 2020.

The Duluth Respondents contend that the Petition for Mandamus Relief fails because they have not failed to perform any clear and present official duty, there is no public wrong specifically injurious to the Duluth Petitioners, and the Duluth Petitioners have an adequate remedy at law. The Duluth Respondents argue that most of the actions which the Petition demands have already been performed by them. Specifically, they have appointed election judges to the Duluth Absentee Ballot Board in Resolution 20-533R; they exhausted party lists before selecting election judges from any other source; the Duluth Absentee Ballot Board complies with the statutory directives on election judge party balance; and they have obtained statements of party affiliation/non-affiliation from all election judges.

The Duluth Respondents contend that the only remaining issues raised in the Petition do not seek to compel performance of any clearly imposed duty. They claim that Minn. Stat. § 204B.21, subd. 2 does not provide direction to a city council on making additional appointments of election judges within 25 days of an election – so there is no clear statutory mandate. Further, while Minn. Stat. § 203B.121, subd. 1 allows appointment of “deputy city clerks” to absentee ballot boards, the Duluth City Clerk does not call any of their employees by that title. The Duluth Respondents maintain that there is no substantive difference between the Duluth City Clerk’s staff being used as election administrators and deputy city clerks. They also argue that the election laws treat “election judges” and “deputy city clerks” differently – the former required to be part of partisan disclosure and balance, and the latter being exempt from such considerations. Again, the Duluth Respondents contend there is no clear statutory mandate to support the Duluth Petitioners’ contentions about partisan disclosure and balance for deputy city clerks.

The Duluth Respondents also claim that the Duluth Petitioners lack standing because they have not shown specific injury, nor have they shown that they are beneficially interested parties.

The Duluth Respondents contend that the Petition should be denied.

THE MINNEAPOLIS PETITION

On July 2, 2020, MVA, Jennifer Zielinski (“Zielinski”), Ronald Moey (“Moey”), Charles R. Halverson (“Halverson”), Skip Stoelzing (“Stoelzing”) and Blair L. Johnson (“Johnson”) (collectively, the “Minneapolis Petitioners”) filed their Petition against the City of Minneapolis (“Minneapolis”), its City Council (“Minneapolis City Council”), its City Clerk Joe Carl (“Minneapolis City Clerk”) and its Assistant City Clerk Grace Wachlarowicz (“Minneapolis Assistant City Clerk”)(collectively, the “Minneapolis Respondents”).

MVA is an organization which claims to ensure “public confidence in the integrity of Minnesota’s elections,” and “that public officials act in accordance with the law in exercising their obligations to” the people of Minnesota. MVA also seeks to protect the rights of its members. It contends that its membership includes election judges of major Minnesota political parties, as well as candidates seeking elective office. Zielinski claims to be a Minneapolis resident and Republican candidate for the Minnesota State Senate in the 2020 general election. She intends to vote absentee, has concerns about whether her vote will be properly tabulated, and believes that the Minneapolis Respondents’ failure to follow election laws “related to the acceptance, rejection and counting of absentee ballots in the City of Minneapolis can have a direct impact on [her] legal right or privilege to take public office as a result of the election outcome.” Moey, Halverson, Stoelzing, and Johnson all claim that they are members of MVA, are election judges, seek appointment to the Minneapolis Absentee Ballot Board, and have been denied such appointment by certain actions of the Minneapolis City Council, Minneapolis City Clerk, or Minneapolis Assistant City Clerk. Moey also claims that he will vote absentee, and “invokes his right to have his 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.”

The Minneapolis Petitioners claim that the Minneapolis City Council acts for Minneapolis and is the municipal governing body which establishes the Minneapolis Absentee Ballot Board, and

which must appoint election judges to it. They also claim that the Minneapolis City Clerk is responsible for all of the Minneapolis City Clerk's employees, including the Minneapolis Assistant City Clerk. Finally, they contend that the Minneapolis Assistant City Clerk is responsible for all matters relating to elections in Minneapolis for the 2020 general election and for the administration and management support of the Minneapolis Absentee Ballot Board, as well as all the individuals engaged by them for all duties related to the election process.

The Minneapolis Petitioners contend that the Minneapolis City Council has failed to act as the appointing authority to do its mandatory statutory duties by failing: (1) to properly appoint election judges to the Minneapolis Absentee Ballot Board under Minn. Stat. § 203B.121, subd. 1; (2) to use and exhaust major political party lists to appoint election judges to the Minneapolis Absentee Ballot Board; (3) to ensure that the Minneapolis City Clerk obtains a statement of major party/non-major party affiliation from individuals considered for appointment to the Minneapolis Absentee Ballot Board as an election judge. The Minneapolis Petitioners contend that the Minneapolis City Clerk or Assistant City Clerk have failed to do their mandatory statutory duties by failing: (1) to ensure that at least two election judges who accept or reject absentee ballots are from different major political parties under Minn. Stat. § 203B.121, subd. 2; (2) to obtain a statement of major party/non-major party affiliation from individuals considered for appointment to the Minneapolis Absentee Ballot Board as an election judge under Minn. Stat. § 204B.21 and exclude from service any individual who does not provide such a statement; and (3) to prohibit temporary, part-time, or permanent staff of the Minneapolis City Clerk from serving on the Minneapolis Absentee Ballot Board under Minn. Stat. § 203B.121, subd. 2.

The Minneapolis Petitioners maintain that they are entitled to mandamus relief because the election laws allegedly being violated by the Minneapolis Respondents created an official duty clearly imposed by law, that they suffered a public wrong especially injurious to them and that they have no other adequate, specific legal remedy. They demand that this court direct the Minneapolis Respondents to adhere to the election laws at issue.

The Minneapolis Respondents respond that the Petition should be dismissed because it is not ripe. The Minneapolis City Council has not yet adopted a resolution appointing election judges to the Minneapolis Absentee Ballot Board for the 2020 general election. They also claim that the Minneapolis Petitioners lack standing because they have no greater right or allegation of specific injury beyond that of any member of the public. They contend that while Halverson is a rostered election judge in Minneapolis, he did not respond to an invitation to serve on the 2020 primary Minneapolis Absentee Ballot Board. The Minneapolis Assistant City Clerk has represented that Halverson will be contacted, once it is time for election judge recruitment for the 2020 general election, and if he accepts an invitation to serve on the Minneapolis Absentee Ballot Board, he will be placed on “a party-balanced team of absentee ballot board election judges.” Although Stoelzing and Johnson were on the Republican Party list submitted to Minneapolis by the Secretary of State, they declined to register as election judges. Moey was neither on the Republican Party list, nor has he registered to work as an election judge. Accordingly, the Minneapolis Respondents contend that those Petitioners have not identified a private wrong, nor have they alleged any injuries to themselves.

The Minneapolis Petitioners sought, and were granted the opportunity, to submit additional Declarations on behalf of Halverson, Johnson and Stoelzing. Halverson’s Declaration affirms that he is “concerned that Ballot Boards in Minneapolis are not being conducted in full compliance with the governing statutes.” He also declares that “the credibility and validity of elections are particularly important” to him and that he is concerned that he has not yet heard from Minneapolis about serving on the absentee ballot board for the coming 2020 general election. Johnson’s Declaration states that “[i]t appears to her that Minneapolis is not requiring political balance of political parties reviewing each absentee ballot envelope” and that it “is critical for the public to know that the accepting and rejecting of absentee ballots is being done in a fair and objective manner...” Stoelzing’s Declaration expresses similar affirmations and concerns as Halverson’s and Johnson’s.

The Minneapolis Respondents contend that these Declarations do not establish standing for the Minneapolis Petitioners, nor do they affect any of the Minneapolis Respondents' other arguments in support of their motion to dismiss.

The Minneapolis Respondents claim that they comply with Minn. R. 8210.2450 and Minn. Stat. § 203B.121 for their appointment and operation of the Minneapolis Absentee Ballot Board. The Minneapolis Assistant City Clerk alleges that Minneapolis appoints election judges and deputy city clerks to its absentee ballot board for each election to receive and process absentee ballots. They contend that absentee ballots need to be verified under Minn. Stat. § 203B.121 and Minn. R. 8210.2450. To perform this verification, two absentee ballot board members, who are "full-time City employee Deputy City Clerks, log in to the Statewide Voter Registration System ("SVRS"). They contend that due to the "strict technical requirements of the SVRS," partisan election judges cannot be provided with log in credentials. As the absentee ballots arrive each day, two person teams of deputy city clerks approve or reject them and then store them for counting in the fourteen days before the election. The Minneapolis Assistant City Clerk appoints and trains both permanent and temporary employees as Minneapolis Deputy City Clerks and they are not asked to identify their party affiliation, if they have any, because their work must be non-partisan. Members of the Minneapolis Absentee Ballot Board will start opening and processing absentee ballots 14 days prior to the 2020 general election.

Before the opening of absentee ballots begins, the Minneapolis Respondents contend that their elections staff contact every election judge on the City's roster and ask whether they are interested in serving on the Minneapolis Absentee Ballot Board. Election judges who volunteer for the absentee ballot board are divided into major party balanced teams of two judges each. The Minneapolis Respondents also contend that they attain partisan balance of the Minneapolis Absentee Ballot Board as a whole. They anticipate a need of at least 100 people to staff the Minneapolis Absentee Ballot Board for the 2020 general election. To date, only 13 Republican Party members are available to serve

as election judges and each of those partisan judges “will have a spot on the absentee ballot board if they choose to apply.” As part of the registration process, “all election judges are required to provide an attestation to their party affiliation.”

The Minneapolis Respondents contend that they have not failed to do a duty clearly imposed by law and that mandamus is not appropriate. They maintain that their use of “election judges” and “deputy city clerks” is appropriate, and that they are treated differently. They claim there is no legal requirement for: (1) “deputy city clerks” to disclose their party affiliation; or (2) party lists to be exhausted. Finally, the Minneapolis Respondents contend there is no prohibition on the Minneapolis City Council delegating its appointment authority for the Minneapolis Absentee Ballot Board.

The Minneapolis Respondents maintain that the Petition should be denied.

THE OLMSTED PETITION

On July 30, 2020, MVA, the Republican Party, Duane Quam (“Quam”), Thomas M. Blondell (“Blondell”), Larry F. Mattson (“Mattson”) and Wayne Delano Harris (“Harris”)(collectively, the “Olmsted County Petitioners”) filed their Petition against County of Olmsted (“Olmsted County”), its Board of Commissioners (“Olmsted County Board of Commissioners”) and Mark Krupski, Olmsted County’s Director of Property Records and Licensing (“Olmsted County Director”) (collectively, the “Olmsted County Respondents”).

MVA is an organization which claims to ensure “public confidence in the integrity of Minnesota’s elections,” and “that public officials act in accordance with the law in exercising their obligations to” the people of Minnesota. MVA also seeks to protect the rights of its members. It contends that its membership includes election judges of major Minnesota political parties, as well as candidates seeking elective office. The Republican Party is a major Minnesota political party which presented a list of its party members to the Minnesota Secretary of State for appointment as election judges. It claims to have an expectation that its members will be appointed as election judges to absentee ballot boards, including the Olmsted County Absentee Ballot Board for the 2020 general

election. Quam claims to be an Olmsted County resident and Republican candidate for the Minnesota State House in the 2020 general election. He intends to vote absentee, has concerns about whether his vote will be properly tabulated, and believes that the Olmstead County Respondents' failure to follow election laws "related to the acceptance, rejection and counting of absentee ballots in Olmsted County can have a direct impact on [his] legal right or privilege to take public office as a result of the election outcome." Blondell, Mattson, and Harris all claim that they are members of MVA and are election judges seeking appointment to the Olmsted County Absentee Ballot Board and have been denied such appointment by certain actions of the Olmsted County Board of Commissioners or the Olmsted County Director.

The Olmsted County Petitioners claim that the Olmsted County Board of Commissioners acts for Olmsted County and is the county governing body which establishes the Olmsted County Absentee Ballot Board, and which must appoint election judges to it. They also claim that the Olmsted County Director is responsible for "the administrative and management support of the Board of Commissioners' appointed ballot board and all individuals engaged by him" and "for all duties related to the election process."

The Olmsted County Petitioners contend that the Olmsted County Board of Commissioners has failed to act as the appointing authority to do its mandatory statutory duties by failing: (1) to properly appoint election judges to the Olmsted County Absentee Ballot Board under Minn. Stat. § 203B.121, subd. 1; (2) to appoint election judges, with partisan balance, to serve on the Olmsted County Absentee Ballot Board as required by Minn. Stat. § 204B.21, subd. 2; (3) to exhaust all major political party lists on appointments to the Olmsted County Absentee Ballot Board under Minn. Stat. § 204B.21, subd. 2; (4) to ensure that the Olmsted County Director obtains a statement of major party/non-major party affiliation from individuals considered for appointment to the Olmsted County Absentee Ballot Board as an election judge; and (5) to ensure the "deputy county auditors" meet the requirements of Minn. Stat. § 384.08. The Olmsted County Petitioners contend that the Olmsted

County Director has failed to do their mandatory statutory duties by failing: (1) to ensure that at least two election judges who accept or reject absentee ballots are from different major political parties under Minn. Stat. § 203B.121, subd. 2; (2) to obtain a statement of major party/non-major party affiliation from individuals considered for appointment to the Olmsted County Absentee Ballot Board as an election judge under Minn. Stat. § 204B.21 and exclude any individual who fails to provide such a statement; (3) to prohibit temporary, part-time, or permanent staff of the Olmsted County Director from serving on the Olmsted County Absentee Ballot Board under Minn. Stat. § 203B.121, subd. 2; and (4) to ensure that “deputy county auditors” serving on the Olmsted County Ballot Board meet the requirements of Minn. Stat. § 384.08.

The Olmsted County Petitioners claim that on July 21, 2020, the Olmsted County Board of Commissioners passed a Resolution, which provided that all members of the Olmsted County Directors’ staff be appointed to the Olmsted County Absentee Ballot Board for the 2020 general election. They contend that the entire staff cannot be legally appointed as “deputy county auditors.” They also contend that, since there is no Olmsted County Auditor, there can be no “deputy county auditors.”

The Olmsted County Petitioners maintain that they are entitled to mandamus relief because the election laws allegedly being violated by the Olmsted County Respondents created an official duty clearly imposed by law, that they suffered a public wrong especially injurious to them, and that they have no other adequate, specific legal remedy. They demand that this court direct the Olmsted County Respondents to adhere to the election laws at issue.

The Olmsted County Respondents respond that the Olmsted County Petitioners lack standing to obtain a writ of mandamus. They contend that the Olmsted County Petitioners have failed to: (1) demonstrate that they have not performed a duty clearly imposed by law; (2) identify a public wrong, specifically injurious to the Olmsted County Petitioners, which needs to be corrected; and (3) demonstrate that the use of an extraordinary writ is their only adequate remedy.

The Olmsted County Respondents contend that the office of Olmsted County Auditor-Treasurer was eliminated in 1998 and all of that position's duties related to elections are now performed by the Olmsted County Director of Property Records and Licensing. The Olmsted County Director alleges that they received advice and guidance from the Secretary of State on the creation and appointment of the Olmsted County Ballot Board. Under this advice and guidance, the Olmsted County Director recruited, hired, and trained eighteen individuals to work as deputies with the express purpose of serving on the Olmsted County Absentee Ballot Board for the 2020 general election. These individuals were appointed by the Olmsted County Board of Commissioners as "deputy county auditors" to serve on the "Absentee Ballot Board" for the 2020 general election in Resolution No. 20-139. Seventeen of these deputies have declared their party affiliation or have revealed non-affiliation, even though according to the Olmsted County Director, they did not have to do so. The eighteenth deputy will not be serving on the Olmsted County Absentee Ballot Board, because that person will be on medical leave. On top of the seventeen deputies, there are also three "full-time permanent deputies on the absentee ballot board, who, in addition to the other statutorily-mandated absentee ballot board duties, also provide oversight of the other seventeen individuals." According to the Olmsted County Director, "[n]o major political party is represented by more than 50 percent of the absentee ballot board members." Finally, the Olmsted County Respondents have recounted their ongoing efforts to recruit partisan election judges and expect that four additional election judges will be appointed to the Olmsted County Absentee Ballot Board at the Olmsted County Board of Commissioners next meeting.

The Olmsted County Petitioners sought, and were granted the opportunity, to submit additional Declarations on behalf of Blondell and Mattson. Blondell's Declaration affirms that his interest in serving as an election judge is "undermined if election officials or others in authority are allowed to evade the requirements of the law when overseeing the election process." He questions the Olmsted Absentee Ballot Board being in "full compliance with the law" and "feels strongly" that

review of absentee ballots be done by partisan election judges. Mattson makes similar affirmations and expresses similar concerns to Blondell.

The Olmsted County Respondents contend that these Declarations do not establish standing for the Olmsted County Petitioners, nor do they affect any of the Olmsted County Respondents' other arguments in support of their motion to dismiss.

The Olmsted Respondents argue that the Olmsted County Absentee Ballot Board was a properly created, neutral ballot board to which deputy county auditors were appointed to serve. They contend that "Section 204B.21...permitted the Board to appoint 'other individuals' as election judges because: (i) it 'furnished' the lists to the municipalities as required by law, and (ii) the County is not a municipality and therefore not required to exhaust party lists before appointing election judges." They also contend that the guidance provided by the Secretary of State for the composition of absentee ballot boards "may consist of election judges, deputy county auditors, or a combination thereof." Minnesota Secretary of State, *2020 Minnesota Absentee Voting Administration Guide*, at p. 15 (2020). As such, the Olmsted County Respondents argue that, in appointing deputy county clerks to the Olmsted Absentee Ballot Board, they did not violate any duty clearly imposed by law.

They also contend that the Olmsted County Petitioners have not been injured. They maintain that none of the Olmsted County Petitioners have demonstrated a specific injury, different than, for example, any other major political party, voter organization, political candidate, or prospective election judge, by the appointment of a neutral absentee ballot board. They also contend that there is no specific right under state law for any particular person to be appointed to an absentee ballot board, so none of the prospective Olmsted County Absentee Ballot Board members can demonstrate injury. Finally, they argue that the Olmsted County Petitioners cannot demonstrate that the issuance of a writ of mandamus would benefit any of them.

The Olmsted County Respondents further maintain that the Olmsted County Petitioners have remedies other than a writ of mandamus, such as a challenge to the Secretary of State's administrative

rule under Minn. Stat. § 14.44. The Olmsted County Respondents observe that at least some of the Olmsted County Petitioners are now using that legal remedy to challenge that rule. Accordingly, the Olmsted County Petitioners have a sufficient legal remedy which would obviate the need for mandamus relief.

The Olmsted County Respondents contend that the Petition should be denied.

THE RAMSEY PETITION

On July 22, 2020, MVA, the Republican Party, Dan McGrath (“McGrath”), Tony W. Ward (“Ward”), Thomas Polachek (“Polachek”) and Robert McDonald (“McDonald”)(collectively, the “Ramsey County Petitioners”) filed their Petition against County of Ramsey (“Ramsey County”), its Board of Commissioners (“Ramsey County Board of Commissioners”), and its County Auditor Christopher A. Samuel (“Ramsey County Auditor”) (collectively, the “Ramsey County Respondents”).

MVA is an organization which claims to ensure “public confidence in the integrity of Minnesota’s elections,” and “that public officials act in accordance with the law in exercising their obligations to” the people of Minnesota. MVA also seeks to protect the rights of its members. It contends that its membership includes election judges of major Minnesota political parties, as well as candidates seeking elective office. The Republican Party is a major Minnesota political party that presented a list of its party members to the Minnesota Secretary of State for appointment as election judges. It claims to have an expectation that its members will be appointed as election judges to absentee ballot boards, including the Ramsey County Absentee Ballot Board for the 2020 general election. McGrath claims to be a Ramsey County resident and Republican candidate for Ramsey County Commissioner in the 2020 general election. He intends to vote absentee, has concerns about whether his vote will be properly tabulated, and believes that Respondents’ failure to follow election laws “related to the acceptance, rejection and counting of absentee ballots in Ramsey County can have a direct impact on [his] legal right or privilege to take public office as a result of the election outcome.” Ward, Polachek, and McDonald all claim that they are members of MVA, are election judges, seek

appointment to the Ramsey County Absentee Ballot Board, and have been denied such appointment by certain actions of the Ramsey County Board of Commissioners or the Ramsey County Auditor.

The Ramsey County Petitioners claim that the Ramsey County Board of Commissioners acts for Ramsey County and is the county governing body which establishes the Ramsey County Absentee Ballot Board, and which must appoint election judges to it. They also claim that the Ramsey County Auditor is responsible for “the administrative and management support of the Board of Commissioners’ appointed ballot board and all individuals engaged by him” and “for all duties related to the election process.”

The Ramsey County Petitioners contend that the Ramsey County Board of Commissioners has failed to act as the appointing authority to do its mandatory statutory duties by failing: (1) to properly appoint election judges to the Ramsey County Absentee Ballot Board under Minn. Stat. § 203B.121, subd. 1; (2) to appoint election judges, with partisan balance, to serve on the Ramsey County Absentee Ballot Board as required by Minn. Stat. § 204B.21, subd. 2; (3) to exhaust all major political party lists regarding appointments to the Ramsey County Absentee Ballot Board under Minn. Stat. § 204B.21, subd. 2; and (4) to ensure that the Ramsey County Auditor obtains a statement of major party/non-major party affiliation from individuals considered for appointment to the Ramsey County Absentee Ballot Board as an election judge. The Ramsey County Petitioners contend that the Ramsey County Auditor has failed to do their mandatory statutory duties by failing: (1) to ensure that at least two election judges who accept or reject absentee ballots are from different major political parties under Minn. Stat. § 203B.121, subd. 2; (2) to obtain a statement of major party/non-major party affiliation from individuals considered for appointment to the Ramsey County Absentee Ballot Board as an election judge under Minn. Stat. § 204B.21 and exclude any individual who fails to provide such a statement; (3) to prohibit temporary, part-time, or permanent staff of the Ramsey County Auditor from serving on the Ramsey County Absentee Ballot Board under Minn. Stat. § 203B.121, subd. 2; and (4) to ensure the “deputy county auditors” meet the requirements of Minn. Stat. § 384.08.

The Ramsey County Petitioners claim that on July 7, 2020, the Ramsey County Board of Commissioners passed a Resolution, which established the absentee ballot board for the 2020 general election and which granted the Ramsey County Auditor the authority to appoint its members. They claim this was an improper delegation.

The Ramsey County Petitioners maintain that they are entitled to mandamus relief because the election laws allegedly being violated by the Ramsey County Respondents created an official duty clearly imposed by law, that they suffered a public wrong especially injurious to them, and that they have no other adequate, specific legal remedy. They demand that this court direct the Ramsey County Respondents to adhere to the election laws at issue.

The Ramsey County Respondents respond that they properly appointed members to the Ramsey County Absentee Ballot Board. They contend that the delegation by the Ramsey County Board of Commissioners of appointment authority to the Ramsey County Auditor is appropriate and necessary. They claim that deputy county auditors appointed to the Ramsey County Absentee Ballot Board are formally appointed in writing and must sign an oath. They claim that any election judge appointed in Ramsey County must disclose their major party affiliation/non-affiliation as part of the appointment process. They maintain that they ensure that election judges performing the duties set forth in Minn. Stat. § 203B.121, subd. 2, are from different major political parties.

The Ramsey County Respondents further contend that they exhaust major political party lists when they staff the Ramsey County Absentee Ballot Board and did so in this election cycle. However, because they were unable to secure a sufficient number of election judges from the partisan lists to process the anticipated number of absentee ballots, the Ramsey County Respondents maintain they appointed sixty-two election judges and five deputy county auditors to the Ramsey County Absentee Ballot Board. They maintain that no more than fifty percent of the election judges on the Ramsey County Absentee Ballot Board are affiliated with the same major political party. The Ramsey County Respondents also deny that Ward, Polachek, and McDonald were denied the opportunity to serve on

the Ramsey County Absentee Ballot Board. Ward and Polachek were on the Republican Party list submitted by the Secretary of State and were both asked to serve on the Ramsey County Absentee Ballot Board. Polachek was appointed as an election judge but did not respond to an inquiry about serving on the absentee ballot board. Ward has been appointed to the Ramsey County Absentee Ballot Board. McDonald has not sought to serve on the Ramsey County Absentee Ballot Board and is now serving as an election judge in a different jurisdiction.

The Ramsey County Petitioners sought, and were granted the opportunity, to submit additional Declarations on behalf of McDonald, Polachek, and Ward. McDonald's Declaration affirms that, despite that he is an election judge in Shoreview, he wants to serve on the Ramsey County Ballot Board in the 2020 general election. He "feels strongly" that the work of the Ramsey County Ballot Board be conducted fairly and that it is "extremely important" that review of absentee ballots be done by election judges with partisan affiliation. Polachek signifies in his Declaration that he is "particularly interested in being an election judge on the Ramsey County Absentee Ballot Board" and his interest would be "undermined if the County does not fully comply with the election laws." Ward's Declaration states that he is currently serving on the Ramsey County Absentee Ballot Board and does "not want to be part of an unlawful operation." He expresses "worry" that the review of absentee ballots will be done by persons who are not partisan election judges.

The Ramsey County Respondents contend that these Declarations do not establish standing for the Ramsey County Petitioners, nor do they affect any of the Ramsey County Respondents' other arguments in support of their motion to dismiss.

The Ramsey County Respondents also claim there is no justiciable controversy, because they have suffered no injury and because any purported injury is simply hypothetical.

They further claim that, contrary to the arguments made by the Ramsey County Petitioners: (1) deputy county auditors do not "automatically become election judges who must disclose their political party affiliation"; (2) there is no requirement that deputy county auditors must disclose their

political party affiliation; and (3) deputy county auditors are permitted to review, and accept or reject absentee ballots, as “members of the ballot board.” Therefore, the Ramsey County Respondents maintain the Ramsey County Petitioners cannot show they violated a duty, clearly mandated by law.

Much like the other Respondents, the Ramsey County Respondents maintain that the Ramsey County Petitioners have demonstrated no wrong specifically injurious to them, nor can they demonstrate that they have no adequate legal remedy outside mandamus relief. They contend the Ramsey County Petitioners could bring a declaratory judgment action, a claim under the Administrative Procedure Act, an errors, and omissions petition under Minn. Stat. § 204B.44, or an election contest under Chapter 209 of the Minnesota Statutes. Last, the Ramsey County Respondents contend the Petition is barred by the doctrine of laches, because the Ramsey County Petitioners waited until the eve of the 2020 general election to file it.

The Ramsey County Respondents contend that the Petition should be denied.

**THE PETITION FOR DECLARATORY JUDGMENT FILED
IN THE MINNESOTA COURT OF APPEALS**

Several months before commencing these actions, MVA, Halverson, Quam, and others filed a Petition for Declaratory Judgment Under Minnesota Statutes § 14.44 Challenging the Validity of Minnesota Rule 8210.2450 (the “§ 14.44 Petition”) with the Minnesota Court of Appeals. *See Minnesota Voters Alliance, et al. v. Simon*, A20-0601 (Minn. Ct. App. 2020). The general claim of this declaratory judgment action is that Minn. R. 8120.2450 contradicts Minn. Stat. § 203B.121. The specific claims are that: (1) “Rule 8210.2450 authorizes, contrary to Minnesota Statutes § 203B.121, subdivision 1, 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.”; (2) “Rule 8210.2450 authorizes, contrary to Minnesota Statutes § 203B.121, subdivision 1, the designation of deputy clerks, staff, or hiring of temporary staff as election judges without apportionment by the governing body, as required under Minnesota Statutes § 203B.121, subdivision 1(a) and § 204B.21, subdivision 2.”; and (3) “Rule

8210.2450 authorizes, contrary to Minnesota Statutes § 203B.121, subdivision 2, the use of designated deputy clerks, staff, or temporary staff as election judges to examine returned absentee ballot envelopes who are not from different political parties as required under subdivision 2.”

The § 14.44 Petition demands a declaration that Minn. R. 8210.2450 is invalid.

WRIT OF MANDAMUS

Petitioners in all four cases, through their Petitions for a Writ of Mandamus, ask the court to command the Respondents to direct them to comply with various laws that relate to the appointment, implementation, and operation of absentee ballot boards in their jurisdictions. A writ of mandamus is an extraordinary legal remedy. *Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162, 171 (Minn. 2006). It is not awarded as “a matter of right, but in the exercise of sound judicial discretion and upon equitable principles.” *Coyle v. City of Delano*, 526 N.W.2d 205, 207 (Minn. Ct. App. 1995)(citation omitted). Mandamus is used (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. Minn. Stat. § 586.01. In order to obtain a writ of mandamus, a petitioner must demonstrate: “(1) the failure of an official duty clearly imposed by law; (2) a public wrong specifically injurious to petitioner; and (3) no other adequate specific legal remedy.” *Coyle*, 526 N.W.2d at 207. *See also* Minn. Stat. §§ 586.02, .04. In mandamus cases, petitioners “must demonstrate a clear legal right to have the act in question performed and must demonstrate every material fact necessary to show the existence of the plain duty with respect to the relief sought.” *Mendota Golf*, 708 N.W.2d at 174, 178-79 (quotation omitted). 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. *See, e.g., State v. Davis*, 592 N.W.2d 457, 459 (Minn.1999); *State ex rel. S. St. Paul v. Hetherington*, 61 N.W.2d 737, 740 (Minn. 1953); *State ex rel. Laurisch v. Pohl*, 8 N.W.2d 227, 231 (Minn. 1943). “If the

entity has any discretion to perform the duty, a petitioning party must show that the failure to perform was so arbitrary and capricious that it constituted a clear abuse of discretion.” *Honck v. Eastern Carver County Sch.*, 787 N.W.2d 227, 232 (Minn. 2010)(citation omitted). Issuance of the writ should “be denied where it is obvious that it will prove to be futile, unavailing, and ineffective.” *Winnetka Partners Ltd. P’ship v. County of Hennepin*, 538 N.W.2d 912, 915 (Minn. 1995)(citations omitted). A court should also not grant mandamus to compel “a technical compliance with the letter of law” that would violate the spirit of the law. *State v. Hodapp*, 48 N.W.2d 519, 522 (Minn. 1951).

THE ABSENTEE BALLOT BOARD LAWS

Section 203B.121 of the Minnesota Statutes governs the establishment and duties of boards for the purpose of the collection, processing, acceptance, or rejection, storage, and counting of absentee ballots. Subdivision 1(a) of that statute addresses the establishment and composition of absentee ballot boards:

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.

Minn. Stat. § 203B.121, subd. 1(a).

Subdivision 2(a) of that statute addresses the fundamental duties of the absentee ballot board:

The members of the ballot board shall take possession of all return envelopes delivered to them in accordance with section 203B.08. Upon receipt from the county auditor, municipal clerk, or school district clerk, 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. 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.

Accordingly, Minn. Stat. § 203B.121 provides that the composition of the absentee ballot board: (1)

“must” consist of “a sufficient number of election judges trained in the handling of absentee ballots

and appointed as provided in section 204B.19 to 204B.22”; and (2) “may” include “deputy county auditors or deputy city clerks who have received training in the processing and counting of absentee ballots.”

The entirety of Minn. Stat. § 203B.121 discusses obligations of three categories of actors in the absentee ballot process: (1) trained election judges, who have been appointed according to a defined statutory process (Minn. Stat. § 203B.121, subds. 1(a) and 2(a)); (2) members of the ballot board or the ballot board (Minn. Stat. § 203B.121, subds. 2(a), (b), (c)(1), and (c)(2)); and (3) the official in charge of the ballot board (Minn. Stat. § 203B.121, subds. 2(d), 2(d)(3)). While there is no definition of “election judge,” Minn. Stat. § 204B.19 provides significant detail about an election judge’s qualifications. They must be eligible voters, and among other things, must be able to read, write, and speak the English language, may not be a relative of an election judge in the same precinct on the same shift, and may not be a candidate in the same election. Minn. Stat. § 204B.19, subds. 1 and 2. This same provision requires that: “No more than half of the election judges in a precinct may be members of the same major political party unless the election board consists of an odd number of election judges, in which case the number of election judges who are members of the same major political party may be one more than half the number of election judges in that precinct.” Minn. Stat. § 203B.121, subd. 5. There is no corresponding provision that requires partisan/non-partisan disclosure or partisan balance for the “members of the ballot board.” There is also no corresponding provision that mandates partisan/non-partisan disclosure for the official in charge of the ballot board.

Minn. Stat. § 204B.195, which is also referenced in Minn. Stat. § 203B.121, addresses time off work for election judges.

Minn. Stat. § 204B.20, as referenced in Minn. Stat. § 203B.121, addresses the appointment and duties of “head election judges” in precincts.

Minn. Stat. § 204B.21, as referenced in Minn. Stat. § 203B.121, addresses the appointment of election judges. Subdivision 1 provides that during election years, “each major political party shall

prepare a list of eligible voters to act as election judges in each election precinct.” It further directs the Secretary of State to “combine the data received from each political party under this subdivision and must process the data to locate the precinct in which the address provided for each potential election judges is located.” *Id.* Accordingly, the Secretary of State shall furnish to the county auditor: “a list of the appropriate names for each election precinct in the jurisdiction of the appointing authority, and a list of the names of individuals residing outside of the jurisdiction who indicated a willingness to travel to that jurisdiction to act as an election judge, noting the political party affiliation of each individual on the list. The county auditor must promptly forward the appropriate names to the appropriate municipal clerk.” *Id.*

Subdivision 2 of Minn. Stat. § 204B.21 provides the process of appointment of election judges for precincts:

Election judges for precincts in a municipality shall be appointed by the governing body of the municipality. Election judges for precincts in unorganized territory and for performing election-related duties assigned by the county auditor shall be appointed by the county board. * * * Except as otherwise provided in this section, appointments shall be made from the list of voters who reside in each precinct, furnished pursuant to subdivision 1, subject to the eligibility requirements and other qualifications established or authorized under section 204B.19. At least two election judges in each precinct must be affiliated with different major political parties. If no lists have been furnished or if additional election judges are required after all listed names in that municipality have been exhausted, the appointing authority may appoint other individuals who meet the qualifications to serve as an election judge, including persons on the list furnished pursuant to subdivision 1 who indicated a willingness to travel to the municipality, and persons who are not affiliated with a major political party. An individual who is appointed from a source other than the list furnished pursuant to 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 any major political party. 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. 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.

Minn. Stat. § 204B.21, subd. 2.

Minn. Stat. § 203B.14 authorizes certain county and municipal officials to hire election help: “Each county auditor and each municipal clerk may employ additional clerical assistance as necessary to discharge the responsibilities imposed on the county auditor or municipal clerk as provided in this chapter.”

The Legislature has also provided the Secretary of State with rulemaking authority related to the marking and return of absentee ballots, Minn. Stat. § 203B.08, subd. 4, and the methods and procedures for the reconciliation of voters and ballot cards, Minn. Stat. § 203B.125. Under this rulemaking authority, the Secretary of State set forth certain obligations of absentee ballot board members for the examination of return envelopes of absentee ballots under Minn. Stat. § 203B.121. *See* Minn. R. 8210.2450.

Subpart 1 of Rule 8210.2450 provides 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.

Other subparts of that same rule mandate that “[b]allot board members” must confirm that the identification number for the absentee ballot is the same as that provided by the voter on their absentee ballot application or on the voter’s record, determine that the absentee voter is properly registered, and determine whether another ballot from the absentee voter has been accepted. *See* Minn. R. 8210.2450, subparts 3, 4 and 6. These provisions also reference the use of the “statewide voter registration system” by “[b]allot board members” in making these determinations. *Id.*

RESPONDENTS' MOTIONS TO DISMISS ARE GRANTED

I. PETITIONERS HAVE FAILED TO ESTABLISH THE ESSENTIAL ELEMENTS REQUIRED FOR THE ISSUANCE OF A WRIT OF MANDAMUS

A. Respondents did not Violate an Official Duty Clearly Imposed by Law that Would Provide the Basis for Mandamus Relief

Petitioners make several arguments which relate to their claim that mandamus relief is appropriate because Respondents have violated an official duty clearly imposed by law.

First, Petitioners contend that Minn. Stat. § 203B.121 requires that absentee ballot boards be established as “essentially an independent entity” in order “to avoid influence of any county auditor or city clerk’s office.”

Second, Petitioners contend Minn. Stat. § 203B.121, subd. 1(a) mandates that 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.” Petitioners maintain that Minn. Stat. § 203B.121, when read in conjunction with Minn. Stat. §§ 204B.19 to 204B.22, requires that only election judges on the absentee ballot board, with partisan balance, may review absentee ballots for acceptance or rejection.

Third, Petitioners contend that, according to Minn. Stat. § 204B.21, subd. 2, the appointment of election judges may not be delegated by the governing board of a county or municipality.

Fourth, Petitioners contend that Minn. Stat. § 204B.21, subd. 2 requires that major political party lists for the appointment of election judges be exhausted before “deputy county auditors” or “deputy city clerks” may be appointed to the absentee ballot board. They claim that such county or municipal employees, when appointed to the absentee ballot board, are “in fact [] ‘election judge[s]’ as found under § 204B.21, performing the statutory duties of

election judges under Minn. Stat. § 203B.121, subdivisions 2 through 5 as members of the ballot board.” They also claim that county or city staff employees, or temporary employees, who are not “bona fide” “deputy county auditors” or “deputy city clerks,” may not serve on absentee ballot boards.

Fifth, Petitioners maintain that if “deputy county auditors” or “deputy city clerks” are appointed to the absentee ballot boards, they must make a disclosure, according to Minn. Stat. § 204B.21, subd. 2, of their party affiliation or non-party affiliation. If those individuals refuse to make such a disclosure, Petitioners contend that they must not be appointed as election judges. *Id.*

In summary, Petitioners contend that the election law requires the review of absentee ballots only by partisan-balanced election judges, appointed to an independent board by the governing body of each county or municipality.

Respondents generally respond that Petitioners misread the operative absentee ballot board statutes to impose duties and obligations on them which do not exist. While each Respondents’ argument is somewhat different, for the most part, they agree on the following in response to the contentions of Petitioners.

First, Respondents deny that the absentee ballot boards are independent entities. There is nothing in Minn. Stat. § 203B.121, or any other statute pertaining to the absentee ballot boards, which supports such a contention. In any event, they claim that this allegation was not made in any of the Petitions against them and should not be considered by this court.

Second, while Respondents acknowledge that Minn. Stat. § 203B.121, subd. 1(a) mandates that the absentee ballot board must consist of a sufficient number of trained election judges, they contend that same statute provides the option for counties and municipalities to

appoint trained “deputy county auditors” or “deputy city clerks.” Respondents therefore contend that “members of the ballot board” can either be “election judges,” or “deputy county auditors” or “deputy city clerks.” They also contend that neither Minn. Stat. § 203B.121, nor any other provision of the election law require only partisan-balanced election judges may review absentee ballots for acceptance or rejection. In fact, Respondents argue that Minn. R. 8210.2450 specifically provides for absentee ballot review by trained, non-partisan deputies, instead of by partisan election judges.

Third, Respondents contend that their governing boards have either directly appointed election judges or deputies to their absentee ballot board, or that they properly delegated that appointing authority. They contend there is no provision of the election law that precludes the delegation of the appointment of election judges or deputies.

Fourth, Petitioners deny that Minn. Stat. § 204B.21, subd. 2 requires the exhaustion of major political party lists for the appointment of election judges to the absentee ballot board before deputies may be appointed. Respondents also contend that “election judges” and “deputy county auditors” or “deputy city clerks” are different and that they have properly trained and appointed permanent or temporary county or city staff employees to their absentee ballot boards.

Fifth, Respondents contend either that “deputy county auditors” or “deputy city clerks” appointed to their absentee ballot boards have made a disclosure, according to Minn. Stat. § 204B.21, subd. 2, of their party affiliation or non-party affiliation, or are not required such a disclosure, because that provision applies only to election judges.

Overall, Respondents contend that they did not violate any clear duty in the establishment of their absentee ballot board and that Petitioners have not established an entitlement to mandamus relief.

The determination of whether a duty is clearly imposed by law may require the court to engage in statutory construction. See *Johnson v. Minn. Dep't of Human Svcs.*, 565 N.W.2d 453, 460 (Minn. Ct. App. 1997)(citation omitted). When interpreting a statute, the court's objective “is to give effect to the legislature's intent as expressed in the language of the statute.” *Goodyear Tire & Rubber Co. v. Dynamic Air, Inc.*, 702 N.W.2d 237, 242 (Minn. 2005) (quoting *Pususta v. State Farm Insurance Companies*, 632 N.W.2d 549, 552 (Minn. 2001)); Minn. Stat. § 645.16 (“The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature.”). The text of an unambiguous statute must be interpreted “according to its plain language.” *Brua v. Minnesota Joint Underwriting Ass'n*, 778 N.W.2d 294, 300 (Minn. 2010) (citing *Molloy v. Meier*, 679 N.W.2d 711, 723 (Minn. 2004)). “[T]he court is prohibited from adding words to a statute and cannot supply what the legislature either purposely omitted or inadvertently overlooked.” *Tracy State Bank v. Tracy-Garvin Coop.*, 573 N.W.2d 393, 395 (Minn. Ct. App. 1998) (citation omitted); see Minn. Stat. § 645.16 (“When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.”). To determine the plain meaning of a statute, the words and phrases in the statute are “construed according to the rules of grammar and according to their common and approved usage.” *State v. Riggs*, 865 N.W.2d 679, 682 (quoting Minn. Stat. § 645.08(1)). “The statutory language in dispute is not examined in isolation; rather, all provisions in the statute must be read and interpreted as a whole.” *State v. Pakbnyuk*, 926 N.W.2d 914, 919 (Minn. 2019)(citations omitted). The

Legislature is presumed to intend that “the entire statute...be effective and certain.” Minn. Stat. § 645.17(2).

If, after considering these principles, a court determines that the statute is “subject to more than one reasonable interpretation,” then it is ambiguous, and the court “may apply canons of construction to resolve the ambiguity.” *State v. Thonesavanb*, 904 N.W.2d 432, 435 (Minn. 2017)(quoting *500, LLC v. City of Minneapolis*, 837 N.W.2d 287, 290 (Minn. 2013)); *see also* Minn. Stat. § 645.16 (2018). “A statute is ambiguous only if it is subject to more than one reasonable interpretation.” *Thonesavanb*, 904 N.W.2d at 435. The court should read the statutory section within context of surrounding sections...to avoid conflicting interpretations.” *Roberts v. State*, 945 N.W.2d 850, 853 (Minn. 2020)(citation omitted). The court may consider, among other factors, the consequences of a particular interpretation and administrative interpretations of the statute, in making its determination of the legislative intent of the statute. Minn. Stat. § 645.16 (6) and (8).

B. There is no Official Duty Clearly Imposed by Law which Requires that Absentee Ballot Boards be Established as an “Independent Entity”

Petitioners claim for the first time in their supporting briefs that the absentee ballot board is an independent body from that of the county auditor or city clerk’s office. The Petitioners cite no particular provision in the election law that mandates independence. Instead, they contend that since the absentee ballot board is established by a resolution of the governing body of a county or municipality under Minn. Stat. § 203B.121, subd. 1(a), required to have a chair under Minn. Stat. § 204B.20, and must have party balance Minn. Stat. § 204B.19, subd. 5, it has the trappings of an independent body. They maintain, without citing any authority, that the purpose of the creation of the absentee ballot board in this regard is to

“avoid influence of any county auditor or city clerk’s office.” Respondents argue that this contention was never pled and has no support in the election law directly or by inference.

There is nothing in the explicit language of Minn. Stat. § 203B.121 which suggests that the absentee ballot board is an independent body. It would also not make sense for the Legislature to establish an independent absentee ballot board to “avoid any influence of any county auditor or city clerk’s office,” yet allow the inclusion of “deputy county auditors or deputy city clerks who have received training in the processing and counting of absentee ballots” to serve as its members. *See* Minn. Stat. § 203B.121, subd. 1(a). Moreover, the remainder of that statute discusses the responsibility of the “official in charge of the absentee ballot board” and “the appropriate election official” in terms that suggest that those persons are neither an “election judge,” nor a “member of the ballot board,” but rather a county or municipal official. *See* Minn. Stat. § 203B.121, subd. 2(c)(3), 2(d) and 2(d)(3). Finally, as will be discussed later in this Memorandum, the statutes that mandate the designation of a head election judge and partisan balance apply only to precincts and do not support Petitioners’ independence argument. Minn. Stat. § 204B.20 does not discuss the appointment of a head election judge for the absentee ballot board, but rather the designation “of one of the election judges *in each precinct* to serve as the head election judge” who assigns duties to the election judges in their precinct. (emphasis added). Similarly, Minn. Stat. § 204B.19, subd. 5 does not discuss the partisan balance of the absentee ballot board, but instead provides “[n]o more than half of the election judges *in a precinct* may be members of the same major political party...” (emphasis added).

The election laws do not require that the governing bodies of counties and municipalities establish their absentee ballot boards as an independent entity. Respondents

did not violate an official duty clearly imposed by law that would provide the basis for mandamus relief.

C. There is no Official Duty Clearly Imposed by Law which Requires Absentee Ballots to be Reviewed Exclusively by Election Judges from Different Major Political Parties

Petitioners contend “only election judges from different major political parties must review absentee ballots.” They find support for this proposition in several provisions of the election law: (1) Minn. Stat. § 203B.121, subd. 1(a) (“The board must consist of a sufficient number of election judges...”); (2) Minn. Stat. § 203B.121, subd. 2(a) (“Election judges performing the duties in this section must be of different major political parties...”); (3) Minn. Stat. § 204B.21, subd. 2 (“At least two election judges... must be affiliated with different major political parties.”); and (4) Minn. R. 8210.2450 (“Two or more ballot board members from different political parties must review the absentee ballots returned...”). Based upon their construction of these several statutes, they maintain that the Respondents’ alleged failure to have partisan judges exclusively review absentee ballots, and their use of deputies in lieu of partisan election judges to do so, violates an official duty clearly imposed by law.

The Respondents generally contend that Petitioners misread and misapply the election laws and omit important language in the operative provisions that does not support their argument. Respondents argue that: (1) election judges and deputies are each “members of the ballot board” and are treated differently throughout the election laws; (2) deputies do not become election judges upon appointment to an absentee ballot board; (3) there is no partisan balance requirement which applies to deputies; and (4) implementing Petitioners’ proposed requirement would place counties and municipalities in an untenable practical position, because there are insufficient partisan election judges to serve on absentee ballot boards.

Throughout their Petitions and their briefs, Petitioners conspicuously omit language which undercuts their contention that only partisan election judges can review absentee ballots. For example, they cite Minn. R. 8210.2450 in this way: “Two or more ballot board members from different major political parties must review the absentee ballots returned...” If a reader stopped at the ellipsis, they would indeed conclude that partisan ballot board members from different major political parties must review the ballots. However, the entire provision reads: “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...*” Minn. R. 8210.2450 (emphasis added). According to the explicit language of the Rule, *either* partisan members of the absentee ballot board from different major parties must review, *or* trained deputies may review the absentee ballots. This is the opposite of what Petitioners argue is a duty clearly imposed by law.

Another fundamental flaw in Petitioners’ analysis is the Legislature’s separate treatment of the obligations and duties of “election judges” and “deputy county auditors” or “deputy city clerks” as “members of the ballot board.” While Subdivision 2(a) requires that “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,” it later differentiates between “election judges” performing that function and the rest of the absentee ballot board: “*Election judges performing the duties in this section must be of different major political parties...*” Minn. Stat. § 203B.121, subd. 2(a)(emphasis added). Significantly, this section implies that there are others, who are not election judges, that can perform the duties in Subdivision 2(a). It also omits any requirement for partisan balance among the deputies performing those duties.

Moreover, the distinction between “election judges” and a more general class of “members of the ballot board” is woven throughout Minn. Stat. §203B.121. Subdivision 2(b) requires “[t]he members of the ballot board” to mark as accepted, initial or sign a return envelope if a majority of “the members of the ballot board” reviewing the envelope agree that the envelope meets the statutory criteria for acceptance. Subdivision 2(c) mandates rejection of a return envelope if “a majority of the members of the ballot board” reviewing the envelope determine that the envelope fails one of the statutory criteria. Subdivision 4 permits accepted ballots to be removed from return envelopes, initialed by “the members of the ballot board,” and deposited in ballot boxes. Subdivision 5(a) requires “two members of the ballot board,” under certain circumstances, to remove ballots from a ballot box and seal them. Subdivision 5(b) requires “two members of the ballot board” to count these ballots. The first sentence of subdivision 5(c) requires “the members of the ballot board” to verify that certain absentee voters did not vote in person on Election Day. The third sentence of subdivision 5(c) provides that accepted absentee ballots must be counted by “members of the ballot board.” Minn. Stat. § 203B.121, subs. 2-5. Since the members of the absentee ballot board can be either election judges or deputies, deputies do not become election judges when appointed to the absentee ballot board; instead, they become members with defined responsibilities. In other words, when deputies are appointed to the absentee ballot board, they act as members of the ballot board, not as election judges.

The election law does not require that only partisan election judges review absentee ballots for acceptance or rejection. As a result, Respondents did not violate an official duty clearly imposed by law that would provide the basis for mandamus relief.

D. There is no Official Duty Clearly Imposed by Law which Precludes Governing Bodies of a County or Municipality to Delegate Absentee Ballot Board Appointing Authority

Petitioners contend that the governing bodies of Respondents failed “as a matter of policy” to appoint election judges to the absentee ballot board. They contend that delegation of the appointment of election judges to the absentee ballot board is prohibited by Minn. Stat. §§ 203B.121, subd. 1 and 204B.21, subd. 2, though they do not point to a specific provision in either statute which precludes non-delegation.

Respondents contend that Minn. Stat. § 203B.121, subd. 1 mandates that the governing board of a county or municipality must, by resolution or ordinance, establish an absentee ballot board. They contend that the statute is silent about who makes appointments once it is established. They further contend that there is nothing in the election law which makes the delegation of appointment authority by the governing boards of counties or municipality a violation of a legal right “so clear and complete as not to admit any reasonable controversy” as required for mandamus. *In re Welfare of Child of S.J.L.*, 772 N.W.2d 833, 838 (Minn. Ct. App. 2009). Next, Respondents contend that the delegation of appointment authority for the absentee ballot boards is a discretionary and appropriate exercise of their plenary authority. Finally, they contend that the authority cited by Petitioners in support of their position is inapposite.

Minn. Stat. § 203B.121, subd. 1(a) provides that: “The governing body of each county, municipality...with responsibility to accept and reject absentee ballots must, by ordinance or resolution, establish a ballot board.” It does not say that the governing body must appoint the ballot board, only that it establish one. It also does not preclude, by its express language, a governing body from delegating the appointments to the absentee ballot board. This

provision does not prevent the governing bodies from delegating appointment authority to the absentee ballot board.

Minn. Stat. § 204B.21, subd. 2 provides in part:

Election judges for precincts in a municipality shall be appointed by the governing body of the municipality. * * * Except as otherwise provided in this section, appointments shall be made from the list of voters who reside in each precinct, furnished pursuant to subdivision 1, subject to the eligibility requirements and other qualifications established or authorized under section 204B.19.

Though this provision applies to election judges for precincts, election judges appointed to the absentee ballot board must be “appointed as provided in sections 204B.19 to 204B.22.”

Minn. Stat. § 203B.121, subd. 1(a). Assuming that this provision applies to the appointment of election judges to the absentee ballot board, it also does not prohibit the delegation of such appointments to county or municipal employees.

The absence of language which would prohibit the delegation of appointment authority to the absentee ballot board by a county board or city council suggests that there is no legal right at issue which is “so clear and complete as not to admit any reasonable controversy” as required for mandamus. *S.J.L.*, 772 N.W.2d at 838. In any event, if the Legislature had intended to preclude the delegation of appointment authority to, for example, county auditors or city clerks, it could have explicitly said so. See *In re Welfare of J.M.*, 574 N.W.2d 717, 723 (Minn. 1998)(“Canons of statutory construction militate against reading into statutory text a provision not already there.”).

Petitioners have advanced several appellate decisions that they contend support their non-delegation claim. In *Fryberger v. Township of Fredenberg*, 428 N.W.2d 601(Minn. Ct. App. 1988), the court of appeals held that review of a planning commission's decision by a board of adjustment was ultra vires because “the Town Board of Supervisors may only delegate its

authority by ordinance, not whim.” *Id.* at 604. It seems clear from the record on each of the governing bodies of the counties and municipalities at issue, that each delegated their authority by ordinance or resolution, not by whim. This court does not find *Fryberger* persuasive.

In *Borglum v. Waseca Soil & Water Conservation Dist.*, 2009 WL 5090021 (Minn. Ct. App. Dec. 29, 2009), the court held that in the absence of a statute requiring formal action to effectuate a delegation, a more flexible approach was acceptable. *Id.*, at 5–6 (“If the legislature had intended that delegation of decision-making authority to staff members be made only by formal action, it could have explicitly stated this requirement...”). The record in each matter suggests that flexibility is necessary to respond to the needs of any particular election. This decision does not provide persuasive authority on the non-delegation of appointment authority for the governing bodies of the county and municipality.

Instead, this court finds assistance in *Minn. State Coll. v. Public Employment Relations Bd.*, 228 N.W.2d 551, 560 (Minn. 1975), where the Minnesota Supreme Court addressed and approved delegation of authority designed to address practical concerns and promote efficiency, without violating legislative intent. In making its holding, the Court reasoned:

As a practical matter, it seems clear that the [State College Board] would be completely inundated if burdened with consideration and approval of each employment contract pending. To facilitate efficiency, the [State College Board] delegatory rules are presumably intended to implement powers of the board, as opposed to substituting college presidents, in this particular case, as the controlling unit. With these considerations in mind, we, in satisfying legislative intent and resolving practical difficulties, hold that the State College Board is the appointing authority, that it has merely delegated the implementation of its duties to the college presidents to promote an efficient state college system, and that such a delegation is not a complete divestiture of its supervisory function as the appointing authority.

Minn. State College Bd., 228 N.W.2d at 560. The delegations of the governing boards of the counties and municipalities in these matters are not, on this record, complete divestitures of

their appointing authority, but rather a practical and efficient way to address the difficulties in planning for and implementing an election. Delegation seems particularly appropriate given the challenges presented by the health risks posed by the COVID-19 pandemic and the profound difficulties of handling an unprecedented number of absentee ballots for the 2020 general election.

The election law does not preclude the delegation of appointments to the absentee ballot board by the governing bodies of counties or municipalities to county auditors or city clerks. Therefore, Respondents did not violate an official duty clearly imposed by law that would provide the basis for mandamus relief.

E. There is no Official Duty Clearly Imposed by Law which Mandates Governing Bodies of a County or Municipality to Exhaust Major Political Party Lists before Appointing Deputies to an Absentee Ballot Board

The Petitioners contend that the governing boards of the counties and municipalities must exhaust lists submitted by the major political parties before they appoint deputies to the absentee ballot boards. They contend that Minn. Stat. § 204B.21, subd. 2 supports this contention.

Some Respondents agree that municipalities must exhaust party lists before appointing “other individuals” as election judges. *See* Minn. Stat. § 204B.21, subd. 1. Others contend that this same provision does not require that counties exhaust party lists, but instead allows them to appoint “other individuals” as election judges, rather than using the individuals named on the party lists. Yet others contend that Minn. Stat. § 203B.121, subd. 1(a), rather than Minn. Stat. § 204B.21, subd. 1(a) is controlling regarding the appointment and does not require exhaustion of party lists before appointment of deputies to the absentee ballot board.

Minn. Stat. § 203B.121, subd. 1(a) provides that while the absentee ballot board “must consist of a sufficient number of election judges,” it “may include deputy county auditors or deputy city clerks.” Again, this anticipates that the absentee ballot boards may be made up of election judges *and* deputies. This provision is silent about the order or manner of appointment, and silent about the number of appointments from either category of absentee ballot board members.

By its plain terms, Minn. Stat. § 204B.21, subd. 1 applies to the appointment of precinct election judges in municipalities. (“*Election judges for precincts in a municipality shall be appointed by the governing body of the municipality. * * * Except as otherwise provided in this section, appointments shall be made from the [party] list of voters who reside in each precinct... * * * If no lists have been furnished or if additional election judges are required after all listed names in that municipality have been exhausted, the appointing authority may appoint other individuals who meet the qualifications to serve as an election judge...*”)(emphasis added). There is nothing in this provision, whether read in isolation, or in conjunction with Minn. Stat. § 203B.121, subd. 1(a), which would require the exhaustion of partisan lists of election judge candidates, before appointing deputies (who are not election judges and who do not become election judges) to the absentee ballot board. This provision applies to partisan election judges, or “other individuals who meet the qualifications to serve as an election judge,” not to deputies.

The exhaustion of partisan lists of election judge candidates before appointing deputies is not required by the election law. Therefore, Respondents did not violate an official duty clearly imposed by law, which would provide the basis for mandamus relief.

F. There is no Official Duty Clearly Imposed by Law which Precludes Governing Boards of a County or Municipality to Appoint Permanent or Temporary Employees as Deputies

Petitioners claim, with regard to the county Respondents, that the only individuals who can be appointed to the absentee ballot board as deputies are what they term “bona fide” “deputy county auditors” who meet the requirements of Minn. Stat. § 384.08. They maintain that “there is no provision under § 203B.121 that allows other county auditor or other county staff, who are not a bona fide ‘deputy county auditor,’ either permanent or temporary employees, to serve on the ballot board or otherwise perform the duties of election judges.” As for the municipal Respondents, Petitioners contend that: “[i]f 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.’ They also contend that there is no provision under Minn. Stat. § 203B.121, subd. 1 “that allows other City Clerk ‘staff,’ either permanent or temporary employees, to serve on the ballot board or otherwise perform the duties of election judges.”

The County Respondents contend that they properly appointed “deputy county auditors,” or their equivalent, to their absentee ballot boards. They also claim that “deputy county auditors” do not become “election judges” once appointed to an absentee ballot board.

As this court has determined, an absentee ballot board can be comprised of “election judges” and deputies. When each is appointed to an absentee ballot board, they become “members of the ballot board.” Deputies do not become election judges after their appointment and do not “perform the duties of election judges” after their appointment. They perform the duties of “members of the ballot board.” The only mandate placed on “deputy county auditors” and “deputy city clerks” in the election laws is that they must “have received training in the processing and counting of absentee ballots.” Minn. Stat. § 203B.121, subd.

1(a). There is nothing in that provision which precludes the appointment of deputies who are currently employed by the county or municipality, nor is there anything in that provision which precludes hiring temporary employees as deputies. In fact, the Legislature appears to have contemplated that elections would require additional temporary staff because it allowed “[e]ach county auditor and each municipal clerk” to “employ additional clerical assistance as necessary to discharge the responsibilities imposed on the county auditor or municipal clerk as provided in this chapter.” Minn. Stat. § 203B.14. There is no clear mandate under the election laws that would prevent permanent or temporary county or municipal staff from being appointed “deputy county auditors” or “deputy city clerks.”

Petitioners in the Ramsey County and Olmsted County matters argue that the County Respondents have not appointed “bona fide” “deputy county auditors” under Minn. Stat. § 384.08 here. The Ramsey County Respondents contend that Petitioners are simply wrong on the facts. They contend that they are fully compliant with Minn. Stat. § 384.08 because the deputy county auditors appointed to the Ramsey County Absentee Ballot Board: (1) were formally appointed in writing; (2) their written appointments were recorded; (3) the deputies were required to sign an oath as part of the appointment process; and (4) the Ramsey County Board has agreed to bear any required bond. There is nothing in the record, aside perhaps from Petitioners’ conjecture, to demonstrate that the deputies appointed to the Ramsey County Ballot Board are not “bona fide.”

The Olmstead County Respondents contend that they recruited and hired “eighteen individuals to work” as deputies with the express purpose of serving on the Olmsted County Absentee Ballot Board. They also appointed three “full-time permanent deputies” to the absentee ballot board who will perform “oversight” of the other deputies, as well as fulfill

“other statutorily-mandated absentee ballot board duties.” Resolution No. 20-139 indicated that “all members of the Olmsted County Property Records & Licensing Elections staff that have been appointed as deputy county auditors by the Director of Property Records and Licensing as provided in sections 204B.19 to 204B.22 to perform the task.” It appears that most of those same individuals were also appointed as election judges “pursuant to Minn. Stat. Section 204B.21.” Accordingly, the Olmsted County Respondents contend that their deputies, except for “full-time permanent deputies” are election judges. Each of those election judges have completed statements of partisan affiliation or non-affiliation and among them, “[n]o major political party is represented by more than 50 percent of the absentee ballot board members.”

Another wrinkle for the Olmsted County Respondents is that there is no “county auditor” in Olmsted County. So it is less than clear that Minn. Stat. § 384.08 would apply to the Olmsted Director of Property Records and Licensing, who by Resolution of the County Board of Commissioners, has been given all of the election responsibilities formerly possessed by the Olmsted County Auditor.

In any event, despite the complexity of the situation presented in Olmsted County, several things are clear. First, nothing in the election laws would prevent the appointment of county employees to serve as election judges on the Olmsted County Ballot Board. Second, it appears from Resolution No. 20-139 that the Olmsted County Respondents comply with Minn. Stat. § 204B.21 and nothing in the record would suggest otherwise. Third, if those individuals were appointed as election judges under Minn. Stat. § 204B.21, Minn. Stat. § 384.08 would not apply. Fourth, nothing in the record suggests that the other county employees appointed as deputies, are not “bona fide.” They have been described by the Olmsted County

Respondents as “full-time permanent deputies.” Petitioners cannot credibly claim that the Olmsted County Respondents have violated a clear duty through mere allegations. Last, it does not appear that there is a clear duty under the election law that would preclude the Olmsted County Respondents from proceeding as they did on the composition of the Olmsted County Absentee Ballot Board.

Therefore, Respondents did not violate an official duty clearly imposed by law, which would provide the basis for mandamus relief.

G. There is no Official Duty Clearly Imposed by Law which Requires Deputies to Disclose their Party Affiliation or Non-Affiliation

Petitioners contend that: “[i]f an individual is appointed *from a source* other than the furnished major political party lists as required under Minn. Stat. § 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.’” (emphasis in original). They contend that disclosure requirement includes deputies who may be included on an absentee ballot board. Petitioners contend that there is nothing in Minn. Stat. § 204B.121, subd. 1 which “makes exceptions of members to forego party balance when accepting or rejecting absentee ballots.” Finally, they also claim that any assurance from a county or municipality that their deputies are non-partisan “is of little avail,” because the “Legislature intended party balance in the accepting and rejecting of absentee ballots under § 204B.121, subdivision 2.”

Respondents, in large part, repeat the arguments they have made on the allegations made previously by Petitioners; namely: (1) election judges and deputies are treated differently under the election laws; (2) if the Legislature intended to require partisan/non-partisan disclosure for deputies, it would have explicitly said so; and (3) they have properly appointed

both election judges and deputies to their absentee ballot boards. Respondents emphasize that neutrality of deputies is critical to the integrity of the election process and requiring partisan affiliation/non-affiliation statements would undermine that neutrality.

This court has already determined that “election judges” and “deputy county auditors” or “deputy city clerks” are different and subject to different aspects of the election laws. Minn. Stat. § 203B.121, subd. 1(a) requires that election judges must be appointed as provided in Minn. Stat. § 204B.19 to 204B.22. Minn. Stat. § 204B.21, subd. 2 requires that election judges must provide a statement of political party affiliation or non-affiliation. Minn. Stat. § 203B.121, subd. 1 does not contain a similar requirement for compliance with Minn. Stat. § 204B.19 to 204B.22 for the appointment of “deputy county auditors” or “deputy city clerks,” so the partisan/non-partisan declaration requirement of Minn. Stat. § 204B.21, subd. 2 does not apply to them. Moreover, Subdivision 2 of Minn. Stat. § 203B.121, subd. 2(a) contains a requirement that only applies to election judges, and not “deputy county auditors” or “deputy city clerks.” *See* Minn. Stat. § 203B.121, subd. 2 (“*Election judges* performing the duties in this section [the review of absentee ballots] must be of different major political parties...”) (emphasis added). There is no requirement in any of the election laws for a “deputy county auditor” or a “deputy city clerk” to provide the appointing authority with “the individual’s major political party affiliation or a statement that the individual does not affiliate with any major political party.” Minn. Stat. § 203B.121, subd. 2(a).

It is clear, from a review of the language of the election laws, that the Legislature did not intend to require “deputy county auditors” or “deputy city clerks” to make partisan/non-partisan disclosures. By its explicit legislation, it clearly intended that partisan election judges

and non-partisan deputies would work together to accurately and fairly count absentee ballots as members of the absentee ballot board.

The election laws do not require that “deputy county auditors” or “deputy city clerks” make disclosures of major party affiliation or non-affiliation. Therefore, Respondents did not violate an official duty clearly imposed by law, which would provide the basis for mandamus relief.

II. PETITIONERS HAVE FAILED TO DEMONSTRATE A PUBLIC WRONG SPECIFICALLY INJURIOUS TO THEM

To be entitled to mandamus relief, Petitioners must show that the establishment of the absentee ballot boards and the appointment of election judges and deputies constituted a “public wrong” that specifically injured them. *See Chanbassen Chiropractic Ctr., P.A. v. City of Chanbassen*, 663 N.W.2d 559, 562 (Minn. Ct. App. 2003). In addition, the party petitioning for a writ of mandamus must be “beneficially interested” in the issuance of the writ. Minn. Stat. § 586.02. This means that the petitioner must show not only that the alleged public wrong is specifically injurious to them, but also that they would benefit from the issuance of the writ. *FATE v. Nichols*, 350 N.W.2d 489, 491-92 (Minn. Ct. App. 1984) (“If petitioner cannot show with certainty that it is a beneficially interested party, then it does not have standing for mandamus.”).

Petitioners in these matters essentially fall within four classifications for the purpose of a determination of specific injury and beneficial interest: (1) a major political party; (2) a voter integrity organization; (3) candidates for office; and (4) partisan voters or election judges who are interested in serving on absentee ballot boards.

In each matter, Petitioners argue that they suffered injury by a public wrong as follows:

The alleged public wrong here is especially injurious to petitioners because the state law requires the appointment of an independent absentee ballot board with party balance –including Republican Party of Minnesota election judges. The refusal of the Respondents to appoint an independent absentee ballot board with party balance has “especially injured” the petitioners. The petitioners, who are Republican Party of Minnesota election judges or who count them as their members, unlike the general public, have a specific right under state law to be appointed as part of the statutorily-required independent ballot boards with party balance.

Many of the actual or ostensible election judges have filed Declarations that express, in various ways, “worry” or “concern” about the overall integrity of the absentee ballot reviewing process, an interest in seeing the election law followed, and a belief that absentee ballot envelopes must be reviewed only by partisan election judges.

Respondents contend that the alleged injuries of Petitioners are not ripe, or are speculative, hypothetical, nonexistent or not beneficial. They also contend that Petitioners have not suffered a public wrong that resulted in specific injury. Much of the focus of the Respondents in each case relates to the election judges.

The Minneapolis Respondents contend that they have not even adopted a resolution appointing election judges for the 2020 general election, so the claims of all of the Minneapolis Petitioners are not ripe for determination. Moreover, the Minneapolis Respondents contend that the election judges in its matter have not been injured. Halverson was invited to serve on the Minneapolis Absentee Ballot Board for the 2020 general election and will be recommended for appointment. Stoelzing and Johnson were on the Republican Party list submitted by the Secretary of State; but they declined or have not responded to serve as election judges on the Minneapolis Absentee Ballot Board for the 2020 general election. Moey was not on the Republican Party list and has not signed up as an election judge. Thus, the Minneapolis

Respondents contend that Halverson, Stoelzing, Johnson and Moey have not identified a private wrong and have alleged no injuries specific to themselves.

Similarly, the Ramsey County Respondents argue that the election judges in its matter have not been injured. Ward is actually serving on the Ramsey County Absentee Ballot Board, so the Ramsey County Respondents contend he has suffered no injury. Polachek was appointed as an election judge, and responded to an inquiry to serve on the Ramsey County Absentee Ballot Board for the 2020 primary election, though he expressed limited availability. He apparently is interested in serving on the Ramsey County Absentee Ballot Board, as well. The Ramsey County Respondents contend that Polachek has no right to serve on an absentee ballot board, and has suffered no injury. McDonald has never sought to serve on the Ramsey County Ballot Board, but expressed in his Declaration that he has an interest in serving for the 2020 general election, so long as it does not conflict with his responsibility as an election judge in the City of Shoreview. Like Polachek, the Ramsey County Respondents contend that McDonald has not suffered an injury. Broadly, the Ramsey County Respondents contend that the expressed interests, concerns, or beliefs of Ward, Polachek, and McDonald cannot demonstrate injury.

The Olmsted County Respondents contend that there is no specific right for any particular person to be appointed as a member of an absentee ballot board, so Blondell, Mattson, and Harris have no entitlement to serve on the Olmsted County Absentee Ballot Board. Nonetheless, Mattson will be recommended for appointment to the Olmsted County Absentee Ballot Board. Accordingly, the Olmsted County Respondents contend that he has suffered no injury. Blondell has been contacted about serving as an election judge on Olmsted County Absentee Ballot Board but has not expressed a willingness to serve. Thus, they

contend that Blondell has not suffered an injury. They also contend that Quam is ineligible to serve, since he is a candidate for office in the 2020 general election. Overall, they contend that these Petitioners have not demonstrated a specific injury.

The Duluth Respondents contend that the election judges in its matter have suffered no injury. It maintains that Bayerl has been appointed to serve as a precinct election judge but has not requested to serve on the Duluth Absentee Ballot Board for the 2020 general election. Bergquist has been appointed both as a precinct election judge and a member of the Duluth Absentee Ballot Board for the 2020 general election. Carter did not express affiliation with a major political party and has been appointed to serve as a precinct election judge. Carter contends that he has expressed an interest in serving on the Duluth Absentee Ballot Board for the 2020 general election but has not been appointed. The Duluth Respondents contend that there is no protectable interest in being appointed as an election judge to an absentee ballot board, and nothing in the Petition or the Declarations would support a conclusion that the Duluth Respondents have interfered with such an interest even if it were protected. They also maintain that: “[b]ecause the statute governing ballot boards expressly allows ballot board members to include ‘deputy city clerks’ to whom party balance requirements do not apply, the Duluth Petitioners’ worries are not tied to any public wrong.” Finally, they maintain that even if the Duluth Petitioners’ “worry” or “concern” could rise to the level of an injury, “the Petitioners’ concerns do not support the requisite element of an injury specific to them, because the Duluth Respondents and the public at large share Petitioners’ interest in fairness and legitimacy of the election process.”

Since this court has already determined that: (1) absentee ballot boards may be composed of both election judges and deputies; (2) either election judges with partisan balance

or deputies may review absentee ballots for rejection or acceptance; (3) deputies need not declare affiliation or non-affiliation with a major political party; and (4) major party lists need not be exhausted before deputies are appointed to absentee ballot boards, Petitioners cannot demonstrate that they have suffered a public wrong. None of the Petitioners could be injured by the deprivation of a legal right that does not exist.

Moreover, even if Petitioners had advanced meritorious constructions of the election law that would rise to the level of a public wrong, they have not – collectively, or individually, demonstrated a specific injury to them. MVA expresses an interest, and the interest of its members, in ensuring that absentee ballots will be properly counted and in ensuring that Respondents comply with election laws, that has been injured by the actions of the Respondents. The candidates make a similar contention, and express concern that absentee ballots will be properly processed and tabulated. These general concerns are not demonstrations of public wrongs that are specifically injurious to them. Interests in ensuring that absentee ballots are correctly and accurately counted is not a specific injury, but rather one shared broadly by all registered voters in Minnesota. *See Conant v. Robins, Kaplan, Miller & Ciresi, L.L.P.*, 603 N.W.2d 143, 146 (Minn. Ct. App. 1999)(when citizens bring lawsuits in the public interest challenging governmental conduct, they must show harm distinct from harm to the public). Such general concerns cannot constitute a specific injury to Petitioners.

While the Republican Party and MVA may be interested in having their members serve on absentee ballot boards, or the Republican candidates for office might prefer election judges from their party on an absentee ballot board, there is no right for any person to be appointed to an absentee ballot board. Similarly, although the individual Petitioners may be interested in serving on an absentee ballot board, they likewise have no right to be appointed. In this regard,

none of the Petitioners have demonstrated a specific injury, nor have they demonstrated that they would benefit from mandamus relief. This court cannot provide mandamus relief that would require the Respondents to appoint members of the Republican Party or MVA to the absentee ballot boards, nor could it appoint any specific person to serve on them.

While the individual Petitioners have expressed “worry,” “concern,” or “interest” about the manner and method of counting absentee ballots; even if there was a public wrong, such sentiments cannot rise to the level of a specific injury. Again, those sentiments are no different than those of the broad, registered voting public. All registered voters in Minnesota have an interest in having their absentee ballots processed and counted legally and fairly.

As a practical matter, some of the Respondents, such as the Duluth and Ramsey County Respondents contend that they have already appointed equal numbers of partisan and unaffiliated election judges to their absentee ballot boards, so Petitioners in those matters cannot claim injury due to lack of partisan balance. In some cases Petitioners have already been appointed to their absentee ballot board, so they cannot demonstrate injury. In other circumstances, they failed to express interest in appointment on their absentee ballot board or failed to respond to invitations to serve. They cannot demonstrate injury either.

The Minneapolis Petitioners have not been injured because the Minneapolis Respondents have not yet made appointments to the Minneapolis Absentee Ballot Board. *See Hanson v. Woolston*, 701 N.W.2d 257, 262 (Minn. Ct. App. 2005)(quoting *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990))(an injury-in-fact must not only be concrete, but must also be “actual or imminent, not conjectural or hypothetical.”).

In summary, Petitioners have failed to demonstrate a specific injury that would entitle them to mandamus relief.

III. PETITIONERS HAVE FAILED TO DEMONSTRATE THAT THEY HAVE NO ADEQUATE REMEDY AT LAW

Petitioners contend that they have “no other adequate specific legal remedy” than mandamus relief. *Coyle*, 526 N.W.2d at 207. They acknowledge that the Minnesota Declaratory Judgment Act provides a remedy but contend that it “is not of itself a cause of action for which relief can be granted” and generally suggest that it is inadequate.

Respondents contend that Petitioners have several other adequate and specific legal remedies, including: (1) a declaratory judgment action; (2) a claim under the Administrative Procedure Act; (3) an errors and omissions petition under Minn. Stat. § 204B.44; or (4) an election contest under Chapter 209 of the Minnesota Statutes.

First, the best evidence of whether Petitioners have a plain, speedy and adequate remedy other than mandamus is the § 14.44 Petition for declaratory judgment against the Secretary of State under Minn. Stat. § 14.44, which MVA, Halverson, and Quam filed in the Minnesota Court of Appeals. Petitioners in that matter seek: “a determination that Minnesota Rule 8210.2450, in part, is invalid because it is contrary to the governing statute regarding appointments to ballot boards as election judges, mandating that when accepting or rejecting absentee ballots, election judges are to be from different major political parties.” Petitioners in that matter have advanced many of the same theories about what is legally required under Minn. Stat. §§ 203B.121 and 204B.21 for the establishment and partisan composition of absentee ballot boards, as they have advanced in the matters pending before this court. The relief requested by the § 14.44 Petition would invalidate relevant parts of Minn. R. 8210.2450, which conflict with the theories advanced in both the § 14.44 Petition and those matters pending before this court.

The § 14.44 Petition has allowed Petitioners to advance the same theories they are advancing here. If successful, it would invalidate a rule promulgated by the Secretary of State that in Petitioner's view, contravenes the statutes at issue in these matters. Minn. Stat. § 14.44 also provides a speedy remedy, because it allowed Petitioners to bypass the district court and proceed directly to the court of appeals. For these reasons, the § 14.44 Petition demonstrates that Petitioners here have an adequate remedy at law.

Second, Minn. Stat. § 555.02 provides:

Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.

(emphasis added). Declaratory judgment actions serve a preventive purpose and allow parties to resolve uncertainties on their legal rights before those rights are actually invaded. *McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 339 (Minn. 2011). Since Minnesota Supreme Court has “long held that a declaratory judgment action is proper to test the validity of a municipal ordinance, regardless of whether another remedy exists,” the same is presumably true to test the validity of the statutes and rule at issue in this case. *See McCaughtry*, 808 N.W.2d at 337 (citation omitted). A declaratory judgment action, therefore, would provide another adequate legal remedy to provide the relief requested by Petitioners in this action.

Third, Minn. Stat. § 204B.44(a) provides that: “[a]ny individual may file a petition in the manner provided in this section for the correction of any of the following errors, omissions, or wrongful acts which have occurred or are about to occur: * * * (4) any wrongful act, omission, or error of any election judge, municipal clerk, county auditor, canvassing board or any of its members, the secretary of state, or any other individual charged with any duty

concerning an election.” A petition filed under this provision “shall be filed with any judge of the supreme court in the case of an election for state or federal office or any judge of the district court in that county in the case of an election for county, municipal, or school district office.” Minn. Stat. § 204B.44(b). Such a petition may address prospective or retrospective errors, omissions, or wrongful acts. *See Begin v. Ritchie*, 836 N.W.2d 545, 548 (Minn. 2013); *Martin v. Dicklich*, 823 N.W.2d 336, 339 (Minn. 2012).

Here, Petitioners contend that various individuals, including city clerks and county auditors, have committed wrongful acts related to the appointment, composition, and work of the absentee ballot boards in four jurisdictions for the 2020 general election. These claims could be made in a petition filed under Minn. Stat. § 244B.44(a), in either the Minnesota Supreme Court or district court. Petitioners, therefore, have yet another legal remedy that would provide them with their requested relief.⁴

Petitioners have not established that there are no other adequate legal remedies to mandamus. As a result, they are not entitled to demand mandamus relief.

CONCLUSION

For all of these reasons, Respondents’ motions to dismiss are granted. The Petitions for a Writ of Mandamus in each case are dismissed.

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⁴ Since this court has determined that there are at least three alternative adequate legal remedies to mandamus, there is no need to address the Respondents’ contention that Minn. Stat. § 209.02 provides a fourth alternative.