

**STATE OF MINNESOTA  
IN SUPREME COURT**

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Minnesota Voters Alliance,  
Kevin Peterson;  
Paul Kozlak,

Petitioners,

vs.

City of Plymouth, Minnesota; Jodi Gallup, in her official capacity as City  
Clerk of the City of Plymouth;  
County of Hennepin, Minnesota; Daniel Rogan, in his official capacity as  
Hennepin County Auditor;  
County of Anoka, Minnesota; Pamela LeBlanc, in her official capacity as  
Anoka County Auditor,

Respondents.

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**PETITIONERS' REPLY BRIEF**

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## **STATEMENT OF THE ISSUES**

1. Is the field of regulation preempted, such that the exercise of any local authority not specifically reserved in Minnesota Statutes § 203B.121 is void?
2. Do the examples before the Court constitute violations of Minnesota Statutes § 203B.121 in their failure to establish ballot boards by appointing members by ordinance or resolution to perform the duties required by law?

## **INTRODUCTION**

Because the election institution depends on the trust of the public, the Legislature drafted Minn. Stat. § 203B.121. This is a statute governing “ballot boards,” which is a shorthand way of referring to the few election judges who will be accepting and rejecting absentee ballots in each jurisdiction. The law is designed to ensure that the identities of the people who will be handling our ballots are known through the passage of an official act of the local government to enhance and ensure trust, transparency, and accountability. Respondents have abused the statute to accomplish the opposite. By refusing to declare the names of these individuals as directed, Respondents rob the very meaning of the law and create a wall of secrecy. Behind this wall, they have usurped the authority of the Legislature and constructed still more local government to illegally appoint and govern ballot board members. This has been facilitated by Secretary of State Steve Simon. Nothing in Respondents’ response briefs addressed the core argument presented by Petitioners: Field preemption.

By warping the terms “establish” and “appoint” in the context of the statute, cities and counties have evidently built entire bureaucracies outside the purview of Minn. Stat. § 203B.121 *and the public* to select, appoint, and govern ballot board members. Identities are hidden or completely unknown. The Secretary of State continues to believe that the law is written to create a “multi-member governmental body” over which local governments rule. This is a theft of authority by cities and counties across the State of Minnesota at the direction of the Secretary, and it is having a dreadful effect on confidence in the institution.

It is unknown whether Respondents allege ambiguity in Minn. Stat. § 203B.121. Petitioner does not. In fact, so clear and direct are the duties imposed by the ballot board statute that there is no room or reason for additional local regulation.

# **I. THE MEASURES BEFORE THE COURT CONFLICT WITH MINNESOTA STATUTES § 203B.121.**

This case involves the interpretation of two sentences in Minnesota Statutes § 203B.121. The Court’s “primary goal in statutory interpretation is to effectuate the intent of the Legislature.”<sup>1</sup> “The plain language of the statute is our best guide to the Legislature’s intent and, if the statutory language is clear, we apply the plain meaning of the statute.”<sup>2</sup> Statutory words and phrases must be interpreted “according to their most natural and obvious usage unless it would be inconsistent with the manifest intent of the

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<sup>1</sup> *Jennissen v. City of Bloomington*, 913 N.W.2d 456, 460 (Minn. 2018).

<sup>2</sup> *Matter of Groebner*, \_\_\_ N.W.3d \_\_\_, 2026 WL 1579625 at \* 6 (Minn. 2026).

legislature.”<sup>3</sup> Minnesota law requires that “every law shall be construed, if possible, to give effect to all of its provisions.”<sup>4</sup>

Respondents present a gaggle of arguments to redefine simple terms and defend their plainly unlawful conduct. The Anoka County Auditor blames the Secretary of State for failing to adhere to the statute,<sup>5</sup> who in turn identifies the “core legal premise” of Petitioner’s argument as an example of hyperbole used in Petitioner’s initial filing.<sup>6</sup> The problem with the Secretary’s Response is that he spent too much time emphasizing this, and too little time engaging with the arguments. Petitioner begins here.

The Secretary’s reply is enlightening. He explains that, just like the State Emblems Redesign Commission,<sup>7</sup> the ballot board statute is actually written to create a multi-member sub-bureaucracy over which the county or city has control.<sup>8</sup> In this scenario, which has been playing out all over Minnesota for years thanks to the Secretary’s guidance, election judges on the ballot board report to persons unknown to receive their marching orders, outside the legislative purview of the statute and the public at large. In other words, the duty to establish a ballot board by ordinance or resolution is interpreted by the Secretary as a *conveyance of authority* to handle the process however the local government wants. Nothing could be further from the truth.

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<sup>3</sup> *Id.* at \* 10.

<sup>4</sup> Minnesota Statutes § 645.16.

<sup>5</sup> There is merit to this.

<sup>6</sup> Rather than calling the separation of ballot boards from their members “nonsensical in any context,” Petitioners should have called them “nonsensical in *this* context.” *See* Secretary’s Response 1-2.

<sup>7</sup> Secretary’s Response at 1.

<sup>8</sup> *See gen.* Secretary’s Response.

All the examples cited by the Secretary are State agencies. As discussed in the Petition, the State has plenary authority, and cities and counties have *none* without an express grant. There is no such grant in § 203B.121. Second, even if the statute did authorize the creation of something called a “multi-member governmental body” in this context, which it does not, local governments would have no authority to govern it because it is not specifically provided in the law. Ballot board members, as well as local government officials like county auditors and city clerks, have duties under the *statute*, not under the city or county charter. As such, §203B.121 fully controls the establishment and duties of ballot boards and their members and the Minnesota Election Law controls the rest. There is no residual authority for cities and counties at all.

Next, it is true that the word “names” is not used in the first two sentences of Minn. Stat. § 203B.121. But neither is “multi-member governmental body.”<sup>9</sup> Or “local authority reserved,” for that matter. In the context of the statute, appointment of members by ordinance or resolution can only mean naming people. The Minnesota Election Law governs in any event, not cities and counties.

The Secretary of State failed to engage with Petitioner’s field preemption argument altogether.

**A. Anoka County and County Auditor Pamela Leblanc acted unlawfully.**

Anoka explains: “[h]ad Petitioners only asked, Anoka County would have gladly made that public information available to them. This entire lawsuit arises because

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<sup>9</sup> *Id.*

Petitioners would rather file a petition before this Court than submit an ordinary request for public data.”<sup>10</sup> But neither Anoka County nor any of the other Respondents is in any position to withhold this information in the first place, and there are no grounds to demand that voters file a data request to get it. The Legislature directed Anoka County to perform its duty under Minn. Stat. § 203B.121 to establish a ballot board by appointing members by ordinance or resolution, and it has absolutely no reservation of authority beyond that.

The Anoka County Auditor revealed that there is something called an “elections department” in Anoka County that appears to claim some authority in the ballot board process. This is referenced repeatedly in Anoka County’s Response through the Declaration of Pamela Leblanc as the recipient of the party lists, but it appears to have other duties as well.<sup>11</sup> “Anoka County’s elections department takes the lists provide by the political parties and uses them to appoint members to the absentee ballot board.”

But those words do not appear in Minn. Stat. § 203B.121, and to the extent this “department” has any legitimate authority at all, it is directly in conflict with this statute.<sup>12</sup> Minn. Stat. § 204B.21 refers to something along these lines:

By May 15, the secretary of state shall furnish electronically to the county auditor a list of the appropriate names for each election precinct in the jurisdiction of the appointing authority... The county auditor must promptly forward the appropriate names to the appropriate municipal clerk.

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<sup>10</sup> Anoka Response at 6.

<sup>11</sup> *Id.* at 3.

<sup>12</sup> It is unknown whether this is a colloquialism for officials who have defined roles under § 203B.121.

This statute requires that the *county auditor* receive the lists by email from the Secretary, and then take appropriate action. But there is no “department” involved.

Again, *any expression of local authority* in this process that is not explicitly provided in this statute is illegal. “If preemption has occurred, a local law purporting to govern, regulate, or control an aspect of the preempted field will be void, even if the local law is not in conflict with the state law.”<sup>13</sup> The field of regulation in Minn. Stat. § 203B.121 is preempted. Anoka County also failed to address this argument completely.

**B. The City of Plymouth and City Clerk Jodi Gallup acted unlawfully.**

Plymouth admits that its army of 365 people are not really on the ballot board, and that City Clerk Jodi Gallup appointed herself and her staffers to do the work of election judges.<sup>14</sup> She simply opens the envelopes and handles the ballots herself, and calls an election judge if she thinks she needs help.<sup>15</sup> In that City, anyone who wants to be “appointed” to the ballot board, gets “appointed” to the ballot board.<sup>16</sup> Almost no one on this list will perform any of the required duties of a ballot board member. Worse, the ones that do, are illegally there.

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<sup>13</sup> *Nordmarken v. City of Richfield*, 641 N.W.2d 343, 348 (Minn. Ct. App. 2002).

<sup>14</sup> Anoka Response at ¶ 12. This number is much closer to the actual “sufficient number” than three hundred sixty five.

<sup>15</sup> *Id.*

<sup>16</sup> Declaration of Gallup at 1.



All of the above examples are illegal because they are either: 1) flatly inconsistent with the statute; or 2) outside the purview of the statute and thus subject to the Minnesota Election Law.<sup>17</sup>

Plymouth clutches its pearls at the notion that it is not allowed to appoint as many people as it wants to its ballot board: “Petitioners assert that the City Council appointed *too many* election judges to the ballot board. According to Petitioners, the City must appoint *only* a sufficient number of election judges to the ballot board (that is to say, the city cannot appoint additional or surplus members).”<sup>18</sup> That is *exactly* what Petitioners assert. And so does the statute.<sup>19</sup> Cities and counties may appoint a sufficient number and *not one person more*. It does not include the authority to appoint “additional or surplus members.”<sup>20</sup>

The sufficient number is determined by the governing body, which the public *trusts* it will do to the best of its ability and in service to the voters. In Plymouth, the number is more than 365.<sup>21</sup> The other Respondents didn’t appoint anyone by resolution and *never have*. In the words of Hennepin County, “This is the nature of local government.”<sup>22</sup> Again, the Legislature cannot prevent these abuses, it can only turn the lights on. And that is why names of appointed members are required in the resolution.

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<sup>17</sup> See Minn. Stat. § 203B.121 Subd. 1 (c).

<sup>18</sup> Plymouth and Gallup Response at 1 (emphasis in original).

<sup>19</sup> Minn. Stat. § 203B.121 subd. 1: “The board must consist of a sufficient number of election judges appointed as provided in sections [204B.19](#) to [204B.22](#).”

<sup>20</sup> Plymouth Response at 1.

<sup>21</sup> The actual “sufficient number” in Plymouth is three.

<sup>22</sup> Hennepin Response at 7.

Under Respondents' interpretation, and under the Secretary's guidance, local governing bodies would have every motivation to appoint as many members to their ballot boards as possible. That way, they could preside over an ever-larger "multi-member body" which reports to the local government, instead of strictly adhering to their duties under Minn. Stat. § 203B.121. Evidence of this might look like Plymouth's list of over 300 people.

A ballot board that exists only on paper is as useful to the Legislature as a board that is made of wood. Neither is capable of human function, which presents a problem for Respondents and the Legislature because Minnesota Statutes § 203B.121 assigns a lot of work to ballot board members. No board is established until it consists of human beings. To further illustrate the point, Respondent Jodi Gallup was administered the Oath of Office and appointed City Clerk by the Plymouth City Council on November 9, 2021.<sup>23</sup> She is referred to as "Jodi Gallup" in the minutes, and the meeting notes reference "Introduce and Oath of Office to City Clerk/ Administrative Coordinator Jodi Gallup."

Before this Oath was administered, Jodi Gallup was not the City Clerk because she had not been appointed. Afterward, she became the City Clerk. Had Petitioners sued

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<sup>23</sup> Plymouth, Minnesota City Council Meeting Minutes, November 9, 2021, Page 7, *available at*: <https://onedrive.live.com/?redeem=aHR0cHM6Ly8xZHJ2Lm1zL2IvYy8yOWNhOGZmZDkzNjBIY2EyL0lRQjlPMVFIQmYyR1E2Z0lwUzBpS0FtQUFYt0xsQmFsT082R3NucnNSbkJWSDgw&cid=29CA8FFD9360ECA2&id=29CA8FFD9360ECA2%21s07543b7dfd054386a801d12d22280980&parId=29CA8FFD9360ECA2%21501&o=OneUp>, *last accessed* August 21, 2026.

“The City Clerk of the City of Plymouth, in her official capacity as City Clerk of the City of Plymouth,” then Petitioners would have actually been suing the City of Plymouth and not the City Clerk herself for abdicating her specific duties under § 203B.121.<sup>24</sup> Just like ballot board members, she must be named before she can be appointed to the position.

This is an unlawful local election framework that is irreconcilable with the statute. Plymouth declined to engage with the field preemption argument.

**C. Hennepin County and Hennepin County Auditor Daniel Rogan acted unlawfully.**

Respondents point out that Petitioner never defined the term “establish” in its filing. But the dictionary contours of this term don’t matter. It can be defined within the statute, such that Respondents’ interpretation (whatever that may be) demonstrates an inherent contradiction. If a ballot board has been “established” by appointing members,<sup>25</sup> then the duties of board members in § 203B.121 can be completed. Conversely, if a ballot board has not been “established,” then the duties of board members cannot be completed. The Secretary, Plymouth, Hennepin, and Anoka, would ask the Court to believe that a ballot board can be “established,” yet the duties of board members cannot be completed because there are no members. Nonsensical, in this context.

Fundamentally, the problem is the local theft and exercise of authority that simply does not exist in this statute. Since the filing of this lawsuit, Petitioner has found three additional cities that are accepting and rejecting ballots that have never passed a ballot

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<sup>24</sup> See *Leaf v. Freeman*, 499 N.W.2d 54, 57 (Minn. Ct. App. 1993).

<sup>25</sup> A ballot board “must consist of... members.” Minn. Stat. § 203B.121.

board resolution of any kind, and two more counties that are following the pattern directed by the Secretary and set forth among Respondents herein. This evidence is not before the Court, but it assuredly would be if time allowed. This is a pattern facilitated by the Secretary of State that creates a curtain in local elections, hiding differing election techniques and varying methods of administration. This is illegal and unacceptable.

More than one Respondent argues that a ballot board, once “established,” need not be revisited in future resolutions. This is absolutely wrong. First, it ignores Minn. Stat. § 204B.21. This law requires the two major political parties to furnish lists of election judges that are potential ballot board members *each election cycle* to the Secretary of State on May 1<sup>st</sup>, which is then forwarded to the counties and cities by May 15<sup>th</sup>.<sup>26</sup> Ballot board members are chosen from these lists.

If Respondents are correct that a ballot board is “established” in their initial ballot board Resolution using members from the initial list of election judges, and no new ordinance or resolution is required to be passed by the city or county ever again,<sup>27</sup> then eventually all of the ballot board members will be dead.<sup>28</sup>

## **II. THE FIELD OF REGULATION IN MINNESOTA STATUTES SECTION 203B.121 IS PREEMPTED.**

When a group of petitioners in the home rule charter City of Richfield gathered signatures to stop the development of a city property in 2002, it presented a potential

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<sup>26</sup> Minn. Stat. § 204B.21 subd. 1.

<sup>27</sup> Secretary’s Response at 2.

<sup>28</sup> Contrary to statute. *See infra*: (“A ballot board that exists only on paper is as useful to the Legislature as a board that is made of wood.”)

zoning conflict between adjacent jurisdictions. In *Nordmarken v. City of Richfield*, the Minnesota Court of Appeals established the test for field preemption – an expression of the Legislature to fully control a given area that it forecloses any exercise of local authority, whether it conflicts with State law or not. This question is dispositive, and none of Respondents even bothered to address it.

The ballot board statute before the Court provides an even better example of field preemption than *Nordmarken* does. This is because of the importance of trust. There are few, if any, institutions in a functioning republic more sacred than the vote – the true expression of the will of the governed. This statute has nothing to do with secrecy, or sub-bureaucracies, or data requests, or groups of hundreds of people. It was written to provide the voting public with guarantees of openness, balance, and accountability, to make sure their will is expressed the same way as everybody else's is.

Petitioners do not know the size or scope of the apparatus that local governing bodies have built outside of this statute. That is precisely the problem. Ballot board members may be selected and appointed by an unknown person in Hennepin County, concealed from the public, and lacking accountability completely. The City Clerk herself is accepting and rejecting ballots in Plymouth, because she appointed herself to the ballot board. According to Plymouth, the City Clerk can be both herself and her own “deputy”

at the same time.<sup>29</sup> Respondent Anoka County can't seem to explain how its ballot board absorbs and sloughs off people over time without any modification to its resolution.

The Court must recognize the doctrine of field preemption and put a stop to this.

No amount of litigation will solve this problem without its application.

### **III. THIS MATTER IS NOT BARRED BY LACHES.**

Respondents argue laches should bar the Petition before the Court. There are no grounds for this.

Application of the doctrine of laches depends on a factual determination in each case.<sup>30</sup> The basic question is "whether there has been such an unreasonable delay in asserting a known right, resulting in prejudice to others, as would make it inequitable to grant the relief prayed for."<sup>31</sup> The purpose of the doctrine is "to prevent one who has not been diligent in asserting a known right from recovering at the expense of one who has been prejudiced by the delay."<sup>32</sup> While evidence of prejudice is not always essential to the application of laches, it is a circumstance of importance in determining whether a plaintiff's delay was reasonable.<sup>33</sup>

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<sup>29</sup> Plymouth Response at 9-10. This is nonsense, but it also underscores the utter meaninglessness of the title "deputy city clerk" or "deputy county auditor" in Minn. Stat. § 203B.121.

<sup>30</sup> *Harr v. City of Edina*, 541 N.W.2d 603, 606 (Minn. Ct. App. 1996).

<sup>31</sup> *Id.*, citing *Fetsch v. Holm*, 236 Minn. 158, 163, 52 N.W.2d 113, 115 (1952).

<sup>32</sup> *Id.*, citing *Aronovitch v. Levy*, 238 Minn. 237, 242, 56 N.W.2d 570, 574 (1953).

<sup>33</sup> *Harr*, 541 N.W.2d at 606.

At the outset, none of Respondents have suffered any prejudice whatsoever, and none of them have even suggested any. Hennepin claims that the “delay” in bringing suit is unacceptable because of “its impact on the County’s ballot counting process and the impact on the Minnesota electorate.”<sup>34</sup> We are told this includes a “broader risk to the voting electorate,” but Hennepin admits, as the others do, that the job required by § 203B.121 is already being done by *someone* in every jurisdiction that accepts and rejects ballots in the State. They were just never properly appointed in an ordinance or resolution.

Presumably, Respondents are adhering to the remainder of the process in §203B.121, and functioning as they are directed under the statute. That is, the required number of election judges is present, they are balanced by political party affiliation, city staff are not present on ballot boards, each member performs their duties under the statute and not under an unlawful exercise of local authority, and so forth. So long as this is the case, local governments can sign a new Ordinance or Resolution appointing and naming the people who are already lawfully doing their job over the weekend by email.

Those jurisdictions who are *failing* to adhere to the statute in the ballot board process may be facing problems of their own making. But this Court must not tailor its laches decision on the presumption that the law is being violated across Minnesota. If cities and counties do as the Legislature intended and provide the names of the ballot

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<sup>34</sup> Hennepin Response at 5.

board members by appointing them in an ordinance or resolution, then the problem is solved. There is no prejudice here.

Hennepin County cites the passage of “1,400 days” as a basis for application of laches and rejection of the Petition. A better number might be 4,383. This would take us back to 2014, which was the year of the original illegal ballot board resolution in Hennepin County. But neither of these dates mean anything because none of Respondents have demonstrated any prejudice anyway. The job is already being done, and voters should *expect* that it is being done properly.

But there is a larger point. Respondents cite to *Minnesota Voters Alliance v. Gelms*, 13 N.W.2d 173 (Minn. 2024) and *Minnesota Voters Alliance v. County of Ramsey*, 971 N.W.2d 269 (Minn. 2022), to argue that Petitioners could have brought this claim at that time. These two cases wound up at the Minnesota Supreme Court, but there were countless more that the Minnesota Voters Alliance have investigated and litigated over the years, and many, many more that were left on the cutting room floor. Preparation of these suits involves countless hours largely by volunteers, trying to improve the state of elections in Minnesota.

The case before the Court came to counsel in June as yet another differing set of violations in yet another collection of local governments. The problem is that local governments can come up with new ways to violate the ballot board law, faster than the Minnesota Voters Alliance can sue them. This is exacerbated when the unlawful conduct before the Court is being facilitated by the Secretary of State. Because of the number and scope of the violations, it is too easy to lose the forest for the trees. Petitioner received



the Hennepin County data request on July 9, 2026, and it was not until after this point that field preemption – the forest – was connected with the various individual violations – the trees. Had Petitioner thought of this argument earlier, it would have been brought many years ago. To suggest Petitioners sat on their rights to the prejudice of Respondents, is wrong.

### CONCLUSION

The ballot board statute was written to prevent the *risk* of loss of faith in the institution. For many years and across Minnesota, the basic language and application of Minn. Stat. § 203B.121 has been corrupted and transformed into a theft of authority. The entire meaning of the law has changed from an intended list of duties assigned to named ballot board members and named local government officials, to the assumption of illicit authority to create sub-bureaucracies who assume the roles of election judges and appoint members anonymously. The Secretary of State has built a conglomeration of local bodies who deviate from Minn. Stat. § 203B.121 at will under color of law. Before the Court are only a few examples of the fruits of many years of misinterpretation and misapplication of the ballot board statute.

The Court must direct that the doctrine of field preemption in *Nordmarken v. City of Richfield* applies to the ballot board statute in Minnesota Statutes § 203B.121, to protect the integrity of our elections and restore trust and openness in the process. The party-balanced election judges who provide their names to be eligible ballot board members do so because they want to do their part to ensure the will of the Legislature is

carried out fairly. The Secretary and local governments should be taking advantage of this provision and not exploiting it.

Petitioners concede that § 203B.121 does not explicitly require that local governing bodies identify whether the appointed ballot board member is an election judge or a “deputy.” However, if Respondents wanted to take a true step toward election transparency and “commit[ ] to protecting and strengthening the security and fairness of our elections process,”<sup>35</sup> then the Secretary’s new Minnesota Absentee Voting Administration Manual should direct local governing bodies to include the titles of these members along with their names in the new sample ballot board resolution. Petitioners would not litigate the question.

Respectfully submitted,

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Dated: August 21, 2026.

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<sup>35</sup> OFFICE OF THE MINNESOTA SECRETARY OF STATE STEVE SIMON, “Elections & Voting” page, available at: <https://www.sos.mn.gov/elections-voting/>, last accessed August 20, 2026

### **CERTIFICATION OF BRIEF LENGTH**

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, Subd. 3, for a brief produced with Times New Roman proportional 13-point font. The length of this brief is 4,107 words, and it was prepared using Microsoft Word.

August 21, 2026

/s/ Gregory J Joseph

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