

STATE OF MINNESOTA

IN SUPREME COURT

A18-0655

Court of Appeals

Gildea, C.J.

Peter K. Butler,

Appellant,

vs.

Filed: December 18, 2019
Office of Appellate Courts

City of Saint Paul, et al.,

Respondents.

Terence G. O'Brien, Jr., Law Office of Terence G. O'Brien, PLLC, Saint Paul, Minnesota,
for appellant.

Lyndsey M. Olson, Saint Paul City Attorney, Anthony G. Edwards, Assistant City Attorney,
Saint Paul, Minnesota, for respondents.

S Y L L A B U S

Because city election officials did not err in using the statewide voter registration system to verify that appellant's petition met statutory signature requirements, and because appellant did not carry his burden to prove that his petition met those requirements, the district court properly granted summary judgment on appellant's challenge to the rejection of his petition.

Affirmed.

OPINION

GILDEA, Chief Justice.

The question presented in this case is whether city election officials erred in refusing to put appellant Peter Butler’s petition to amend Saint Paul’s City Charter before the voters in the next election. The City, relying on the statewide voter registration system (“SVRS”), concluded that Butler’s petition did not have the required number of signatures and rejected the petition. Butler asserted that the City’s rejection was erroneous, and he filed an action under Minn. Stat. § 204B.44 (2018) to correct the City’s error. The district court granted the City’s motion for summary judgment, and the court of appeals affirmed. Because we agree that city election officials did not err in using the SVRS to verify that Butler’s petition met the statutory signature requirements, and because Butler did not meet his burden to prove that his petition met statutory requirements, we affirm.

FACTS

The City of Saint Paul is a home rule charter city. Minn. Const. art. XII, § 4 (“Any local government unit when authorized by law may adopt a home rule charter for its government.”). Amendments to a city charter “may be proposed . . . by a petition of five percent of the voters of the local government unit as determined by law” and must be approved by a majority of voters. Minn. Const. art. XII, § 5. Butler and others gathered signatures in support of a petition to amend section 7.01 of the Saint Paul City Charter to move city elections from odd- to even-numbered years. *See* Saint Paul, Minn., City Charter § 7.01. To place a charter-amendment proposal on the ballot, a “petition of voters equal in number to five percent of the total votes cast at the last previous state general election in

the city” is required. Minn. Stat. § 410.12, subd. 1 (2018). The parties agree that Butler’s petition needed 7,011 signatures to reach the five-percent threshold.

Butler’s petition, which was submitted on July 7, 2017, to the Ramsey County Elections Office, contained 7,656 signatures. Election officials used the SVRS to determine whether the petition contained a sufficient number of signatures. The SVRS “is the official record of registered voters.” Minn. Stat. § 201.081, subd. 1(a) (2018). It is maintained by the secretary of state and lists the name and registration information of every legally registered voter in Minnesota. Minn. Stat. § 201.021 (2018). The SVRS is regularly updated with address-change information provided to the secretary of state. *See* Minn. Stat. § 201.13, subd. 3 (2018) (explaining that, in addition to the list of address changes from the United States Postal Service, the secretary of state may also regularly obtain lists from the Department of Public Safety of registered voters who have applied for a driver’s license or state identification card with a different address). If a signer did not appear in the SVRS as registered to vote in Saint Paul, the City rejected that signature.

Seven days after Butler submitted his petition, the Elections Office sent him a notice of petition insufficiency, informing him that 1,790 of the signatures were invalid and that he had 10 days to file a supplementary petition with the 1,145 additional signatures necessary to meet the statutory requirement. *See* Minn. Stat. § 410.12, subd. 3 (2018) (allowing a petitioner to submit a supplementary petition within 10 days after receiving notice of an insufficiency).

Butler requested that the Elections Office provide a specific reason for the invalidity of each signature. As relevant here, the Elections Office explained that it rejected signatures from those who were not registered to vote in Saint Paul.¹

Butler did not file a supplementary petition within 10 days. Instead, he filed a petition in Ramsey County District Court under Minn. Stat. § 204B.44. Under section 204B.44, a party may file a petition with the district court to correct “any wrongful act, omission, or error of any . . . municipal clerk . . . or any other individual charged with any duty concerning an election.” Minn. Stat. § 204B.44(a)(4). Butler asserted that the City erred by relying on the SVRS to invalidate signatures and in refusing to put his proposed charter amendment before the voters.²

The parties engaged in discovery concerning the invalidated signatures. Following this process, the City reduced the number of rejected signatures to 1,699, which left Butler’s petition 1,054 signatures short of the required 7,011 signatures.³

Both parties then moved for summary judgment. The City argued that it was entitled to summary judgment because Butler’s petition did not meet the statutory threshold of

¹ The Elections Office also rejected signatures in cases where: (1) the signer did not provide all of the required information; (2) the signer was not eligible to vote in Saint Paul; (3) the signer’s information was illegible; and (4) the same person signed more than one line on the petition. These rejection reasons are not before us in this appeal.

² Butler also alleged in his petition that the City erred by sending him a notice that failed to comply with Minn. Stat. § 410.12, subd. 3. The district court found that the petition failed to state a claim that the City committed an error, omission, or wrongful act in issuing the notice of insufficiency to Butler. Butler did not pursue this claim on appeal.

³ In its motion for summary judgment, the City stipulated that Butler provided 5,957 valid signatures.

7,011 signatures. For his part, Butler argued that the City rejected too many signatures. With his motion, Butler included an affidavit stating that the City improperly rejected at least 1,127 signatures. Butler argued that these signatures should not have been rejected because the signers lived in Saint Paul based on his examination of public-information voter lists provided by the secretary of state, screenshots from the SVRS disclosed by the City during discovery, Ramsey County property records, and Minnesota marriage certificates. And he argued that the City had incorrectly invalidated these 1,127 signatures because the signers were listed on Saint Paul’s voter-registration lists when they signed the petition.

The district court determined that Butler had produced “some record evidence” that 980 of the rejected signatures were from residents of Saint Paul who were registered voters eligible to vote at the time they signed the petition or at the time the petition was submitted to the City. But even when those 980 signatures were added to the 5,957 signatures already accepted by the City, the district court concluded that the petition was still 74 signatures short of the five-percent statutory threshold.

Butler also argued that the City had wrongfully rejected 147 signatures because it had relied on the SVRS—rather than the addresses listed on the petition—to verify whether the signers were registered to vote in Saint Paul. If these 147 signatures were accepted, Butler argued, his petition would contain more than the 7,011 signatures required. The district court rejected this argument, determining that Butler had produced no evidence to support the assertion that the signers were residents of Saint Paul, other than a Saint Paul

address listed on the petition.⁴ Concluding that no genuine dispute of material fact existed as to whether the City erred in rejecting the signatures, the district court granted summary judgment for the City.

Butler appealed, and the court of appeals affirmed the district court. *Butler v. City of Saint Paul*, 923 N.W.2d 43, 51 (Minn. App. 2019). Although Butler had shown a difference between the information on the petition and the information included in the SVRS, the court of appeals determined that he failed to produce admissible evidence to suggest “that this difference amounts to an error, omission, or wrongful act by election officials.” *Id.*

We granted Butler’s petition for review.

ANALYSIS

This case comes to us on appeal from the district court’s entry of summary judgment for the City, and our review is de novo. *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010) (explaining that we review the grant of summary judgment de novo). Butler argues that the district court erred in two respects. First, he argues that the district court improperly upheld the City’s decision to rely on the SVRS to disqualify some signatures on his petition. Second, Butler argues that he at least raised an issue for trial as to the residency of a sufficient number of signatories and so granting summary judgment for the City was erroneous. We consider each issue in turn.

⁴ The district court found that 111 of these signers were registered to vote in jurisdictions other than Saint Paul and that there was no record evidence to support Butler’s assertion that the other 36 signers were living in Saint Paul during the petition period.

A.

We turn first to Butler’s argument that the district court erred in upholding the City’s reliance on the SVRS to reject signatures contained in Butler’s petition. Butler’s petition involves a citizen-led effort to urge residents of Saint Paul to vote to amend the city charter. We have long promoted “the enfranchisement of qualified voters[.]” *Bell v. Gannaway*, 227 N.W.2d 797, 802 (Minn. 1975) (upholding challenged absentee ballots). And we have been reluctant to exclude such petitions “on mere technicalities,” because they can be “the result of democracy working at the grassroots level.” *Bogen v. Sheedy*, 229 N.W.2d 19, 24 (Minn. 1975). But we also recognize that we must adhere to mandatory statutory requirements, such as a voter’s “affidavit of residence and eligibility” to vote, to ensure that only those who are qualified to participate do so. *Bell*, 227 N.W.2d at 803 (concluding that absentee voters “must be held to a strict compliance” with all substantial requirements of absentee voter statutes).

The statutory requirements at issue here are found in Minn. Stat. § 410.12 (2018). In this statute, the Legislature provided methods to amend home rule charters, including the process for amendments voters propose in voter-circulated petitions. Minn. Stat. § 410.12; *Minneapolis Term Limits Coal. v. Keefe*, 535 N.W.2d 306, 308 (Minn. 1995). Under section 410.12, “[o]nly registered voters are eligible to sign the petition.” Minn. Stat. § 410.12, subd. 1; see also Minn. Const. art. XII, § 5 (“Home rule charter amendments may be proposed . . . by a petition of five percent of the voters of the local government unit as determined by law[.]”). In addition, the “petition must contain each petitioner’s signature . . . and must indicate after the signature the place of residence by street and

number, or other description sufficient to identify the place.” Minn. Stat. § 410.12, subd. 2. Once the petition has been filed and transmitted to the city council, the city clerk has 10 days to determine “whether the petition is signed by a sufficient number of voters[,]” and to “certify the result[s] of th[at] examination to the council.” *Id.*, subd. 3.

The dispute in this case is over the way in which the City determines which voters are eligible to sign a petition submitted under section 410.12. The parties agree that the language of section 410.12 is unambiguous, but each side contends that the unambiguous language supports their respective interpretations. The parties’ disagreement centers on the requirement in subdivision 1 that only “registered voters” can sign a petition to propose an amendment to the city charter. *Id.*, subd. 1. The City contends that the statute requires it to verify that a sufficient number of petition signers are, in fact, residents of Saint Paul. To do so, the City used the SVRS to verify that the petition signers were registered to vote in Saint Paul. If a signer listed a Saint Paul address on the petition but was registered to vote at an address outside of Saint Paul, the City rejected that signature. The City rejected 147 signatures for this reason, which Butler argues was an error.⁵

⁵ At oral argument, the City’s counsel asserted that for a person to be eligible to sign a petition to amend the Saint Paul City Charter, the person must be registered to vote in Saint Paul. The City explained that a person who is registered to vote at an address outside of Saint Paul but who has moved since that registration and now maintains residence in Saint Paul is likely eligible to sign the petition. But because voter residency is determined in accord with principles largely based on an individual’s intent, the City contends that the city clerk is unable to verify that the signer is a Saint Paul resident without some record evidence. *See, e.g.*, Minn. Stat. § 200.031(1) (2018) (“The residence of an individual is in the precinct where the individual’s home is located, from which the individual has no present intention of moving, and to which, whenever the individual is absent, the individual intends to return.”). The City argues that the city clerk therefore did not err in relying on

Butler asserts that the statute's language merely requires the City to verify that (1) the signer is a registered voter, and (2) the address the signer lists as the signer's residence on the petition is located within the city. He argues that the plain language of the statute requires that the City rely on the address listed on the petition for the signer's place of residence. *See id.*, subd. 2 ("A petition . . . must indicate after the signature the place of residence by street and number, or other description sufficient to identify the place."). The statute, Butler contends, does not mandate that the address listed on the petition conform to the signer's voter-registration record nor does it require additional proof of the signer's residence. Butler asserts that the City therefore erred in looking beyond the petition to voter-registration records to determine the voter's residency.

Butler further argues that the City's review is limited to determining only whether the petition is signed by a sufficient number of registered voters. *See id.*, subd. 1 ("Only registered voters are eligible to sign the petition."). A "registered voter," Butler argues, is defined by being a person listed in the SVRS, not by the residence that the person lists when registering to vote. *See* Minn. Stat. § 201.081, subd. 1(a) ("The statewide registration system is the official record of registered voters."). Butler contends that any person listed in the SVRS is a registered voter and is thus eligible to sign the petition as long as the person also lists a Saint Paul residence address on the petition.

To summarize Butler's position, he asserts that while the City may use the SVRS to verify whether the petition signers are registered to vote, it cannot use the SVRS to

the residence listed in the SVRS to determine whether the signers are residents of Saint Paul.

determine whether the signers are residents of Saint Paul. Doing so, Butler argues, was an error for purposes of Minn. Stat. § 204B.44. We disagree.

Butler is effectively arguing that the City should ignore information in the SVRS when that information lists a registered address different from the address listed on the petition. Specifically, if we adopted Butler’s argument, we would require the City to ignore affirmative evidence in the SVRS that the signer was not an eligible voter in Saint Paul.

But the statute requires that city election officials verify whether the petition is signed by the required number of voters. Minn. Stat. § 410.12, subd. 3; *see also* Minn. R. 8205.1050, subp. 2(B) (2017) (explaining the verification process for petitions and the City’s obligation to verify whether the petition “has been signed by the required number of signatories and whether the signatories meet the applicable eligibility requirements”).⁶ And state law provides that only registered voters are eligible to sign a petition like the one that Butler submitted. Minn. Stat. § 410.12, subd. 1. Because state law provides that only registered voters are eligible to sign petitions, *id.*, and because the SVRS is the official

⁶ See Minn. Stat. § 204B.071 (2018) (“The secretary of state shall adopt rules governing the manner in which petitions required for any election in this state are circulated, signed, filed, and inspected.”). During oral argument, Butler’s counsel argued that Minn. Stat. § 204B.071 grants the secretary of state authority to adopt rules only relating to nominating and referendum petitions and therefore Minn. R. 8205.1050 does not apply to charter-amendment petitions. This assertion is incorrect. Chapter 204B “applies to all elections held in this state except as otherwise provided by law.” Minn. Stat. § 204B.02 (2018). Section 204B.071 falls under the section titled “Candidate Nomination and Filing,” Minn. Stat. §§ 204B.03–.12 (2018) (emphasis added), which includes filing petitions to place a charter amendment on the ballot. See Minn. Stat. § 204B.071; *see also In re Referendum to Amend City of Grand Rapids, Minn. Mun. Elections Ordinance No. 04-08-11*, No. A05-2350, 2006 WL 1985595, at *2 (Minn. App. July 18, 2006) (“Petition forms required for any Minnesota election are governed by rules adopted by the secretary of state.”).

record of registered voters in Minnesota, Minn. Stat. § 201.081, subd. 1(a), it was not an error for the City to look to the SVRS in determining whether Butler’s petition met the statutory requirements.

The fact that eligibility to vote is tied to both registration and residency reinforces this conclusion. Under state law, eligible voters “may vote only in the precinct in which the voter[s] maintain[] residence.” Minn. Stat. § 201.016, subd. 1 (2018). To cast a ballot in an election, “eligible voter[s] must register,” Minn. Stat. § 201.018, subd. 2 (2018), and in their voter-registration application, voters must list their current address. Minn. Stat. § 201.071, subd. 1 (2018). This address is recorded in the SVRS, Minn. Stat. § 201.121, subd. 1(a) (2018), which is then updated when voters apply for an address change or for a new state identification card. See Minn. Stat. § 201.13, subd. 3. Given that a voter’s registration is tied to the voter’s current residence, it does not arise to the level of an error, omission, or wrongful act, see Minn. Stat. § 204B.44, for the City to reject a signature of a voter whose current residence, as listed in the SVRS, is located outside of Saint Paul.⁷

Based on our analysis, we hold that the City did not err for purposes of Minn. Stat. § 204B.44 by relying on the SVRS to determine eligibility and rejecting signatures of those who were registered to vote at an address outside of Saint Paul.

⁷ That is not to say that a person who lists a residence address on her voter registration is forever tied to that address. In fact, the parties agree that if a registered voter did not reside “in St. Paul in the previous election but now resides in St. Paul and remains a registered voter, that person is eligible to sign a petition under section 410.12.” *Butler*, 923 N.W.2d at 49.

B.

We turn next to Butler’s argument that he raised an issue for trial as to the qualifications of a sufficient number of signers. Butler argues that the district court erred in denying his section 204B.44 petition because genuine disputes of material fact precluded summary judgment. Specifically, he contends that discrepancies between a residential address in Saint Paul on the petition, as compared to data in the SVRS showing that the signer is registered to vote at an address outside of Saint Paul, present material factual disputes. We are not persuaded.

Butler brought his challenge to the City’s action under Minn. Stat. § 204B.44. Butler therefore has the burden to prove that the City made an error that requires correction. *Paquin v. Mack*, 788 N.W.2d 899, 904 (Minn. 2010) (explaining that the petitioner bears the burden of showing election officials committed an error, omission, or wrongful act). The record shows that Butler did not carry his burden as the section 204B.44 petitioner. *See id.* Rather, it demonstrates that the City diligently compared each signature in his petition to the SVRS—“the official record of registered voters.” Minn. Stat. § 201.081, subd. 1(a).

In its initial review of Butler’s petition, the City had 10 days to examine the 786-page petition to verify whether it included the required number of valid signatures, and it did so by relying on the SVRS. After Butler filed his section 204B.44(a)(4) petition, the City reviewed his voter-circulated petition four more times to re-examine the rejected signatures, rescind the rejections for some signatures, and provide reasons supporting the invalidation of each rejected signature. Even after these four reviews, the district court

found that the petition fell 74 signatures short of the minimum statutory requirement. And the district court determined that Butler “produced *no evidence*” to demonstrate that any of the signatures were wrongly rejected by the City because those individuals were residents of Saint Paul. Our review of the record confirms the district court’s assessment and convinces us that Butler did not carry his burden.

We came to a similar conclusion in *Paquin*. 788 N.W.2d 899. In *Paquin*, the county auditor rejected signatures of signers who listed a post office box as their residence, rather than a street address, because a post office box “provides no information about the location of the box renter’s residence.” *Id.* at 904. We concluded that the section 204B.44 petitioner failed to provide “any other evidence from . . . signers of his nominating petition who listed a post office box . . . attesting that [they] intended the city or township and county listed on the petition to convey their residence address.” *Id.* We therefore held that the petitioner failed to meet his burden of showing that the county auditor erred “in rejecting the signatures of those who listed only a post office box in the residence address column” on the nominating petition. *Id.* (noting that the petitioner failed to show that the signers’ voting records would establish that the signers lived in the legislative district). Here, Butler similarly failed to submit admissible evidence, such as signed affidavits, showing that the signers were, in fact, residents of Saint Paul. Accordingly, he has not met his burden to show that the City erred in rejecting the petition signatures.

In urging us to reach the contrary conclusion, Butler does not point to evidence showing that the data in the SVRS, as to the signatures in dispute, was inaccurate in any way. Rather, he contends that his voter-circulated petition—because it included signatures

and places of residence—was signed in compliance with the statutory requirements and is therefore presumptively valid. He concedes that we have not recognized this presumption. Instead, he relies on a decision from the Montana Supreme Court, which applied such a presumption in the context of a voter-initiative petition. *Montanans for Justice v. State ex rel. McGrath*, 146 P.3d 759, 775 (Mont. 2006). The Montana Supreme Court also held, however, that once evidence is introduced to rebut the presumption of validity, “it is incumbent upon . . . the party endorsing the validity of the signatures . . . to come forward with evidence to rebut or counter the damaging evidence.” *Id.* Here, even if we were inclined to adopt the Montana approach, the result would be the same. Assuming Butler’s voter-circulated petition was presumptively valid, the City offered evidence to rebut that validity by showing that 147 signers were registered to vote at addresses outside of Saint Paul. Butler, as the district court found, produced no evidence to rebut that showing, and thus, he failed to meet his burden. Accordingly, we hold that the district court did not err in granting summary judgment for the City.

CONCLUSION

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

Affirmed.