STATE OF MINNESOTA

IN SUPREME COURT

A22-0111

Court of Appeals — Gildea, C.J.

Minnesota Voters Alliance, et al.,

Appellants,

vs.

Office of the Minnesota Secretary of State,

Respondent.

Filed: May 24, 2023
Office of Appellate Courts

Douglas P. Seaton, James V.F. Dickey, Upper Midwest Law Center, Golden Valley, Minnesota; and

Gregory J. Joseph, Joseph Law Office PLLC, Waconia, Minnesota, for appellants.

Keith M. Ellison, Attorney General, Nathan J. Hartshorn, Allen Cook Barr, Assistant Attorneys General, Saint Paul, Minnesota, for respondent.

William Z. Pentelovitch, Joseph P. Ceronsky, Melissa Muro LaMere, Maslon LLP, Minneapolis, Minnesota; and

Teresa Nelson, David P. McKinney, American Civil Liberties Union of Minnesota, Minneapolis, Minnesota, for amici curiae American Civil Liberties Union Foundation and American Civil Liberties Union of Minnesota.

S Y L L A B U S

1. Because Minnesota Rule 8210.2450, subpart 3 (2021), authorizes any ballot board member to review signatures in the event of an identification number mismatch and Minn. Stat. § 203B.121, subd. 2(b)(3) (2022), requires that election judges conduct that review, the rule conflicts with the statute. The rule is invalid to the extent that it conflicts with the statute.

2. Because the other challenged parts of Minnesota Rule 8210.2450, subparts 2 and 3 (2021), are not inconsistent with Minn. Stat. § 203B.121 (2022), these parts of the rule do not conflict with the statute.

Affirmed in part and reversed in part.

O P I N I O N

GILDEA, Chief Justice.

The question presented in this case is whether an administrative rule governing the acceptance of absentee ballots conflicts with a statute on that same topic. Appellants brought this declaratory judgment action in the court of appeals, seeking a prospective declaration that Minnesota Rule 8210.2450, subparts 2 and 3 (2021) (the rule), conflicts with Minnesota Statutes section 203B.121 (2022) (the statute), and that the challenged rule therefore is invalid. The court of appeals held that there was no conflict. We agree with appellants that subpart 3 of the challenged rule conflicts with subdivision 2(b)(3) of the statute to the extent that the rule permits any ballot board member to compare signatures when the statute requires that election judges do this comparison. As a result, we reverse

that part of the court of appeals decision. But we reject the other alleged conflicts appellants raise and otherwise affirm the court of appeals.

FACTS

This case involves absentee voting in Minnesota, so we begin with an overview of that process. Under Minnesota law, any eligible voter may request to vote by absentee ballot. *See* Minn. Stat. § 203B.04, subd. 1(a) (2022). The voter can request an absentee ballot by mail, email, fax, or in person, by filling out an application. *Id.* The voter is required to sign the application. *See id*., subd. 1(b).[1]

Once the application has been approved, *see* Minn. Stat. § 203B.04, subd. 1(b), the voter will typically receive their absentee ballot by mail. Minn. Stat. § 203B.07, subd. 1 (2022); *but see* Minn. Stat. § 203B.11, subd. 1 (2022) (providing for absentee ballots to be delivered by election judges in limited circumstances). Along with the absentee ballot, the voter receives a signature envelope and a mailing envelope. *See* Minn. Stat. § 203B.07, subd. 1 ("The county auditor or the municipal clerk shall prepare, print, and transmit a return envelope, a ballot envelope, and a copy of the directions for casting an absentee ballot to each applicant whose application for absentee ballots is accepted pursuant to section 203B.04."); Minn. Stat. § 203B.08 (2022) (discussing mailing envelope). After filling out the ballot, the voter puts the ballot into their completed signature envelope, then

[1] A voter can also request a ballot through a secure website maintained by the Secretary of State. Minn. Stat. § 203B.04, subd. 1(a) (2022); *Request an Absentee Ballot*, Office of the Minnesota Secretary of State Steve Simon, https://mnvotes.sos.state.mn.us/ABRegistration/ABRegistrationStep1.aspx (last visited Apr. 4, 2023). The parties agreed at oral argument that when a voter applies for an absentee ballot through the Secretary's website, the voter does not sign the application.

puts the signature envelope into the mailing envelope and mails the ballot to the county auditor or municipal clerk. *See* Minn. Stat. § 203B.08. The voter can also return their completed ballot in the completed signature envelope to the county clerk in person or deposit it at a drop box. *Id.*

A voter must print their name, address, and identification number (either a Minnesota driver's license number, a Minnesota ID card number, or the last four digits of their social security number) on the signature envelope. *See* Minn. Stat. § 203B.08, subd. 1(a) ("An eligible voter who receives absentee ballots as provided in this chapter shall mark them in the manner specified in the directions for casting the absentee ballots."); *see, e.g.*, *Absentee Ballot Signature Envelope*, https://www.sos.state.mn.us/media/2319/absentee-ballot-signature-envelope.pdf (last visited Apr. 4, 2023). The voter is also required to sign an oath certifying that they "meet[] all of the requirements established by law for voting by absentee ballot." Minn. Stat. § 203B.07, subd. 3 (2022); *see also Instructions: How to vote by Absentee Ballot for Registered Voters*, https://www.sos.state.mn.us/media/2315/absentee-ballot-instructions-for-registered-voters.pdf (last visited Apr. 4, 2023).

Ballot boards are responsible for deciding whether to accept or reject absentee ballots. Minn. Stat. § 203B.121, subd. 2. Ballot boards "must consist of a sufficient number of election judges" and "may include deputy county auditors or deputy city clerks." Minn. Stat. § 203B.121, subd. 1; *see Minn. Voters All. v. County of Ramsey (Alliance I)*,

971 N.W.2d 269, 278 (Minn. 2022).[2] In other words, there are members of ballot boards who are election judges and there might be other members who are not election judges.

In 2010, the Legislature revised the process for acceptance of absentee ballots through the enactment of Minn. Stat. § 203B.121. *See* Act of Mar. 24, 2010, ch. 194, § 9, 2010 Minn. Laws 120, 124–25 (codified as amended at Minn. Stat. § 203B.121).[3] The statute was passed following the contested 2008 senate race between Al Franken and Norm Coleman. *See generally* House debate on H.F. 3111, 86th Minn. Leg., Mar. 8, 2010 (video tape) (starting at 45:47) (available at https://www.lrl.mn.gov/media/file?mtgid=1011529#ctl00_Main_video); Sen. debate on S.F. 2622, 86th Minn. Leg., Mar. 8, 2010 (video tape) (starting at 36:06) (available at https://www.lrl.mn.gov/media/file?mtgid=860890). Issues central to the litigation over that election involved how to tell whether the voter's signature was genuine, as the law then in effect required, and variations in absentee ballot review procedures between local election sites. *See, e.g.*, *Sheehan v.*

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[2] In *Alliance I*, the Alliance argued that counties "violated their statutory obligations for appointing members to absentee ballot boards during the 2020 general election." 971 N.W.2d at 273. We rejected that argument and affirmed the dismissal of the Alliance's mandamus petitions.

[3] Minnesota Statutes section 203B.121, the provision at issue here, has been amended several times since, though none of the amendments are relevant to our analysis in this case. *See* Act of May 11, 2010, ch. 314, § 4, 2010 Minn. Laws 846, 849; Act of May 23, 2013, ch. 131, art. 1, §§ 6–8, 2013 Minn. Laws 2188, 2191–93; *id.* art. 2, §§ 17–18, 2013 Minn. Laws 2188, 2201-02; Act of May 22, 2015, ch. 70, art. 1, § 15, 2015 Minn. Laws 822, 829–30; Act of May 30, 2019, ch. 10, art. 4, § 3, 2019 Minn. Laws 1st Spec. Sess. 1995, 2044; Act of May 25, 2021, ch. 31, art. 3, §§ 4–5, 2021 Minn. Laws 812, 835–36; Act of June 30, 2021, ch. 12, art. 4, § 6, 2021 Minn. Laws 1st Spec. Sess. 2124, 2170; Act of May 5, 2023, ch. 34, art. 1, § 17, 2023 Minn. Sess. Law Serv. ___, ___ (West) (to be codified at Minn. Stat. § 203B.121).

Franken (In re Contest of General Election Held on Nov. 4, 2008, for the Purpose of Electing a U.S. Senator from the State of Minn.), 767 N.W.2d 453, 468 & n.19 (Minn. 2009). In both the house and the senate, the bill's authors stated that the purpose of the legislation was to ensure that fewer ballots were wrongly accepted or rejected, to move away from signature matching to identification number matching, and to rely on more objective criteria.[4]

As enacted, Minn. Stat. § 203B.121, subd. 2, explains how ballot boards are to decide whether to accept or reject absentee ballots. The board reviews each signature envelope and accepts or rejects it. Minn. Stat. § 203B.121, subd. 2(b). A signature envelope is accepted "if a majority of the members of the ballot board examining the envelope are satisfied that" six criteria are met. *Id.* But if a majority of the members of the ballot board examining a signature envelope find that an absentee voter has failed to meet one of the six criteria provided in paragraph (b), the signature envelope is rejected. *Id*., subd. 2(c)(1).

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[4] *See* Hearing on H.F. 3111, H. Comm. on State and Loc. Gov't Operations Reform, Tech. and Elections, 86th Minn. Leg., Mar. 2, 2010 (video tape) (comments of author Rep. Ryan Winkler occurring at 32:57–33:15 & 34:03–34:09) (stating that "this bill takes a number of steps to try to ensure that many fewer absentee ballots are improperly rejected and to ensure that absentee ballots and applications are treated equally across the state" and that one of the changes was "moving from a signature match between the application and the return ballot to a number match"); Hearing on H.F. 3111, H. Comm. on State and Loc. Gov't Operations Reform, Tech. and Elections, 86th Minn. Leg., Mar. 2, 2010 (video tape) (comments of author Rep. Mary Kiffmeyer occurring at 39:00–39:50) (stating that "[t]he point" of the bill "is accuracy in accepting and rejecting" absentee ballots); Sen. debate on S.F. 2622, 86th Minn. Leg., March 8, 2010 (video tape) (comments of senate sponsor Senator Katie Sieben starting at 36:50) (explaining that the bill would reduce the number of rejected absentee ballots by using "more objective criteria for accepting or rejecting absentee ballots" and that the bill "will replace the signature match with identification number matches").

The determination that the envelope fails to meet the six statutory criteria is the only reason the board can "reject[] an absentee ballot." *Id.*

Two of the six statutory criteria are relevant here. The first asks if "the voter signed the certification on the envelope." *Id.*, subd. 2(b)(2). The second asks whether the voter's identification numbers (their driver's license number, state identification number, or the last four digits of their social security number) "are the same as a number on the voter's absentee ballot application or voter record." *Id.*, subd. 2(b)(3). In the event of an identification number mismatch, "the *election judges* must compare the signature provided by the applicant to determine whether the ballots were returned by the same person to whom they were transmitted." *Id.* (emphasis added).

The Secretary of State has promulgated a rule relating to the ballot board's review of absentee ballot signature envelopes. Minn. R. 8210.2450. Both subparts 2 and 3 of the rule are at issue here. Subpart 2 addresses, in part, "whether the signature envelope was signed by the voter."[5] *Id.*, subp. 2. It directs that the "[u]se of, or lack of, full names,

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[5] Subpart 2 of Minnesota Rule 8210.2450 reads in full:

> The voter's name and address on the absentee ballot application must match the voter's name and address on the signature envelope. Use of, or lack of, full names, nicknames, abbreviations, or initials on either document are not a reason for rejection.
>
> Ballot board members must determine whether the signature envelope was signed by the voter. Use of, or lack of, full names, nicknames, abbreviations, or initials within either signature are not a reason for rejection. A signature is considered the voter's even if a voter uses a signature mark on either or both documents, or if a voter has another individual or different individuals sign the voter's name in their presence on either or both the application and

nicknames, abbreviations, or initials within either signature are not a reason for rejection." *Id.* (nickname provision). And voters may use a signature mark or have someone else sign their name consistent with Minn. Stat. § 645.44, subd. 14 (2022) (accommodation statute).[6] Subpart 2 of the rule provides only one ground for rejecting an absentee ballot: "if the name signed is clearly a different name than the name of the voter as printed on the signature envelope." Minn. R. 8210.2450, subp. 2.

> the signature envelope in accordance with Minnesota Statutes, section 645.44, subdivision 14. A ballot must be rejected under this subpart on the basis of the signature if the name signed is clearly a different name than the name of the voter as printed on the signature envelope. This is the only circumstance under which a ballot may be rejected on the basis of signature under this subpart.

[6] Under the accommodation statute, when "[t]he signature of a person" is required by law, the signature "(1) must be in the handwriting of the person, or (2) if the person is unable to write," the person may use a mark, have another person sign for them, or use a rubber stamp of their signature or mark. Minn. Stat. § 645.44, subd. 14. Ballot board members will know that the accommodation statute has been invoked because the voter will have used a signature mark or stamp or because the person signing for the voter will have also signed. The instructions for an absentee ballot application and for the signature envelope cite the accommodation statute and explain that a voter with a disability can sign the application themselves, make their signature mark, ask another person to sign for them in their presence (in which case the voter should "have the person sign their own name as well"), or use a signature stamp. *See 2023 Minnesota Absentee Ballot Application*, https://www.sos.state.mn.us/media/2444/english-regular-absentee-ballot-application.pdf (last visited Apr. 26, 2023); *How to Vote by Absentee Ballot for Registered Voters*, https://www.sos.state.mn.us/media/2315/absentee-ballot-instructions-for-registered-voters.pdf (last visited Apr. 26, 2023); *see also How to Vote by Absentee Ballot*, https://www.sos.state.mn.us/media/2314/absentee-ballot-instructions-for-non-registered-voters.pdf (last visited Apr. 26, 2023).

Subpart 3 of the rule is also at issue. Subpart 3 addresses the match of identification numbers.[7] *Id.*, subp. 3. When the voter's identification numbers do not match, "the ballot board members must compare the signatures on the absentee ballot application and on the signature envelope to determine whether the ballots were returned by the same person to whom they were transmitted." *Id.* As in subpart 2, subpart 3 includes a nickname provision that prohibits the rejection of ballots based on the voter's use of a nickname. *See id.*

Appellants are the Minnesota Voters Alliance and several election judges from Ramsey County (collectively, the Alliance). The Alliance filed a declaratory judgment action in the court of appeals. *See* Minn. Stat. § 14.44 (2022). The Alliance argued that the challenged rule subparts conflict with the statute by infringing on discretion the Legislature gave to ballot board members. The court of appeals concluded that there were no conflicts between the challenged rule and the statute because the statute did not give

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[7] Subpart 3 of Minnesota Rule 8210.2450 provides in full:

> Ballot board members must determine whether the identification number provided by the voter on the certificate is the same as the identification number provided by the voter on the absentee ballot application or the voter's record in the statewide voter registration system.
>
> If the numbers do not match or the voter did not provide identification numbers on both documents, the ballot board members must compare the signatures on the absentee ballot application and on the signature envelope to determine whether the ballots were returned by the same person to whom they were transmitted. Use of, or lack of, full names, nicknames, abbreviations, or initials within either signature are not a reason for rejection. A signature is considered the voter's even if a voter uses a signature mark on either or both documents, or if a voter has another individual or different individuals sign the voter's name in their presence on either or both the application and the return envelope in accordance with Minnesota Statutes, section 645.44, subdivision 14.

complete discretion for ballot board members and election judges to rely on any evidence in determining whether to accept absentee ballots, and because it was possible to comply with both the challenged rule and the statute. *See Minn. Voters All. v. Off. of Minn. Sec'y of State* (*Alliance II*), A22-0111, 2022 WL 3348641, at *6 (Minn. App. Aug. 15, 2022).

We granted the Alliance's petition for review.

ANALYSIS

This is a declaratory judgment action seeking to invalidate a rule under Minn. Stat. §§ 14.44–.45 (2022). We can "declare [a] rule invalid" if: "[the rule] violates constitutional provisions or exceeds the statutory authority of the agency or was adopted without compliance with statutory rulemaking procedures." Minn. Stat. § 14.45. The Alliance asserts that the challenged rule exceeds the statutory authority of the Secretary because it conflicts with the statute. The Secretary does not dispute that if the rule conflicts with the statute then the rule exceeds the agency's statutory authority.[8]

A rule conflicts with a statute when the rule "violates the plain meaning of" the statute, *Special Sch. Dist. No. 1 v. Dunham*, 498 N.W.2d 441, 445 (Minn. 1993), or when the rule has "no counterpart in the statute[] and [is] inconsistent with [it]," *Green v. Whirlpool Corp.*, 389 N.W.2d 504, 506 (Minn. 1986). Because the conflict question

[8] The parties made concessions at oral argument that narrow the scope of our review. For its part, the Alliance agreed that other than its argument that the rule conflicts with the statute, it is not otherwise arguing the Secretary exceeded his rulemaking authority. *See Hirsch v. Bartley-Lindsay Co.*, 537 N.W.2d 480, 485 (Minn. 1995) ("An agency has the power to issue binding administrative rules only if, and to the extent, the legislature has authorized it to do so."). And the Secretary agreed that a rule that conflicts with the statute exceeds the statutory authority. Based on these concessions, we do not address the specific contours of the Secretary's rule-making authority or the scope of Minn. Stat. § 14.45.

depends on our interpretation of the statute and the rule, the question is one of law that we review de novo. *Berglund v. Comm'r of Rev.*, 877 N.W.2d 780, 783 (Minn. 2016).

The Alliance argues that the challenged rule and the statute conflict. As a general matter, the Alliance contends that subpart 2 of the challenged rule conflicts with subdivision 2(b)(2) of the statute because the rule infringes on the ballot board's discretion to consider any evidence, including comparison of the voter's signature on the application with the voter's signature on the signature envelope, when determining if the voter signed the certification on the signature envelope. The Alliance challenges the portion of the rule that states that the ballot board may reject the signature envelope only when "the name signed is clearly a different name than the name of the voter as printed on the signature envelope." The Alliance also alleges that the rule conflicts with the statute because the rule provides in both subparts 2 and 3, that a signature envelope cannot be rejected if the voter uses a nickname on either the signature on the envelope or the signature on the application. Finally, the Alliance asserts that subpart 3 of the challenged rule conflicts with subdivision 2(b)(3) of the statute because the statute requires that election judges do the signature comparison but the rule permits ballot board members, who may not always be election judges, to do the comparison. We begin with this last argument.

I.

The Alliance contends that subpart 3 of the challenged rule conflicts with the statute. The Alliance argues there is a conflict because the rule allows any ballot board member to conduct a signature review in the event of an identification number mismatch, when the Legislature intended that election judges perform this review. We agree. The rule gives

the power to review signatures to members of the ballot board generally, but the statute gives this responsibility only to election judge members of the ballot board. That is a conflict. *See Billion v. Comm'r of Rev.*, 827 N.W.2d 773, 781 (Minn. 2013) (invalidating rule to the extent that statute allowed certain taxpayers to carry over losses, but the rule permitted all taxpayers to do so).

The court of appeals reached a contrary conclusion, because "a ballot board can comply with both the statute and the rule by having ballot board members who are election judges perform signature comparison." *Alliance II*, 2022 WL 3348641, *5. The Secretary urges us to reach the same conclusion. We decline to do so.

The court of appeals is correct that it is possible to comply with both the rule and the statute because the ballot board members who compare the signatures could be election judges. But the possible-to-comply-with-both standard that the court of appeals applied comes from conflict preemption cases concerning an alleged conflict between a statute and a local ordinance or between federal and state law. *See*, *e.g.*, *Musta v. Mendota Heights Dental Ctr.*, 965 N.W.2d 312, 321 (Minn. 2021) (stating that one way for conflict preemption to arise is "when it is impossible to comply with both state law and federal law"). We have not applied conflict preemption case law to an alleged conflict between an administrative rule and a statute. Instead, when, as in this case, the rule changes the plain terms of the statute, we have found that the rule and the statute conflict. *See Dunham*, 498 N.W.2d at 445 (recognizing that "[i]t is elemental that when an administrative rule conflicts with the plain meaning of a statute, the statute controls," and holding that rule that

provided limitations period of 90 days conflicted with statute that provided for a 45-day limitation period). We reach a similar conclusion here.

Under subpart 3 of the challenged rule, "ballot board members" may review signatures in the event of an identification number mismatch, Minn. R. 8210.2450, subp. 3, but that is a task the statute gives to "election judges" specifically, Minn. Stat. § 203B.121, subd. 2(b)(3). The term "ballot board" is broader than "election judges" because a ballot board may be comprised of election judges and county auditors or city clerks. *See Alliance I*, 971 N.W.2d at 278 ("The plain language of the statute distinguishes between election judges and deputy county auditors and permits both to serve on absentee ballot boards."). Because the rule changes the explicit terms of the statute by assigning the task of signature review to someone other than election judges, the rule conflicts with the statute to the extent that the rule authorizes non-election judge members of a ballot board to review signatures. *See Dunham*, 498 N.W.2d at 445. Accordingly, we hold that Minn. R. 8210.2450, subp. 3, is invalid to the extent that the rule conflicts with Minn. Stat. § 203B.121, subd. 2(b)(3).

II.

We turn next to the Alliance's argument that the rule conflicts with the statute because the rule limits the discretion of the ballot board members in reviewing signature envelopes.

A.

The Alliance first argues that the rule violates the statute by limiting what ballot board members can consider to evaluate whether the name signed is "clearly a different

name" from the voter's name in determining whether the board is "satisfied" that "the voter signed the certification on the envelope." Minn. R. 8210.2450, subp. 2; Minn. Stat. § 203B.121, subd. 2(b)(2). The Alliance asserts that the word "satisfied" as it relates to subdivision 2(b)(2) of the statute clearly gives broad discretion to ballot boards to compare the signature on the absentee ballot application with the signature on the signature envelope when determining whether "the voter signed the certification on the envelope." By limiting the ballot board's ability to reject an envelope to only when the name signed on the envelope is "clearly a different" name than the name printed on the envelope, the Alliance argues the rule conflicts with the statute.[9]

For his part, the Secretary contends that the rule and the statute do not conflict. We agree, but on different grounds. As explained below, we disagree with the Secretary's interpretation of the statute, but conclude that as properly interpreted, there is no conflict between the statute and the rule.

[9] The Alliance also argues that the rule conflicts with the statute to the extent that the rule "requires acceptance of ballots with signature marks or another person's signature on 'either' document, even if they don't match, which means that anyone can sign for any voter for any reason . . . . " The Alliance overreads the rule. The rule simply incorporates the provisions of the accommodation statute for those voters who need accommodation; the rule does not make those provisions broadly applicable to all voters. Minn. R. 8210.2450, subp. 2 (noting that a signature is the voter's "even if a voter uses a signature mark . . . or if a voter has another individual or different individuals sign the voter's name in their presence . . . *in accordance with [the accommodation statute]*" (emphasis added)); *id.*, subp. 3 (same). And the Alliance acknowledges that it is "not arguing that a ballot-board member cannot accept a ballot if a person uses a signature mark or signature-by-proxy . . . ." In short, the rule's incorporation of the protections in the accommodation statute does not create a conflict with the statute.

1.

The Secretary argues that there is no conflict because "the voter signed" criterion in the statute means "only that there is a signature on the envelope." In other words, the Secretary argues that all that the statute requires ballot board members to determine is whether there is a signature on the envelope, and he contends subpart 2 of the rule is not inconsistent with that statutory requirement. We disagree with the Secretary's interpretation of the statute.

Subdivision 2(b)(2) requires that the ballot board is satisfied that the voter who signed the envelope is the voter who applied for the absentee ballot. The language of Minn. Stat. § 203B.121, subd. 2(b)(2), plainly expresses a legislative intent that "the voter" who "signed the certification on the envelope" is the person who requested and is entitled to receive the absentee ballot. *See* Minn. Stat. § 645.16 (2022) ("The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature."). "The" is a word of limitation, versus the inclusive article "a." *State v. Hohenwald*, 815 N.W.2d 823, 830 (Minn. 2012) (citing *Am. Bus. Ass'n v. Slater*, 231 F.3d 1, 4–5 (D.C. Cir. 2000) ("[I]t is a rule of law well established that the definite article 'the' particularizes the subject which it precedes.")). Thus, the plain language of the statute makes clear that "the voter" means the person entitled to cast the vote.

Other uses of the phrase "the voter" in Minn. Stat. § 203B.121, subd. 2(b), support our interpretation. In subdivision 2(b)(1), the Legislature required that "the voter's name and address on the signature envelope" must be "the same as the information provided on the absentee ballot application" for the ballot to be accepted. *Id.*, subd. 2(b)(1). And under

subdivision (2)(b)(4), "the voter" must be "registered and eligible to vote." *Id.*, subd. 2(b)(4); *see also id*., subd. 2(b)(3) (listing as a criterion that "the voter's Minnesota driver's license, state identification number, or the last four digits of the voter's Social Security number are the same as a number on the voter's absentee ballot application or voter record"); *id.*, subd. 2(b)(6) (listing as a criterion that "the voter has not already voted at that election"). Accordingly, it is clear that "the voter" referenced in section 203B.121, subd. 2(b)(2), is the person eligible to vote by absentee ballot and not some other person.

In urging us to conclude otherwise, the Secretary relies on the meaning of "the voter signed" in the accommodation statute. The Secretary asserts that "the voter signed" cannot include an identity requirement (i.e., it cannot mean that "the voter" is the person who signed the envelope) because state and federal law require accommodations for voters with disabilities. But the accommodation statute applies when "[t]he signature of a person" is required by law. Minn. Stat. § 645.44, subd. 14. And when a signature is required, a person who cannot write may substitute for their signature a mark, their name written by someone else, or a stamp or facsimile. *Id.* This substitute signature *is* the signature of the voter under the accommodation statute.[10] Thus, the accommodation statute does not foreclose an interpretation of "the voter" that includes an identity requirement. Instead, it merely forecloses any interpretation of "the voter signed the certification on the envelope" that

[10] For the same reason, the Secretary's argument that the Alliance's interpretation conflicts with federal laws about voting assistance is unavailing. The federal requirement that a voter who requires assistance to vote must be given that assistance by a person of the voter's choice can be met by reading the accommodation statute as making the substitute signature the signature of the voter. *See* 52 U.S.C. § 10508.

does not allow for a substitute signature on the signature envelope when the circumstances at issue in the accommodation statute apply.

In short, the statute requires that the ballot board be satisfied that the person who applied to vote absentee (the voter) is the person who signed the certification on the envelope.

2.

The next question is whether the rule conflicts with the statute due to the rule's limitations on what evidence the ballot board can use as a basis to reject a signature envelope. The Alliance contends that the rule's provision limiting rejection based on signature comparison to when "the name signed is clearly a different name" than the voter's conflicts with the discretion afforded to ballot board members in the statute. We conclude that it does not.

The Alliance asks us to hold that the Legislature intended to give ballot board members discretion to compare signatures on the application and the signature envelope whenever they wish, because "satisfied" in subdivision 2(b) of the statute means "persuaded by argument or evidence." And the Alliance asserts that "[s]ignature matching is likely the best possible place to look for a ballot-board member to" become satisfied that the voter signed the certification on the envelope.

It is true, as the Alliance argues, that the statute requires that the ballot board be "satisfied" that the voter is the same person who submitted the absentee ballot application. And the rule limits the reasons for rejection under subpart 2 to when "the name signed is clearly a different name than the name of the voter as printed on the signature envelope"—

foreclosing a comparison of the voter's signatures. But nothing in the statute's requirement that the ballot board members be "satisfied" that "the voter signed the certification on the envelope" plainly gives the ballot-board members discretion to consider *any* evidence. The definition of "satisfied" that the Alliance points to—"persuaded by argument or evidence"—likewise says nothing about what evidence the ballot board might consider. Accordingly, to conclude that there is a conflict here, we would have to infer that the Legislature did not intend there to be limits on the ballot board's investigation, and that by imposing limits the rule conflicts with the statute. But we have not concluded that administrative rules and statutes conflict through inference or legislative silence. *See Alliance I*, 971 N.W.2d at 277 ("We will not read in requirements to a statute where none exist."); *see also Berglund*, 877 N.W.2d at 784 ("Had the Legislature intended to require the Commissioner's signature for commissioner-filed returns, it would have done so explicitly just as it did for orders of assessment and property tax assessments.").

The Alliance argues that "the Secretary cannot create rules which are an 'enlargement of express powers by implication,' " and that "administrative rules 'must be fairly drawn and fairly evident from the agency objectives and powers expressly given by the legislature,' " quoting *Hirsch v. Bartley-Lindsay Co.*, 537 N.W.2d 480, 485 (Minn. 1995). But these principles guide the analysis of whether an agency has acted within the scope of its rulemaking authority, which is not at issue here.[11] *See id*. (noting that "agency

[11] Whether the Secretary acted within the scope of his rulemaking authority under the rules-enabling clause is not the issue before us here, based on the Alliance's concession that we previously noted. *See Hagen v. Steven Scott Mgmt., Inc.*, 963 N.W.2d 164, 170

has the power to issue binding administrative rules only if, and to the extent, the legislature has authorized it to do so," and discussing enabling legislation).

We have found that a rule conflicts with a statute in two situations. First, we have determined that a rule conflicts with a statute when the rule adds a requirement that is different from the requirements expressed in the statute. *See Berglund*, 877 N.W.2d at 785 ("The lack of an explicit signature requirement for commissioner-filed returns in the statute conflicts with the signature requirement in the Department of Revenue's rule."); *Billion*, 827 N.W.2d at 781 (determining that rule conflicted with the statute because the statute provided that only trusts and estates could carry over losses but rule permitted any taxpayer to do so); *Green*, 389 N.W.2d at 506 (determining that rule conflicted with statute because rule added requirements to default remedy that were not in the statute). Second, we have determined that a rule conflicts with a statute when the rule changed the explicit terms in the statute. *See Dunham*, 498 N.W.2d at 445 (determining that rule conflicted with statute because limitations period in the rule was 90 days but the limitation period in the statute was 45 days). Subpart 2's restriction on signature comparison as a basis for rejection under that subpart does neither.

The statute requires signature comparison only when identification numbers do not match. *See* Minn. Stat. § 203B.121, subd. 2(b)(3). Rule 8210.2450, subpart 3, keeps this exact requirement, so there is no express conflict because the rule does not change the

(Minn. 2016) (discussing the extent of delegation in the rules enabling clause). The question here is simply whether the rule, even assuming it was enacted within the scope of the Secretary's authority, nevertheless conflicts with the statute.

requirements of the statute. Because the signature-comparison restriction in Rule 8210.2450, subpart 2, governs only signature comparison done "under" subpart 2 of the rule, it does not govern what happens in the event of an identification number mismatch under subpart 3. Minn. R. 8210.2450, subp. 2 ("A ballot must be rejected *under this subpart* on the basis of the signature if the name signed is clearly a different name than the name of the voter as printed on the signature envelope. This is the only circumstance under which a ballot may be rejected on the basis of signature *under this subpart*." (emphasis added)). Thus, the signature comparison restriction in subpart 2 of the rule is not inconsistent with the statute's requirement for signature comparison when the voter's identification numbers do not match. In other words, an envelope could be rejected under subpart 3 of the rule even when it could not be rejected under subpart 2 of the rule. Reading the rule as a whole, we conclude that there is not a conflict between the rule and the statute with regard to signature comparison.

B.

Similar to its argument that the rule conflicts with the statute by improperly cabining the ballot board's discretion to compare signatures, the Alliance also argues that the rule's nickname provision leads to a conflict between the statute and the rule. Under the nickname provision, differences in names due to nicknames cannot be the basis for rejection of an absentee ballot. *See* Minn. R. 8210.2450, subps. 2 & 3. The Alliance argues that this provision conflicts with the statute's broad delegation to the ballot board to be

"satisfied" that the voter is the same, and for election judges to "determine"[12] that the ballots were returned by the voter based on signature comparison. Minn. Stat. § 203B.121, subds. 2(b)(2) & 2(b)(3). We disagree.

In the nickname provision in subparts 2 and 3, the rule provides that the ballot board may not reject a signature envelope if the voter used a nickname on either the application or the signature envelope. The statute does not address the use of nicknames. The statute requires that the ballot board members are satisfied that "the voter's name . . . on the signature envelope [is] the same as the information provided on the absentee ballot application." Minn. Stat. § 203B.121, subd. 2(b)(1). The rule, by allowing the expression of one's name through use of a nickname, does not add a requirement to the statute or change any explicit term in the statute. Accordingly, we hold that the rule does not conflict with the statute.

CONCLUSION

For the foregoing reasons, we affirm in part, and reverse in part the decision of the court of appeals.

[12] "Determine" means "to establish or ascertain definitely, as after consideration, investigation, or calculation." *Determine*, *The American Heritage Dictionary of the English Language* 494 (5th ed. 2018). "Determine," like "satisfied," is silent about what evidence should be used in making the determination.

OFFICE OF THE MINNESOTA
SECRETARY OF STATE **STEVE SIMON**

Español Hmoob Soomaali Tiếng Việt Русский 中文 ພາສາລາວ Afaan Oromo ខ្មែរ
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REQUEST AN ABSENTEE BALLOT
Step 1 Of 2

Use this application for **federal, state and county** elections

To complete this application online you must:

- be eligible to register and vote in Minnesota
- provide an email address
- provide your identification number: Minnesota-issued driver's license, Minnesota ID card or last 4 digits of Social Security Number

If you do not have an email address and one of the identification numbers above, you cannot apply for your absentee ballot online. You may apply with a paper form by clicking this link, selecting your preferred language, and printing out the paper absentee ballot application.

If you are an active duty military or overseas voter, do not use this application. Use the special application for military and overseas voters.

If you already submitted your application, do not submit another one online; use the Absentee Ballot Lookup to find out where your absentee ballot is in the process, or contact your county election office.

To find your address, first select your county: *

County:

-Select your County-

FIND YOUR CITY AND ZIP

Select your residence's city, state and Zip Code within your county: *

City, State and Zip Code:

(If this dropdown is blank, you must select your county **AND** click the *Find* button above.)

Election(s) you are requesting an Absentee Ballot for: *

Elections:

** Required*

CONTINUE ›

To be eligible to vote in Minnesota you must:

- Be at least 18 years old on Election Day
- Be a citizen of the United States
- Have resided in Minnesota for 20 days immediately preceding Election Day
- Have any felony conviction record discharged, expired or completed
- Not be under court-ordered guardianship where a court has revoked your voting rights
- Not have been ruled legally incompetent by a court of law

Registered to vote?

You do not have to be registered to vote to apply for an absentee ballot, but it makes the process easier. You can check your voter registration status online. If you need to register or update your voter registration, you may want to do that online before applying for an absentee ballot.

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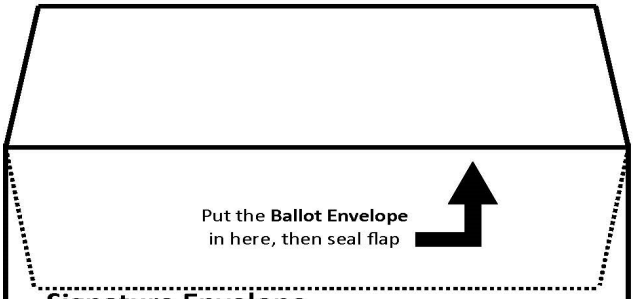


Signature Envelope

Voter must complete this section please print clearly

Voter name

Voter MN address

MN

ID number
(MN driver's license #,
MN ID card #,
or last four digits of SSN)

☐ I do not have a MN-issued driver's license, MN-issued ID card, or a Social Security Number.

I certify that on Election Day I will meet all the legal requirements to vote.

Voter Signature X

Witness must complete this section

Witness name

MN street address
(or title,
if an official
or notary)

Street Address

MN

City

I certify that:

- the voter showed me the blank ballots before voting;
- the voter marked the ballots in private or, if physically unable to mark the ballots, the ballots were marked as directed by the voter;
- the voter enclosed and sealed the ballots in the ballot envelope; and
- I am or have been registered to vote in Minnesota, or am a notary, or am authorized to give oaths.

Witness Signature X

If notary, must affix stamp

For Official Use Only
☐Accepted ☐Rejected (reason:)_____

Signature Envelope– Registered

Instructions

How to vote by absentee ballot for registered voters

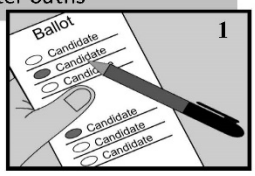
You will need:

- Ballot*
- Tan ballot envelope*
- White signature envelope*
- Larger white return envelope*

*If any of these items are missing, please contact your local election official.

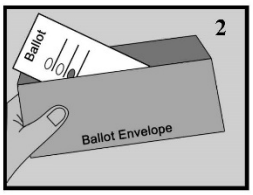
- Pen with black ink
- Your ID number
  Minnesota driver's license number, Minnesota ID card number, or the last four digits of your Social Security number.
  See below if you do not have any of these numbers.
- Witness
  Anyone registered to vote in Minnesota,
  including your spouse or relative,
  or a notary public,
  or a person with the authority to administer oaths

❶ Vote!



- Show your witness your blank ballot, then mark your votes in private.
- Follow the instructions on the ballot.
- Do not write your name or ID number anywhere on the ballot.
- Do not vote for more candidates than allowed. *If you do, your votes for that office will not count.*

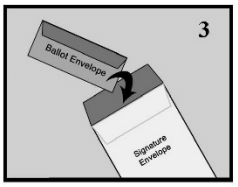
See the other side if you make a mistake on your ballot.



❷ Seal your ballot in the tan ballot envelope

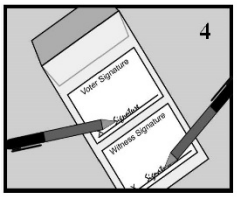
- Do not write on this envelope.

❸ Put the tan ballot envelope into the white signature envelope



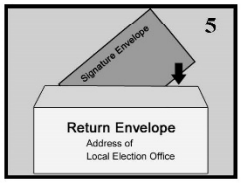
❹ Fill out the white signature envelope <u>completely</u>

- If there is no label, print your name and Minnesota address.
- Print your Minnesota driver's license number, Minnesota ID card number, or the last four digits of your Social Security number.
  Be sure to use one of same numbers that you provided on your absentee ballot application.
  If you do not have any of these numbers, check the box.
- Read and sign the oath.
- Ask your witness to print their name and Minnesota <u>street</u> address, including city (not a P.O. Box), and sign their name.
  If your witness is an official or notary, they must print their title instead of an address. Notaries must also affix their stamp.
- Seal the envelope.



❺ Put the signature envelope into the larger white return envelope to protect your private information from view

- Seal the envelope.



❻ Return your ballot <u>by Election Day to the address on the return envelope</u>

Ballots may not be delivered to your polling place.

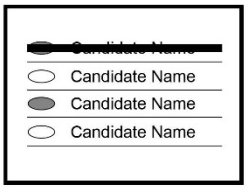
You have three options:

- Send it so it arrives by Election Day, using U.S. mail or a package delivery service,
- Deliver it in person before election day or by 3:00 p.m. on Election Day, or
- Ask someone to deliver it by 3:00 p.m. on Election Day.
  This person cannot deliver more than 3 ballots.

See the other side for special instructions if you have a disability.

Correcting a mistake

- If time allows, ask for a new ballot from your election office. Contact your election office at [e-mail] or [phone number], or
- Completely cross out the name of the candidate you accidentally marked and then mark your ballot for the candidate you prefer (do not initial your corrections).



If you have a disability:

If you have a disability or cannot mark your ballot, your witness may assist you by marking your ballot at your direction, assembling the materials, and filling out the forms for you.

When signing the envelope, Minnesota law says you may:

- Sign the return envelope yourself, or
- Make your mark, or
- Ask your witness to sign for you in your presence. (Have the witness sign their own name as well.)
- If you have adopted the use of a signature stamp for all purposes of signature, you may use your signature stamp or ask your witness to use your signature stamp in your presence.

Minnesota Statutes, section 645.44, subdivision 14

Please note: Voting is not covered by power of attorney. A person with power of attorney may only sign for you in your presence, as outlined above.

Confidentiality Notice: If your ballot envelope is accepted, your name and address is available to the public upon that acceptance, when used for elections, political and law enforcement purposes. Otherwise, the data you supply on your signature envelope is restricted to election officials until 8:00 p.m. on Election Day. After that time, your envelope and the data on it, other than your identification number, are public information. Your ID number is required to ensure that the ballot is returned by the same voter who applied for it. You may refuse to provide it, but doing so may lead your absentee ballot to be rejected.

2023 Minnesota Absentee Ballot Application

Complete lines 1 through 7 below. Please print clearly.

Return this application as soon as possible. Ballots must be returned by election day to be counted.

Important: Active duty military and overseas voters should not use this application. See the other side for more information.

1. absentee ballots requested for the following election(s) *(if no election is marked, a ballot will be mailed for the next election only)*

☐ 2/14 Special Election ☐ 4/11 Special Election ☐ 8/8 Primary Election ☐ ***Both*** 8/8 & 11/7 Elections
☐ 3/14 Township Election ☐ 5/9 Special Election ☐ 11/7 General Election ☐ Other (specify date):

2. last name or surname | first name | middle name | suffix

3. date of birth (mm/dd/yyyy) | county where you live | phone number - -

email address

4. mark all boxes that apply:

☐ I have a MN-issued driver's license or MN ID card. The number is: ☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐ I have a social security number. The last four digits are: XXX-XX- ☐☐☐☐

☐ I do not have a MN-issued driver's license, MN-issued ID card or a social security number.

Your identification number will be compared to the one on your absentee ballot envelope.

5. address where you live (residence) | apt. | city | **MN** | zip code

6. address where your absentee ballot should be sent | apt. | city | state | zip code

7. I certify that I:

- am completing this application on my own behalf;
- will be at least 18 years old on election day;
- am a citizen of the United States;
- will have resided in Minnesota for 20 days immediately preceding election day;
- maintain residence at the address given on this application form;
- am not under court-ordered guardianship in which the court order revokes my right to vote;
- have not been found by a court to be legally incompetent to vote;
- have the right to vote because, if I have been convicted of a felony, my felony sentence has expired (been completed) or I have been discharged from my sentence; and
- have read and understand this statement: The above information is accurate, and I sign this application form under penalty of perjury, a felony punishable by not more than 5 years imprisonment, a fine of not more than $10,000, or both.

sign here: X_____ **date** ____/____/____

See other side for special instructions for voters with disabilities or power of attorney.

official use only

Primary ➔ ☐ reg ☐ non-reg	received date	ballot issued date	initials	type M C HCF	reason replaced ☐ rejected ☐ lost ☐ spoiled ☐ never received	repl. date:	precinct
General ➔ ☐ reg ☐ non-reg	received date	ballot issued date	initials	type M C HCF	reason replaced ☐ rejected ☐ lost ☐ spoiled ☐ never received	repl. date:	school district

Return this application as soon as possible to:

Where to return your application

You should return this to your local election office. If not provided above, contact information for your local election official can be found under "Find County Election Office" at https://mnvotes.gov.

Options for returning absentee ballot applications

For federal, state or county elections, submit an absentee ballot application online at https://mnvotes.gov. -OR- Paper absentee ballot applications may be returned by mail, fax or as a scanned attachment to an email.

When your ballot will be sent

Your absentee ballot materials will be sent to you at least 46 days before the election, (excluding town elections held in March where materials will be sent 30 days before the election). If you applied after this date, your ballot will be sent when the application is received. Contact your local election official if you have not received your ballot. To check the status of your absentee ballot, visit https://mnvotes.gov.

Privacy Notice

Your exact date of birth, email address, and any ID number you give (Minnesota driver's license, state ID or last four digits of social security number) are private. Only election officials may access it.

Election officials ask for your exact date of birth so they can match your application to your voter record. If you refuse to give your date of birth, you won't get an absentee ballot.

Election officials ask for your email so they can contact you about your application. Also, the Office of the Secretary of State may email you (or contact you another way) about voting and elections, or ask for public input. If you refuse to give an email address, you cannot apply for an absentee ballot online and you will need to apply with a paper application.

Election officials ask for an ID number to check that the person who is casting the ballot is the same person who applied for it. If you have an ID number but refuse to give it, your absentee ballot might get rejected, and you won't be able to check your absentee ballot status online.

The rest of the data on your application is public when used for elections, political or law enforcement purposes. If you need to keep your contact data private because of personal safety concerns, call 1-877-600-8683 to learn what you can do.

Who may apply for a ballot

Each person must apply for themselves. It is a felony to make a false statement in an application for an absentee ballot, to attempt to cast an illegal ballot, or to help anyone to cast an illegal ballot.

If you think you may not be registered to vote

If you are not registered at the legal residence address provided, you will be sent a voter registration application with your ballot materials.

Information for active-duty military and overseas voters

If you are applying for an absentee ballot because you or your family are active-duty military or because you will be overseas and/or outside of the territorial limits of the United States, do not use this application. You are entitled to special protections if you apply using the Federal Postcard Application. For more information and to apply online, go to https://mnvotes.gov.

Options available to you if you have a disability

You may:

- sign the application yourself,
- make your mark, or
- ask another person to sign for you in your presence (have the person sign their own name as well.)
- If you have adopted the use of a signature stamp for all purposes of signature, you may use your signature stamp or ask another person to use your signature stamp in your presence. (See *Minnesota Statutes*, section 645.44, subdivision 14.)

Information regarding Power of Attorney

Voting is not covered by power of attorney. A power of attorney pertains only to affairs affecting property. A person with power of attorney may only sign for you in your presence, as outlined above. (See *Minnesota Statutes,* section 523.24, subdivision 14.)

Instructions

How to vote by absentee ballot

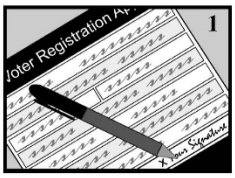
You will need:

- Ballot*
- Tan ballot envelope*
- Voter registration application*
- White signature envelope*
- Larger white return envelope*
- Pen with black ink
- Minnesota driver's license with your address *or* other authorized proof of where you live.
  See other side for a list of options

*If any of these items are missing, please contact your local election official.

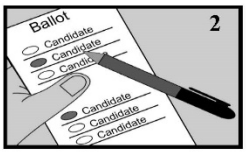
- Your ID number
  Minnesota driver's license number,
  Minnesota ID card number,
  or the last four digits of your Social Security number.
  See below if you do not have any of these numbers.
- Witness
  Anyone registered to vote in Minnesota,
  including your spouse or relative,
  or a notary public,
  or a person with the authority to administer oaths

Important: You must submit the voter registration application <u>with</u> your ballot (in the white signature envelope) for your vote to be counted.



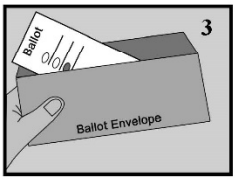
❶ Fill out the voter registration application and sign it

- Show your witness your driver's license or other authorized proof of where you live.
  See the other side for a list of options.



❷ Vote!

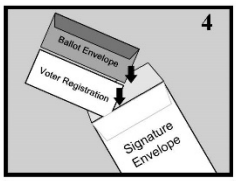
- Show your witness your blank ballot, then mark your votes in private.
- Follow the instructions on the ballot.
- Do <u>not</u> write your name or ID number anywhere on the ballot.
- Do <u>not</u> vote for more candidates than allowed. *If you do, your votes for that office will not count.*
  See the other side if you make a mistake on your ballot.



❸ Seal your ballot in the tan ballot envelope

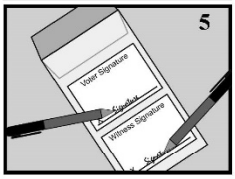
- Do not write on this envelope.

❹ Put the tan ballot envelope and the voter registration application in the white signature envelope



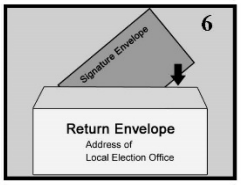
❺ Fill out the white signature envelope <u>completely</u>

- If there is no label, print your name and Minnesota address.
- Print your Minnesota driver's license number, Minnesota ID card number, or the last four digits of your Social Security number.
  Be sure to use one of the same numbers that you provided on your absentee ballot application.
  If you do not have any of these numbers, check the box.
- Read and sign the oath.
- Ask your witness to print their name and Minnesota <u>street</u> address, including city (not a P.O. Box), indicate which proof you showed them, and sign their name.
  If your witness is an official or notary, they must print their title instead of an address.
  Notaries must also affix their stamp.
- Seal the envelope.



❻ Put the signature envelope into the larger white return envelope to protect your private information from view

- Seal the envelope.



❼ Return your ballot <u>by Election Day to the address on the return envelope</u>

Ballots may not be delivered to your polling place.

You have three options:

- Send it so it arrives by Election Day, using U.S. mail or a package delivery service,
- Deliver it in person before election day or by 3:00 p.m. on Election Day, or
- Ask someone to deliver it by 3:00 p.m. on Election Day.
  This person cannot deliver more than 3 ballots.

Options for proof of where you live

A valid Minnesota driver's license, Minnesota ID card, or permit with your current address

or

A photo ID that does not have your current address along with a document that has your current address

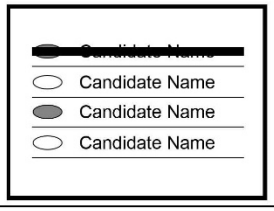
- **Eligible photo IDs:** Minnesota or another state's driver's license, learner's permit, or ID card; U.S. passport; U.S. military or veteran ID card; Minnesota high school/college/university ID card; or tribal ID card with your signature, from a tribe recognized by the Bureau of Indian Affairs (BIA).
- **Eligible documents with your current address:** an original bill, including account statements and start-of-service notifications, dated within 30 days before or with a due date 30 days before or after the election; a current student fee statement; or a residential lease if valid through election day. Eligible bills are: gas, electric, solid waste, water, sewer, phone, cell phone, television, Internet provider, credit card, or banking services; or bills for rent or mortgage payments.

or one of the following:

- A yellow receipt for a valid Minnesota driver's license, Minnesota ID card, or permit with your current address
- Vouching: the signature of a registered voter who lives in your precinct and personally knows that you live in the precinct. If your witness is registered to vote in this precinct, your witness may vouch for you.
  This person must complete and sign the voucher form on the back of the voter registration application.
- A tribal ID card with your name, address, signature, and picture, from a tribe recognized by the BIA
- A "Notice of Late Registration" if you received one from the county auditor or city clerk
- If you have moved within your precinct or changed your name, a current registration in the precinct
- Vouching for residents of certain residential facilities: the signature of an employee of your residential facility, including nursing homes, group homes, battered women's shelters, homeless shelters, etc.
  If you are not sure if the residential facility where you live is eligible, call your local election official.
  The employee must complete and sign the voucher form on the back of the voter registration application.

Correcting a mistake

- If time allows, ask for a new ballot from your election office. Contact your election office at [e-mail] or [phone number], or
- Completely cross out the name of the candidate you accidentally marked and then mark your ballot for the candidate you prefer (do not initial your corrections).



If you have a disability:

If you have a disability or cannot mark your ballot, your witness may assist you by marking your ballot at your direction, assembling the materials, and filling out the forms for you.

When signing the envelope, Minnesota law says you may:

- Sign the return envelope yourself, or
- Make your mark, or
- Ask your witness to sign for you in your presence. (Have the witness sign their own name as well.)
- If you have adopted the use of a signature stamp for all purposes of signature, you may use your signature stamp or ask your witness to use your signature stamp in your presence.

Minnesota Statutes, section 645.44, subdivision 14

Please note: Voting is not covered by power of attorney. A person with power of attorney may only sign for you in your presence, as outlined above.

Confidentiality Notice: If your ballot envelope is accepted, your name and address is available to the public upon that acceptance, when used for elections, political and law enforcement purposes. Otherwise, the data you supply on your signature envelope is restricted to election officials until 8:00 p.m. on Election Day. After that time, your envelope and the data on it, other than your identification number, are public information. Your ID number is required to ensure that the ballot is returned by the same voter who applied for it. You may refuse to provide it, but doing so may lead your absentee ballot to be rejected.