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STATE OF MINNESOTA DISTRICT COURT

COUNTY OF SCOTT FIRST JUDICIAL DISTRICT

Aaron Paul,

Contestant,

v.

Brad Tabke,

Contestee.

Court File No. 70-CV-24-17210

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above-entitled matter came before the Honorable Tracy L. Perzel, Judge of District Court, First Judicial District, for evidentiary hearing on Contestant's Notice of Election Contest on December 16 and 17, 2024, at the Scott County Government Center in Shakopee, Minnesota.

R. Reid LeBeau II, Esq., appeared on behalf of Aaron Paul, Contestant.

David J. Zoll, Esq., and Rachel A. Kitze Collins, Esq., appeared with and on behalf of Brad Tabke, Contestee, who also appeared.

Summary

In the November 5, 2024, General Election for Minnesota House District 54A, with candidates Aaron Paul and Brad Tabke, 21,980 voters had their votes counted. Unofficial election results showed only 14 votes separated Brad Tabke's reelection as a State Representative over Aaron Paul.

In the normal process of auditing the election results and in preparation for the gathering and reporting of the official vote totals, Scott County discovered on November 7, 2024, that 21 absentee ballots had not been counted. These absentee ballots had been cast, or voted, by voters at

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the early voting location administered by the City of Shakopee. Twenty of these voters were from Shakopee Precinct-10 and one of the voters was from Shakopee Precinct-12A.

Despite diligent searching, to include at Shakopee City Hall, these missing absentee ballots were not found. Scott County informed Aaron Paul, Brad Tabke, and the Scott County Canvassing Board (which would later gather the official vote totals) about these missing absentee ballots. The investigation into these missing ballots reflects they were likely inadvertently discarded while still sealed in their secrecy envelopes.

After an official recount requested by Aaron Paul, the Scott County Canvassing Board reported the official election results based on the ballots then in hand and not including the uncounted, missing ballots. Fourteen votes still separated Aaron Paul and Brad Tabke.

The process for challenging the official election results is this election contest brought by Aaron Paul. By public filing, Aaron Paul alleges three reasons for challenging the official election results. First, he alleges uncertainty exists regarding which candidate received the largest number of votes that were legally cast. Second, he alleges elections officials deviated materially from proper election procedures and, in doing so, directly impacted the results of this election. And, third, he alleges Scott County officials engaged in deliberate, serious, and material violations of the Minnesota Election Law.

The Court was selected by Aaron Paul and Brad Tabke to consider these allegations and held an evidentiary hearing where Aaron Paul and Brad Tabke called witnesses to testify in open court and presented exhibits that serve as the evidentiary basis for the Court's decision. Using this evidentiary record, the Court must decide whether or not Aaron Paul proved any of his three election contest grounds by the greater weight of the evidence.

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The Court has carefully considered the testimony of Scott County and City of Shakopee officials, election judges who staffed the Shakopee early voting location, and 12 of 20 voters from Shakopee Precinct-10 whose envelope absentee ballots went uncounted. In addition, the Court has thoroughly reviewed each of the exhibits including, among others, election-related documents.

Of the 12 voters from Shakopee Precinct-10 who testified, six testified they voted for Aaron Paul, and six testified they voted for Brad Tabke. This leaves eight identified Shakopee Precinct-10 voters who did not testify and one unidentified Shakopee Precinct-12A voter who did not testify. For purposes of this election contest only, and giving Aaron Paul the benefit of any plausible doubt, the Court considers the votes of the nine voters who did not testify to have been nine votes for Aaron Paul. The table below reflects that even with the 21 uncounted ballots, there is not uncertainty in the present, official election results as to which candidate received the most legally cast votes or an effect on the election results.

	Paul	Tabke	Write In
Votes that were counted (21,980 votes)	10,965	10,979	36
Votes that went uncounted (21 votes)	15	6	---
TOTAL	10,980	10,985	36

The Court has applied the law, including the statutes Aaron Paul alleges were violated and prior court decisions relevant to the distinct facts of this election contest.

Aaron Paul has not proven his three election contest grounds by the greater weight of the evidence.

There is no basis in fact or law for holding a special election.

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Based on the evidence received during the evidentiary hearing, the written submissions, arguments of counsel, and all the files, records, and proceedings herein, the Court makes the following:

Findings of Fact and Conclusions of Law

1. Contestant, Aaron Paul ("Paul"), and Contestee, Brad Tabke ("Tabke"), were competing candidates in the 2024 General Election for State Representative in Minnesota House District 54A ("House 54A"). Tabke won the General Election held November 5, 2024, by a margin of 14 votes.
2. By Notice of Election Contest filed November 29, 2024, Paul alleges:
    a. a question of which candidate received the largest number of votes legally cast;
    b. irregularity in the conduct of the election which directly impacted the results of the election; and
    c. deliberate, serious, and material violations of the Minnesota Election Law.
3. On December 4, 2024, the parties selected the undersigned Judicial Officer to preside over this matter in accordance with Minn. Stat. § 209.10, subd. 2.
4. The record on which the Court considers Paul's claims includes testimony, exhibits, and stipulations of the parties. The Court cannot and does not consider evidence beyond the record of this evidentiary hearing.
5. Paul presented the following witnesses in his case in chief, intermingled with witnesses for Tabke, at Paul's request, to accommodate witness scheduling:
    a. Julie Hanson, Scott County Elections Administrator
    b. Matt Lehman, Shakopee Mayor
    c. Voter Number 14

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d. Voter Number 15

e. Voter Number 17

f. David Beer, Scott County Commissioner and Scott County Canvassing Board Member

g. Voter Number 16

h. Voter Number 10

i. Voter Number 4

6. Tabke presented the following witnesses in his case in chief, not in this order, as explained above:

a. Kay Gamble, Shakopee County Elections Judge

b. Chelsea Petersen, Assistant Shakopee City Administrator

c. Voter Number 9

d. Voter Number 5

e. Voter Number 11

f. Voter Number 18

g. Voter Number 20

h. Voter Number 12

i. Rocky Swearengin, Shakopee Election Judge and Absentee Ballot Board Member

j. Dr. Aaron Rendahl, Associate Professor of Statistics and Informatics

7. In his rebuttal case, Paul presented the testimony of Dr. Thomas Brunell, Professor of Political Science.

8. The parties submitted the following exhibits, which were received by the Court either without objection or by stipulation:

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Exhibit	Description
1	Affidavit of Julie Hanson
2	11/27/24 Letter of Ron Hocevar, Scott County Attorney
3	Scott County Absentee Handbook
4	Spreadsheets titled "Jackson and Louisville TWP," "DB Applications and Machine Counts," "AB Count from 9/20 – 10/17"
5	Abstract of Votes Cast for Federal, State, and Judicial Offices in the County of Scott for the General Election held 11/5/24
6	Emails regarding missing votes
7	Curriculum Vitae of Thomas L. Brunell
8	Tabulator machine tape with handwritten notations
9	Absentee Ballots By Current Status and Location (redacted)
10	Precinct-10 Election Documents for Voters Number 1-20 (redacted)
201	Email thread with spreadsheets between C. Petersen, B. Reynolds, and L. Hensen
202	Compilation of emails regarding missing votes
203	AB machine tape with handwritten notes
204	Table, Scott County early vote results (redacted)
205	Table, Shakopee P-10 early votes through October 18 (redacted)
206	Recount Worksheet
207	Expert Report of Dr. Aaron Rendahl
300	Voter Identification Spreadsheet/Key (sealed) (Idx. 21)[1]
304	Voter 4 Election Documents (sealed)
305	Voter 5 Election Documents (sealed)
309	Voter 9 Election Documents (sealed)
310	Voter 10 Election Documents (sealed)
311	Voter 11 Election Documents (sealed)
312	Voter 12 Election Documents (sealed)
314	Voter 14 Election Documents (sealed)
315	Voter 15 Election Documents (sealed)
316	Voter 16 Election Documents (sealed)

[1] "Idx. ____" refers to the document number of a filing in the present court file.

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317	Voter 17 Election Documents (sealed)
318	Voter 18 Election Documents (sealed)
320	Voter 20 Election Documents (sealed)

9. On December 15, 2024, the Court entered its Order to preserve the anonymity of voter-witnesses the parties intended to call at this evidentiary hearing. (Idx.19.) It required voter-witnesses' identities to be anonymized (i.e., to Voter Number 1, Voter Number 2, and so on), and further, required the use of a voter identification key (Idx. 21, Sealed Ex. 300), redacted exhibits for public view, and unredacted (and sealed) exhibits for use by the parties and the Court.

10. During the evidentiary hearing, the parties stipulated:

    a. this type of election contest is a matter of first impression;

    b. preservation of secrecy envelopes is a best practice;

    c. there are more voters in a regular election than in a special election; and

    d. Voter 5 and Voter 11 are married.

11. To the extent Paul or Tabke did not call other witnesses, present other exhibits, or enter into additional stipulations, those decisions were made by Paul and Tabke. The Court cannot and does not speculate as to the significance of evidence the parties chose not to present at the evidentiary hearing.

12. Post-hearing, the parties made the following filings:

    a. Paul's Memorandum of Law in Support of Election Contest filed December 23, 2024 (Idx. 30);

    b. Tabke's Responsive Brief filed December 27, 2024 (Idx. 31);

    c. Paul's Reply in Support of Election Contest filed December 30, 2024 (Idx. 32);

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d. Tabke's Proposed Findings of Fact, Conclusions of Law and Order filed December 30, 2024 (Idx. 33);

e. Paul's Proposed Findings of Fact, Conclusions of Law and Order filed December 31, 2024, which the Court has considered despite its untimely filing. (Idxs. 28, 34).

Election and Investigation of Ballot Discrepancy

13. Julie Hanson is the Scott County Property and Customer Service Manager and, within that role, she serves as Scott County's Elections Administrator. ("Elections Administrator Hanson"). She has been involved in approximately ten elections during her employment with Scott County.

14. For nearly three hours, Elections Administrator Hanson testified in person before this Court. With these in-person observations, the Court finds her testimony credible based on her demonstrated ability and opportunity to know, remember, and relate facts; her frankness and sincerity; and the reasonableness of her testimony in light of the other evidence in the case. Her demeanor was professional, candid, and indicative of the diligence with which (a) she approaches her job of administering elections for Scott County generally, and (b) she investigated the circumstances leading to this election contest specifically.

15. Election day for this election was November 5, 2024.

16. Elections Administrator Hanson testified:

a. As part of its normal post-election process of auditing elections and in preparation for the canvass, on November 7, 2024, Scott County, through its Elections Administrator Julie Hanson ("Elections Administrator Hanson"), was examining the Minnesota Statewide Voter Registration System ("SVRS") absentee ballot

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reports against the expected absentee results. These reports showed, at the precinct-by-precinct level:

i. in Shakopee Precinct-12A , Scott County had received votes for one ballot less than SVRS indicated had been cast (meaning, voted);

ii. in Shakopee Precinct-10, Scott County had received votes for 20 ballots less than SVRS indicated had been cast.

b. Elections Administrator Hanson explained that while a one-vote discrepancy was not unusual, in that there have been situations where a person obtains the absentee ballot and then does not vote, a discrepancy of 20 votes, like that in Shakopee Precinct-10, is unusual.

c. As a result, Scott County focused its search efforts, and eventually its investigation, on the missing Shakopee Precinct-10 absentee ballots.

d. Elections Administrator Hanson organized and led at least four physical counts (also known as hand or manual counts) of the Shakopee Precinct-10 absentee ballots and searched within the Shakopee early voting location at Shakopee City Hall ("Shakopee EVL") in an attempt to find the missing ballots. She and her team also performed a physical count of the Shakopee EVL's other election documents, including absentee ballot applications and signature envelopes, which confirmed that Shakopee Precinct-10 had issued 329 absentee ballots and votes had been received for 309 absentee ballots.

e. Elections Administrator Hanson disclosed the 21-vote discrepancy to Paul and Tabke, through their campaigns on November 8, and to the Scott County Canvassing Board before the board convened for the first time post-election.

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17. Paul and Tabke agree there was an official recount for the House District 54A race on November 21, 2024. (Idx. 33 at 2; Idx. 34 at 4; Ex. 206 (Recount Worksheet).) In this official recount, and specific to Shakopee Precinct-10 ballots, there were (a) 534 votes for Paul, (b) 731 votes for Tabke, and (c) 94 for "other" votes (Ex. 206). "Other" votes include write-in votes, undervotes, or overvotes.

18. Elections Administrator Hanson testified:

    a. write-in vote is a vote for someone other than the candidate;

    b. an undervote occurs when the voter does not vote for a candidate; and

    c. an overvote is a vote for more than the number of candidates once is allowed to select.

19. Paul and Tabke further agree the Scott County Canvassing Board ("Canvassing Board") met for a second time on November 25, 2024.[2] Exhibit 5 is the second version of the Abstract of Votes Cast, a report generated from the official election returns in Minnesota's SVRS, and which was completed on November 25, 2024, by the Canvassing Board members in connection with the second canvass. (Ex. 5 at 73 ("Second Abstract").)

20. Elections Administrator Hanson further testified, as to Scott County ballots cast for Paul and Tabke only (i.e., without write-ins, undervotes, or overvotes), the Second Abstract indicated 10,965 ballots were cast for Paul and 10,979 ballots were cast for Tabke. Further narrowed to Shakopee Precinct-10 only, the Second Abstract indicated 534 ballots were cast for Paul and 731 ballots were cast for Tabke. (Ex. 5 at 18.)

21. The Second Abstract does not reference the 21 missing absentee ballots.

22. Mayor Matt Lehman ("Mayor Lehman") testified, in summary:

[2] There is no record evidence of the date the Canvassing Board met for the first time.

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a. He is the Mayor of the City of Shakopee and is a member of the Canvassing Board.

b. The Canvassing Board knew of the 21 missing ballots at its first Canvassing Board Meeting.

c. Elections Administrator Hanson had informed them of the missing ballots.

d. The Canvassing Board members understood they were to consider physical ballots in hand—not missing ballots—which he thinks was correct.

e. The Second Abstract indicated 534 ballots were cast for Paul and 731 ballots were cast for Tabke, which was without the missing ballots. (*Id.*)

23. Based on the record evidence, "ballots in hand" and "ballots that had been tallied" are synonymous with ballots that had been tallied through the tabulator machine.

24. When testifying at the evidentiary hearing, Mayor Lehman had some difficulty providing a direct answer regarding whether he believed the Second Abstract to be accurate, at times indicating it was accurate based on ballots in hand and at times implying, without stating, he did not believe it to be accurate based on the 20 missing ballots from Shakopee Precinct-10.

25. Commissioner David Beer ("Commissioner Beer") testified, remotely by Zoom videoconference technology ("Zoom") , in summary:

a. He is a Scott County Commissioner and a member of the Canvassing Board.

b. He was aware of the 21 missing ballots that were not counted and was told of it by some combination of the Scott County elections official, the Scott County Administrator, and/or the Scott County Attorney.

c. He voted to approve the canvass based on his understanding, as communicated to the Canvassing Board by the Scott County Attorney, that the abstract of votes was

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for votes that had been tallied and, if there was a contest, that was "the point at which it would be triggered."

d. He does not believe the canvass report to be accurate in that it does not include the 20 missing ballots.

26. In context, Mr. Beer's statement referencing a contest suggested some knowledge that the issue of the missing votes could be addressed at an election contest.

27. On November 25, 2024, each member of the Canvassing Board—including Mayor Lehman, Commissioner Beer, and the board's three other members—certified the accuracy of the Scott County precinct-by-precinct vote totals by signing their individual signatures below the following certification:

> We, the legally constituted county canvassing board certify that we have herein specified the names of the persons receiving votes and the number of votes received by each within the county at the State General Election held on Tuesday, November 5, 2024. As appears by the returns of said election in the several precincts in SCOTT COUNTY, duly returned to, filed, opened, and canvassed, and now remaining on file in the office of the county auditor. Witness our official signature at Shakopee in SCOTT County this 25th day of November, 2024.

(Ex. 5 at 73.)

28. There is no record evidence that the Canvassing Board had any intent to mislead regarding the Scott County, or Shakopee Precinct-10, vote totals when signing the Second Abstract with knowledge of the 21 missing ballots.

29. The contents of the Second Abstract have not changed since November 25, 2024, nor has the existence of the missing ballots changed.

30. The Court does not find credible Mayor Lehman's testimony credible when he implied, without expressly stating, he did not believe the Second Abstract to be accurate. This is inconsistent with Mayor Lehman signing and thereby certifying the Second Abstract.

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31. The Court does not find credible Commissioner Beer's testimony when he stated he did not believe the Second Abstract to be accurate. This is inconsistent with Commissioner Beer signing and thereby certifying the Second Abstract.

32. Elections Administrator Hanson further testified:

    a. In her capacity as Scott County Elections Administrator, she discovered the 21-ballot discrepancy and led Scott County's investigation into this discrepancy, which involved a review of election-related documents and reports maintained by Scott County and/or the State of Minnesota, examining other documentary evidence, and interviewing witnesses.

    b. Scott County oversees various cities' administration of elections within Scott County, including the City of Shakopee. Scott County provided the framework—training and guidance— for the City of Shakopee to administer the election.

    c. Beginning September 20, 2024, Shakopee conducted early voting at its City Hall, the Shakopee early voting location ("Shakopee EVL"). This election activity was administered by Shakopee City Clerk Lori Hensen and involved two types of in-person absentee balloting.

    d. On and before October 17, 2024, Shakopee conducted "envelope absentee voting" for the 2024 General Election. Envelope absentee voting involves the voter going in person to Shakopee City Hall, where the voter completes an absentee ballot application; obtains the ballot, secrecy envelope, and signature envelope; votes; seals the ballot in the secrecy envelope; seals the secrecy envelope in the signature envelope; and then places the sealed signature envelope and its contents into the locked ballot box for later processing.

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e. From October 18 to November 4, 2024, the day before the election day, Shakopee conducted "direct balloting." Like envelope absentee voting, direct balloting involves the voter going in person to City Hall, where the voter completes an absentee ballot application, obtains a ballot, and votes, but instead of sealing the ballot in envelopes, the voter places the ballot into the tabulator machine for tallying.

f. The Shakopee EVL neither received nor accepted mail-in absentee ballots, as Scott County handled all mail-in ballots, meaning the absentee ballots at issue in this case are not mail-in absentee ballots.

33. Elections Administrator Hanson further testified:

a. Scott County provides cities administering elections within Scott County an Absentee Handbook drafted by Elections Administrator Hanson's team to assist cities' staff in administering the election. (Ex. 3.)

b. One of the instructions in the Absentee Handbook directs the storing of ballot secrecy envelopes. (Ex. 3 at 11 (marked bates number AP00116).) Whether or not the secrecy envelopes are considered "election materials" for retention purposes, Scott County tries to err on the side of caution by keeping everything involved in the election process for the required retention period.

34. The parties stipulated that the storage of ballot secrecy envelopes is a best practice.

35. Elections Administrator Hanson testified that while investigating the 21-ballot discrepancy, she learned the City of Shakopee did not retain the secrecy envelopes for this election and, likely, for prior elections. Specifically, she testified that post-election,

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a request was made to the City of Shakopee for their secrecy envelopes, and Scott County Elections Administration was advised they had been thrown into the garbage.

36. A letter prepared by Scott County Attorney Ron Hocevar indicated that Scott County Elections Administration tracked the trash and recycling and learned the recycling bale had already been sent to shredding. (Ex. 2 (Letter of Scott County Attorney).)

37. Elections Administrator Hanson further testified:

    a. Another of the various instructions in the Absentee Handbook addresses the process of "balancing," meaning the process of verifying that the number of absentee ballot applications matches the number of absentee ballots received each day at the Precinct or "ballot-split" (meaning, the school district) level. (Ex. 3 at 12-15 (bates nos. AP00117-20).)

    b. During the investigation, Scott County learned the Shakopee EVL conducted some daily balancing by verifying that the total number of absentee ballot applications matched the total number of absentee ballots received. They did not, however, do this balancing to the Precinct or ballot-split level.

38. Minnesota law specifies procedures for storing and counting absentee ballots and states these tasks are to be conducted by two members of the absentee ballot board. Minn. Stat. § 203B.121, subd. 5.

39. Elections Administrator Hanson testified that during the investigation, she learned these procedures were not followed when only Shakopee City Clerk Hensen processed absentee ballots on October 18, as observed by Shakopee Election Judge Kay Gamble ("Gamble").

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Identifying Affected Voters

40. Elections Administrator Hanson further testified:

    a. Using records maintained by Scott County and the Minnesota Secretary of State, Elections Administrator Hanson was able to identify, by name, the 329 Shakopee Precinct-10 voters who cast the 329 absentee ballots at the Shakopee EVL.

    b. Elections Administrator Hanson and Assistant City Administrator for the City of Shakopee Chelsea Petersen ("Assistant Shakopee Administrator Petersen") reviewed balancing spreadsheets produced by Gamble for the Shakopee EVL. These spreadsheets recorded daily envelope absentee ballot application totals to October 17 and daily direct balloting application totals beginning October 18. (Ex. 202 at 2-4.) These spreadsheets also memorialized the tabulator machine count that Shakopee EVL recorded each day (except for October 18) after balancing the absentee voter applications against the SVRS data.

    c. When Assistant Shakopee Administrator Petersen reviewed these Shakopee EVL spreadsheets, she observed that the total number of envelope absentee ballots accepted from September 20 to October 17, when combined with the number of direct ballots accepted on October 18 (the first day of direct balloting), did not match the tabulator machine total.

41. The table below is sourced from data within Exhibit 202 and shows that the number of absentee ballots counted through the tabulator machine as of October 18 was a number 21 ballots less than the total number of absentee ballots received by Shakopee EVL:

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Description of Ballots	Number of Ballots	Source
Absentee Ballots received from September 20 to October 17	1124	Spreadsheet titled "AB Count from 9/20 – 10/17" (row titled "Total") (Ex. 202 at 4)
Plus Direct Ballots received On October 18	+ 276	Spreadsheet titled "DB Applications and Machine Counts" (row titled "10/18", column titled "DB Apps") (Ex. 202 at 3)
TOTAL Ballots Received as of October 18	= 1400	-------
Minus Counted Ballots as of October 18[3]	- 1379	Spreadsheet titled "DB Applications and Machine Counts" (row titled "10/18", column titled "Machine" (Ex. 202 at 3)
Uncounted Ballots	**= 21**	

42. Elections Administrator Hanson testified that:

a. Because the total absentee ballots received at the Shakopee EVL as of October 18 was different from the total absentee ballots counted as of October 18, the 21-ballot discrepancy had to have occurred on or before October 18.

[3]According to Shakopee Election Judge Kay Gamble's testimony, each day after October 18, the first day of direct balloting, Shakopee EVL recorded the actual tabulator machine total. Whomever recorded it from the tabulator machine would leave the information for Gamble, who would then memorialize it. Thus, "Counted Ballots as of October 18" is the difference between the counted ballots as of October 21 and the direct ballots received on October 18.

Ex. 202 at 3 - Spreadsheet "DB Application and Machine Counts"	Number of Ballots
Counted Ballots as of October 21 ("Machine")	1587
Minus Direct Ballots Received on October 21 ("DB Apps")	- 208
Equals Counted Ballots as of October 18 ("Machine")	= 1397

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b. With this date in mind, she was able to use the SVRS data and reports to identify the 20 voters who cast the missing absentee ballots for Shakopee Precinct-10 at the Shakopee EVL.

   i. Of these 329 voters, 87 voters cast their absentee ballots on or before October 30; and

   ii. Of these 47 voters who cast their absentee ballots on or before October 30, 47 voters by further limiting the pool to voters who cast their ballots on or before October 18.

c. Finally, of these 47 voters:

   i. 17 voters had their ballots marked "accepted" in SVRS by Shakopee City Clerk Hensen on October 17, which yielded 17 voters; and

   ii. an additional three voters cast their ballots later on October 17 but those ballots were not marked "accepted" in SVRS by Shakopee City Clerk Hensen until October 18.

43. The following table shows this filtering process for absentee ballot voters who voted at the Shakopee SVL:

Absentee Ballot Voters for Shakopee Precinct-10	Number	Source
who cast their ballots on or before October 30	87 voters	Ex. 9 (final column, ballot "Accepted" dates on/before October 30) and Elections Administrator Hanson's testimony
who cast their ballots on or before October 18	47 voters	Ex. 9, (final column, ballot "Accepted" dates on/before October 30) and Elections Administrator Hanson's testimony

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(of the 47 voters) whose ballots were marked "accepted" by Shakopee City Clerk Hensen on October 17, of the 47 voters who cast their ballots on or before October 18	17 voters	Elections Administrator Hanson's testimony regarding review of SVRS data
(of the 47 voters) whose ballots were cast later on October 17 but were not marked "accepted" by Shakopee City Clerk Hensen until noon on October 18	3 voters	Elections Administrator Hanson's testimony regarding review of SVRS data

44. Elections Administrator Hanson testified:

a. The 17 ballots marked "accepted" by Shakopee City Clerk Hensen on October 17 were not included in ballots prepared for counting and opened on October 17 at the Shakopee EVL.

b. She reached this conclusion based on (1) investigative interviews with those who staffed the Shakopee EVL and timing of certain activities there; (b) review of time cards for those who staffed EVL; and (c) review of the SVRS data and reports including that at Exhibit 9:

i. Specifically, the Absentee Ballot Board ("Absentee Ballot Board") had convened at about 10:00 a.m. on October 17 at the Shakopee SVL, with Scott County Election Judges Rocky Swearengin ("Swearengin") and Latisha Porter. They were preparing a set of absentee ballots for acceptance by performing the task of comparing each voter's identifying information on the absentee ballot applications to the voter's identifying information on the signature envelopes. This set of ballots included the 17 ballots for Shakopee Precinct-10. The Absentee Ballot Board did not open this set of

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ballots because Shakopee City Clerk Hensen first needed to mark them "accepted" in SVRS.

ii. By 11:00 a.m., a third election judge arrived at Shakopee EVL, and the Absentee Ballot Board—including Swearengin—began working with another set of ballots that had already been accepted by the Absentee Ballot Board and marked "accepted" in SVRS by Shakopee City Clerk Hensen.

1. As to this second set of ballots, the Absentee Ballot Board was provided the total numbers of ballots for each precinct from SVRS.
2. The ballots were then counted by precinct and the counts compared to the precinct-by-precinct numbers they were given. Initially, the ballots did not match because "spoiled" ballots had been included in the SVRS numbers.
3. The spoiled ballots were removed from the precinct-by-precinct numbers, which them matched the number of ballots the Absentee Ballot Board had in hand for each precinct.
4. The Absentee Ballot Board began the process of opening these absentee ballots in preparation for counting.
5. The process for opening ballots, as set forth in the Absentee Handbook, was followed.
6. After the Absentee Ballot Board began the counting/opening process at 11:00 a.m., no one brought the Absentee Ballot Board additional ballots for opening.

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c. SVRS data indicates three additional voters cast their envelope absentee ballots for Shakopee Precinct-10 at the Shakopee EVL later in the day on October 17. These ballots were not accepted into SVRS until the morning of October 18.

d. After the 11:00 a.m. hand-counting and ballot-opening process was completed for this set of ballots, and the three additional absentee voters had voted, the investigation indicates 99 unopened absentee ballots remained at Shakopee EVL for all precincts. Twenty (20) of these unopened ballots were for Shakopee Precinct-10.

e. Exhibit 10 is a 40-page document (redacted) containing absentee ballot applications and corresponding signature envelopes for these 20 voters whose Shakopee Precinct-10 ballots were not counted.

f. As to these 20 absentee ballots, Scott County's investigation indicates they were placed in the locked cabinet at the Shakopee EVL, stored overnight until the morning of October 18 (Friday), when the final accepting of the three additional absentee envelope ballots was performed that morning.

g. When interviewed, Shakopee City Clerk Hensen said she had not opened the envelope absentee ballots on October 18, as she was then performing another election-related activity. That activity—healthcare facility voting—did not begin until October 30. (Ex. 202 at 3, showing "HCF" on "10/31", "10/31", "11/1".) As a result, this statement by Shakopee City Clerk Hensen was not credible.

h. Elections Administrator Hanson's conclusion is that the 20 uncounted absentee ballots from Shakopee Precinct-10 were lost during the process of opening and

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preparing for counting the absentee ballots that were accepted on October 17 and 18. There is no other plausible explanation.

i. Scott County has not been able to determine that any of the Absentee Ballot Board members were involved in the opening process for those 20 ballots, as it appears the final accepting and opening was done by Shakopee City Clerk Hensen. There is no direct evidence of anyone else being involved.

j. The investigative interviews reflect no other Shakopee EVL staff were involved in preparing ballots for acceptance, marking ballots "accepted," or opening ballots aside from the Absentee Ballot Board and Shakopee City Clerk Hensen.

k. There is no other explanation for where the missing absentee ballots could be other thana that they were thrown away.

l. Elections Administrator Hanson has no doubt that the 20 ballots identified from the pool of 47 absentee ballots cast on or before October 18 at the Shakopee EVL are the 20 missing Shakopee Precinct-10 ballots.

m. These 20 missing absentee ballots were validly cast by Minnesota residents entitled to vote in the General Election for House District 54A.

n. The 20 voters who cast the 20 missing absentee ballot for Shakopee Precinct-10 are identified in Exhibit 10 as Voter 1, Voter 2, and so on.

45. There is no plausible explanation for how or when the 20 uncounted and missing absentee ballots were lost aside from the conclusion reached by Elections Administrator Hanson.

46. Elections Administrator Hanson testified Scott County's investigation continued after November 27, 2024, and:

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a. has not changed any of her conclusions, including the conclusion that the 20 missing absentee ballots were validly cast by Minnesota residents entitled to vote in the General Election for House District 54A (Ex. 2); and

b. has only increased her confidence (1) in the preliminary conclusions she stated on November 26, 2024, in Exhibit 2 and (2) in Scott County's identification of the 20 voters linked to the 20 uncounted absentee ballots for Shakopee Precinct-10.[4]

47. The Court finds Elections Administrator Hanson's testimony and conclusions credible. She was subject to extensive questioning about her investigation, the information it uncovered, and the basis for her conclusions.

Election Judge and Shakopee Staff Testimony

48. Swearengin served as an election judge at Shakopee EVL and was a member of the Absentee Ballot Board for the 2024 General Election. The Court observed him testify in person and finds his testimony credible based on his firsthand knowledge of events at the Shakopee EVL (particularly those related to the Absentee Ballot Board's functions) and his ability to remember and relate those events. He was appropriately serious, frank, and sincere, and his testimony was reasonable in light of the other evidence in the case.

49. Swearengin participated in two processes at the Shakopee EVL: review of signature envelopes and absentee ballots as part of preparing the ballots to be marked "accepted" in SVRS and opening the absentee ballots in preparation for counting.

50. As to October 17, 2024, Swearengin testified:

[4] The City of Shakopee recently provided Scott County with 27 terabytes of data, which was represented to possibly have video footage "back to October 23"" of the Shakopee City Council chamber where the Absentee Ballot Board performed its work. Scott County had a forensic expert download data from the 27-terabytes Scott County provided. Elections Administrator Hanson testified Scott County does not yet know if the data Administrator Hanson testified Scott County does not yet know if the data actually contains video footage. Given that the ballot discrepancy existed as of October 18, the video footage, if any exists, would not have captured the events that caused the discrepancy five days before the October 23. Accordingly, the Court's decision is not impacted by this.

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a. October 17 was a "very busy" day because envelope absentee balloting was still occurring.

b. Shakopee City Clerk Hensen and three other election judges were in the Shakopee EVL, in a space separate from the City Council chamber, working to serve increasingly long lines of absentee voters.

c. The Absentee Ballot Board met in the Shakopee City Council chamber to ensure the safeguarding and securing of the ballots. This also allowed the Absentee Ballot Board to perform a proper count and begin reviewing absentee ballot applications against the signature envelopes for acceptance of ballots received from October 14 to 16.

d. Swearengin understood this was in preparation for Shakopee City Clerk Hensen to mark the ballots accepted in the SVRS.

e. Once the Absentee Ballot Board verified the identifying data and signatures on the absentee ballot applications and signature envelopes, these materials were returned to the absentee voting room in which the Shakopee EVL maintained them.

f. Later that day, the Absentee Ballot Board met again to begin opening ballots at the direction of Shakopee City Clerk Hensen, who provided the total number of ballots per precinct for comparison to the total number of signature envelopes by precinct. She also instructed the Absentee Ballot Board to maintain the signature envelopes, not to worry about the secrecy envelopes, and to bring the ballots to her when they were done opening up a precinct so she could verify the numbers.

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g. The Absentee Ballot Board started the opening process with Shakopee Precinct-1; however, the number of signature envelopes did not match the total number of ballots per precinct, as provided by Shakopee City Clerk Hensen.

h. Shakopee City Clerk Hensen instructed Swearengin to talk with Gamble and explain she only wanted the numbers of actual absentee ballots received, not including any additional ballots such as spoiled ballots.

i. The Absentee Ballot Board received the revised numbers from Gamble.

j. To the precinct level, the numbers of absentee ballots in SVRS, without the spoiled ballots, matched the actual numbers of ballots then in hand in the form of the sealed signature envelopes.

k. Next, the Absentee Ballot Board began the process of opening the ballots.

l. The opening process consisted of: opening and separating the white signature envelopes; removing the brown secrecy envelopes from the signature envelopes and separating them; opening the secrecy envelopes; removing the ballots from the secrecy envelopes; and separating the ballots.

m. They confirmed the white secrecy envelopes were empty and that they had all of the ballots. They then returned the ballots to the absentee ballot room.

n. All signature envelopes contained a secrecy envelope, and all secrecy envelopes contained a ballot.

o. After the secrecy envelopes were opened, they remained in the City Council room, but as far as he knew, they were discarded thereafter.

p. The Absentee Ballot Board returned the ballots to the absentee ballot room at the Shakopee EVL.

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q. October 17 was the only day he removed absentee ballots from the signature and secrecy envelopes.

51. As to October 18, 2024, Swearengin testified:

a. Direct balloting started, and he worked at Shakopee City Hall from noon until the Shakopee EVL closed.

b. Upon request of City staff, he and another election judge stayed after the Shakopee EVL closed to help the absentee ballots that had been opened through the tabulator machine.

c. He did not perform any actions related to accepting or opening of absentee ballot signature envelopes on this day.

52. Swearengin testified Shakopee kept track of the day-end tabulator number to verify against the number of absentee ballot applications.

53. Swearengin testified he did not know of the missing-ballot issue until sometime after the election when he heard about it on the news.

54. Swearengin testified credibly.

55. Gamble testified in person before this Court. The Court finds her testimony credible based on her firsthand knowledge of events at the Shakopee EVL and her ability to remember and relate those events. This is particularly true for those events related to the daily tracking of absentee ballots, the precinct-by-precinct numbers used in the opening process on October 17, and her observations of Shakopee City Clerk Hensen), Her testimony was frank, sincere, and reasonable in light of the other evidence in the case.

56. Gamble testified:

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a. She served as a Shakopee Election Judge at the Shakopee City Hall for the 2024 General Election and assisted voters when they came in to vote at Shakopee City Hall (the Shakopee EVL).

b. She helped voters when they came in to vote by finding each voter in the system, providing the voter with a ballot and envelopes (secrecy and signature), and explaining the voting process.

c. Swearengin was on the Absentee Ballot Board.

d. She also kept track of the daily absentee ballot numbers.

e. She did not serve on the Shakopee Absentee Ballot Board, accept ballots, mark them accepted in the SVRS system, or open ballot envelopes.

57. As to October 17, 2024, Gamble testified:

a. This was the last day of envelope absentee balloting.

b. The Absentee Ballot Board met that day to accept envelope absentee ballots and then began the process of opening envelope absentee ballots, which started by confirming the number of signature envelopes to be opened matched the number of ballots the Shakopee EVL had accepted.

c. Specifically, Gamble ran an SVRS report for Shakopee EVL absentee ballots and provided those numbers to the Absentee Ballot Board.

d. Any ballots accepted after Gamble ran this SVRS report would not have been included within the numbers she provided to the Absentee Ballot Board.

e. Initially, the number of accepted ballots did not match because the report Gamble had run included spoiled ballots. After excluding spoiled ballots, Gamble provided the Absentee Ballot Board with revised SVRS numbers for precinct-by-precinct

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ballot totals. Thereafter, she did not hear anything more about the numbers not matching.

58. As to October 18, 2024, Gamble testified:

a. This was the first day of direct balloting.

b. The envelope absentee ballots were run through the tabulator machine.

c. She counted 276 direct balloting applications that day.

d. Upon arrival at the Shakopee City Hall conference room, she observed Shakopee City Clerk Hensen—without assistance—processing the ballots from October 17, like an absentee ballot board would do, comparing the signatures and the envelope, accepting them into the system, and opening them.

e. Gamble asked Shakopee City Clerk Hensen if she needed help, and Shakopee City Clerk Hensen said it was fine as long as there were "two of us" in the room; another election judge named Mary was in the room when Gamble arrived.

f. Neither Gamble nor Mary helped Shakopee City Clerk Hensen with the absentee ballots that day.

59. As to Exhibit 202, Gamble testified:

a. She made these spreadsheets as an internal report to keep "balanced and accountable," which worked until the transition from envelope absentee voting to direct balloting.

b. The spreadsheets memorialized the daily ballot counts for the townships (by abbreviation "TWPs"), direct balloting (by abbreviation "DB machine counts"), and absentee balloting (by abbreviation "AB Counts").

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c. To verify the number of envelope absentee ballots, Shakopee EVL would count the absentee applications; remove the signature envelopes from the ballot box and count those; and compare those numbers against the SVRS reports for total envelope absentee ballots at Shakopee EVL. The numbers matched.

d. To verify the number of direct balloting ballots, Shakopee EVL would record the tabulator machine count at the end of each day. The next day, Gamble would record this number in her spreadsheet. On October 18, the first day of direct balloting, the tabulator machine total was not recorded at day's end. To determine this number, Gamble subtracted the direct ballots received on October 18 from the number of ballots run through the tabulator on October 18 to arrive at the number of ballots run through the tabulator machine on October 17.

e. Initially, Gamble memorialized these numbers by hand. She reduced the handwritten notes to the spreadsheets on October 26.

60. Gamble testified that on Monday, October 21, 2024, she first noticed the numbers did not add up and told Shakopee City Clerk Hensen and another Shakopee City employee who worked for Shakopee City Clerk Hensen.

61. Gamble testified credibly.

62. Assistant Shakopee Administrator Petersen testified in-person before this Court. Her testimony, while limited, reflected her ability to know, remember, and relate the facts surrounding her review of spreadsheets received from Shakopee City Clerk Hensen. She was frank and sincere, and the Court finds her testimony credible.

63. Shakopee City Administrator Petersen testified:

a. She is the Assistant City Administrator for Shakopee.

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b. She learned of the 21-ballot discrepancy from Shakopee City Clerk Hensen on November 8, 2024.

c. Later the same day, Shakopee City Clerk Hensen emailed Assistant Shakopee Administrator Petersen spreadsheets showing absentee ballot counts that appeared to show the 21-ballot discrepancy "going into direct balloting."

d. The spreadsheets are the same spreadsheets as contained in Exhibit 202.

64. Assistant Shakopee Administrator Petersen testified credibly.

Voter Testimony

65. As detailed previously, Scott County Elections Administration identified the 20 Shakopee Precinct-10 voters whose envelope absentee ballots were not counted, after they were marked "accepted" in SVRS.

66. Twelve of these 20 envelope absentee voters testified at the evidentiary hearing.

67. As officers of the Court, counsel for the parties confirmed that each voter called, as identified by the voter's 1-to-20 voter number, was the individual fully identified by name on the voter identification spreadsheet/key filed under seal. (Idx. 21, Sealed Ex. 300).

68. Each of these 12 voters testified:

a. to having voted in the 2024 General Election at Shakopee City Hall (the Shakopee EVL); and

b. to recognizing the election documents keyed to the voter number under which the voter testified (e.g., Exhibit 304 for Voter No. 4, Exhibit 305 for Voter No. 5, and so on) and that those were in fact the voter's absentee ballot application and signature envelope for the 2024 General Election.

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69. Thus, Exhibits 304, 305, 309, 310, 311, 312, 314, 315, 316, 317, 318, and 320 were received without objection and reflect the dates on which each of Voter Nos. 4, 5, 9, 10, 11, 12, 14, 15, 16, 17, 18, and 20 voted.

70. The SVRS report contained at Exhibit 9 reflects the date on which each of their ballots were accepted (Ex. 9 ("Ballot Status" column).)

71. For these 12 testifying voters, the table below summarizes:

    a. the date the voter cast the ballot through the envelope absentee process at Shakopee EVL per the "ballot issued date" on the voter's 2024 Minnesota Absentee Ballot Application;

    b. the date the voter's ballot was marked "accepted" by Shakopee City Clerk Hensen, per the SVRS report; and

    c. the candidate the voter testified they voted for in the Shakopee House District 54A race.

Voter No.	Date Voted	Date Ballot Accepted	House District 54A
4	October 16 (Ex. 304)	October 17 (Ex. 9 at 1)	Paul (Voter 4 testimony)
5	October 17 (Ex. 305)	October 18 (Ex. 9 at 6)	Tabke (Voter 5 testimony)
9	October 16 (Ex. 309)	October 17 (Ex. 9 at 1)	Tabke (Voter 9 testimony)
10	October 16 (Ex. 310)	October 17 (Ex. 9 at 1)	Paul (Voter 10 testimony)
11	October 17 (Ex. 311)	October 18 (Ex. 9 at 5)	Tabke (Voter 11 testimony)
12	October 16 (Ex. 312)	October 17 (Ex. 9 at 12)	Tabke (Voter 12 testimony)
14	October 15 (Ex. 314)	October 17 (Ex. 9 at 2)	Paul (Voter 14 testimony)
15	October 17 (Ex. 315)	October 17 (Ex. 9 at 2)	Paul (Voter 15 testimony)

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16	October 15 (Ex. 316)	October 17 (Ex. 9 at 1)	Paul (Voter 16 testimony)
17	October 15 (Ex. 317)	October 17 (Ex. 9 at 1)	Paul (Voter 17 testimony)
18	October 15 (Ex. 318)	October 17 (Ex. 9 at 6)	Tabke (Voter 18 testimony)
20	October 15 (Ex. 320)	October 17 (Ex. 9 at 2)	Tabke (Voter 20 testimony)

72. Thus, of the 12 voters who testified, six voted for Paul and six voted for Tabke.

73. The Court observed 11 voters testify in person and one voter testify by Zoom. Each voter expressed an appropriate opportunity to know, and ability to remember and relate:

    a. the circumstances surrounding their absentee voting in the election at issue,

    b. the election documents related to their voting in this election, and

    c. for whom they voted in the House District 54A race.

    d. On those points, each voter appeared frank and sincere.

74. None of the voter-witnesses were subjected to significant cross-examination.

75. Voters 14 and 15 have the same "voter address". (Exs. 314, 315.)

76. Voters 10, 16, and 17 have the same "voter address". (Exs. 310, 316, 317.)

77. Voters 18 and 20 have the same "voter address". (Exs. 318, 320.)

78. Per the stipulation of Paul and Tabke, Voters 5 and 11 are married.

79. As explained previously, the single missing ballot from Shakopee Precinct-12A has not been linked to an identified voter.

Expert Testimony

80. Tabke, and then Paul, presented expert witnesses to calculate, and refute the calculation of, the probability that the 20 missing absentee ballots would change the election. This calculation was based on the official election results and the proportion of Shakopee

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Precinct-10 voters who voted for Paul, the proportion of Shakopee Precinct-10 voters who voted for Tabke, and the proportion of "other" voters, as applied randomly to the 20 missing ballots.

81. Tabke presented the testimony of Dr. Aaron Rendahl ("Dr. Rendahl"), who was qualified as an expert under Minnesota Rule of Evidence 702.

82. Dr. Rendahl testified:

a. He has a Ph.D. in Statistics from the University of Minnesota in 2008 and is an Associate Professor of Statistics and Informatics in the College of Veterinary Medicine.

b. He has published extensively, as reflected by his curriculum vitae, to which his expert report is attached. (Ex. 207.)

c. The Court has no doubt, given his expertise, his expert report is accurate for type of proportionality analysis conducted.

83. Paul presented the testimony of Dr. Tom Brunell ("Dr. Brunell"), who was qualified as an expert under Minnesota Rule of Evidence 702.

a. Dr. Brunell is a professor of political science at the University of Texas at Dallas, has his Ph.D. in political science from the University of California at Irvine, and studies American elections.

b. He has published extensively, as reflected by his curriculum vitae (Ex. 7).

c. He did not produce an expert report.

d. He did not analyze this election in particular.

e. He did not perform his own probability analysis and expressed concern that Dr. Rendahl's probability analysis is based on the 20 votes being random.

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f. Specifically, Dr. Brunell testified people often go to vote with family or people with whom they live, potentially making the voting pattern something other than random. Dr. Brunell did not know how his concern could be factored into a probability calculation.

84. Because the voter-witnesses testified in this case, the Court does not rely on this expert testimony in reaching its decision.

Applying the Law

85. In *Scheibel v. Pavlak*, the Minnesota Supreme Court explained a trial judge's limited authority in an election contest:

> The trial judge selected by the parties to the election contest acts, in effect, as an agent of the legislative body involved. He hears and directs the recording of the evidence; he makes findings and conclusions with respect to the contest; he submits the record and his recommendations to the legislative body involved. Since he is acting, in practical effect, as a legislative agent for the purposes of the case, the legislative body is absolutely free to accept or reject his findings and conclusions. Respect for his training and experience as an objective factfinder chosen by the parties and deference to his views on the credibility of the witnesses whom he has observed under direct and cross-examination can be anticipated, but it is not required.

See Scheibel v. Pavlak, 282 N.W.2d 843, 850–51 (Minn. 1979). In *Derus v. Higgins*, the Minnesota Supreme Court reiterated, in part, *Scheibel's* observation regarding the role of courts in election contests. 555 N.W.2d 515, 518 (Minn. 1996).

86. Minnesota Statutes section, 209.10, states the Court shall decide the contest, issue appropriate orders and make written findings of fact and conclusions of law.

87. In this election contest, Paul alleges, under Minnesota Statutes, section 209.02, subd. 1:

a. a question of who received the largest number of votes legally cast;

b. irregularity in conduct of an election;

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c. deliberate, serious, and material violations of the election law, specified by Paul to include Minnesota Statutes, sections 203B.121, subd. 5; 204C.21, and 204C.24, subd. 1(2), (5), and (7).

88. There is a "policy of the state to give effect to the votes of legal voters regardless of the irregularities in the election." *Clayton v. Prince*, 151 N.W.2d 911, 912 (Minn. 1915).

Use of Voter Testimony

89. For the first time, and through his reply memorandum filed December 31, 2024, Paul argues the Court cannot consider the testimony of voter-witnesses whose ballots went uncounted. (Idx. 32). Paul relies on *Pennington v. Hare* and *Kearin v. Roach* to so argue. Before raising this new argument, Paul:

a. engaged pretrial with the Court and opposing counsel to formulate a plan for handling voter testimony that balanced preservation of voter privacy and transparency, which resulted in the Court issuing its Order on Voter Testimony and Media Access on December 15, 2024, memorializing these interactions. (Idx. 19);

b. did not dispute, before or during trial, the contents of the Order addressing voter testimony;

c. presented testimony of voter-witnesses whose ballots went uncounted in Shakopee Precinct-10 and linked each of his six voter-witnesses to their 2024 General Election absentee ballot applications and signature envelopes; offered these exhibits into evidence; and asked whom each voted for in the House District 54A election;

d. did not object to voter-witness testimony when offered by Tabke for the clear purpose of identifying for whom the voters voted in the election at issue here; and

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e. declined to include any argument or caselaw on this issue in his initial memorandum of law filed December 23, 2024 (Idx. 30).

90. By failing to timely raise this issue, Paul has waived it. Even so, the Court will address this issue to avoid speculation concerning this argument's merits.

91. First, the Court considers Paul's reliance on *Pennington v. Hare*. In *Pennington*, election judges prevented eligible voters from voting, meaning these eligible voters did not cast ballots. 60 Minn. 146, 147-48, 62 N.W. 116 (Minn. 1895). On these facts, the Minnesota Supreme Court said the uncast "ballots" cannot be counted based on stymied voters' later statements concerning who they would have voted for had they actually voted. *Id.*

92. The facts of Paul's election contest are markedly different from those of *Pennington*, as:

a. there is no evidence that the 21 envelope absentee ballot voters who voted at the Shakopee EVL were prevented from voting by elections officials; and

b. at least 20 of those 21 envelope absentee ballot voters actually voted, meaning they cast their envelope absentee ballots, which were then accepted by the Absentee Ballot Board and marked "accepted" in the SVRS by Shakopee City Clerk Hensen (Ex. 9, and Elections Administrator Hanson's testimony).

93. Thus, *Pennington* does not apply.

94. Second, Paul relies on *Kearin v. Roach*, a case involving ineligible voters who cast votes. 381 N.W. 25 531, 533 (Minn. 1986). In *Kearin*, Minnesota's Court of Appeals concluded that testimony of ineligible voters about who they voted for (direct evidence) was "not allowed" because:

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a. at the time of trial on the election contest, the ineligible voters were charged with voting violations and refused to testify under their Fifth Amendment protections; and

b. there was sufficient indirect evidence, in the form of the ineligible voters' affiliations and pre-election activities, through which the trial court could determine who they voted for and deduct their votes from that candidate's vote total.

Kearin v. Roach, 381 N.W. 25 531, 533 (Minn. 1986) (deducting two votes from winning candidate because ineligible voters were winning candidate's daughters).

95. *Kearin* was decided after *Ganske v. Indep. Sch. Dist. No. 84*, where the Minnesota Supreme Court held, "Subject *only* to the right against self-incrimination, one who votes in an election without being qualified to do so enjoys no privilege against disclosing the manner in which he voted." 271 Minn. 531, 531, 136 N.W.2d 405, 406 (1965) (emphasis added); *see also Hanson v. Emanuel*, 210 Minn. 271, 280, 297 N.W. 749, 755 (1941) (trial court relied on ineligible voter testimony to deduct votes). In short, voter-witnesses, at least those who are ineligible to vote, may be called to testify, unless they invoke Fifth Amendment protections.

96. In the present election contest, none of the 12 voter-witnesses were ineligible to vote and none of these voter-witnesses invoked the protections under the Fifth Amendment, meaning *Keiran* does not apply.

97. In the context of election contests, ineligible voters may have a motivation to not testify or, if required to testify, to lie about for whom they actually voted, as telling the truth would result in their ineligible votes being deducted from the candidate for whom they voted.

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98. In the context of an election contest, and particularly in polarized political times, the opposite seems true for eligible voters who cast votes that are now missing. This is so because the eligible voters are motivated to have their vote counted for the candidate they actually voted for and, thus, to truthfully identifying that candidate. If Paul believed otherwise, he had the opportunity to probe the six Tabke voters on cross-examination regarding their candidate affiliation, pre-election activities, whether they actually voted in the race, recollections related to this vote, and any animosity they have toward Tabke even if he was a member of the political party with whom the voter affiliated. Paul engaged in no such cross-examination, which strongly supports that Paul did not doubt the veracity of Tabke's six voter-witnesses when they testified about voting for Tabke.

99. In this case, the best available evidence as to who the 12 voter-witnesses voted for in the House District 54A race was their in-person testimony.

100. In so concluding, Court will not, and does not, engage in assigning these voters' ballots to Paul or to Tabke, as this is not a recount with Paul and Tabke contesting individual ballots based on discerning voters' intent is solely from the face of their ballots. *Cf.* Minn. Stat. 204C.22 (determining intent from ballot). There are no physical ballots to consider for these 20 voter-witnesses (or for the single unidentified Shakopee Precinct 12A voter), and were lost after being marked "accepted" in the SVRS.

101. Evidence of how the 12 voter-witnesses voted is probative of whether or not a question exists over which candidate received the most votes legally cast and whether Paul can meet his burden of proof on the remaining election-contest grounds.

102. Thus, the Court will consider voter testimony.

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Paul's Burden of Proof

103. Paul bears the burden of proof in this election contest and, therefore, must demonstrate by a preponderance of the evidence that he has proven the grounds of his contest. *Coleman v. Franken*, 767 N.W.2d 453, 458 (Minn. 2009) (contestant bears the burden of proof in trial to show certification of the election was in error); *State v. Alpine Air Prods., Inc.*, 500 N.W.2d 788, 790 (Minn. 1993) (preponderance of evidence standard applies for statutory cause of action when standard is not specified by the legislature).

Contest Ground: Over the Question of Who Received the Largest Number of Votes Legally Cast

104. In an election contest over the question of who received the largest number of votes legally cast, the contestant (here, Paul), bears the burden of proving that the candidate declared elected by the canvassing board (here, Tabke) did not receive a majority of the legal votes. *Berg v. Veit,* 162 N.W. 522, 522-23 (Minn. 1917).

105. Paul does not dispute the 20 absentee voters whose ballots went uncounted in Shakopee Precinct-10 were Minnesota residents entitled to vote in the General Election for House District 54A.

106. He claims Scott County has not linked these 20 uncounted ballots to 20 voters identified on Exhibit 9.

107. The credible evidence proves otherwise. Scott County Elections Administration diligently used SVRS data and reports, interviewed those who staffed Shakopee EVL, and reviewed other documentary evidence (e.g., time cards, balancing spreadsheets) to understand the timing of the ballot discrepancy (i.e., October 18). Knowing this, Scott County Elections Administration refined their SVRS searches to focus on an increasingly smaller set of voters who voted near that time (on or before October 18). Elections

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Administrator Hanson questioned election judges, Absentee Ballot Board members and city staff, about the events that occurred during those dates at the Shakopee EVL to understand who was working with the ballots and the purpose and timing of that work. Scott County Elections Administration revisited the SVRS data to determine the actions taken in SVRS during that time period and by whom they were taken. This resulted in Scott County Elections Administration identifying the 20 voter-witnesses from the 329 absentee voters who voted at the Shakopee EVL. (Ex. 10.) As Elections Administrator Hanson testified, she has no doubt based on reason or common sense that the 20 identified voters are in fact those for Shakopee Precinct-10 whose ballots were lost and not counted. The Court agrees.

108. The evidence reflects that even Paul had confidence in Scott County's work identifying the 20 voters from Shakopee Precinct-10. As he called six of them to testify, asking each of the six to identify their election documents (Ex. 10), which were then offered into evidence, and then asking who the voter cast the ballot for in House District 54A election.

109. With the identification of the 20 Shakopee Precinct-10 voters, the evidence convincingly shows there is no question of which candidate received the most votes legally cast.

110. Specifically:

    a. six voter-witnesses testified to voting for Paul;

    b. six-voter witnesses testified to voting for Paul;

    c. eight identified voters did not testify; and

    d. one unidentified voter did not testify.

111. For purposes of analyzing this issue, the Court gives Paul the benefit of any doubt and assumes the nine voters who did not testify would have voted for Paul.

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112. With the 14-vote margin of this election, in favor of Tabke, an additional six votes for Tabke and an additional 15 votes for Paul, results in a five-vote margin in favor of Tabke, as follows:

	Paul	Tabke	Write In
Votes that were counted (21,980 votes)	10,965	10,979	36
Votes that went uncounted (21 votes)	15	6	---
TOTAL	10,980	10,985	36

113. Accordingly, Paul has not proven by the greater weight of the evidence that there is a question of who received the most votes legally cast in the House District 54A election.

Contest Ground: Irregularities in the Conduct of the Election

114. Paul alleges irregularities in the conduct of the election under Minnesota Statutes, sections 203B.121, 204C.24, subd. 1(2), (5), and (7), the statutes he cites in support of his claim. (Idx. 1 at 8.)

115. In a contest alleging irregularity in the conduct of an election *or* deliberate, serious, and material violations of Minnesota election law, the contestant, Paul, must plead (and, then prove) that the irregularities, or the violations, changed the outcome of the election, which "has been the law in election contests for more than 150 years." *Bergstrom v. McEwen*, 960 N.W.2d 556, 563 (Minn. 2021); *Hahn v. Graham*, 302 Minn. 407, 225 N.W.2d 385, 386 (Minn. 1975); *Janeway v. City of Duluth*, 68 N.W. 24, 25 (Minn. 1896).[5]

[5] To the extent Paul relies on cases from other states that have a constitutional guarantee of a secret ballot, Minnesota has no such guarantee, meaning these cases are inapplicable. The Court's reference to such a guarantee, by pretrial Order, was in error. Minn. Const. Art. VII. § 5.

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116. As explained in analyzing whether there is a question over who won the most votes legally cast, Paul cannot show the outcome of the election would have been different but for any irregularity.

117. Nevertheless, Paul relies on various caselaw to argue this contest ground does not require him to prove the irregularities affected the outcome of the case.

118. First, Paul cites *In re Contest of Election in DFL Primary Election*, which involved allegations of a Fair Campaign Practices Act violation under Minn. Stat. § 210A.12, wherein the contestant did not have outcome of the election would have been different because such a requirement would frustrate statutory enforcement. 344 N.W.2d 826 (Minn. 1984).

119. The present election contest does not involve the Fair Campaign Practices Act, such that *In re Contest of Election in DFL Primary Election* does not apply.

120. Second, Paul cites *In re Contest of Election of Vetsch*, wherein the Minnesota Supreme Court did not require the contestant to show the irregularities changed the outcome of the election, where "violations of election laws were so substantial and numerous that doubt and suspicion were cast upon [the] election and [the] integrity of the vote was impeached […]." 245 Minn. 229, 229, 71 N.W.2d 652, 652 (Minn. 1955).

121. Unlike the 20- (or 21-) voter impact of the irregularities in the present contest, *In re Contest of Election of Vetsch* involved structural error in the administration of the election that created "so great an opportunity for fraud," including, among other issues:

    a. the lack of a lawfully appointed and qualified election board,

    b. the failure to hold (until turning over to election judges on election day) 900 blank ballots,

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c. the loss of 59 of the combined blank and cast ballots in an election with a 41-vote margin (such that the reviewing court observed, "it would have been a simple matter for some one (sic) to have marked a sufficient number of the 59 blank ballots with the desired results and to have disposed of the original ballots cast),

d. the use of an "election judge" who was the contestant's political rival and who had told friends he would like to see contestee elected, and

e. the failure to enter (in the tally book) the persons who voted.

Id. at 231-32, 654-55.

122. Unlike the relatively egregious facts of *In re Contest of Election of Vetsch*, the irregularities in this case impacted 21 votes—not the entire election—meaning the standard *Vetsch* applied to fit its unusual facts is inapplicable in this case.[6]

123. In this case, there is no record evidence of "so great an opportunity for fraud," fraud, or bad faith.

124. The Court observes, and Tabke concedes in his post-trial responsive memorandum that there were irregularities in the conduct of this election "as was laid bare by the investigative efforts of the Scott County Elections Administrator and the testimony presented to this Court." (Idx. 31 at 16.)

125. The Shakopee EVL did not comply with the requirements for storing and counting of envelope absentee ballots in that after the 20 envelope absentee ballots for Shakopee Precinct-10 had been accepted by the Absentee Ballot Board and were marked "accepted" in SVRS by Shakopee City Clerk Hensen on October 17 and 18, they were lost and went

[6] Paul's reliance on *Bencomo* is similarly misplaced, in that *Bencomo* involved structural error in the ballot instructions, "result[ing] in 44,605 illegitimate votes being cast in an election where 1,979 votes would distinguish the winner from the loser." *Bencomo v. Phoenix Union High Sch. Dist. No. 210*, No. CV-90-00369-PHX-GMS, 2024 WL 5090208, at *2 (D. Ariz. Dec. 12, 2024).

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uncounted *See* Minn. Stat. § 203B.121, subd. 5 (addressing requirements for storage and counting of absentee ballots).

126. The only other statutory violations Paul alleged in his Notice of Contest for "Count I—Irregularity in the Conduct of an Election" are Minnesota Statutes, section 204C.24, subd. 1(2), (5), and (7) (Idx. 1), which all relate to the content of precinct summary statements. Minn. Stat. § 204C.24, subd. 1 (stating precinct summary statements "shall contain the following information for each kind of ballot" and listing required "information" in each subpart).

127. There is no precinct summary statement in evidence, and no witnesses were asked about a summary statement. Therefore the Court cannot determine the content of a document without having the document before it.

128. There are, however, other irregularities.

129. The Shakopee EVL did not keep its secrecy envelopes, which Tabke concedes is a best practice. This prevented a post-election search of those secrecy envelopes to see if any of the missing ballots remained therein.

130. Shakopee EVL did not alert Scott County to the 21-vote discrepancy through an "incident log" or other mechanism that may have resulted in the locating of the ballots and prevented an investigation by Scott County Elections Administration.

131. Shakopee EVL did not balance its absentee ballots to the precinct level each day as opposed to the voting-location level, as it was doing.

132. Shakopee EVL did not include the 20 missing Shakopee Precinct-10 votes on any reported vote total because the ballots were lost and unavailable for counting.

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133. Despite these irregularities, Paul has not proven by a preponderance of the evidence irregularities in the conduct of the election that affected the outcome of the election.

Contest Ground: Deliberate, Serious, and Material Violations of the Minnesota Election Laws

134. First, as stated in paragraph 115 above, this type of contest requires Paul to prove by a preponderance of the evidence that alleged election law violations affected the outcome of the election, which he cannot do, as set forth previously.

135. Second, the Minnesota Supreme Court has held that an election-law violation by a third party who is neither the candidate nor the candidate's agent will not invalidate the results of an election, *Derus v. Higgins*, 555 N.W. 2d 515, 515-16, the very relief Paul seeks.

136. Shakopee City Clerk Hensen is neither Tabke nor Tabke's agent, meaning Paul cannot contest the results of the election on this ground.

137. Third, even assuming a violation of Minnesota election law by a third party, who is neither the candidate (here, Tabke) nor the candidate's agent, could be brought under the contest ground of deliberate, serious, and material violations, Paul has not met his burden of proof to establish this type of violation.

138. A violation is "deliberate" where it is intended to affect the voting at the election. *Schmitt v. McLaughlin*, 275 N.W.2d 587 (Minn. 1979).

139. There is no record evidence in the present contest to support that the alleged violations were deliberate, meaning intended to affect the voting at the election.

140. Speculation is not evidence. *Cokley v. City of Otsego*, 623 N.W.2d 625, 633 (Minn. Ct. App. 2001).

141. There is no record evidence of the intentional damaging of a ballot.

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142. Specifically, Shakopee Assistant City Administrator Petersen, who supervised Shakopee City Clerk Hensen during the election at issue, testified she has not learned of any information that causes her to believe the ballots were intentionally destroyed.

143. This is consistent with the timing of the operative events and Shakopee City Clerk Hensen's comments—to both the Absentee Ballot Board about secrecy envelopes and to Gamble the morning of October 18—which suggest the loss of these ballots was inadvertent, unintentional, and, at least in part, the result of shortcuts by Hensen in handling these 20 ballots during the changeover to direct balloting.

144. In addition, when the events leading to the discrepancy occurred—October 17 and 18—Shakopee City Clerk Hensen would have had no idea that two weeks later the vote in the House District 54A race would be as close as it was.

145. Paul cannot bring this contest ground against a third party who is neither Tabke, nor Tabke's agent.

146. Even if he could bring this contest ground against another third party, Paul has not proven by the greater weight of the evidence a deliberate, serious, *and* material violation of the election law that had an effect on the outcome of the election.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Court enters the following:

ORDER

1. Denial of this election contest is recommended and ordered, to the extent the Court's authority in this election contest, described in *Scheibel v. Pavlak*, 282 N.W.2d 843 (Minn. 1979) and Minnesota Statutes, section 209.10, subd. 3, allows for such an Order.

    a. Brad Tabke remains the candidate with the most votes legally cast in the 2024 General Election for Minnesota House District 54A.

    b. This election is not invalid.

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2. Neither an injunction nor a special election is warranted or ordered.

3. Unless this matter is appealed to the Minnesota Supreme Court, the Scott County Court Administrator shall transmit this Findings of Fact, Conclusions of Law and Order and the pleadings in this case to the Chief Clerk of the Minnesota House of Representatives no later than January 14, 2025.

BY THE COURT:

Perzel, Tracy
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Dated: January 14, 2025

Tracy L. Perzel
Judge of District Court