

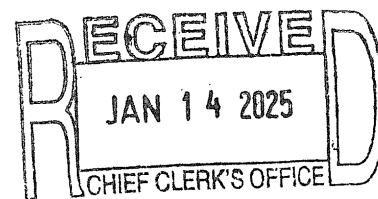
2024

Election Contest

District 54A

Filings

Dated: January 14, 2025



To: Patrick Duffy Murphy, Chief Clerk of the House of Representatives
75 Rev Dr. Martin Luther King Jr Blvd
Room 211, State Capital
St. Paul, MN 55155

From: Vicky Carlson, Scott County Court Administrator
200 4th Avenue West
Shakopee, MN 55379

Case: Aaron Paul vs. Paul Tabke
70-CV-24-17210

Please find enclosed a copy of all documents filed in the above-entitled case.

REGISTER OF ACTIONS**CASE NO. 70-CV-24-17210**

Iron Paul vs Brad Tabke

§
§
§
§
§
§Case Type: Civil Other/Misc.
Date Filed: 11/29/2024
Location: Scott
Judicial Officer: Perzel, Tracy ,**PARTY INFORMATION**

Defendant	Tabke, Brad 1584 Harvest LN Shakopee, MN 55379	Lead Attorneys CHARLES N NAUEN <i>Retained</i> 612-339-6900(W)
Plaintiff	Paul, Aaron 1377 Ridge LN Shakopee, MN 55379	RONDELL REID LEBEAU, II <i>Retained</i> 612-483-1507(W)

EVENTS & ORDERS OF THE COURT

OTHER EVENTS AND HEARINGS			
11/29/2024	Notice by Attorney or Party Index # 1 <i>Notice of Elections Contest and Exhibits</i>		
11/29/2024	Affidavit of Service Index # 2 <i>Certificate of Service</i>		
12/02/2024	Notice of Appearance Index # 3 <i>Notice of Appearance for Contestee Brad Tabke</i>		
12/03/2024	Affidavit of Service Index # 4 <i>eServed D. Attorney. P. Attorney was not signed up for eService, so I emailed and mailed the AOS to the address I have on file.</i>		
12/03/2024	Correspondence Index # 5 <i>from Chief Justice Hudson</i>		
12/04/2024	Correspondence Index # 6 <i>Letter to Chief Justice Natalie Hudson</i>		
12/06/2024	Correspondence Index # 7 <i>Corrected Letter to Chief Justice Natalie Hudson</i>		
12/06/2024	Notice of Case Assignment Index # 8		
12/06/2024	Answer Index # 9 <i>Answer of Contestee Brad Tabke</i>		
12/06/2024	e-Service <i>rlebeau@chalmersadams.com</i> Paul, Aaron	Served	12/06/2024
12/06/2024	e-Service <i>cnnauen@locklaw.com</i> Tabke, Brad	Served	12/06/2024
12/06/2024	e-Service <i>djzoll@locklaw.com</i> Tabke, Brad	Served	12/06/2024
12/06/2024	e-Service <i>rakitzeollins@locklaw.com</i> Tabke, Brad	Served	12/06/2024
12/09/2024	Scheduling Conference (1:00 PM) (Judicial Officer Perzel, Tracy ,) Result: Held Off the Record		
12/09/2024	Hearing Held Remote		
12/10/2024	Returned Mail Index # 10 <i>re-sent to his address with suite number on it</i>		
12/11/2024	Scheduling Order Index # 11 <i>Order Following Informal Scheduling Conference</i>		
12/11/2024	Notice of Filing of Order Index # 12		
12/11/2024	Notice of Visual or Audio Coverage Index # 15		
12/12/2024	Notice of Hearing Index # 13		
12/12/2024	Notice of Visual or Audio Coverage Index # 14		
12/12/2024	Correspondence Index # 16 (Judicial Officer: Perzel, Tracy ,) <i>Correspondence to Judge Perzel</i>		
12/12/2024	e-Service <i>rlebeau@chalmersadams.com</i> Paul, Aaron	Served	12/12/2024
12/12/2024	e-Service <i>cnnauen@locklaw.com</i> Tabke, Brad	Served	12/12/2024
12/12/2024	e-Service <i>djzoll@locklaw.com</i> Tabke, Brad	Served	12/12/2024
12/12/2024	e-Service <i>rakitzeollins@locklaw.com</i> Tabke, Brad	Served	12/12/2024

12/12/2024	Notice of Visual or Audio Coverage	Index # 17		
12/12/2024	Correspondence	Index # 18	(Judicial Officer: Perzel, Tracy ,)	
	<i>Letter to Judge Prezel from SCAO</i>			
12/12/2024	e-Service			
	<i>rlebeau@chalmersadams.com</i>			
12/12/2024	e-Service		Served	12/12/2024
	<i>Paul, Aaron</i>			
12/12/2024	e-Service			
	<i>cnnauen@locklaw.com</i>			
12/12/2024	e-Service		Served	12/12/2024
	<i>Tabke, Brad</i>			
12/12/2024	e-Service			
	<i>djzoll@locklaw.com</i>			
12/12/2024	e-Service		Served	12/12/2024
	<i>Tabke, Brad</i>			
12/12/2024	e-Service			
	<i>rakitzecollins@locklaw.com</i>			
12/12/2024	e-Service		Served	12/12/2024
	<i>Tabke, Brad</i>			
12/15/2024	Order-Other	Index # 19	(Judicial Officer: Perzel, Tracy ,)	
	<i>Order Restricting Voter Identification and Allowing Media Access</i>			
12/16/2024	Court Trial	(9:00 AM)	(Judicial Officer Perzel, Tracy ,)	
	<i>Result: Held On the Record</i>			
12/16/2024	Notice of Visual or Audio Coverage	Index # 20		
	<i>KMSP-TV request</i>			
12/16/2024	Stipulation	Index # 21		
	<i>Sealed Stipulation regarding Individual Voter Identities</i>			
12/16/2024	Notice of Filing of Order	Index # 22		
12/16/2024	Notice of Visual or Audio Coverage	Index # 23		
	<i>KARE 11</i>			
12/16/2024	Hearing Held Hybrid			
12/17/2024	Court Trial	(9:00 AM)	(Judicial Officer Perzel, Tracy ,)	
	<i>Result: Held On the Record</i>			
12/17/2024	Hearing Held Hybrid			
12/17/2024	Exhibit List	Index # 24	(Judicial Officer: Perzel, Tracy ,)	
12/17/2024	Order for Submissions-Under Advisement	Index # 25	(Judicial Officer: Perzel, Tracy ,)	
	<i>Briefs Due 12/23/24 Reply due 12/30/24</i>			
12/17/2024	Order for Submissions-Under Advisement	Index # 26	(Judicial Officer: Perzel, Tracy ,)	
	<i>Response due 12/27/24</i>			
12/17/2024	Order-Other	Index # 28	(Judicial Officer: Perzel, Tracy ,)	
	<i>Order Setting Deadlines</i>			
12/18/2024	Notice of Filing of Order	Index # 29		
12/23/2024	Briefs	Index # 30		
	<i>Contestants Memorandum in Support of Election Contest</i>			
12/27/2024	Briefs	Index # 31		
	<i>Contestee Brad Tabke's Response Brief</i>			
12/27/2024	e-Service			
	<i>rlebeau@chalmersadams.com</i>			
12/27/2024	e-Service		Served	12/27/2024
	<i>Paul, Aaron</i>			
12/27/2024	e-Service			
	<i>cnnauen@locklaw.com</i>			
12/27/2024	e-Service		Served	12/27/2024
	<i>Tabke, Brad</i>			
12/27/2024	e-Service			
	<i>djzoll@locklaw.com</i>			
12/27/2024	e-Service		Served	12/27/2024
	<i>Tabke, Brad</i>			
12/27/2024	e-Service			
	<i>rakitzecollins@locklaw.com</i>			
12/27/2024	e-Service		Served	12/27/2024
	<i>Tabke, Brad</i>			
12/30/2024	Taken Under Advisement	Index # 27	(Judicial Officer: Perzel, Tracy ,)	
12/30/2024	Briefs	Index # 32		
	<i>Contestant's Reply in Support of Election Contest</i>			
12/30/2024	Proposed Order or Document	Index # 33	(Judicial Officer: Perzel, Tracy ,)	
	<i>Contestee Brad Tabke's Proposed Findings of Fact and Conclusions of Law (emailed to Judge team)</i>			
12/30/2024	e-Service			
	<i>rlebeau@chalmersadams.com</i>			
12/30/2024	e-Service		Served	12/30/2024
	<i>Paul, Aaron</i>			
12/30/2024	e-Service			
	<i>cnnauen@locklaw.com</i>			
12/30/2024	e-Service		Served	12/30/2024
	<i>Tabke, Brad</i>			
12/30/2024	e-Service			
	<i>djzoll@locklaw.com</i>			
12/30/2024	e-Service		Served	12/30/2024
	<i>Tabke, Brad</i>			
12/30/2024	e-Service			
	<i>rakitzecollins@locklaw.com</i>			
12/30/2024	e-Service		Served	12/30/2024
	<i>Tabke, Brad</i>			
12/31/2024	Proposed Order or Document	Index # 34	(Judicial Officer: Perzel, Tracy ,)	
	<i>Contestant's Findings of Fact, Conclusion of Law, and [Proposed] Order</i>			
01/13/2025	Correspondence for Judicial Approval	Index # 35		
	<i>Letter to Judge Perzel</i>			
01/13/2025	Correspondence	Index # 36		
	<i>Correspondence to Judge Perzel</i>			
01/13/2025	e-Service			
	<i>rlebeau@chalmersadams.com</i>			
01/13/2025	e-Service		Served	01/13/2025
	<i>Paul, Aaron</i>			
01/13/2025	e-Service			
	<i>cnnauen@locklaw.com</i>			
01/13/2025	e-Service		Served	01/13/2025
	<i>Tabke, Brad</i>			

01/13/2025	djzoll@locklaw.com Tabke, Brad	Served	01/13/2025
	e-Service rakitzecollins@locklaw.com Tabke, Brad	Served	01/13/2025
01/13/2025	Transcript Index # 38 Hearing Type: Court Trial Hearing Date: December 16, 2024 Judge: Perzel Volume I		
01/13/2025	Transcript Index # 39 Hearing Type: Court Trial Hearing Date: December 17, 2024 Judge: Perzel Volume II		
01/14/2025	Findings of Fact, Conclusions of Law and Order Index # 37 Election Contest		
01/14/2025	Notice of Filing of Order Index # 40		

FINANCIAL INFORMATION

	Defendant Tabke, Brad		
	Total Financial Assessment		298.00
	Total Payments and Credits		298.00
	Balance Due as of 01/14/2025		0.00
12/02/2024	Transaction Assessment		298.00
12/02/2024	E-File Electronic Payment Receipt # EF70-2024-05619	Tabke, Brad	(298.00)
	Plaintiff Paul, Aaron		
	Total Financial Assessment		298.00
	Total Payments and Credits		298.00
	Balance Due as of 01/14/2025		0.00
12/02/2024	Transaction Assessment		298.00
12/02/2024	E-File Electronic Payment Receipt # EF70-2024-05585	Paul, Aaron	(298.00)

[Section divider]

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF SCOTT

FIRST JUDICIAL DISTRICT

Aaron Paul,

Contestant,

v.

Brad Tabke,

Contestee.

CASE NO.: _____

NOTICE OF
ELECTION CONTEST
Minn. Stat. § 209.021**NOTICE OF ELECTION CONTEST UNDER MINNESOTA STATUTE § 209.021**

Pursuant to Minnesota Statute § 209.021, Contestant Aaron Paul submits this notice of election contest to challenge the issuance of an election certificate to Brad Tabke ("Contestee") to become the Representative of District 54A in the Minnesota State House of Representatives.

This contest is based on two undisputed facts. First, following the recent election, Scott County election officials announced that they have irretrievably lost and failed to count 21 ballots cast for the Representative of District 54A—and that 20 of these were unquestionably lawful and validly-cast ballots that Minnesota law required to be counted. Second, after failing to count these 21 ballots, Scott County election officials declared that Rep. Tabke had been re-elected by a margin of 14 votes over Contestant Aaron Paul. In other words: Scott County election officials unlawfully lost and failed to count significantly more ballots than would be needed to change the announced result of the election, meaning at the very least the actual victor is in absolute doubt and at worst the candidate who received fewer votes has been announced as the winner.

Mr. Paul challenges the results of the election due to violations of the Minnesota Election Law by the Scott County Auditor's Office, Elections Division. Specifically, the contest alleges:

1. **Irregularities in the Conduct of the Election:** The Elections Division materially deviated from proper election procedures, which directly impacted the results of the election.
2. **Question of Legally Cast Votes:** Uncertainty exists regarding which candidate received the largest number of votes legally cast.
3. **Deliberate, Serious, and Material Violations:** Scott County Elections officials engaged in deliberate, serious, and material violations of Minnesota Election Law.

The undisputed facts show that these legal violations have made it impossible to rely on canvassed election results to determine which candidate won the November 5 election for House District 54A. As a result, the Court should declare that a vacancy will exist for this seat once Rep. Tabke's current term ends, which would allow voters to make a clear decision pursuant to Minnesota law governing special elections.

This notice and memorandum outlines these claims as the basis for Mr. Paul's contest.

JURISDICTION

1. This Court has jurisdiction over this matter pursuant to Minnesota Statute § 209.021. For contests relating to state legislative office, "the contestant shall file the notice of contest with the court administrator of district court in the county where the contestee maintains residence." Contestee Brad Tabke resides in Scott County Minnesota.

2. Contestant has standing to bring this action pursuant to Minn. Stat. § 209.02, which allows "[a]ny eligible voter, including a candidate" to file an election contest regarding the "nomination or election of any person for whom the voter had the right to vote if that person is declared nominated or elected to...a ... legislative... office[.]" The contest may be brought "over an irregularity in the conduct of an election," or "over the question of who received the largest number of votes legally cast, [...] or on the grounds of deliberate, serious, and material violations

of the Minnesota Election Law.” Contestant was the Republican candidate for District 54A, is a resident of Scott County, and eligible to vote in District 54A.

3. This contest rests on all three grounds. First, there were irregularities in the conduct of the election which directly impacted the results of the election. Second, there is a dispute as to which candidate received the largest number of legally cast votes. And third, this contest also asserts violations of specific provisions of Minnesota law:

- Minn. Stat. § 203B.121 subd. 5, which governs the handling of ballots cast during early voting;
- Minn. Stat. § 204C.21, which governs ballot counting; and
- Minn. Stat. § 204C.24, subd. 1(2), (5) & (7), which outlines further procedures and guidelines for managing election ballots and ensuring compliance with election laws.

PARTIES

4. Petitioner-Contestant Aaron Paul resides at 1377 Ridge Lane, Shakopee, MN 55379, and is qualified as an eligible voter under Minnesota election law. He therefore is eligible to vote for the Representative to the Minnesota State Legislature from House District 54A. Paul objects to the declaration by the Scott County Canvassing Board that Brad Tabke received more votes than Aaron Paul in the General Election.

5. Contestee Brad Tabke resides at 1584 Harvest Lane, Shakopee, MN 55379. He is the current declared winner of the House of Representatives seat for District 54A.

6. The Scott County Auditor Treasurer is Cynthia Geis. She oversees the Department that is responsible for the conduct of the 2024 election for District 54A House of Representatives.

7. Julie Hanson is the Election Administrator for Scott County.

FACTUAL BACKGROUND

I. Scott County Elections

8. The General Election for House District 54A occurred on November 5, 2024. Incumbent Brad Tabke was challenged by Petitioner Aaron Paul.

9. Before election night, Scott County conducted early voting pursuant to Minn. Stat. § 203B.30. The City of Shakopee administered early voting in its city, which included precinct P-

10. Scott County is ultimately responsible for City of Shakopee elections administration.

10. At the end of election night, the vote difference between the two candidates was 13 votes.

11. On Friday, November 8 at 2pm, County officials called the candidates and informed them that there had been an irregularity and discrepancy in processing absentee votes, and that they intended to re-count the absentee votes that evening.

12. On Friday, November 8, 2024, Scott County election officials recounted all the absentee votes in their possession that were cast in the 2024 General Election.

13. Also on Friday, November 8, 2024, Scott County elections officials informed candidate Paul (and presumably candidate Tabke) that one precinct—Shakopee P-10 (“P-10”)—was “short” 20 absentee ballots. They indicated that the ballots were being searched for, that all attempts had been made to locate them, and that the ballots could not be found.

14. County officials indicated that in P-10, early voting records indicated that 329 absentee ballots were “checked in” but after multiple attempts to find them, only 309 ballots could be located.

15. Subsequently, Scott County election officials stated that one additional absentee ballot was missing from Precinct 12A.

16. Overall, Scott County election officials have publicly indicated that they are in possession of 21 more absentee ballot envelopes, which is the transmittal device for an absentee ballot, than absentee ballots.

17. Approximately one week later, Scott County elections officials contacted counsel for Representative Tabke (David Zoll) and counsel for Mr. Paul (Reid LeBeau) and indicated that the missing ballots were unretrievable. The election officials further indicated that they believed that they identified the voters who submitted the missing absentee ballots, but that they could not say with certainty that the names they identified were the voters responsible for casting the missing ballots.

18. On November 13, 2024, Scott County election officials canvassed the results for the General Election for Minnesota House District 54A and determined that Representative Tabke won the election by 14 votes. At that time, Aaron Paul requested a recount pursuant to Minn. Stat. § 204C.35, subd. 1(b)(1).

19. Following the November 13, 2024, canvass, the loss of the missing 21 ballots was reported by various news media sources.¹

20. Scott County conducted a recount on November 21, 2024. At the conclusion of the recount Representative Tabke's lead increased to 15 votes.

21. During the recount, Scott County officials held a press conference and confirmed that they were still unable to locate the 21 missing absentee ballots. *Id.*

22. The Scott County Canvassing Board met on November 25, 2024. It ruled in favor of a Paul challenge to one Tabke ballot, reducing the margin of victory to 14. Members of the

¹ E.g., Eva Herscowitz, *DFL Rep. Brad Tabke picks up one vote over Republican Aaron Paul after 54A recount*, The Minnesota Star Tribune (Nov. 21, 2024, 5:14 PM), <https://www.startribune.com/house-district-54a-recount-shakopee-tabke-paul/601184676>; *Secretary of State | November 2024*, TPT Almanac (Nov. 22, 2024), <https://www.tpt.org/almanac/video/secretary-of-state-november-2024-uhcu08?se=>.

Canvassing Board expressed concern over the missing ballots and lack of details concerning the circumstances of the loss. The County Attorney advised them, however, that the Board was to certify the recount results, even with the issue of the missing ballots remaining unresolved.

23. The Board then certified the recount and concluded, erroneously, that Brad Tabke received the most legally cast votes for House District 54A.

24. On November 26, 2024, the Elections Administrator for Scott County, Julie Hanson, provided additional information to Contestant's Counsel and confirmed the following facts:

- a. "there were 20 more absentee ballot records than ballots counted in the Shakopee P-10 precinct [...]"
- b. "the County was in possession of the 20 absentee ballot envelopes."
- c. "After exhausting all attempts to locate the missing 20 absentee ballots, the County determined that the 20 absentee ballots have been lost and cannot be found."
- d. "the County determined that the missing 20 absentee ballots were validly cast by Minnesota residents entitled to vote in the general election for House District 54A."
- e. "The missing 20 absentee ballots were not counted, in the original count nor the recount, and were not include in any reported vote totals for the House District 54A election."

See Affidavit of Julie Hanson, Exhibit A hereto, at ¶¶ 3,4,6-8.

25. It is undisputed that at least 20, possibly 21, missing absentee ballots were in the possession of the Scott County election officials when they went missing.

26. Based on the information provided by Scott County, it is undisputed that at least 20 of the missing absentee ballots in question were validly cast ballots by Minnesota residents

entitled to vote in the General Election in House District 54A. *See* Exhibit B, Letter from Scott County Attorney regarding Ballot Investigation, Nov. 27, 2024.

27. On November 27, 2024, Scott County Attorney Ron Hocevar released a letter detailing the investigation into the missing ballots. *Id.* The letter conforms with the information provided in Elections Administrator Hanson's Affidavit. Based on the results of the preliminary investigation County Attorney Hocevar made the following conclusions:

- a. "That 20 absentee ballots in P10 were properly accepted for counting on October 17 and should have been counted;"
- b. "That these ballots are the ballots that were not counted;"
- c. "That the ballots were most likely were never removed from their secrecy envelopes;"
- d. "That the ballots were likely in their secrecy envelopes when the secrecy envelopes were thrown away;"
- e. "That the ballots most likely will not be recovered; and"
- f. "That even if the ballots were found, it is unlikely that their chain of custody can be proven to assure they have not been tampered with." *Id.* at 2-3.

28. Additionally, Mr. Hocevar noted that investigation into the missing ballot in P-12 was not pursued. *Id.* At 1.

LEGAL STANDARD

29. Minnesota Election Law requires the following:

- a. Minn Stat. § 203B.121, subd. 5(a) requires election judges to store and count absentee ballots: "On a day on which absentee ballots are inserted into a ballot box, two members of the ballot board must: (1) remove the ballots from the ballot box

... at the end of the day; (2) without inspecting the ballots, ensure that the number of ballots removed from the ballot box is equal to the number of voters whose absentee ballots were accepted that day; and (3) seal and secure all voted and unvoted ballots present in that location at the end of the day.

b. Minn. Stat. § 204C.21, subd. 1 requires that ballots be grouped and counted systematically, ensuring uniformity and accuracy in tallying ballots.

c. Minn. Stat. § 204C.24, subd. 1(2), (5), & (7) require that:

- Election judges must accurately document the total votes received by each candidate, record the number of undervotes, overvotes, and defective ballots for each office.
- The number of individuals who voted at the election in the precinct must equal the total number of ballots cast in the precinct.
- Election judges must certify by their signatures “that all of the ballots cast were accurately piled, checked, and counted; and that the numbers entered by the election judges on the summary statements correctly show the number of votes cast for each candidate.”

CONTEST GROUNDS

II. Count I—Irregularity in Conduct of an Election.

30. Contestant Aaron Paul realleges and incorporates paragraphs 8-28.

31. Scott County elections officials admit a material irregularity in the conduct of this election. Scott County election officials failed to record, maintain, and count at least 20, possibly 21, validly cast absentee ballots in direct violation of Minn. Stat. § 203B.121, subd. 5 and Minn. Stat. § 204C.24, subd. 1(2), (5), & (7).

32. The admitted irregularity directly impacted the results and outcome of the election for District 54A. The admitted irregularity could and will change the results for the District 54A race.

33. The admitted irregularity directly impacts the results for District 54A, as the amount of missing ballots exceeds the difference in ballots cast for the candidate declared the winner.

34. The admitted irregularity in the conduct of the election, losing at least 20 possibly 21 ballots, has impacted the results for District 54A by making it impossible to determine who received the most ballots cast on election day.

III. Count II—Question of Who Received the Largest Number of Votes Legally Cast.

35. Contestant Aaron Paul realleges and incorporates paragraphs 8-28.

36. Scott County admits that a material irregularity in the conduct of the election occurred, that eligible voters cast valid ballots, and those ballots were not included in the vote totals for District 54A.

37. Scott County has directly refuted the canvassed results of District 54A. By their own statements, Scott County admits that the reported canvassed results for District 54A are incorrect.

38. Due to Scott County's admitted failure to secure, maintain, and count up to 21 validly cast ballots, a question exists as to who received the largest number of votes legally cast for Minnesota House District 54A.

IV. Deliberate, Serious, and Material violation of Minnesota Election Law.

39. Contestant Aaron Paul realleges and incorporates paragraphs 8-28.

40. The admitted failure of Scott County elections officials to secure, maintain, and count the 21 validly cast ballots constitutes a serious, material, and deliberate violation of Minn

Stat. § 203B.121 subd. 5. Specifically, by discarding absentee ballots, election officials deliberately failed to “ensure that the number of ballots removed from the ballot box is equal to the number of voters whose absentee ballots were accepted that day;” and to “secure all voted and unvoted ballots present in that location at the end of the day.” *Id.* This resulted in a serious and material violation of law, directly impacted the results of the election for District 54A and is fatal to the validity of the election.

41. Additionally, the failure to ensure an accurate count of ballots prior to and after the final tally was completed constitutes a violation of Minn. Stat. § 204C.21 and Minn. Stat. § 204C.24, Subd.1(2), (5), & (7), which requires election officials to confirm the accuracy of the ballot count, confirm that the number of ballots are equal to the number of individuals who voted, and to immediately seal the ballots for return to the county auditor once the count is complete. Election officials deliberately failed to comply with these statutes and these serious and material violations call the accuracy of the election results into serious question.

42. Furthermore, Scott County elections officials deliberately reported results knowing that up to 21 validly cast ballots were missing. In doing so, this violation of Minnesota Election Law was serious and material as it resulted in a candidate being declared the winner, without knowing who received the highest number of validly cast ballots.

43. This failure to secure and count the 21 missing absentee ballots is a serious and material violation of Minnesota Election Law. Indeed, since Representative Tabke’s currently announced margin of victory is less than 21 votes, this violation is of significant magnitude that it may determine the election outcome, resulting in the announced winner of the race being the candidate who the voters did *not* select.

44. Minnesota Election Law mandates that Minnesota county auditors, and their agents, have a statutory duty to ensure accurate voter registration, proper absentee ballot handling, secure elections, transparent vote counting, and access to voting for all eligible voters. These duties are designed to preserve the integrity of the election process, safeguard voter rights, and ensure that the election results accurately reflect the will of the people. The actions of Scott County elections officials constitute a serious breach of not only Minnesota Election Law, but the public trust in our electoral system.

PRAYER FOR RELIEF

WHEREFORE, Contestant prays that the Court:

45. Immediately set the date for service of Contestee's answer for seven (7) days after service of the notice of election contest, in compliance with Minnesota Statute § 209.03.

46. Immediately set a hearing within fifteen (15) days of filing of this notice of contest, in compliance with Minnesota Statute § 209.10, subd. 3.

47. Immediately instruct the Court Administrator for Scott County to submit the Notice of Contest to the chief justice of the Minnesota State Supreme Court by certified mail within three (3) days of receipt of the notice of contest.

48. Issue Findings of Fact and Conclusions of Law that based on the facts described herein Contestant is entitled to a decree changing the declared result of the election.

49. Issue Findings of Fact and Conclusions of Law that based on the facts described herein violations of the law did occur, and that the irregularity on the conduct of the election directly affected the outcome of the District 54A election.

50. Issue Findings of Fact and Conclusions of Law that based on the facts described herein violations of the law did occur, and that the deliberate, serious, and material violation of law directly impacted the outcome of the District 54A election.

51. Issue Findings of Fact and Conclusions of Law that based on the facts described herein, a question as to who received the most votes for 54A exists and is unresolvable based on the ballots in possession of Scott County.

52. Enjoin the Scott County Auditor and Secretary of State from issuing a certificate of election to Representative Tabke.

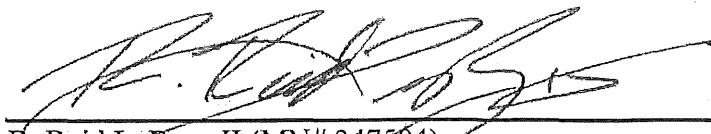
53. Declare that the election for House District 54A is invalid and that a vacancy in House District 54A exists.

54. Issue Findings of Fact and Conclusions of Law recommending that the House of Representatives refuse to seat Representative Tabke to the House District 54A seat,

55. Grant Plaintiff such other and further relief as the Court deems just and appropriate.

Dated: November 29, 2024

Respectfully Submitted,



R. Reid LeBeau II (MN# 347504)

Attorney for Aaron Paul

Chalmers, Adams, Backer, and Kaufman

525 Park St. Suite 255

St. Paul, MN 55103

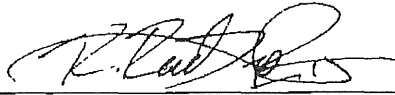
651-397-0089

rlebeau@chalmersadams.com

I declare under penalty of perjury that everything I have stated in this document is true and correct.
Minn Stat. § 358.116.

ACKNOWLEDGEMENT

Pursuant to Minn. Stat. § 549.211, the undersigned acknowledges that costs, disbursements, and reasonable attorney and witness fees may be awarded to the opposing party or parties for actions in bad faith; the assertion of a claim or a defense that is frivolous and that is costly to the other party; the assertion of an unfounded position solely to delay the ordinary course of the proceedings or to harass; or the commission of a fraud upon the Court.



R. Reid LeBeau II (MN# 347504)
Attorney for Aaron Paul
Chalmers, Adams, Backer, and Kaufman
525 Park St. Suite 255
St. Paul, MN 55103
651-397-0089
rlebeau@chalmersadams.com

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF SCOTT

FIRST JUDICIAL CIRCUIT

Aaron Paul,

Contestant,

v.

Brad Tabke,

Contestee.

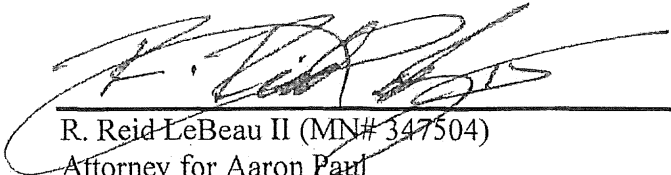
Case No.: _____

VERIFICATION DECLARATION
Minn. Stat. § 209.021**VERIFICATION DECLARATION OF R. REID LEBEAU II**

R. Reid LeBeau II ("Declarant"), as counsel for Contestant Aaron Paul, declares and states that the facts contained in the Notice of Election Contest Under Minnesota Statute § 209.021 dated November 29, 2024, are based upon his own knowledge and understanding, and are true and correct to the best of his recollection.

I declare under penalty of perjury that everything I have stated in this document is true and correct.
Minn Stat. § 358.116

Dated: November 29, 2024



R. Reid LeBeau II (MN# 347504)

Attorney for Aaron Paul

Chalmers, Adams, Backer, and Kaufman

525 Park St. Suite 255

St. Paul, MN 55103

651-397-0089

rlebeau@chalmersadams.com

STATE OF MINNESOTA
COUNTY OF SCOTT

DISTRICT COURT
FIRST JUDICIAL CIRCUIT

Aaron Paul,

Contestant,

v.

Brad Tabke,

Contestee.

Case No.: _____

**AFFIDAVIT OF
JULIE HANSON**

AFFIDAVIT OF JULIE HANSON

Julie Hanson, hereby affirms and certifies, under the penalty of perjury, the following:

1. I am the Elections Administrator for Scott County ("County"). I am making this Affidavit based on my personal knowledge. If called to do so, I could and would testify to the matters herein.
2. In my capacity as Elections Administrator, I am the local election official responsible for duties relating to Scott County's elections, including state and federal elections.
3. While carrying out my election duties, I identified a discrepancy in the count of ballots, in which there were 20 more absentee ballot records than ballots counted in the Shakopee P-10 precinct from the City of Shakopee.
4. From the initial receipt of Shakopee P-10 precinct's ballots through the time in which the absentee ballots in dispute were identified as missing, the County was in possession of the 20 absentee ballot envelopes.
5. I organized and conducted multiple search attempts with County and City staff to locate the 20 absentee ballots.
6. After exhausting all attempts to locate the missing 20 absentee ballots, the County determined the 20 absentee ballots have been lost and cannot be found.
7. Upon investigating the ballot count discrepancy, the County determined the missing 20 absentee ballots were validly cast by Minnesota residents entitled to vote in the general

election for House District 54A.

8. The missing 20 absentee ballots were not counted, in the original count nor the recount, and were not included in any reported vote totals for the House District 54A election.

I declare under penalty of perjury that everything I have stated in this document is true and correct.
Minn. Stat. § 358.116

Dated: November 26, 2024

Scott County, Minnesota

/s/ Julie Hanson

Julie Hanson

Scott County Property & Customer Service Manager

County Recorder/Registrar of Titles

Deputy Registrar 135

Elections Administrator



OFFICE OF THE SCOTT COUNTY ATTORNEY

GW-300 GOVERNMENT CENTER WEST • 200 FOURTH AVE. WEST • SHAKOPEE, MN 55379
(952) 496-8240 • Fax: (952) 496-8775 • www.scottcountymn.gov

RON HOCEVAR
County Attorney

SARAH WENDORF
Chief Deputy

MICHAEL GROH
First Assistant

CRIMINAL-FELONY/JUVENILE
Debra Lund – Div. Head

CRIMINAL-MISDEMEANOR
Steve Kelm – Div. Head

CIVIL
Jeanne Andersen – Div. Head

VICTIM/WITNESS
Tera Portinga – Supervisor

OFFICE MANAGER
Lori Lambrecht

November 27, 2024

During the post-election audit of election returns, Scott County staff discovered that the City of Shakopee did not return the number of ballots that would match the Statewide Voter Registration System (SVRS) count for voters checked in. After reviewing the situation further, Scott County has come to the conclusion that the ballots were likely disposed of while they were in their secrecy envelopes, after being removed from their signature envelopes but before being tabulated.

The City of Shakopee held early voting at its City Hall from September 20, 2024 through November 4, 2024. Early voting from September 20 through October 17 was by “envelope voting,” in which an individual could complete their absentee ballot, place it in a security envelope, put that inside a signature envelope, and leave the completed packet with the City as if it had been mailed in. On the night of October 17, 2024, Absentee Ballot Boards were allowed to start opening absentee envelope ballots and scanning them through tabulators. On October 18, individuals who were voting early switched from envelope voting to “direct ballot voting,” in which their absentee ballots were immediately scanned through the tabulators.

On election day, after the polls closed, Scott County noted that the City of Shakopee was slow to report their final results. At 10:50 PM, Shakopee reported that it had 6,300 absentee ballots still in process; at 11:25 PM, the City reported they had only gotten through 2,400 of those ballots with two tabulators running. Scott County advised Shakopee to stop tabulating and the remaining ballots could be run through the County’s high speed tabulator. At around 12:20 AM on Wednesday, November 6, the County and City put the remaining ballots through the County’s tabulator. Upon completing that work, City staff confirmed that the total of the scanned ballots matched the amount of ballots that they should have reported. This was later found to be incorrect.

While conducting normal auditing activities on Thursday, November 7, County staff found that there was a problem with Shakopee returns in that there was a 21-ballot discrepancy between two precincts (with more absentee voters recorded than ballots received). The issues were noted to be 20 ballot records for Precinct 10 (“P10”) and one for Precinct 12A. Based on experience, staff noted that it is not uncommon for one voter to check in and not vote, so the discrepancy in Precinct 12A was not pursued; the focus was on P10.

For P10, Shakopee reported processing 329 voters but reported results for 309 ballots; in addition, their transfer case held 309 ballots. The ballots for Shakopee Precinct 10 were counted at least four times with the total number equaling 309 – while 329 people were checked in.

County staff worked to eliminate various possibilities for the discrepancy. It was felt that this was unlikely to be voters changing their mind and not voting due to the number of voters in one precinct. Staff counted signature envelopes and verified the number matched the number of voters on the SVRS reports (87 in all for P10). Applications for absentee ballots were also counted and matched to the signature envelopes, and again, all were accounted for. County staff then checked a spreadsheet report that was provided by City staff tracking absentee ballots submitted in Shakopee. The report was found to reflect a 21-ballot discrepancy between October 17 to October 18 when the sheets were reflecting ballots received and machine counts of ballots tabulated. Specifically, the running balance of absentee ballots accepted, when added to the first day number of direct voters, did not total the number of ballots reflected on the tabulator counter; the machine was 21 ballots short.

Staff considered if Health Care Facility (HCF) voting -- a common area for mismatches due to residents deciding not to vote -- could have been an issue, but after learning the dates that the City performed HCF voting and checking the envelopes, this theory was eliminated (as voting took place after the dates that were determined to be an issue). County staff next ran reports for just P10, matching them against when the City's Absentee Ballot Board was held. It was found that 20 P10 ballots were accepted by the Ballot Board on October 17 covering the voting period of October 15-17 (the last three days of envelope voting). The County was unable to recheck the City's secrecy envelopes for the missing ballots as they had not been returned with the City's election materials.

A request was made to the City for their secrecy envelopes, and the County was advised they had been thrown into the garbage. The County tracked the trash and recycling to a landfill in Burnsville and DemCon respectively, but learned that the recycle bale had already been sent for shredding.

Absentee ballot boards are established by each governing body. The members are charged with following the process to accept or reject ballots that have been voted via the envelope method. Following the procedures, two or more members of the board examine each signature envelope, mark "accepted" or "rejected," and record into the Statewide Voter Registration System. Based upon the acceptance records and the matching of the envelopes and applications, this part of the process was completed.

At the close of business on the 19th day before the election (in this case, October 17), the envelopes can start being opened. Prior to opening, voting envelopes must be divided by precinct, and each precinct has to be balanced by counting of the physical envelopes vs. the accepted number in SVRS. Once the envelopes are balanced, they are opened by precinct, opening all signature envelopes, and setting them to the side while secrecy envelopes are placed in another pile, thereby ensuring voter privacy. Once all of the signature envelopes and secrecy envelopes are opened, the ballots can be removed from the secrecy envelopes. The ballots are then reviewed, duplicated as needed, initialed, and prepared for tabulation. Although investigation is continuing, the County has been unable to verify that the missing ballots were ever removed from their secrecy envelopes.


Although the investigation is not complete and remains ongoing, County staff has made the following preliminary conclusions based upon the facts that there were 20 accepted ballots for P10 on October 17 (exactly matching the discrepancy for that precinct), and the tabulator numbers showed a discrepancy as of October 18 (the first day ballots would have been scanned and that the secrecy envelopes were disposed of):

- That 20 absentee ballots in P10 were properly accepted for counting on October 17

and should have been counted;

- That these ballots are the ballots that were not counted;
- That the ballots were most likely were never removed from their secrecy envelopes;
- That the ballots were likely in their secrecy envelopes when the secrecy envelopes were thrown away;
- That the ballots most likely will not be recovered; and
- That even if 20 ballots were found, it is unlikely that their chain of custody can be proven to assure they have not been tampered with.

Date: November 27, 2024



Ronald B. Hocevar
Scott County Attorney

[Section divider]

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF SCOTT

FIRST JUDICIAL CIRCUIT

Aaron Paul,

Contestant,

v.

Brad Tabke,

Contestee.

Case No.: _____

CERTIFICATE OF SERVICE
Minn. Stat. § 209.021**CERTIFICATE OF SERVICE**

R. Reid LeBeau II, certifies that on November 29, 2024, he filed a Notice of Election Contest Under Minnesota Statute § 209.021 in the First Judicial Circuit of the Minnesota District Court of Scott County and hereby personally served upon the Contestee, Brad Tabke, via email to his counsel by consent of electronic service. Additionally, Contestee, Brad Tabke was served via certified mail to his last known listed address. Service was made to the following recipients:

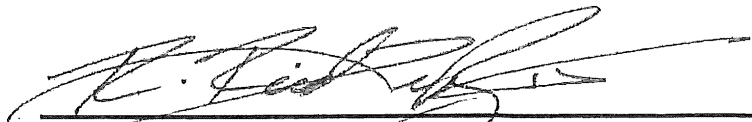
David J. Zoll, attorney for Contestee Brad Tabke
Email: DJZoll@locklaw.com

Jeanne Andersen, Assistant Attorney for Scott County
Email: JAndersen@co.scott.mn.us; and

Brad Tabke, 1584 Harvest Lane, Shakopee, MN 55379

I declare under penalty of perjury that everything I have stated in this document is true and correct.
Minn Stat. § 358.116

Dated: November 29, 2024



R. Reid LeBeau II (MN# 347504)

Attorney for Aaron Paul

Chalmers, Adams, Backer, and Kaufman

525 Park St. Suite 255

St. Paul, MN 55103

651-397-0089

rlebeau@chalmersadams.com

Idx. 2

[Section divider]

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF SCOTT

FIRST JUDICIAL DISTRICT

CASE TYPE: CIVIL/OTHER

Aaron Paul,

Court File No. 70-CV-24-17210

Contestant,

v.

**NOTICE OF APPEARANCE FOR
CONTESTEE BRAD TABKE**

Brad Tabke,

Contestee.

PLEASE TAKE NOTICE that the undersigned attorneys hereby notify the Court, counsel, and parties that they shall appear as counsel of record for Contestee Brad Tabke in the above-referenced matter.

Dated: December 2, 2024

LOCKRIDGE GRINDAL NAUEN PLLP

s/Charles N. Nauen

Charles N. Nauen, #121216

David J. Zoll, #330681

Rachel A. Kitze Collins, #396555

100 Washington Avenue South, Suite 2200

Minneapolis, MN 55401

(612) 339-6900

cnnauen@locklaw.comdjzoll@locklaw.comrakitzecollins@locklaw.com**ATTORNEYS FOR CONTESTEE
BRAD TABKE**

[Section divider]

Filed in District Court
State of Minnesota
12/3/2024

State of Minnesota
Scott County

District Court
First Judicial District

Court File Number: **70-CV-24-17210**

Case Type: Civil Other/Misc.

Aaron Paul vs Brad Tabke

Affidavit of Service

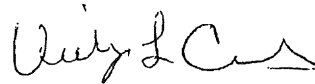
Vicky Carlson states that on December 2, 2024, at Shakopee, in Scott County and State of Minnesota, (s)he sent via certified mail a copy of Notice of Elections Contest to:

Chief Justice Natalie Hudson
Minnesota Supreme Court
25 Rev. Dr. Martin Luther King Jr. Blvd
St. Paul, MN 55155

by serving a copy at Shakopee, Minnesota.

I declare under penalty of perjury that everything I have stated in this document is true and correct.

Minn. Stat. § 358.116.



Vicky L. Carlson

Court Administrator

By: Vicky Carlson

Deputy Court Administrator

Scott County District Court

200 4th Avenue West JC 115

Shakopee MN 55379

952-496-8200

Dated: December 2, 2024

70-CV-24-17210

9589 0710 5270 2043 5940 55

U.S. Postal Service™ CERTIFIED MAIL® RECEIPT Domestic Mail Only	
For delivery information, visit our website at www.usps.com	
Sold to PAUL MN 55379	
Certified Mail Fee	\$4.85
Extra Services & Fees (check box, add fee as appropriate)	
<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00
<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00
Postage	\$2.31
Total Postage and Fees	\$7.16
Sent To	
Street and Apt. No., or PO Box No.	
City, State, ZIP+4®	
PS Form 3800, January 2023 PSN 7530-02-000-9047 See Reverse for Instructions	

Postmark
DEC 02 2024
Here
STAPLEE MN 55379

[Section divider]



THE SUPREME COURT OF MINNESOTA
MINNESOTA JUDICIAL CENTER
25 REV. DR. MARTIN LUTHER KING JR. BLVD.
SAINT PAUL, MINNESOTA 55155

CHAMBERS OF
CHIEF JUSTICE NATALIE E. HUDSON

(651) 296-3380

December 3, 2024

RE: *Aaron Paul v. Brad Tabke*
No. 70-CV-24-17210 (First Judicial District)

Contestants and Contestees:

An election contest for House Seat 54A was filed in Scott County District Court on November 29, 2024. The Scott County Court Administrator submitted a copy of the Notice of Election Contest to me, as required by Minnesota Statutes § 209.10, subdivision 1. I am required by subdivision 2 of section 209.10 to provide the parties with "the names of judges of the judicial district or districts covering the area served by the contested office." Enclosed, please find a copy of Minnesota Statutes § 209.10.

House Seat 54A serves Scott County, which is within the First Judicial District. Please find the following list of active judges from the First Judicial District who are available to preside over this matter.

Assistant Chief Judge Christopher Jon Lehmann
Judge Douglas C. Bayley
Judge Patrick M. Biren
Judge Eric J. Braaten
Judge Jamie L. Cork
Judge Dannia L. Edwards
Judge Bryce A.D. Ehrman
Judge Martin S. Fallon
Judge Patrick Goggins
Judge Kathryn Iverson Landrum
Judge Adam Johnson
Judge Lauren M. Johnson
Judge Colleen G. King
Judge David L. Knutson

Judge David Lutz
Judge Jessica J.W. Maher
Judge Krista M. Marks
Judge Michael J. Mayer
Judge Cynthia L. McCollum
Judge Luis Morales
Judge Tracy Perzel
Judge Stacey E. Sorensen Green
Judge Vicki Vial Taylor
Judge Paula D. Vraa
Judge Charles Webber
Judge Michael D. Wentzell
Judge Christian S. Wilton
Judge Jody L. Winters

Sincerely,

A handwritten signature in cursive script, reading "Natalie E. Hudson".

Natalie E. Hudson
Chief Justice

Enclosure

Idx. 5

209.10 MS 1957 [Repealed, 1959 c 675 art 13 s 1]

209.10 STATE LEGISLATIVE OFFICE.

Subdivision 1. **Notice in legislative contest.** In a legislative contest, the court administrator of district court, within three days of receipt of the notice of contest, shall submit one copy of it to the chief justice of the supreme court by certified mail. The court administrator shall also submit one copy of the answer, if any, to the chief justice by certified mail within three days of receipt.

Subd. 2. **Judge selection.** In cases where an unfair campaign practice is alleged, within five days of receipt of a notice of contest, the chief justice shall submit to the parties a list of all the district judges in the state, except those involved in a trial that would interfere with serving as a judge in the election contest and those whose health precludes serving as judge in the election contest. Within two days after receiving the list of judges the parties shall meet together and, by alternating strikes they shall remove the names of all judges until only one remains. If no unfair campaign practice is alleged, the parties shall follow the same procedure using only the names of judges of the judicial district or districts covering the area served by the contested office. If the contestant does not proceed within the time provided for in this section, the action must be dismissed and the judge shall transmit a copy of the order for dismissal to the chief clerk of the house of representatives or the secretary of the senate, as appropriate.

Subd. 3. **Duties of court.** Within 15 days after notice of contest has been filed, the judge shall convene the proceeding at an appropriate place within the county, or, if the district includes all or portions of more than one county, a county within the legislative district, and hear testimony of the parties under the ordinary rules of evidence for civil actions. The judge shall decide the contest, issue appropriate orders, and make written findings of fact and conclusions of law. Unless the matter is appealed to the supreme court, the judge, by the first day of the legislative session, shall transmit the findings, conclusions, orders, and records of the proceeding to the chief clerk of the house of representatives or the secretary of the senate, as appropriate.

Subd. 4. **Appeal.** The judge's decision may be appealed to the supreme court no later than ten days after its entry in the case of a general election contest or five days after its entry in the case of a primary contest. The record on appeal must be made, certified, and filed in the supreme court within 15 days after service of notice of appeal. The appellant shall file in the district court a bond of \$500 for the payment of respondent's costs if appellant fails on appeal. The appeal from an election contest relating to the office of state senator or representative takes precedence over all other matters before the supreme court. A copy of the decision must be forwarded to the chief clerk of the house of representatives or the secretary of the senate, as appropriate.

Subd. 5. **Legislative hearing, procedure.** In hearing a contest, the house of representatives or senate shall proceed as follows:

- (a) At the time appointed, the parties shall be called and, if they appear, their appearance shall be recorded.
- (b) If the presiding officer is a party, a speaker pro tem must be elected to preside.
- (c) The contestant shall submit evidence first, followed by the contestee, and the contestant shall open the argument and close the argument after the contestee has been heard.
- (d) The vote upon the contest must be viva voce, any member may offer reasons for an intended vote, and a majority of the votes given decides the issue. No party to the contest may vote upon any question relating thereto.
- (e) The clerk or secretary shall enter the proceedings in the journal.

Subd. 6. **Not a limitation.** This chapter does not limit the constitutional power of the house of representatives and the senate to judge the election returns and eligibility of their own members.

History: 1959 c 675 art 10 s 7; 1961 c 564 s 6; 1961 c 607 s 8; 1971 c 733 s 8; 1986 c 408 s 11; 1986 c 444; 1Sp1986 c 3 art 1 s 82

[Section divider]



Chalmers, Adams, Backer
& Kaufman, LLC

525 PARK STREET, SUITE 255

St. Paul, MN 55103

(612) 483 – 1507

rlebeau@chalmersadams.com

December 4, 2024

Chief Justice Natalie E. Hudson
Supreme Court of Minnesota
Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Re: Aaron Paul v. Brad Tabke
No. 70-CV-24-17210 (Scott Cty. Dist. Ct.)

Dear Chief Justice Hudson:

Per your letter dated November 26, 2024, the parties have conferred and chosen Judge Tracy Purzel to preside over the above referenced matter.

Please feel free to contact our office with any questions. Thank you.

Respectfully Yours,

CHALMERS, ADAMS, BACKER & KAUFMAN, LLC

R. Reid LeBeau, Esq.
For the Firm

cc: Clerk of Court

Idx. 6

[Section divider]



Chalmers, Adams, Backer
& Kaufman, LLC

525 PARK STREET, SUITE 255

St. Paul, MN 55103

(612) 483 – 1507

rlebeau@chalmersadams.com

December 6, 2024

Chief Justice Natalie E. Hudson
Supreme Court of Minnesota
Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Re: Aaron Paul v. Brad Tabke
No. 70-CV-24-17210 (Scott Cty. Dist. Ct.)

Dear Chief Justice Hudson:

Per your letter dated November 26, 2024, the parties have conferred and chosen Judge Tracy Perzel¹ to preside over the above referenced matter.

Please feel free to contact our office with any questions. Thank you.

R. Reid LeBeau II (MN# 347504)
Attorney for Aaron Paul
Chalmers, Adams, Backer, and Kaufman
525 Park St. Suite 255
St. Paul, MN 55103
651-397-0089
rlebeau@chalmersadams.com

cc: Clerk of Court

¹ We recognize and apologize for the misspelling of the last name in our previous correspondence with the Court.

[Section divider]

State of Minnesota
Scott County

District Court
First Judicial District

Court File Number: **70-CV-24-17210**

Case Type: Civil Other/Misc.

FILE COPY

**Notice of Judicial
Assignment**

Aaron Paul vs Brad Tabke

This case is assigned to:

Judge Tracy Perzel
200 4th Avenue West JC 115
Shakopee MN 55379
952-496-8200

All future hearings shall be scheduled before this judicial officer.

Please note that a notice to remove this judicial officer must comply with Minnesota Rules of Civil Procedure 63.03 and Minnesota Statute § 542.16.

Dated: December 6, 2024

Vicky L. Carlson
Court Administrator
Scott County District Court

cc: RONDELL REID LEBEAU, II

CHARLES N NAUEN

[Section divider]

STATE OF MINNESOTA
COUNTY OF SCOTT

DISTRICT COURT
FIRST JUDICIAL DISTRICT
CASE TYPE: CIVIL/OTHER

Aaron Paul,

Court File No. 70-CV-24-17210

Contestant,

v.

**ANSWER OF CONTESTEE
BRAD TABKE**

Brad Tabke,

Contestee.

Pursuant to Minnesota Statutes, Section 209.03, Contestee Brad Tabke ("Tabke") for his answer to the Notice of Contest, hereby states as follows. Tabke denies each and every matter, allegation, or thing contained in the Notice of Contest except as may be affirmatively admitted herein. To the extent any of the headings in the Notice of Contest or the statements in the unnumbered paragraphs following the "Introduction" heading constitute allegations to which a response is required, Tabke denies any and all such allegations.

INTRODUCTION

Representative Brad Tabke won the 2024 General Election for the Office of State Representative for House District 54A by a margin of 14 votes. This result was certified by the Scott County Canvassing Board on November 13, 2024 and again on November 25, 2024 following a hand recount of the ballots. Now, Contestant Aaron Paul ("Contestant") asks this Court to invalidate the results of the election and nullify the votes of the nearly 22,000 voters who cast their ballots for either Representative Tabke or Aaron Paul. Ultimately, Contestant seeks to take the election away from the individuals who voted in the November 2024 general election and

place the outcome in the hands of the much smaller pool of voters who would participate in a special election.¹

Contestant asserts that the error by election officials which resulted in 20 absentee ballots from Shakopee Precinct-10 being lost before they were counted raises a question of who received the largest number of votes legally cast. To be sure, the total number of votes received by each candidate likely would change if these ballots had been counted. It is extraordinarily unlikely, however, that the counting of 20 ballots from a precinct which Tabke won by a 14% margin² would change the outcome of the election. Indeed, there is only a 0.0005% chance that the counting of the missing ballots would result in Contestant gaining a net of at least 14 votes. Moreover, although Contestant asserts that question of who received the most votes is unresolvable, Tabke is confident that the evidence introduced in the election contest will leave no doubt that he won the election.

Contestant also asserts, without support, that the election was affected by “deliberate, serious, and material violations of the Minnesota Election Law.” The Notice of Contest does not allege that the 20 ballots were deliberately destroyed and there is no evidence to suggest that the alleged failures to secure, maintain, and count the ballots were the result of deliberate conduct. Instead, Contestant alleges that Scott County election officials deliberately violated Minnesota Election Law by reporting results that did not include the missing ballots. This is not a violation

¹ For example, 6,618 votes were cast in the December 5, 2023 special election for House District 52B while 26,179 votes were cast in the 2024 General Election for the same office. *See* <https://electionresults.sos.mn.gov/results/Index?ErsElectionId=159&scenario=StateFedMNHouse&DistrictId=458&show=Go> (2023 Special Election Results); <https://electionresults.sos.mn.gov/results/Index?ErsElectionId=170&scenario=StateRepresentative&DistrictId=458&show=Go> (2024 General Election Results).

² The precinct level results for House District 54A are available at: <https://electionresults.sos.mn.gov/Results/Index?ersElectionId=170&scenario=ResultsByPrecinctCrosstab&OfficeInElectionId=33461&QuestionId=0>

of Minnesota Election. The County election officials were carrying out their statutorily prescribed duties when taking these actions and deviating from this course as Contestant seemingly believes should have been done would violate Minnesota Election Law.

Finally, this Court lacks the authority to grant elements of the relief Contestant requests. For instance, there is no basis in Minnesota Election Law for this Court to enjoin the issuance of a certificate of election for Representative Tabke nor is there any basis for this Court to declare that the election for House District 54A is invalid or that a vacancy exists in House District 54A because the Minnesota Constitution gives the House of Representatives the exclusive authority to judge the election returns and eligibility of its own members. Minn. Const. Art. IV, § 6

JURISDICTION

1. Tabke admits that he resides in Scott County Minnesota. Tabke denies that this Court has jurisdiction over this matter, notwithstanding the provisions of Minnesota Statutes, Chapter 209, because Minnesota Constitution Article IV, Section 6 provides “[e]ach house shall be the judge of the election returns and eligibility of its own members.” Tabke denies the remaining allegations in paragraph 1 of the Notice of Contest.

2. Tabke admits the allegation in the final sentence of paragraph 2 of the Notice of Contest that Contestant was the Republican candidate for District 54A. Tabke lacks information sufficient to admit or deny the remaining allegations in the final sentence of paragraph 2 and, therefore, denies the same. Tabke denies the remaining allegations in paragraph 2 of the Notice of Contest.

3. The allegations in paragraph 3 of the Notice of Contest are characterizations of the contest and/or conclusions of law to which no response is required. To an extent a response is required, Tabke denies the allegations in paragraph 3.

PARTIES

4. Tabke lacks information sufficient to admit or deny the allegations in paragraph 4 of the Notice of Contest and, therefore, denies the same.

5. Tabke admits the allegations in paragraph 5 of the Notice of Contest.

6. Tabke admits the allegations in paragraph 6 of the Notice of Contest.

7. Tabke admits the allegations in paragraph 7 of the Notice of Contest.

FACTUAL BACKGROUND**I. Scott County Elections**

8. Tabke admits the allegations in paragraph 8 of the Notice of Contest.

9. Tabke admits the allegations in the first two sentences of paragraph 9 of the Notice of Contest. The allegations in the final sentence are conclusions of law to which no response is required.

10. Tabke admits that the publicly reported results on election night showed that Tabke lead the race by a margin of 13 votes. Tabke denies the remaining allegations in paragraph 10 of the Notice of Contest.

11. Tabke admits that, on November 8, 2024, Scott County election officials notified him that they intended to rescan all absentee ballots for the County. Tabke is without sufficient information to admit or deny the remaining allegations in paragraph 11 of the Notice of Contest and, therefore, denies the same.

12. Tabke admits that Scott County election officials rescanned the absentee ballots for the County on November 8, 2024. Tabke denies the remaining allegations in paragraph 12 of the Notice of Contest.

13. Tabke was not party to conversations between Contestant Scott County election officials and lacks sufficient information to admit or deny allegations regarding such

communications. Accordingly, Tabke denies the allegations in paragraph 13 of the Notice of Contest.

14. The allegations in paragraph 14 of the Notice of Contest appear to be based upon communications between Contestant and Scott County election officials. Tabke was not party to conversations between Contestant and Scott County election officials and lacks sufficient information to admit or deny allegations regarding such communications. Accordingly, Tabke denies the allegations in paragraph 14 of the Notice of Contest.

15. Tabke affirmatively alleges that Scott County election officials stated that the number of voters who are recorded to cast absentee ballots in Shakopee Precinct 12A exceeds the number of absentee ballots returned for Shakopee Precinct 12A by one. Tabke denies the allegations in paragraph 15 of the Notice of Contest.

16. Tabke admits the allegations in paragraph 16 of the Notice of Contest.

17. Tabke admits the allegations in the first sentence of paragraph 17 and further admits that Scott County election officials indicated that they believed they identified the voters who submitted the 20 ballots that were not counted for Shakopee Precinct 10. Tabke denies the remaining allegations in paragraph 17 of the Notice of Contest.

18. Tabke admits the allegations in paragraph 18 of the Notice of Contest.

19. Tabke admits that news media sources covered the election for the office of State Representative for House District 54A and states that the news media reports speak for themselves. Tabke denies the remaining allegations in paragraph 19 of the Notice of Contest.

20. Tabke admits the allegations in paragraph 20 of the Notice of Contest.

21. Tabke is without sufficient information to admit or deny the allegations in paragraph 21 of the Notice of Contest and, therefore, denies the same.

22. Tabke admits that the Scott County Canvassing Board met on November 25, 2024, that it sustained a challenge by Contestant to a ballot that had been called as a vote for Tabke during the recount, and that the Scott County Canvassing Board certified the results following the recount which indicated that Tabke won the election by a margin of 14 votes. Tabke denies the remaining allegations in paragraph 22 of the Notice of Contest.

23. Tabke admits that the Scott County Canvassing Board certified the results following the recount which indicated that Tabke won the election by a margin of 14 votes. Tabke denies the remaining allegations in paragraph 23 of the Notice of Contest.

24. Tabke is without sufficient information to admit or deny the allegations in paragraph 24 of the Notice of Contest, including subparagraphs a. through e. and, therefore, denies the same.

25. Tabke denies the allegations in paragraph 25 of the Notice of Contest.

26. Tabke denies the allegations in paragraph 26 of the Notice of Contest.

27. Tabke admits that Scott County Attorney Ron Hocesvar released a memorandum on November 27, 2024 and states that the memorandum speaks for itself. Tabke denies the remaining allegations in paragraph 27 of the Notice of Contest to the extent they are inconsistent with the memorandum.

28. Tabke admits that Scott County Attorney Ron Hocesvar released a memorandum on November 27, 2024 and states that the memorandum speaks for itself. Tabke denies the allegations in paragraph 28 of the Notice of Contest to the extent they are inconsistent with the memorandum.

LEGAL STANDARD

29. The allegations in paragraph 29, including subparagraphs a. through c., consist of statements and/or conclusions of law to which no response is required. To an extent a response is required, Tabke denies the allegations in paragraph 29.

FACTUAL BACKGROUND**II. Count I – Irregularity in Conduct of an Election**

30. Tabke incorporates by reference his responses to the allegations in paragraphs 8 through 28 of the Notice of Contest.

31. Tabke denies the allegations in paragraph 31 of the Notice of Contest.

32. Tabke denies the allegations in paragraph 32 of the Notice of Contest.

33. Tabke denies the allegations in paragraph 33 of the Notice of Contest.

34. Tabke denies the allegations in paragraph 34 of the Notice of Contest.

III. Count II – Question of Who Received the Largest Number of Votes Legally Cast.

35. Tabke incorporates by reference his responses to the allegations in paragraphs 8 through 28 of the Notice of Contest.

36. Tabke denies the allegations in paragraph 36 of the Notice of Contest.

37. Tabke denies the allegations in paragraph 37 of the Notice of Contest.

38. Tabke denies the allegations in paragraph 38 of the Notice of Contest.

IV. Deliberate, Serious, and Material violation of Minnesota Election Law.

39. Tabke incorporates by reference his responses to the allegations in paragraphs 8 through 28 of the Notice of Contest.

40. Tabke denies the allegations in paragraph 40 of the Notice of Contest.

41. Tabke denies the allegations in paragraph 41 of the Notice of Contest.

42. Tabke denies the allegations in paragraph 42 of the Notice of Contest.

43. Tabke denies the allegations in paragraph 43 of the Notice of Contest.

44. Tabke denies the allegations in paragraph 44 of the Notice of Contest.

PRAYER FOR RELIEF

45. In response to Contestant's prayer for relief in paragraph 45 of the Notice of Contest, Tabke states that he is filing this Answer to the Notice of Contest consistent with the requirements of Minnesota Statutes, Section 209.03.

46. In response to Contestant's prayer for relief in paragraph 46 of the Notice of Contest, Tabke states that the Court should proceed consistent with the requirements of Minnesota Statutes Chapter 209 and other applicable Minnesota law.

47. In response to Contestant's prayer for relief in paragraph 47 of the Notice of Contest, Tabke states that, prior to the filing of this Answer, the Court submitted notice to the Chief Justice of the Minnesota Supreme Court as required under Minnesota Statutes, Chapter 209.

48. In response to Contestant's prayer for relief in paragraph 48 of the Notice of Contest, Tabke denies that Contestant is entitled to the requested relief.

49. In response to Contestant's prayer for relief in paragraph 49 of the Notice of Contest, Tabke denies that Contestant is entitled to the requested relief.

50. In response to Contestant's prayer for relief in paragraph 50 of the Notice of Contest, Tabke denies that Contestant is entitled to the requested relief.

51. In response to Contestant's prayer for relief in paragraph 51 of the Notice of Contest, Tabke denies that Contestant is entitled to the requested relief.

52. In response to Contestant's prayer for relief in paragraph 52 of the Notice of Contest, Tabke denies that Contestant is entitled to the requested relief.

53. In response to Contestant's prayer for relief in paragraph 53 of the Notice of Contest, Tabke denies that Contestant is entitled to the requested relief.

54. In response to Contestant's prayer for relief in paragraph 54 of the Notice of Contest, Tabke denies that Contestant is entitled to the requested relief.

55. In response to Contestant's prayer for relief in paragraph 55 of the Notice of Contest, Tabke denies that Contestant is entitled to the requested relief.

AFFIRMATIVE DEFENSES

1. This Court lacks subject matter jurisdiction over this matter, notwithstanding the provisions of Minnesota Statutes, Chapter 209, because Minnesota Constitution Article IV, Section 6 provides "[e]ach house shall be the judge of the election returns and eligibility of its own members."

2. This Court lacks the authority to grant the relief requested by Contestant Aaron Paul.

Dated: December 6, 2024

LOCKRIDGE GRINDAL NAUEN PLLP

s/David J. Zoll

Charles N. Nauen, #121216

David J. Zoll, #330681

Rachel A. Kitze Collins, #396555

100 Washington Avenue South, Suite 2200

Minneapolis, MN 55401

(612) 339-6900

cnnauen@locklaw.com

djzoll@locklaw.com

rakitzecollins@locklaw.com

ATTORNEYS FOR CONTESTEE

BRAD TABKE

[Section divider]

DISTRICT COURTS
GOVERNMENT CENTER JC115
200 FOURTH AVENUE WEST
SHAKOPEE, MINNESOTA 55379-1220

An Equal Opportunity/Safety Aware Employer

MINNEAPOLIS MN 553

4 DEC 2024 PM 3:11

Filed in District Court
State of Minnesota

DEC 10 2024

70-CV-24-17210

SCO

RONDELL REID LEBEAU, II
525 PARK ST
ST. PAUL MN 55103

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UNABLE TO FOR

55303-005005
55379-1220

BC: 55379122000 *23

Form #502

DISTRICT COURTS
GOVERNMENT CENTER JC115
200 FOURTH AVENUE WEST
SHAKOPEE, MINNESOTA 55379-1220

An Equal Opportunity/Safety Aware Employer

Filed in District Court
State of Minnesota

DEC 10 2024

RECE

DEC 11

SCOTT COUN

70-CV-24-17210

RONDELL REID LEBEAU, II
525 PARK ST
ST. PAUL MN 55103

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Idx. 10

[Section divider]

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF SCOTT

FIRST JUDICIAL DISTRICT

Court File No.: 70-CV-24-17210

Aaron Paul,

Contestant,

v.

Brad Tabke,

Contestee.

**ORDER FOLLOWING
INFORMAL SCHEDULING
CONFERENCE**

On December 9, 2024, this matter came before the Honorable Tracy L. Perzel, Judge of District Court, First Judicial District, for informal scheduling conference.¹

Attorney Reid LeBeau appeared on behalf of Contestant, Aaron Paul. Attorneys David Zoll and Charles Nauen appeared on behalf of Contestee, Brad Tabke. Assistant Scott County Attorney Jeanne Andersen and various other members of the public were also present.

The parties indicated the trial in this matter must begin by Monday, December 16, 2024. The Court agrees. The notice of election contest ("Notice") was filed on November 29, 2024. That filing starts the 15-day period established by statute and in which the trial must begin. *See* Minn. Stat. § 209.10, subd. 3. However, the last day of that 15-day-period is Saturday, December 14, 2024. Minnesota's statutes addressing election contests do not provide a method for computing this 15-day period when the last day falls on a Saturday, Sunday or legal holiday. *See* Minn. Stat. §§ 209.01-209.12. Minnesota Rule of Civil Procedure 6.01 fills this gap, stating the period of days continues to run until the next day that is not a Saturday, Sunday or legal holiday, meaning Monday, December 16, 2024. *See Bergstrom v. McEwen*, 960 N.W.2d 556, 562 (Minn. 2021) (citation omitted) (applying Minnesota Rules of Civil Procedure not inconsistent with election contest statutes); Minn. R. Civ. Pro. 6.01(a)(1) (filling statutory void in computing time).

Given the extraordinarily short time from filing of the Notice to trial, the parties asked if witnesses with scheduling conflicts could provide their testimony to the physical courtroom remotely, using the Zoom video-conferencing platform ("Zoom"). Minnesota's Judicial Branch uses Zoom on a daily basis in certain court proceedings and, in general, has success doing so when those who appear by Zoom have reliable internet connectivity and electronic devices that allow them to be seen and heard from a quiet location. Considering the specific circumstances of this case, the parties' mutual request is reasonable in light of the compressed timeline for trying this case and with the parameters set forth below.

¹ This informal scheduling conference was held remotely using Zoom technology and without a court reporter making a record, all with the agreement of the parties. This is the typical practice for informal scheduling conferences where logistics, not the merits, of a case are addressed.

The parties further agreed to exchange and file exhibit and witness lists by December 12, 2024, at 5:00 p.m. and to email any filed documents to the undersigned's law clerk to ensure the Court's timely receipt of the filings.

The parties also indicated the potential for pretrial motion practice and eventual need for post-trial filing deadlines. The Court will address the former if motions are filed and the latter on day one of trial.

Based on the foregoing, the Court enters the following:

ORDER

1. Trial in this matter will begin on Monday, December 16, 2024, at the Scott County Courthouse in Shakopee, Minnesota.
2. A witness with scheduling conflicts that necessitate a remote appearance may testify using Zoom, provided the witness has (a) reliable internet connectivity; (b) access to both Zoom and an electronic device that will allow the witness to be seen and heard on Zoom; (c) the proficiency to use and, if necessary, troubleshoot, Zoom through the electronic device; (d) a quiet space from which to testify in accordance with the rules of courtroom decorum; *and* (e) copies of any exhibits about which counsel may ask the witness.
 - a. To prevent delay of the trial, witnesses testifying remotely must be within reasonable driving distance of the Scott County Courthouse should the remote nature of their testimony impair its receipt and necessitate in-person testimony.
3. The parties shall exchange witness and exhibit lists by 5:00 p.m. on December 12, 2024.
4. After making any court filings in this case, the parties shall email a copy of those court filings to the undersigned's law clerk at the email address provided during the scheduling conference and shall copy opposing counsel on any such email.

BY THE COURT:

Dated: 12/11/2024



Perzel, Tracy
2024.12.11
11:18:01 -06'00'

Tracy L. Perzel
Judge of District Court

[Section divider]

State of Minnesota
Scott County

District Court
First Judicial District

Court File Number: **70-CV-24-17210**

Case Type: Civil Other/Misc.

Notice of Filing of Order

FILE COPY

Aaron Paul vs Brad Tabke

You are notified that an order was filed on this date.

Dated: December 11, 2024

Vicky L. Carlson
Court Administrator
Scott County District Court
200 4th Avenue West JC 115
Shakopee MN 55379
952-496-8200

cc: RONDELL REID LEBEAU, II
CHARLES N NAUEN

A true and correct copy of this notice has been served pursuant to Minnesota Rules of Civil Procedure, Rule 77.04.

Idx. 12

[Section divider]

State of Minnesota
Scott County

District Court
First Judicial District
Court File Number: 70-CV-24-17210
Case Type: Civil Other/Misc.

Notice of Hearing

FILE COPY

Aaron Paul vs Brad Tabke

You are notified of the following hearing date(s):

<i>Setting</i>
December 16, 2024
Court Trial
9:00 AM

at the following location:

**District Court Judge Tracy Perzel
Scott County District Court
Crtroom 1A
200 4th Avenue West JC 115
Shakopee MN 55379
952-496-8200**

You are expected to appear fully prepared. **You must notify the court if your address changes.**

**To receive an eReminder for future court dates via e-mail or text, visit
<http://www.mncourts.gov/Hearing-eReminders.aspx> or scan the QR code to enroll.**



Dated: December 12,
2024

Vicky L. Carlson

Scott County Court Administrator

cc: RONDELL REID LEBEAU, II

CHARLES N NAUEN

[Section divider]

DEC 12 2024

State of Minnesota

County

Scott

District Court

Judicial District: First

Court File Number: **70-CV-24-17210**

Case Type: Civil

Aaron Paul

Plaintiff

vs

Brad Tabke

Defendant

Notice of Visual or Audio Coverage

Minn. Gen. R. Prac. 4.03(a)

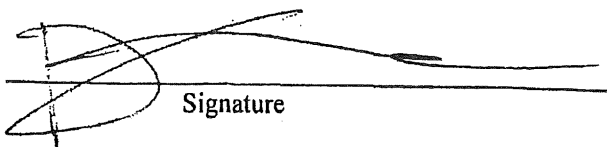
To: County Court Administrator Vicky Carlson____
Trial Judge: Tracy Perzel
State Court Administrator's Office (Court Information Office)
Media Coordinator: Mark Anfinson

The undersigned media representative provides notice of the intent to cover by visual or audio means the following district court proceedings (including dates and/or descriptions of the hearing(s) to be covered):

MPR News is requesting permission to record audio of the hearing on Dec. 16, 2024, and all subsequent hearings in this matter.

As required by Minn. Gen. R. Prac. 4.03(a), the court administrator is required to promptly provide a copy of this notice to all counsel of record, and any parties appearing without counsel.

Dated: 12/11/2024



Signature

Name: Dana Ferguson

Media Outlet/Organization: MPR News

Address: 480 Cedar St.

City/State/Zip: St. Paul, MN 55101

Telephone: 952-215-4046

E-mail address: dferguson@mpr.org

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[Section divider]

State of Minnesota

County
Scott

District Court

Judicial District:	1st
Court File Number:	70-CV-24-17210
Case Type:	Civil

Aaron Paul

Contestant

vs

Brad Tabke

Contestee

Notice of Visual or Audio Coverage

Minn. Gen. R. Prac. 4.03(a)

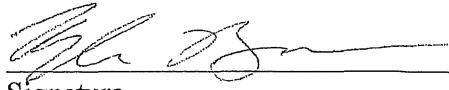
To: County Court Administrator: Vicky Carlson
Trial Judge: Tracy L. Perzel
State Court Administrator's Office (Court Information Office)
Media Coordinator (List available at www.mncourts.gov)

The undersigned media representative provides notice of the intent to cover by visual or audio means the following district court proceedings (including dates and/or descriptions of the hearing(s) to be covered):

KSTP-TV requests Zoom access to proceedings in the above case, as well as the ability to record the trial scheduled to begin on December 16, 2024.

As required by Minn. Gen. R. Prac. 4.03(a), the court administrator is required to promptly provide a copy of this notice to all counsel of record, and any parties appearing without counsel.

Dated: 12/11/2024


Signature

Name: Kyle Brown
Media Outlet/Organization: KSTP-TV
Address: 3415 University Ave
City/State/Zip: St. Paul, MN, 55114
Telephone: 651-642-4412
E-mail address: newsreply@kstp.com

Idx. 15

[Section divider]

David J. Zoll
djzoll@locklaw.com
Direct: 612-596-4028



MINNEAPOLIS
100 Washington Avenue South
Suite 2200
Minneapolis, MN 55401-2179
P: 612.339.6900

December 12, 2024

VIA ODYSSEY E-FILE

Hon. Tracy Perzel
First Judicial District Judge
Dakota County Courthouse

Re: *Aaron Paul v. Brad Tabke*,
Court File No. 70-CV-24-17210

Dear Judge Perzel:

Scott County provided documents to Contestant and Contestee which contain public information about individual voters (but not their votes). Scott County raised concerns that presenting the documents at trial may interfere with voter privacy and provided the documents with the understanding that the parties would “keep the information confidential until and unless the Court weighs in on the issue.”

The Parties seek the Court’s guidance regarding the manner in which such documents will be presented at trial. Specifically, the Parties request an order from the Court providing that, consistent with the presumption that all trial exhibits are public, the documents provided by Scott County containing public information may be used and displayed in open Court and shared with potential witnesses in preparation for trial.

Thank you.

Very truly yours,

LOCKRIDGE GRINDAL NAUEN PLLP

s/David J. Zoll

David J. Zoll

c: All counsel of record (via Odyssey)

LOCKRIDGE GRINDAL NAUEN PLLP

Idx. 16

[Section divider]

State of Minnesota

County
Scott

District Court

Judicial District:	1st
Court File Number:	70-CV-24-17210
Case Type:	Civil

Aaron Paul

Plaintiff

vs

Brad Tabke

Defendant

Notice of Visual or Audio Coverage

Minn. Gen. R. Prac. 4.03(a)

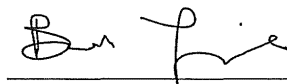
To: County Court Administrator Vicky Carlson
Trial Judge Tracy Perzel
State Court Administrator's Office (Court Information Office)
Media Coordinator (List available at www.mncourts.gov)

The undersigned media representative provides notice of the intent to cover by visual or audio means the following district court proceedings (including dates and/or descriptions of the hearing(s) to be covered):

WCCO-TV requests audio/visual/live stream recording access to all further proceedings in the above case, starting with the first day of court trial currently scheduled for 12/16/24

As required by Minn. Gen. R. Prac. 4.03(a), the court administrator is required to promptly provide a copy of this notice to all counsel of record, and any parties appearing without counsel.

Dated: 12/12/24



Signature

Name: Bree Levine

Media Outlet/Organization: WCCO-TV

Address: 90 S. 11th St.

City/State/Zip: Minneapolis, MN, 55403

Telephone: 612-330-2509

E-mail address: tips@wcco.com

Idx. 17

[Section divider]



OFFICE OF THE
SCOTT COUNTY ATTORNEY

GW-300 GOVERNMENT CENTER WEST • 200 FOURTH AVE. WEST • SHAKOPEE, MN 55379
(952) 496-8240 • Fax: (952) 496-8775 • www.scottcountymn.gov

RON HOCEVAR
County Attorney

SARAH WENDORF
Chief Deputy

MICHAEL GROH
First Assistant

CRIMINAL-FELONY/JUVENILE
Debra Lund – Div. Head

CRIMINAL-MISDEMEANOR
Steve Kelm – Div. Head

CIVIL
Jeanne Andersen – Div. Head

VICTIM/WITNESS
Tera Portinga - Supervisor

OFFICE MANAGER
Lori Lambrecht

December 12, 2024

VIA E-FILING

Hon. Tracy Perzel
First Judicial District Judge
Dakota County Courthouse

Re: *Aaron Paul v. Brad Tabke*,
Court File No. 70-CV-24-17210

Dear Judge Perzel,

As counsel for the parties have noted, Scott County has concerns related to the presentation of evidence for specific documents in this case. This is a unique situation where there are 20 missing ballots from one voting precinct in Scott County. The County believes it has identified the voters connected to those ballots, although that is not a 100% certainty. As it relates to the issues before you, the County is specifically requesting protection of voter identities related to absentee ballot applications, name lists, and returned signature envelopes. The County also seeks a finding and order that absentee ballot applications and absentee ballot signature envelopes are releasable to the parties.

While voter names and ballot voting histories are public, data classifications and access to particular documents in which the information can be found is less clear. Statutes and caselaw make it clear that Public Information Lists (lists of public data items created by elections officials using other documents) are public, but the classification and accessibility of sources of some of that information, including ballot return envelopes and absentee ballot application documents themselves, are not explicitly clear under statute, caselaw and Office of Administration advisory opinions. (See for example, *Cilek v. Office of Minnesota Secretary of State*, 941 N.W.2d 411 (2020); Advisory Opinions 13-014, 09-004, and 01-053).

The County does recognize the need for the parties in this case to have underlying documents to fully evaluate and process the situation. Further, while the names on those documents are helpful for the parties to navigate what occurred in this case and prepare for court, the County does not believe the names are relevant and necessary for proper administration of hearings, particularly for individuals who choose not to participate in the court proceedings.

Idx. 18

The County is concerned that given the small pool of names it has identified, making those names publicly available would infringe on the voters' rights to anonymity in their voting (if for instance vote totals change based on court decisions) and that they could be subjected to unwanted attention, contact or even harassment. This is particularly troubling when the County is not absolutely certain these are the individuals connected to the ballots in question (while the County believes its working theory of what happened, there is no definitive proof it is what happened).

The County believes balancing the interests of the voters against the interests and needs of the parties in this case, warrants protection of individual identities. The County requests issuance of a protective order or hearing procedures that will limit publication of the identities of the individuals in this case, prior and subject to, any decision of those individuals to participate in the court proceedings.

The County further requests that the Court find and order pursuant to Minn. Stat. §13.03 subd. 6, that to the extent specific documents can be considered private data despite containing public data, the benefit to the parties in this case outweighs the harm to the County or the individuals, and that those documents can be released to the parties for purposes of this matter without further notice to the individuals.

RON HOCEVAR
SCOTT COUNTY ATTORNEY

/s/ Jeanne Andersen
Jeanne Andersen
Assistant Scott County Attorney

cc. Counsel of Record via eService

[Section divider]

STATE OF MINNESOTA
COUNTY OF SCOTT

DISTRICT COURT
FIRST JUDICIAL DISTRICT

Aaron Paul,

Court File No. 70-CV-24-17210

Contestant,

v.

Brad Tabke,

**ORDER RESTRICTING
VOTER IDENTIFICATION AND
ALLOWING MEDIA ACCESS**

Contestee.

This matter came before the Honorable Tracy L. Perzel, Judge of District Court, First Judicial District, administratively with receipt of correspondence from the parties filed December 12, 2024.

In light of the compressed timeline in this case, the Court met with the parties on December 12 and 13, 2024, remotely for chambers discussions regarding the issues raised in the correspondence. The substance of the case was not discussed. All counsel were present for these discussions as follows: Reid LeBeau, Esq., counsel for Aaron Paul ("Paul"); David Zoll, Esq., on behalf of Brad Tabke ("Tabke"); Jeanne Anderson, Assistant Scott County Attorney, on behalf of Scott County.

Based on the file, records, and in-chambers discussions, the Court makes the following:

Findings and Conclusions of Law*Voters' Identities*

1. In this case, the Notice of Election Contest alleges, in part relevant to this Order:
 - a. the House District 54A election contest involved candidates Aaron Paul and Brad Tabke;
 - b. before certification of the election results, election officials disclosed that 21 absentee ballots had been lost and had not been counted;
 - c. at least 20, and possibly 21, of the lost ballots were validly cast by Minnesota residents entitled to vote in the general election for House District 54A;
 - d. after recount and decision-making by the Scott County Canvassing Board that ruled in favor of a Paul challenge to one Tabke ballot, Tabke was certified as the candidate with the most votes; and
 - e. there is a margin of 14 votes between the two candidates.
2. Reliable elections stand at the foundation of our democracy, and this case has generated statewide interest of a polarized electorate deserving of appropriate transparency.
3. The public has a right to know how the voters associated with those lost ballots ("lost-ballot voters") have been identified and whether their votes in the House District 54A election can be determined.
4. The Court has significant concern regarding the public identification of the lost-ballot voters at trial.
5. We live in times where political division has devolved increasingly to threats of violence and actual violence.

6. The lost-ballot voters are not parties to this case, and the Scott County Attorney's Office has identified its concern about disclosure of such voters' identifying information, prompting the Court to consider the propriety of limiting public access to these voters' names, voter-related exhibits, and other voter identifying evidence.
7. In *Schumacher*, the Court examined both the common law and constitutional right of access to court records. *Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197, 202-03 (Minn. 1986). To determine which standard to use, the court: (1) "first examines the proceeding or document to determine whether it has historically and philosophically been presumed open to the public"; and (2) if such analysis leads to a "presumption of openness," the court then "examines the constitutional right asserted to determine whether it 'affords protection' to the proceeding or document in question." *Id.* at 204 (citations omitted).
8. Documents identifying registered voters, whether a voter applied for an absentee ballot, and/or whether a voter cast an absentee ballot are public information. Minn. Stat. §§ 201.091, subd. 4; 203B.12.
9. However, the parties seek to use the public documents to obtain nonpublic information, meaning the content of voters' ballots.
10. Specifically, the parties intend, and need, to use various voter-related documents including and not limited to absentee ballot return envelopes and applications to link identified voters with the lost absentee ballots and then to have as many of those identified voters testify, first, to this link (as they are the voters whose ballots went uncounted) and, second, how they voted in the Paul/Tabke race.¹

¹ To the extent the lost-ballot voters may have a privacy interest in their voter-related documents and voter identifying information for the House District 54A election, such documents and information are

11. Minnesota's Constitution confers a right to a secret ballot. Minn. Const. Art. 7, § 5; *Brisbin v. Cleary*, 26 Minn. 107, 1 N.W. 825 (1879) (clarifying "the privilege of secrecy may properly be regarded as the distinguishing feature of ballot voting").
12. This allows voters to cast their ballots privately without their candidate choice being public, thereby minimizing unlawful efforts to buy votes and potential repercussions for voters.
13. Thus, historically and philosophically, the manner the parties seek to use these documents in this case—to facilitate identifying the content of voters' ballots—has been protected from public access and, therefore, does not give rise to a "presumption of openness."
14. Without the presumption of openness, the Court applies the common law balancing test. *Schumacher*, 392 N.W.2d at 203-204. Specifically, the Court weighs the interest of the party seeking access, including the presumption of public access, against the interest of the party seeking to restrict access. *Id.* at 205.
15. For purposes of this analysis, the public interest in voter identifying information, as that information is being used in this case, does not outweigh the countervailing privacy interest in the actual vote as linked to that identified voter.
16. Making public the voter-related documents, with information identifying each lost-ballot voter, does not protect the privacy interest in the actual vote linked to that identified voter.
17. The political climate is simply too charged to allow public identification at trial of these lost-ballot voters, some of whom may testify for Paul and others of whom may testify for Tabke, as reflected on the parties' witness lists.

discoverable under Minnesota's rules of civil procedure. In addition, any such privacy interest is outweighed by the parties' need to litigate, and the public's need for this Court to rule on, the issues in this case.

18. Thus, it is appropriate for public court filings not to identify voters by name, and for trial exhibits identifying the lost-ballot voters to be (a) redacted to exclude each voter's identifying information, including and not limited to name, date of birth, address, and signature, for purposes of the public's view during the trial; and (b) unredacted for the Court's consideration of this case and the parties' use when inquiring at trial of the specific voter to whom the voter documents relate. The Court discussed this approach with the parties, who indicated they agree.
19. It is also appropriate for lost-ballot voters to be identified on an identification key that will be filed under seal in court to ensure clarity as to the identity of the voters the parties seek to link to the lost ballots, as those voters will only be referred by "Voter" and their corresponding number, during court proceedings.
20. Likewise, it is appropriate for the Court to require counsel for the parties, their staffs, and the parties themselves not to disclose further the voter identifying information related to the lost ballots at issue in this case, unless such disclosure involves disclosing to the voter the exhibits and identifying information related solely to that voter or is otherwise authorized by this Order.

Media

21. News outlets KSTP, WCCO and MPR have filed Notices of Audio/Video Coverage as to the trial beginning December 16, 2024, in this matter.
22. Such notices are required to be filed seven days before the trial or other proceeding.
23. The Notices are late, however, the media could not have timely filed such notices given the compressed time in which this trial was scheduled. Thus, the Court will consider the Notices even though the rule-stated deadline had passed by the time of those filings.

24. Minnesota General Rule of Practice 4.02(c) provides, in relevant part:

(c) In civil proceedings, a judge may authorize, without the consent of all parties, the visual or audio recording and reproduction of appropriate court proceedings under the following conditions:

* * *

(ii) There shall be no visual or audio coverage of any witness who objects thereto in writing or on the record before testifying.

(iii) Visual or audio coverage of judicial proceedings shall be limited to proceedings conducted within the courtroom, and shall not extend to activities or events substantially related to judicial proceedings that occur in other areas of the court building.

(iv) There shall be no visual or audio coverage within the courtroom during recesses or at any other time the trial judge is not present and presiding.

25. As indicated previously, this election contest case has statewide significance, necessitating public access for not only observers present at the Scott County Courthouse but also observers across Minnesota.

26. The Court has taken the precautions set forth in the Order to allow for observers statewide to access the trial while keeping the identities of lost-ballot voters, as linked to their uncounted votes, private in these court proceedings.

27. Therefore, the Court will allow video news coverage of this trial at the Scott County Courthouse, subject to the requirements and limitations below. The Court discussed this approach with the parties, who indicated they agree.

28. If a voter witness objects to audio coverage of the voter-witness's testimony, the only type of coverage the Court is allowing for voter-witness testimony, the Court will nonetheless allow such audio coverage given the clear need for appropriate transparency in these proceedings and the precautions the Court and the parties are taking to protect these voters' identities.

Based on the foregoing, the Court enters the following:

ORDER

1. **Voter Identification Key.** The parties shall create **and file under seal** with the Court an identification key to identify each lost-ballot voter as Voter 1, Voter 2, and so on. Minn. Gen. R. Prac.14.06(a).
2. **Identification of Voters.** Each lost-ballot voter shall only be identified by “Voter” and the corresponding voter number in filings and during the trial.
3. **Voter-Related Exhibits.** The parties shall create and upload to MNDES, the Court’s electronic exhibit system, two sets of exhibits: one set marked consecutively by number and a second set marked consecutively by number followed by the letter “A”, one of which shall be public and one of which shall be sealed, as set forth below.
 - a. **Redacted Set (Public).** One set of exhibits shall be redacted of all personal identifying information and shall include only the exhibits to be displayed publicly during the trial.
 - b. **Unredacted Set (Sealed).** The second set of exhibits shall be unredacted of all personal identifying information for the Court’s use and the parties’ and voter-witnesses’ use while voter witnesses are testifying. The parties shall not disclose identifying voter information, other than as stated in this Order. Scott County Court Administration shall maintain the unredacted set of exhibits under seal and shall not disclose those exhibits except as specifically authorized by court order.
4. **Disclosure of Voter Identities.** Counsel for the parties, members of their staff, and the parties themselves shall not disclose the identities of the lost-ballot voters in this case, the exhibits pertaining to these voters, or any identifying information for these voters, *unless*

such disclosure is to a voter of the voter's own identifying information or voting documents for purposes of these proceedings or as authorized by this Order.

5. **Video News Coverage.** Video news coverage of this trial by the news agencies that filed their Notices of Audio/Video Coverage by KSTP, WCCO and MPR shall be allowed in the courtroom where the trial is conducted, subject to the following requirements and limitations:

- a. The video coverage may be in the form of recording, broadcasting, and/or delayed live-streaming with a 30-minute delay to ensure adequate time for any necessary redaction of any identification of a voter that violates this Order.
- b. The media is prohibited from publishing or disclosing any identification of the voter witnesses that may occur during these proceedings in violation of this order.
- c. No video photography, still photography, or audio recording may be conducted in any other Scott County Government Center location where the use of recording devices is otherwise prohibited.
- d. Voter witnesses shall not be visible on the video at any time during the proceedings, and shall only be audio recorded when testifying. Voter witnesses shall be audio recorded even if they object to such testimony.
- e. The video recording shall be conducted through the use of pooling, with only one camera in operation in the courtroom. The camera will be affixed by the news organization operating the pool and will not be moved from its fixed position until trial is concluded.
- f. The camera shall not have a vantage point on the horizontal surfaces of the bench, witness stand, court-reporter station, court-staff stations.

- g. There shall be no microphones placed at counsel tables and no audio recording of conversations occurring at counsel tables.
- h. Sidebar and chambers discussions shall not be recorded.
- i. The coverage must otherwise comply with all requirements of Minnesota General Rule of Practice 4.02.

BY THE COURT:

Perzel, Tracy
2024.12.15
20:37:47 -06'00'

Dated: 12/15/2024

Tracy L. Perzel
Judge of District Court

[Section divider]

State of Minnesota

County

Scott County

District Court

Judicial District:

First

Court File Number:

70-CV-24-17210

Case Type: Civil

Aaron Paul

Plaintiff

vs

Brad Tabke

Defendant

Notice of Visual or Audio Coverage

Minn. Gen. R. Prac. 4.03(a)

To: County Court Administrator Vicky Carlson
Trial Judge Tracy Perzel
State Court Administrator's Office (Court Information Office)
Media Coordinator (List available at www.mncourts.gov)

The undersigned media representative provides notice of the intent to cover by visual or audio means the following district court proceedings (including dates and/or descriptions of the hearing(s) to be covered):

KMSP-TV is requesting full A/V recording and live streaming access for the hearing/trial scheduled on
Dec. 16, 2024, and all subsequent hearings in this case.

As required by Minn. Gen. R. Prac. 4.03(a), the court administrator is required to promptly provide a copy of this notice to all counsel of record, and any parties appearing without counsel.

Dated: 12/16/2024

Katelyn Wermus
Signature

Name: Katelyn Wermus

Media Outlet/Organization: KMSP-TV

Address: 11358 Viking Drive

City/State/Zip: Eden Prairie, MN 55346

Telephone: 952-946-5767

E-mail address: fox9news@fox.com

Idx. 20

[Section divider]

DEC 16 2024

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF SCOTT

FIRST JUDICIAL DISTRICT

CASE TYPE: CIVIL/OTHER

Aaron Paul,

Court File No. 70-CV-24-17210

Hon. Tracy Perzel

Contestant,

SEALED

v.

**CONFIDENTIAL STIPULATION
REGARDING INDIVIDUAL VOTER
IDENTITIES**

Brad Tabke,

Contestee.

WHEREAS, Contestant Aaron Paul and Contestee Brad Tabke ("the Parties") anticipate introducing evidence identifying individual voters and desire to protect voter privacy;

Therefore, the Parties **HEREBY STIPULATE AND AGREE** as follows:

1. When calling an individual voter as a witness and questioning such witness, the Parties shall refer to the witnesses using the pseudonyms in the following table.

Pseudonym	Voter	Exhibit
Voter 1		Confidential Exhibit 301
Voter 2		Confidential Exhibit 302
Voter 3		Confidential Exhibit 303
Voter 4		Confidential Exhibit 304
Voter 5		Confidential Exhibit 305
Voter 6		Confidential Exhibit 306
Voter 7		Confidential Exhibit 307
Voter 8		Confidential Exhibit 308
Voter 9		Confidential Exhibit 309
Voter 10		Confidential Exhibit 310
Voter 11		Confidential Exhibit 311
Voter 12		Confidential Exhibit 312
Voter 13		Confidential Exhibit 313
Voter 14		Confidential Exhibit 314
Voter 15		Confidential Exhibit 315
Voter 16		Confidential Exhibit 316
Voter 17		Confidential Exhibit 317
Voter 18		Confidential Exhibit 318
Voter 19		Confidential Exhibit 319
Voter 20		Confidential Exhibit 320

2. The Parties may present the listed confidential exhibits to the individual voters but shall otherwise use only the redacted versions of such documents included in Exhibit 10.

Dated: December 13, 2024

CHALMERS, ADAMS, BACKER AND KAUFMAN

s/R. Reid Lebeau II

R. Reid Lebeau, #347504

525 Park St. Suite 255

St. Paul, MN 55103

(651) 397-0089

rlebeau@chalmersadams.com

ATTORNEY FOR CONTESTANT

Dated: December 13, 2024

LOCKRIDGE GRINDAL NAUEN PLLP

s/David J. Zoll

Charles N. Nauen, #121216

David J. Zoll, #330681

Rachel A. Kitze Collins, #396555

100 Washington Avenue South, Suite 2200

Minneapolis, MN 55401

(612) 339-6900

cnnaugen@locklaw.com

djzoll@locklaw.com

rakitzecollins@locklaw.com

ATTORNEYS FOR CONTESTEE

[Section divider]

Filed in District Court
State of Minnesota
12/16/2024

State of Minnesota
Scott County

District Court
First Judicial District

Court File Number: **70-CV-24-17210**

Case Type: Civil Other/Misc.

Notice of Filing of Order

FILE COPY

Aaron Paul vs Brad Tabke

You are notified that an order was filed on this date.

Dated: December 16, 2024

Vicky L. Carlson
Court Administrator
Scott County District Court
200 4th Avenue West JC 115
Shakopee MN 55379
952-496-8200

cc: RONDELL REID LEBEAU, II
CHARLES N NAUEN

A true and correct copy of this notice has been served pursuant to Minnesota Rules of Civil Procedure, Rule 77.04.

[Section divider]

DEC 16 2024

State of Minnesota

County

SCOTT

District Court

Judicial District:

1

Court File Number:

70-CV-24-17210

Case Type: CV

AARON PAUL

Plaintiff

vs

BRAD TABKE

Defendant

Notice of Visual or Audio Coverage

Minn. Gen. R. Prac. 4.03(a)

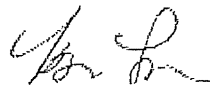
To: County Court Administrator VICKY CARLSON
Trial Judge TRACY PERZEL
State Court Administrator's Office (Court Information Office)
Media Coordinator (List available at www.mncourts.gov)

The undersigned media representative provides notice of the intent to cover by visual or audio means the following district court proceedings (including dates and/or descriptions of the hearing(s) to be covered):

KARE 11 is requesting to audio/visual coverage of all hearings/trial in this case scheduled for 12/16/24 and beyond for use on television and digital platforms (e.g. kare11.com, KARE 11 social media accounts). KARE 11 is also requesting the option to stream the proceedings live on digital platforms and/or live on television in real-time as it occurs.

As required by Minn. Gen. R. Prac. 4.03(a), the court administrator is required to promptly provide a copy of this notice to all counsel of record, and any parties appearing without counsel.

Dated: 12/16//24



Signature

Name: Brian Lundeen

Media Outlet/Organization: KARE 11

Address: 8811 Olson Memorial Highway

City/State/Zip: Golden Valley, MN 55427

Telephone: 763-797-7215

E-mail address: blundeen@kare11.com

[Section divider]

Minnesota Digital Exhibit System

Description: Aaron Paul vs Brad Tabke

Exhibit list for case: 70-CV-24-17210

Filed in District Court

State of Minnesota

12/17/2024

Description	Exhibit Type	Party Affiliation	Tracking #	Status	Uploaded	Exhibit #	Hearing Type	Case #
1 - Affidavit of Julie Hansen	Document	Plaintiff/Petitioner	T-000001	Stipulated	12/12/2024	001	Court Trial	70-CV-24-17210
2 - Letter from Scott Co. Attorney	Document	Plaintiff/Petitioner	T-000002	Stipulated	12/12/2024	002	Court Trial	70-CV-24-17210
3 - Scott Co. Absentee Handbook	Document	Plaintiff/Petitioner	T-000003	Stipulated	12/12/2024	003	Court Trial	70-CV-24-17210
4 - 1 Jackson & Louisville TWP	Document	Plaintiff/Petitioner	T-000004	Stipulated	12/12/2024	004-1	Court Trial	70-CV-24-17210
4-2 DB Apps & Machine Counts	Document	Plaintiff/Petitioner	T-000005	Stipulated	12/12/2024	004-2	Court Trial	70-CV-24-17210
4-3 AB Count 9.20-10.17	Document	Plaintiff/Petitioner	T-000006	Stipulated	12/12/2024	004-3	Court Trial	70-CV-24-17210
5 - 2nd general election abstract (002)	Document	Plaintiff/Petitioner	T-000007	Stipulated	12/12/2024	005	Court Trial	70-CV-24-17210
6 - Missing Ballot Emails	Document	Plaintiff/Petitioner	T-000008	Stipulated	12/12/2024	006	Court Trial	70-CV-24-17210
7 - Curriculum Vitae of Thomas L. Brunell, Ph.D	Document	Plaintiff/Petitioner	T-000009	Received Without Objection	12/12/2024	007	Court Trial	70-CV-24-17210
8 - Voter Election Tape	Document	Plaintiff/Petitioner	T-000010	Stipulated	12/12/2024	008	Court Trial	70-CV-24-17210
9 - Absentee Ballots (REDACTED)	Document	Plaintiff/Petitioner	T-000038	Stipulated	12/13/2024	009	Court Trial	70-CV-24-17210
10 - Shak P10 (REDACTED)	Document	Plaintiff/Petitioner	T-000039	Stipulated	12/13/2024	010	Court Trial	70-CV-24-17210
2024-11-12 Email	Document	Defendant/Respondent	T-000015	Stipulated	12/12/2024	201	Court Trial	70-CV-24-17210
2024-11-04 Email	Document	Defendant/Respondent	T-000012	Stipulated	12/12/2024	202	Court Trial	70-CV-24-17210
Absentee Ballot Machine Tape	Document	Defendant/Respondent	T-000013	Stipulated	12/12/2024	203	Court Trial	70-CV-24-17210

Idx. 24

Minnesota Digital Exhibit System

Description: Aaron Paul vs Brad Tabke

Exhibit list for case: 70-CV-24-17210

Recount worksheet Document		Defendant/Respondent	T-000017	Stipulated	12/13/2024	206	Court Trial	70-CV-24-17210
Expert Report of Aaron Rendahl PhD	Document	Defendant/Respondent	T-000016	Received Over Objection	12/12/2024	207	Court Trial	70-CV-24-17210
Sealed - Stipulation regarding Individual Voter Identities	Other	Defendant/Respondent	T-000041	Stipulated	12/18/2024	300	Court Trial	70-CV-24-17210
Sealed - Voter # 4 Election Documents	Other	Defendant/Respondent	T-000042	Received Without Objection	12/18/2024	304	Court Trial	70-CV-24-17210
Sealed - Voter # 5 Election Documents	Other	Defendant/Respondent	T-000043	Received Without Objection	12/18/2024	305	Court Trial	70-CV-24-17210
Sealed - Voter # 9 Election Documents	Other	Defendant/Respondent	T-000044	Received Without Objection	12/18/2024	309	Court Trial	70-CV-24-17210
Sealed - Voter # 10 Election Documents	Other	Defendant/Respondent	T-000045	Received Without Objection	12/18/2024	310	Court Trial	70-CV-24-17210
Sealed - Voter # 11 Election Documents	Other	Defendant/Respondent	T-000046	Received Without Objection	12/18/2024	311	Court Trial	70-CV-24-17210
Sealed - Voter # 12 Election Documents	Other	Defendant/Respondent	T-000047	Received Without Objection	12/18/2024	312	Court Trial	70-CV-24-17210
Sealed - Voter # 14 Election Documents	Other	Defendant/Respondent	T-000048	Received Without Objection	12/18/2024	314	Court Trial	70-CV-24-17210
Sealed - Voter # 15 Election Documents	Other	Defendant/Respondent	T-000049	Received Without Objection	12/18/2024	315	Court Trial	70-CV-24-17210
Sealed - Voter # 16 Election Documents	Other	Defendant/Respondent	T-000050	Received Without Objection	12/18/2024	316	Court Trial	70-CV-24-17210

Minnesota Digital Exhibit System

Description: Aaron Paul vs Brad Tabke

Exhibit list for case: 70-CV-24-17210

Sealed - Voter # 17 Election Documents	Other	Defendant/Respondent	T-000051	Received Without Objection	12/18/2024	317	Court Trial	70-CV-24-17210
Sealed - Voter # 18 Election Documents	Other	Defendant/Respondent	T-000052	Received Without Objection	12/18/2024	318	Court Trial	70-CV-24-17210
Sealed - Voter # 20 Election Documents	Other	Defendant/Respondent	T-000053	Received Without Objection	12/18/2024	320	Court Trial	70-CV-24-17210

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Order for Submissions-Under Advisement
(no document associated with this event)

[Section divider]

Order for Submissions-Under Advisement

(no document associated with this event)

[Section divider]

Taken Under Advisement

(no document associated with this event)

[Section divider]

STATE OF MINNESOTA
COUNTY OF SCOTT

DISTRICT COURT
FIRST JUDICIAL DISTRICT

Aaron Paul,

Court File No. 70-CV-24-17210

Contestant,

v.

**ORDER SETTING
DEADLINES**

Brad Tabke,

Contestee.

This matter came before the Honorable Tracy L. Perzel, Judge of District Court, First Judicial District, in-chambers following conclusion of the evidentiary portion of the trial with Reid LeBeau, Esq., David Zoll, Esq., and Rachel Kitze Collins, Esq., present to discuss deadlines.

The parties agree that closing arguments of the parties, in the form of the written submissions set forth below, shall be filed on or before the following deadlines:

December 23, 2024: Contestant's memorandum of law

December 27, 2024: Contestee's responsive memorandum of law

December 30, 2024: (a) Contestant's and Contestee's proposed findings of fact, conclusions of law, and orders; and (b) Contestant's reply memorandum of law

The Court will then take the matter under advisement on December 30, 2024, and issue its decision as required by statute, not later than January 14, 2025, the first day of the legislative session and the deadline on which the parties agree the Court's decision is due.

IT IS SO ORDERED.

Dated: 12/17/2024

BY THE COURT:

Perzel, Tracy

Digitally signed by Perzel,
Tracy
Date: 2024.12.17 15:38:17
-06'00'

Tracy L. Perzel
Judge of District Court

Idx. 28

[Section divider]

State of Minnesota
Scott County

District Court
First Judicial District

Court File Number: **70-CV-24-17210**

Case Type: Civil Other/Misc.

Notice of Filing of Order

FILE COPY

Aaron Paul vs Brad Tabke

You are notified that an order was filed on this date.

Dated: December 18, 2024

Vicky L. Carlson
Court Administrator
Scott County District Court
200 4th Avenue West JC 115
Shakopee MN 55379
952-496-8200

cc: RONDELL REID LEBEAU, II
CHARLES N NAUEN

A true and correct copy of this notice has been served pursuant to Minnesota Rules of Civil Procedure, Rule 77.04.

[Section divider]

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF SCOTT

FIRST JUDICIAL DISTRICT

Aaron Paul,

Contestant,

v.

Brad Tabke,

Contestee.

Case No.: 70-CV-24-17210

Hon. Tracy Perzel

CONTESTANT'S MEMORANDUM OF LAW IN SUPPORT OF ELECTION CONTEST

R. Reid LeBeau II (MN# 347504)
Counsel for Aaron Paul
Chalmers, Adams, Backer, and Kaufman
525 Park St. Suite 255
St. Paul, MN 55103
651-397-0089
rlebeau@chalmersadams.com

TABLE OF AUTHORITIES**Cases**

<i>Agin v. Heyward</i> , 6 Minn. 110, 114 (Minn. 1861).....	6
<i>Bencomo v. Phx. Union High Sch. Dist. No. 210</i> , No. CV-90-00369-PHX-GMS, 2024 U.S. Dist. LEXIS 224813 (D. Ariz. Dec. 12, 2024)	14
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<i>Boschee v. Duevel</i> , 530 N.W.2d 834, 840 (Minn. App. 1995).....	9
<i>Brown v. Clemons</i> , No. : FBT-CV-22-5049450 S, 2022 Conn. Super. LEXIS 2149, at *4-5 (Ct. Super. Ct. Oct. 4, 2022)	16
<i>Chauncey v. Wass</i> , 30 N.W. 826, 830 (Minn. 1885).....	6
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<i>Griffin v. Burns</i> , 570 F.2d 1065 (1st Cir. 1978).....	15
<i>Hahn v. Graham</i> , 225 N.W.2d 385, 386 (Minn. 1975).....	8
<i>In re Application of Anderson</i> , 119 N.W.2d 1, 8 (Minn. 1962).....	8
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<i>Schmitt v. McLaughlin,</i> 275 N.W.2d 587 (Minn. 1979).....	10
<i>Seehus v. Bor-Son Constr., Inc.,</i> 783 N.W.2d 144, 147 (Minn. 2010).....	5
<i>State v. Shane,</i> 883 N.W.2d 606, 610 (Minn. Ct. App. 2016).....	12
<i>Thornton v. Johnson,</i> 453 P.2d 178, 185 (Ore. 1969) (<i>citing Cook v. Corbett</i> , 446 P.2d 179 (Ore. 1968)).....	11
<i>Wichelmann v. Glencoe,</i> 273 N.W. 638, 639 (Minn. 1937).....	13
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Minn. Stat. Sec. 209.02	6, 7, 8, 9, 10
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Justin Levitt, <i>Tied MN House Hinges on 14-Ballot Win in Race with 20 Destroyed Uncounted Votes</i> , ELECTION LAW BLOG (Dec. 2, 2024, 11:40 P.M.), https://electionlawblog.org/?p=147580	4
Steven F. Huefner, <u>Remedying Election Wrongs</u> , 44 Harvard J. on Legis. 265, 299 (2007)	13

Introduction

“Facts are stubborn things [...]”¹ John Adams’ profound axiom is particularly true in this case. There is one stubborn and inescapable fact about the 2024 General Election for House District 54A; there are more ballots missing than the vote difference between the two candidates for the Minnesota House of Representatives District 54A race. Law, policy, reason, common sense, and our obligation to the fundamental principles of democracy require that the actions which led to this fact be addressed and rectified. The only mechanism for doing so is an election contest.

In short, this election was best summarized by a former member of the Biden administration: “Yikes.” That one word exclamation is how Constitutional Law Professor and former Senior Policy Advisor for Democracy and Voting Rights to President Biden, Justin Levitt, reacted upon learning about the recent District 54A Election. Justin Levitt, *Tied MN House Hinges on 14-Ballot Win in Race with 20 Destroyed Uncounted Votes*, ELECTION LAW BLOG (Dec. 2, 2024, 11:40 P.M.), <https://electionlawblog.org/?p=147580>.

In what was a clear breakdown in processes, at least 20 legally cast ballots were irretrievably destroyed leaving the result of the District 54A Election unknowable. Following two days of an election contest hearing, the public and this court are left with more questions than answers:

- How many ballots were destroyed by the City of Shakopee? Was it 20 or 21?
- To what dates and voters did these destroyed ballots correspond? Different witnesses gave different answers.
- Why were all secrecy ballots in the City of Shakopee’s custody nonchalantly discarded?
- Were the missing ballot secrecy envelopes opened prior to being lost?

¹ “Facts are stubborn things; and whatever may be our wishes, our inclinations, or the dictates of our passions, they cannot alter the state of facts and evidence.” John Adams, Adams’ Argument for the Defense: 3-4, December 1770.

- Why did City election officials not balance the ballots in their custody daily, using proper procedures to ensure the number of voters and ballots matched?
- Why did it take 20 days from the occurrence of the discrepancy for it to come to light?
- Why was the error never reported to the County by City officials?
- How could a rogue election official violate so many county policies and legal requirements without oversight?
- What actually happened to the missing (20 or 21) ballots?

Unfortunately, the answers to these questions are likely unknowable and these failures require a top-to-bottom revaluation of processes to ensure that such a maladministration never reoccurs. But what *must* be resolved, and the question left to this court, is how to rectify this situation for the current District 54A election. That a profoundly serious violation of law occurred is not in question. Therefore, the court's decision hinges on crafting an appropriate remedy.

Relevant case law from this state and around the country clearly indicates that a new election is required. No other outcome will rectify this situation and restore confidence in the state's electoral process. Both the District 54A electorate await a new election that is conducted freely and fairly and demonstrates that every legally cast ballot is counted.

In connection with the court's decision, Contestant Aaron Paul offers legal authority on three key issues before this Court: 1) whether it has subject matter jurisdiction; 2) what is the appropriate legal standard for this Court to use in evaluating this election contest; and 3) what is the appropriate remedy to apply here.

Legal Analysis

- I. This Court Plainly Has Subject Matter Jurisdiction to Decide this Election Contest and to Grant Such Relief that It Deems Appropriate

“An election contest is an adversarial proceeding governed by the Minnesota Rules of Civil Procedure ‘so far as practicable.’” *Quist v. Simon*, 2020 Minn. Dist. LEXIS 463, (Ramsey Co. D.C. Dec. 29, 2020) *2-3 (*quoting* Minn. Stat. § 209.065.).

“Subject-matter jurisdiction is the court’s authority to hear the type of dispute at issue and to grant the type of relief sought. The question of whether subject-matter jurisdiction exists is a question of law for the court.” *Seehus v. Bor-Son Constr., Inc.*, 783 N.W.2d 144, 147 (Minn. 2010) (internal citations omitted). “The determination of whether a particular court has subject-matter jurisdiction depends on whether the court in question has the statutory and constitutional power to adjudicate the case.” *Zweber v. Credit River Twp.*, 882 N.W.2d 605, 608 (Minn. 2016).

“The right to contest the results of an election is ‘purely statutory.’” *Bergstrom v. McEwen*, 960 N.W.2d 556, 563 (Minn. 2021) (*quoting Phillips v. Ericson*, 80 N.W.2d 513, 517 (Minn. 1957)). Therefore, “Minnesota courts have subject-matter jurisdiction over election contests solely through statute.” *Quist*, 2020 Minn. Dist. LEXIS 463 at *3 (*citing Moulton v. Newton*, 144 N.W.2d 706, 710 (Minn. 1966); Minn. Stat. §§ 209.01-.12.); *see also Robinette v. Price*, 8 N.W.2d 800, 804 (Minn. 1943) (*quoting Chauncey v. Wass*, 30 N.W. 826, 830 (Minn. 1885) (“In the instant case the court's power and authority emanates from the applicable statutes. ‘Power to try and render judgment on the merits is jurisdiction. Whenever that power is given, jurisdiction is conferred, no matter what terms the statute employs.’”).

Pursuant to Minn. Stat. § 209.02, “[a]ny eligible voter, including a candidate, may contest in the manner provided in this chapter. . . the . . . election of any person for whom the voter had the right to vote if that person is . . . elected . . . to a statewide, county, legislative, municipal, school, or district court office . . . The contest may be brought over an irregularity in the conduct of an election or canvass of votes, over the question of who received the largest number of votes legally

cast, over the number of votes legally cast in favor of or against a question, or on the grounds of deliberate, serious, and material violations of the Minnesota Election Law.”

Here, Contestant Aaron Paul appropriately filed this election contest against Contestee Brad Tabke pursuant to Minn. Stat. § 209.02. As such, this election contest is properly before this Court. *See also Agin v. Heyward*, 6 Minn. 110, 114 (Minn. 1861) (the district court “is . . . the one great court of general jurisdiction to which all may apply to have justice judicially administered, in every case where the constitution itself does not direct application to be made elsewhere.”). Minn Stat. § 209.10 then provides the procedure for a legislative election contest. Important here, once selected, Subdivision 3 gives this court the authority so that “[t]he judge shall decide the contest, issue appropriate orders, and make written findings of fact and conclusions of law.” *Id.* at subdv. 3. Then, “[u]nless the matter is appealed to the Supreme Court, the judge, by the first day of the legislative session, shall transmit the findings, conclusions, orders, and records of the proceeding to the chief clerk of the house of representatives or the secretary of the senate, as appropriate.” *Id.*²

An example of this procedure just occurred this past Friday. In *Wikstrom v. Johnson*, Judge Leonardo Castro decided an election contest concerning the eligibility of Curtis Johnson to serve as the Representative for Minnesota House District 40B. Case No. 62-CV-24-7378 (Dec. 20, 2024 2d. Judicial District). Following a hearing, Judge Castro concluded that “Mr. Johnson’s failure to maintain a residence in District 40B. . . was a deliberate, serious, and material violation of Minnesota Election Law under Minn. Stat. Sec. 209.02. “Consequently, Curtis Johnson is not eligible to represent the people of 40B and he cannot claim entitled to the election certificate for

² While the Election Contest statutes are admittedly vague in terms of the required procedure for the contest hearing, “[w]here jurisdiction over certain subject matter is conferred upon a court and no procedure is provided by the statute, the court will proceed under its general powers and adopt such procedure as is necessary to enable it to exercise and make effective the jurisdiction thus granted.” *Oronoco Sch. Dist. v. Oronoco*, 212 N.W. 8, 9 (Minn. 1927).

State House District 40B.” *Id.* at *32.

Pursuant to his corresponding order, Judge Castro ordered the “transmi[ssion of] the findings, conclusions, orders, and records of the proceedings to the Chief Clerk of the Minnesota House of Representatives no later than January 14, 2025” but also held that Mr. “Johnson is enjoined from taking the oath of office and from acting as a member of the Minnesota House of Representatives for House District 40B” and ordered that “[t]he seat for Minnesota House of Representatives District 40B shall be filled according to law.” *Id.*

The *Johnson* case plainly demonstrates both that this Court likewise possesses subject-matter jurisdiction to decide this election contest, and that this court has the power to issue an order that it deems appropriate to decide the contest. *See* Minn Stat. § 209.10, subd. 3.

II. Legal Standard

Pursuant to Minnesota Stat. § 209.02, subd. 1, an election contest may be brought “over an irregularity in the conduct of an election or canvass of votes, over the question of who received the largest number of votes legally cast,” or “on the grounds of deliberate, serious, and material violations of the Minnesota Election Law.” “The contestant is not required to affirmatively show an effect on the outcome of the election. The statute makes no such requirement, and, indeed, to place such an impossible burden of proof on contestants would effectively thwart the enforcement of the Fair Campaign Practices Act.” *In re Contest of Election in DFL Primary Election*, 344 N.W.2d 826, 831 (Minn. 1984).³

What constitutes a material versus immaterial irregularity in an election contest has only been analyzed under fact-specific circumstances. For example, election contests have been

³ Indeed, in the present circumstances doing so would be impossible—given that the only way to definitively determine who won the District 54A election would be to conclusively identify and canvass the 20-21 destroyed ballots. What is clear is that the destruction of these ballots thwarts knowing the identity of the winner of the election.

dismissed when the violation of the election law was “trivial, unimportant and in no manner affected the result of this election.” *Hahn v. Graham*, 225 N.W.2d 385, 386 (Minn. 1975).

When evaluating an “irregularity in the conduct of an election,” the Supreme Court has held that “after a fair election is held and the results ascertained, mere irregularities in following statutory procedure will often be overlooked.” *Moulton v. Newton*, 144 NW2d 706, 710 (Minn. 1966) (citing *In re Application of Anderson*, 119 N.W.2d 1, 8 (Minn. 1962)). However, this standard was more fully explicated by the Court when it stated,

This policy rests on upon the principle that no person should be deprived of his right to vote because of the neglect or carelessness of election officials, *unless the carelessness or irresponsibility has been carried to such an extent as to affect the outcome of the election or put the results in doubt.*

In re Contest of Election of Vetsch, 71 N.W.2d 652, 658 (Minn. 1955)(emphasis added); compare with *Green v. Indep. Consol. Sch. Dist.*, 89 N.W.2d 12 (Minn. 1958)(in affirming the dismissal of an election contest the Court concluded “[t]he evidence sustains the trial court’s finding [...] the votes were both cast and counted under the vigilant eyes of the contestants. *There was a proper accounting of all ballot blanks and votes cast.*” (emphasis added).

Here, however, it is readily apparent that numerous “irregulariti[es]” occurred during the conduct of November’s election that resulted in at least 20 legally-cast, and outcome-determinative votes, not being canvassed. Minn Stat. § 209.02, subd. 1. Scott County election officials admit a material irregularity in the conduct of this election in that they failed to record, maintain, and count at least 20, possibly 21, validly cast absentee ballots in direct violation of Minn. Stat. § 203B.121, subd. 5 and Minn. Stat. § 204C.24, subd.1(2), (5), & (7). Compliance with these provisions is more than simply technical in nature, it is *essential* to the proper functioning of any election. Noncompliance resulted in the direct violation of eligible voters’ constitutional right to cast ballots and have them counted in the election. Under these circumstances, either candidate could have

won this election—with the result unknowable due to the failures of the elections officials, calling the very validity of the election into doubt.

Analogizing to appellate jurisprudence on trial irregularities is also helpful here. Minnesota courts in that context have defined such an “irregularity” as “a failure to adhere to a prescribed rule or method of procedure not amounting to an error in a ruling on a matter of law.” *Boschee v. Duevel*, 530 N.W.2d 834, 840 (Minn. App. 1995) (quotation omitted), *rev. denied* (Minn. June 14, 1995). To gain a new trial based on an irregularity, a party “must prove (1) an irregularity occurred and (2) they were deprived of a fair trial.” *Id.* Here, Contestant has proved that significant irregularities occurred in the handling of the absentee ballots, and given that these irregularities resulted in a more ballots being discarded greater than the margin between the two candidates, Contestant (as well as Contestee and the voters in District 54A) were deprived of a fair election. This is enough to sustain Contestant’s election contest.

The facts substantiate more. As the County has admitted, the carelessness or irresponsibility of the City of Shakopee in handling absentee ballots in its custody, and losing them, has occurred to such an extent as to affect the outcome of the election or put the results in doubt. This is the textbook example of a material irregularity within the meaning of Minn. Stat. § 209.02, subd. 1.

Should the Court need to go further, the record of the election contest hearing demonstrates that there were “deliberate, serious, and material violations of the Minnesota Election Law.” *Id.* While there is not a lot of Minnesota case law interpreting the meaning of these words, the Supreme Court’s opinion in *Schmitt v. McLaughlin*—albeit drafted in the context of an improper candidate claim of political party endorsement—offers some guidance. 275 N.W.2d 587 (Minn. 1979).

“For a violation to be ‘deliberate,’ it must be intended to affect the voting at the election.”

Id. at 591 (citing *Effertz v. Schimelpfenig*, 291 N.W. 286 (1940)). In *Schmitt*, “[t]he trial court specifically found that the contestee’s use of the initials ‘DFL’ was intended to affect the election in his favor.”

“A ‘serious’ violation is one that is not trivial.” *Id.* In *Schmitt*, the court found that “[t]he use by contestee of 75 lawn signs and daily advertising in the two largest county newspapers for 10 days prior to the election removes this violation from the trivial category.” *Id.*

Unfortunately, the *Schmitt* court offered less guidance on “materiality”, offering only the conclusion that “there is no question that for a candidate to imply that he has the support of a political party, which support he does not in fact have, is a material violation of the provisions of Minnesota election law.” *Id.*

However, we can look to other states for guidance on this point. For example, the Oregon Supreme Court “held that material was used . . . in the sense of substantial as compared to trivial or unimportant. To be material a violation must be capable of having some *possible* effect upon the election.” *Thornton v. Johnson*, 453 P.2d 178, 185 (Ore. 1969) (citing *Cook v. Corbett*, 446 P.2d 179 (Ore. 1968)(emphasis added). The Oregon Supreme Court “rejected the argument that conduct is not material unless it changes the result of the election.” *Id.*; see also *Nickelson v. Whitehorn*, 375 So.3d 1132, 1140 (La. App. 2 Cir. 2023), writ denied, 2023-01645, 2023 La. LEXIS 2428 (La. Dec. 28, 2023) (affirming trial court order of election in one-vote margin race where election administration irregularities were “sufficient to make it legally impossible to determine the result of the election.”); *Franks v. Hubbard*, 498 S.W.3d 862, 872 (Mo. Ct. App. 2016) (affirming trial court order ordering new election based on “irregularity” in absentee voting procedures “of sufficient magnitude to affect the outcome of the election.”).

Here, the admitted failure of Scott County election officials to secure, maintain, and count

the 21 validly cast ballots constitutes a serious, material, and deliberate violation of Minn Stat. § 203B.121 subd. 5. Specifically, by discarding absentee ballots, election officials failed to “ensure that the number of ballots removed from the ballot box is equal to the number of voters whose absentee ballots were accepted that day;” and to “secure all voted and unvoted ballots present in that location at the end of the day.” *Id.* This resulted in a serious and material violation of law, directly impacted the results of the election for District 54A and is fatal to the validity of the election.

Indeed, this situation is so serious that it may well rise to the level of being a criminal offense. *See* Minn. Stat. § 204C.06, subd. 4(b) (“No individual shall intentionally . . . damage, deface, or mutilate any ballot, election file, or election register or any item of information contained on it, except as authorized by law.”); *see also State v. Shane*, 883 N.W.2d 606, 610 (Minn. Ct. App. 2016) (upholding conviction of election official for destroying ballots after an election).

Additionally, the failure to ensure an accurate count of ballots prior to and after the final tally was completed constitutes a violation of Minn. Stat. § 204C.21 and Minn. Stat. § 204C.24, Subd.1(2), (5), & (7), which requires election officials to confirm the accuracy of the ballot count, confirm that the number of ballots are equal to the number of individuals who voted, and to immediately seal the ballots for return to the county auditor once the count is complete.

Furthermore, Scott County elections officials deliberately reported results knowing that up to 21 validly cast ballots were missing. This violation of Minnesota Election Law was serious and material as it resulted in a candidate being declared the winner, though neither these officials nor anyone else knows which candidate received the highest number of validly cast ballots.

In conclusion, Contestant has demonstrated that significant irregularities occurred in the conduct of the election, and that deliberate, serious, and material violations of Minnesota election

law occurred. These violations directly call into doubt who received the most legally cast votes for the office of House of Representatives for District 54A.

III. A New Election is the Appropriate Remedy to Rectify this Election Maladministration

While Contestee has alternated between various methods for this Court to *divine* the contents of the missing ballots, the unescapable fact is that the contents of the missing ballots are unknowable and irretrievably lost, thereby necessitating a new election. “The purpose of an election is to ascertain the will of the electorate. In order to secure a full and complete expression of the popular will, it is necessary not only that all voters who are qualified be permitted to vote, but also that only those who are entitled to vote be permitted to do so, and that a proper count and return be made.” *Wichelmann v. Glencoe*, 273 N.W. 638, 639 (Minn. 1937).

Here, there was no “full and complete expression of the popular will” as at least 20 registered voters who were entitled to vote had their votes thrown away, in an election where the two candidates are separated by just 14 votes. *Id.* “When the number of lost votes exceeds the margin of victory in a contested race, this type of failure thus often merits a judicial response. Ordinarily, some form of new election will be the most appropriate solution for lost votes that could have determined the election, despite the burdens of this remedy.” Steven F. Huefner, Remedying Election Wrongs, 44 Harvard J. on Legis. 265, 299 (2007). While there is the inescapable cost (both monetary and time) of doing so, “this approach obviously promotes accuracy and legitimacy and minimizes separation of powers concerns. . .” *Id.*

Indeed, this is the remedy ordered last week by Judge Castro in the *Johnson* election contest, where because of Mr. Johnson’s ineligibility to serve as State Representative, Judge Castro ordered that “the seat for Minnesota House of Representatives District 40B shall be filled according to law.” *Johnson*, No. 62-CV-24-7378 at *32. Pursuant to Minnesota law, “[a] vacancy

in the office of. . . state representative shall be filled for the unexpired term by **special election** upon the writ of the governor. . .” Minn. Stat. 204.17, subd. 1 (emphasis added).⁴

Nor is the *Johnson* case an outlier in terms of ordering a new election as a remedy in these sorts of cases. *In re Contest of Election in DFL Primary Election* concerned an election contest where the respondent contestee had extensively distributed campaign literature falsely implying a party endorsement. 344 N.W.2d 826, 828 (Minn 1984).

Our Supreme Court held that because the contestee’s conduct “was deliberate, serious, and material within the meaning of section 209.02, subd. 1” and “resulted from a want of good faith . . . [the Court] reverse[d] and set aside and nullif[ied] the September 13, 1983, DFL primary election for Third Ward alderman for the City of Minneapolis.” *Id.* at 831, 832.

New elections are frequently the relief granted in election contests nationwide where the outcome of the election has been called into question through election administration errors or fraud. For example, earlier this month, the United States District Court for the District of Arizona ordered a new election for seats on a school district’s governing board. *See Bencomo v. Phx. Union High Sch. Dist. No. 210*, No. CV-90-00369-PHX-GMS, 2024 U.S. Dist. LEXIS 224813 (D. Ariz. Dec. 12, 2024). In *Bencomo*, two at-large seats on the governing board were up for election, where it was legally required for the seats to be chosen “through a two-seat ‘limited voting’ system, whereby each voter will be entitled to cast only one vote for the candidate of his or her choice for the two at-large seats at stake. . .” *Id.* at *4-5 (internal citation omitted). Instead, the county “printed ballots for the November 5, 2024 election with instructions directing voters to vote for up to two candidates for the PUHSD Governing Board election.” *Id.* at *5.⁵ Out of 222, 719 votes

⁴ Judge Castro recognized that a new election was the only equitable solution under those circumstances. Either seating an ineligible candidate or the losing candidate would be inequitable.

⁵ “By the time Maricopa County became aware of the mistake, voters on the Active Early Voting List had already received their ballots and commenced voting.” *Id.*

cast in the ensuing election, “[t]he difference in votes between the third-and second-place candidates, the latter of whom won a seat on the Governing Board, was only 1,979 votes.” *Id.* at *6.

In determining the appropriate relief, the District Court concluded that

[s]uch a fundamental and potentially consequential error undermines the organic processes of the ballot itself and cannot be allowed to stand, regardless of the good faith of Maricopa County in committing it. The mistake simply makes it impossible to declare, with any confidence, who the winners of a legally conducted election would be or that the mistake was not consequential.

Id. at *8.

The Court concluded that “[n]one of the cases cited by the parties urging the Court to authorize the canvass of the present election involve such a situation. And, any effort to characterize this error as garden variety’ in light of the actual election results are, to put it mildly, unpersuasive.” *Id.*

Moreover, in *Bencomo*, the Court rejected arguments that the results of the election should be allowed to stand because “[i]t is likely. . . that a special election will have a lower voter turnout than the general election . . . [T]he results of the recent general election demonstrate, however, more voters in a fatally flawed election, at least in this instance, do not help determine who would have won the election had it been lawfully conducted. Nor do they demonstrate that the error was harmless. Therefore, in fashioning a remedy for the County's failure, prioritizing the date of the election over compliance with the law does not provide electoral integrity.” *Id.* at *10-11.

As such, the District Court concluded that “the number of votes cast in violation of the Decree is more prejudicial than holding a special election with lower voter turnout.” *Id.* at *13. Therefore, “a special election is the only principled way to remedy Maricopa County's violation,” (*id.* at *13) and “[a] special election provides a remedial measure to cure unfixable flaws in the recent election. It will occur as soon as reasonably possible after the election date indicated in the

Decree.” *Id.* at *11.⁶

The Arizona District Court’s decision is not an outlier. Special elections are routinely ordered by courts across the country in these circumstances. *See, e.g., Griffin v. Burns*, 570 F.2d 1065 (1st Cir. 1978) (affirming district court order of new election where Rhode Island election officials, relying on a ruling of the state supreme court, made an after-the-fact decision not to count absentee ballots that had been cast in a primary election); *Nickelson v. Whitehorn*, 375 So.3d 1132, 1140 (La. App. 2 Cir. 2023), *writ denied*, 2023-01645, 2023 La. LEXIS 2428 (La. Dec. 28, 2023) (affirming trial court order for new election in one-vote margin race where election administration irregularities were “sufficient to make it legally impossible to determine the result of the election.”); *Franks v. Hubbard*, 498 S.W.3d 862, 872 (Mo. Ct. App. 2016) (affirming trial court order ordering new election based on “irregularity” in absentee voting procedures “of sufficient magnitude to affect the outcome of the election.”); *Brown v. Clemons*, No. : FBT-CV-22-5049450 S, 2022 Conn. Super. LEXIS 2149, at *4-5 (Ct. Super. Ct. Oct. 4, 2022) (ordering a new primary election for the office of State Representative where the leading candidate’s “margin of victory . . . is two votes and the court finds that four votes must be invalidated, the court does not approve the results of the court ordered manual recount.”); *Gasaway v. Kemp*, Civil Action File No. 2018-CV-306197 (Fulton Co. Super. Ct. 2018) (ordering special election when it was determined that a number of voters who received incorrect ballots was at least equal to or slightly exceeded the margin in the election)⁷; *Medley v. Iron County*, 20IR-CC00013 (Iron Co. Cir. Ct. Aug. 27, 2020) (ordering new primary election based on usage of incorrect ballots, a voting machine missing part

⁶ To mirror the prior election as much as possible, the District Court ordered that “[t]he four candidates qualified for the November 5, 2024 election by filing a sufficient number of nominating petitions and need not requalify. . . . To replicate the election as nearly as possible, those four candidates’ names shall be placed on the ballot. No other persons may stand as candidates.” *Id.* This would be appropriate to order in the present case, with an ensuing special election only having contestant and contestee on the ballot.

⁷ A second special election was ordered when the court determined that the number of ineligible votes cast in the special election was higher than the margin of victory.

of its tally tape, and other violations of Missouri state law).

While certainly holding a new election is an unfortunate and expensive undertaking, “[w]hat is fair and essential to the candidates and the electorate, and to preserve election integrity, is to have a new runoff election with a winner decided by qualified voters.” *Nickelson v. Whitehorn*, 2023-01645, 2023 La. LEXIS 2428 (La. Dec. 28, 2023) (Genovese, J., concurring).

Indeed, in the most historically similar Minnesota case, our Supreme Court, recognizing the seriousness of irregular election results in a precinct, went *even further* than ordering a new election and affirmed the judgment of the district court *throwing out the results of the affected precinct altogether*. See *In re Contest of Election of Vetsch*, 71 N.W.2d 652 (Minn. 1955). In *Vetsch*, just like here, the results of a county-wide election were thrown into chaos by a precinct that failed to follow election procedures and to keep track of the ballots cast in an election. In that election, the La Crescent village precinct had a litany of problems, including permitting more votes to be cast than there were registered voters in the precinct along with 59 missing and unaccounted-for ballots. *Id.* at 656.⁸

In evaluating the chaos of the election, the Supreme Court first grappled with the issue that there was definite fraud. The court held, however, that “there is no necessity of proving actual fraud in all cases. It is sufficient if there has been such a wholesale violation of the election laws . . . that so great an opportunity for fraud exists as to impeach the integrity of the ballot.” *Id.* at 658-59 (internal citations omitted).

Beyond the series of violations involving the very structure of the election⁹, the Supreme

⁸ The precinct had other problems as well, including ineligible individuals serving as election judges and clerks. *Id.* at 657.

⁹ “viz., improper appointment of the election board; improper handling of ballots by the village clerk; unauthorized issuance of absentee ballots; failure to take, administer, and indicate proper oaths; unauthorized and ineligible persons filling in as judges and clerks without indication thereof; the intermixing of clerk and judge functions; failure to count

Court held that “[w]hat is more serious than the numerous violations already referred to, however, is the evidence that the inspectors found one more ballot voted than the number of persons listed in the election register and that there were 59 ballots missing from the La Crescent village precinct.” *Id.* at 659.

As such, the Supreme Court affirmed the district court’s holding that “the total vote cast at La Crescent village was invalid.” *Id.* at 654, 660.

The Supreme Court held that this was required to rectify the “cloud of suspicion [that] has been cast upon the integrity of the voting in the La Crescent village precinct. The foundation upon which an election system rests is the confidence which the electorate places in that system. The voter is entitled to have his vote counted fairly and honestly along with the votes of others. If his confidence in this procedure is undermined, there will necessarily be a loss of respect for the democratic system which is wholly dependent upon fair and honest election procedures.” *Id.* at 659.

In setting aside the precinct results, the court acknowledged “that the disenfranchisement of a voter is a serious matter, but there is also an obligation to see that the will of the voters in other precincts whose ballots have, without a doubt, been honestly cast and counted is vindicated. . . . The purpose of the election laws is to assure honest elections. Such a wholesale flouting of the law cannot be tolerated when the result is to cast doubt and suspicion upon the election and impeach the integrity of the vote.” *Id.* at 660.

There are many parallels between the present case and *Vetsch*. Here, as there, the principal issue was the significant number of missing votes at issue, mirroring here where as many as 21

ballots before issuing receipts therefor; and inadequate maintenance of the election register. The people conducting the election appeared to be completely unaware of the laws governing elections, and what is more, they made no effort whatsoever to become acquainted with them.” *Id.* at 659.

voters were disenfranchised from “hav[ing their] votes counted fairly and honestly along with the votes of others.” *Id.* at 659. Also mirroring *Vetsch*, the root cause of the problems in the present case was that “the people conducting the election appeared to be completely unaware of the laws governing elections”, as demonstrated by the failure to follow Minnesota law and written county procedures that led to as many as 21 votes being thrown away.

While the outcome in *Vetsch* in setting aside the results of an entire precinct in such circumstances is admittedly extreme and beyond the relief (a new election) being requested here, it is an important focal point on how critical missing ballots are—and the profound steps that our Supreme Court deemed appropriate to rectify such circumstances. Here, a new election would be sufficient to remove the “cloud of suspicion [that] has been cast upon the integrity of the voting.” *Id.* at 659.

By contrast, it is not at all clear what relief Contestee deems appropriate to rectify the maladministration the past election—as Contestee seemed to vacillate at the contest between urging the court to ignore the missing ballots due to the supposed statistical unlikelihood that they would have been outcome-determinative, or seeking to use the testimony of the voters whose ballots *may* have been the ones lost as a Band-Aid for a properly conducted election.

But given the inescapable uncertainty as to what happened here—exactly how many ballots were lost; exactly who they were cast by; and the lack of any evidentiary foundation to tie either of these items to concrete cast ballots—a new election is required here.

Just as in *Vetsch*, the negligence of the election administrators in losing ballots beyond the difference separating Contestant and Contestee has resulted in a “cloud of suspicion . . . upon the integrity of voting” in the 54A House race. *Id.* at 659. Only a new and fairly conducted election will restore “the confidence which the electorate places in that system If . . . [voters’]

confidence in this procedure is undermined, there will necessarily be a loss of respect for the democratic system which is wholly dependent upon fair and honest election procedures.” *Id.* at 659.

Conclusion

The only thing certain about the House District 54A race is that more votes were lost than the margin between Aaron Paul and Brad Tabke. Many questions remain, and many will likely go unanswered. Contestant has met the legal requirements for an election contest and this court is statutorily imbued with the authority to grant the requested relief.

As such, Contestant respectfully requests that this Court order a new election and grant such other relief as it deems just and proper.

Dated: December 23, 2024

Respectfully Submitted,



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I declare under penalty of perjury that everything I have stated in this document is true and correct.

Minn Stat. § 358.116

ACKNOWLEDGEMENT

Pursuant to Minn. Stat. § 549.211, the undersigned acknowledges that costs, disbursements, and reasonable attorney and witness fees may be awarded to the opposing party or parties for actions in bad faith; the assertion of a claim or a defense that is frivolous and that is costly to the other party; the assertion of an unfounded position solely to delay the ordinary course of the proceedings or to harass; or the commission of a fraud upon the Court.



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STATE OF MINNESOTA
COUNTY OF SCOTTDISTRICT COURT
FIRST JUDICIAL CIRCUIT

Aaron Paul,

Contestant,

v.

Brad Tabke,

Contestee.

Case No.: 70-CV-24-17210

Hon. Tracy Perzel

**CERTIFICATE OF SERVICE FOR CONTESTANT'S MEMORANDUM
IN SUPPORT OF ELECTION CONTEST**

I hereby certify that I have served Contestant's Memorandum in Support of Election Contest to all counsel of record via the court's electronic filing system this 23rd day of December, 2024.

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I declare under penalty of perjury that everything I have stated in this document is true and correct.
Minn Stat. § 358.116

Dated: December 23, 2024



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STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF SCOTT

FIRST JUDICIAL DISTRICT

CASE TYPE: CIVIL/OTHER

Aaron Paul,

Court File No. 70-CV-24-17210

Hon. Tracy Perzel

Contestant,

v.

**CONTESTEE BRAD TABKE'S
RESPONSE BRIEF**

Brad Tabke,

Contestee.

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I. INTRODUCTION

Contestant Aaron Paul (“Contestant”) is asking to redo the 2024 general election for House District 54A, which he lost by a margin of 14 votes because 20 ballots were inadvertently discarded before they were counted. Paul asserts that the failure to count the 20 ballots makes it impossible to know which candidate received the most votes. He is wrong; the evidence introduced at trial conclusively demonstrates that Representative Brad Tabke won the election and the contest fails as a result.

At trial, the Court received extensive evidence explaining in step-by-step detail how Scott County was able to identify, with certainty, the individual voters who cast the 20 uncounted ballots. The Court also heard from twelve of these voters who testified under oath regarding how they cast their ballots in the race for House District 54A; six voted for Representative Tabke and six voted for Aaron Paul. The remaining eight uncounted ballots, regardless of who they were cast for, cannot change the result and there is no legitimate question as to who won the election.

Contestant suggests that the Court should ignore the evidence confirming that Representative Tabke won the election and instead send the matter to a special election where the outcome will be decided by a much smaller pool of voters. Contestant relies on cases where courts from across the country have concluded that irregularities in the conduct of the election make it impossible to know the true outcome of the election. Each case is readily distinguishable on the dispositive issue in this contest. In each case cited by Contestant it was not possible to determine whether or how the irregularities affected the outcome of the election. Here, it is not only possible to determine whether the failure to count 20 ballots from Shakopee Precinct-10 affected the outcome of the election, the evidence at trial conclusively proves that Representative Tabke won the election.

Contestant failed to meet his burden and this Court should enter findings of fact and conclusions of law recommending that the Minnesota House of Representatives affirm that Representative Tabke won the 2024 general election and take no further action relating to this contest.

II. FACTUAL BACKGROUND

The general election for House District 54A was held on November 5, 2024. The certified results of the election, following a hand recount of the ballots, show that incumbent Representative Brad Tabke received 10,979 votes and challenger Aaron Paul received 10,965 votes, a margin of 14 votes. Ex. 5 at AP00142. A total of 21,980 ballots were counted in the election. *Id.*

During the process of preparing for the canvass of the election results, Scott County discovered that 21 more absentee ballots had been marked as “accepted” in the Statewide Voter Registration System (“SVRS”) than were counted and included in the election results. Tx. 77:14-79:25 (J. Hanson). This included one uncounted absentee ballot from Shakopee Precinct-12A and 20 uncounted absentee ballots from Shakopee Precinct-10. Ex. 3 at AP00103; Tx. 80:1-15 (J. Hanson). The County noted that it may not be unusual for a one-ballot discrepancy to occur in a single precinct where a voter may have chosen not to cast their ballot after having checked-in and did not investigate the discrepancy in Shakopee Precinct-12A. Ex. 3 at AP00103; Tx. 21:16-22:10 (J. Hanson). The 20-ballot discrepancy for Precinct-10 was unusual and the County undertook an investigation, led by its Elections Administrator Julie Hanson, to determine the cause. Ex. 3; Tx. 73:11-74:10 (J. Hanson).

Using the data in the SVRS, Scott County was able to determine that the uncounted absentee ballots for Precinct-10 originated from the early voting location administered by the City of Shakopee at City Hall. Ex. 3 at AP00103-04; Tx. 80:19-81:9 (J. Hanson). Specifically, the County was able to determine that the City of Shakopee had accepted 329 absentee ballots for

Precinct-10 at its early voting location but only 309 ballots had been counted and included in the election results. Ex. 3 at AP00103-04; Tx. 81:13-82:2 (J. Hanson). Upon discovering this fact, the County asked the City of Shakopee to search for the missing ballots including checking the “write-in drawer” of the tabulator machine. Tx. 26:20-28:5 (J. Hanson). The City was unable to locate the uncounted ballots. Tx. 50:15-23 (J. Hanson). Separately, the County opened the transfer case the City used to return ballots to the County and confirmed through several hand counts that there were only 309 ballots in the case. Ex. 3 at AP00103; Tx. 81:19-25 (J. Hanson).

As part of its investigation, Scott County received a spreadsheet from the City of Shakopee which reflected the number of ballots that had been accepted at the early voting location and a running total of the ballots which had been counted by the tabulator machine. Ex. 3 at AP00104; Ex. 202; Tx. 82:25-84:4; (J. Hanson); Tx. 165:19-167:8, 170:8-20 (K. Gamble). The spreadsheet included a page titled “AB Count from 9/20 – 10/17” which included the ballots accepted from September 20 through October 17. Ex. 202 at 4; Tx. 170:8-171:12 (K. Gamble). This is the so-called “envelope voting” period where voters place their completed ballots into a secrecy envelope and signature envelope and deposit them into a secured box for subsequent review and counting. Tx. 23:1-25 (J. Hanson); Tx. 164:4-18 (K. Gamble). Each day, the election judges at the Shakopee early voting location counted the envelopes which had been completed by the voters and confirmed that they matched the number of completed absentee ballot applications for that day. Tx. 170:8-24 (K. Gamble). The spreadsheet shows that a total of 1,124 ballots were cast at the Shakopee early voting location during the envelope voting period. Ex. 202 at 4; Tx. 85:17-86:14 (J. Hanson); Tx. 171:8-12 (K. Gamble).

A separate page in the spreadsheet titled “DB Applications and Machine Counts” shows the number of absentee ballots that were cast at the Shakopee early voting location from October

18 through November 4. Ex. 202 at 3; Tx 165:19-167:8 (K. Gamble). This is the so-called “direct balloting” period where voters deposit their ballots directly into the tabulator machine. Tx. 24:9-25 (J. Hanson); Tx. 164:4-18 (K. Gamble). The spreadsheet shows the number of completed applications for each day and a running total of the ballots counted through the City’s tabulator machine. Ex. 202 at 3; Tx. 165:19-167:8 (K. Gamble). The election judges did not record the daily count on the tabulator machine until Monday, October 21. Tx. 168:4-169:6 (K. Gamble). Accordingly, election judge Kay Gamble determined the machine count for the end of the day on October 18 by subtracting the number of ballots submitted through the direct voting method on October 21 (208 ballots) from the end-of-day machine count on October 21 (1,587 ballots). Ex. 202 at 3; Tx. 86:15-87:3; Tx. 168:4-169:6 (K. Gamble). The election judges recorded the end-of-day machine counts on each day from October 21 through November 4. Tx. 169:7-14 (K. Gamble)

The “AB Count from 9/20 – 10/17” page of the spreadsheet shows that 1,124 ballots had been cast through the end of the “envelope voting” period and the “DB Applications and Machine Counts” page shows that 276 ballots were cast on the first day of “direct balloting” on October 18. Ex. 3 at 3-4. Accordingly, a total of 1,400 ballots should have been run through the City’s tabulator machine by the end-of-day on October 18. However, the spreadsheet reflects that only 1,379 ballots had been tabulated, a discrepancy of 21 ballots. Ex. 202 at 3; Tx. 85:17-86:11 (J. Hanson); Tx. 171:8-172:4 (K. Gamble); Tx. 193:20-194:25 (C. Petersen). This means that the 21 uncounted ballots must have been cast on or before October 18, 2024. Tx. 85:17-86:11 (J. Hanson).

Scott County’s investigation determined that the City’s daily absentee ballot counts as reflected on the spreadsheet were accurate through October 17. Tx. 95:2-5 (J. Hanson). The County was able to reach this conclusion through a comparison of the absentee ballot applications,

signature envelopes, and data contained in the SVRS as well as interviews of Scott County election judges including Kay Gamble and Rocky Swearengin. Ex. 9; Tx. 27:20-30:18, 84:8-15, 95:2-16 (J. Hanson). Most significantly, Mr. Swearengin described the process the City of Shakopee used on October 17 to “accept” absentee ballots and to prepare to run the ballots through the tabulator machine. Tx. 92:20-95:16 (J. Hanson).

Mr. Swearengin explained to Election Administrator Julie Hanson—and testified at trial—that the Shakopee absentee ballot board, consisting of Mr. Swearengin and two other election judges, met on the morning of October 17 to review the absentee ballots received by the City which had not yet been accepted. Tx. 95:17-96:17 (J. Hanson); Tx. 239:1-240:14 (R. Swearengin). Once this process was completed, the ballots, which remained sealed in their envelopes, were returned to the City’s absentee ballot room where they were later marked as “accepted” in the SVRS and securely stored. Tx. 95:17-96:17, 99:9-100:3 (J. Hanson); Tx. 239:1-240:4 (R. Swearengin). The absentee ballot board then began the process of opening envelopes to prepare the ballots for counting. Tx. 96:17-97:4 (J. Hanson); Tx. 240:15-21 (R. Swearengin).

At the start of this process, election judge Kay Gamble provided the absentee ballot board with a yellow sheet of note paper that listed the number of ballots they should have for each precinct. Tx. 93:7-22 (J. Hanson); Tx. 241:4-246:6 (R. Swearengin); Tx. 172:23-173:14, 174:12-15 (K. Gamble). The members of the absentee ballot board counted the envelopes for each precinct to confirm the numbers matched the list provided by Ms. Gamble. Tx. 93:7-22 (J. Hanson); Tx. 241:4-246:6 (R. Swearengin). The absentee ballot board began with Shakopee Precinct-1 and noticed that the numbers did not match due to the fact that Ms. Gamble had included spoiled ballots in the expected totals. Tx. 241:4-246:6 (R. Swearengin); Tx. 174:18-175:1 (K. Gamble). Ms. Gamble provided a revised sheet that included only the number of absentee ballots for the

Shakopee early voting location that had been designated as “accepted” in the SVRS as of the close of business on October 16. Tx. 241:4-246:6 (R. Swearingin); Tx. 172:23-174:7, 174:18-175:24 (K. Gamble). The counts for Shakopee Precinct-1, and all other precincts, matched the totals included in Ms. Gamble’s revised list. Tx. 94:15-95:5 (J. Hanson); Tx. Tx. 241:4-246:6 (R. Swearingin); Tx. 174:18-175:9 (K. Gamble).

Once the absentee ballot board had counted the envelopes, they opened the outer signature envelopes and separated them from the inner secrecy envelopes. Tx. 243:7-244:4 (R. Swearingin). Every signature envelope contained a secrecy envelope. *Id.* The absentee ballot board then opened the secrecy envelopes and removed the ballots that had been completed by the voters. *Id.* Every secrecy envelope contained a ballot. *Id.* The ballots were then securely stored until they were run through the City’s tabulating machine at the end of the day on October 18. Tx. 243:7-19; 246:10-24 (R. Swearingin).

The ballots which the absentee ballot board reviewed for acceptance on the morning of October 17 were not opened by the absentee ballot board that day. Tx. 96:1-97:4 (J. Hanson); Tx. 175:17-24 (K. Gamble) (noting that the absentee ballot board accepted ballots after the report was run on the morning of October 17). Instead, these ballots, together with the ballots that were received throughout the day on October 17, were opened through a separate process on the morning of October 18. Tx. 100:4-9 (J. Hanson). A total of 99 ballots for the Shakopee early voting location—including 20 ballots from Precinct-10—were accepted on either October 17 or 18 and would have been opened and prepared for counting on October 18. Ex. 9; Tx. 100:4-102:6 (J. Hanson). These ballots were opened by former Shakopee City Clerk Lori Hensen acting by herself. Tx. 101:19-103:2 (J. Hanson); Tx. 176:17-177:23 (K. Gamble) (testifying that she observed Ms. Hensen opening ballots on the morning of October 18).

The County requested that the City provide the empty secrecy envelopes for all ballots received at the Shakopee early voting location but was informed that they had been discarded. Ex. 2 at AP00104; Tx. 37:19-24 (J. Hanson). It appears that Ms. Hensen never removed the 20 ballots for Precinct-10 which were accepted by the City of Shakopee on October 17 and 18 from their secrecy envelopes and that the ballots were discarded with the envelopes. Ex. 2 at AP00104-05; Tx. 52:14-21 (J. Hanson). This is the only plausible explanation that has been advanced to explain the source (and subsequent loss) of the 20 uncounted ballots from Shakopee Precinct-10. Tx. 103:4-10; 105:10-18 (J. Hanson).

The County was able to identify the voters who cast the 20 uncounted ballots using data in the SVRS database. Tx. 105:19- 106:13 (J. Hanson). Specifically, the County was able to run a report identifying 87 voters who cast their ballots for Shakopee Precinct-10 at the Shakopee early voting location using the envelope voting process. Ex. 9; Tx. 88:21-90:3,105:19-106:13 (J. Hanson). Forty of these ballots were cast through the health care facility voting process and the ballots were not accepted until October 30 as reflected on the report. Ex. 9; Tx. 90:4-91:23 (J. Hanson). This leaves 47 voters who cast ballots for Shakopee Precinct-10 at the Shakopee early voting location during the “envelope voting” period which ended on October 17. Ex. 9; Tx. 91:24-92:5 (J. Hanson). Of these, only twenty voters had their absentee ballots accepted on October 17 or October 18. Ex. 9; Tx. 105:19-106:13 (J. Hanson). These individuals are identified as “Voter 1” through “Voter 20” in the copy of the SVRS report which was introduced at trial. Ex. 9; Tx. 105:19-106:13 (J. Hanson).

A total of 1,362 ballots were cast by voters in Shakopee Precinct-10. Ex. 206; Tx. 65:4-66:18 (J. Hanson). Of these, 731 were cast for Representative Tabke, 534 were cast for Aaron Paul, and 94 were cast for neither candidate. Ex. 10; Tx. 65:4-66:18 (J. Hanson). It is unlikely

that 20 uncounted ballots from Precinct-10, which Representative Tabke won by a margin of 14%, would have changed the outcome of the election. Indeed, the expert testimony of Dr. Aaron Rendahl indicates that there is only a 0.0051% chance that 20 randomly selected ballots from Shakopee Precinct-10 would net at least 14 additional votes for Aaron Paul. Ex. 207 at 3-4; Tx. 264:25-266:3 (A. Rendahl).

There is no need to wonder, however, whether the uncounted 20 ballots would have changed the result had they been counted. Six of the affected voters called by Representative Tabke testified at trial that they cast ballots for Brad Tabke. Tx. 214:22-217:2 (Voter 5); Tx. 210:6-213:9 (Voter 9); Tx. 218:23-221:13 (Voter 11); Tx. 231:15-233:24 (Voter 12); Tx. 224:20-226:11 (Voter 18); Tx. 227:19-230:10 (Voter 20). And six of the affected voters called by Contestant testified at trial that they cast ballots for Aaron Paul. Tx. 201:9-203:2 (Voter 4); Tx. 156:6-157:19 (Voter 10); Tx. 132:8-133:12 (Voter 14); Tx. 138:13-140:14 (Voter 15); Tx. 153:11-154:21 (Voter 16); Tx. 143:20-145:4 (Voter 17). This leaves only eight uncounted ballots from Shakopee Precinct-10 and it is impossible for those votes to overcome the 14-vote margin between Representative Tabke and Aaron Paul. *See* Tx. 269:18-270:12 (A. Rendahl) (noting that there is no scenario where the outcome could change if at least four of the 20 (or 21) uncounted ballots were cast of Representative Tabke); Tx. 290:16-291:5 (T. Brunnell) (same).

III. ARGUMENT

An election contest “may be brought over an irregularity in the conduct of an election or canvass of votes, over the question of who received the largest number of votes legally cast, ... or on the grounds of deliberate, serious, and material violations of the Minnesota Election law.” Minn. Stat. § 209.02. Contestant brings this election contest on all three grounds, each of which fails.

First, Contestant asserts that there is a “question of who received the largest number of votes legally cast.” That may have been a possibility when the contest was initiated, but the evidence at trial proves conclusively that Representative Tabke received the largest number of votes legally cast and, therefore, won the election.

Second, Contestant asserts that the election should be set aside due to irregularities in its conduct. Although there is no dispute that there were irregularities—20 absentee ballots are not discarded without being counted unless there is some irregularity in the conduct of the election—Contestant failed to demonstrate that the irregularities affected the outcome of the election as has been required in all election contests initiated on this ground for well over 100 years.

Finally, Contestant asserts that a new election should be held due to “deliberate, serious, and material violations of the Minnesota Election Law.” This assertion—which is a mere repackaging of Contestant’s assertion that there were irregularities in the conduct of the election—fails because, as the Minnesota Supreme Court has held, the results of an election will not be invalidated due to a violation of Minnesota election law by a third party who is neither the candidate nor the candidate’s agent. The contest also fails on this ground because Contestant failed to demonstrate that there has been any “deliberate” violation of Minnesota election law and, like the other grounds, because the evidence in this election contest proves that any violation *did not* affect the outcome of the election.

A. **The contest fails on the question of which candidate received the most votes legally cast because the evidence conclusively proves that Representative Tabke won the election.**

Throughout his brief, Contestant asserts that it is impossible to know with certainty who won the election because the number of uncounted ballots from Shakopee Precinct-10 exceeds the 14-vote margin between the candidates. According to Contestant, a new election is required due to “the inescapable uncertainty as to what happened here—exactly how many ballots were lost;

exactly who they were cast by; and the lack of any evidentiary foundation to tie either of these items to concrete cast ballots....” Contestant’s Br. at 20. This assertion ignores the evidence in this case which addresses each of these points and leaves no room for doubt that Representative Tabke won the election. Specifically, the record demonstrates that 20 ballots from Shakopee Precinct-10 were inadvertently discarded before they were counted,¹ that the individuals identified by the Scott County as Voter 1 through Voter 20 cast the uncounted ballots, and that six of the twenty voters cast ballots for Representative Tabke and six others—called by Contestant—cast ballots for Aaron Paul.

The Court heard testimony from Scott County Elections Administrator Julie Hanson regarding the step-by-step process the County followed to determine how the uncounted ballots had come to be discarded and to identify the individuals who cast the ballots. Ms. Hanson’s testimony regarding her investigation was corroborated by election judges Kay Gamble and Rocky Swarengin who testified regarding actions taken by the City of Shakopee election officials on the key dates of October 17 and 18. Ms. Hanson testified that she has not identified any other plausible explanation for when or how the 20 uncounted ballots were lost. *See* Tx. 105:10-18. She further testified that she does not have any doubt based on reason or common sense or that is not fanciful or capricious, that the twenty individuals identified by Scott County are, in fact, the voters who cast the 20 uncounted ballots from Shakopee Precinct-10. *See* Tx. 106:17-107:9. Put differently, Ms. Hanson has no reasonable doubt that the individuals identified as Voter 1 through Voter 20 by the County are the individuals who cast the uncounted ballots. *See* 10 MNPRAC. CRIMJIG

¹ The record also demonstrates that one more ballot for Shakopee Precinct-12A was accepted than was included in the final tally. The reason that ballot was not counted and its ultimate fate is immaterial to the outcome of this election contest because the evidence demonstrates that the result of the election would not change if there were 21 rather than 20 uncounted ballots.

3:02 (“Proof beyond a reasonable doubt is such proof as ordinarily prudent people would act upon in their most important affairs. . . . A reasonable doubt is a doubt based upon reason and common sense. It does not mean a fanciful or capricious doubt, nor does it mean beyond all possibility of doubt.”).

The Court also heard testimony from twelve of the twenty voters who cast the uncounted ballots. Six of the voters testified that they cast their ballots for Representative Tabke and six others testified that they cast their ballots for Aaron Paul.² This is sufficient to put to rest any question regarding which candidate received the most votes in this election.³ There are only eight (or possibly nine) uncounted ballots for which there is no evidence as to how they were cast. Even if all of them were cast for Aaron Paul, Representative Tabke would win the election by six (or possibly five) votes.

Contestant does not address any of this evidence in his brief and instead insists that we should proceed in an artificially imposed vacuum of information, pretending as though we cannot

² Courts have heard testimony from voters identifying the candidates for whom they cast their ballots to determine the outcome of election contests. The Minnesota Supreme Court, in *Hanson v. Emanuel*, explained that the trial court heard testimony from individuals who cast ballots in the election but admittedly were not qualified to vote in the election and relied upon that testimony to reduce the vote totals for the candidates for whom the illegal votes were cast. 297 N.W. 749, 755 (Minn. 1941); *see also Ganske v. Ind. Sch. Dist. No. 84*, 136 N.W.2d 495, 408, (Minn. 1965) (discussing ability to obtain testimony regarding how ineligible voters cast their ballots); *Nelson v. Bullard*, 194 N.W. 308, 312 (Minn. 1923) (“It is competent to show by circumstantial evidence for whom an illegal ballot was cast.”). It is likewise appropriate for this Court to consider voter testimony to determine for whom they voted on their legally cast ballots.

³ Contrary to Contestant’s assertion, Representative Tabke never urged the Court to rely upon the statistical unlikelihood that the uncounted ballots would change the outcome of the election to resolve this contest. Rather, Representative Tabke provided this information for helpful context and to demonstrate that—as the evidence has confirmed—it is exceedingly unlikely that the failure to count 20 ballots from Shakopee Precinct-10 affected the result of the election.

know how an outcome determinative number of the uncounted ballots were cast in this race.⁴ This is not only contrary to the evidence, it fails to satisfy Contestant's burden of proving either that he received the most votes or that it is impossible to determine which candidate received the most votes in the election. The Minnesota Supreme Court's analysis in *Berg v. Veit* is instructive.

In *Berg*, the race for Clearwater County Commissioner was separated by just four votes and the contestant introduced evidence that 20 votes were cast in the town of Itasca by persons who were not residents of the town and, thus, were not eligible to vote in the election. 162 N.W. 522, 522-23 (Minn. 1917). The contestant argued that, because there was no evidence tending to show for whom the illegal votes were cast, they should be deducted pro rata from the votes counted for the town of Itasca which would net him an additional 12 votes and tip the result in his favor. *Id.* at 523. The Court rejected this argument noting that the contestant bears the burden of proving that the candidate declared elected by the canvassing board did not receive a majority of the legal votes. *Id.* Because the contestant based his contest on the fact that illegal votes were cast, "it [was] incumbent upon him to show that enough of such votes were cast for the contestee to change the outcome." *Id.* Ultimately, the Court rejected contestant's argument for a pro rata reduction in the votes from the town of Itasca because he "made no attempt to show for whom the illegal votes were cast, nor to show that he was unable to do so" and noted that even if the individual voters refused to testify, contestant "could have presented the best available evidence which tended to show for whom the voter probably voted." *Id.*

⁴ Somewhat confusingly, Contestant asserts that there is insufficient evidence to identify the 20 voters who cast the uncounted ballots from Shakopee Precinct-10 yet he called six of those individuals at trial and elicited testimony that they voted for Aaron Paul.

In this case, Contestant Aaron Paul bears the burden of proving that the failure to count the 20 ballots from Shakopee Precinct-10 changed the outcome of the election.⁵ Similar to *Berg*, Contestant cannot satisfy his burden by simply asserting that there is no way of knowing who cast the twenty uncounted ballots or whether those ballots would have changed the outcome of the election. Rather, Contestant must present evidence demonstrating that it is not possible to know how the uncounted ballots were cast; a burden which he simply cannot sustain on this record. To the contrary, the evidence demonstrates the opposite—the evidence proves who the voters are *and* for whom they voted.⁶

In sum, the Contest fails on the question of which candidate received the most votes legally cast because the evidence at trial permits no conclusion except that Representative Tabke won the election.

B. The contest fails on the ground of irregularities in the conduct of the election because the irregularities did not affect the outcome.

The Minnesota Supreme Court recently addressed the pleading standard in election contests holding that the “in addition to alleging irregularities in the conduct of the election or a violation of election laws, there must be a ‘plain statement showing that the contestant is entitled to a decree changing the declared result of the election.’” *Bergstrom v. McEwen*, 960 N.W.2d 556, 563 (Minn. 2021) (quoting *Christenson v. Allen*, 119 N.W.2d 35, 40-41 (Minn. 1963)). This is not a new requirement but rather has been the law in Minnesota for over 150 years. *Bergstrom*, 960

⁵ As discussed *infra*, Contestant’s citation to *In re Contest of Election in DFL Primary*, 344 N.W.2d 826 (Minn. 1984) (“*DFL Primary*”), does not alleviate his burden in this matter.

⁶ The legislature can prescribe standards of proof for statutorily-created causes of action such as an election contest. See *Seeley v. Sobczak*, 281 N.W.2d 368, 370 (Minn. 1979). When the legislature has not prescribed a standard for statutorily-created causes of action, “this is regarded as a signal that the legislature intended the preponderance of the evidence standard” to apply. *State v. Alpine Air Prods., Inc.*, 500 N.W.2d 788, 790 (Minn. 1993).

N.W.2d at 563-64; *Hahn v. Graham*, 225 N.W.2d 385, 286 (Minn. 1975) (“It has been the rule in this state for well over 100 years that violation of a statute regulating the conduct of an election is not fatal to the election in the absence of proof that the irregularity affected the outcome or was the product of fraud or bad faith.”); *Janeway v. City of Duluth*, 68 N.W. 24, 25 (Minn. 1896) (allegations of irregularities in the election were framed in “the most general terms” and the contestant had “not alleged in what manner” those irregularities “affected the result.”).

It is axiomatic that, if the notice of contest must allege that the irregularities affected the outcome of an election in order to state a claim upon which relief may be granted, the Contestant must prove that such irregularities in fact affected the outcome in order to prevail in the contest. This is consistent with the Minnesota Supreme Court’s conclusion in *Berg v. Veit*, and the longstanding “policy of the state to give effect to the votes of legal voters regardless of irregularities in the election.” *Clayton v. Prince*, 151 N.W. 911, 912 (Minn. 1915).

In re Contest of Election in DFL Primary Election, cited by Contestant does not ease his burden. 344 N.W.2d 826 (Minn. 1984). That case involved an allegation that the winning candidate violated the Fair Campaign Practices Act by falsely implying that she was the party-endorsed candidate.⁷ *Id.* at 828-31. The Minnesota Supreme Court acknowledged that, in the context of an alleged violation of Minn. Stat. § 210A.12, the contestant “is not required to affirmatively show an effect on the outcome of the election” because this burden of proof “would effectively thwart the enforcement of the Fair Campaign Practices Act.” This exception does not

⁷ *In re Contest of Election in DFL Primary Election* was the third in a series of contests involving alleged violations of Minn. Stat. § 210A.12 which has subsequently been recodified at Minn. Stat. § 211B.02. In the first case, *Schmitt v. McLaughlin*, the Minnesota Supreme Court noted that the Fair Campaign Practices Act provided for the penalty of removal. 275 N.W.2d 587, 591 (Minn. 1979). This was again noted in *Matter of Ryan* where the Court further discussed the circumstances in which it would be unjust to invoke the penalty of removal for a violation of the Fair Campaign Practices Act. 303 N.W.2d 462, 467-68 (Minn. 1981).

change the requirement, restated just three years ago in *Bergstrom*, that in all other contexts, a contestant must demonstrate that the irregularities in the conduct of the election affected the outcome. As discussed above, Contestant cannot satisfy this burden because the evidence in the contest confirms that the failure to count the 20 ballots from Shakopee Precinct-10 did not affect the outcome and that Representative Tabke won the election.

Contestant asserts that *In re Contest of Election of Vetsch* is the “most historically similar Minnesota case” in support of his argument that he is entitled to a new election notwithstanding his failure to prove that the irregularities affected the outcome of the election. Contestant Br. at 18 (citing *Vetsch*, 71 N.W.2d 652 (Minn. 1955)). *Vetsch* is the exception in Minnesota election case law and the dissimilarities with the instant case are striking. *Vetsch* involved a contested election for Houston County Sherrieff and egregious violations of election law in La Crescent village that called into doubt the validity of all votes cast in the village. *Vetsch*, 71 N.W.2d at 658-60. The irregularities included the improper appointment of the election board; improper handling of ballots by the village clerk; the unauthorized issuance of absentee ballots; the failure to take, administer and indicate proper oaths; unauthorized and ineligible persons filling in as judges and clerks; the intermixing of clerk and judge functions; the failure to count ballots before issuing receipts; and the inadequate maintenance of the election register. *Id.* at 659. Most troubling of all, however, was the fact that there was one more ballot voted than the number of persons listed in the election register and that there were 59 ballots—which should have been unvoted, blank ballots—missing from the La Crescent village precinct. *Id.* at 656, 659. The record also shows that, by the time the election officials in La Crescent village reported their results, they were aware of the results in all of the other precincts in the County and the contestant noted that “because a switch of 41 votes would have been all that was needed to change the total county vote, it would

have been a simple matter for someone to have marked a sufficient number of the 59 blank ballots with the desired results and to have disposed of the original ballots cast. *Id.* at 659. The cloud of suspicion grew even darker because the La Crescent village election manager, who was unaware of the laws governing the election, was an old political rival of the contestant and friend of the contestee. *Id.* at 655, 659. In the face of this unique set of facts, the Minnesota Supreme Court concluded that the votes from La Crescent village should be invalidated due to “the cumulative effect of the numerous serious violations which occurred” that “cast doubt and suspicion upon the election and impeach the integrity of the vote.” *Id.* at 660.

To be sure, there were irregularities in the manner in which the City of Shakopee administered the in-person absentee voting process at City Hall as was laid bare by the investigative efforts of the Scott County Elections Administrator and the testimony presented to this Court. But this investigation and testimony also eliminates any lingering doubt or suspicion regarding the breadth of the irregularities or the results of the election. The circumstances which led the Minnesota Supreme Court to conclude in *Vetsch* that “so great an opportunity for fraud exists as to impeach the integrity of the ballot,” 71 N.W.2d at 658-59, simply are not present here.

The other cases Contestant cites in support of the proposition that “new elections are frequently the relief granted in election contests nationwide” are readily distinguishable on the dispositive issue of this case: is it possible to determine whether and how the irregularity in the conduct of the election affected the outcome? The *Bencomo* case from Arizona, for example, arose from the fact that the voters were provided ballots which instructed them to vote for up to two candidates even though the consent decree pursuant to which the election was conducted provided that each voter “will be entitled to cast only one vote for the candidate of his or her choice.” *Bencomo v. Phoenix Union High Sch. Dist. No. 210*, No. CV-90-00369-PHX-GMS, 2024 WL

5090208, *1 (D. Ariz. Dec. 12, 2024). This issue was raised with the court prior to the election but the court concluded that no pre-election remedy was practical. *Id.* When addressing the post-election remedy, the court noted that the provision limiting voters to one vote “is an election limitation designed to protect minority voters” and the erroneous ballots “simply make it impossible to declare, with any confidence, who the winners of a legally conducted election would be or that the mistake was not consequential.” *Id.* at *3.

Similarly, the First Circuit Court of Appeals upheld a district court decision that Rhode Island’s retroactive invalidation of absentee ballots after they had been cast violated the voters’ constitutional rights and ordered a new election as a remedy for this conduct which invalidated approximately 10% of the total votes cast in a closely contested primary election. *Griffin v. Burns*, 570 F.2d 1065, 1075-80 (1st Cir. 1978). The case of *Nickelson v. Whitehorn* involved an election with a one-vote margin in which at least six ineligible votes were identified. 375 So.3d 1132, 1140-41 (La. App. 2 Cir. 2023). The Louisiana Court of Appeals affirmed the trial court’s conclusion that, because the Louisiana Constitution includes the guarantee of a secret ballot, it was impossible to determine for whom the illegal votes had been cast. *Id.* at 1137, 1140-41; La. Const. Art. II, § 2 (“In all elections by the people, voting shall be by secret ballot.”). Minnesota has no such constitutional guarantee and Minnesota courts have relied upon voter testimony in analogous cases to determine whether the alleged irregularities affected the outcome of the election. *See* Note 2, *supra*; Minn. Const. Art. VII, § 5 (“All elections shall be by ballot except for such town officers as may be directed by law to be otherwise chosen.”).

Franks v. Hubbard involved a contest in which 142 absentee ballots were cast without being placed in an executed ballot envelope as required under Missouri law. 498 S.W.3d 862, 865 (Mo. Ct. App. 2016). The Missouri Court of Appeals affirmed the decision to order a new election

in light of the Missouri precedent stating that an invalidly cast absentee ballot constitutes a legal fraud. *Id.* at 868-69. There is no comparable provision of Minnesota election law implicated here. Finally, Contestant relies upon the Superior Court of Connecticut's decision ordering a new election after four ballots were invalidated in a race separated by only one vote. *Brown v. Clemons*, FBT-CV-22-5049450, 2022 WL 6694967, at *1-3 (Ct. Super. Ct. Oct. 4, 2022). Crucially, the court stated that "[t]here is no evidence on which the court can conclude that these four ballots were not among the 1,144 votes counted in favor of [the winning candidate] and therefore, the court must infer that these four ballot were among the 1,144 votes that were so counted." *Id.* at *3. Here, of course, the Court has the evidence necessary to determine that at least six of the uncounted ballots were cast for Representative Tabke thus eliminating the uncertainty which compelled the Connecticut Superior Court to order a new election.⁸

Ultimately, each of the cases cited by Contestant are premised on the conclusion that the irregularities in the conduct of the election make it impossible to know the true outcome. Such a conclusion is at odds with the evidence in this matter which makes clear not only that the irregularities did not affect the outcome of the election, but also that Representative Tabke was the winner. Allowing a new election in this circumstance would run counter to Minnesota's longstanding policy "to give effect to the votes of legal voters regardless of irregularities in the

⁸ *DFL Primary* is inapposite. That case involved an alleged violation of the Fair Campaign Practices Act where the court imposed the penalty of removal from office which is specifically authorized in the Act. *DFL Primary*, 344 N.W.2d at 83; see also *Schmitt*, 275 N.W.2d at 591 (discussing penalty of removal). The *Gasaway v. Kemp* and *Medley v. Iron County* cases cited by Contestant, Br. at 17, are unpublished decisions from the state courts of Georgia and Missouri which are not widely available. However, the parenthetical descriptions included in Contestant's own brief indicate that these case address defects in the ballot which, like the ballots in *Bencomo*, make it impossible to know what the outcome would have been in an election with proper ballots.

election,” *Clayton*, 151 N.W. at 912, particularly in light of the historically lower voter turnout for special elections as compared to general elections for the same legislative seat.⁹

Contestant has failed to sustain his burden of proving that the irregularities in the conduct of the election affected the outcome and his contest fails as a result.

C. The contest fails on the ground of “deliberate, serious, and material” violations of Minnesota election law because the provision does not apply to this contest, because Contestant failed to prove there was a “deliberate” violation, and because any violation did not affect the outcome of the election.

Contestant’s claim that he is entitled to a new election due to “deliberate, serious, and material” violations of Minnesota election law fails, at the outset, because this ground for an election contest does not allow for forfeiture of a nomination due to the actions of a third party who is neither the candidate nor the candidate’s agent. This limitation was articulated in *Derus v. Higgins* which involved a claim that the Star Tribune published “a false and misleading article creating the impression that [contestant] was somehow connected with dishonest conduct” in violation of the Fair Campaign Practices Act. 555 N.W.2d 515, 515-16 (Minn. 1996). The Minnesota Supreme Court held that “to the extent the allegations of wrongdoing with regard to the

⁹ The following table shows the number of votes cast in the five most recent special elections for the Minnesota House of Representatives as well as the immediately preceding general election for the same house district. All of the election results are available at: <https://www.sos.state.mn.us/elections-voting/election-results> (last visited December 27, 2024).

District	Special Election		General Election	
	Votes	Date	Votes	Date
27B	2,073	Mar. 19, 2024	18,093	Nov. 8, 2022
52B	6,618	Dec. 5, 2023	22,592	Nov. 8, 2022
30A	3,126	Feb. 4, 2020	18,854	2018
60A	2,149	Feb. 4, 2020	17,843	2018
11B	5,220	Mar. 19, 2019	15,327	2018

conduct of this third party only implicate the [Fair Campaign Practices] Act, the remedies provided therein are exclusive” and “no justiciable claim for relief [under Minn. Stat. § 209.02] has been asserted.” *Id.* at 517. For this reason, contests relating to election official’s violations of election laws proceed on the ground of “an irregularity in the conduct of the election” rather than the ground of “deliberate, serious, and material violations of the Minnesota Election Law.” Compare *Clayton*, 151 N.W. 911; *Berg*, 162 N.W. 522; *In re Special Election in School Dist. No. 68*, 237 N.W. 412 (Minn. 1931); *Green v. Ind. Consol. School Dist. No. 1*, 89 N.W.2d 12 (Minn. 1958); *Vetsch*, 71 N.W.2d 652 (involving election officials’ violations of election laws); with *Effertz v. Schimelpfenig*, 291 N.W. 286 (Minn. 1940); *Moulton v. Newton*, 144 N.W.2d 706 (Minn. 1966); *Scheibel v. Pavlak*, 282 N.W.2d 843 (Minn. 1979); *Schmitt*, 275 N.W.2d 587; *Matter of Ryan*, 303 N.W.2d 462, *DFL Primary*, 344 N.W.2d 826 (involving election law violations by candidates).

Even if Contestant could repackaging his claim relating to irregularities in the conduct in the election as a claim relating to deliberate, serious, and material violations of Minnesota Election Law, his claim fails for several reasons. First, Contestant has not proven that a “deliberate” violation of Minnesota election law occurred. A violation is “deliberate” where it is “intended to affect the voting at the election.” There is no evidence to support a finding that the inadvertent discarding of the uncounted ballots was intended to affect voting at the election.¹⁰ And Contestant’s inflammatory assertion that the destruction of ballots in this matter “may well rise to the level of being a criminal offense” finds even less support in the record. See Contestant’s Br. at 13. The action of damaging a ballot is criminal only if it was done intentionally, *State v. Shane*,

¹⁰ Contestant’s strained attempt to shoehorn his allegations regarding the manner in which the election was conducted into a claim relating to a deliberate, serious, and material violation of Minnesota election law lends further support to the conclusion that this is not an appropriate ground for this election contest.

883 N.W.2d 606, 610 (Minn. Ct. App. 2016), and there is nothing to suggest such an intentional action occurred here. Tx. 195:1-4 (C. Petersen) (testimony by the Assistant City Administrator that she has not learned of any information that causes her to believe that the ballots were intentionally destroyed).

Moreover, Contestant's claims on the ground of deliberate, serious, and material violations of Minnesota election law fail because the evidence at trial demonstrates that the failure to count the 20 absentee ballots from Shakopee Precinct-10 before they were inadvertently discarded did not affect the outcome of the election and that Representative Tabke, in fact, received the most votes legally cast.¹¹

D. This Court's jurisdiction in this matter is narrowly constrained and the Court should deny Contestant's requests for relief which exceed its legal authority.

The courts' authority to address election contests is tightly constrained by the constitutional directive that "[e]ach house [of the legislature] shall be the judge of the election returns and eligibility of its own members." Minn. Const. Art. IV, § 6. The laws regulating election contests for legislative offices "are predicated on this principle of legislative authority" and proscribe that after the courts have issued a decision the record is transmitted to the legislature which will make the ultimate determination in the contest. *Scheibel*, 282 N.W.2d 848. Accordingly, the courts lack the jurisdiction to issue a final binding decision and their orders in legislative election contests are purely advisory. *Id.* More relevant for this matter, the trial judge in a legislative election contest "acts, in effect, as an agent of the legislative body involved" to hear and direct the recording of evidence, make findings and conclusions, and submit the record and recommendations to the

¹¹ As explained above, *In re Contest of Election in DFL Primary Election*, which involved an alleged violation of the Fair Campaign Practices Act, does not absolve Contestant of his burden of proving that the alleged violations of election law affected the outcome of the election.

legislature. *Id.* at 850. Given this narrow role and the ultimate authority of the legislature, the courts must be careful not to overstep their constitutional and statutory authority.¹²

The Court should be wary of Contestant's invitation to go further than the law allows. For instance, Contestant asks the Court to "declare that the election for House District 54A is invalid and that a vacancy in House District 54A exists" and to "order a new election." Notice of Contest at 12; Contestant's Br. at 21. The Court lacks the authority to take any of these actions. As explained in *Scheibel*, the legislature makes the ultimate determination in election contests and, therefore, this Court cannot "declare" that the election is invalid and that a vacancy exists in the office of Representative for House District 54A or "order" a new election. Rather, this court must limit itself to making findings of fact and conclusions of law and submitting its recommendations to the Minnesota House of Representatives.

IV. CONCLUSION

The evidence introduced at trial conclusively demonstrates that the fact that 20 ballots were inadvertently discarded before they were counted did not affect the outcome of the election for House District 54A and that Representative Tabke received the most votes legally cast. The election contest fails in the face of these facts and Representative Tabke respectfully requests that the Court issues findings of fact and conclusions of law recommending that the Minnesota House of Representatives affirm that Representative Tabke won the 2024 general election and take no further action relating to this contest.

¹² The recently decided case of *Wikstrom v. Johnson*, Case No. 62-CV-24-7378 (Dec. 20, 2024 2d. Judicial District) in which the Ramsey County District Court ordered that candidate Curtis Johnson is "enjoined from taking the oath of office" and that the "[t]he seat for Minnesota House of Representatives District 40B shall be filled according to law", does not support Contestant's assertion that this Court may similarly disregard the constitutional limits on its authority in legislative election contests. *See* Contestant's Br. at 9.

Dated: December 27, 2024

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STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF SCOTT

FIRST JUDICIAL DISTRICT

Aaron Paul,

Contestant,

v.

Brad Tabke,

Contestee.

CASE NO.: 70-CV-24-17210

Hon. Tracy Perzel

CONTESTANT'S REPLY IN SUPPORT OF ELECTION CONTEST

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Contestee's Response Brief makes several critical errors to which Contestant Aaron Paul wishes to respond.

First, Contestee significantly and incorrectly couches the posture of the Election Contest as one of certainty—a situation where Scott County and the City of Shakopee's maladministration of the 2024 General Election can be neatly resolved and concluded. Nothing can be further from the truth. While it is true that it is Election Director Julie Hanson's "best guess" that the County has identified 20 of the missing 21 ballots discarded by the City of Shakopee, there are significant inconsistencies and outstanding questions in an ongoing investigation that leave the universe of missing ballots at just that: a guess. Tx. 52:25 (J. Hanson). These inconsistencies are discussed in greater detail below.

Next, Contestee misstates the relevant legal standard of this Election Contest—vainly attempting to contort the standard beyond the demonstrable material irregularities that occurred in connection with this election. Contrastingly, Scott County Election Officials readily concede that the conduct was "inappropriate, something that should not have happened", a "very large" error, and that it is "a big deal." TX. 59:12; 112:22 (J. Hanson). The standard for an election contest is more than met here.

Contestee, then, in direct violation of Minnesota law, suggests that the testimony of the voter witnesses can be used as substitute votes even though "for obvious reasons arising from the inviolable secrecy of the ballot, direct evidence as to how contested votes were cast is not allowed. . ." *Kearin v. Roach*, 381 N.W.2d 531, 533 (Minn. App. 1986) (*citing In re Mathison v. Meyer*, 199 N.W. 173, 173 (Minn. 1924)). Therefore, even if the universe of missing ballots was somehow conclusively known, it would be improper for this Court to use that testimony as proof of how those voters cast their ballots.

Finally, Contestee fails to factually distinguish relevant case law demonstrating the obvious remedy here: a special election. Therefore, this Court should reticently acknowledge the unfortunate and irreparably tarnished nature of the 2024 General Election and order a new election to conclusively, freely, and fairly determine the true representative of District 54A in the Minnesota of Representatives.

I. Despite Contestee's Blithe Conclusions, It Remains Unknown Who Won the District 54A Election

The only clear conclusion concerning the November General Election is that material irregularities by City of Shakopee election officials led to ballots being lost beyond Contestee's putative margin of victory. Even the quantity of lost ballots remains unknown.¹ Tx. 22:14-18 (J. Hanson). These material irregularities rendered the election profoundly suspect and were conducted in a manner inconsistent with the policies and procedures of Scott County. Tx. 61:2-7 (J. Hanson).

Beyond that, much remains a "best guess" among competing theories in an ongoing investigation.

In the hearing, witnesses described at least **three** separate theories as to what caused Scott County to destroy at least 20 ballots in connection with the election. First, and most prominently, Scott County Election Director, Julie Hanson's "best guess" is that Shakopee City Clerk, Lori Henson, on or about October 18, 2024, opened 20 absentee ballots, cast between October 15-17, and then discarded them due to carelessness, or some other reason.

¹ The only definitive evidence of the missing ballots in the hands of election officials is that at some point they were entered into the SVRS system. That doesn't however answer the question of exactly when, how, or exactly which ballots were lost. Compounding this problem is the fact that 20 days lapsed before the ballots are unaccounted for an when the County discovered that ballots were missing.

Theory number two is taken from the testimony of Election Judge, Kay Gamble. While Ms. Gamble's testimony largely tracks that of Ms. Hanson—they differ on one critical point: what date range of ballots were destroyed. Ms. Hanson testified that these ballots were cast from the period of October 15 through October 17. By contrast, Kay Gamble—the election official directly responsible for tracking totals on a daily basis—repeatedly testified that these accepted ballots that would have been processed on October 17 covered a different period—from October “14th, 15th, and 16th.” Tx. 184:7 (K. Gamble); *see also* Tx. 187:21-25 (K. Gamble).²

Obviously, this differing universe³ of affected ballots/voters belies any certainty about whose ballots were destroyed in this election—because if Kay Gamble is correct, and she is the official who directly tracked these issues, the identity of the missing voters is incomplete/partially incorrect.

Finally, there is the third theory: Lori Hensen's categorical denial that she was responsible for opening the envelopes in question, since “she was doing another activity at that time.” Tx. 102:7-12 (J. Hanson). While Scott County Election Officials did not find Ms. Henson's version of events “to be credible”, that credibility determination appears to be based primarily on the fact that Ms. Henson's story was inconsistent with that of other witnesses. Tx. 102:13-25; 103:1-2. But of course, if Ms. Henson's version of events is correct—and there was no direct testimony that categorically disproves it—then the county's theory and timeline of events is obliterated if Ms. Henson was not the operative actor.

² As noted here, Ms. Gamble made this point multiple times during her testimony including during direct examination by Contestee, where Ms. Gamble stated “yeah, 14 -- 14, 15, 16, and 17 wouldn't have been on that report.” Tx. 173:22-23 (K. Gamble).

³ There is also inconsistent testimony as to the number of validly cast absentee ballots in Precinct 10—giving further doubt to that universe of potential ballots. For example, Julie Hanson testified that of the 87 absentee ballots cast in that precinct, 37 were votes from health care facilities. Tx. 50:25-51:2 (J. Hanson). This left a universe of 50 ballots. Tx. 51:2 (J. Hanson). However, Contestee's counsel later repeatedly asks her about the “47 ballots”. Tx. 92:1; 92:16-21 (J. Hanson), a figure that Contestee uses as factually correct in his Memorandum of Law. *See Contestee's Br.* at 7. Obviously, certainty as to this question is important in identifying which voters/ballots were lost.

These are basic questions that remain outstanding in the midst of Scott County's "ongoing" investigation where technicians are still attempting to retrieve video footage of the events in question. Tx. 129:16-18 (M. Lehman); Exhibit 2 (Scott County's "investigation is not complete and remains ongoing. . ."). And while their additional information may eventually be pieced together that categorically resolves these issues—they remain outstanding at the present time; during this Court's tight timeframe for review.

Therefore, the only reasonable conclusion for this Court is to acknowledge the existence of these inconsistencies and unknown facts. To do otherwise, as Contestee suggests, would require this Court to insert itself into the ongoing investigation and to make factual conclusions that the County, itself, has not conclusively made.

II. Contestee Misstates the Relevant Legal Standard

Pursuant to Minnesota Stat. § 209.02, subd. 1, an election contest may be brought "over an irregularity in the conduct of an election or canvass of votes, over the question of who received the largest number of votes legally cast," or "on the grounds of deliberate, serious, and material violations of the Minnesota Election Law."

To meet this standard, all Contestant needs to prove is that the "carelessness or irresponsibility [of election officials] has been carried to such an extent as to affect the outcome of the election **or put the results in doubt.**" *In re Contest of Election of Vetsch*, 71 N.W.2d 652, 658 (Minn. 1955) (emphasis added). Here, Director Hanson readily concedes that the official conduct here was "inappropriate, something that should not have happened", a "very large" error, and that it is "a big deal." TX. 59:12; 112:22 (J. Hanson). The standard for an election contest is more than met here.

The Court should reject Contestee's alternative "gotcha" standard where contestants would be obliged to determine the contents of *missing and destroyed* ballots or lose their election contest. The obvious problem with such a rule would be that even in the reverse situation—where 30,000 ballots were destroyed and only 20 maintained—how would a contestant ever conclusively *prove* that the unknowable contents of the 30,000 ballots, despite their overwhelming number, would have changed the outcome of the election? It is an impossible and unworkable standard that this Court should reject.

III. Minnesota Law Does Not Permit Using the Voters' Testimonies as Substitutes for the Missing Ballots

Central to Contestee's attempts to summarily resolve the District 54A election, is Contestee's impermissible attempt to paper over the missing ballots via the testimony of certain voters at the Election Contest Hearing. *See, e.g.*, Contestee's Br. at 9 ("Specifically, the record demonstrates that 20 ballots from Shakopee Precinct-10 were inadvertently discarded before they were counted,¹ that the individuals identified by . . . Scott County as Voter 1 through Voter 20 cast the uncounted ballots, and that six of the twenty voters cast ballots for Representative Tabke and six others—called by Contestant—cast ballots for Aaron Paul.") (cleaned up).

First, as discussed in Section I, there are profound problems with the conclusion that "the individuals identified by . . . Scott County as Voter 1 through Voter 20 cast the uncounted ballots. . ." *Id.* While that may be the county's "best guess", that's not a sufficient basis to decide an election—especially where any error would result in those voters being impermissibly allowed to vote twice, with the uncounted voters still disenfranchised.

Even if this Court were willing to ignore the optics and separation of powers concerns attendant to so heavily inserting itself into this election's resolution, Contestee's proposal that the

Court use the voter testimony as substitutes for ballots violates Minnesota law. *See Contestee's Br.* at 11 ("Six of the voters testified that they cast their ballots for Representative Tabke and six others testified that they cast their ballots for Aaron Paul. This is sufficient to put to rest any question regarding which candidate received the most votes in this election.").

The Court of Appeals squarely addressed this question in its 1986 decision in *Kearin v. Roach*, when deciding whether the contestant had shown enough "votes were cast by nonresidents . . . for the contestee to change the result." 381 N.W.2d 531 (Minn Ct. App. 1986). While the Court of Appeals considered certain types of circumstantial evidence that could be used, the Court held that **"for obvious reasons arising from the inviolable secrecy⁴ of the ballot, direct evidence as to how contested votes were cast is not allowed . . ."** *Id.* at 533. Given that *Kearin* is a precedential decision, this Court is obliged to follow it here and not impermissibly use the voters' testimony.⁵

As the Minnesota Supreme Court has previously explained:

where, as in this case, the supposed ballots were never in existence, and we must rely upon the subsequent declarations of the electors as to how they intended to and would have marked and cast their ballots, if they had voted, it would be an uncertain and dangerous experiment to attempt the task of ascertaining and giving effect to

⁴ Indeed, this rule is consistent with Minnesota's emphasis on secrecy of the ballot. *See Bell v. Gannaway*, 227 N.W.2d 797, 802 (Minn. 1975) ("The preservation of the enfranchisement of qualified voters and of the secrecy of the ballot, the prevention of fraud, and the achievement of a reasonably prompt determination of the result of the election have been the vital considerations in the development of absentee voting legislation."); *see also*, Minn Admin. R. 8210.0300 (requiring absentee ballot be "ke[pt]. . . secret."); *Doepke v. King*, 156 N.W. 125, 125 (Minn. 1916) ("Where a person so far violates the secrecy of an election as to identify his ballot, by writing his name on it, the vote itself is illegal and fraudulent. An act of this kind is in violation of the law and should not be given validity for any purpose whatsoever); Minn. Stat. § 204C.22, Subd. 2 (limiting an inquiry to a voter's intent to "only" the "face of the ballot." Furthermore, the purpose of the statute is to protect voter anonymity. It renders ballots defective that contain identifying marks. *Id.*).

⁵ Contestee deems it "somewhat confusin[g]" that Contestant called a handful of voters identified by the County as possibly being the missing 20. *Contestee's Br.* at 12, fn. 4. Frankly, it is not "confusing" at all that Contestant would choose to call voters that participated in the flawed absentee balloting administered by the City of Shakopee. While for purposes of transparency and the reflection of any bias, Contestant asked the voters how they voted in the District 54A Election, Contestant's questions were largely aimed at the process of absentee voting in the City of Shakopee and the voters' views and their feelings on the uncertainty and maladministration of the election. At no point, has Contestant deemed them to be those that cast of the missing ballots or *ever suggested* that the testimony of those voters could be used as substitutes for ballots.

their intentions, as ballots actually cast and returned. *Uncertain, because it would be simply a matter of speculation; dangerous, because it would give to such electors the power of determining the result of an election, in a close contest.*

Pennington v. Hare, 62 N.W. 116, 117 (Minn. 1895) (emphasis added).⁶

Nor is Minnesota an outlier in prohibiting such voter testimony. *See, e.g., McCavitt v. Registrars of Voters*, 434 N.E.2d 620, 623 (Mass. 1982) (“in the absence of evidence of fraud or intentional wrongdoing, a voter who has cast an absentee ballot in good faith may not be asked to reveal for whom he or she voted. Such a requirement burdens the fundamental right to vote and strikes at the heart of the American tradition of the secret ballot. If the outcome of an election depends on good faith absentee voters whose facially valid ballots must be rejected because of procedural mistakes, we believe that a new election is preferable to compelling those voters to disclose the candidate for whom they voted.”); *Huggins v. Superior Court*, 788 P.2d 81, 83 (Ariz. 1990) (“Voter disclosure testimony, even where offered, is highly suspect. Courts have long recognized this weakness when contemplating testimony by legal voters whose attempted votes were erroneously unrecorded.”); *Briscoe v. Between Consol. Sch. Dist.*, 156 S.E. 654, 656 (Ga. 1931) (“[I]t would . . . be dangerous to receive and rely upon the subsequent statement of the voters as to their intentions, after it is ascertained precisely what effect their votes would have upon the result.”); *Young v. Deming*, 33 P. 818, 820 (Utah 1893) (“We know from common experience that those

⁶ The Court went on to posit through significant fraud concerns under such circumstances:

All that it would be necessary for them to do, in such a case, to decide the election, would be to declare that they intended to vote for a particular candidate. It would enable them to sell the office to the candidate offering the highest price for it, because they would not be called upon for their declaration until a contest arose, after the actual ballots had been counted, and the precise effect of their statement known. They could swear falsely as to their past intentions, without fear of punishment, for how would it be possible to disprove their statements as to their intentions with reference to a supposed act, if perchance they had acted?

Id. While such concerns may seem a bit extreme in the present case, the Supreme Court’s admonition speaks to the dangers of establishing precedent whereby such testimony would be admitted in future cases.

[Section divider]

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF SCOTT

FIRST JUDICIAL DISTRICT

CASE TYPE: CIVIL/OTHER

Aaron Paul,

Court File No. 70-CV-24-17210

Hon. Tracy Perzel

Contestant,

v.

**CONTESTEE BRAD TABKE'S
PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

Brad Tabke,

Contestee.

I. INTRODUCTION

The general election for the Office of Representative for House District 54A was held on November 5, 2024 and incumbent Representative Brad Tabke won the election by 14 votes over challenger Aaron Paul. During the canvass of the election results, Scott County determined that 21 fewer absentee ballots were counted in the election than had been accepted from voters. Following a thorough investigation, Scott County determined that 20 ballots for Shakopee Precinct-10 which had been cast at the City's early voting location were inadvertently discarded before they were counted.

On November 29, 2024, Contestant Aaron Paul initiated this election contest pursuant to Minnesota Statutes, Section 209.02 over the question of who received the largest number of votes legally cast, on the ground of an irregularity in the conduct of the election, and on the ground of deliberate, serious, and material violations of Minnesota election law. Following the procedures established in Minnesota Statutes, Section 209.10, subd. 2, the Parties selected the undersigned Judge Tracy Perzel to serve as the district court judge in this election contest. The undersigned presided over the trial of this election contest on December 16 and 17. Contestant Aaron Paul was

represented by R. Reid Lebeau II of Chalmers, Adams, Backer, and Kaufman. Contestee Representative Brad Tabke was represented by David J. Zoll and Rachel A. Kitze Collins of Lockridge Grindal Nauen PLLP. Contestant submitted a post-trial brief on December 23, 2024. Contestee submitted a responsive brief on December 27, 2024 and Contestant submitted a reply brief on December 30, 2024. Both Parties also submitted proposed findings of fact and conclusions of law on December 30, 2024.

After considering all evidence presented at the hearing and the parties' post-trial submissions, the undersigned makes the following Findings of Fact and Conclusions of Law.

II. FINDINGS OF FACT

A. November 5, 2024 General Election.

1. The general election for House District 54A was held on November 5, 2024 and resulted in a 14-vote victory for incumbent Representative Brad Tabke.

2. A manual recount of the ballots was conducted on November 21, 2024. Ex. 206. A total of 22,980 ballots were counted in the race for House District 54A. *Id.* This included 10,980 ballots cast for Tabke, 10,965 ballots cast for Paul, and 1,035 ballots that were not cast for either candidate. *Id.*

3. The Scott County Canvassing Board met on November 25, 2024, to review ballots that were challenged by the candidates during the recount and to certify the results of the election.¹ The Canvassing Board sustained one challenge which resulted in one vote being deducted from Representative Tabke. The Canvassing Board certified the results showing that Representative Tabke won the election by a 14-vote margin. Ex. 5 at AP00142.

¹ See INFORMATION RELEASE: Canvassing board certifies election results in Minnesota House district 54A, available at: <https://www.scottcountymn.gov/CivicAlerts.aspx?AID=1594>.

B. Absentee Voting Process in Scott County.

4. Scott County maintains the ultimate responsibility for voting in the County and provides guidance, training, and support for cities within the County to conduct election day and in-person absentee voting in the cities. Tx. 19:25-20:8; 23:1-25, 24:9-25:4 (J. Hanson).

5. Scott County receives all mail-in absentee ballots for voters in the County; the cities do not receive or accept mail-in absentee ballots. Tx. 19:16-24, 25:5-8 (J. Hanson).

6. The City of Shakopee conducts two types of in-person absentee voting prior to election day:

- a. Prior to October 18, 2024, the City of Shakopee conducted the “envelope absentee voting process” in which the voters went to City Hall where they complete an absentee ballot application, sealed their completed ballots in secrecy and signature envelopes, and place them in a ballot box for later processing. Tx. 23:1-25 (J. Hanson); Tx. 160:5-13 (K. Gamble).
- b. Beginning on October 18, 2024, the City of Shakopee transitioned to the “direct balloting” process where voters insert their completed ballots directly into the tabulator machine rather than using the envelope process. Tx. 24:9-22 (J. Hanson). The direct balloting process continues through the day before election day. Tx. 24:23-25 (J. Hanson).

7. Scott County prepared an Absentee Handbook to provide additional documentation to support the cities’ operations relating to the absentee balloting process. Ex. 3; Tx. 33:4-34:17 (J. Hanson).

8. Among other things, the Absentee Handbook directs the cities to “store ballot secrecy envelopes” which the Parties agree is a best practice. Ex. 3 at AP00116; Tx. 36:8-25 (J. Hanson); Tx. 120:16-121:10 (stating Parties’ stipulation).

9. The City of Shakopee did not retain the ballot secrecy envelopes. Ex. 2; Tx. 37:19-24 (J. Hanson).

10. The Absentee Handbook also includes a procedure for “balancing” to confirm that the number of ballots received each day matches the number of absentee ballot applications. Ex. 3 at AP00117-20; Tx. 44:3-25 (J. Hanson).

11. The City of Shakopee completed daily balancing, but it was not performed at the precinct or “ballot-split” levels as recommended in the County’s Absentee Handbook. Tx. 45:1-46:1, 84:24-85:16 (J. Hanson); Tx. 165:25-166:13, 170:8-171:7 (K. Gamble).

12. Minnesota Statutes, Section 203B.121, subd. 5 specifies procedures for the storage and counting of absentee ballots which are to be completed by two members of the absentee ballot board. As explained below, these procedures were not followed on the morning of October 18 when one individual processed the ballots.

C. Discovery of the Shakopee Ballot Discrepancy.

13. During the process of preparing for the canvass of the election results, Scott County discovered that 21 more absentee ballots had been marked as “accepted” in the Statewide Voter Registration System (“SVRS”) than were counted and included in the election results. Tx. 77:14-79:25 (J. Hanson).

14. This included one uncounted absentee ballot from Shakopee Precinct-12A and 20 uncounted absentee ballots from Shakopee Precinct-10. Ex. 2 at AP00103; Tx. 80:1-15 (J. Hanson).

15. The County noted that it may not be unusual for a one-ballot discrepancy to occur in a single precinct where a voter may have chosen not to cast their ballot after having checked-in and did not investigate the discrepancy in Shakopee Precinct-12A. Ex. 2 at AP00103; Tx. 21:14-22:10 (J. Hanson).

16. The 20-ballot discrepancy for Precinct-10 was unusual and the County undertook an investigation, led by its Elections Administrator Julie Hanson, to determine the cause. Ex. 2 at AP00103; Tx. 73:11-74:10 (J. Hanson).

D. Investigation of the Shakopee Precinct-10 Ballot Discrepancy.

17. Using the data in the SVRS, Scott County was able to determine that the uncounted absentee ballots for Precinct-10 originated from the early voting location administered by the City of Shakopee at City Hall. Ex. 2 at AP00103-04; Tx. 80:19-81:9 (J. Hanson).

18. Specifically, the County was able to determine that the City of Shakopee accepted 329 absentee ballots for Precinct-10 at its early voting location but only 309 ballots had been counted and included in the election results. Ex. 2 at AP00103-04; Tx. 81:13-82:2 (J. Hanson).

19. Upon discovering this fact, the County asked the City of Shakopee to search for the missing ballots including checking the “write-in drawer” of the tabulator machine and every other location they could think of. Tx. 26:20-28:5 (J. Hanson).

20. The City was unable to locate the uncounted ballots. Tx. 50:15-23 (J. Hanson).

21. The County opened the box the City used to return ballots to the County and confirmed through several hand counts that there were only 309 ballots in the case. Ex. 2 at AP00103; Tx. 48:9-25, 81:19-25 (J. Hanson).

22. As part of its investigation, Scott County received a spreadsheet from the City of Shakopee which was prepared by one of the City’s election judges and reflected the number of ballots that had been accepted at the City’s early voting location and a running total of the ballots which had been counted by the tabulator machine. Ex. 2 at AP00104; Ex. 202; Tx. 82:25-84:4 (J. Hanson); Tx. 165:19-167:8, 170:8-20 (K. Gamble).

23. The spreadsheet included a page titled “AB Count from 9/20 – 10/17” which included the ballots accepted from September 20 through October 17. Ex. 202 at 4; Tx. 170:8-

171:12 (K. Gamble). This is the so-called “envelope voting” period where voters place their completed ballots into a secrecy envelope and signature envelope and deposit them into a secured box for subsequent review and counting. Tx. 23:1-25 (J. Hanson); Tx. 164:4-18 (K. Gamble).

24. Each day, the election judges at the Shakopee early voting location counted the envelopes which had been completed by the voters and confirmed that they matched the number of completed absentee ballot applications for that day. Tx. 170:8-24 (K. Gamble). The election judges completed this balancing by counting all applications and ballots accepted each day rather than performing the balancing on a precinct-by-precinct basis as provided in the County’s Absentee Handbook. Tx. 45:1-46:1, 84:24-85:16 (J. Hanson); Tx. 165:25-166:13, 170:8-171:7 (K. Gamble).

25. The spreadsheet shows that a total of 1,124 ballots were cast at the Shakopee early voting location during the envelope voting period from September 20 through October 17. Ex. 202 at 4; Tx. 85:17-86:11 (J. Hanson); Tx. 171:8-12 (K. Gamble).

26. A separate page in the spreadsheet titled “DB Applications and Machine Counts” shows the number of absentee ballots that were cast at the Shakopee early voting location from October 18 through November 4. Ex. 202 at 3; Tx. 165:19-167:8 (K. Gamble). This is the so-called “direct balloting” period where voters deposit their ballots directly into the tabulator machine. Tx. 24:9-25 (J. Hanson); Tx. 164:4-18 (K. Gamble).

27. The spreadsheet shows the number of completed applications for each day and a running total of the ballots counted through the City’s tabulator machine. Ex. 202 at 3; Tx. 165:19-167:8 (K. Gamble).

28. Although the election judges did not record the daily count on the tabulator machine until Monday, October 21, election judge Kay Gamble was able to determine the machine count

for the end of the day on October 18 by subtracting the number of ballots submitted through the direct voting method on October 21 (208 ballots) from the end-of-day machine count on October 21 (1,587 ballots). Ex. 202 at 3; Tx. 86:15-87:3; Tx. 168:4-169:6 (K. Gamble). The election judges recorded the end-of-day machine counts on each day from October 21 through November 4. Tx. 168:4-169:14 (K. Gamble).

29. The “AB Count from 9/20 – 10/17” page of the spreadsheet shows that 1,124 ballots had been cast through the end of the “envelope voting” period and the “DB Applications and Machine Counts” page shows that 276 ballots were cast on the first day of “direct balloting” on October 18. Ex. 4 at 3-4.

30. Accordingly, a total of 1,400 ballots should have been run through the City’s tabulator machine by the end-of-day on October 18. However, the spreadsheet reflects that only 1,379 ballots had been tabulated, a discrepancy of 21 ballots. Ex. 202 at 3; Tx. 85:17-86:11 (J. Hanson); Tx. 171:8-172:4 (K. Gamble); Tx. 193:20-194:25 (C. Petersen).

31. This means that the 21 uncounted ballots must have been cast on or before October 18, 2024. Tx. 85:17-86:11 (J. Hanson).

32. Scott County’s investigation determined that the City’s daily absentee ballot counts as reflected on the spreadsheet were accurate through October 17. Tx. 95:2-5 (J. Hanson). The County was able to reach this conclusion through a comparison of the absentee ballot applications, signature envelopes, and data contained in the SVRS as well as interviews of Scott County election judges including Kay Gamble and Rocky Swearengin. Ex. 9; Tx. 26:20-28:5, 29:7-30:20, 84:8-15, 95:2-16 (J. Hanson).

33. Mr. Swearengen described the process the City of Shakopee used on October 17 to “accept” absentee ballots and to prepare the ballots to be run through the tabulator machine. Tx. 92:20-95:16 (J. Hanson).

34. Mr. Swearengen explained to Election Administrator Julie Hanson—and testified at trial—that the Shakopee absentee ballot board, consisting of Mr. Swearengen and two other election judges, met on the morning of October 17 to review the absentee ballots received by the City which had not yet been accepted. Tx. 95:17-97:4 (J. Hanson); Tx. 239:1-240:14 (R. Swearengen).

35. Once this process was completed, the ballots, which remained sealed in their envelopes, were returned to the City’s absentee ballot room where they were later marked as “accepted” in the SVRS and securely stored. Tx. 95:17-97:4, 99:9-100:3 (J. Hanson); Tx. 239:1-240:14 (R. Swearengen).

36. The absentee ballot board then began the process of opening envelopes to prepare the ballots for counting. Tx. 96:17-97:4 (J. Hanson); Tx. 240:15-21 (R. Swearengen).

37. At the start of this process, election judge Kay Gamble provided the absentee ballot board with a yellow sheet of note paper that listed the number of ballots they should have for each precinct. Tx. 93:7-22 (J. Hanson); Tx. 241:4-246:6 (R. Swearengen); Tx. 172:23-173:14, 174:12-15 (K. Gamble).

38. The members of the absentee ballot board counted the envelopes for each precinct to confirm the numbers matched the list provided by Ms. Gamble. Tx. 93:7-22 (J. Hanson); Tx. 241:4-246:6 (R. Swearengen). The absentee ballot board began with Shakopee Precinct-1 and noticed that the numbers did not match due to the fact that Ms. Gamble had included spoiled ballots in the expected totals. Tx. 241:4-246:6 (R. Swearengen); Tx. 174:16-175:6 (K. Gamble).

39. Ms. Gamble provided a revised sheet that included only the number of absentee ballots for the Shakopee early voting location that had been designated as “accepted” in the SVRS as of the close of business on October 16. Tx. 241:4-246:6 (R. Swearingin); Tx. 174:18-175:24 (K. Gamble).

40. The counts for Shakopee Precinct-1, and all other precincts, matched the totals included in Ms. Gamble’s revised list. Tx. 94:15-95:5 (J. Hanson); Tx. 241:4-246:6 (R. Swearingin); Tx. 174:16-175:6 (K. Gamble).

41. Once the absentee ballot board counted the envelopes, they opened the outer signature envelopes and separated them from the inner secrecy envelopes. Tx. 243:7-244:4 (R. Swearingin). Every signature envelope contained a secrecy envelope. *Id.*

42. The absentee ballot board then opened the secrecy envelopes and removed the ballots that had been completed by the voters. *Id.* Every secrecy envelope contained a ballot. *Id.* The ballots were then securely stored until they were run through the City’s tabulating machine at the end of the day on October 18. Tx. 243:7-19; 246:10-24 (R. Swearingin).

43. The ballots which the absentee ballot board reviewed for acceptance on the morning of October 17 were not opened by the absentee ballot board that day. Tx. 54:16-55:4, 96:1-97:4 (J. Hanson); Tx. 175:17-24 (K. Gamble) (noting that the absentee ballot board accepted ballots after the report was run on the morning of October 17). Instead, these ballots, together with the ballots that were received throughout the day on October 17, were opened through a separate process on the morning of October 18. Tx. 100:4-103:20 (J. Hanson).

44. A total of 99 ballots for the Shakopee early voting location—including 20 ballots from Precinct-10—were accepted on either October 17 or 18 and would have been opened and prepared for counting on October 18. Ex. 9; Tx. 100:4-102:6 (J. Hanson). These ballots were

opened by former Shakopee City Clerk Lori Hensen acting by herself. Tx. 101:19-103:2 (J. Hanson); Tx. 176:17-177:23 (K. Gamble) (testifying that she observed Ms. Hensen opening ballots on the morning of October 18).

45. The County requested that the City provide the empty secrecy envelopes for all ballots received at the Shakopee early voting location but was informed that they had been discarded. Ex. 2 at AP00104; Tx. 37:19-24 (J. Hanson).

46. It appears that Ms. Hensen never removed the 20 ballots for Precinct-10 which were accepted by the City of Shakopee on October 17 and 18 from their secrecy envelopes and that the ballots were discarded with the envelopes. Ex. 2 at AP00104-05; Tx. 52:14-21 (J. Hanson).

E. Conclusions regarding the 20 Ballot Discrepancy in Shakopee Precinct-10.

47. Based on the evidence and testimony presented at trial, the Court concludes that the 20 uncounted absentee ballots for Shakopee Precinct-10 were cast by voters at the Shakopee early voting location between October 14 and 17, were accepted on October 17 and 18, and were included in the set of 99 ballots which Shakopee City Clerk Lori Hensen processed on her own on the morning of October 18.

48. This conclusion is based, in part, upon the following:

- a. Twenty-one more absentee ballots were accepted in the 2024 General Election for House District 54A than were counted in the election. This precisely matches the discrepancy noted in the spreadsheet maintained by election judge Kay Gamble. This evidence leads the Court to the conclusion that the uncounted ballots were cast and discarded on or before October 18, 2024.
- b. On October 17, the City of Shakopee Absentee Ballot Board opened the envelopes for all of the absentee ballots which had been accepted as of the end of the day on October 16. As part of this process, the Absentee Ballot Board counted the ballot envelopes and confirmed they matched the number of ballots which had been accepted on a precinct-by-precinct basis. The Court credits the testimony from election judges

Kay Gamble and Rocky Swearengin regarding this balancing process.

- c. Twenty ballots were uncounted for Shakopee Precinct-10. This precisely matches the number of ballots that were accepted on October 17 or 18 and were included in the set of ballots which Shakopee City Clerk Lori Hensen processed on her own on the morning of October 18.
- d. No other plausible explanation for the source of the uncounted ballots has been proffered consistent with the evidence in this election contest.

49. The Court acknowledges that the County's investigation is not yet complete but also observes that the only remaining step is to determine whether video footage from prior to October 23 may be recovered and reviewed. Tx. 53:18-54:8 (J. Hanson). The Court also notes Julie Hanson's testimony that the continuing investigation following the release of the County's preliminary findings on November 27, 2024 has served to increase her confidence in the conclusions. Tx. 76:14-77:7 (J. Hanson).

50. The Court also observes that the potential uncounted ballot from Shakopee Precinct-12A would not affect the outcome of the election and, therefore, any questions or uncertainty regarding how the ballot was cast are immaterial for this election contest.

F. Identification of the Voters Who Cast the Uncounted Ballots.

51. The County was able to identify the voters who cast the 20 uncounted ballots using data in the SVRS database. Tx. 105:19-106:13 (J. Hanson).

52. Specifically, the County was able to run a report identifying 87 voters who cast their ballots for Shakopee Precinct-10 at the Shakopee early voting location using the envelope voting process. Ex. 9; Tx. 88:21-90:3, 105:19-106:13 (J. Hanson).

53. Forty of these ballots were cast through the health care facility voting process and the ballots were not accepted until October 30 as reflected on the report. Ex. 9; Tx. 90:4-91:11 (J. Hanson).

54. This leaves 47 voters who cast ballots for Shakopee Precinct-10 at the Shakopee early voting location during the "envelope voting" period which ended on October 17. Ex. 9; Tx. 91:12-92:5 (J. Hanson).

55. Of these, only twenty voters had their absentee ballots accepted on October 17 or October 18. Ex. 9; Tx. 105:19-106:13 (J. Hanson).

56. These individuals are identified as "Voter 1" through "Voter 20" in the copy of the SVRS report which was introduced at trial. Ex. 9; Tx 105:19-106:13 (J. Hanson).

57. Scott County Elections Administrator Julie Hanson testified that she had not doubts that are based on reason or common sense or that are not fanciful or capricious that the twenty individuals identified as "Voter 1" through "Voter 20" are the individuals who cast the 20 uncounted ballots for Shakopee Precinct-10. Tx. 106:17-107:9

58. The following table indicates the date each individual voted at the Shakopee early voting location, as reflected in the date of the ballot applications (Ex. 10), and the date the ballots were accepted, as reflected in the SVRS report (Ex. 9).

Voter	Voting Date	Accepted Date
Voter 1	Oct. 16, 2024	Oct. 17, 2024
Voter 2	Oct. 17, 2024	Oct. 18, 2024
Voter 3	Oct. 16, 2024	Oct. 17, 2024
Voter 4	Oct. 16, 2024	Oct. 17, 2024
Voter 5	Oct. 17, 2024	Oct. 18, 2024
Voter 6	Oct. 15, 2024	Oct. 17, 2024
Voter 7	Oct. 16, 2024	Oct. 17, 2024
Voter 8	Oct. 16, 2024	Oct. 17, 2024
Voter 9	Oct. 16, 2024	Oct. 17, 2024
Voter 10	Oct. 16, 2024	Oct. 17, 2024
Voter 11	Oct. 17, 2024	Oct. 18, 2024
Voter 12	Oct. 16, 2024	Oct. 17, 2024
Voter 13	Oct. 16, 2024	Oct. 17, 2024
Voter 14	Oct. 15, 2024	Oct. 17, 2024
Voter 15	Oct. 15, 2024	Oct. 17, 2024
Voter 16	Oct. 15, 2024	Oct. 17, 2024
Voter 17	Oct. 15, 2024	Oct. 17, 2024
Voter 18	Oct. 15, 2024	Oct. 17, 2024
Voter 19	Oct. 15, 2024	Oct. 17, 2024
Voter 20	Oct. 15, 2024	Oct. 17, 2024

59. There is no evidence to suggest that any of the 20 uncounted ballots were not legally cast. Tx. 50:24-51:5 (J. Hanson).

G. The Uncounted Ballots did not Affect the Outcome of the Election for House District 54A.

60. It is unlikely that 20 uncounted ballots from Precinct-10, which Representative Tabke won by a margin of 14%, would have changed the outcome of the election. Indeed, the expert testimony of Dr. Aaron Rendahl indicates that there is only a 0.0051% chance that 20 randomly selected ballots from Shakopee Precinct-10 would net at least 14 additional votes for Aaron Paul. Ex. 207 at 3-4; Tx. 264:25-266:3 (A. Rendahl).

61. The Court does not rely upon probabilities, however, in reaching the conclusion that the 20 uncounted ballots from Precinct-10 did not affect the outcome of the election.

62. Six of the affected voters, called by Representative Tabke, testified at trial that they cast ballots for Brad Tabke. Tx. 214:22-217:2 (Voter 5); Tx. 210:6-213:9 (Voter 9); Tx. 218:23-

221:13 (Voter 11); Tx. 231:15-233:24 (Voter 12); Tx. 224:20-226:11 (Voter 18); Tx. 227:19-230:10 (Voter 20).

63. And six of the affected voters, called by Contestant, testified at trial that they cast ballots for Aaron Paul. Tx. 201:9-203:2 (Voter 4); Tx. 156:6-157:19 (Voter 10); Tx. 132:8-133:12 (Voter 14); Tx. 138:13-140:14 (Voter 15); Tx. 153:11-154:21 (Voter 16); Tx. 143:20-145:4 (Voter 17).

64. This leaves only eight uncounted ballots from Shakopee Precinct-10 and it is impossible for those votes to overcome the 14-vote margin between Representative Tabke and Aaron Paul. *See* Tx. 269:18-270:12 (A. Rendahl) (noting that there is no scenario where the outcome could change if at least four of the 20 (or 21) uncounted ballots were cast of Representative Tabke); Tx. 290:16-291:5 (T. Brunnell) (same).

III. CONCLUSIONS OF LAW

A. Contestant's Burden of Proof.

1. An election contest may be brought “over an irregularity in the conduct of an election or canvass of votes; over the question of who received the largest number of votes legally cast; ... or on the grounds of deliberate, serious, and material violations of the Minnesota Election Law.” Minn. Stat. § 209.02.

2. To prevail in a contest “over an irregularity in the conduct of an election or canvass of votes” or “on the grounds of deliberate, serious, and material violations of the Minnesota Election law,” the contestant must prove that the irregularity or violation changed the outcome of the election. *See, e.g., Bergstrom v. McEwen*, 960 N.W.2d 556, 563 (Minn. 2021); *Hahn v. Graham*, 225 N.W.2d 385, 286 (Minn. 1975) (“It has been the rule in this state for well over 100 years that violation of a statute regulating the conduct of an election is not fatal to the election in

the absence of proof that the irregularity affected the outcome or was the product of fraud or bad faith.”).

-3. Contestant bears the burden of proof in this matter and, therefore, must demonstrate by a preponderance of the evidence that the grounds of his contest have been satisfied. *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).

4. Accordingly, to prevail in this contest, Contestant must prove by a preponderance of the evidence:

- a. That Representative Tabke did not receive the most votes legally cast;
- b. That an irregularity in the conduct of the election affected the outcome; or
- c. That a deliberate, serious, and material violation of Minnesota election affected the outcome.

B. Contestant has not Proven the he Received More Votes than Representative Tabke or that the Result of the Election was a Tie.

5. The evidence in this election contest demonstrates the individuals identified as “Voter 1” through “Voter 20” cast ballots at the Shakopee early voting location on October 15 through 17 and there is no evidence to suggest that any of the ballots were not legally cast. The evidence further demonstrates that these 20 ballots were accepted on either October 17 and 18 and that the ballots were inadvertently discarded without being counted. Six of the individuals who cast the uncounted ballots testified under oath that they voted for Representative Brad Tabke and six others testified that they voted for Aaron Paul. The ballots cast by these 12 individuals offset each other, and the margin between the candidates remains 14 votes.

6. Even if all eight of the remaining uncounted ballots were cast for Aaron Paul, Representative Tabke would win the election by six votes.

7. The result would remain the same if the single uncounted ballot from Shakopee Precinct 12A were cast for Aaron Paul with Representative Tabke winning the election by five votes.

8. Contestant Aaron Paul failed to prove that Representative Tabke did not receive the most votes legally cast and his election contest fails on this ground.

C. Contestant has not Proven that an Irregularity in the Conduct of the Election Affected the Outcome.

9. The evidence in this contest demonstrates that the City of Shakopee failed to follow the procedures and best practices set forth in the Scott County Absentee Handbook. The evidence further demonstrated that the City of Shakopee failed to comply with the requirements of Minnesota Statutes, Section 203B.121, subd. 5, with respect to the storage and counting of absentee ballots which were processed by Ms. Hensen on the morning of October 18.

10. The failure to comply with the requirements of Minnesota Statutes, Section 203B.121 subd. 5 constitutes an irregularity in the conduct of the election within the meaning of Minn. Stat. 209.02.

11. To prevail in an election contest, however, a contestant must prove that the irregularities affected the outcome of the election. *See, Bergstrom*, 960 N.W.2d at 563; *Hahn*, 225 N.W.2d at 286.

12. The irregularity in the conduct of the 2024 general election for House District 54A resulted in 20 absentee ballots cast at the Shakopee early voting location by voters from Shakopee Precinct-10 being inadvertently discarded before they were counted.

13. As explained above, six of the voters who cast the uncoun-
ted ballots testified that they voted for Representative Tabke and six others testified that they voted for Aaron Paul. These
twelve votes offset each other, and it is impossible for the remaining eight uncoun-
ted ballots to
change the outcome of the election.

14. Contestant failed to introduce any evidence to support a finding that the single
uncoun-
ted ballot from Shakopee Precinct-12A was not counted due to an irregularity in the
conduct of the election. Accordingly, the fact that the ballot was not counted is not relevant to this
contest on the ground of an irregularity in the conduct of the election.

15. Contestant has failed to prove that the irregularities in the conduct of the election
affected the outcome and his contest fails as a result.

**D. Contestant has not Proven that a Deliberate, Serious, and Material Violation of the
Minnesota Election Law affected the Outcome.**

16. The evidence in this contest demonstrates that the City of Shakopee failed to
comply with the requirements of Minnesota Statutes, Section 203B.121, subd. 5, with respect to
the storage and counting of absentee ballots which were processed by Ms. Hensen on the morning
of October 18.

17. The Minnesota Supreme Court has held that the results of an election will not be
invalidated due to a violation of Minnesota election law by a third party who is neither the
candidate nor the candidate's agent. *See Derus v. Higgins*, 555 N.W.2d 515, 515-16 (Minn. 1996).
Accordingly, the election officials' failures to comply with Minnesota election laws are not the
proper subject of an election contest on the grounds of deliberate, serious, and material violations
of Minnesota election law.²

² The Court observes that contests relating to election official's violations of election laws proceed
on the ground of "an irregularity in the conduct of the election" rather than the ground of
"deliberate, serious, and material violations of the Minnesota Election Law." *Compare Clayton v.*

18. Assuming that the election officials' violations of election law could proceed on this ground, Contestant must prove that the violations were "deliberate, serious, and material" and that they affected the outcome of the election.

19. A violation is "deliberate" where it is "intended to affect the voting at the election." *Schmitt*, 275 N.W.2d at 591.

20. There is no evidence to support a finding that Ms. Hensen intended to affect voting at the election when she processed the absentee ballots on the morning of October 18 in a manner that violated Minnesota Statutes, Section 203B.121, subd. 5.³

21. This failure to comply with the statutory requirements for the processing and handling of absentee ballots resulted in 20 absentee ballots cast at the Shakopee early voting location by voters from Shakopee Precinct-10 being inadvertently discarded before they were counted.

22. As explained above, six of the voters who cast the uncounted ballots testified that they voted for Representative Tabke and six others testified that they voted for Aaron Paul. These twelve votes offset each other, and it is impossible for the remaining eight uncounted ballots to change the outcome of the election.

Prince, 151 N.W. 911 (Minn. 1915); *Berg v. Veit*, 162 N.W. 522 (Minn. 1917); *In re Special Election in School Dist. No. 68*, 237 N.W. 412 (Minn. 1931); *Green v. Ind. Consol. School Dist. No. 1*, 89 N.W.2d 12 (Minn. 1958); *In re Contest of Election of Vetsch*, 71 N.W.2d 652 (Minn. 1955) (involving election officials' violations of election laws); *with Effertz v. Schimelpfenig*, 291 N.W. 286 (Minn. 1940); *Moulton v. Newton*, 144 N.W.2d 706 (Minn. 1966); *Scheibel v. Pavlak*, 282 N.W.2d 843 (Minn. 1979); *Schmitt v. McLaughlin*, 275 N.W.2d 587 (Minn. 1979); *Matter of Ryan*, 303 N.W.2d 462, *In re Contest of Election in DFL Primary*, 344 N.W.2d 826 (Minn. 1984) (involving election law violations by candidates).

³ There likewise is no evidence to support a finding that Ms. Hensen intentionally destroyed the ballots in violation of Minnesota Statutes, Section 204C.06, subd. 4(b).

23. Contestant failed to introduce any evidence to support a finding that the single uncounted ballot from Shakopee Precinct-12A was not counted due to violation of Minnesota election law. Accordingly, the fact that the ballot was not counted is not relevant to this contest on the ground of deliberate, serious, and material violations of Minnesota election law.

24. Contestant failed to prove that the results of the 2024 general election for House District 54A was affected by a deliberate, serious, or material violation of Minnesota election law and his contest fails as a result.

IV. RECOMMENDATIONS

1. The Minnesota Constitution provides that “[e]ach house [of the legislature] shall be the judge of the election returns and eligibility of its own members.” Minn. Const. Art. IV, § 6. Accordingly, the courts lack the jurisdiction to issue a final binding decision and their orders in legislative election contests are purely advisory. *Scheibel*, 282 N.W.2d at 850.

2. In a legislative election contest, the district court “acts, in effect, as an agent of the legislative body involved” to hear and direct the recording of evidence, make findings and conclusions, and submit the record and recommendations to the legislature. *Id.* at 850.

3. In recognition of this limited authority, the Court makes the following recommendations to the Minnesota House of Representatives:

- a. The House of Representatives should affirm that Representative Tabke won the 2024 general election for the Office of Representative for House District 54A.
- b. The House of Representatives should take no further action relating to the contest except to pass a resolution confirming that Representative Tabke won the election and declining to consider the contest on the merits.

Dated: _____, 2025

Hon. Tracy Perzel

[Section divider]

STATE OF MINNESOTA
COUNTY OF SCOTT

DISTRICT COURT
FIRST JUDICIAL DISTRICT

Court File No. 70-CV-24-17210

Aaron Paul,)	
)	
)	
Contestant)	CONTESTANT'S PROPOSED
)	FINDINGS OF FACT,
v.)	CONCLUSIONS OF LAW, AND
)	ORDER
)	
Brad Tabke,)	
)	
Contestee.)	

This matter came on for an evidentiary hearing before the undersigned District Court Judge appointed by the Minnesota Supreme Court on December 16 & 17, 2024 at the Scott County Courthouse in Shakopee, Minnesota.

R. Reid LeBeau II appeared on behalf of the Contestant.

David Zoll and Rachel A. Kitze Collins appeared on behalf of the Contestee.

Based upon the testimony and evidence adduced at the evidentiary hearing, the Court makes the following Findings of Fact, Conclusions of Law and issues the following orders.

FINDINGS OF FACT

1. Aaron Paul is the Contestant in this case.
2. Brad Tabke is the Contestee in this case.
3. Both men were candidates in 2024 for the Minnesota House of Representatives seat District 54A.
4. House District 54A is contained entirely in Scott County, Minnesota.

5. The Scott County Auditor Treasurer is responsible for the overall administration of the election for House District 54A.
6. The Scott County Auditor Treasurer appointed Julie Hanson, County Registrar, as the Elections Director for Scott County for the 2024 General Election.
7. Pursuant to an agreement between Scott County and the City of Shakopee, the City of Shakopee administered early absentee voting for eligible voters in the 2024 General Election.
8. The City of Shakopee election was administered by City Clerk Lori Hensen.
9. Early absentee voting began on September 20, 2024 at which time eligible Shakopee voters cast ballots at Shakopee City Hall.
10. The City of Shakopee held early voting at its City Hall from September 20, 2024 through November 4, 2024.
11. Prior to October 18, 2024, early voting was by in person "envelope voting," in which an eligible voter after arriving at Shakopee City Hall would complete the absentee ballot, place that ballot in the security envelope, then place it inside a signature envelope, and leave the completed packet with the City as if it had been mailed.
12. Shakopee City Elections staff at no time administered mail in Absentee voting, absentee ballots mailed in are sent to Scott County for processing and counting.
13. On October 18, 2024, early direct voting began in Minnesota, including in the City of Shakopee, at which point in person "envelope voting" was no longer utilized and instead a voter after completing their ballot at Shakopee City Hall would place it directly into a vote tabulating machine.
14. On November 5, 2024, the General Election was held.

15. At the conclusion of the General Election, Brad Tabke was reported as the winner of House District 54A by a total of 14 votes.
16. On November 7, 2024, Scott County Elections Director Julie Hanson conducted a post-election audit.
17. While conducting the post-election audit, Director Hanson discovered a discrepancy in the vote totals reported by the City of Shakopee.
18. The discrepancy discovered by Director Hanson showed 20 fewer ballots than reported for Shakopee Precinct P-10 and one (1) fewer ballot from Shakopee Precinct P-12.
19. On November 7, 2024, Director Hanson began an investigation into the missing ballots.
20. On November 8, 2024, Director Hanson contacted Aaron Paul and Brad Tabke's campaigns and informed them of a possible discrepancy and indicated that the County would be recounting the absentee ballots (through their tabulator) the evening of Friday, November 8. At the end of this event, Brad Tabke gained one vote for a 15-vote margin over Aaron Paul.
21. From November 7, 2024, to the present day, Director Hanson has continued to investigate the exact cause of the missing ballots. At the time of the election contest hearing, Director Hanson testified that investigation is not complete as there are potentially terabytes of video data that had yet to be reviewed.
22. On November 12, 2024 the Scott County Canvassing Board met and adopted the Canvass report. This report did not include the 21 missing absentee ballots.

23. The adopted Scott County canvass report reflected vote totals for House District 54A, which was within the margin for a state funded recount.
24. Candidate Aaron Paul officially requested a recount of the House District 54A totals on November 12, 2024.
25. A recount of the vote total for House District 54A occurred on November 21, 2024. The result of the recount reduced Tabke's lead by one vote, reverting back to 14 as reported on election night.
26. On November 26, 2024, Director Hanson signed an affidavit¹ swearing to the following facts:
 - a. While carrying out my election duties, I identified a discrepancy in the count of ballots, in which there were 20 more absentee ballot records than ballots counted in the Shakopee P-10 precinct from the City of Shakopee.
 - b. From the initial receipt of Shakopee P-10 precinct's ballots through the time in which the absentee ballots in dispute were identified as missing, the County was in possession of the 20 ballot envelopes.
 - c. I organized and conducted multiple search attempts with County and City staff to locate the 20 absentee ballots.
 - d. After exhausting all attempts to locate the missing 20 absentee ballots, the County determined the 20 absentee ballots have been lost and cannot be found.
 - e. Upon investigating the ballot count discrepancy, the County determined the missing 20 absentee ballots were validly cast by Minnesota residents entitled to vote in the general election for House District 54A.

¹ Stipulated to by the parties as Exhibit 1 of the evidentiary hearing record.

- f. The missing 20 absentee ballots were not counted in the original count, nor in the recount, and were not included in any reported vote totals for House District 54A.
27. On November 27, 2024, Scott County Attorney Ron Hocevar issued a public letter² concerning the investigation into the missing ballots.
28. In the letter, the County Attorney made the following statements of fact:
- a. After reviewing the situation further, Scott County has come to the conclusion that the ballots were likely disposed of while they were in their secrecy envelopes, after being removed from their signature envelopes but before being tabulated.
 - b. While conducting normal auditing activities on Thursday, November 7, County staff found that there was a problem with the Shakopee returns in that there were 21-ballot discrepancy between two precincts (with more absentee voters recorded than ballots received). The issues were noted to be 20 ballot records for Precinct 10 ("P10") and one for Precinct 12A. Based on experience, staff noted that it is not uncommon for one voter to check in and not vote, so the discrepancy in Precinct 12A was not pursued; the focus was on P10.
 - c. For P10, Shakopee reported processing 329 voters but reported results for 309 ballots; in addition, their transfer case held 309 ballots. The ballots for Shakopee Precinct 10 were counted at least four times with the total number equaling 309- while 329 people were checked in.
 - d. County staff worked to eliminate various possibilities for the discrepancy.
 - e. County staff then checked a spreadsheet report that was provided by City staff tracking absentee ballots submitted by Shakopee.

² Stipulated to by the parties as Exhibit 2 of the evidentiary hearing record.

- f. The report was found to reflect a 21-ballot discrepancy between October 17 to October 18 when the sheets were reflecting ballots received and matching counts of ballots tabulated.
- g. It was found that 20 P10 ballots were accepted by the Ballot Board on October 17 covering the period of October 15-17 (the last three days of envelope voting).
- h. A request was made to the City for their secrecy envelopes, and the County was advised they had been thrown in the garbage.
- i. Although [an] investigation is continuing, the County has been unable to verify that the missing ballots were ever removed from their secrecy envelopes.
- j. Although the investigation is not complete and remains ongoing, County staff has made the following preliminary conclusions based upon the facts that there were 20 accepted ballots for P10 on October 17 (exactly matching the discrepancy for that precinct), and the tabulator numbers showed a discrepancy as of October 18 (the first day ballots would have been scanned and that the secrecy envelopes were disposed of):
 - i. That 20 absentee ballots in P10 were properly accepted for counting on October 17 and should have been counted;
 - ii. That those ballots are the ballots that were not counted;
 - iii. That the ballots were most likely never removed from their secrecy envelopes;
 - iv. That the ballots were likely in their secrecy envelopes when the secrecy envelopes were thrown away;
 - v. That the ballots most likely will not be recovered; and

- vi. That even if the 20 ballots were found, it is unlikely that their chain of custody can be proved to assure they have not been tampered with.
29. On November 25, 2024 the Scott County Canvassing Board met a second time and adopted the results of the recount. This report did not include the missing 21 ballots. Two canvassing Board members testified at trial that they raised the issue of the missing ballots at the meeting and were told that they were not to consider the missing ballots in approving the canvass report.
- a. Shakopee Mayor Matt Lehman testified that although the Board approved the second canvass reports, they were aware of the issue of the 20 missing ballots. Tx. 124: 4-20; 127: 4-6 (M. Lehman).
 - b. He also testified that they were tasked to approve the canvass reports as presented to them, reflecting only the “ballots in hand.” Tx. 127: 4-8 (M. Lehman).
 - c. Scott County Commissioner David Beer, who is also a member of the Canvassing Board, testified that he was aware of the missing ballots when he signed the abstract of the canvass report. Tx. 148: 2-17 (D. Beer).
 - d. He “voted to approve the canvass results on the abstract that had gone through the tabulation machine[.]” Tx 148: 25; 149: 1 (D. Beer).
 - e. He does not believe that the canvass report is an accurate report. Tx. 149: 16-19 (D. Beer).
30. On November 29, 2024 Aaron Paul, through counsel, initiated an election contest. He alleged:

- **Irregularities in the Conduct of the Election:** The Elections Division materially deviated from proper election procedures, which directly impacted the results of the election.
- **Question of Legally Cast Votes:** Uncertainty exists regarding which candidate received the largest number of votes legally cast.
- **Deliberate, Serious, and Material Violations:** Scott County Elections officials engaged in deliberate, serious, and material violations of Minnesota Election Law.

31. At trial, Scott County Elections Director Julie Hanson testified to the additional relevant facts:

- a. On direct examination Ms. Hanson stated that the one missing vote in P-12 and 20 missing votes in P-10 were all from the absentee voting period at the City of Shakopee. Tx. 22: 14-18.
- b. The discrepancy in the vote totals was first discovered by County staff and they informed the City of the error. The City never informed the County of the error. Tx. 62: 21-24.
- c. A discrepancy in vote totals was first discovered by the County on November 7, 2024. Tx. 43: 2-3.
- d. City staff indicated to County Officials as early as October 30 that they “thought they were a ballot off.” Tx. 43: 10-15.
- e. 20 days lapsed from when it is assumed the ballots went missing to when County staff discovered the discrepancy in vote totals. Tx. 43: 2-6.

- f. Ms. Hanson further stated, on direct examination, she had not before witnessed a scenario where early absentee ballots would have been kept by the voter. Tx. 24: 1-8; 58: 7-25; 59: 1-6.³
- g. In the City of Shakopee during the 2024 General Election 1124 absentee ballots were cast. Tx. 47: 19-20.
- h. From September 20-October 17 there were 87 absentee ballots cast in Shakopee Precinct P-10. Tx. 30: 2.
- i. During the County's investigation, County staff spoke with only 2 of the 3 election judges that would have been involved with accepting absentee ballots on October 17 and 18. Tx. 118: 10-25.
- j. The City of Shakopee was provided election training materials beginning in January of 2024. Tx. 34: 18-22.
- k. City of Shakopee election staff did not balance the ballots daily as they were directed. Tx. 45: 17-18.
- l. The spreadsheet created by the City (Exhibit 202) was not a document provided by the County and was not part of the election training procedures the County provided. Tx. 31: 4-9.
- m. The spreadsheet (Exhibit 202) was used by the City to track ballot totals, was "not broken down by precinct or ballot split level, as actually we had asked for it to be." Tx. 30: 6-9; 85: 13-14.
- n. When testifying as to her investigation into the lost ballots and record keeping by the City of Shakopee Ms. Hanson stated: "We later learned that the machine count

³ This along with the testimony of Mr. Swearengen (*infra*) strongly suggests that the missing ballot in P-12 was not a voter who chose not to vote, but is in fact an additional missing ballot.

was not actually written down; that the person who was doing the balancing just took the 276 from the total that they had an extrapolated from there that they should have 1379.” Tx. 31: 23-25; 32: 1; 86: 21-24.

- o. Ms. Hanson testified that ballot balancing totals are to be done daily and that requirement is part of the County’s training for proper election administration. The City did not comply with that requirement. Tx. 32: 13.
- p. Ms. Hanson stated: “[T]he number from the tabulator was never actually written down on October 18, so staff took the number of voters that they had that day and subtracted from the number that was totally run. They did do math. I can’t call it an estimation, but there wasn’t verification through the SVRS system of what those totals should be.” Tx. 60: 18-23.
- q. The recording of ballot totals consisted of “[t]hat each night at the end of the day, they would – the staff in the room would hand-record a number on a piece of paper.” Tx. 87: 6-8.
- r. The recording was not done by the same person. “Most days she worked early morning, not closing shifts, so someone else at the end of the day wrote down or had written those numbers down, and she would move them into the spreadsheet.” Tx. 87: 9-12.⁴
- s. Based upon the County’s investigation they concluded that absentee ballots were not balanced until election day. “That was when we determined that [City Clerk] Lori [Hensen] was actually balancing the absentee, was on election day.” Tx. 104: 5-6.

⁴ It was confirmed in the testimony of Kay Gamble, *infra*, that Exhibit 202 didn’t come into existence until October 26.

- t. The City did not follow the proper procedure for handling the ballots. Tx. 61: 2-7.
- u. As part of the County Election training, as reflected in the Absentee Handbook (Exhibit 3), Shakopee elections officials were instructed to keep and maintain ballot secrecy envelopes. Tx. 35: 23-25.
- v. Specifically, with regard to retaining secrecy envelopes “[w]e have always tried to err on the side of caution, and everything that is involved in the process we would prefer to keep for the 22-month retention period.” Tx. 75: 9-12.
- w. Secrecy envelopes are materials provided to the County by a vendor as part of the elections process. Tx. 37: 6-15.
- x. Shakopee City Clerk Lori Hensen told Ms. Hanson that they threw away all secrecy envelopes. Tx. 37: 22-24.
- y. City of Shakopee elections officials failed to follow County procedures for handling secrecy envelopes. Tx. 40: 10-13.
- z. Ms. Hanson further stated “[w]e have not been able to determine that any of the Absentee Ballot Board was actually involved in that process (on October 18). It looks like the final accepting and opening was done by the city clerk.” Tx. 101: 5-8.
- aa. Based on the County investigation it appears the 20 missing ballots in P-10 were handled solely by City Clerk Lori Hensen. Tx. 101: 19-25; 102: 1-6; 110: 20-25.
- bb. Ms. Hensen denied involvement in handling the 20 missing ballots to Ms. Hanson. Tx. 101: 7-12.
- cc. Ms. Julie Hanson, the Scott County Election Director tasked with leading the investigation into the missing ballots, did not find Shakopee City Clerk Lori

Hensen to be credible in the information she provided during the investigation.

Tx. 101: 11-23.

dd. Ms. Hensen was the sole source of information concerning the activities that took place when she was alone. And it was during this time period that the missing ballots were processed. Tx. 108: 3-23.

ee. City of Shakopee elections officials were trained as to reporting incidents in the incident log, no incident log notations were made for the lost ballots. Tx. 41: 10-24;; 42: 1-10.

ff. The failure of the City to report the vote discrepancy was not in accordance with proper election administration procedure. Tx. 43: 19-24.

gg. The County's conclusion that the ballots were thrown away is their "best guess" as to the fate of the missing ballots. Tx. 52: 22-25.

hh. "There is not" a way for the County to be certain as to what happened to the missing ballots. Tx. 53: 1-3.

ii. County staff cannot be certain whether or not ballots were removed from the secrecy envelopes. Tx. 56: 10-15.

jj. Lori Hensen, Shakopee City Clerk was responsible for ballot security between the dates of October 15-18. Tx. 56: 16-18.

kk. On cross examination, when asked about date information contained on the absentee ballot envelope, Ms. Hanson described another administration error by City officials: "We do train the staff and our Absentee Ballot Board to date these envelopes. We did find through this process that that [the dating of the envelope] was not done." Tx. 72: 1-6.

ll. In her opinion the actions of the City of Shakopee elections officials losing 20, or 21, ballots is “inappropriate, something that should not have happened.” Tx. 59: 7-12.

mm. Ms. Hanson cannot say with “absolute certainty” that the 20 voters who have been identified as having missing ballots are the actual voters corresponding to the lost ballots. Tx. 61: 10-13, 18-22.

nn. Ms. Hanson does not have certainty that the City of Shakopee election officials followed all procedures for tabulating and counting ballots. Tx. 62: 2-6.

oo. Ms. Hanson indicated that she has never encountered an error like this before. She characterized this error as “Very large. This is a – it’s a big deal.” Tx. 112: 16-22.

32. At trial Kay Gamble testified to the following relevant facts:

- a. She was an election judge for the City of Shakopee during the 2024 General Election. Tx. 159: 14-15.
- b. She created the spreadsheet, Exhibit 202. Tx. 161: 6-14.
- c. The document was first created on October 26, 2024. Tx. 169: 17-19.
- d. Prior to that totals were kept “[o]n a bright yellow sheet of paper” which she later identified as “Post-it notes” that were subsequently thrown away. Tx. 174: 15; 181: 22-24; 182: 1-12.
- e. She admitted she did not follow the handbook procedures for balancing ballots on a daily basis. Tx. 179: 8-14.
- f. The spreadsheet was an overall reflection of totals and not precinct by precinct. Tx. 170: 24-25; 171: 1-2.

- g. The total number for October 18, 2024 was not written down “so on Monday, I kind of did back-math to get that.” Tx. 168: 7-9.
- h. She ran an SVRS report on October 17, 2024. Tx. 175: 17-24.
- i. On October 17, the Ballot Board met to accept ballots from the 14, 15, 16. Tx. 175: 21-22; 184: 7; 187: 10-11.⁵
- j. On October 18, she witnessed Lori Hensen processing absentee ballots alone. She witnessed Lori Hensen opening absentee ballots. Tx. 176: 17-25; 177: 1-4.
- k. She asked Ms. Hensen “if she needs somebody else to be watching because that’s – a ballot board, you need two people to do that, usually one from each party.” Tx. 177: 10-14.
- l. Neither she nor the other election judge assisted Ms. Hensen in processing the ballots. Tx. 177: 12-23.
- m. She first noticed the error in the ballot totals on October 21, 2024. Tx. 180: 10-13.
33. At trial Chelsea Petersen testified to the following relevant facts:
- a. She is the Assistant City Administrator. Tx. 190: 9.
- b. She first became aware of the missing 20 ballots in P-10 when contacted by Lori Hensen on November 8, 2024. Tx. 190: 10-17.
- c. She stated that “procedures were missed” by City staff in administering the election. Tx. 196: 17-18.
- d. She did not personally witness the administration of the election, except for one brief instance. Tx. 197: 9-11.

⁵ Ms. Gamble’s testimony directly contradicts the County Attorney’s report of the timeline of impacted votes. The County Attorney claims the Ballot Board on October 17 covered the voting period of October 15-17. Exhibit 2. This calls into question the scope of potential voters impacted by the City’s error and in particular whether the 20 voters who cast ballots that were not counted were accurately identified.

34. At trial Rocky Swearengen testified to the following relevant facts:

- a. He was an election judge for the 2024 General Election in Scott County in the City of Shakopee. Tx. 236: 16-19.
- b. He was also a member of the Absentee Ballot Board. Tx. 238: 20-22.
- c. The acceptance of absentee ballots was done by City staff. Tx. 239: 6-8.
- d. He did not recall opening any signature envelopes that didn't contain a secrecy envelope or opening any secrecy envelopes that didn't contain a ballot. Tx. 243: 20-25; 244: 1-4.
- e. He did not participate in review of absentee ballots on October 18, 2024. Tx. 247: 1-5.
- f. He corroborated that the ballots processed on October 17, 2024 corresponded to ballots submitted to the City on October 14, 15, 16. Tx. 247: 18-24.⁶
- g. Secrecy envelopes were discarded after ballots were removed. Tx. 251: 5-8.
- h. The handwritten ballot totals were not verified by the SVRS system. Tx. 253: 18-20.

35. In total 12 voters testified as to how they intended to cast their ballots. It is undisputed that these ballots are uncounted, lost, and irretrievable. It is uncertain whether these 12 voters were among the 20 voters whose ballots were not counted.

36. The record establishes that 7 of the 12 voters who testified are members of the same family and reside at the same address. *See*, Confidential Exhibits 305, 311, 307, 308, 314, 315, 310, 316, 317.

37. At trial Doctor Aaron Rendahl testified to the following relevant facts:

⁶ This testimony corroborates the testimony of Ms. Gamble. Again, it is in contradiction to the County Attorney's report that the date in which ballots were impacted were the 15, 16, and 17th.

- a. He is an Associate Professor of Statistics and Information at the University of Minnesota. Tx. 257: 19-25.
 - b. He prepared an expert report on the probability of Aaron Paul winning the election. Tx. 260: 18-24.
 - c. His report was based on the assumption that 20 missing votes cast were random. Tx. 261: 16-23; 271: 23-25.
 - d. He has not studied voter characteristics of early voting versus election day voters. Tx. 271: 5-7.
 - e. He has no basis for knowing whether early versus election day voters are similar. Tx. 273: 9-11.
 - f. His methodology did not account for different demographics of voters, such as early versus election day. Tx. 272: 23-25; 273: 1.
 - g. The results of his report didn't account for early voters selecting candidates at a different proportion than election day voters. Tx. 273: 15-17.
 - h. He had no knowledge of whether the 20 missing ballots were cast at random. Tx. 272: 3-5.
 - i. He admitted that if the votes were not random, the probability he calculated would be meaningless for this inquiry. Tx. 272: 13-16.
 - j. He admitted that if early voters and same day voters cast ballots for candidates at different proportions, he cannot determine the probability of how particular voters acted. Tx. 273: 22-25; 274: 1-4.
38. At trial Doctor Tom Brunnell provided the following relevant testimony:

CONCLUSIONS OF LAW

1. A contestant to an election must establish that at least one of the following occurred:
 - a. Material irregularity in the conduct of the election;
 - b. Question as to who received the largest number of votes legally cast;
 - c. Deliberate, Serious, and Material Violations of Minnesota Election Law.
2. The contestant has established through clear and convincing evidence that a material irregularity occurred in the administration of the election for House District 54A.
3. It is undisputed that the County received and lost validly cast ballots.
4. It is undisputed that the total ballots lost exceed the difference in the reported vote totals between candidate Aaron Paul and candidate Brad Tabke.
5. It is undisputed that the County lost at least 20, possibly 21, validly cast ballots.
6. The loss of ballots was likely the direct result of ballot secrecy envelopes being thrown away by City of Shakopee Election officials.
7. The identity of the voters who cast the lost ballots is uncertain and unable to be absolutely confirmed.
8. The testimony establishes that it is unclear exactly which ballots were lost. Ms. Hanson and County Attorney Hocesvar state the ballots lost were received between October 15-17. Ms. Gamble and Mr. Swearingin testified that the lost ballots, which were accepted and processed on October 17, were received between October 14-16.
9. Given the discrepancy in timeline, it is impossible to know exactly which ballots were lost, and which voters were specifically impacted. This court will not assume voter identity that cannot be absolutely confirmed.

10. Even if voter identity could be absolutely confirmed, there is no legal authority to permit the court to substitute trial testimony for a counted ballot. Both recent and longstanding caselaw from over a century ago strongly cautions against that very thing. *See, e.g. Pennington v. Hare*, 62 N.W. 116, 117 (1895)⁸; *Kearin v. Roach*, 381 N.W.2d 531, 533 (Minn. App. 1986)⁹. To the contrary, the only statutory guidance that exists for determining voter intent, Minn. Stat. § 204C.22, Subd. 2, limits the inquiry to “only” the “face of the ballot.”
11. The testimony of Ms. Hanson, Ms. Gamble, and Mr. Swearingen clearly establish that multiple material errors in the administration of the election occurred within the City of Shakopee.
12. The testimony of Ms. Hanson, Ms. Gamble, and Mr. Swearingen clearly establish that these errors were not trivial, but rather significant and serious, directly impacting the proper administration of the 2024 General Election.
13. As a matter of law, secrecy envelopes are “election materials” within the meaning of Minn. Stat. § 204B.29.
14. As a matter of law, it is a material irregularity, within the meaning of Minn. Stat. § 209.02, when election officials lose more ballots than the difference in vote totals between the top two candidates.

⁸ “Where a ballot has been marked by the elector, properly cast, and returned, we have something tangible and certain to deal with, and from it we unerringly read the intention and act of the elector. But where, as in this case, the supposed ballots were never in existence, and we must rely upon the subsequent declarations of the electors as to how they intended to and would have marked and cast their ballots, if they had voted, it would be an uncertain and dangerous experiment to attempt the task of ascertaining and giving effect to their intentions, as ballots actually cast and returned. Uncertain, because it would be simply a matter of speculation; dangerous, because it would give to such electors the power of determining the result of an election, in a close contest.” *Id.*

⁹ “[F]or obvious reasons arising from the inviolable secrecy of the ballot, direct evidence as to how contested votes were cast is not allowed. . .” *Id.*

15. In this case, the loss of ballots by City election staff, whether thrown in the trash or otherwise discarded, was a material irregularity within the meaning of Minn. Stat. § 209.02.
16. Additionally, the City of Shakopee election officials engaged in other procedural errors that resulted in materials irregularities in the conduct of the election. The failure of City of Shakopee election officials to keep daily ballot balances, maintain and secure secrecy envelopes, and timely report discrepancies to Scott County, constitute procedural errors that only compounded the issues involved herein.
17. Contestant has established through clear and convincing evidence that due to the loss of 20, possibly 21 ballots, there is an unresolvable question as to who received the most votes for the office of State Representative for House District 54A.
18. Furthermore, Contestant has established through clear and convincing evidence that the errors which occurred were Serious, Material, and Deliberate.
19. The testimony of Ms. Hanson, Ms. Gamble, and Mr. Swearingen establish that the errors that occurred at the City of Shakopee were not mistakes but were, in fact, deliberate decisions to not follow law and procedures for the proper administration of the election.
20. The facts of this case, supported by the testimony of Ms. Hanson, Ms. Gamble, and Mr. Swearingen, clearly establish that the City of Shakopee election officials threw away secrecy envelopes, as a matter of regular course, and in direct contravention of the training provided by Scott County.
21. The decision to discard secrecy envelopes, as a matter of regular course, was likely the direct cause of the loss of the 20 or 21 ballots in question.

22. The decision to regularly throw away secrecy envelopes, in contravention of training and County election procedures, was a deliberate decision. Whether or not the City election official intended to throw away ballots is immaterial. Minn. Stat. §209.02 does not require “intent”, simply a deliberate action. And the decision to discard secrecy envelopes was the likely direct cause of the ballots being irretrievably lost.
23. The decision to throw away secrecy envelopes was likely the direct cause of the missing ballots, but the problem presented in this case was compounded by other repeated, multiple, and deliberate failures to follow law and proper election administration which resulted in serious and material errors in the outcome of the 2024 General Election by the City of Shakopee.

ORDER

- 1) Contestant Aaron Paul's Election Contest is GRANTED.
- 2) City of Shakopee election officials engaged in a material irregularity in the administration of the 2024 General Election. The error puts the total legal votes cast for House District 54A into question. This error was serious, material, and deliberate.
- 3) The election for House District 54A is in doubt and the winner is unable to be determined. Brad Tabke is enjoined from taking the oath of office and from acting as a member of the Minnesota House of Representatives for House District 54A. As such, Brad Tabke is enjoined from taking the seat as a member of the Minnesota House of Representatives for District 54A.
- 4) Unless this matter is appealed to the supreme court, the court administrator shall transmit the findings, conclusions, orders, and a record of the proceeding to the Chief Clerk of the Minnesota House of Representatives no later than January 14, 2025 (the first day of the legislative session).
- 5) The seat for Minnesota House of Representatives District 54A shall be filled according to law.

**THERE BEING NO REASON FOR DELAY,
LET THE JUDGEMENT BE ENTERED IMMEDIATELY.**

Dated: _____

Tracy L. Perzel
Judge of the District Court

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF SCOTT

FIRST JUDICIAL CIRCUIT

Aaron Paul,

Contestant,

v.

Brad Tabke,

Contestee.

Case No.: 70-CV-24-17210

Hon. Tracy Perzel

**CERTIFICATE OF SERVICE FOR CONTESTANT'S FINDINGS OF FACT,
CONCLUSION OF LAW, AND [PROPOSED] ORDER**

I hereby certify that I have served Contestant's Findings of Fact, Conclusions of Law, and [Proposed] Order to all counsel of record via the court's electronic filing system this 30th day of December, 2024.

David J. Zoll, Esq.
Charles N. Nauen, Esq.
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Counsel for Contestee

Jeanne Andersen
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Counsel for Scott County

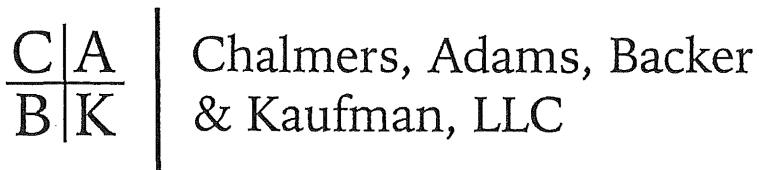
I declare under penalty of perjury that everything I have stated in this document is true and correct. Minn Stat. § 358.116

Dated: December 30, 2024



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January 13, 2025

Judge Tracy Perzel
First Judicial District
1560 Hwy 55
Hastings, MN, 55033

Your Honor,

Reported events of this past weekend compel me to inform this Court of actions allegedly taken by contestee, Brad Tabke, that, if true, would appear to be a direct attempt by Contestee to flout this Court's authority to decide an active election contest, as well as to flout black letter statutory requirements.

It was reported on Sunday January 12, 2025, that members of the House DFL engaged in a "swearing in" ceremony at the Minnesota Historical Society. Blois Olson, @blois olson Twitter (Jan. 14, 2025), <https://x.com/bloisolson/status/1878598806629232679?s=42>.¹ As you are aware, Contestant Aaron Paul requested that Mr. Tabke be enjoined from engaging in such activity. Contestant's Proposed Order, ¶ 3.

If these media reports are correct, Mr. Tabke's performative actions would represent a direct attack on this Court and its authority to decide the current action, which presumably, this Court intends to rule on imminently. Mr. Tabke's actions would thus represent a serious attack on separation of powers and this Court's power of judicial review. As such, this Court may wish to consider issuing a show cause order and to hold appropriate proceedings so as to determine whether Mr. Tabke should be subject to sanctions, or be held in contempt of court.²

Beyond raising Mr. Tabke's potentially sanctionable conduct, I write further to advise the Court that Mr. Tabke's actions, while grossly improper, have not affected this Court's ability to enjoin Mr. Tabke from: 1) taking the oath of office; 2) from acting as a member of the Minnesota House of Representatives for House District 54A; and 3) from taking the seat as a member of the Minnesota House of Representatives for District 54A.

¹ "Update: All DFL House members who had an election certificate were sworn in except Curtis Johnson. Rep. @BradTabke was sworn in tonight [...]"

² Contestant reserves the right to file a separate motion for sanctions/contempt of court based on this action or other actions taken by Mr. Tabke.

Given clear, black letter, Minnesota law, Mr. Tabke's "swearing in" was pure political theatre, as Minn. Stat. § 3.05 requires members to be sworn in the chamber on the day set for the beginning of session:

At noon of the day appointed for convening the legislature, the members shall meet in their respective chambers. The lieutenant governor shall call the senate to order and the secretary of state, the house of representatives. In the absence of either officer, the oldest member present shall act in the officer's place. The person so acting shall appoint, from the members present, a clerk pro tem, who shall call the legislative districts in the order of their numbers. As each is called, the persons claiming to be members from each shall present their certificates to be filed. *All whose certificates are so presented shall then stand and be sworn.*

Minn. Stat. § 3.05(emphasis added).


As such Mr. Tabke's actions are merely desperate acts of performance art which are full of sound and fury, but signify nothing as a matter of law and do not impair this Court's ability to decide this Election Contest and to grant such relief as it deems just and proper.

Finally, while Mr. Tabke's actions to be putatively "sworn in" have no legal significance, it is disturbing that Mr. Tabke may have *viewed* his "swearing in" as legitimate, in which case it was not just a direct attack on this Court, but also a direct attack to circumvent Minnesota law. *See* Minn. Stat. § 3.05.

One can only ponder which laws apply to these individuals and which to the rest of the citizenry of Minnesota. If this was an authentic attempt to swear in members of the House, Shakespeare may have said it best "upon what meat doth this our Caesar feed, That he is grown so great."³

In conclusion, regardless of motivation which led to Sunday's charade, Contestant Paul respectfully requests that you consider the totality of his requested relief and to order such further proceedings as may be required to address Contestee's actions.

Respectfully Submitted,



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³ Julius Caesar, Act I, Scene 2 (155-156).

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January 13, 2025

VIA ODYSSEY AND E-MAIL

Hon. Tracy Perzel
First Judicial District
Dakota County Courthouse
1560 Highway 55
Hastings, MN 55033

Re: *Paul v. Tabke*, Court File No. 70-cv-24-17210

Dear Judge Perzel:

We write in brief response to the letter submitted this morning by counsel for Contestant Aaron Paul. The letter misstates the Court's authority in this election contest.

As explained in Representative Tabke's December 27, 2024 response brief, this Court's decision is purely advisory. *Scheibel v. Pavlak*, 282 N.W.2d 843, 848 (Minn. 1979) ("In short, we have no jurisdiction to issue a final and binding decision in this matter, and our opinion by statute will be and by the Minnesota Constitution must only be advisory to the House of Representatives.") Accordingly, the Court does not have the authority to enjoin Representative Tabke from taking the oath of office and serving as a member of the Minnesota House.

Moreover, section 209.10 contemplates that the individual who is the subject of an election contest will be seated, and serving in the legislature, at the time the contest is ultimately decided. Minn. Stat. § 209.10, subd. 5(d) (noting that when the legislature decides a contest, "[n]o party to the contest may vote upon any question relating thereto.") Indeed, Robert Pavlak served in the Minnesota House for four months prior to his removal on a 67-66 vote by the remaining legislators following the Minnesota Supreme Court's ruling in the appeal of the election contest.¹

The administration of the oath of office to Representative Tabke in no way impinges upon the Court's ability to perform its role in this election contest.

Thank you.

Sincerely,

LOCKRIDGE GRINDAL NAUEN PLLP

s/David J. Zoll

David J. Zoll

c: Counsel of Record (via Odyssey)

¹ See *The year the House was tied, and how the two parties made peace ... until they didn't*, Public Information Services – Minnesota House of Representatives, (May 11, 2020), available at: <https://www.house.mn.gov/sessiondaily/Story/15307> (last visited Jan. 13, 2025).

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STATE OF MINNESOTA
COUNTY OF SCOTT

DISTRICT COURT
FIRST JUDICIAL DISTRICT

Aaron Paul,

Court File No. 70-CV-24-17210

Contestant,

v.

Brad Tabke,

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

Contestee.

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

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.

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.

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

- 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 Swearengen, 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:

Exhibit	Description
1	Affidavit of Julie Hanson
2	11/27/24 Letter of Ron Hoyer, 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.

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:
- this type of election contest is a matter of first impression;
 - preservation of secrecy envelopes is a best practice;
 - there are more voters in a regular election than in a special election; and
 - 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:
- Paul's Memorandum of Law in Support of Election Contest filed December 23, 2024 (Idx. 30);
 - Tabke's Responsive Brief filed December 27, 2024 (Idx. 31);
 - Paul's Reply in Support of Election Contest filed December 30, 2024 (Idx. 32);

- 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

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.

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.

- 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

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.

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.

- 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,

- 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 Hovevar 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”).

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:

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)
<i>Plus</i> 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	-----
<i>Minus</i> 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.

³According 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
<i>Minus</i> Direct Ballots Received on October 21 ("DB Apps")	- 208
<i>Equals</i> Counted Ballots as of October 18 ("Machine")	= 1397

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

(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 Swearengen (“Swearengen”) 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

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 then 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.

- 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

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 than 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:

- 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. Swarengin 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. Swarengin 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, Swarengin 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.

- 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. Swearingin 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.

- 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.

- q. October 17 was the only day he removed absentee ballots from the signature and secrecy envelopes.
51. As to October 18, 2024, Swearingin 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. Swearingin testified Shakopee kept track of the day-end tabulator number to verify against the number of absentee ballot applications.
53. Swearingin testified he did not know of the missing-ballot issue until sometime after the election when he heard about it on the news.
54. Swearingin 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:

- 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. Swearingin 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

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”).

- 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.

- 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.

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:
- 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;
 - the date the voter’s ballot was marked “accepted” by Shakopee City Clerk Hensen, per the SVRS report; and
 - 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)

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:
- the circumstances surrounding their absentee voting in the election at issue,
 - the election documents related to their voting in this election, and
 - for whom they voted in the House District 54A race.
 - 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

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.

- 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;

- 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

- 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:

- 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. 2d 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.

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.

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

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.

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.

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,

- 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.” (*Id.* 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).

- 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.

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.

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.

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.

Dated: January 14, 2025

BY THE COURT:



Perzel, Tracy
2025.01.14
05:29:50 -06'00'

Tracy L. Perzel
Judge of District Court

1 STATE OF MINNESOTA

DISTRICT COURT

2 COUNTY OF SCOTT

FIRST JUDICIAL DISTRICT

3
4 Aaron Paul,COURT TRIAL
VOLUME I

5 Contestant,

6 v.

Court File No. 70-CV-24-17210

7 Brad Tabke,

8 Contestee.

9
10 The above-entitled matter came duly on for Court Trial
11 before the Honorable TRACY L. PERZEL, one of the judges of the
12 above-named Court, on the 16th day of December, 2024, at the Scott
13 County Government Center, City of Shakopee, County of Scott, State
14 of Minnesota.

15
16 A P P E A R A N C E S

17
18 FOR CONTESTANT AARON PAUL:

19 R. REID LeBEAU II, Attorney at Law
20 CHALMERS, ADAMS, BACKER, and KAUFMAN
525 Park Street, Suite 255
St. Paul, MN 55103

21 FOR CONTESTEE BRAD TABKE:

22 DAVID J. ZOLL, Attorney at Law
23 RACHEL A. KITZE COLLINS, Attorney at Law
LOCKRIDGE GRINDAL NAUEN PLLP
24 100 Washington Avenue South, Suite 2200
Minneapolis, MN 55401

25 ALSO PRESENT: JEANNE ANDERSEN, Assistant Scott County Attorney

Idx. 38

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DR. THOMAS BRUNELL (via Zoom)

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EXHIBITS:

<u>NUMBER</u>	<u>OFFERED</u>	<u>RECEIVED</u>
1- Affidavit of Julie Hanson	Stip.	Stip.
2- 11/27/24 Statement by Ron Hocesvar, Scott County Attorney	Stip.	Stip.
3- Scott County Absentee Handbook	Stip.	Stip.
4- Tables, "Jackson and Louisville TWP," "DB Applications and Machine Counts," "AB Count from 9/20 - 10/17"	Stip.	Stip.
5- "Abstract of Votes Cast for Federal, State, and Judicial Offices In the County of Scott held 11/5/24	Stip.	Stip.
6- Compilation of emails regarding missing votes	Stip.	Stip.

M A S T E R I N D E X (Continued)

EXHIBITS:

<u>NUMBER</u>		<u>OFFERED</u>	<u>RECEIVED</u>
7-	Curriculum Vitae of Thomas L. Brunell	278	278
8-	Voter election tape with handwritten notes	Stip.	Stip.
9-	"Absentee Ballots By Current Status And Location" (Redacted)	Stip.	Stip.
10-	Precinct 10 Election Documents for Voters Number 1 - 20 (Redacted)	Stip.	Stip.
201-	Email thread between C. Petersen, B. Reynolds, and L. Hensen	Stip.	Stip.
202-	Compilation of emails regarding missing votes	Stip.	Stip.
203-	AB machine tape with handwritten notes	Stip.	Stip.
204-	Table, Scott County early vote results (Redacted)	---	---
205-	Table, Shakopee P-10 early votes through October 18 (Redacted)	---	---
206-	Recount Worksheet	Stip.	Stip.
207-	Expert Report of Dr. Aaron Rendahl	266	266
<u>Confidential/Sealed Exhibits</u>			
304-	Voter Number 4 Election Documents	202	202
305-	Voter Number 5 Election Documents	215	216
309-	Voter Number 9 Election Documents	211	211
310-	Voter Number 10 Election Documents	156	157

M A S T E R . I N D E X (Continued)EXHIBITS:

<u>NUMBER</u>	<u>OFFERED</u>	<u>RECEIVED</u>
311- Voter Number 11 Election Documents	220	220
312- Voter Number 12 Election Documents	232	232
314- Voter Number 14 Election Documents	135	136
315- Voter Number 15 Election Documents	139	139
316- Voter Number 16 Election Documents	153	154
317- Voter Number 17 Election Documents	144	144
318- Voter Number 18 Election Documents	224	224
320- Voter Number 20 Election Documents	228	228

(Whereupon, the following proceedings were duly had of record:)

THE COURT: Good morning. My name is Tracy Perzel. I'm the judge that's going to be presiding over these proceedings.

We're here today in the case of Aaron Paul, Contestant, and Brad Tabke, Contestee. It is Scott County District Court File No. 70-CV-24-17210.

Counsel, would you please note your appearances.

MR. LeBEAU: Thank you, Your Honor. Reid LeBeau for Contestant Aaron Paul.

THE COURT: Thank you. Good morning.

MR. ZOLL: David Zoll on behalf of Contestee Brad Tabke, who has joined us here today.

MS. KITZE COLLINS: And Rachel Kitze Collins on behalf of Contestee Brad Tabke.

THE COURT: All right. Thank you, and good morning.

We do also have Assistant Scott County Attorney Jeanne Andersen present this morning.

Good morning, Ms. Andersen.

MS. ANDERSEN: Good morning, Your Honor.

THE COURT: We are here today for court trial on the Notice of Election Contest for House District 54A filed on November 29th, 2024, and answered by filing of December 6,

1 2024.

2 Before we begin trial, the house -- the Court,
3 excuse me -- will address some housekeeping matters.

4 Everyone is expected to demonstrate appropriate courtroom
5 behavior and follow the rules of courtroom decorum. If you
6 need to have a conversation with someone, unless you are
7 conferring at one of the three counsel tables and you're an
8 attorney or client in this case, please leave the courtroom
9 to have that conversation.

10 And of course, your staff may have those
11 conversations as well, counsel.

12 Everyone must remain neutral in their body
13 language. You may agree or disagree with something that is
14 said in this courtroom, but please do not show that by your
15 facial expressions, gestures, voice, or other audible action.

16 You must turn off your cell phone completely --
17 this means more than simply silencing it -- and put it in
18 your pocket or bag, where it will remain until you are
19 outside the courtroom. Aside from at counsel table, there
20 will be no use of cell phones in the courtroom.

21 If you cannot follow these rules, please leave the
22 courtroom at this time. As with any other court proceeding,
23 there is a deputy in the courtroom to assist in matters of
24 courtroom decorum, and a violation of these instructions will
25 be considered direct contempt.

1 You should know that when the Court is on the
2 record, as now, the court reporter is taking down everything
3 that is being said in the courtroom. The Court also takes
4 notes, sometimes on paper, but most often by typing on the
5 computer.

6 From time to time, the attorneys for the parties
7 and the Court will need to speak at the bench. This is an
8 occasional occurrence in most trials to address logistical,
9 legal, or other issues. The Court will make a record of
10 those bench conferences as needed.

11 Given the accelerated timeline for trial and the
12 Court's schedule, the Court and the attorneys for the
13 parties -- including Mr. LeBeau, Mr. Zoll, and Ms. Andersen
14 at times -- have had informal discussions in three chambers
15 audio conferences. I should add that Ms. Andersen was only
16 there for two of those. These discussions have been
17 non-substantive and focused primarily on trial presentation,
18 including how to protect the identities of voter witnesses
19 who may be called to testify, how to handle exhibits,
20 requests for media coverage, and ways to streamline this
21 trial.

22 Yesterday the Court received a general roadmap of
23 what the parties anticipate as to the length and nature of
24 the various witnesses' testimony to assist it in preparing
25 for the conducting of this trial. The Court appreciates the

1 attorneys' efforts to make the trial operate more
2 efficiently.

3 Counsel, and starting with Mr. LeBeau, is there
4 anything you want to add about our chambers audio
5 conferences?

6 MR. LeBEAU: No, thank you, Your Honor.

7 THE COURT: All right. Ms. Andersen?

8 MS. ANDERSEN: No, thank you, Your Honor.

9 THE COURT: All right. Mr. Zoll?

10 MR. ZOLL: Nothing additional.

11 THE COURT: All right. You will observe today that
12 each voter whose ballot is alleged to be at issue will be
13 identified only by the word "voter" and a unique number keyed
14 to that particular voter. You will also see that exhibits
15 pertaining to these voters and presented by the parties here
16 in court have been redacted for public view.

17 The selections made by Minnesota voters on their
18 ballots are secret, and the parties and the Court are trying
19 to afford that same protection to the voters whose ballots
20 will be addressed in these proceedings. There is a voter
21 identification key, to which the parties have stipulated, and
22 that is filed under seal. That key correlates the voters'
23 names to the unique number that will be used here in court.
24 That voter number is the only manner by which each voter for
25 the ballots at issue will be publicly identified during the

1 trial.

2 Consistent with this, exhibits containing voter
3 identifying information have been redacted for public display
4 in the courtroom. Again, the Court, counsel, and the parties
5 have unredacted copies. Those unredacted copies of exhibits,
6 when admitted, will be filed under seal.

7 If anyone errs -- and of course, the Court sure
8 hopes that none of us do -- and states the voter name, media
9 and others in the courtroom shall not, and are expressly
10 prohibited from, reporting or disclosing that name, and the
11 Court will immediately seal that portion of the transcript.

12 The Court understands the parties have also reached
13 agreement as to admission of certain exhibits.

14 And I'm going to turn to Mr. LeBeau and Mr. Zoll
15 briefly to make sure that we have the correct exhibit
16 numbers.

17 Mr. LeBeau, would you like to identify those?

18 Or Mr. Zoll?

19 It's up to you.

20 MR. LeBEAU: Thank you, Your Honor. I believe we
21 have -- so far as Contestant's exhibits, we have agreed to
22 Exhibit 1, Exhibit 2 --

23 THE COURT: Let's pause for just a minute. It
24 might be easiest to identify the exhibits not stipulated to.

25 MR. LeBEAU: Oh, I'm sorry.

1 THE COURT: That's all right.

2 MR. LeBEAU: I believe just Contestant's Exhibit 7.

3 THE COURT: That's the only exhibit on your side of
4 the case that's not been stipulated to; is that correct?

5 MR. LeBEAU: I believe so.

6 THE COURT: Mr. Zoll?

7 MR. LeBEAU: Opposing counsel.

8 MR. ZOLL: That is correct.

9 THE COURT: All right. And all other exhibits that
10 have been submitted thus far by Contestant will be received
11 by the Court, and we'll make a record of exactly which those
12 are in a little bit.

13 Thank you, Mr. LeBeau.

14 Mr. Zoll, as far as your exhibits go?

15 MR. ZOLL: With respect to Contestee's exhibits,
16 the parties have stipulated to the admission of all but 204,
17 205, and 207. Though I do note, Your Honor, Confidential
18 Exhibits 301 through 320, the parties have also agreed not to
19 stipulate to the admission of those but rather admit them
20 into evidence only to the extent that they're relied upon in
21 trial.

22 THE COURT: And those are the exhibits that the
23 Court indicated would be filed under seal once received; is
24 that correct?

25 MR. ZOLL: Correct, Your Honor.

1 THE COURT: All right. Thank you.

2 So counsel, is there anything else we need to
3 address before opening statements?

4 Mr. LeBeau?

5 MR. LeBEAU: Nothing from me, Your Honor.

6 THE COURT: Mr. Zoll?

7 MR. ZOLL: Nothing further.

8 THE COURT: All right. The parties have indicated
9 that they have opening statements that are five minutes or
10 less. I'm going to hold them to that.

11 So Mr. LeBeau, why don't you go ahead.

12 MR. LeBEAU: Thank you.

13 Good morning, Your Honor. Certainty and
14 confidence. That is the minimum all American citizens
15 deserve in our elections. Certainty and confidence are not
16 based on percentages or assumptions. The facts will show
17 that all we are certain and have confidence in in this
18 election is that 20 validly cast ballots are missing. More
19 ballots are missing than the vote totals between the two
20 candidates for House District 54A.

21 The facts will show that there was a massive
22 material irregularity in the administration of the election
23 in the City of Shakopee. The facts will show that the
24 results of the election are in doubt. And the facts will
25 show that the error was deliberate, serious, and material.

1 Contestee will claim that the error isn't material based on
2 the theory of projections, statistics, and guesses, but how
3 we gather statistics does not equate to confidence or
4 certainty.

5 In the end, this Court will be left with a clear
6 choice: either we restore certainty and confidence in our
7 elections, in the system, or we don't. Contestee will argue
8 for a dangerous precedent of -- where statistical models
9 takes the place of ballots cast.

10 Simply, if this case is not a clear demonstration
11 of what the statute refers to as a material irregularity,
12 nothing is. Twenty -- possibly 21 -- voters entered the
13 polling location, cast their ballots, and left their ballots
14 in the custody of election officials. Those votes are gone
15 and were never counted. Any result which fails to address
16 this fatal defect is terminal to the certainty and confidence
17 and the basic expectations we all have in our electoral
18 system.

19 At the conclusion of this case, there will be one
20 inescapable fact: more votes were lost and not counted
21 than separates the two candidates for House District 54A.
22 The only way to ensure the will of the voters and to restore
23 certainty and confidence in our elections is to have a new
24 election for that city.

25 Thank you.

1 THE COURT: Thank you, Mr. LeBeau.

2 Mr. Zoll, are you ready to proceed?

3 MR. ZOLL: Yes, Your Honor.

4 THE COURT: All right. Go ahead.

5 MR. ZOLL: Thank you, Your Honor.

6 More than 20,000 individuals voted in the 2024
7 General Election for House District 54A, and Representative
8 Brad Tabke was reelected by a margin of 14 votes over
9 challenger, Aaron Paul. While canvassing the results, the
10 election officials discovered that 20 ballots from Shakopee
11 Precinct 10 were not counted, and a subsequent investigation
12 by Scott County led to the conclusion that those 20 ballots
13 have been irretrievably lost.

14 The parties agree on the basic facts of this case:
15 The election results certified by the Scott County Canvassing
16 Board show that Representative Tabke won the election by 14
17 votes, and 20 ballots from Shakopee Precinct 10 have been
18 irretrievably lost.

19 The parties disagree, however, on what should be
20 done in the face of these facts. Contestant Aaron Paul
21 suggests that we should simply throw up our hands and say,
22 "There is no way to know who won the election, and we should
23 just start over." He says we should disregard the votes cast
24 by more than 20,000 residents of House District 54A and put
25 this contest to a special election, where history shows only

1 a fraction of the voters will cast their ballots and have
2 their voices heard.

3 Representative Tabke, on the other hand, believes
4 that this Court and the parties should do the work to
5 determine whether the failure to count the 20 ballots from
6 Shakopee Precinct 10 actually affected the outcome of the
7 election and avoid the extreme step of putting this to a
8 special election and disenfranchising more than 20,000
9 residents who cast their ballots on November 5th, 2024, in
10 the General Election.

11 The evidence in this contest will show that it is
12 possible to identify the 20 voters whose ballots were not
13 counted, and this is consistent with the preliminary results
14 of Scott County's investigation in this matter. The Court
15 will hear testimony providing a step-by-step analysis that
16 leads to the conclusion that the parties and this Court can
17 determine, to the exclusion of any other possibility, the
18 identity of the voters who cast the uncounted ballots.

19 The Court will also hear from some of the voters
20 who cast those ballots, and those voters will confirm not
21 only the circumstances of their voting, but also for whom
22 they cast their ballots in the election for House District
23 54A.

24 In sum, the evidence will demonstrate that had
25 those ballots, those 20 ballots, been counted, the outcome of

1 the election would have been the same; that is to say,
2 Representative Brad Tabke would have been reelected to the
3 Office of State Representative for House District 54A.

4 Thank you.

5 THE COURT: Thank you, Mr. Zoll.

6 Before we get started, Ms. Andersen, I know you may
7 have other work to do today, so if you'd rather sit in the
8 back, that's fine. You're also welcome to remain at that
9 table as well. All right?

10 MS. ANDERSEN: Thank you, Your Honor.

11 THE COURT: Thank you.

12 Mr. LeBeau, are you ready for your first witness?

13 MR. LeBEAU: (Nodding.)

14 THE COURT: And is this a voter witness or is this
15 a witness who is not a voter witness?

16 MR. LeBEAU: Not a voter witness.

17 THE COURT: All right. Thank you. And are they
18 appearing in person or by Zoom?

19 MR. LeBEAU: In person.

20 THE COURT: All right. I'll try not to ask those
21 questions again, and maybe if you let me know when you bring
22 up your other witnesses. Go ahead and tell me who that is.

23 MR. LeBEAU: Thank you. I'd like to call Julie
24 Hanson to the stand.

25 THE COURT: All right. Ms. Hanson, would you

1 please step forward. The witness seat is over here, and if
2 you can maybe stop just in front of the Court in the well,
3 I'll go ahead and get you sworn in. All right?

4 Could you please raise your right hand?

5 (The oath was administered.)

6 THE WITNESS: I do, Your Honor.

7 THE COURT: Thank you. Go ahead and have a seat.

8 And once you get situated, if you could please
9 state and spell your full name.

10 THE WITNESS: Good morning. My name is Julie
11 Hanson. It's J-U-L-I-E, H-A-N-S-O-N. I am the Scott County
12 Property & Customer Service Manager and Elections
13 Administrator.

14 THE COURT: Thank you.

15 And Mr. LeBeau, if it assists you to tilt that
16 podium, that's just fine.

17 MR. LeBEAU: Thank you very much.

18 THE COURT: You're welcome. Go ahead.

19 MR. LeBEAU: And if it's all right, I have somebody
20 grabbing me water.

21 THE COURT: Of course.

22 MR. LeBEAU: Thank you.

23 JULIE HANSON,
24 having been first duly sworn, was examined and testified on her
25 oath as follows:

1 DIRECT EXAMINATION

2 BY MR. LeBEAU:

3 Q. Good morning.

4 A. Good morning.

5 Q. Could you please just restate your name for the record?

6 A. Absolutely. My name is Julie Hanson.

7 Q. And what -- what is your occupation?

8 A. I am the Property & Customer Service Manager for Scott

9 County, and under that umbrella, I am the Elections

10 Administrator.

11 Q. And how long have you been in this position?

12 A. I have been in this position for about six and a half years.

13 Q. And how many elections have you been involved in in that time
14 period?

15 A. I have been involved in approximately ten elections.

16 Q. And as elections director, what does that make you
17 responsible for?

18 A. Sure. I'm responsible for the goings-on, everything that is
19 affiliated with elections here in Scott County. We do have a
20 decentralized model in which Scott County handles both
21 in-person and mail-in absentee votes, and the cities have
22 agreed to do in-person absentee voting. So, we have things
23 spread out a little differently than maybe some other
24 counties do.

25 Q. And what is the nature of that relationship between Scott

1 County and the City of Shakopee?

2 A. The nature of the relationship is such that we provide the
3 guidance, the training, the framework for the City to be able
4 to administer the election. They provide election-day voting
5 as well across the City of Shakopee.

6 Q. And ultimately, are you still responsible for the overall
7 conduct of the election in Scott County?

8 A. I am.

9 Q. As elections director, are you in charge of investigating
10 errors and discrepancies in elections in Scott County?

11 A. Yes, I am.

12 Q. What does that entail?

13 A. That would entail using my elections team to run detailed
14 reports through the Statewide Voter Registration System; to
15 interview election judges, City staff, County staff, whoever
16 might be involved; and use all of our -- the tools within our
17 disposal to try and get to the bottom of the issue.

18 Q. What are some -- in your six years of experience, that's
19 roughly -- would that be twelve elections? What are some of
20 the typical errors that you would see in a typical election
21 season?

22 A. Sure. In a typical election season, especially when doing
23 our validation and audit post-election, the things that we
24 generally see is we may have a voter or two in a precinct who
25 may have checked in and then elected not to vote.

1 Other errors may include just general voter
2 situations, especially on election day. We are here to
3 provide that support. We get a lot of phone calls for just
4 different situations that may occur on election day or during
5 the absentee process. But generally -- and I don't even know
6 that I would call those errors. Those are sort of expected
7 differences.

8 We do have things like folks issue wrong ballots.
9 As perfect as we would all like to be, we have 79 ballot
10 styles in Scott County, so with our 100,000-plus voters,
11 things do happen. And that is normal throughout the course
12 of the election. We do have corrections, duplications,
13 processes for things like that.

14 Q. And did you encounter -- excuse me. Did you encounter any
15 errors or discrepancies in this election?

16 A. We didn't encounter any unexpected errors until after
17 election day when auditing our results. Yes, I did. I was
18 examining the Statewide Voter Registration absentee reports
19 against the expected absentee results. In Shakopee Precinct
20 12-A, we were off one, meaning that we received votes for one
21 ballot less than the system says was cast. That was not
22 alarming to us. But in Shakopee Precinct 10, there was a
23 difference of 20, and that is very unusual. So we began the
24 process of really digging into what that could have been.

25 Q. While we're talking about it, why would that one missing vote

1 in P-12 not be unusual?

2 A. It does happen. I know in fact on election day -- different
3 situation -- but it did happen that folks came in, they
4 checked in, and they elected not to vote. It's not super
5 common, but it does happen every election cycle. I know on
6 election day, for example, a voter received an emergency
7 phone call from her child and ended up needing to leave.

8 So it certainly wasn't surprising to me that that
9 could happen, that someone would have waited at the City of
10 Shakopee to vote and then maybe not cast their ballot.

11 Q. Is it fair to say that that's more typical on election day
12 than in absentee voting?

13 A. It is, yes.

14 Q. And the one missing vote in P-12 or the 20 missing votes in
15 P-10 were from the absentee voting time period; is that
16 correct?

17 A. That is correct, the absentee voting period at the City of
18 Shakopee.

19 Q. And can you remind me, when did you notice that the error
20 occurred?

21 A. We noticed that the error occurred during our audit process.
22 That would have been on Thursday, November 7th.

23 Q. And once you learned of it, that's when you began your
24 investigation.

25 A. Correct.

1 Q: I'd like to talk about the City of Shakopee just for a few
2 moments to understand how this works. What type of voting
3 was being conducted in the City of Shakopee prior to
4 October 18th?

5 A. We would call that our "envelope absentee voting process."
6 So a voter would fill out an absentee ballot application.
7 They would bring it to an election judge and check in. The
8 election judge would check them in through the Statewide
9 Voter Registration System and then would give them not only
10 their ballot but a secrecy envelope and a signature envelope
11 to go with it. Once it has voted, then the voter would seal
12 their ballot in the secrecy envelope, which would then go in
13 what we call the "signature envelope" and be placed into a
14 ballot box for later processing.

15 Q. So, just so I'm clear, a voter that's going in to do that
16 prior to October 18th, they're -- everything that you just
17 described, they're doing that in the actual polling location?

18 A. Yes, they are.

19 Q. So they're going in, they're getting the envelopes, filling
20 them out, and then at the end, they're turning both of those
21 back in to the election judge in that particular location; is
22 that right?

23 A. They would be putting them in a locked ballot box when they
24 were complete. But yes, it would go into a box in that same
25 room.

1 Q. So -- I just want to be clear on the process here. Were
2 there to be a missing ballot at that point in time, a
3 potential voter would have had to come in, get the envelopes,
4 turn it back in, but keep the secrecy envelope and the ballot
5 for themselves?

6 A. Correct. In this scenario, yes, that would be correct.

7 Q. And have you ever seen that before?

8 A. I have not.

9 Q. What -- you mentioned what you called "envelope voting" prior
10 to October 18th. What are the other types, just so we're
11 clear?

12 A. Sure, absolutely. After envelope voting concludes on
13 October 17th -- and just to be very specific, direct
14 balloting is not required through statute, but it is
15 something that we've elected to do here in Scott County. So
16 starting on, in this case, October 18th -- so it's 18 days
17 before election day -- rather than the voter receiving the
18 ballot and the envelopes to put it in, they receive the
19 ballot and a secrecy sleeve so that they can, when they're
20 done with their voting, just put their ballot right into the
21 tabulator. So starting the morning of October 18th, we would
22 call that "direct balloting."

23 Q. And that lasts until when?

24 A. Until the day before election day, so in this case,
25 November 4th.

1 Q. And then after that, just regular in-person voting.

2 A. Regular in-person election-day voting, and then we do accept
3 absentee ballots until 8:00 p.m. here at the County, per
4 statute, on election day.

5 Q. What -- what specific type of -- was the City of Shakopee
6 taking mail-in ballots prior to October 18th?

7 A. They were not. Scott County handles all of the mail-in
8 ballots. The cities just conduct the in-person voting.

9 Q. So a voter going in to the City of Shakopee prior to
10 October 18th had to physically be present.

11 A. Correct.

12 Q. So none of the ballots in question that we're talking
13 about -- we have the different universes of ballots -- none
14 of this involves a mail-in absentee ballot. Is that correct?

15 A. Correct; it does not.

16 Q. Let's go back to the investigation that we talked about a
17 moment ago. After you discovered the error on -- what day
18 was it again?

19 A. Thursday, November 7th.

20 Q. Who did you first contact after you noticed the error had
21 occurred?

22 A. I called Lori Hensen, the Shakopee City Clerk.

23 Q. And what was the nature of your conversation?

24 A. I called to ask if she could tell me why we would have
25 received results for 309 ballots, but according to the state

1 system, there were 329 issued.

2 Q. And what was the impression that you received based on the
3 conversation you had with her?

4 A. She seemed surprised; that she wasn't aware of any issues.
5 We did sit down the day before with the assistant city clerk
6 and one of their staff members and went through their
7 absentee results as well as all of their precinct results,
8 but Thursday is when we actually found the error. She told
9 me she was not aware of anything that had occurred.

10 Q. And who did you speak with on -- you said the day before, on
11 November 6th?

12 A. November 6th we had Heidi Emerson and Terri Valian here from
13 the City of Shakopee.

14 Q. And I don't think we put this on the record, but what was
15 Lori Hensen's role with the City of Shakopee?

16 A. She was the city clerk.

17 Q. And so was she in charge of the City of Shakopee portion of
18 the elections that were delegated then from --

19 A. Yes, she was.

20 Q. So once you -- after the conversation with her, what was your
21 next step?

22 A. We asked the City of Shakopee to tear everything that they
23 could think of apart. To look in all of their tabulators.
24 Our tabulators have a write-in bin in the bottom, so if you
25 cast a write-in vote, it does -- it does send it to a

1 separate slot. And that has happened, that someone has
2 forgotten to check the write-in bin and bring those in. We
3 asked them to look through every possible location. Look
4 in cars, if they didn't make their way here. Anything that
5 they could possibly think of.

6 We then, my team and I, went through every scenario
7 we could possibly think of. The first thing that came to
8 mind was Health Care Facility voting. The City of Shakopee
9 does go onsite to health care facilities to assist voters
10 that qualify for that. So we -- we dug through everything.
11 We ran all the reports we could think of. We discovered that
12 of the 329 voters, 87 of those would have voted through the
13 envelope process, which is common. It's usually more direct
14 balloting. Voters want to come in and fill out their ballot
15 and put it right in the tabulator. We really concentrated on
16 those, dug into that, discovered that all 87 envelopes were
17 present, all 87 applications that matched those envelopes
18 were present.

19 We also did receive an Excel spreadsheet log from
20 the City of Shakopee that showed that they were recording
21 their totals each day, both through envelope voting and
22 direct balloting. And in the process of our investigation
23 those first few days -- actually, it was the assistant city
24 clerk -- I'm sorry, the assistant city administrator, Chelsea
25 Petersen, that realized in that report that the City of

1 Shakopee actually did not balance from October 17th to
2 October 18th; that they were, in fact, off 21 ballots. That
3 enabled us to focus our investigation a little more on that.
4 The Health Care Facility voting didn't occur until the last
5 week of October, beginning of November.

6 MR. LeBEAU: Your Honor, if I may, Ms. Hanson's
7 referred to what we have as Contestant's Exhibit 4. We've
8 stipulated to that already.

9 THE COURT: Any exhibit that's been stipulated has
10 been received, so four is received. Go ahead.

11 MR. LeBEAU: Oh. Would you like me to try to
12 publish it for the first time?

13 THE COURT: You're welcome to try to do that.

14 MR. LeBEAU: I will. If I can have a moment, I'll
15 give it my best.

16 THE COURT: You may. Thank you.

17 MR. LeBEAU: I have it up on my computer.

18 THE CLERK: Ready?

19 MR. LeBEAU: Yep.

20 BY MR. LeBEAU:

21 Q. Can you see that?

22 A. Yes, I can.

23 Q. Okay, perfect.

24 A. I have one here, so thank you.

25 Q. And do I have that on the right page?

1 A. Actually, if you could go to the -- there's one more page --

2 Q. Further down?

3 A. Yes, I believe it would be further down. We could start on
4 that one.

5 Q. (Scrolling.)

6 A. Yes, this one. Thank you.

7 Q. Can you please explain what this is.

8 A. Sure. So this that's titled "AB Count from 9/20 - 10/17" was
9 the City of Shakopee's log of the amount of envelope voters
10 that they had through each day. September 20th was the first
11 day of absentee voting for this election, and October 17th
12 was the last day of envelope voting. So according to this,
13 this just shows each day, and then the total of 1124 through
14 the envelope voting process.

15 Could I ask you -- do you have a question?

16 Q. Just a few questions.

17 A. Yep.

18 Q. We're going to get sort of jumbled in numbers here.

19 A. Yes, we are.

20 Q. So I want to make sure our numbers are keeping straight.

21 Earlier you referred to 87 envelope votes. What does that 87
22 number specifically refer to?

23 A. The number of voters in Shakopee Precinct 10 only.

24 Q. For the entirety of the early absentee voting process.

25 A. For the entirety of the envelope voting process.

1 Q. Which would be what days?

2 A. September 20th through October 17th.

3 Q. Thank you. So 87 is September 20 through October 17. And
4 back to the -- the list, what is this number that we're
5 looking at?

6 A. This number is the total number of voters each day. This was
7 not broken down by precinct or ballot split level, as
8 actually we had asked for it to be. So the Statewide Voter
9 Registration System does produce reports -- not always
10 easy-to-read reports, but reports -- that show the ballot
11 split. So, for example, some of the precincts in Shakopee
12 have school district splits. As much as we would like our
13 school district lines to run around the legislative
14 boundaries, those kinds of things, they don't. So there are
15 some shared precincts in Shakopee that may have two different
16 school district numbers, that type of thing. But this report
17 shows the total number of voters from each day through that
18 initial approximately three-week time period.

19 Q. In aggregate for all precincts within the City of Shakopee.

20 A. Correct.

21 Q. And what day was this document provided to you?

22 A. This was provided on Thursday, November 7th. I will be
23 honest and say that I first looked at this and said, "I don't
24 know what this is." So I had it; I didn't really dig into it
25 until the following Tuesday.

1 Q. And is this -- you are the head of elections for Scott
2 County, as we've already established.

3 A. Yes.

4 Q. The City of Shakopee is essentially working under you. Is
5 this a document that you provided them to fill out?

6 A. No, it is not.

7 Q. Is this document part of the training that you provided them
8 on how to handle absentee ballots?

9 A. No, it is not.

10 Q. So let's go back to where the numbers start going up. There
11 was some -- there was a different document I think you wanted
12 me to show?

13 A. Yes, could you go back to the second page, the page above? I
14 would like to note that the total on this page says 1124.

15 Q. (Scrolling.) This one?

16 A. This one. Perfect. Thank you.

17 And then if we look at October 18th -- "DB" means
18 direct balloting -- the record shows that there were 276
19 direct balloting applications and that the machine showed
20 1379. If you take 1124 from the previous page and you add
21 276, you do not get 1379; you get 1400. So that is where we
22 focused our investigation on.

23 We later learned that the machine count was not
24 actually written down; that the person who was doing the
25 balancing actually just took the 276 from the total that they

1 had and extrapolated from there that they should have 1379.

2 Q. We're going to talk a little bit more about that in a minute,
3 but --

4 A. Sure.

5 Q. -- the balancing that is done, what frequency is that done
6 in?

7 A. Every day.

8 Q. That's part of the training.

9 A. Correct.

10 Q. It's part of the training that you give to the City.

11 A. It is.

12 Q. And did that occur here?

13 A. It did not.

14 Q. So Exhibit 4 represents the -- just so we're clear, this is
15 where you found the math to find the error that ballots were
16 missing.

17 A. Correct.

18 MR. LeBEAU: Your Honor, I don't have any more
19 questions about this exhibit. Would you like me to keep it
20 up or take it down?

21 THE COURT: Why don't you go ahead and take it
22 down. Thank you.

23 BY MR. LeBEAU:

24 Q. Let's talk about the training between Scott County and
25 Shakopee for just a minute. I'd like to show you what is

1 marked as Exhibit 3. It's a rather long document, so I'm
2 just going to show you the lead page, if that's all right.

3 A. Sure.

4 Q. And can you describe what Exhibit 3 is.

5 A. Sure. This is the absentee handbook that my team actually
6 put together to provide to all of the cities during our
7 training process.

8 Q. And what's the purpose of this document?

9 A. The purpose of this really is to help the cities better
10 understand what the absentee process should be, everything
11 from assisting the voter in person to running reports out of
12 the Statewide Voter Registration System, absentee ballot
13 board, ballot opening, all of the details. We also provide
14 the Secretary of State's absentee guide, so the two documents
15 together would provide really good foundational documents for
16 folks to be able to refer back to.

17 Q. So is it fair to say that this is sort of a -- both what is
18 legally required and what is the best practice?

19 A. Correct.

20 Q. And you use it for training purposes.

21 A. We do.

22 Q. So if I'm a brand-new election judge that's going to be
23 handling absentee ballots, I better know what's in this
24 document?

25 A. Yes.

1 Q. And you mentioned that your office created it; is that right?

2 A. That's correct.

3 Q. Who in your office created it?

4 A. Amanda Geis.

5 Q. And how did you determine what to put in it?

6 A. We did absentee -- starting in the year 2000 -- I'm sorry,
7 2020, not the year 2000 -- is when the cities began issuing
8 in-person absentee ballots. I came into this role in the
9 spring of 2018. At that time, the County did all of the
10 in-person voting. We started to have conversations with the
11 cities about providing more convenient locations for our
12 voters. Absentee voting, of course, was expanded and it was
13 growing, and -- but we did not have this document in 2020 or
14 in 2022, and in our conversations, the feedback that we
15 received from our cities, they were looking for more
16 documentation to be able to support their operations, so this
17 document was created in early 2024.

18 Q. And did you provide this document to the City of Shakopee
19 elections officials?

20 A. Yes, we did.

21 Q. And when did you provide it to them?

22 A. That would have been in January of 2024, prior to the
23 presidential nomination primary.

24 Q. And were City of Shakopee personnel trained on it, to the
25 best of your knowledge?

1 A. Yes.

2 Q. Does this document discuss the handling of secrecy envelopes?

3 A. It does.

4 Q. And can you just remind us, what is the secrecy envelope?

5 A. Sure. The secrecy envelope is the manila envelope that
6 during the envelope voting process or the mail voting process
7 a voter is provided with to ensure the secrecy of their
8 ballot. So they would fold up their ballot, put it inside
9 that secrecy envelope.

10 MR. LeBEAU: I'd like to show the witness what's
11 been marked as AP0016.

12 THE COURT: All right. Does that correspond to an
13 exhibit number of yours, Mr. Zoll?

14 MR. ZOLL: I understand that to be a Bates number
15 that Counsel is referring to.

16 THE COURT: All right. Go ahead.

17 MR. LeBEAU: May I give it to the witness?

18 THE COURT: You may approach.

19 MR. LeBEAU: Thank you.

20 BY MR. LeBEAU:

21 Q. (Handing.) Can you identify what your handbook details with
22 regard to the handling of secrecy envelopes?

23 A. Absolutely. The last bullet in the section that talks about
24 separating the ballot from the ballot secrecy envelope tells
25 them to store the ballot secrecy envelope.

1 Q. And that is on AP00116. Is that the stamped number at the
2 bottom?

3 A. That's correct.

4 MR. LeBEAU: If I could have a minute, I'll put
5 that up.

6 THE COURT: You may.

7 BY MR. LeBEAU:

8 Q. That's definitely hard to read from a distance. Just for the
9 sake of those watching, can you read that line again, please?

10 A. Absolutely. The last bullet says to store ballot secrecy
11 envelope.

12 Q. And what's the purpose of storing the secrecy envelope?

13 A. Really, statute dictates that all election materials need to
14 be retained. There is some argument whether this ends up
15 actually being election material, but we want them to store
16 those ballot secrecy envelopes and return them to us. I've
17 actually even asked myself in the past why would we keep
18 empty envelopes. This is exactly why we would keep empty
19 envelopes. We should have had these envelopes. That was one
20 of our questions at the City of Shakopee during our
21 investigation is where -- where are those envelopes; we can't
22 find them. And if those 20 ballots or 21 ballots would have
23 been left in those secrecy envelopes and returned to us, we
24 would have imagined that we would have been able to find
25 them.

1 Q. And just so we're clear, the secrecy envelope, it's not just
2 a plain manila envelope; there's printed writing on it,
3 correct?

4 A. Correct. It does say, I believe, "Secrecy Envelope" right on
5 the outside of it, yes.

6 Q. And that's something that's provided to you, to the -- to the
7 County as part of the elections process.

8 A. Correct. We purchase those from a vendor, and then we kind
9 of farm those out to all of the cities for their use, yes.

10 Q. And this is something that comes along with the regular
11 ballot and other election material that you get from a
12 specific vendor for that purpose; correct?

13 A. Yes. We do have different vendors for the ballots versus the
14 printed envelopes and materials, but yes, it is provided by a
15 vendor.

16 Q. I can't go pick up -- a bundle of these up at Kinko's or
17 something like that.

18 A. No.

19 Q. During the course of your investigation, did the City
20 officials indicate to you what their practice was for
21 retaining secrecy envelopes?

22 A. They did. When I spoke with Lori Hensen and I asked where
23 the secrecy envelopes were, she indicated to me that they
24 were thrown away.

25 Q. And did you get the impression that that was a one-time deal,

1 or was that something that had happened before?

2 A. It sounds like it was something that had happened before and
3 we didn't realize.

4 Q. And "something" when you say "happened before," it happened
5 before in this election or previous elections?

6 A. Previous elections.

7 Q. And just because this can be kind of confusing for those that
8 don't do elections all the time --

9 A. Yes.

10 Q. -- that secrecy envelope, that is what actually contains the
11 ballot that is inside the what we might call the "signature
12 envelope."

13 A. Correct.

14 Q. And so during the absentee ballot process, would those --
15 when the secrecy envelope is removed from the written
16 envelope, what happens at that point in the process?

17 A. When they are separated, the signature envelope is opened;
18 the secrecy envelope is taken out; and we teach people to do
19 that as a group. We don't want a signature envelope opened
20 and then a secrecy envelope opened because I should never
21 know what your vote is on that ballot. So if you have 20
22 that you're opening, the -- all of the signature envelopes
23 should be opened, those secrecies removed and set to the
24 side. Those signature envelopes then get bundled and set to
25 the side, and those secrecy envelopes are then opened,

1 ballots removed.

2 And then the ballots are examined to make sure that
3 nothing is damaged; that it's the right precinct. Again, as
4 I talked about, that is something that unfortunately does
5 happen. It is a human process. People aren't perfect. So
6 there is a chance if you're opening, let's say, for Shakopee
7 Precinct 1, that someone could have accidentally issued a
8 Shakopee Precinct 10 ballot, that type of thing. So they are
9 instructed to count the signature envelopes, to count the
10 ballots, and then we count the secrecy envelopes as well when
11 we do our process to make sure that everything exactly
12 matches.

13 Q. So the number of secrecy envelopes should match the number of
14 signature envelopes.

15 A. Unless you have an anomaly, like someone sent in a ballot
16 without the secrecy envelope. It's very possible. And it's
17 also very possible that someone would return their envelope
18 without the ballot in it. It does happen. So that's just
19 generally something as you're opening that you're making a
20 note of, that if I have 20 signature envelopes and someone
21 returned it without a ballot, that I know that I need 19.

22 Q. And if something like that would have happened, would there
23 be a written document that would memorialize that "I'm a
24 member of the Absentee Ballot Board, and this came in and
25 there was nothing in it?" Would there be some written

1 document just to log that?

2 A. I honestly don't know if someone would write that on their
3 incident log. I would think that they would, that that would
4 be certainly the way to track things back for us to be able
5 to say no, a ballot wasn't missing; in fact, it wasn't
6 returned by the voter. Yes.

7 Q. On what day did you request the secrecy ballots -- or the
8 secrecy envelopes from the City of Shakopee?

9 A. We requested those Thursday, November 7th.

10 Q. In your opinion, concerning the secrecy envelopes, did the
11 City of Shakopee election officials follow the procedures
12 that were laid out in your handbook?

13 A. They did not.

14 Q. I'd like to talk about -- you mentioned this just a second
15 ago -- what is an incident log?

16 A. An incident log is a document that we're provided with by the
17 Secretary of State's Office, or at least the format is
18 something that's provided. We print those ourselves here.
19 And we give those out to both the absentee locations and the
20 election-day locations. The purpose is really to just record
21 any anomalies, something that happens that maybe is outside
22 what you perceive to be the regular elections process, really
23 any incidents, just as the name indicates.

24 Q. Would that be something that would be contrary to what's in
25 the handbook?

1 A. No, that is -- that is part of the precinct process. An
2 absentee room is stood up as a precinct and has to follow all
3 of the regular election-day rules and guidelines as
4 practicable as well.

5 Q. So they're not exempt from filling out an incident log if
6 something --

7 A. No --

8 Q. -- were to occur.

9 A. -- they are not.

10 Q. Are election judges in Scott County and Shakopee trained on
11 reporting in the incident log?

12 A. They are.

13 Q. And what is that training?

14 A. We provide the training to the City staff in regards to
15 absentee, and then there are train-the-trainer activities
16 that occur. We do also train the election judges for
17 election day. The larger cities do their own training as
18 well, so we may train the clerk and the clerk staff, and then
19 they would go out and train their hundreds of judges that
20 they employ.

21 Q. Can you remind me, what was the day that you discovered that
22 the numbers that the City of Shakopee was recording when they
23 went off?

24 A. I believe it was Tuesday, November 12th. Monday was Veterans
25 Day, so we were not here that day. But it would have been

1 Tuesday, November 12th. I ended up having a phone
2 conversation with not only Lori Hensen but the assistant city
3 administrator, Chelsea Petersen, and a couple of other folks
4 were present on that call. And she's actually the one that
5 pointed out that she had found the discrepancy on that log.

6 Q. And that -- the date on the log traced back to what day?

7 A. Traced back to between the 17th and 18th of October.

8 Q. And did you receive an incident log for October 17th
9 detailing the discrepancy in the totals?

10 A. We did not. We got one incident log, which is not uncommon
11 for the entire absentee process; that is normal. But there
12 was not anything indicated on that log that there was a
13 discrepancy or, for example, that 20 people had checked in
14 and not voted or something like that.

15 Q. You received one incident log in total from the absentee
16 ballot location in Shakopee; is that right?

17 A. Correct. It was multiple pages, but yes, one log.

18 Q. And anywhere did it discuss -- whether it was the 17th, the
19 18th, the 15th, the 16th -- anything dealing with missing
20 ballots?

21 A. No.

22 Q. Do you have an incident log for the missing ballot in P-12?

23 A. I do not.

24 Q. So can you remind me the day that you first became aware of a
25 discrepancy in the number of people that checked in and

1 ballots? Was it the 7th or the 12th?

2 A. It was the 7th that we initially discovered that there was an
3 issue.

4 Q. And the issue would have occurred, to the best you can tell,
5 on October 17th.

6 A. Correct.

7 Q. So in the intervening 20 days, there was no indication made
8 to you that there was an error.

9 A. No. I did have a conversation at one point. I did some site
10 visits to the larger cities the Wednesday before election day
11 just to check in with everybody, see how everybody was doing,
12 to talk about tabulators. We had set up a second tabulator
13 for each location. The volume was much higher, honestly,
14 than I think any of us had anticipated. They indicated that
15 they thought they were off one ballot; that they thought the
16 machine wasn't counting appropriately. And I did indicate
17 that they would need to re-zero and re-run their ballots.
18 That would be the standard practice if a precinct was off.

19 Q. So you don't find out about anything for 20 days, and there's
20 no record kept of anything that went wrong. Is that your
21 testimony?

22 A. Correct.

23 Q. In your opinion, is that proper procedure?

24 A. No, it is not.

25 Q. Can we go back to the handbook for a moment? And I'd like to

1 take you to AP00117. (Handing.)

2 A. Thank you.

3 Q. We've talked a little bit about balancing. Can you explain
4 what "balancing totals" means.

5 A. Sure. What we train on and what we teach folks to do is to
6 run the Statewide Voter Registration System reports at the
7 close of each day; that is what we do in our absentee room as
8 well. And depending on the election and if you have
9 different ballot styles for every location, your report can
10 be different. But what we teach them to do is at the end of
11 each day, to run those reports. The machine has the ability
12 to run what we call an "interrupt tape," so you can actually
13 shut down the machine, reboot it, and you can get the number
14 of ballots for each ballot style. You do not get any
15 results, the polls are not closed, but you can get that
16 counted out for you by the machine.

17 The other option that we give folks -- and
18 sometimes this does work better, of course depending on their
19 size -- is they can count their applications and count those
20 against the ballots. The ballots do need to be removed from
21 the tabulator each day and put into a sealed transfer case,
22 so we do give people the ability to use whichever works best
23 for them, but the SVRS reports are definitely the most
24 accurate way to know that you have, in fact, balanced to the
25 ballot style level each day.

1 Q. And what does the handbook say with regard to balancing?

2 A. The handbook says, "During direct balloting, once direct
3 balloting starts, it should be balanced if you have followed
4 the above directions. If not, you should sit down and figure
5 out where you can balance and solve the issue right away."

6 It also gives some step-by-step instructions on how to run
7 the reports, what you should be looking at, and it does say
8 up at the top, "Do not wait until election day to balance."

9 Q. And "election day" being actual in-person election day --
10 November 5th in this case this year -- not one of the other
11 earlier checkpoints for when --

12 A. Correct.

13 Q. -- balloting changes. Did you discover during the course of
14 your investigation whether the City of Shakopee balanced
15 their ballot totals before in-person voting began on
16 October 18th?

17 A. We discovered that they thought they balanced, but they did
18 not follow the reports as directed, no.

19 Q. What did they do?

20 A. They kept track on that log, the spreadsheet that you showed
21 earlier, and they tracked the amount of people that they had
22 each day, but they did not balance to the precinct or ballot
23 split level.

24 Q. And the way they were balancing was not part of the training
25 that you provided.

1 A. Correct.

2 Q. So once again, they were operating contrary to the handbook
3 and the training that you provided.

4 A. They were.

5 Q. Can you refer me -- maybe from memory, or I'd be happy to
6 give you the entire exhibit. I think you have the extra
7 page. I think you've got 16 and 17 there.

8 A. Okay.

9 Q. Can you show me in the -- or just direct me to where in the
10 handbook it discusses estimating.

11 A. There would be nothing in the absentee handbook about
12 estimating.

13 Q. Do you know if there's a Secretary of State rule that
14 discusses the process for estimating ballot totals?

15 A. Not that I'm aware of.

16 Q. Are you aware of any law, rule, or policy for estimating
17 ballot totals in a precinct?

18 A. No.

19 Q. To the best of your knowledge and experience, are you aware
20 of whether estimating ballot totals is permissible?

21 A. To the best of my knowledge, I would say it is not
22 permissible. We direct them to balance every day, and you
23 balance -- elections is not a game of estimations; you
24 balance to the numbers.

25 Q. It's a game of certainty, I suppose.

1 A. I would --

2 MR. ZOLL: Objection. Counsel's testifying.

3 THE COURT: Sustained.

4 BY MR. LeBEAU:

5 Q. Why would estimating not be allowed?

6 A. We need to know that the exact number of ballots that are
7 reported are the exact number that were issued and that it is
8 for the correct ballot precinct and school-district split for
9 everyone who voted.

10 Q. Do you have any incident log in your possession regarding --
11 or indicating that there was an estimation of ballot totals
12 on the 17th or 18th?

13 A. I do not.

14 Q. Let's -- I'm done with that document.

15 A. Okay. (Handing.)

16 Q. Let's talk about Precinct 10. How many people voted by
17 envelope absentee in all of Shakopee between September 20th
18 and October 18th?

19 A. According to the report and the numbers that we've been able
20 to find, it looks like 1124 people voted, envelope voting.

21 Q. And how many specifically in just Precinct 10?

22 A. 87.

23 Q. That's where that 87 --

24 A. Yes.

25 Q. And in Precinct 10, again, these were the individuals -- were

1 they able to mail their ballot in to Shakopee?

2 A. No.

3 Q. They had to return them in person?

4 A. They would either be in person in the absentee room or done
5 through Health Care Facility voting.

6 Q. And it's within that number, that 87, that you found the
7 discrepancy; is that correct?

8 A. Correct.

9 Q. Let's turn back to the 12th, November 12th that you
10 mentioned. What did you do on the -- after confirming the
11 ballot totals on November -- the error ballot totals on
12 November 12th?

13 A. We continued to look into where those 20 ballots could have
14 been. If in fact there were voters represented by that
15 ballot, if it makes sense to try and figure out if, in fact,
16 folks had checked in and just not voted. We dug down into
17 every material that we had. We counted applications; we
18 counted envelopes; we counted ballots. It is not part of our
19 normal process that we would open absentee ballot boxes or
20 any ballot boxes that we received from the City, but we did
21 do so to verify, in fact, that we had 309 ballots from
22 Precinct 10 and not the 329 that were checked in. So we
23 spent a lot of time recounting ballots as a team, and I would
24 say we recounted the Precinct 10 absentee ballots at least
25 four times.

1 Q. Why do you say it's not part of the normal process to open
2 those absentee boxes?

3 A. Because they would normally balance, or balance possibly
4 within one. But in order to really try and pinpoint where
5 that error occurred to ensure that it wasn't here at Scott
6 County through the mail balloting, all of that, we ran
7 reports that showed what we took in, what the City took in,
8 and what they took in against the actual amount of ballots
9 that they had. So we were able to definitively determine
10 that it was the City absentee room for Precinct 10 that did
11 not balance.

12 Q. And how long did this process take?

13 A. We spent most of Thursday, the 7th; Friday, the 8th; and then
14 we took a break. After a couple of 80-hour work weeks,
15 everyone was pretty exhausted, so we took the weekend and
16 Veterans Day off and came back to attack it fresh on the 12th
17 and continued to just dig into everything that we had and
18 every report that we could run, where we then determined that
19 we believed we had identified the 20 voters.

20 Q. And are you still investigating the matter?

21 A. We have completed our questioning of City staff, of the
22 election judges, of the folks involved in the process. We
23 just haven't been able to put together a summary report. But
24 yes, our investigation I believe is at its final stages.

25 Q. Have you made final conclusions in the investigation?

1 A. We have.

2 Q. I would like to go to Exhibit 1. (Handing.)

3 A. Thank you.

4 Q. Can you identify this document?

5 A. Yes. It is an affidavit that I completed per your request.

6 Q. And what does it -- can you read what it says?

7 A. Sure. Do you want me to read the whole thing? I'm happy to
8 if that's --

9 THE COURT: Well, hold on. I don't know that I
10 need it read. I can read it, so --

11 MR. LeBEAU: Yeah.

12 BY MR. LeBEAU:

13 Q. No, not entirely.

14 A. Okay.

15 Q. What did you conclude in your affidavit concerning the
16 missing ballots?

17 A. We concluded that we were in possession of the 20 absentee
18 ballot envelopes in question. That we conducted multiple
19 search attempts; we exhausted all attempts to locate the
20 ballots. And we determined that they were validly cast by
21 valid voters through that precinct, and that we had never
22 received the ballots here, and that they had never been run
23 through a tabulator.

24 Q. How did you conclude that they were validly cast?

25 A. We were able to go back to those 87 people and kind of break

1 down the numbers from there. Thirty-seven of those were
2 Health Care Facility voting, so that left us with 50. And we
3 were able to go look at those records, match up the
4 applications to the envelopes. And according to everything
5 that we could see, those numbers all came out exactly right.

6 Q. And so everything in the affidavit that you signed, is it
7 still true and accurate now that you've concluded your
8 investigation?

9 A. It is.

10 Q. Thank you. I'd like to go to Exhibit 2. (Handing.) I'll
11 trade you.

12 A. Thank you.

13 Q. And can you identify what Exhibit 2 is, please.

14 A. Yes. This was a statement released by Ron Hocevar, the Scott
15 County Attorney, on November 27th.

16 Q. And is it -- what is it in reference to?

17 A. It is in reference to our initial preliminary investigation
18 of the missing 20 ballots from City Hall.

19 Q. And are the conclusions that are referred to in that letter
20 still accurate today?

21 A. They are.

22 Q. There's a line on the letter that concerns the final fate of
23 the 20 ballots. Can you read that portion?

24 A. I believe that you would be referring to -- there's a line
25 that says, "the County was advised they had been thrown into

1 "the garbage" and "the County has been unable to verify that
2 the missing ballots were ever removed from their secrecy
3 envelopes."

4 Q. What is that conclusion based upon?

5 A. That is based upon our ability to see when voters came in,
6 not only by what was entered into the Statewide Voter
7 Registration System but also their completed application.
8 Those were dated, of course, when the voter were to come in.

9 They're also -- based on the timing in the
10 Statewide Voter Registration System, we were able to
11 determine that the opening of the initial envelope-voting
12 ballots occurred before the last bunch, if you will, of
13 ballots were opened and processed.

14 Q. In the letter, it references that the ballots were thrown
15 away. How did you conclude that?

16 A. Based on the fact that we did not receive any secrecy
17 envelopes back from the City, and the information that we
18 received from the staff, from the election judges; that they
19 did confirm that once those were opened -- and of course they
20 thought the ballots removed -- that those envelopes were
21 swept into a garbage can.

22 Q. So to be clear, it's your best guess that they were thrown
23 away, but you don't have any evidence to confirm that;
24 correct?

25 A. Correct, that is our best -- best guess.

1 Q. Is there any way for you to be certain as to what actually
2 happened to those ballots?

3 A. There is not. We've been able to obtain video footage from
4 the City of Shakopee. There is still 27 terabytes of data
5 that we are going to attempt to go through to make a
6 hopefully final conclusion. But the conversations, the
7 interviews that we had with the election judges, they opened
8 the initial batch of envelope-voting ballots; they were never
9 given another batch, if you will, of ballots. So if we take
10 the 17 people who voted between the 15th, 16th, and 17th of
11 October, the initial Ballot Board approved those envelopes.
12 Then there were three more that voted on the afternoon of
13 October 17th. That gives us our 20 missing ballots.

14 Q. So you mentioned that there are -- you mentioned the video
15 and that there are still -- a significant amount of time to
16 watch.

17 A. Uh-huh.

18 Q. So your investigation is not done. You haven't finished
19 watching the video from --

20 A. We don't know if the video actually exists, so we are
21 waiting. We don't -- the information that we received from
22 the City of Shakopee is that they had video from their City
23 Council chambers where the Absentee Ballot Board and ballot
24 opening was conducted back to October 23rd. We have had a
25 digital forensic specialist obtain all of the stored footage

1 that they have. We don't even know that that footage exists.
2 But we're going to take a look into that and see if there's
3 any additional footage that we can obtain.

4 From the information that we were given, it was not
5 the election judges who would have done the final opening,
6 the final Ballot Board and the final opening of those
7 ballots; it appears as though that was City staff. And that
8 was not done in a room that we can find that was on camera.

9 Q. So depending on whether or not you can find additional
10 footage, your conclusions as to what happened may change.

11 A. It's possible.

12 Q. But it's possible. You just mentioned -- so the final -- the
13 final opening of those ballots was done by -- or opening or
14 process --

15 A. From --

16 Q. -- was done by City staff. Explain that for me. Sorry.

17 A. No, that's okay. From what we've been able to determine, the
18 Absentee Ballot Board -- so the hired party-affiliated
19 election judges -- conducted their last Ballot Board on
20 Thursday, October 17th, at approximately 10:00 a.m. Those
21 ballots were then marked "accepted" into SVRS about noon.
22 They had already started to open the absentee ballots that
23 had been received earlier through the envelope process.
24 Those last 20 were not included, and they were never given
25 another batch. No one ever walked into the room -- like

1 here's your initial (indicating); they balanced the envelopes
2 to the ballots. No one walked into the room at a later time
3 that afternoon and said "Here's more" for any of the
4 precincts.

5 Q. Do you know why City staff would have processed those and not
6 the Absentee Ballot Board?

7 A. It is allowable, per statute, for two people to do that
8 together. Not everyone does their absentee ballot board with
9 party-affiliated election judges. They're required to do
10 signature verifications; they're not necessarily required to
11 do the entire process. But according to the time cards that
12 we've been able to receive, there were not election judges
13 present at the time that that process would have occurred on
14 Friday morning, the 18th.

15 Q. And is this the point in time that the signature envelope and
16 the secrecy envelope would have been separated?

17 A. Correct.

18 Q. And it's because of the information that you received from
19 the City of Shakopee that all of the other secrecy envelopes
20 were thrown away, you concluded that these must have been
21 thrown away as well. Is that right?

22 A. We did.

23 Q. You also -- the letter also states something with regard to
24 whether the ballots were removed from the secrecy envelope.
25 Can you read that portion, please?

1 A. (Pause.) Could you help me?

2 Q. Sure.

3 A. Thank you.

4 Q. (Indicating.)

5 A. Got it. Thank you.

6 Yes, in the conclusions on the last page, it
7 states: "That the ballots were most likely never removed
8 from their secrecy envelopes," "...when the secrecy envelopes
9 were thrown away."

10 Q. But you cannot be certain whether they were removed from the
11 secrecy envelope or not, can you?

12 A. I cannot.

13 Q. And you don't have any additional proof today of whether or
14 not they were removed from the secrecy envelope and reviewed.

15 A. I do not.

16 Q. Who was responsible for ballot security at Shakopee during
17 the period of October 15th through the 18th?

18 A. It would have been Lori Hensen, the Shakopee city clerk.

19 Q. I think this has been stated, but I just want to make sure
20 that we're clear on the record: The ballots in question --
21 the 20, 21 -- were never included in the final vote totals;
22 is that correct?

23 A. That's correct.

24 Q. And that would be reflected in the -- or wouldn't be
25 reflected in the second abstract for Scott County; is that

1 correct?

2 A. Correct. They were not included in the second abstract.

3 MR. LeBEAU: And just for the record, Your Honor,
4 that's Exhibit 5.

5 BY MR. LeBEAU:

6 Q. And Exhibit 5 reflects what? That's the second ballot
7 abstract. Can you describe what that is?

8 A. Sure. That is a report that shows an aggregate of vote
9 totals for each candidate as well as a breakdown of voter
10 totals by precinct. It does not break out absentee versus
11 election day in the abstract. It gives you one total, other
12 than stating how many absentee voters there were total.

13 Q. On the Scott County letter, it also mentions Precinct 12;
14 correct? I believe it's a paragraph --

15 A. It does.

16 Q. -- at the bottom of the first page.

17 A. Yes.

18 Q. Could you read that, please?

19 A. Sure. "While conducting normal auditing activities on
20 Thursday, November 7, County staff found that there was a
21 problem --

22 THE COURT: You have to slow -- I'm sorry to
23 interrupt you.

24 THE WITNESS: Yes.

25 THE COURT: You have to slow down.

1 THE WITNESS: I'm sorry. Thank you.

2 THE COURT: So why don't you --

3 THE WITNESS: I will do that.

4 THE COURT: -- start again if you don't mind.

5 Thank you.

6 THE WITNESS: Okay.

7 A. "While conducting normal auditing activities on Thursday,
8 November 7, County staff found that there was a problem with
9 Shakopee returns in that there was a 21-ballot discrepancy
10 between two precincts (with more absentee voters recorded
11 than ballots received). The issues were noted to be 20
12 ballot records for Precinct 10 and one for Precinct 12A.
13 Based on experience, staff noted it is not uncommon for one
14 voter to check in and not vote, so the discrepancy in
15 Precinct 12A was not pursued; the focus was on P10."

16 BY MR. LeBEAU:

17 Q. And to this date, there's been no investigation into P-12;
18 correct?

19 A. There has not.

20 Q. So you can't conclude whether this falls into the same
21 category as these other 20 or not, can you?

22 A. I cannot.

23 Q. And earlier you gave sort of an example of what a person
24 would have to go through and to vote absentee in person and
25 not have a ballot. Is this the same type of scenario?

1 A. This would be the same type of scenario, yes.

2 Q. And in your experience, have you ever seen that occur?

3 A. Not that I'm aware of.

4 Q. So is it possible that there is one more ballot that's still
5 out there that can't be accounted for?

6 A. It's possible.

7 Q. In your opinion, how would you characterize -- based on the
8 facts that you know of this polling location and these 20, 21
9 missing ballots, how would you characterize that in the
10 administration of an election?

11 A. How would I characterize it. I would say it is
12 inappropriate, something that should not have happened.

13 Q. And is it contrary to the training that you provided?

14 A. It is.

15 Q. I want to talk about the dates in question during this time.
16 Early voting, envelope voting as you described it, began on
17 September -- ?

18 A. 20th.

19 Q. And concluded on what day?

20 A. October 17th.

21 Q. And the 18th is the day -- what happens with all those
22 ballots once the 18th hits?

23 A. Starting late on the 17th, those ballots that have already
24 been voted can be opened and run through the tabulator. So
25 normal process would be on the 18th, that not only would you

1. have people, voters in-person voting putting their ballot in
2. the tabulator, you would also have staff, election judges
3. both together running those ballots that had been cast
4. through the envelope process into that same tabulator.

5. Q. And so they're physically, again, separating the secrecy
6. envelope from the signature envelope and putting the ballot
7. in the machine.

8. A. Correct.

9. Q. And this is all predicated upon the fact that they would have
10. balanced out the totals with those absentee ballots
11. previously.

12. A. Correct.

13. Q. We touched on this earlier, but there was a reference to the
14. fact that there was an estimation made for the 17th. Do you
15. recollect that conversation?

16. A. I do.

17. Q. And what was this estimation that was made?

18. A. It appears as though the number from the tabulator was never
19. actually written down on October 18th, so the staff took the
20. number of voters that they had that day and subtracted from
21. the number that was totally run. They did do math. I can't
22. call it an estimation, but there wasn't verification through
23. SVRS reports of what those totals should be. They should
24. have been able to run reports showing exactly how many voters
25. they had plus the voters they would have had on the 18th

1 through the direct balloting process.

2 Q. Whatever math they did was not the proper procedure for
3 handling the ballots; is that correct?

4 A. Correct.

5 Q. And once the secrecy envelope is detached from the signature
6 envelope, there's no way to trace it back; is that correct?

7 A. Correct.

8 Q. That's sort of the whole point; right?

9 A. Correct.

10 Q. So can you say with absolute certainty that the 20 voters who
11 have been identified as having missing ballots are the actual
12 ballots that were lost?

13 A. I can't say with absolute certainty, no.

14 Q. And why is that?

15 A. As much as we don't want to estimate and play games with
16 probability, this is the most likely scenario based on all of
17 our investigations. But I was not there. I did not assist
18 those voters, I did not do the balancing for them, so I
19 cannot say that -- at a hundred percent certainty that this
20 is -- that those are the 20 people. It is what makes the
21 most sense given all of the scenarios and the investigation
22 that we've done, but no.

23 Q. And that -- I'm just trying to figure out how to phrase this,
24 but -- and as you stated earlier, that investigation may not
25 be done. There may yet be more evidence for you to dig in.

1 A. It is possible.

2 Q. Based on your experience with the conduct that the City of
3 Shakopee had in this election, do you have certainty that
4 they followed all procedures for tabulating and counting the
5 ballots?

6 A. I do not.

7 Q. So the information that we have may not be reliable even from
8 what they provided.

9 A. We've been able to verify through multiple interviews. We
10 not only interviewed City staff but the party-affiliated
11 election judges as well. And is it possible it's not
12 reliable? Of course, yes, it is possible. But we believe
13 we've been able to put many pieces of the puzzle together and
14 verify against our questioning.

15 Q. And I certainly don't think anybody's doubting your efforts.

16 Prior to November 7th, did the City ever inform you
17 of a discrepancy in either P-10 or P-12?

18 A. No.

19 Q. So how many days lapsed between you now knowing when an error
20 occurred and with them informing you about it?

21 A. We actually informed them of the error, so -- but from the
22 time that they were able to inform us on where the error
23 occurred, that would have been from Thursday to Tuesday, so
24 about five days.

25 Q. But from when the error actually occurred --

1 A. Oh, from the error actually occurred to when -- well, they
2 never informed us of an error. But from the time the error
3 occurred until we discovered, whatever the time frame would
4 be from October 17th to November 7th, a good three weeks.

5 Q. And it was that same three weeks, 20 days, that lapsed before
6 an investigation began; is that right?

7 A. Correct.

8 Q. You are certain the ballots are missing.

9 A. I am.

10 Q. And you can't say with certainty where they came from.

11 A. I can, yes. I mean -- where they came from at the precinct
12 level --

13 Q. Yes.

14 A. -- sorry. My elections brain. Can I say with absolute
15 certainty what happened? No.

16 MR. LeBEAU: Your Honor, thank you. I tried to
17 keep it right at time.

18 THE COURT: Thank you for that.

19 It's about time for our morning recess. We're
20 going to take that at this time. We generally take 15
21 minutes, and then we'll come back and restart with Mr. Zoll's
22 cross-examination.

23 (A recess was taken.)

24 THE COURT: We'll go back on the record.

25 Mr. Zoll -- we do not have our witness.

1 Why don't you come back to the witness stand,
2 please. Thank you.

3 Go ahead, Counsel.

4 MR. ZOLL: One moment. I just want to make sure my
5 colleague is able to share exhibits for me.

6 CROSS-EXAMINATION

7 BY MR. ZOLL:

8 Q. Thank you, Ms. Hanson. Unfortunately, some of my questions
9 are going to be repetitive of topics that you discussed
10 earlier in your testimony, but I do want to make sure that we
11 have a clear record and a full understanding of the issues.

12 Did you describe yourself as the Elections
13 Administrator for Scott County?

14 A. Yes, I did.

15 Q. Okay. And you've been in that position for about six and a
16 half years?

17 A. Correct.

18 Q. And in that role, do you rely on both City and County staff
19 to carry out the functions of administering the elections?

20 A. I do.

21 Q. I have a few questions regarding some documents that I want
22 to go through before asking you questions regarding your
23 investigation, and I'd like to start with Exhibit 206.

24 THE COURT: And 206 is already -- is that one of
25 the objected-to exhibits, Counsel?

1 MR. ZOLL: I don't believe so.

2 THE COURT: All right.

3 BY MR. ZOLL:

4 Q. Do you recognize this document?

5 A. I do.

6 Q. What is it?

7 A. This is the recount worksheet that we are provided from the
8 State's election system to use during a recount process, so
9 it gives us what the November 5th tallies are for each
10 candidate, which would include absentee totals, and then it
11 gives us space to be able to provide our recount totals as
12 well.

13 Q. And is this Exhibit 206 the document that was used in the
14 recount of the election for House District 54A?

15 A. Yes, it was.

16 Q. Did you fill out the information on this form?

17 A. I did. This is my handwriting; the only portion of this that
18 is not is where it says "Recount Team Initials." That was --
19 each of the election judges that participated for each
20 precinct, they initialed that themselves.

21 Q. Okay. I want to focus on Shakopee Precinct 10. And can you
22 just confirm for me, what was the total number of ballots
23 that were counted for Aaron Paul in Precinct 10?

24 A. Yes. That would have been 534.

25 Q. How about for Representative Brad Tabke?

1 A. 731.

2 Q. And what is the total for "Other"?

3 A. The "Other" would be undervotes, so if folks chose -- because
4 of course you can vote or not vote any race on a ballot.

5 "Other" would be undervotes. Mostly that's, you know, people
6 who did not vote that category. It could also be an overvote
7 if people voted equally for both candidates. Or it could
8 have been a write-in or a vote for someone else.

9 Q. And what's the total number of "Other" votes for Shakopee
10 Precinct 10?

11 A. 94.

12 Q. Okay. And if we were to add those numbers together, the 731
13 for Tabke and the 534 for Paul and the 94 for "Other" -- and
14 I'm not going to ask you to do that math in your head -- but
15 would that be the total number of ballots that were counted
16 for Shakopee Precinct 10 in this election for House District
17 54A?

18 A. Yes, it would.

19 Q. Okay. Now I want to turn to Exhibit 5, and I believe you
20 were asked questions about Exhibit 5 previously. And we'll
21 just start with the title page here. Do you recognize this
22 document?

23 A. I do.

24 Q. What is it?

25 A. It is the Abstract of Votes Cast, so this is the report that

1 is generated from the official returns through the State's
2 election registration system that is provided to the
3 Canvassing Board for their signatures.

4 Q. From this page, are you able to tell whether this is the
5 abstract that was signed before or after the recount?

6 A. I am not, not from this page.

7 Q. Okay.

8 MR. ZOLL: Can we just move to the final page of
9 Exhibit 5?

10 BY MR. ZOLL:

11 Q. Does this page allow you to answer that question?

12 A. It does. This is the second version of the abstract
13 completed after the recount.

14 Q. What information allows you to say that?

15 A. Just even the date. The second Canvassing Board was held on
16 the 25th of November.

17 Q. Okay.

18 MR. ZOLL: Finally, I want to focus on page 18 of
19 73, so page 18 of Exhibit 5.

20 BY MR. ZOLL:

21 Q. Can you tell me what's reflected on this page?

22 A. This is U.S. Representative District 2 race. I don't think
23 this is the page you want.

24 MR. ZOLL: Yeah --

25 MS. KITZE COLLINS: Oh.

1 MR. ZOLL: Sorry. One more.

2 MS. KITZE COLLINS: (Scrolling.)

3 MR. ZOLL: Here we go. So this is page 18. It's
4 page 20 of the PDF but page 18 of the report.

5 THE WITNESS: Yes.

6 MR. ZOLL: That's my fault.

7 BY MR. ZOLL:

8 Q. So can you tell me what's reflected on this page?

9 A. Yes. This gives us the precinct-by-precinct breakdown of the
10 votes for State Representative 54A for both Mr. Paul,
11 Representative Tabke, and then any write-ins. As I said,
12 precinct by precinct as well as the totals.

13 Q. Okay. And how many total votes across all precincts were
14 cast for Aaron Paul?

15 A. It appears as though it was 10,965.

16 Q. How about for Representative Brad Tabke?

17 A. 10,979.

18 Q. And "Write-in"?

19 A. 36.

20 Q. These results don't show undervotes or overvotes that you
21 described that were in the "Other" category of the recount
22 tally sheets; is that correct?

23 A. Correct.

24 Q. What's the margin in terms of the number of votes between
25 Representative Tabke and Mr. Paul?

1 A. 14.

2 MR. ZOLL: You can take that exhibit down.

3 BY MR. ZOLL:

4 Q. I'd like to ask you some questions about the process of
5 reporting election results. Does your office prepare totals
6 from the absentee ballots that are received within Scott
7 County?

8 A. We do.

9 Q. And do you separately prepare totals from the ballots that
10 are cast on election day?

11 A. We do.

12 Q. Are those then combined?

13 A. They are. They are combined and reported to the Secretary of
14 State.

15 Q. Okay. Is that combination, is that an automated process or
16 is that something that you and your staff do by hand?

17 A. It is an automated process.

18 Q. Okay. Is there a software that does that work for you?

19 A. There is.

20 Q. Okay. From your experience as the Elections Administrator,
21 do you have a view as to whether absentee voting or election
22 votes cast on election day tend to favor one party or the
23 other?

24 A. Not at this time. I would say in the past, prior to 2020 and
25 COVID, I think we would see more Democrat votes through the

1 absentee process. But I don't believe that that holds true
2 currently, either here or from what I've seen across the
3 state or nationally.

4 Q. Okay. Thank you. I want to ask you a few questions about
5 the process of casting an absentee ballot in person, and I
6 understand you addressed this with questions from Mr. LeBeau.
7 But are voters required to complete an absentee ballot
8 application when voting by absentee in person?

9 A. They are.

10 MR. ZOLL: Can we pull up Exhibit 10?

11 THE COURT: And Exhibit 10 has already been
12 received, as was Exhibit 206.

13 MR. ZOLL: Thank you.

14 And can we move to the second page of Exhibit 10?

15 BY MR. ZOLL:

16 Q. Is this an example of an absentee ballot application?

17 A. It is.

18 Q. Using this form, are you able to determine the date an
19 individual voted? Well, let me back up one step.

20 If an individual voted in-absentee, they would
21 complete this form when they showed up at the polling
22 location?

23 A. Correct, either at the polling location or there is a
24 possibility they would already have one that they would bring
25 with them, yes.

1 Q. Using this form, is it possible to determine the date that
2 they arrived or appeared at the polling location?

3 A. There is. There's two examples. What you see at the top
4 where the word "APP" says, meaning application, there's two
5 dates. October 16th is listed as one of those dates, so that
6 initial date would have been the date that they applied. And
7 if you can scroll down a little bit as well, down to the
8 signature, there's a date dated there by the voter and a
9 "received date" down towards the bottom. For the General, it
10 says this was a registered voter, the date that this
11 application was received, and the date the ballot was issued.
12 All of those dates indicate -- in this example, it was
13 October 16.

14 Q. Okay. Thank you. And the voters, you had described that
15 they, when voting, place their ballots inside a secrecy
16 envelope.

17 A. Correct.

18 Q. And then that is placed inside a signature envelope.

19 A. Correct.

20 Q. Going back to the first page of Exhibit 10, is this an
21 example of a signature envelope?

22 A. It is.

23 Q. And are you able to tell whether this ballot was accepted?

24 A. If we scroll down a little bit towards the bottom of the
25 envelope, it is marked "Accepted" in the bottom left corner.

1 Q. Does this tell you the date it was accepted?

2 A. This envelope does not. We do train the staff and our
3 Absentee Ballot Board to date these envelopes. We did find
4 through this process that that was not done. Looking in the
5 Statewide Voter Registration System at the ballot history, we
6 are able to see what date it was accepted.

7 Q. Okay. And to be clear, there's not a -- on Exhibit 10, a
8 spot to include the date. There's not a "Date Accepted"
9 blank for them to fill in.

10 A. There is not.

11 Q. But it was your testimony that using other sources of
12 information, it is possible to determine the date upon which
13 a particular ballot was accepted?

14 A. Correct.

15 Q. And can you just explain again what that other source of
16 information is?

17 A. Yes. It is the Statewide Voter Registration System. It is
18 the software that we use provided by the Secretary of State's
19 Office to administer the election.

20 THE COURT: Counsel, would you approach for a
21 minute, please?

22 (Off-the-record bench discussion.)

23 THE COURT: Go ahead.

24 BY MR. ZOLL:

25 Q. On Exhibit 10, there was a -- on the signature page, there is

1 a signature that was visible. Do you see that?

2 A. I do.

3 Q. Would that be -- who would have signed that?

4 A. That would have been a City staff or election judge, whoever
5 assisted the voter that day.

6 Q. So that's not the voter's signature there.

7 A. It is not.

8 Q. Okay.

9 MR. ZOLL: We can take the exhibits down.

10 BY MR. ZOLL:

11 Q. As part of your work as the Elections Administrator for Scott
12 County, did you take steps to confirm the accuracy of the
13 results of the election?

14 A. We did.

15 Q. In the process of doing so this year, as you testified
16 previously, you determined that 20 ballots from Shakopee
17 Precinct 10 were not included in the total number of ballots
18 counted in the 2024 General Election; is that correct?

19 A. Correct.

20 Q. And you conducted an investigation into the circumstances
21 regarding why those ballots were not counted?

22 A. Yes, we did.

23 Q. Is that investigation that you performed something you did in
24 your role as the Scott County Elections Administrator?

25 A. It is.

1 Q. As part of your role to confirm the accuracy of the election
2 results?

3 A. Yes.

4 Q. And to confirm that the election was conducted consistent
5 with Minnesota law?

6 A. Correct.

7 Q. Put differently, was the investigation that you conducted
8 performed as part of your job as the Scott County Elections
9 Administrator?

10 A. Yes.

11 Q. Okay. You had testified earlier that errors or discrepancies
12 in the conduct of an election are not unusual and provided an
13 example of providing the voter the wrong ballot. Do you
14 recall that testimony?

15 A. I do.

16 Q. Why is it that errors or discrepancies like that are not
17 unusual?

18 A. Just because as hard as we try, it's still a human process,
19 and humans make mistakes.

20 Q. We try, but we don't always succeed; correct?

21 A. Correct.

22 Q. You were also asked questions regarding the absentee voting
23 guide that you and your staff prepared. Do you recall those
24 questions?

25 A. I do.

1 Q. And you were asked about the provision that says that the
2 secrecy envelopes should be stored or maintained. Do you
3 recall that?

4 A. I do.

5 Q. Do you know whether that is a requirement of Minnesota
6 Election Law?

7 A. I don't know that it is. I have actually been told that
8 secrecy envelopes are technically not included in the
9 retaining of election materials. We have always tried to err
10 on the side of caution, and everything that is involved in
11 the process we would prefer to keep for the 22-month
12 retention period.

13 Q. Okay. I'm going to give my colleague, Ms. Kitze Collins, a
14 heads-up that Exhibit 2 will be the next exhibit that I'll
15 have a question for you on.

16 But by late November -- or -- yeah, by late
17 November 2024, had you reached a preliminary conclusion
18 through your investigation regarding the 20 uncounted ballots
19 from Precinct 10?

20 A. We had.

21 Q. I'm showing you what has been admitted as Exhibit 2. Do you
22 recognize this document?

23 A. I do.

24 Q. Is this a memo that summarizes the preliminary conclusions?

25 A. Yes.

1 Q. Did you assist in the preparation of this document?

2 A. I did.

3 Q. Did you review it before it was finalized?

4 A. I did.

5 Q. At the time, did you believe it to be accurate?

6 A. Yes, I did.

7 Q. And do you continue to believe that it is accurate today?

8 A. I do.

9 Q. I'm going to call your attention to the second-to-the-last
10 page of Exhibit 2 where the final paragraph begins with the
11 sentence, "Although the investigation is not complete and
12 remains ongoing..."? Do you see that?

13 A. I do.

14 Q. And that's followed by a series of bullet-pointed
15 conclusions. And I'll just ask you: Do you continue to
16 agree with the conclusions that are stated there?

17 A. I do.

18 Q. Has your investigation continued after the date of this
19 November 27th memo?

20 A. It has.

21 Q. Has that continuing investigation caused you to change any of
22 your conclusions?

23 A. It has not.

24 Q. Has your continuing investigation caused you to increase or
25 decrease your confidence in the conclusions you reached?

1 A. The investigation would have increased my confidence in the
2 preliminary decision that we believe we had made.

3 Q. And more specifically, has the continuing investigation
4 caused you to increase or decrease your confidence in the
5 identity of the 20 individuals who cast the uncounted
6 ballots?

7 A. I would say it was -- increased my confidence.

8 Q. Okay. I'd like to work through the process of your
9 investigation step by step to make sure we have a clear
10 understanding of how you reached your conclusions. So let me
11 start here -- and I'm sorry it's repetitive, but I want to
12 make sure that we can walk through this in a logical,
13 stepwise approach.

14 How did you first determine that 21 ballots cast in
15 the 2024 General Election had not been counted?

16 A. In our normal audit that we began the morning of
17 November 7th, we as standard practice go through and verify
18 all of the vote totals off of all the tapes, everything that
19 is received. Part of that process is to run reports out of
20 the Statewide Voter Registration System to look at totals of
21 ballots accepted at each location. And that is what led us
22 to discover that there were 20 or possibly 21 ballots missing
23 from the two precincts in Shakopee.

24 Q. And were you able to determine whether those ballots were
25 cast on election day or whether they were cast as absentee

1 ballots?

2 A. We were. They were cast as absentee ballots.

3 Q. How did you reach that conclusion?

4 A. The Statewide Voter Registration System that we're using to
5 balance is only balancing absentee ballots. It is not
6 looking at election-day balloting at all.

7 Q. So am I understanding that you would have had a total number
8 of absentee ballots that had been cast -- or strike that.
9 Maybe I'm -- I want to be precise.

10 When you look at the Statewide Voter Registration
11 System, are you looking at ballots that had been requested,
12 that had been sent, or that had been accepted for purposes of
13 this balancing?

14 A. We are looking at the amount of ballots that have been
15 accepted.

16 Q. Okay. So to determine that these uncounted ballots were cast
17 as absentee ballots, would you first identify the total
18 number of accepted absentee ballots?

19 A. We would.

20 Q. And then what would you compare that to?

21 A. We would compare that to the amount of applications that we
22 received from the City of Shakopee. All of their materials
23 were returned to us the day after the election, so we would
24 go back to those applications, physically count those
25 applications. We would count the envelopes. Of course the

1 envelopes would only give us the total that were voted during
2 the envelope process, right, not through direct balloting.
3 And in this case, we actually went back to the physical
4 ballots and counted the physical ballots.

5 Q. Would you have checked anything prior to getting to that
6 step? And I guess what I'm asking is when you first
7 discovered this imbalance, were you looking at all those
8 materials you described, or were you looking at the vote
9 totals compiled by you and your staff?

10 A. We were looking at the vote totals. We were looking at the
11 breakdown between election day and absentee. Our system
12 gives us the ability to run reports both for election day and
13 absentee. We had our party balance of election judges
14 working alongside with staff to verify the election-day vote
15 totals. We were concentrating on the absentee side.

16 Q. Okay. So to determine that 21 ballots that were cast as
17 absentee ballots had not been counted -- and I'll use a
18 hypothetical number here -- if you looked in the SVRS and saw
19 that 50,000 absentee ballots had been accepted in Scott
20 County, when you looked at the totals for absentee ballots
21 that had been counted, it would have been 49,979.

22 A. Correct.

23 Q. Okay. And that's how you discovered that there was that
24 discrepancy.

25 A. Yes.

1 Q. Were you able to determine whether the at that point 21
2 uncounted ballots came from a specific precinct?

3 A. We were. We were able to determine that there was one from
4 Shakopee 12A and 20 from Shakopee Precinct 10.

5 Q. How did you do that?

6 A. The vote totals -- apologies, not the vote totals. The total
7 ballots accepted issued by the Statewide Voter Registration
8 System shown by those reports, and the number of cards cast
9 is what our system would call it, so the number of ballots
10 that we received results for was off that 21.

11 Q. So to identify the specific precincts from which those
12 ballots were cast, is it fair to say you just did more
13 granular analysis, as what led you to conclude that there
14 were 21 uncounted ballots?

15 A. Correct. We balance on a precinct-by-precinct level.

16 Q. Okay. Voters can mail in their absentee ballots or cast
17 absentee ballots in person; is that correct?

18 A. Yes.

19 Q. Were you able to determine whether the 20 uncounted ballots
20 from Shakopee Precinct 10 were mailed in or cast in person?

21 A. We were. The City of Shakopee does not do mail-in absentee
22 balloting; we do all of that at the county level. So it
23 would have been in-person votes.

24 Q. Okay. And how specifically were you able to make that
25 determination that these would have been ballots cast in

1. person through the City of Shakopee?

2. A. The ballots are kept separate from what is done here at the
3. county level, whether it be at our Public Works facility
4. where in-person voting is done, mail balloting, those types
5. of things. They are combined at the end, but we were able to
6. determine simply by looking at the reporting that there was a
7. discrepancy in the numbers just for the City of Shakopee. We
8. can break down those reports both in SVRS and our system, our
9. election tabulation system, by location.

10. Q. Okay, and I think I may have a question for you with an
11. exhibit on that --

12. A. Sure.

13. Q. -- a little bit later. That's very helpful. How many
14. accepted absentee ballots were there from the City of
15. Shakopee for Precinct 10?

16. A. 329.

17. Q. And that's based on information that you obtained from where?

18. A. The Statewide Voter Registration System.

19. Q. And did you testify that you counted the physical ballots
20. that were returned to the County by the City of Shakopee?

21. A. We did that as well, yes.

22. Q. And how many ballots did you count in that physical count?

23. A. 309.

24. Q. And that's for Precinct 10?

25. A. For Precinct 10, correct.

1 Q. Ballots that came from the City of Shakopee.

2 A. Yes.

3 Q. Are you able to determine, just looking at a physical ballot,
4 what precinct it was cast for?

5 A. Yes. The ballots are marked at the top corner as well as the
6 bottom as to which precinct it is for.

7 Q. Okay. So, at this point in your analysis that we're
8 discussing here, we've narrowed the source of the 20
9 uncounted ballots from Shakopee Precinct 10 to a universe of
10 329 ballots cast by voters at the Shakopee early voting
11 location; is that correct?

12 A. Correct.

13 Q. Do the records maintained by either Scott County or the
14 Minnesota Secretary of State allow you to identify by name
15 the voters who cast those 329 ballots?

16 A. Yes.

17 Q. Were you able to further narrow the source of the 20
18 uncounted ballots from Shakopee Precinct 10 to a specific
19 date range?

20 A. We were.

21 MR. ZOLL: If we could pull up Exhibit 2 again?
22 And I'll want to look at the first paragraph of the second
23 page.

24 BY MR. ZOLL:

25 Q. I think about midway through this paragraph there's a

1 reference to a spreadsheet provided by City staff tracking
2 absentee ballots submitted in Shakopee. Do you see that?

3 A. I do.

4 Q. Was that spreadsheet useful for your investigation?

5 A. Yes. At the beginning, I could not really make heads nor
6 tails of the report, but yes, once we really dug into that
7 and their totals, it was.

8 MR. ZOLL: Can we pull up Exhibit 202, which has
9 been stipulated to its admission?

10 THE COURT: And 202 has been received.

11 BY MR. ZOLL:

12 Q. Do you recognize this?

13 A. I do.

14 Q. Is this an email from Lori Hensen to you?

15 A. It is.

16 Q. And remind me, who's Lori Hensen?

17 A. She's the former Shakopee city clerk.

18 Q. Okay. And in this email -- by the way, what's the date of
19 this email?

20 A. Thursday, November 7th.

21 Q. Okay. In this email, Ms. Hensen says, "This is an excel
22 spreadsheet that Kay our election judge in the AB room made
23 to keep (pause) track" -- I had a typo in my notes. Sorry,
24 that's the reason I paused there -- "to keep track of the
25 ballot votes made." Do you see that?

1 A. I do.

2 Q. And is this the spreadsheet that's referenced in the County
3 Attorney's memo that we looked at that's Exhibit No. 2?

4 A. It is.

5 Q. And if we can turn to the next page of Exhibit 202, is this a
6 copy of that spreadsheet?

7 A. It is.

8 Q. In the course of your investigation, did you talk to the
9 individual who prepared this spreadsheet?

10 A. I did.

11 Q. Who was that?

12 A. Her name was Kay Gamble.

13 Q. Did Ms. Gamble explain to you how the spreadsheet was
14 prepared?

15 A. She did.

16 Q. Can you explain for the Court once again how you were able to
17 use this spreadsheet or how this spreadsheet was helpful to
18 narrow down the date range when the uncounted absentee
19 ballots were cast?

20 A. I can. Not on this page, but on the third page, so -- yes,
21 this one. This gives us the absentee ballot count from the
22 first day of absentee through the last day of envelope
23 voting, which they have totaled up to be 1124.

24 Q. Okay, and I'll stop you there. Did you ask Ms. Gamble about
25 the process she used to create the information on this page

1 of the spreadsheet?

2 A. I did.

3 Q. What did she describe to you in terms of the process she
4 used?

5 A. She described to me, especially during this part, that they
6 were balancing their applications that they took in and
7 counting applications against the Statewide Voter
8 Registration System and then logging the total number of
9 voters that came in each day.

10 Q. So they were doing the balancing for -- across all the
11 precincts that were voting at that location?

12 A. Correct.

13 Q. But not on a precinct-by-precinct basis.

14 A. Correct.

15 Q. Okay. But they were performing some balancing.

16 A. They were.

17 Q. Okay, and then where would you take me next on this
18 spreadsheet to explain to the Court how this helped you focus
19 in on a particular date range when the 20 uncounted ballots
20 were cast?

21 A. Sure. So the total of this page indicates that all of those
22 numbers added together are 1124. And if we can go back up
23 one page and look at that first date. We were able to look
24 at this, take the 1124 from the previous sheet, add the 276
25 direct balloting applications, and not arrive at 1379. The

1 total of that should be 1400. So that is exactly 21 off on
2 that date.

3 Q. And that's the number of the discrepancy that you initially
4 discovered when comparing accepted absentee ballots in the
5 SVRS system against -- I believe the term you used for what
6 your machines would say -- the "cards read" for absentee
7 ballots.

8 A. Correct.

9 Q. And is that how you were able to determine that the 21-ballot
10 discrepancy began on or before October 18th, 2024?

11 A. It is.

12 Q. You were asked questions about the 1379 number that reflects
13 the machine count. Do you recall those questions?

14 A. I do.

15 Q. And I don't want to misstate anything you said, so please
16 correct this: You were asked how that estimate was prepared,
17 and you clarified that math was performed to arrive at that
18 number. Can you explain -- well, let me back up one step.

19 Do you have an understanding of the math that was
20 performed to determine that the number was 1379?

21 A. From what I was told by Ms. Gamble, the actual machine total
22 was not recorded at the end of October 18th, so she took the
23 machine total and subtracted the amount of direct balloting
24 applications to arrive at the 1379.

25 Q. Do you understand from your discussions or interviews with

1 Ms. Gamble whether the machine total was recorded on a date
2 subsequent to October 18?

3 A. Yes, I understand that it was.

4 Q. And what's your understanding around the -- that recording,
5 that writing-down of the number?

6 A. That each night at the end of the day, they would -- the
7 staff in the room would hand-record a number on a piece of
8 paper. She would then take it and put it into her
9 spreadsheet. Most days she worked early morning, not closing
10 shifts, so someone else at the end of the day wrote down or
11 had written those numbers down, and she would move them into
12 the spreadsheet.

13 Q. And is it your understanding that that would have occurred
14 beginning October 21st and continuing forward?

15 A. That is my understanding, yes.

16 Q. Okay. So the math that was performed was simply to get from
17 the number recorded from the machine at the end of the day on
18 October 21st to what it would have been at the end of the day
19 on October 18th.

20 A. Correct.

21 Q. Next up will be Exhibit 9, and as that's being pulled up --
22 and this is again another exhibit that's been stipulated to
23 by the parties. Do you know how many absentee ballots were
24 cast at the Shakopee early voting location prior to
25 October 18th, 2024?

1 A. I do just doing the subtraction. So there were 329 total.
2 We know that there were 87 cast prior to October 18th. That
3 does match up with our amount of envelopes that we have, and
4 applications as well.

5 Q. How many absentee ballots -- well, maybe I can ask a question
6 that will help this be more clear. Prior to October 18 -- so
7 through October 17 -- voters who arrived at Shakopee to cast
8 an absentee ballot were doing what you described as "envelope
9 balloting"; is that correct?

10 A. Correct.

11 Q. And then what about beginning on October 18 going forward?

12 A. They would have done the direct-balloting method right into
13 the tabulator.

14 Q. Okay. And how many envelope voting -- or how many voters for
15 Precinct 10 voted using the envelope method at Shakopee?

16 A. Prior to October 18th, there would have been 50.

17 Q. Okay.

18 A. We know that there were an additional 37 that voted through
19 Health Care Facility voting, which is also the envelope
20 process, but that was done later in the month.

21 Q. Let me ask you about Exhibit 9. Do you recognize this
22 document?

23 A. I do.

24 Q. What is this?

25 A. This is a -- could you scroll down just a little -- or I'm

1 sorry -- up. Apologies.

2 This is the report that we are able to obtain out
3 of the Statewide Voter Registration System -- which we
4 abbreviate to "SVRS" -- of the "Absentee Ballots By" -- it
5 says "Status And Location." So we can use all of these
6 methods that are listed in the description to bring them
7 down. If I were to run absentee ballots by current status
8 and location and not put any of the limiters on it or the
9 filters, I would get every location, including Scott County
10 absentee. But in this case, this would be only -- the
11 "Shakopee-M" would be Shakopee-Main, and in this case, that
12 would be Shakopee City Hall.

13 Q. And is this limited to the envelope voting method?

14 A. In this case, we have -- yes. We do not have the direct
15 balloting listed as the application delivery method, so those
16 would have been taken out.

17 Q. And if we wanted to know the precise number of individuals
18 who voted using the envelope method at Shakopee for
19 Precinct 10, would we -- could we determine that by going
20 through this exhibit? I'm not going to ask you to do it now,
21 but --

22 A. Yes, we could.

23 Q. How would one do that?

24 A. We could certainly add these up. I believe at the end of
25 this report as well -- it's multiple pages, but I believe at

1 the end of the report, it may give us a total. (Pause.) It
2 does not. So we would have to add these up and get that
3 total.

4 Q. And on each line of this, there's "Accepted" and then a date.
5 Do you see that?

6 A. I do.

7 Q. What does that reflect?

8 A. That reflects the date that it was actually accepted by the
9 Absentee Ballot Board into the Statewide Voter Registration
10 System.

11 Q. Okay. And you had testified previously about Health Care
12 Facility voting. Can you describe what Health Care Facility
13 voting is?

14 A. Sure. So there's a provision in law that allows for
15 facilities that meet certain qualifications -- and generally
16 it's those folks that aren't mobile, right, that aren't able
17 to come to an in-person or election-day location. So to
18 staff the two-party balanced election judges, or it could be
19 a mixture, go and create the election day sort of experience
20 for the voters at the health care facility. They do request
21 from the health care facility that those voters fill out
22 absentee applications in advance so that the clerk or the
23 staff can enter those into the system, prepare that
24 paperwork, including the ballot, and then bring it to the
25 health care facility for someone to vote.

1 Q. And is there a way, looking at this report, for you to
2 determine whether a ballot was cast through Health Care
3 Facility voting versus in-person envelope voting?

4 A. I can determine that, yes, because I can see that by the
5 date. So for example, on this page that we're looking at,
6 the first three say 10/7, 10/7, 10/17. That was during the
7 normal envelope voting process. The fourth one says
8 October 30th, and we know based on conversations and also the
9 spreadsheet that was provided by the City of Shakopee what
10 days they did Health Care Facility voting, and October 30th
11 was one of those days.

12 Q. Okay. And if we wanted to know how many individuals cast
13 ballots at Shakopee in person using the envelope voting
14 method, could we determine that using this report?

15 A. Only for Precinct 10, yes.

16 Q. Sorry. I meant to limit that to Precinct 10. Thank you for
17 that correction.

18 And we would do that by adding up the number of
19 entries that have dates on October 18th or earlier for when
20 their ballots were accepted?

21 A. We would, and also, during our investigation, we took the
22 envelopes that we received back and the applications and
23 matched them up with this report.

24 Q. Okay. I'll represent to you that I had counted the number of
25 entries with dates on October 18 and earlier, and I came up

1 with 47. Does that seem correct?

2 A. That seems right, yes.

3 Q. Okay. So -- but if we want to know for sure, anyone could
4 just go through and count the number of entries on the sheet.

5 A. Absolutely.

6 Q. Okay.

7 MR. ZOLL: We can take that exhibit down.

8 BY MR. ZOLL:

9 Q. So, if we assume my counting is correct -- which is not an
10 assumption that anyone should make -- but if we do, at this
11 point, we've narrowed down the source of the uncounted
12 ballots from Precinct 10 down to the 47 individuals who voted
13 in-person absentee ballots during envelope voting at the
14 Shakopee early voting location; correct?

15 A. Correct.

16 Q. Through your investigation, you ultimately narrowed this set
17 of 47 voters down to 20 individuals who cast the uncounted
18 ballots from Shakopee Precinct 10; is that correct?

19 A. We did.

20 Q. I'd like to explore how you were able to narrow from 47 down
21 to the 20 specific individuals who cast those ballots.

22 Let me start here: At some point in time, did the
23 City of Shakopee begin opening absentee ballot envelopes in
24 preparing them to be counted?

25 A. They did.

1 Q. Do you know when that occurred?

2 A. I do. They started at approximately 11:00 on October 17th.

3 Q. How do you know that?

4 A. We know that based on interviews through the election judges
5 and the staff, as well as using their time cards that we were
6 provided by the City of Shakopee.

7 Q. Can you describe generally how that process works for the
8 opening of the absentee ballots?

9 A. Sure. The Absentee Ballot Board or the opening team is
10 provided with the envelopes that need to be opened on a
11 precinct-by-precinct basis. You would not intermingle
12 Precinct 1 and Precinct 2, for example. One would open all
13 of Precinct 1, complete that, and then move on to Precinct 2.

14 We know based on our interviews that Ms. Gamble
15 provided the total of the envelopes that the Absentee Ballot
16 Board should have the morning of the opening process. And
17 also, based on our interviews of the election judges, we were
18 able to determine that they counted the envelopes that they
19 were provided in like an expandable folder that had been
20 locked in the absentee room. They were provided the folder
21 and the number. They counted the amount of envelopes to the
22 list that they were provided.

23 And then your opening process would be opening all
24 of the signature envelopes; pulling all of the secrecy
25 envelopes out, setting those to the side; and then opening

1 all of the secrecy envelopes, removing the ballots. And then
2 you have a total of signature envelopes, total of secrecy
3 envelopes, and a total of ballots.

4 And then the ballots are also examined, and they
5 get initialed by the Absentee Ballot Board to confirm that it
6 was the accurate precinct as well as that it wasn't something
7 that could not be run through the machine; for example, it
8 was torn or damaged in some way.

9 Q. Did Ms. Gamble describe to you the source of the number that
10 she provided to the Absentee Ballot Board for the number of
11 ballots and envelopes that they should be counting?

12 A. She did not, actually. We were told by one of the other
13 election judges step-by-step how everything was processed,
14 and he indicated to us that he was given that by Ms. Gamble.

15 Q. Did this individual indicate whether the numbers of envelopes
16 and ballots that were counted during the opening process
17 reconciled with the numbers provided by Ms. Gamble?

18 A. He did. He could only tell us for sure for the precincts
19 that he opened himself. He could not recall which precincts
20 he had opened from that long ago, but he did indicate that
21 all three of them that were opening at the time were having
22 conversations. As we talked about, there's human error,
23 right? You might misfile a Shakopee 10 envelope in with
24 Shakopee 1. So they were having conversations about
25 balancing throughout the day until their opening was

1 complete.

2 Q. Through the course of your investigation, do you have any
3 evidence to suggest that the numbers did not balance when
4 they completed that opening process on October 17th?

5 A. I do not.

6 Q. And based on your investigation, is it your understanding
7 that the Absentee Ballot Board counted the ballots
8 themselves?

9 A. Yes.

10 Q. Who is the individual that then you spoke with regarding the
11 process of opening those ballots?

12 A. A gentleman named Rocky -- and I apologize, I'm not sure --
13 Swearengin is the last name I believe? I'm not sure how to
14 pronounce that, but he was the gentleman that we spoke with.

15 Q. Okay. And he was an election judge with Shakopee?

16 A. Correct.

17 Q. Did the Shakopee Absentee Ballot Board accept any absentee
18 ballots on October 17th?

19 A. They did.

20 Q. Do you know how many?

21 A. I know -- I know how many from Precinct 10.

22 Q. Sorry --

23 A. Thank you.

24 Q. -- let me ask the question differently.

25 A. Sure.

1 Q. Do you know how many absentee ballots from Precinct 10 the
2 Shakopee Absentee Ballot Board accepted on October 17th?

3 A. I do. Seventeen.

4 Q. Were these included in the set of ballots that were opened
5 and prepared for counting by the City on October 17th?

6 A. Not from what we've been able to gather, no.

7 Q. And what's the basis for that conclusion?

8 A. We know, as I stated, based on the time frames for what
9 activities were done when. The Ballot Board convened about
10 10:00 a.m. At that time, there was just two members of the
11 Ballot Board, which is fine. One of the judges that was
12 participating in opening was coming in late that day. So
13 both Rocky and Latisha Porter did the Absentee Ballot Board
14 together first.

15 Those envelopes, once they were accepted by them,
16 were then brought back to the absentee ballot room and stored
17 in a locked box or a filing cabinet. And they began opening
18 about 11:00 with the three of them -- so the third Absentee
19 Ballot Board judge did come in about 11:00 -- those absentee
20 ballots, the 17. And then there were a subsequent three
21 people that also voted on the 17th that were not accepted
22 until the 18th. Those were not accepted in SVRS by the clerk
23 until approximately noon, and their opening process had
24 already begun about 11:00. We did ask specifically if they
25 had started any precincts and then anyone had come and

1 brought additional ballots later and said, "Oh, here's" --
2 "here's another batch," and we were told no. They only
3 opened what was already available to them as of about 11:00
4 on Thursday, the 17th.

5 Q. Okay.

6 MR. ZOLL: Can we take a look at Exhibit 3? And
7 once you're able to pull that up, we'll want to look
8 specifically at page 12.

9 BY MR. ZOLL:

10 Q. This is the absentee voting manual or the document that was
11 prepared by your staff. Are these the procedures for opening
12 the absentee ballots from the envelopes?

13 A. It is.

14 Q. Okay. And the first item, does that simply describe when
15 that process can start?

16 A. Yes.

17 Q. Let me look at item number two, which says, "Check recorded
18 absentee ballot return envelopes and verify the number with
19 SVRS accepted absentee ballot audit report."

20 Is it your understanding that that was done as part
21 of the opening process?

22 A. It is.

23 Q. And would that have been, to your understanding, performed by
24 Ms. Gamble?

25 A. Yes.

1 Q. That's where those numbers came from?

2 A. Yes.

3 Q. And item number three refers to separating the absentee
4 ballot return envelope and the secrecy envelope. Was that
5 performed do you know?

6 A. It was.

7 Q. How about item four of placing empty absentee ballot return
8 envelopes in a box? Is it your understanding that that was
9 performed?

10 A. Yes.

11 Q. And then item five is a number of sub-bullet points. I'd ask
12 you just to look through those, and my question is going to
13 be this: But for the final bullet point of "Store ballot
14 secrecy envelope," is it your understanding that each of
15 those bullet points in item number five were performed by the
16 team at Shakopee that was opening the absentee ballot
17 envelopes on October 17th?

18 A. It is, with the exception of the second bullet, "Board
19 members must initial ballots." From our investigation, it
20 sounds like the Ballot Board members were not the ones
21 initialing the ballots. It was a combination of Ballot Board
22 members and staff before they were run through a tabulator.

23 Q. Okay. Do you know whether the failure to initial a ballot by
24 an election official invalidates that vote in any way?

25 A. To my understanding, it does not. During the recount

1 process, we are specifically told if a ballot is not
2 initialed, that that is not a basis for challenge.

3 Q. And is it your understanding that the ballots that had been
4 opened and removed from the secrecy envelopes were securely
5 stored, as indicated in point number six?

6 A. Yes.

7 MR. ZOLL: We can take down Exhibit 3.

8 BY MR. ZOLL:

9 Q. You indicated that the 17 absentee ballots that were accepted
10 by the Shakopee Absentee Ballot Board at the beginning of the
11 day on October 17th were stored in a locked box and cabinet.
12 Am I correct in my recollection?

13 A. Yes.

14 Q. How do you know that?

15 A. Just based on the interviews that we performed. The Ballot
16 Board members that were part of the opening process indicated
17 that they did go to the cabinet, the filing cabinet, bring
18 the ballots to the City chambers, where they were opened, and
19 then returned them, as well as any time they did Ballot
20 Board, they took those envelopes and brought them to the
21 storage container themselves.

22 Q. Let me just ask you this: Do you have any reason to doubt
23 the trustworthiness of the individuals that you interviewed
24 as part of your investigation?

25 A. I do not.

1 Q. Do you question the reliability of the information that they
2 conveyed to you?

3 A. I do not.

4 Q. So after that ballot opening process was completed on
5 October 17, how many absentee ballots remained sealed in
6 their envelopes at the Shakopee early voting location?

7 A. To my recollection, I believe there were 99 in total. That
8 is what we've been able to determine based on the dates that
9 things were accepted and then opened on Friday, the 18th.

10 Q. All right. And then let me ask a narrower question: After
11 the ballot opening process or the envelope opening process on
12 October 17, how many absentee ballots for Precinct 10
13 remained sealed in their envelopes at the Shakopee early
14 voting location?

15 A. 20.

16 Q. What did -- I'll just ask it this way: What happened with
17 those 20 ballots, based on your investigation? Did they --
18 you had testified that the Absentee Ballot Board members
19 informed you that they had placed them in a locked cabinet
20 after they had accepted them. Can you walk us through the
21 life of those envelopes as you were able to reconstruct
22 through your investigation from that point forward?

23 A. Absolutely. It appears as though the morning of -- well,
24 let's back up. As you stated, those envelopes were placed
25 into the locked filing cabinet. They were stored overnight

1 until the morning of the 18th. The final accepting of the
2 absentee envelopes was done Friday morning, the 18th, at
3 approximately 9:30. And then those envelopes would have been
4 opened.

5 We have not been able to determine that any of the
6 Absentee Ballot Board was actually involved in that process.
7 It looks like the final accepting and opening was done by the
8 city clerk.

9 Q. And when you refer to the "final accepting" on October 18th
10 at approximately 9:30, do you know how many ballots were
11 accepted in that process?

12 A. I know for --

13 Q. For Precinct 10.

14 A. Precinct 10?

15 Q. Thank you.

16 A. There were three.

17 Q. Okay. One of these times I'm going to remember to add
18 "Precinct 10" to my question.

19 When -- I'm sorry if you said this: When the
20 remaining 20 envelopes were opened, do you know who performed
21 that action of opening those envelopes?

22 A. It appears as though that was done by Lori Hensen.

23 Q. What's the basis for that conclusion?

24 A. Some of that was based on she was the one to accept those
25 envelopes into SVRS, which, from what we were able to

1 determine, was the normal practice. The Absentee Ballot
2 Board would accept the envelope and she would mark them in
3 the Statewide Voter Registration System. But we also were
4 not able to determine based on our interviews that there was
5 anyone else involved in opening other than the three people
6 who opened on Thursday.

7 Q. Did you interview Lori Hensen as part of your investigation?

8 A. We did.

9 Q. Did she inform you as to whether or not she had opened those
10 envelopes?

11 A. She stated she had not; that she was doing another activity
12 at that time.

13 Q. Did you find that statement to be credible?

14 A. I did not.

15 Q. Why not?

16 A. In speaking with anyone involved in the elections process at
17 all, no one else had been involved in the opening of
18 envelopes except the three people, as I indicated, and
19 Ms. Hensen herself, and two of those three people did not
20 even work on Friday. So Friday afternoon is when
21 Mr. Swearengin came in at about noon, and those envelopes,
22 according to the timestamps in SVRS, were accepted much
23 earlier than that.

24 We also interviewed the rest of the City employees
25 that were involved in elections towards the beginning of our

1 process. They indicated they were not involved in accepting
2 or opening envelopes at any time during the process.

3 Q. Okay. Thank you.

4 You were asked a question as to whether it's your
5 best guess that the envelopes were thrown away. Do you
6 recall that question?

7 A. I do.

8 Q. Do you have any other explanation for what happened to the
9 secrecy envelopes?

10 A. I do not.

11 Q. You were also asked questions about the fact that there's no
12 incident log reflecting the 21-ballot discrepancy for
13 Shakopee. Is it surprising to you that you don't have an
14 incident log reflecting that?

15 A. I would say yes and no. We were -- we were the ones that
16 reported the error to Shakopee, and that is not the normal
17 part of the absentee -- or the absentee room or the election
18 day process at all. So I didn't record that on an incident
19 log.

20 I have seen an interrupt tape from our machines at
21 one point with what I've been told is Lori Hensen's
22 handwriting on it that does indicate that there were 309
23 ballots for Shakopee 10, not the 329, but there was no
24 indication on the tape of a minus-20 or anything like that.
25 There was an indication for a minus-1 for Shakopee 12A.

1 Q. Okay. And are you able to tell the date that that interrupt
2 tape was run?

3 A. I am not. Based on our interviews and the questioning that
4 we've done of folks, I believe it was actually run on
5 election day. That is when we determined that Lori was
6 actually balancing the absentee, was on election day.

7 MR. ZOLL: Can we just take a look at Exhibit 203?

8 THE COURT: And 203 has already been received.

9 MR. ZOLL: Thank you.

10 BY MR. ZOLL:

11 Q. Do you recognize this document?

12 A. I do.

13 Q. What is this?

14 A. This would be the interrupt tape that I was describing. I
15 did ask -- I was able to obtain this tape as well. I did ask
16 the city administrator if there was anything else attached,
17 and there was not. But this gives us -- every ballot is
18 assigned a ballot ID number. We started the County with
19 Belle Plaine Township at 4001 and go all the way through
20 4079. So -- and by the handwriting on this, you can see
21 Jackson 1, Jackson 2, Louisville, Louisville. The City of
22 Shakopee also performed absentee voting for those two
23 township voters. And then we would get into the Shakopee
24 precincts.

25 As we've talked about, some of these have a split,

1 so ballot ID number 4060, according to the tape, is Shakopee
2 Precinct 4, School District 181. 4061 is School District 720
3 but for the same precinct, and so on and so forth. And if
4 you get down to ballot ID number 4069, that would be -- I
5 apologize -- 4068, that would be Shakopee Precinct 10. I
6 would have anticipated that this should have said 329, but it
7 does, in fact, indicate 309.

8 Q. Okay. Thank you. Just a few more questions.

9 A. Sure.

10 Q. Is it your conclusion that the 20 uncounted ballots from
11 Precinct 10 were lost during the process of opening and
12 preparing for counting the absentee ballots that were
13 accepted on October 17 and 18?

14 A. It is.

15 Q. In the course of your investigation, have you identified any
16 other plausible explanation for when or how the 20 uncounted
17 ballots were lost?

18 A. I have not.

19 Q. Are you able to identify the 20 individuals who cast the
20 absentee ballots for Precinct 10 in Shakopee that were
21 accepted by the City of Shakopee on October 17 and 18?

22 A. I believe that we have, yes.

23 MR. ZOLL: Can we just pull up one more time
24 Exhibit 9?
25

1 BY MR. ZOLL:

2 Q. Are the individuals who cast the 20 absentee ballots for
3 Precinct 10 that were accepted by the City of Shakopee on
4 October 17 and 18 identified in this Exhibit 9 as "VOTER #1,"
5 "VOTER #2," and so on?

6 A. They would be, yes.

7 Q. Okay. And just to confirm, is it your conclusion that the
8 individuals identified as VOTER #1 through VOTER #20 on
9 Exhibit 9 are the individuals who cast the 20 uncounted
10 ballots from Shakopee Precinct 10?

11 A. Yes.

12 Q. Are you confident in that conclusion?

13 A. I am confident.

14 Q. Have you identified any other plausible explanation for the
15 source of the 20 uncounted ballots?

16 A. No.

17 Q. You were asked whether you're absolutely certain that the 20
18 voters identified by the County marked or cast those ballots.
19 Do you recall that question?

20 A. I do.

21 Q. Okay. Do you currently have any doubt that the 20 voters
22 identified by the County cast the uncounted ballots?

23 A. I don't have any doubt.

24 Q. Do you have -- and I'm sorry, it's going to be a repetitive
25 question: But do you have any doubt in that conclusion

1 that's based on reason or common sense?

2 A. No.

3 Q. Do you have any doubt in that conclusion that is not fanciful
4 or not capricious?

5 A. No.

6 Q. Is it fair to say that when you testified that you can't be
7 absolutely certain, that you were just acknowledging the mere
8 possibility of doubt?

9 A. Yes.

10 MR. ZOLL: I have no further questions, Your Honor.

11 THE COURT: All right. Thank you.

12 Mr. LeBeau?

13 Just to inform on timing, it would be my intent to
14 keep going until you are concluded.

15 MR. LeBEAU: Okay. Thank you.

16 REDIRECT EXAMINATION

17 BY MR. LeBEAU:

18 Q. Ms. Hanson, your conclusions that are reflected in your
19 affidavit and the letter from the County are informed by
20 information that you received from Ms. Hensen at Shakopee,
21 the City of Shakopee; correct?

22 A. Yes.

23 Q. And you earlier stated that you found her not to be credible;
24 is that correct?

25 A. It is.

1 Q. So the conclusions that you are making are based on
2 information received by somebody that you don't trust or you
3 don't find credible and potentially skewed by bad
4 information. Isn't that true?

5 MR. ZOLL: Objection, leading.

6 THE COURT: Sustained.

7 BY MR. LeBEAU:

8 Q. Is there reason to believe that the information that you
9 received is not credible?

10 A. It's possible the information we received from Ms. Hensen is
11 not credible, but she was not our sole source of information
12 as well.

13 Q. But she was the sole source of information concerning the
14 activities that she took when she was acting alone; correct?

15 A. Correct.

16 Q. And when she was acting alone, was that the time period where
17 the majority of the ballots in question were processed?

18 A. To my knowledge, yes.

19 Q. And I believe you stated earlier that Ms. Hensen --
20 Ms. Hensen is -- I forget the way you phrased it. But she
21 has not claimed responsibility for the missing ballots; is
22 that correct?

23 A. Correct.

24 Q. (Pause.)

25 MR. LeBEAU: Sorry, Your Honor. I'm just going

1 through some notes here.

2 THE COURT: That's fine. Take your time.

3 BY MR. LeBEAU:

4 Q. Earlier you were asked -- and we don't need to pull it back
5 up, but with regard to the handbook, that the only part of
6 it -- referring to number five -- that wasn't performed was
7 keeping the envelope and initialing the ballot. Do you
8 recall that conversation?

9 A. Yes.

10 Q. I can pull it up if you'd like.

11 A. No, that's okay. Thank you.

12 Q. But isn't it also true that part of what wasn't performed in
13 number five was actually separating the ballot from the
14 secrecy envelope?

15 A. That -- you're right; that would be correct.

16 Q. Kind of a big deal, right?

17 A. Yes.

18 Q. So your understanding of where this error occurred and how it
19 occurred is contingent upon the veracity -- partially
20 contingent upon the veracity of what Ms. Hensen told you;
21 correct?

22 MR. ZOLL: Objection, leading.

23 THE COURT: Sustained.

24 BY MR. LeBEAU:

25 Q. Did Ms. Hensen give you any indication of where the error in

1 the ballots came from?

2 A. No.

3 Q. What did she say with regard to -- or what did she indicate
4 with regard to her role in missing ballots?

5 A. She indicated that she did not participate in opening; that
6 it must have been the other city staff.

7 Q. And your conclusion was that she did?

8 A. I'm sorry?

9 Q. Was your conclusion that she did have a role in that?

10 A. Yes.

11 Q. Who was responsible -- you answered this earlier, so I just
12 want to get on to this other questioning, but who was
13 responsible for processing the -- in your investigation, the
14 ballots in question?

15 A. It appears --

16 MR. ZOLL: Objection, vague.

17 THE COURT: Sustained. Why don't you rephrase it.

18 MR. LeBEAU: Sure.

19 BY MR. LeBEAU:

20 Q. Who was responsible for processing the 20 ballots that appear
21 to have gone missing?

22 A. From the course of our investigation, it looks like it was
23 Ms. Hensen.

24 Q. And I think, based on your earlier testimony, you indicated
25 that -- was she acting with somebody else or was she alone?

1 A. We have not been able to determine that she was acting with
2 anyone else. We believe she was acting alone.

3 Q. And would that have included also -- the processing piece,
4 not just removing it from the secrecy ballot, but would that
5 have also involved uploading it into the SVRS system?

6 A. Yes.

7 Q. And so the information that we see in Exhibit -- (pause) -- I
8 believe the last exhibit that we looked at was 201? The
9 spreadsheet?

10 A. Uh-huh.

11 Q. The information contained on there indicating what day a
12 ballot was accepted, based on your investigation, who would
13 that have been entered by?

14 A. Ms. Hensen.

15 Q. In your experience, have you ever had ballot -- a ballot's
16 precinct mismarked?

17 A. Can you clarify what you mean by "mismarked"?

18 Q. You had indicated that on the ballot the precinct is marked
19 for what -- the precinct the ballot corresponds with?

20 A. Sure.

21 Q. Has that ever been mismarked?

22 A. No.

23 Q. Is that part of the printing that's done before you get it?

24 A. It is. It's part of the programming with our election
25 software, and then the printing itself.

1 Q. Is it true that an absentee ballot can be cured or changed
2 after it's cast, as long as it's done by election day?

3 A. If you mean like can it be retrieved by the voter, if they're
4 able to change their mind, yes, as long as it's done before
5 those envelopes are opened and cast through a tabulator. So
6 normal process would be -- we call that "clawing back a
7 ballot." Someone would be able to claw back their ballot
8 generally through the end of business on October 17th. After
9 that time, they are run into the tabulator, intermingled, so
10 at that point, someone would not be able to claw back their
11 ballot and revote.

12 Q. Are the number of ballots that are missing in this case
13 different -- or greater than the difference between the
14 candidates for House Race 54A?

15 A. Yes.

16 Q. In your time and experience as the Elections Director for
17 Scott County, have you ever experienced an error like this
18 before?

19 A. I have not.

20 Q. How would you characterize the scope of the error that is
21 currently being dealt with?

22 A. Very large. This is a -- it's a big deal.

23 Q. Do you believe that Ms. Hensen followed the procedures that
24 are laid out in your absentee ballot handbook?

25 A. I do not.

1 Q. What remaining steps do you have in the course of your
2 investigation?

3 A. We are waiting to retrieve any camera-footage data. We had a
4 digital forensic specialist from our sheriff's office obtain
5 the camera footage from the City of Shakopee. What they were
6 able to deliver for us was after the Absentee Ballot Board
7 opening them and the Ballot Boards concluded, so we were not
8 able to see any footage in the Council chambers of what had
9 occurred. But according to the specialist, there's a
10 possibility that there could be additional data stored that
11 the City wouldn't normally know how to get to.

12 There's a BCA program that can be utilized to be
13 able to extract some of that. We are going to go through
14 with that and continue with that investigation, but it is a
15 lot of data; like I said, I believe 27 terabytes of data.
16 And we will only be able to utilize -- and "we," I mean the
17 sheriff's office -- able to utilize the BCA program for just
18 a period of time. So not only will it have to extract all of
19 that data and store all of that data, but then of course
20 we'll have to look through it as well. To my understanding,
21 that likely won't be until sometime in January.

22 Q. I just want to go back to just the facts of the day in
23 question. You had indicated that you had spoken with the
24 other three election judges; correct? Absent from
25 Ms. Hensen.

1 A. We were able to speak to two out of the three Absentee Ballot
2 Board judges. One did not respond to our inquiry.

3 Q. So is it fair to say that those would be the -- the three
4 people that you spoke with are the three people that would
5 have the most knowledge about the missing ballots?

6 A. Yes.

7 Q. And how did you characterize the versions of the stories that
8 you've gotten from them?

9 A. I would say that they've lined up very well. They were able
10 to provide a lot of context that being sort of sitting
11 outside of the process that we didn't have between the two in
12 particular. We did also speak with folks that worked in the
13 absentee room that really weren't involved in opening. We
14 spoke with the additional city staff, the assistant city
15 administrator. Everybody was able to provide a little piece
16 of the puzzle. But yes, the Absentee Ballot Board, the two
17 in particular that we spoke with, provided the most context
18 for us.

19 Q. And did their -- did their version of what occurred line up
20 with what you learned from Ms. Hensen?

21 A. Not entirely. We honestly went into this thinking that these
22 envelopes probably disappeared from the afternoon of the 17th
23 when all of the opening occurred. But based on all the
24 interviews and the timelines, the time stamps of everything,
25 we don't believe that to be true. We believe that to be the

1 morning of the 18th. And no one was able to -- no one else
2 was involved in that process that we've been able to speak
3 with, so no one was able to confirm or deny what had happened
4 on the morning of the 18th.

5 Q. So there's others that may have information that would be
6 pertinent to this?

7 A. I don't know that there's anyone else we could speak with,
8 no. If Ms. Hensen is the one doing the activity and she was
9 alone, there's no one else that we could talk to that could
10 provide any framework around it.

11 Q. And you've concluded that whatever Ms. Hensen told you was
12 not credible; is that right?

13 A. There could be portions of what she told us that were not
14 credible. She told us the morning of the 18th that she was
15 preparing Health Care Facility ballots. Based on the time
16 stamps involved in the SVRS system, that doesn't appear to be
17 true. That was not done until much later. She was, however,
18 accepting the final ballots that were envelope-voted on the
19 17th.

20 Q. So is it possible that some of the information that she has
21 uploaded into the SVRS system or other processing that she
22 has done was not done in accordance with the absentee ballot
23 handbook?

24 A. It is possible.

25 Q. Is it possible that that information that you are relying on

1 in your investigation is clouded by what Ms. Hensen has told
2 you?

3 A. I don't know that I fully understand your question. I'm
4 sorry. Can you clarify for me?

5 Q. Sure. Are you -- does your investigation rely on information
6 that you've obtained from Ms. Hensen?

7 A. Honestly, no. I would say our information that we obtained
8 from everyone else involved in the process is how we've come
9 to our conclusion, not the information that she gave us.

10 Q. But is she the only one that would have firsthand knowledge
11 of what happened with the ballots in question?

12 A. Yes.

13 MR. LeBEAU: I think that's all I have, Your Honor.
14 Thank you.

15 THE COURT: All right.

16 Mr. Zoll, do you have any questions?

17 MR. ZOLL: Yes, but I -- as every lawyer says in
18 this circumstance, I think I can be brief.

19 THE COURT: All right.

20 RECROSS-EXAMINATION

21 BY MR. ZOLL:

22 Q. You were asked just now about information that Lori Hensen
23 would have input into the SVRS indicating the date that the
24 20 absentee ballots were accepted. Do you recall those
25 questions?

1 A. Yes.

2 Q. Looking at the absentee ballot applications associated with
3 those ballots, are you able to determine when those voters
4 would have cast those ballots?

5 A. Yes.

6 Q. And based upon your interviews, do you have an understanding
7 as to whether the Absentee Ballot Board would have accepted
8 those 20 ballots on October 17th?

9 A. To my understanding, there were 17 of the 20 that were
10 accepted on the 17th by the Absentee Ballot Board.

11 Q. Are you able to see in the SVRS system who updates the
12 information regarding the status of a ballot?

13 A. Yes.

14 Q. It's linked back to a user?

15 A. It is.

16 Q. Do you know who marked those 17 ballots as being accepted?

17 A. I do. It was Ms. Hensen.

18 Q. Okay. Okay. But looking at the absentee ballot applications
19 for those voters, you can determine the date that they voted;
20 correct?

21 A. Yes.

22 Q. And looking at the signature envelopes, you can see that they
23 were accepted; correct?

24 A. Correct.

25 Q. The only information Ms. Hensen would have put into the

1 system would be the date on which that acceptance occurred;
2 correct?

3 MR. LeBEAU: I'll object.

4 THE COURT: On what ground?

5 MR. LeBEAU: Leading.

6 THE COURT: It's recross, so overruled.

7 Go ahead.

8 A. Yes.

9 BY MR. ZOLL:

10 Q. Okay. You testified that -- strike that. I think I want to
11 ask the question a little bit differently.

12 You spoke with two out of the three members of the
13 Absentee Ballot Board for the City of Shakopee in the course
14 of your investigation; is that correct?

15 A. Yes.

16 Q. And specifically with respect to October 18th, were you able
17 to ascertain whether the two individuals you spoke with were
18 part of the process of opening the absentee ballots?

19 A. We were.

20 Q. And can you remind me how you were able to ascertain that?

21 A. Sure. Both through conversations with the two folks that we
22 had as well as their time cards that were provided by the
23 City of Shakopee and the time stamps in SVRS, we were able to
24 determine that they did, in fact, participate in the opening
25 process the afternoon of the 17th, but they did not on the

1 morning of the 18th.

2 Q. And with respect to the member of the Absentee Ballot Board
3 with whom you did not speak, were you able to ascertain
4 whether that individual was involved in the opening of
5 ballots on the morning of October 18th?

6 A. We were, and she did not work on the morning of the 18th.

7 Q. And how did you determine that that individual did not work
8 on the morning of October 18?

9 A. Based on the time cards provided by the City of Shakopee.

10 Q. Okay.

11 MR. ZOLL: No further questions.

12 THE COURT: All right.

13 Mr. LeBeau?

14 MR. LeBEAU: Thank you. Just very quickly.

15 FURTHER REDIRECT EXAMINATION

16 BY MR. LeBEAU:

17 Q. Thank you for your time this morning.

18 A. You're welcome.

19 Q. How many ballots are missing?

20 MR. ZOLL: Objection; this is beyond the scope of
21 recross.

22 THE COURT: Sustained.

23 BY MR. LeBEAU:

24 Q. Who processed the ballots that are missing?

25 A. It appears as though Lori Hensen did.

1 Q. And did she follow the procedures laid out in your handbook
2 for processing these ballots?

3 MR. ZOLL: Objection; once again, beyond the scope
4 of recross.

5 THE COURT: Sustained.

6 Well counsel, why don't you approach.

7 (Off-the-record bench discussion.)

8 BY MR. LeBEAU:

9 Q. Earlier -- sorry.

10 MR. LeBEAU: I'm good, Your Honor. Thank you.

11 THE COURT: All right. Thank you.

12 (The witness was excused.)

13 THE COURT: So, we are going to be in recess until
14 1:30. We'll reconvene at that time.

15 (Lunch recess.)

16 THE COURT: We'll go on the record.

17 The Court and the parties -- counsel -- have had
18 some discussions. I understand that the parties were able to
19 reach an agreement and a stipulation that eliminates the need
20 for some witness testimony. I've written the stipulation
21 down and read it in the presence of the parties for their
22 agreement to it, and I'll read it here then in open court.

23 And counsel, I will just ask if that's, in fact,
24 the stipulation. All right?

25 First, this type of election contest is a matter of

1 first impression.

2 Second, preservation of secrecy envelopes is the
3 best practice.

4 Third, there are more voters in a regular election
5 than in a special election.

6 Mr. LeBeau, is that the stipulation?

7 MR. LeBEAU: Yes, Your Honor.

8 THE COURT: Mr. Zoll?

9 MR. ZOLL: Yes, Your Honor.

10 THE COURT: All right. Thank you.

11 Mr. LeBeau, why don't you go ahead and call your
12 next witness.

13 MR. LeBEAU: Thank you, Your Honor. I would call
14 the Mayor of Shakopee, Matt Lehman.

15 THE COURT: All right.

16 Mr. Lehman, you can come up here to the witness
17 stand. Before you ascend the ramp, why don't you stop in the
18 well and I'll get you sworn in. You can come forward. Thank
19 you.

20 Sir, could you please raise your right hand?

21 (The oath was administered.)

22 THE WITNESS: Yes, I do.

23 THE COURT: Thank you. You may go ahead and have a
24 seat on the witness stand.

25 Let's go off the record for a second.

1 (Off-the-record discussion.)

2 THE COURT: You may proceed.

3 MR. LeBEAU: Thank you.

4 MATT LEHMAN,

5 having been first duly sworn, was examined and testified on his
6 oath as follows:

7 DIRECT EXAMINATION

8 BY MR. LeBEAU:

9 Q. Good afternoon, sir. Can you please identify yourself for
10 the record?

11 A. My name is Matt Lehman. I'm the Mayor of Shakopee.

12 Q. And where do you live?

13 A. In Shakopee. Do you want my address?

14 Q. Yes, please.

15 A. 815 East Eighth Avenue, Shakopee.

16 Q. And what's your occupation?

17 A. Currently I'm semi-retired. I did 40 years in the automotive
18 industry.

19 Q. And as we mentioned earlier, you are an elected official, and
20 what's your position?

21 A. I've been an elected City Council member since November of
22 2001, and I was elected Mayor in November of '22. '22. So
23 I've been a mayor two years now.

24 Q. And are you a member of the Scott County Canvassing Board?

25 A. I am.

1 Q. And how did you obtain that position?

2 A. Well, I didn't know that I was a part of it until I received
3 an email saying "You're a part of this," and I come to learn
4 that it's part of state statute who was to sit on the County
5 Canvassing Board. And it includes the mayor of the largest
6 city of the County -- that's my understanding -- a couple of
7 county commissioners, and the court administrator, I think it
8 is, and I'm not sure about the last one.

9 Q. And did you serve on the Scott County Canvassing Board during
10 this last election?

11 A. I did.

12 Q. And did the Canvassing Board certify the results of this
13 election?

14 A. They did.

15 Q. And how did you vote on that --

16 A. Well, it wasn't a vote; it was a signature on a document of
17 what was the results of the ballots that they had in hand.

18 Q. And would those results be reflected in what we have as
19 Exhibit 5, the second abstract of the election? I can show
20 it to you. It's the --

21 A. Yeah, I don't have that, so I don't know. I'm going to
22 assume if it's the same thing that came from Scott County
23 election administration, that that would be the correct
24 document.

25 MR. LeBEAU: Your Honor, Exhibit 5 is already taken

1 into --

2 THE COURT: It has been received.

3 BY MR. LeBEAU:

4 Q. Mr. Mayor, were you aware of the potential for missing
5 ballots while you were on the Canvassing Board?

6 A. Well, we met twice. We were aware at the first Canvassing
7 Board meeting that there was 329 sign-in voters and only 309
8 ballots, so we were aware of that.

9 Q. And who informed you of that discrepancy?

10 A. What is her name? Julie -- Hanson? Is that the election
11 administrator for Scott County?

12 Q. And so did you vote to approve -- I think you may have
13 mentioned this. I'm sorry. Did you vote to approve the
14 canvass results?

15 A. I did, and it wasn't a vote by hands; it was a signing of a
16 document. We were told that we were only to look at the
17 ballots that they had in hand, even though I raised the
18 question, "What about these other missing ballots?"

19 Q. And when you raised that question, what were you told?

20 A. We were to look at only the ballots that they had in hand,
21 physical ballots that they had in their possession.

22 Q. And were you informed as to whether the missing 20 ballots
23 were part of the results of the -- of the canvass -- the
24 final canvass results?

25 A. You know, I think we asked those questions, and I'm not

1 really clear on that. But I assume that if we're showing
2 precinct by precinct, that it would show Precinct 10, how
3 many people signed in to vote and how many ballots were
4 there. So I would assume that's in there, that we were
5 certifying that we knew that these were missing at that time.

6 Q. So do you believe the numbers in the canvass report to be
7 correct?

8 A. You know, I haven't looked deep enough to see if it shows the
9 missing ballots, but I think the ballots on hand are correct.

10 Q. And does the canvass report -- and I can show it to you. Are
11 you aware of whether that includes the missing 20 ballots?

12 A. I don't -- I'm not sure if it does or not.

13 Q. Let me --

14 A. I'm actually not sure on the policy, the election law on how
15 that's handled because, you know, there was disagreement
16 amongst legal people of if you're only going to count ballots
17 in hand, well, technically, they're not in hand because
18 they're missing. I don't have an answer for you on that one.

19 Q. And so what were you advised with regard to voting on the --
20 or approving the canvass results with regard to the question
21 that you raised about the missing 20 ballots?

22 A. Well --

23 MR. ZOLL: Objection, hearsay.

24 THE COURT: Sustained.

25 MR. LeBEAU: Oh, I'm sorry.

1 BY MR. LeBEAU:

2 Q. What was the impression that you received regarding the
3 missing 20 ballots and approving the canvass results?

4 A. We were only -- our role is only the ballots that they have
5 in hand.

6 Q. And let me pull up the canvass -- the -- Exhibit 5 and grab
7 that.

8 MR. LeBEAU: Your Honor, may I approach?

9 THE COURT: You may, and you don't need to ask
10 again. That's fine.

11 MR. LeBEAU: Thank you.

12 BY MR. LeBEAU:

13 Q. (Handing.) Mr. Mayor, showing you what is -- or can you
14 describe the document that I've shown you?

15 A. It looks like total number of votes per candidates and
16 write-ins for one precinct in Jackson Township, Precinct 1,
17 and Shakopee's 1 through 14 precincts, with a total for each
18 candidate, number of write-ins.

19 Q. And it was -- were you here for the earlier testimony today?

20 A. I was not.

21 Q. (Pause.) I'm trying to find what line exactly to direct you
22 to. Can you tell us what the results for Precinct 10 were in
23 the document in front of you?

24 A. Mr. Paul had -- I wish I had a slide scale here -- 534, I
25 believe, and Mr. Tabke had 731, with one write-in ballot.

1 Can I fold this document to make sure I'm accurate?

2 Q. Yeah, go right ahead.

3 A. (Pause.) That appears to be accurate.

4 Q. And is it your understanding that the 20 missing ballots are
5 not reflected?

6 A. My understanding is they're not, as we were only tasked with
7 the ballots that were in hand.

8 Q. Okay. And without that -- without those results in there,
9 what is your opinion as to the veracity of the canvass
10 report?

11 MR. ZOLL: Objection. Calls for an opinion from a
12 non-expert witness.

13 THE COURT: Sustained.

14 BY MR. LeBEAU:

15 Q. Mr. Mayor, with the acknowledgment that the 20 missing
16 ballots are not in the report, do you believe that it
17 accurately reflects the results of the election?

18 MR. ZOLL: Same objection.

19 THE WITNESS: No.

20 THE COURT: I'll overrule it.

21 You can answer the question, sir.

22 A. Can you repeat that again? Do I think that this is an
23 accurate reflection? I think there's 20 ballots that haven't
24 been counted. And at the second Canvassing Board meeting, I
25 asked the question again, and the election administrator,

1 Julie Hanson, said that -- that 329 and 309 shows up in a
2 separate system called -- the state system? I'm not sure
3 what she called it. It was an acronym.

4 BY MR. LeBEAU:

5 Q. SVRS, I believe.

6 A. That sounds about right.

7 MR. ZOLL: Your Honor, there was no question
8 pending that elicited this testimony, and I would ask that it
9 be stricken.

10 THE COURT: All right. That's granted.

11 Sir, if you could just listen to the questions
12 Counsel is asking and just respond to those, I would
13 appreciate that. Thank you.

14 THE WITNESS: Okay. All right. So I have a
15 question.

16 THE COURT: Well, hold on. Just -- let's -- the
17 questions sort of come from counsel and not from you, so
18 we'll let Mr. LeBeau, if he's got another question, and then
19 if he does, that's fine. And then if Mr. Zoll's got
20 questions, he'll turn to you. Okay?

21 THE WITNESS: Yes, ma'am.

22 MR. LeBEAU: I have no further questions, Your
23 Honor.

24 THE COURT: All right. Thank you. Go ahead and
25 have a seat.

1 Mr. Zoll, do you have questions?

2 MR. ZOLL: I do. Thank you.

3 CROSS-EXAMINATION

4 BY MR. ZOLL:

5 Q. Mayor Lehman, you did not yourself investigate the
6 circumstances surrounding the 20 ballots that were not
7 counted from Shakopee Precinct 10, did you?

8 A. I did not.

9 Q. You were not involved in the process of accepting or counting
10 absentee ballots from Shakopee during the early voting
11 process, were you?

12 A. Counting absentee ballots. I was not.

13 Q. As you sit here today, do you have any reason to doubt the
14 conclusions that have been drawn through Scott County's
15 investigation regarding the 20 uncounted ballots?

16 A. My understanding is the investigation is still ongoing, and
17 I'm not sure it's final. If it is, I'm not aware that it's
18 finalized yet.

19 Q. So let me ask the question again with the understanding
20 that -- well, are you familiar with the preliminary findings
21 that were issued by Scott County regarding the investigation?

22 A. Yes, I read that on the County's website.

23 Q. And as you sit here today, do you have any reason to doubt
24 the conclusions that were drawn in that document?

25 A. I don't think that conclusion is -- has a finding in it. It

1 says a lot about what they suspect happened, but there's
2 really no factual that I found. It's kinda best guess.

3 Q. Do you have any firsthand knowledge regarding the handling of
4 the 20 ballots that were not counted from Shakopee
5 Precinct 10?

6 A. I have no firsthand knowledge.

7 MR. ZOLL: Okay. I have no further questions.

8 THE COURT: All right. Thank you.

9 Mr. LeBeau?

10 MR. LeBEAU: I don't have any further questions,
11 Your Honor.

12 THE COURT: All right. Thank you.

13 Thank you, sir. You may step down.

14 THE WITNESS: Thank you, Your Honor. Do you want
15 this back?

16 THE COURT: Why don't you just leave it right on
17 the counter there. Thank you very much.

18 Mr. LeBeau, you can go ahead and call your next
19 witness.

20 MR. LeBEAU: Your Honor, I'm going to call our
21 first voter witness.

22 THE COURT: All right.

23 MR. LeBEAU: So I just want to take a minute to
24 make sure I'm following the proper procedure.

25 THE COURT: That's fine. Could you tell us which

1 voter number that is?

2 MR. LeBEAU: Yes. (Pause.) Your Honor, it's going
3 to be Voter Number 14.

4 THE COURT: All right. Why don't we have Voter
5 Number 14 come forward.

6 And Mr. LeBeau, you verified that Voter Number 14
7 is, in fact, the voter identified on the sealed spreadsheet
8 corresponding with that individual's name; is that correct?

9 MR. LeBEAU: Correct, Your Honor.

10 THE COURT: All right. Thank you.

11 Voter 14, could you please stop right there?

12 THE WITNESS: Sure.

13 THE COURT: Just raise your right hand.

14 (The oath was administered.)

15 THE WITNESS: I do.

16 THE COURT: Thank you. You may go to the witness
17 stand and have a seat.

18 We are not asking our voter witnesses to identify
19 themselves here in court; that's consistent with the order
20 that I issued yesterday. Voters will only be identified by
21 voter number.

22 Mr. LeBeau, you may proceed.

23 And for the media, we noted in the order that voter
24 witnesses are not to be on camera. They may be
25 audio-recorded; they may not be by camera.

1 MR. LeBEAU: Just one moment, Your Honor. I want
2 to make sure I have the right paperwork.

3 VOTER NUMBER 14,
4 having been first duly sworn, was examined and testified under
5 oath as follows:

6 DIRECT EXAMINATION

7 BY MR. LeBEAU:

8 Q. Voter 14, I'm going to share two documents with you, and I'd
9 ask that you please identify them. (Handing.) Do you need
10 your glasses?

11 A. Yeah.

12 MR. LeBEAU: Forgot his glasses.

13 (Woman approached with reading glasses.)

14 THE COURT: Thank you.

15 BY MR. LeBEAU:

16 Q. Voter 14, are these a copy of your absentee ballot envelope
17 and your absentee ballot application?

18 A. Yes, they are.

19 Q. And did you vote in the 2024 election?

20 A. Yes, I did.

21 Q. And do you recall what day you voted?

22 A. It was either the 16th or the 17th. I think it's the 17th.

23 Q. And I believe it would be indicated on the -- on the ballot.
24 I'm sorry, on the envelope.

25 A. (Pause.) I'm not sure -- okay, I see it now. The 15th.

1 Q. (Indicating.)

2 A. It was on the 15th.

3 Q. Okay. Thank you. And where did you vote?

4 A. City Hall. In Shakopee.

5 Q. Thank you. And why exactly did you vote on that particular
6 day?

7 A. I wanted to get my early voting in on that week, so I went in
8 that day.

9 Q. And did you cast a vote in the House District 54A race?

10 A. Correct.

11 Q. And for whom did you vote?

12 A. I voted for Aaron Paul.

13 Q. And sir, are you familiar with the facts of this case and why
14 we're here today?

15 A. Yes, I do.

16 Q. And how did you hear about it?

17 A. I had a phone call from Reid that I was amongst voters who
18 their ballots were not handled properly.

19 Q. Voter 14, I want to -- I want to ask: How do you feel about
20 knowing that your ballot may have gone missing?

21 A. I found it very unacceptable if that was what dealt my
22 ballot, that it never made it through.

23 Q. How long have you lived in Shakopee?

24 A. 27 years.

25 Q. And have you always resided in Precinct 10?

1 A. I believe it's always been that precinct.

2 Q. Is it that you've stayed in the same spot but the lines have
3 moved?

4 A. Correct.

5 Q. How has the area changed in the time that you've lived there?

6 MR. ZOLL: Objection. Relevance.

7 THE COURT: I'll sustain the objection.

8 BY MR. LeBEAU:

9 Q. Voter 14, can you describe to the Court your feelings with
10 having to testify as to how you voted?

11 A. I wish my voice would be heard about this incident, that it's
12 something that should not have happened. And I wish my
13 ballot would have made it through when I submitted it
14 properly.

15 MR. LeBEAU: I have no further questions, Your
16 Honor.

17 THE COURT: All right. Mr. LeBeau, just so the
18 record's clear, as far as the absentee envelope and ballot
19 application you were showing, what exhibit number was that?

20 MR. LeBEAU: I'm sorry. From the redacted --

21 THE COURT: Well, whatever you were showing, I just
22 want the record to reflect that.

23 MR. LeBEAU: Oh, sure. Confidential Exhibit 314.

24 THE COURT: All right.

25 I understand the confidential exhibits haven't yet

1 been offered or received into evidence; that they aren't
2 stipulated to.

3 MR. LeBEAU: I'm sorry, Your Honor.

4 BY MR. LeBEAU:

5 Q. (Handing.) Voter 14, can you re-identify what those
6 documents are?

7 A. One is the envelope signature that you submit, and the other
8 is the absentee ballot with my name and address and what
9 precinct.

10 Q. And are these true and accurate representations of the
11 documents that you filled out and submitted to the City for
12 the purposes of voting?

13 A. Yes, they are.

14 Q. Thank you.

15 MR. LeBEAU: I would move the admission of
16 Confidential Exhibit 314.

17 THE COURT: Any objection?

18 MR. ZOLL: Your Honor, it's not clear to me that
19 the witness was shown a version of the document that is
20 marked with the exhibit number. So I would like to have that
21 clarification, and I'm happy to provide a copy that's marked,
22 just so we can confirm the exhibit number.

23 THE COURT: That's fine.

24 Go ahead. Thank you.

25

1 BY MR. LeBEAU:

2 Q. (Handing.)

3 A. Okay, this is -- this is what I submitted.

4 Q. Okay. Thank you.

5 THE COURT: All right. Then as far as 314, is
6 that -- do you have any objection to that?

7 MR. ZOLL: No objection.

8 THE COURT: All right, 314 will be received, that
9 being the Sealed Exhibit 314.

10 MR. LeBEAU: No further questions.

11 THE COURT: All right.

12 Mr. Zoll, any questions?

13 MR. ZOLL: I have no questions for the witness,
14 Your Honor.

15 THE COURT: All right.

16 Sir, thank you for coming here today.

17 THE WITNESS: You're welcome.

18 (The witness was excused.)

19 THE COURT: Go ahead and call your next witness,
20 Mr. LeBeau.

21 MR. LeBEAU: Thank you, Your Honor. (Pause.)

22 Sorry for the delay. I'm just trying to get the
23 steps correct.

24 I would call Voter 15 to the stand.

25 THE COURT: All right, Voter 15?

1 Just pause for one moment, ma'am, in the well, if
2 you don't mind. You can come forward, but just -- if you
3 just pause there, I have something I want to briefly address.

4 Counsel, in general, I do sequester witnesses, and
5 I don't know if there are any other witnesses in the
6 courtroom. So it would be my preference that those
7 individuals are seated outside the courtroom. I had made a
8 wrong assumption about that, and I just wanted to clarify.
9 Thank you.

10 Okay. Could you raise your right hand?

11 (The oath was administered.)

12 THE WITNESS: Yes, I do.

13 THE COURT: Thank you. You may have a seat on the
14 witness stand.

15 MR. ZOLL: Your Honor, can we have a brief recess
16 to confer with you for a moment?

17 THE COURT: Sure.

18 (Off-the-record bench discussion.)

19 THE COURT: If there's anyone in the gallery who is
20 going to be called as a witness today, I understand counsel
21 may have only spoken with you by phone, and therefore, they
22 may not recognize you here in court. Please, at this time,
23 if you could seat yourself outside of the courtroom, the
24 Court would appreciate that.

25 And Mr. LeBeau, as far as the witness we now have

1 on the witness stand, Voter 15, you have confirmed that
2 Voter 15 is, in fact, the person identified as Voter 15 on
3 the sealed voter identification key?

4 MR. LeBEAU: Yes.

5 THE COURT: All right. Thank you.

6 You may proceed.

7 MR. LeBEAU: Thank you, Your Honor.

8 VOTER NUMBER 15,
9 having been first duly sworn, was examined and testified under
10 oath as follows:

11 DIRECT EXAMINATION

12 BY MR. LeBEAU:

13 Q. Voter 15, I'm showing you two documents. (Handing.) Could
14 you please identify them?

15 A. Yeah, this is a Minnesota absentee ballot.

16 Q. And what's the other document?

17 A. It's an envelope.

18 Q. And the first one you referenced is the ballot application;
19 is that correct?

20 A. Uh-huh.

21 Q. And is --

22 THE COURT: Hold on one second.

23 You need to answer "yes" or "no," ma'am.

24 THE WITNESS: Yes.

25

1 BY MR. LeBEAU:

2 Q. And this is an exhibit marked 315; is that correct?

3 A. Yes.

4 Q. Can you identify what these documents are? Or I'm sorry.

5 Are these a true and accurate representation of the documents
6 that you filled out as your absentee ballot application and
7 your absentee ballot signature envelope?

8 A. Yes.

9 MR. LeBEAU: Your Honor, I would move Confidential
10 Exhibit 315 into the record.

11 THE COURT: Any objection?

12 MR. ZOLL: No objection.

13 THE COURT: Sealed Exhibit 315 will be received.

14 MR. LeBEAU: Thank you.

15 THE COURT: Thank you.

16 BY MR. LeBEAU:

17 Q. Voter 15, did you vote in the 2024 election?

18 A. Yes, I did.

19 Q. And on what day did you vote?

20 A. I think it was the 17th.

21 Q. And where did you vote?

22 A. Right here in the -- I voted right here at the -- I can't
23 think of the name of it.

24 Q. The building we're in?

25 A. Yes, yes, yes. I'm sorry.

1 Q. No, that's just fine. And why did you vote on that
2 particular day?

3 A. There was really no particular reason. It was -- we wanted
4 to vote early, and we just decided -- just decided to go that
5 day.

6 Q. Did you vote in the House District 54 race?

7 A. Uh-huh.

8 Q. And --

9 THE COURT: I'll --

10 THE WITNESS: Yes.

11 THE COURT: Thank you.

12 BY MR. LeBEAU:

13 Q. And for whom did you vote?

14 A. Aaron Paul.

15 Q. And are you familiar with the facts of this case?

16 A. Yes.

17 Q. And how did you hear about it?

18 A. I heard about it through the news and -- and then you had
19 called us.

20 Q. And how does it make you feel to know your ballot may have
21 gone missing?

22 A. It upsets me a lot because it was a major election, and not
23 to have my voice heard as to who I want really upset me.

24 Q. And when you were voting at the City of Shakopee location,
25 can you describe the process that you went through to cast a

1 ballot?

2 A. We had to -- we had to sign an absentee form, and then we
3 were given an envelope to put that in and another envelope to
4 put both of those in. When we -- when we received those
5 forms, we walked to a voting booth, voted. We put our
6 vote -- our voting form in an envelope, we put that in
7 another envelope, and then we gave it to somebody or put it
8 in a box.

9 MR. LeBEAU: Thank you. That's all the questions I
10 have.

11 THE COURT: All right.

12 Mr. Zoll?

13 MR. ZOLL: Just one clarifying question.

14 THE COURT: Go ahead.

15 CROSS-EXAMINATION

16 BY MR. ZOLL:

17 Q. You were asked whether you voted in the election for House
18 District 54A. Just for clarification, when you responded to
19 that question, you were responding that you voted in the
20 election for House District 54A?

21 A. Uh-huh.

22 Q. Okay, not House District 54B?

23 A. Well, I guess I'm not really -- I'm not really sure.

24 Q. You would have voted for the House District in which Brad
25 Tabke and Aaron Paul were the candidates; is that correct?

1 A. Yes.

2 Q. Okay. I just wanted to make sure that was clear for the
3 record.

4 A. Yes.

5 MR. ZOLL: No further questions.

6 THE COURT: All right. Thank you.

7 You may step down. Thank you.

8 (The witness was excused.)

9 THE COURT: Mr. LeBeau, are the witness's exhibits,
10 though, still on the witness stand?

11 MR. LeBEAU: Oh.

12 THE COURT: Thank you.

13 You can go ahead and call your next witness.

14 MR. LeBEAU: Thank you, Your Honor.

15 Call Voter 17.

16 THE COURT: All right. Voter 17. And I assume
17 that person may be seated outside the courtroom?

18 MR. LeBEAU: Correct. May I go get them?

19 THE COURT: You may.

20 MR. LeBEAU: Thanks.

21 (Witness entered the courtroom.)

22 THE COURT: Voter 17, if you could come forward to
23 this area right almost by the ramp, then I can get you sworn
24 in. Thank you.

25 Could you please raise your right hand?

1 (The oath was administered.)

2 THE WITNESS: I do.

3 THE COURT: Thank you. You may lower your hand and
4 have a seat.

5 Mr. LeBeau, as far as Voter 17's identity, have you
6 confirmed that in fact Voter 17 is the person identified on
7 the sealed voter identification key?

8 MR. LeBEAU: Yes, Your Honor.

9 THE COURT: Thank you.

10 MR. LeBEAU: And I have a different copy. I have a
11 larger copy than what they have marked. Do you just want to
12 confirm they're the same?

13 MR. ZOLL: I prefer that he just identify it.

14 MR. LeBEAU: Okay.

15 VOTER NUMBER 17,
16 having been first duly sworn, was examined and testified under
17 oath as follows:

18 DIRECT EXAMINATION

19 BY MR. LeBEAU:

20 Q. (Handing.) Voter 17, can you identify the exhibits that I've
21 shown you?

22 A. The top one is the envelope, security envelope I believe, and
23 then the second one is the absentee ballot application, 2024.

24 THE COURT: Could you tell me what exhibit you're
25 looking at?

1 THE WITNESS: Oh, I'm sorry. Exhibit 317.

2 THE COURT: Thank you.

3 THE WITNESS: Yep.

4 BY MR. LeBEAU:

5 Q. Voter 17, are these a true and accurate copy of your absentee
6 ballot application and your absentee ballot envelope?

7 A. They appear to be those documents, yep.

8 MR. LeBEAU: Your Honor, I would move Confidential
9 Exhibit 317 into the record.

10 THE COURT: Any objection?

11 MR. ZOLL: No objection.

12 THE COURT: All right. 317 will be received.

13 BY MR. LeBEAU:

14 Q. Voter 17, did you vote in the 2024 election?

15 A. I did.

16 Q. On what day did you vote?

17 A. The 15th of October.

18 Q. And where did you vote?

19 A. Shakopee City Hall.

20 Q. And did you -- did you go by yourself or did you go in a
21 group?

22 A. No, my wife and I went.

23 Q. And why did you vote on that particular day?

24 A. We were going to be out of the country on election day.

25 Q. Are you familiar -- oh, did you vote in the House District

1 54A race?

2 A. Yes.

3 Q. And for whom did you vote?

4 A. Aaron Paul.

5 Q. Are you familiar with the facts of this case?

6 A. Briefly. Since we were out of the country, we weren't
7 following it that closely. I understand that there were a
8 number of ballots that were not counted, and mine happened to
9 be one of those ballots.

10 Q. How does it make you feel knowing that your ballot may not
11 have been counted?

12 A. Frankly, I feel like I've been robbed. It makes me question
13 the integrity of our voting system actually.

14 Q. How does it make you feel to have to testify today about how
15 you voted?

16 A. I mean, quite frankly, it shouldn't have to happen. With the
17 technology this country has, we should be able to get this
18 down ironclad, so --

19 Q. Do you have an opinion of what you think is a fair result of
20 your vote not being counted?

21 A. A fair result of my vote not being counted?

22 THE COURT: Counsel --

23 MR. ZOLL: Objection.

24 THE COURT: -- approach, please.

25 (Off-the-record bench discussion.)

1 MR. LeBEAU: I have no further questions, Your
2 Honor.

3 THE COURT: All right. Thank you, Mr. LeBeau.
4 Mr. Zoll?

5 MR. ZOLL: No questions.

6 THE COURT: All right. Thank you. You may step
7 down.

8 (The witness was excused.)

9 THE COURT: I'll just make a brief record of the
10 sidebar conference. I indicated that it was not relevant
11 what the voter felt was the appropriate remedy. That's a
12 question of law for the Court's determination in this case.

13 Do you have another witness, Mr. LeBeau?

14 MR. LeBEAU: I do, Your Honor, and actually, one of
15 the county commissioners is now available to appear by Zoom.

16 THE COURT: All right. We'll get that set up. It
17 might take us a moment, so we'll go off the record.

18 (Off-the-record discussion.)

19 THE COURT: We'll go back on the record.

20 Mr. LeBeau, could you just indicate again your
21 witness's name?

22 MR. LeBEAU: It's Commissioner Dave Beer.

23 THE COURT: All right.

24 Commissioner Beer, you've been called as a witness
25 in the case. Are you able to hear us?

1 THE WITNESS: I can hear you, yes.

2 THE COURT: All right. You're testifying here
3 remotely via Zoom. I'll have you raise your right hand. All
4 right. Thank you.

5 (The oath was administered.)

6 THE WITNESS: Yes, I do.

7 THE COURT: Thank you. You may lower your hand.
8 Can you please state and spell your full name?

9 THE WITNESS: David Beer. D-A-V-I-D, B-E-E-R.

10 THE COURT: All right. Thank you.

11 You may proceed, Mr. LeBeau.

12 MR. LeBEAU: Thank you, Your Honor.

13 DAVID BEER,
14 having been first duly sworn, was examined and testified on his
15 oath remotely, via Zoom, as follows:

16 DIRECT EXAMINATION

17 BY MR. LeBEAU:

18 Q. Mr. Beer, can you tell us where you live?

19 A. 4439 Coachman Lane, Prior Lake, Minnesota.

20 Q. And what's your occupation?

21 A. Landscape owner and also a county commissioner for the County
22 of Scott, District 4.

23 Q. And how long have you been a county commissioner?

24 A. I believe it's been eight years.

25 Q. And are you also a member of the Scott County Canvassing

1 Board?

2 A. I was this past election, yes.

3 Q. And did you vote to certify the results in the 2024 election?

4 A. I did sign off on the abstract, yes.

5 Q. And were you aware of potential discrepancies regarding the
6 number of ballots on that abstract?

7 A. On the abstract? I guess the clarification would be the
8 numbers on the actual abstract?

9 Q. Yes.

10 A. I was aware that the number on the abstract was the number of
11 votes tallied through the machines.

12 Q. Are you aware of the issue of missing ballots in the --

13 A. Well aware.

14 Q. And what is your -- what is your awareness of the missing
15 ballots?

16 A. That there is 20 or 20-plus-one ballots that did not make it
17 through the tabulator.

18 Q. And who informed you of that?

19 A. I believe initially it may have been our county administrator
20 or our elections official, one of those two, or both.

21 Q. So did you --

22 A. Well, it also could have been our county attorney. I mean,
23 any of those three parties.

24 Q. So did you vote to approve the canvass results?

25 A. I voted to approve the canvass results on the abstract that

1 had gone through the tabulation machine, yes.

2 Q. So not with the 20 ballots noted on the report?

3 A. Correct.

4 Q. And why was that?

5 A. Well, we were told through our county attorney that we were
6 simply acknowledging the number on the abstract of votes that
7 had been tallied, and if there was to be a contest, that
8 would be the point at which it would be triggered.

9 Q. So do you believe the canvass report without the missing
10 results to be accurate?

11 MR. ZOLL: Objection. Calls for an opinion.

12 THE COURT: Overruled.

13 You may answer the question, sir.

14 THE WITNESS: State the question again, please?

15 BY MR. LeBEAU:

16 Q. Sure. Do you believe that the canvass report with the
17 missing -- with the 20 missing ballots not included on the
18 report is an accurate -- is an accurate report?

19 A. I do not.

20 Q. Thank you.

21 MR. LeBEAU: That's all the questions I have.

22 THE COURT: All right.

23 Mr. Zoll?

24 MR. ZOLL: Yeah, a few questions.

25

CROSS-EXAMINATION

BY MR. ZOLL:

Q. Thank you, Commissioner Beer. In your testimony, you indicated that the Canvassing Board had approved the vote totals based on what had been run through the tabulation machine? Did I hear that correctly?

A. You did. Yes, that's correct.

Q. Did the Canvassing Board meet a second time and certify the results of the hand recount of the ballots for House District 54A?

A. We did meet a second time to canvass the same -- well, I guess it would be the second abstract of the votes that had been hand-recounted for that race.

Q. And did you sign that second abstract?

A. I did sign that second abstract.

Q. Did you conduct any independent investigation of the circumstances surrounding the 20 ballots that were not counted from Shakopee Precinct 10?

A. Myself, independently?

Q. Correct.

A. No, I did not.

MR. ZOLL: No further questions.

THE COURT: All right. Mr. LeBeau?

MR. LeBEAU: Thank you.

REDIRECT EXAMINATION

BY MR. LeBEAU:

Q. Commissioner Beer, did you -- was there discussion of the missing 20 ballots at the second canvass meeting?

A. Yes, there was.

Q. And what was your impression of that discussion?

A. Well, I think somebody had -- I don't remember who had mentioned it -- "Let's talk about the elephant in the room,"

to which I had mentioned, "It's the elephant and the room."

It was a fairly well-known fact at that point. And so it was a point of discussion, yes.

Q. And do you believe the second canvass approval to be accurate with the missing 20 ballots?

A. It does not include the missing 20 ballots, so it's only accurate for what was hand-recounted.

Q. Thank you.

MR. LeBEAU: No further questions, Your Honor.

THE COURT: All right. Anything else, Mr. Zoll?

MR. ZOLL: No, Your Honor.

THE COURT: All right.

Thank you, sir. You may depart the Zoom meeting.

THE WITNESS: Thank you for your patience in connecting. Thank you.

(The witness was excused.)

THE COURT: Mr. LeBeau, do you have another

1 witness?

2 MR. LeBEAU: Your Honor, may I have five minutes to
3 check on who I have out there?

4 THE COURT: Sure, that's fine.

5 MR. LeBEAU: And there was one other -- sorry --
6 Commissioner Wolf I don't believe will be available for some
7 time. I'd like to confer with Mr. Zoll, as I know he had a
8 witness that was coming as well.

9 THE COURT: All right. Sure. That's fine. We'll
10 just wait for five minutes. Thank you.

11 (A short recess was taken.)

12 THE COURT: Mr. LeBeau, did you have another
13 witness?

14 MR. LeBEAU: Thank you, Your Honor. Yes, I'd call
15 Voter 16.

16 THE COURT: All right. Voter 16, if you could come
17 forward near this ramp here and just stop, then I'll get you
18 sworn in. Okay?

19 Would you please raise your right hand?

20 (The oath was administered.)

21 THE WITNESS: I do.

22 THE COURT: Thank you.

23 And Mr. LeBeau, have you confirmed that Voter 16
24 is, in fact, the individual identified on the voter
25 identification key that's filed under seal?

1 MR. LeBEAU: I have.

2 THE COURT: Thank you. You may proceed.

3 MR. LeBEAU: Thank you. I'm going to confer with
4 opposing counsel.

5 (Off-the-record discussion.)

6 VOTER NUMBER 16,
7 having been first duly sworn, was examined and testified under
8 oath as follows:

9 DIRECT EXAMINATION

10 BY MR. LeBEAU:

11 Q. (Handing.) Voter 16, can you identify the documents that I
12 placed before you?

13 A. It's the voter envelope and the absentee ballot.

14 Q. And what is this exhibit marked?

15 A. 316.

16 Q. Thank you. And is this -- are these documents true and
17 accurate representations of the absentee ballot application
18 and absentee signature envelope that were yours and filled
19 out by you?

20 A. Yes.

21 MR. LeBEAU: Your Honor, I would move Exhibit --
22 Confidential Exhibit 316 into the record.

23 THE COURT: Mr. Zoll, any objection?

24 MR. ZOLL: No objection.

25 THE COURT: All right. Confidential or Sealed

1 Exhibit 316 will be received.

2 MR. LeBEAU: Thank you.

3 BY MR. LeBEAU:

4 Q. Voter 16, did you vote in the 2024 election?

5 A. Yes.

6 Q. And on what day did you vote?

7 A. October 15.

8 Q. And where did you vote?

9 A. At the Shakopee City hall.

10 THE COURT: Ma'am, could I -- could I ask you to
11 just come forward and just speak --

12 THE WITNESS: Sure. At the Shakopee City Hall.

13 THE COURT: Thank you.

14 BY MR. LeBEAU:

15 Q. And why did you vote on that particular day?

16 A. We were going to be out of town.

17 Q. And did you vote -- did you cast a vote in the House District
18 54A race?

19 A. Yes.

20 Q. And for whom did you vote?

21 A. Rand -- Aaron Paul. Sorry. Aaron Paul.

22 Q. Thank you.

23 MR. LeBEAU: No further questions.

24 THE COURT: Mr. Zoll?

25 MR. ZOLL: No questions.

1 THE COURT: All right. Thank you. You may step
2 down.

3 (The witness was excused.)

4 THE DEPUTY: Do you want her to keep that thing?

5 THE COURT: Oh, ma'am, why don't you --

6 THE WITNESS: Oh, I'm sorry.

7 THE COURT: Mr. LeBeau would take that exhibit.

8 Thank you. I appreciate that. Thank you.

9 MR. LeBEAU: Your Honor, for my final vote witness,
10 I would call Voter 10.

11 THE COURT: All right.

12 (Witness entered the courtroom.)

13 THE COURT: Voter 10, could you please come forward
14 just to this area by the ramp?

15 Thank you. And once you get there, if you could
16 just raise your right hand.

17 (The oath was administered.)

18 THE WITNESS: I do.

19 THE COURT: Thank you. You can have a seat.

20 And Mr. LeBeau, as to Voter 10, have you confirmed
21 that Voter 10 is, in fact, the individual identified as
22 Voter 10 on the voter identification key that's sealed?

23 MR. LeBEAU: Yes, Your Honor.

24 THE COURT: All right. Thank you.

25

1 VOTER NUMBER 10,
2 having been first duly sworn, was examined and testified under
3 oath as follows:

4 DIRECT EXAMINATION

5 BY MR. LeBEAU:

6 Q. Voter 10, I'm showing you a document that's been marked as
7 310. Can you please identify what those documents are?

8 A. Say that again?

9 Q. Can you please identify what those documents are?

10 A. It's your application that you fill out before you get the
11 ballot.

12 Q. And what's the other document?

13 A. It's the exterior of the envelope that you put your ballot
14 into.

15 Q. And are these true and correct representations of the
16 envelope and application that you filled out for this
17 election?

18 A. Yeah.

19 MR. LeBEAU: Your Honor, I would --

20 THE WITNESS: Yes.

21 MR. LeBEAU: Oh, thank you.

22 I would move Exhibit 310 into the record.

23 THE COURT: Any objection?

24 MR. ZOLL: No, Your Honor.

25 THE COURT: All right. So Sealed Exhibit 310 is

1 received.

2 And sir, if you could just speak up a little bit?

3 It's a little bit hard to hear you.

4 THE WITNESS: Okay.

5 THE COURT: Thank you.

6 BY MR. LeBEAU:

7 Q. Voter 10, did you vote in the 2024 election?

8 A. I did.

9 Q. And on what day did you vote?

10 A. The 16th -- 17 -- 16th.

11 Q. And where did you vote?

12 A. At the Shakopee City Hall.

13 Q. And why did you vote on that particular day?

14 A. I was going to be out of town on election day.

15 Q. And did you vote -- did you cast a vote in the House District
16 54A race?

17 A. I did.

18 Q. And for whom did you vote?

19 A. Aaron Paul.

20 MR. LeBEAU: No further questions, Your Honor.

21 THE COURT: All right.

22 Mr. Zoll?

23 MR. ZOLL: No questions.

24 THE COURT: All right. Thank you.

25 Thank you, sir. You may step down.

1 (The witness was excused.)

2 MR. LeBEAU: Your Honor, I'm waiting on
3 Commissioner Tom Wolf, who I believe is presently in the air.
4 So I know Mr. Zoll has a witness that had some time
5 constraints, so --

6 THE COURT: All right.

7 Mr. Zoll, is it all right with you if a witness is
8 called out of order?

9 MR. ZOLL: I'm happy to do that, Your Honor.

10 THE COURT: All right.

11 MR. ZOLL: May I go to the hall and grab the
12 witness?

13 THE COURT: You may.

14 MR. ZOLL: And we'll be calling Kay Gamble.

15 THE COURT: All right. Thank you.

16 (Witness entered the courtroom.)

17 THE COURT: Ms. Gamble, if you could just come
18 forward and pause here on the ramp, I'll get you sworn in.
19 Thank you.

20 Would you raise your right hand?

21 (The oath was administered.)

22 THE WITNESS: I do.

23 THE COURT: Thank you. You can have a seat on the
24 witness stand.

25 And once you're situated, if you could please state

1 and spell your full name.

2 THE WITNESS: Kay Gamble. K-A-Y, G-A-M-B-L-E.

3 THE COURT: All right. Thank you.

4 You may proceed.

5 MR. ZOLL: Thank you, Your Honor.

6 KAY GAMBLE,

7 having been first duly sworn, was examined and testified on her
8 oath as follows:

9 DIRECT EXAMINATION

10 BY MR. ZOLL:

11 Q. Thank you, Ms. Gamble. Did you receive a subpoena to testify
12 here today?

13 A. Yes, I did.

14 Q. Did you serve as an election judge in connection with the
15 2024 General Election?

16 A. Yes.

17 Q. Was that with the City of Shakopee?

18 A. Yes.

19 Q. Did you serve as an election judge for election day or for
20 early voting?

21 A. Just early voting.

22 Q. Okay. When you began working as an election judge with the
23 City of Shakopee, did you take an oath to carry out your
24 duties impartially and not in a manner that would benefit a
25 particular party or candidate?

1 A. Yes.

2 Q. Does that same commitment of impartiality apply to the
3 testimony you're providing here today?

4 A. Yes.

5 Q. Did you perform your duties as an election judge at a
6 particular location?

7 A. City Hall.

8 Q. The Shakopee City Hall?

9 A. City. (Nodding.)

10 Q. Can you describe generally as an election judge at Shakopee
11 City Hall what you did?

12 A. I assisted voters in the early person voting by getting them
13 their ballots, answering any questions.

14 Q. Did you serve on the City of Shakopee's Absentee Ballot
15 Board?

16 A. No.

17 Q. Were you one of the individuals who would accept absentee
18 ballots?

19 A. No.

20 Q. Were you one of the individuals who opened ballot envelopes?

21 A. No.

22 MR. ZOLL: I'll ask my colleague to pull up what
23 has been marked as Exhibit 202.

24 And Your Honor, if I may, I have a binder with
25 exhibits that might be helpful for the witness to have?

1 THE COURT: That's fine.

2 BY MR. ZOLL:

3 Q. I'm going to hand you -- there's tabs in here, and I'll just
4 ask you to turn to tab 202. (Handing.)

5 A. Okay.

6 Q. Do you have Exhibit 202 in front of you?

7 A. Yes.

8 Q. And do you recognize this document?

9 A. Yes.

10 Q. What is it?

11 A. It's an Excel spreadsheet for the townships for the direct
12 ballot applications, the machine counts, and then the
13 absentee -- what would be the envelopes, the AB envelope
14 count.

15 Q. Let me go back one step to the first page of Exhibit 202 --

16 A. Uh-huh.

17 Q. -- which might be one page further back than what you're
18 looking at right now.

19 A. Okay.

20 Q. What's on this first page of the exhibit?

21 A. An email that it looks like I sent to Lori. I sent her all
22 those on the last day with the spreadsheets I made for these.

23 Q. And is the email that you sent, is that towards the bottom
24 of --

25 A. Uh-huh.

1 Q. -- that page?

2 THE COURT: Could you answer "yes" or "no"?

3 THE WITNESS: Oh, yes.

4 BY MR. ZOLL:

5 Q. And I'll do my best to try not to interrupt your responses
6 and just ask if you could, for the benefit of the court
7 reporter, make sure I stop. You'll probably know what I want
8 to ask -- you can usually guess that -- but it's easier for
9 the court reporter if we do our best not to talk over each
10 other. I'm as guilty of that as anybody.

11 So, you mentioned this is an email you sent to
12 Lori. Who is Lori?

13 A. Lori is the city clerk of the City of Shakopee.

14 Q. And what's her last name?

15 A. Hanson.

16 Q. And did you send this --

17 A. Or Hensen. Sorry.

18 Q. Hensen?

19 A. Hensen.

20 Q. With two E's?

21 A. Yeah.

22 Q. Okay.

23 A. Yes.

24 Q. Did you send this email in connection with your work as an
25 election judge for the City of Shakopee?

1 A. Yes.

2 Q. And in the body of that email, it says that you're "attaching
3 the Excel spreadsheets I made for the daily counts of TWPs,
4 the DB machine counts, and the AB counts." Do you see that?

5 A. Yes.

6 Q. I'm going to ask you what each of those terms mean. What are
7 the daily counts of TWPs?

8 A. That's the townships.

9 Q. And why are townships relevant?

10 A. They were included in the AB -- in the early person voting
11 and people could vote -- well, if they were in those
12 townships, they could vote at City Hall.

13 Q. Okay. Okay. And what about the DB machine counts? What's
14 that?

15 A. That's direct balloting. That's when they -- people could
16 vote and put it in the machine.

17 Q. Okay. And it says "machine counts." What does that mean?

18 A. That would be -- the machine count was the number at the end
19 of the day that the machine had --

20 Q. Okay.

21 A. -- on it.

22 Q. And then you also referenced AB counts. What does that refer
23 to?

24 A. Those were the envelopes, the count each day of when
25 people -- when we did the envelopes before direct balloting.

1 Q. Were there two different forms of absentee voting that
2 occurred at the City of Shakopee?

3 A. Forms?

4 Q. Manners of casting their ballots. And maybe I'll just ask it
5 this way --

6 A. Oh.

7 Q. -- was there a period of time where voters were required to
8 place their ballots into envelopes?

9 A. Yes.

10 Q. And then was there a period of time where they would place
11 the ballots directly into machines?

12 A. Yes.

13 Q. Okay. Do you recall when that -- did those happen
14 sequentially? Like was it all envelopes and then all
15 directly into the machines?

16 A. Yeah, the 17th was the last day of envelopes, and then --
17 October 17th. October 18th was the start of direct
18 balloting.

19 Q. Okay. So now turning to the second page of Exhibit 202,
20 which would be the first page of the spreadsheet, is this a
21 document that you attached to your email?

22 A. Yes.

23 Q. And what is the -- focusing on the first page, what's
24 reflected there and what's the source of that information?

25 A. It's the count, the -- from 9/20 to 10/17 for the envelopes.

1 And then from 10/18 to 11/4 in yellow were the direct
2 balloting. And those were counts from the applications.

3 Q. Okay. And is that for everything that was occurring in
4 Shakopee City Hall, or was that for the townships?

5 A. That -- this particular one was just the townships.

6 Q. Okay. And this may be obvious, but sometimes I have to ask
7 obvious questions: How do you know that? Is that indicated
8 on the page somewhere?

9 A. Yes, at the top.

10 Q. Okay. What's reflected in the row at the bottom of this that
11 is "DB Totals"?

12 A. That was just for direct balloting. Those are the numbers
13 that were in yellow.

14 Q. And for overall totals?

15 A. The whole entire election.

16 Q. And did you add those up or is that something the spreadsheet
17 did?

18 A. Excel did, the spreadsheet did.

19 Q. Okay. Let's turn to the next page of the spreadsheet, and
20 can you tell me what's reflected here?

21 A. That's the Direct Balloting Applications and Machine Counts.

22 Q. Okay. And I think we can understand what the "Date" column
23 means.

24 A. Uh-huh.

25 Q. What is included in the "DB Apps" column?

1 A. That was the number of applications that we had that day.

2 They would count -- we would count the applications at the
3 end of the day.

4 Q. Do you know who counted those applications?

5 A. The election judges that were there at the end of the day.

6 Q. Okay. And was that information conveyed to you?

7 A. They were supposed to write it -- yeah, they were supposed to
8 write it down on a sheet of paper.

9 Q. And then would you take the information that they wrote down
10 and put it into the spreadsheet?

11 A. Uh-huh. Yes.

12 Q. Is that the source of the information?

13 A. Yes.

14 Q. Okay. And the next column that says "Machine," can you tell
15 me what's reflected in that column?

16 A. That was the number on the machine where people inserted
17 their ballots at the end of the day.

18 Q. Okay. And then there's a -- an "Agent" column. Do you know
19 what that reflects?

20 A. Those were agent deliveries. Agent is where somebody can
21 come in -- if somebody's at home and they're not capable of
22 coming in, they can be their agent. So they come in and they
23 get the forms; they bring them home. They fill them out;
24 they come in; and then we give them a ballot. They take the
25 ballot home; they fill it out and then they bring it back.

1 Q. Okay.

2 A. And that's the number that we have each of those days.

3 Q. And then how about the "HCF" column?

4 A. That's Health Care Facilities. And that would be the health
5 care facilities -- they sent applications out to the health
6 care facilities and they came back; we got their envelopes,
7 everything ready, and then they went over there and people
8 voted.

9 Q. Okay. Thanks.

10 A. Uh-huh.

11 Q. In the row for October 18 at the top of this, it says "276 DB
12 Apps."

13 A. Uh-huh.

14 Q. Do you see that?

15 A. Yes.

16 Q. And 1379 in the "Machine" column. Do --

17 A. Yes.

18 Q. -- you see that?

19 A. Yes.

20 Q. Why are there so many more ballots in the "Machine" column
21 than the "DB Apps"?

22 A. Because the "Machine" also reflects the absentee ballots --

23 Q. Okay.

24 A. -- envelopes.

25 Q. That makes sense. And do you know when approximately the

1 absentee envelope ballots would have been run through the
2 machine?

3 A. On the 18th.

4 Q. Okay. The information here for the machine count on
5 October 18, was that a number taken directly from the machine
6 total?

7 A. Unfortunately, they did not write the number down that night,
8 and so we -- so on Monday, I kind of did back-math to get
9 that.

10 Q. Can you describe the back-math that you did?

11 A. Well, the number on the 21st for the machine count, I minused
12 the DB apps from that, and then I minused the DB apps from
13 the 18th.

14 Q. Okay. So is it your understanding that the 1587 --

15 A. Uh-huh.

16 Q. -- for October 21st was a number that was taken from the
17 tabulator machine?

18 A. It was -- it was on that day because I was there at the end
19 of the day, and I wrote it down.

20 Q. Okay. So you know for sure that that's --

21 A. I know that number was correct, yes.

22 Q. And then there's 208 DB apps. Does that reflect the people
23 who voted that day?

24 A. Yes.

25 Q. And just to make sure I'm understanding, these would have

1 Q. been voters who went to the tabulator machine and fed their
2 ballots directly into it?

3 A. Yes.

4 Q. So to figure out what the machine total would have been at
5 the end of October 18, did you just subtract 208 from 1587?

6 A. Yes.

7 Q. And then going forward from October 22nd through
8 November 4th, do you have an understanding as to whether the
9 numbers reflected in the "Machine" column were numbers that
10 were taken directly from the machine?

11 A. Yes.

12 Q. You have that understanding, and is that, in fact, what you
13 believe happened?

14 A. Yes.

15 Q. Okay.

16 A. They -- yes.

17 Q. Did you update the information in the spreadsheet on an
18 ongoing basis, or did you create it after the fact?

19 A. The spreadsheets were created on the 26th.

20 Q. Okay.

21 A. They were on a sheet of paper. They were created on the
22 26th.

23 Q. And did you create that spreadsheet on the 26th?

24 A. Uh-huh.

25 Q. And --

1 THE COURT: Could you answer --

2 THE WITNESS: Yes.

3 THE COURT: Thank you.

4 BY MR. ZOLL:

5 Q. Did the information that you took from the written sheets,
6 was that accurately transcribed into the spreadsheet?

7 A. Yes.

8 Q. Okay. Let's take a look at the third page of the
9 spreadsheet. And can you just describe for the Court what's
10 reflected here?

11 A. This is the count each day of the envelopes, the absentee
12 ballot envelopes.

13 Q. And when you say the "absentee envelopes," would these be
14 envelopes that had been completed by voters who showed up to
15 vote at the Shakopee early voting location?

16 A. Yes, at the end of every day, we count the applications. We
17 remove the envelopes from the box, count those. They have to
18 match, and they did.

19 Q. Okay. And those are the numbers that are reflected here?

20 A. Yep. Yes.

21 Q. And do those numbers reflect all the ballots that were
22 received in envelopes at the Shakopee early voting location
23 on each of those days?

24 A. Yes.

25 Q. Did you do that on a precinct-by-precinct basis, or did you

1 do it as an overall total amount for ballots for the day?

2 A. Overall for the day.

3 Q. Okay. And did you say that the number of applications and
4 envelopes matched each day?

5 A. Yes.

6 Q. And they reflect the numbers that are on that chart?

7 A. Yes.

8 Q. The total number at the bottom of the third page, what is
9 that number?

10 A. 1124.

11 Q. And what does that reflect?

12 A. That reflects the total of AB envelopes that we had.

13 Q. And do you recall that there were 276 direct balloting
14 applications on October 18th?

15 A. Yes. I counted them.

16 Q. If we were to add together the 1124 reflected here with the
17 276 ballots from the 18th, what number would that give us?

18 A. It should have been 1400.

19 Q. And if all of the ballots had been run through the tabulator
20 machine, is that the number that you would have expected --

21 MR. ZOLL: And if we could just go back one page.

22 BY MR. ZOLL:

23 Q. Is that the number that you would have expected to see in the
24 "Machine" column for October 18th?

25 A. Yes.

1 Q. The number that is there is 1379?

2 A. Correct.

3 Q. And that's 21 ballots fewer; correct?

4 A. Correct.

5 Q. Okay. Did you notice that discrepancy at the time?

6 A. On Monday -- excuse me -- on Monday I did.

7 Q. Okay. What, if anything, did you do after noticing that?

8 A. I let them know that we were off on the numbers.

9 Q. When you say "them," to whom are you referring?

10 A. To Lori and Terri.

11 Q. Okay. Who's Terri?

12 A. Terri is -- I don't know her title. She works for Lori.

13 Q. Okay. Another City of Shakopee employee?

14 A. City of Shakopee employee.

15 Q. Okay. And did you say that direct balloting process began on
16 October 18th?

17 A. Yes.

18 Q. Do you recall whether the Shakopee Absentee Ballot Board met
19 on October 17th to accept absentee ballots?

20 A. Yes, they did.

21 Q. But you weren't a member of the Absentee Ballot Board?

22 A. No.

23 Q. Do you know whether the Absentee Ballot Board on October 17th
24 began the process of opening the absentee ballot envelopes?

25 A. Yes, they did.

1 Q. How do you know that?

2 A. I was told that they were.

3 Q. Do you know whether they took any steps to confirm that the
4 number of envelopes they were opening matched the number of
5 ballots that had been accepted by the City of Shakopee?

6 A. Yes. There was a sheet of paper. I gave them the numbers
7 off of the report from the Shakopee Voter Registration
8 System, SVRS, and those numbers, when they counted the
9 envelopes, should have matched those.

10 Q. Okay. And the numbers that you pulled from the SVRS system,
11 is it your understanding -- well, do you know if those
12 reflected ballots that had been designated as having been
13 accepted?

14 A. Just accepted.

15 Q. Okay.

16 A. Yeah.

17 Q. So you ran a report in the SVRS for absentee ballots that had
18 been accepted at the Shakopee early voting location. And do
19 you know through what date or time that report ran?

20 A. It would have -- the envelopes that they opened would have
21 been through the previous week; I think the 11th. Because
22 the 14th was a Monday, right? Fifteenth -- yeah, 14 -- 14,
23 15, 16, and 17 wouldn't have been on that report.

24 Q. When did you -- I think my questions might have been a little
25 unclear.

1 A. Okay.

2 Q. When did you run the report that you used to provide those
3 numbers?

4 A. The report was run I believe the morning -- it was either the
5 end of the day the 16th or the morning of the 17th. I can't
6 remember if Rocky had run the report Wednesday night. If
7 not, I always ran the report in the morning.

8 Q. Okay, so if any ballots were accepted after the point in time
9 where you ran that report, they wouldn't have been captured
10 by that; correct?

11 A. No, they would not have.

12 Q. Okay. How did you provide those numbers to the members of
13 the Absentee Ballot Board that were going through the process
14 of opening the envelopes?

15 A. On a bright yellow sheet of paper.

16 Q. Okay. Were your numbers -- did you get any feedback on the
17 accuracy of your numbers?

18 A. Well, when they counted Precinct 1, they told me that it was
19 off, and I was like -- I wasn't sure. I looked back, and the
20 number that was on the sheet was actually the ones that
21 included spoiled ballots, so I corrected that. And then they
22 came back and said that Precinct 1 was still off, and it was
23 because Jackson P-1s were filed in with the Shakopee P-1
24 envelopes. So I asked them to please check to make sure
25 there was no Jackson P-1s in there, and there was. Once they

1 pulled those, it matched.

2 Q. Okay. And from that point forward, did you receive any
3 indication that the numbers of ballots or envelopes that they
4 were counting were not consistent with the numbers that you
5 provided to them?

6 A. I got nothing after that.

7 Q. Okay. And when you provided that set of numbers -- again,
8 did you say that -- were those handwritten?

9 A. They were handwritten.

10 Q. Okay. And I think you mentioned Rocky. Who's Rocky?

11 A. He was another election judge.

12 Q. Do you happen to remember his last name?

13 A. No.

14 Q. Okay. The numbers that you provided, were those broken out
15 by individual precincts?

16 A. Yes.

17 Q. Do you have an understanding as to whether there were
18 absentee ballots that were accepted by the City of Shakopee
19 after -- well, after you ran your report on the morning of
20 the 17th?

21 A. Yeah, they -- they had a ballot board on the 17th that did
22 the 14, 15th, and 16th. They compared those and accepted
23 them, and then they were put into the system on the 17th as
24 being accepted.

25 Q. Did you input data into the SVRS system at all?

1 A. No.

2 Q. Okay. Do you know whether those ballots that were accepted
3 by the Absentee Ballot Board on the 17th or after that were
4 opened, the envelopes were opened and processed for counting?

5 A. I -- I don't recall that. I think they just opened up the
6 ones that were in the file cabinet.

7 Q. Okay. Let me ask you this: Did you work as an election
8 judge on October 18th?

9 A. Yes, I did.

10 Q. And what was your role on October 18th?

11 A. Just assisting voters in getting their ballot.

12 Q. And I understand it was happening at Shakopee City Hall.

13 A. Uh-huh.

14 Q. But was there a specific room where that was occurring?

15 A. Yes. There was a conference room when you walked in
16 (indicating) off to the right all the way down at the end.

17 Q. Okay. Did you notice anything else that was occurring in
18 that room when you arrived on October 18th?

19 A. Yes. Lori was in there accepting -- or going through the
20 ballots from the 17th, comparing -- you know, like a ballot
21 board would do, comparing the signatures and the envelope,
22 and then accepting them into the system.

23 Q. Was there anyone assisting her in that process?

24 A. No, there was not.

25 Q. Do you know whether Ms. Hensen was also opening the envelopes

1 in that process?

2 A. Yes, she was.

3 Q. How do you know that?

4 A. I did see her opening envelopes. I just -- that's all --

5 Q. You saw it with your own eyes.

6 A. Yeah.

7 Q. Okay. Sometimes my questions are obvious.

8 Did you say anything to Ms. Hensen when you
9 observed her activities on the morning of October 18th?

10 A. Well, I did ask her if she needs somebody else to be watching
11 because that's -- a ballot board, you need two people to do
12 that, usually one from each party. And she said she was fine
13 as long as she was in the room and there were the other two
14 of us in there.

15 Q. The "other two of us" would be yourself and whom?

16 A. And Mary.

17 Q. Is Mary another election judge?

18 A. Yes.

19 Q. Were you and Mary there to help voters cast ballots?

20 A. Yes.

21 Q. Did you or Mary assist Ms. Hensen in any way with her
22 handling of absentee ballots on October 18th?

23 A. No.

24 MR. ZOLL: I have no further questions, Your Honor.

25 THE COURT: All right. Thank you.

1 Mr. LeBeau?

2 MR. LeBEAU: (Pause.) If it's okay, Your Honor, I
3 just have notes in multiple places.

4 THE COURT: That's fine.

5 CROSS-EXAMINATION

6 BY MR. LeBEAU:

7 Q. Ms. Gamble, are you a politically designated election judge?

8 A. No, I am not.

9 Q. I want to talk about the back-math that you mentioned
10 earlier. The spreadsheets that you created, were these
11 documents that were given to you by Scott County?

12 A. No, I created these as an internal report just so that we
13 could see that we were keeping balanced and accountable. It
14 was just meant for us in there.

15 Q. And you had said that there was an underlying document that
16 informed the exhibit that was just on the screen. What was
17 that?

18 A. Oh, you mean the yellow sheet of paper?

19 Q. Yeah.

20 A. That was -- that was the yellow sheet of paper that I had
21 written down the precincts from the SVRS report that was run,
22 so when they counted the envelopes when they opened them,
23 they matched.

24 Q. In looking at the -- well, let's talk about the balancing
25 procedure. Did you follow the balancing procedure that's

1 outlined in the absentee handbook?

2 A. What do you mean by "balancing"?

3 MR. LeBEAU: If I might, Your Honor, I'd like to
4 pull up Exhibit 3.

5 BY MR. LeBEAU:

6 Q. Are you familiar with this document?

7 A. Yes.

8 Q. And the -- if I could direct you to the second tab. What
9 does the second tab outline?

10 A. A balancing?

11 Q. Is that the procedure that you followed in creating the
12 spreadsheet?

13 A. (Pause.) No, the spreadsheet was just made for our use to
14 match the numbers to the report, to make sure we were fine.

15 Q. But it wasn't balancing --

16 A. It balanced up until the transition between AB envelopes and
17 direct balloting.

18 Q. But not by using that procedure; is that correct?

19 A. Well, can I read it?

20 Q. Please.

21 A. (Pause.) I was not on the ballot board. This is completed
22 by the ballot board. I never did ballot-boarding.

23 Q. Okay. But that's not my question. That's not the procedure
24 that you followed in giving out those balance totals; is that
25 correct?

1 A. (Pause.) Again, I wasn't on the ballot board. This was a
2 report that we ran -- this was a report that we -- if this is
3 the same report, it's a report that we run -- we ran every
4 night.

5 Q. Okay.

6 A. And it was sent to Lori.

7 Q. So that was not the procedure that you would --

8 A. Well, no, the number that's written on my -- on my
9 spreadsheet is just the counting of the AB envelopes.

10 Q. So can you walk me through just the timeline again of how
11 this all occurred. So on the 17th is when you noticed that
12 the numbers don't match up; is that correct?

13 A. No. It was that Monday, the 21st.

14 Q. Okay. That you first noticed it on the 21st.

15 A. Well, I noticed it -- yeah, I noticed that the math wasn't
16 adding up, and when you ran the report to the report
17 showed -- it didn't match the number on the machine.

18 Q. So when was the last time you had a number that didn't match
19 up according to your chart?

20 A. The AB envelopes.

21 Q. And what day would that have been?

22 A. That would have been probably after running the report after
23 the 17 -- after -- it would have been running the report
24 Monday -- well, I don't even know if they ran a report. I
25 wasn't there at the end of every day, so I couldn't -- but it

1 would have been probably me coming in Friday morning and
2 counting the -- counting the absentee applications and then
3 running the report to see if we were at that number.

4 Q. So you weren't on the -- you were not on the Absentee Ballot
5 Board.

6 A. I was not on the Absentee Ballot Board.

7 Q. So what was your particular role with dealing with absentee
8 ballots?

9 A. My -- with absentee ballots, I -- a voter would come in and I
10 would find them on the system, get their envelopes and
11 everything ready, and explain how to vote and how to put it
12 in there. That's what my job was.

13 Q. So would it be very, like, front-of-the-house as opposed to
14 back-of-the-house actually moving the ballots around?

15 A. I was not moving ballots around.

16 Q. Okay. Just trying to understand --

17 A. Yeah.

18 Q. -- the different roles. There's a lot of different roles.

19 A. Okay.

20 Q. You said that you -- that the spreadsheet was created on the
21 26th.

22 A. That was after my -- because I was using just a Post-it note
23 for them to write numbers down just because it was just an
24 internal report; it had nothing to do with anything else.
25 And somebody criticize -- one of the other judges criticized

1 my Post-it note. So I thought okay, I already have a
2 Louisville one up there; I'll just put this in here so it
3 looks nice, you know.

4 Q. So this spreadsheet is a reflection of the Post-it notes
5 that --

6 A. Yeah.

7 Q. -- you had previously had.

8 A. Yeah.

9 Q. And do you have all the Post-it notes still?

10 A. No. Once I had it in there and I verified the numbers of the
11 report, I threw the Post-it notes away. There was no reason
12 to keep them.

13 Q. When you couldn't verify the numbers on the 17th, what did
14 you do with those?

15 MR. ZOLL: Objection; misstates the witness's
16 testimony.

17 THE COURT: Sustained.

18 BY MR. LeBEAU:

19 Q. Was there a time when you couldn't verify the -- you had
20 mentioned that there was a time that the numbers were off.
21 What day was that?

22 A. That would have been the 21st. That was -- because nobody
23 wrote the number down on the machine, and so we kind of
24 have -- I kind of have to back it, and that's -- and I didn't
25 do it 'til the end of the day because we had already had

1 voters and we were really busy. So I really couldn't take
2 the time.

3 And the machine, also they -- at the end of every
4 day, they were supposed to run the full tape on the machine.
5 When I went over there to confirm, it was zero. The tape
6 never -- never showed an amount.

7 Q. So the tape had never been run either?

8 A. No, the tape was run. The tape just never showed any numbers
9 the whole entire time --

10 Q. And why would that be?

11 A. I don't know. I asked and -- (shrugging).

12 Q. So just so I'm clear, the spreadsheet -- the spreadsheet that
13 was the exhibit, that was created on the 26th; right?

14 A. Right. Right.

15 Q. And that had numbers going all the way back to what day?

16 A. The -- numbers going all the way back to -- you want the AB
17 numbers? It went all the way back -- but the AB numbers had
18 started on the 20th. That's the first day of in-person
19 voting. So the -- what you're seeing, the AB count there,
20 that was -- that was the numbers.

21 Q. And so you noticed the error on the 21st.

22 A. I noticed the error on the 21st.

23 Q. And what was the corresponding day that the error occurred?

24 A. I'm assuming with the transition between envelopes and direct
25 balloting, which would have been the 18th when they started

1 putting them in the machine.

2 Q. And what's that assumption based on?

3 A. That we were balanced with AB envelopes before that time.

4 The 1124 balanced with the SVRS report.

5 Q. Let's talk about the 17th. You said that the Ballot Board
6 met to accept those ballots; correct?

7 A. To accept the ballots from the 14th, 15th, and 16th.

8 Q. And what goes into that process when they meet to accept
9 ballots?

10 A. They -- they were doing it in a chamber because it has to be
11 open to the public. And they were -- they would take the AB
12 application and the envelope, and they would (indicating)
13 compare the information, signature, name, making sure
14 everything matched. If it did, they accepted it, and then I
15 imagine it just, you know, went into a pile. And then Lori
16 would take those and accept them into the machine.

17 Q. And did you watch them go through that process on the 17th?

18 A. No, I did not; I was in the AB room. I just know the
19 process --

20 Q. So you --

21 A. -- with what they're supposed to do.

22 Q. Right. You assume that's what they did --

23 A. Well, I'm assuming, yeah.

24 Q. You had mentioned earlier that -- when asked about the
25 numbers that you provided, that after the 17th, you said, "I

1 got nothing after that" about the handwritten notes.

2 A. Well, when they -- when they were saying how Precinct 1 was
3 off, if it was off because they had spoiled -- the number had
4 spoiled ballots in it that had to be removed. And then the
5 Jackson P-1 was filed in with the Shakopee P-1s, the
6 envelopes, and I'm assuming they just saw "P-1" and put it in
7 the P-1 file. Once they did that. But after that, I did not
8 hear whether or not the numbers matched or didn't match. I
9 assume I would have been told if they didn't.

10 Q. On October 18th, you mentioned that you had personally
11 witnessed Lori was processing the absentee ballots?

12 A. She was doing what the ballot board would do, probably the
13 ones from the 17th.

14 Q. And what did you actually see her do?

15 A. Well, she was comparing the -- comparing the information, and
16 then she was accepting those into the machine.

17 Q. How do you know she was accepting them into the machine?

18 A. She was sitting down at the end, the very end, and
19 (indicating) -- that's what she was doing.

20 Q. And --

21 A. And she had a pile of them here (indicating) and she was
22 going through and then doing whatever she does on the
23 machine, and she was going through like that (indicating).

24 Q. But you didn't actually see the screen.

25 A. I didn't actually see the screen, no. But they would have

1 had to have been accepted for the report to come out.

2 Q. I think you mentioned this earlier, but I just want to be
3 clear: The -- you don't dispute that there's 21 -- the
4 numbers are off by 21; is that correct?

5 A. I don't dispute that, no.

6 Q. But your role in this was never in handling or separating the
7 ballot and secrecy envelope from the signature envelope --

8 A. Correct.

9 Q. -- correct? And who was that -- what group would have been
10 in charge of that process?

11 A. It was Rocky, Latisha, and Lori.

12 Q. And when -- who would have been in charge of that process on
13 the 17th and the 18th?

14 A. Lori.

15 Q. Exclusively?

16 A. Uh-huh.

17 THE COURT: You need to answer "yes" or "no."

18 THE WITNESS: Yes.

19 THE COURT: Thank you.

20 MR. LeBEAU: I don't have any further questions.

21 THE COURT: All right. Thank you.

22 Mr. Zoll?

23 REDIRECT EXAMINATION

24 BY MR. ZOLL:

25 Q. Just a couple clarifying questions for you, Ms. Gamble. Did

1 you compare the numbers that you included in the spreadsheet
2 you prepared against reports from the SVRS?

3 A. Yes.

4 Q. And did those numbers line up?

5 A. Yes.

6 Q. And I believe you mentioned the Absentee Ballot Board met on
7 the 17th to accept ballots from the 14th, 15th, 16th, and
8 17th. Do you know whether it included the 14th to the 17th?
9 Might it have been the 15th through the 17th?

10 A. It was only the 14th through the 16th because on the 17th we
11 were still -- voters were still coming in with envelopes.

12 Q. All right. Fair enough.

13 MR. ZOLL: No further questions.

14 THE COURT: All right. Thank you.

15 Mr. LeBeau?

16 RECROSS-EXAMINATION

17 BY MR. LeBEAU:

18 Q. So just on that last point: So the operative ballots that
19 were processed on the 17th and the 18th were from the 14th,
20 15th, and 16th?

21 A. So being accepted on the 17th. The Ballot Board met to do
22 the 14th, 15th, and 16th because they had met on the 14th and
23 done the week before. So they had the 14th, 15th, and 16th
24 to do. And then they -- I'm not sure if they filed them
25 away -- filed them and that's when they started opening

1 envelopes. On the 18th, the 17th would have had to have been
2 verified and accepted into the system.

3 MR. LeBEAU: Okay. Thank you very much.

4 THE COURT: Any other questions, Mr. Zoll?

5 MR. ZOLL: Can I have just one moment?

6 THE COURT: Sure.

7 MR. ZOLL: (Pause.) I don't have any further
8 questions.

9 THE COURT: All right. Thank you.

10 You may step down, ma'am.

11 THE WITNESS: Do I leave these here?

12 MR. ZOLL: Yes.

13 THE COURT: You can leave them on the witness
14 stand. That's fine.

15 (The witness was excused.)

16 MR. LeBEAU: May I recover those?

17 THE COURT: That's fine. Mr. LeBeau, do you have
18 another witness? Or is your witness who was in the air now
19 available?

20 MR. LeBEAU: Let me check.

21 MR. ZOLL: And Your Honor, if not, we do have one
22 additional witness available.

23 THE COURT: All right.

24 MR. LeBEAU: I would defer because he's still not
25 ready.

1 THE COURT: All right. That's fine.

2 Who is that, Mr. Zoll?

3 MR. ZOLL: Chelsea Petersen.

4 THE COURT: All right.

5 MR. ZOLL: And if I may go retrieve the witness?

6 THE COURT: That's fine. Thank you.

7 In general, we would take a mid-afternoon recess,
8 but we've had a number of breaks today and started a little
9 late, so my intent is just to continue going.

10 (Witness entered the courtroom.)

11 THE COURT: Ms. Petersen, if you could just come
12 forward to this ramp area, we'll get you sworn in. Thank
13 you.

14 Would you raise your right hand?

15 (The oath was administered.)

16 THE WITNESS: Yes.

17 THE COURT: Thank you. You can have a seat on the
18 witness stand.

19 And once you get there or situated, could you
20 please state and spell your full name.

21 THE WITNESS: Chelsea Petersen. C-H-E-L-S-E-A,
22 P-E-T-E-R-S-E-N.

23 THE COURT: All right. Thank you.

24 Mr. Zoll, when you're ready, you can proceed.

25 MR. ZOLL: Thank you, Your Honor.

1 CHELSEA PETERSEN,
2 having been first duly sworn, was examined and testified on her
3 oath as follows:

4 DIRECT EXAMINATION

5 BY MR. ZOLL:

6 Q. Thank you, Ms. Petersen. Where do you work?

7 A. The City of Shakopee.

8 Q. And what is your title?

9 A. Assistant City Administrator.

10 Q. In your role as Assistant City Administrator, did you become
11 aware of the fact that 20 ballots from Shakopee Precinct 10
12 had not been counted in the 2024 General Election?

13 A. Yes.

14 Q. How did you learn that fact?

15 A. Lori called me on -- it would have been Friday after the
16 election. I forget the date. She called me right around
17 1:00 to tell me that.

18 Q. Okay. And when you refer to "Lori," who are you referring
19 to?

20 A. Lori Hensen, the city clerk.

21 Q. Were you involved in any of the efforts to determine what
22 happened with the 20 ballots?

23 A. That afternoon I went back to City Hall and looked around in
24 that regard. Prior to that, no, I had no knowledge of it.
25 But yes, Friday afternoon we went back and we looked through

1 every area where any of our elections equipment had been.

2 Q. I'm going to call your attention to Exhibit 201, and I'll

3 bring you a binder that has a physical copy of it.

4 (Handing.) And you can just open that to tab 201.

5 And I'll just -- the first question will be are you
6 familiar with this document?

7 A. Yes.

8 Q. Is this an email that you sent to Lori Hensen and Bill
9 Reynolds on November 12th?

10 A. Yes.

11 Q. And the top email on November 12th, is that the most recent
12 email in a thread of emails?

13 A. Yes.

14 Q. And you testified as to who Lori Hensen is. Who's Bill
15 Reynolds?

16 A. He's the City Administrator.

17 Q. Okay, for the City of Shakopee?

18 A. Yes, correct.

19 Q. I'm going to call your attention to the last -- or excuse
20 me -- the second-to-the-last page of Exhibit 201. And in the
21 middle, you'll see an email from Bill Reynolds to you and
22 Lori Hensen sent at 2:42 p.m. on November 8th. Do you see
23 that?

24 A. A lot of pages in here. (Pause.) Yes.

25 Q. And is that forwarding another email that Mr. Reynolds had

1 sent to -- it looks like "Council Members"?

2 A. Yep, that was informing our City Council.

3 Q. So the Council Members, that would include the Shakopee City
4 Council?

5 A. Yeah.

6 Q. Okay. In the body of the email that goes on to the final
7 page of Exhibit 201, Mr. Reynolds says near the end: "It is
8 very important to note that every night after closure of
9 absentee balloting, our staff conducted a count of ballots
10 vs. registrations and those checked out every night."

11 Do you see that?

12 A. Uh-huh.

13 THE COURT: You need to answer "yes" or "no."

14 THE WITNESS: Yes. I'm sorry.

15 THE COURT: That's all right. Thank you.

16 BY MR. ZOLL:

17 Q. Did you discuss the subject matter of this email with
18 Mr. Reynolds before it was sent?

19 A. Yes. So, after Lori had called me to tell me that there
20 was a -- 20 missed ballots were missing, I was with Bill, and
21 so I informed him he needs -- he needed to inform Council.

22 Q. Do you know what the basis was for his statement that staff
23 conducted a count of ballots versus registrations every
24 night?

25 A. So while I was with Lori and searching through City Hall, I

1 was asking her a number of questions on how -- how they did
2 their daily procedures and what documents and/or counts might
3 exist. And I was told throughout the course of that that
4 yes, they did count the ballots every night and they tied
5 them out. That's my words, not necessarily hers. But they
6 did count them out, ballots versus registration, every night,
7 so that was the information I had, and that was the
8 information I provided to Bill.

9 Q. Okay. Turning back to the previous page of Exhibit 201, Lori
10 Hensen emails that she's attaching "the spreadsheet that my
11 election judge kept throughout the elections 46 days."

12 Do you see that?

13 A. Yep.

14 Q. Do you recall receiving that email and seeing the exhibit
15 that was -- or the attachment that was described there?

16 A. Yes.

17 Q. On the second page of Exhibit 201, there's an email from you
18 at 9:21 on November 12th. Do you see that?

19 A. Yes.

20 Q. What are you conveying in this email?

21 A. So I had gone through the spreadsheet and done math, so they
22 had one spreadsheet of the absentee ballots day by day, and
23 then they flipped it to a new sheet in the same spreadsheet
24 for the direct-balloting ballots. And so I totaled them up,
25 and I guess I referenced which sheets I was talking about in

1 here, and added them together and -- so there were 1124 from
2 the absentee ballots, and 276 is what was shown from the
3 first day of direct balloting when people actually came and
4 put their ballots to the tabulator. It should have been
5 1400, but the machine reading was 1379, which is 21 off of
6 where we should have been. There was a discrepancy of 21, I
7 guess.

8 Q. I'll have you turn to Exhibit 202 in the binder, and that
9 begins with an email. If I could just have you turn to the
10 second page of that exhibit. And my question for you: Is
11 this the spreadsheet that you were just describing?

12 A. Yes.

13 Q. Okay. And can you just point to where the numbers were that
14 you were just describing? So the -- the 276 and the 1379,
15 where is that seen?

16 A. So this is Lori's original spreadsheet, so I saved math on
17 mine, I guess. Okay. So the third page says "AB Count from
18 9/20 - 10/17." That's where the 1124 is, the total.

19 Q. Okay.

20 A. And then if you back up one page to "DB Applications and
21 Machine Counts," so there was 276 DB applications on that
22 10/18; that was the first day of direct balloting. So then I
23 took the 1124 from page 3 of the spreadsheet, added it to
24 276, and got 1400. But the machine was reading 1379
25 according to page 2 of the spreadsheet.

1 Q. Okay. Since you first became aware of the discrepancy of 21
2 ballots, have you learned of any information that causes you
3 to believe that ballots were intentionally destroyed?

4 A. Not that I learned, no.

5 MR. LeBEAU: Objection.

6 THE COURT: What's the objection?

7 MR. LeBEAU: Calls for speculation.

8 THE COURT: Overruled.

9 MR. ZOLL: I have no further questions.

10 THE COURT: All right. Mr. LeBeau?

11 CROSS-EXAMINATION

12 BY MR. LeBEAU:

13 Q. Ms. Petersen, can you refresh my collection -- my
14 recollection on what day you first became aware of the 21
15 missing ballots?

16 A. I would have to -- actually, it was the Friday after the
17 election. The date is escaping me, but these emails -- on
18 Friday, November 8th.

19 Q. So prior to that, you had no knowledge of any -- of any
20 concerns within your election staff?

21 A. No.

22 Q. And as the Deputy City Administrator -- do I have that title
23 right?

24 A. Assistant City Administrator, yeah.

25 Q. Are you in charge of City elections?

1 A. I am in charge of Lori Hensen, the city clerk. Elections
2 fall under her in a joint effort with the County.

3 Q. Are you familiar with the County's absentee ballot training?

4 A. I am aware that they offer it. I'm not aware of when -- I've
5 never sat through the training, no.

6 Q. You wouldn't be required to.

7 A. Right. Yeah.

8 Q. Do you know -- based on your knowledge, are you aware if Lori
9 Hensen or any of her staff would have engaged in training?

10 A. I believe Lori attended, and I believe we talked through that
11 with County election staff. Beyond that, I don't know. I
12 would think some of her staff may have, but I know we trained
13 our election judges in-house, which is why Lori attended
14 their training.

15 Q. Based on what you now know, do you believe that the training
16 procedures in the absentee ballot manual were followed?

17 A. I've not read the manual itself, but I believe that there
18 were procedures that were missed, yes. Whether they were
19 County or State, I'm not sure.

20 Q. I want to just talk about the email at the top of what is --
21 the exhibit you just looked at, which I think for us is
22 Exhibit 3, but it's the same thing in both instances. Where
23 it's referred to an estimate.

24 A. Uh-huh.

25 Q. Do you know what they mean when they refer to an estimate?

1 A. I -- I don't, frankly. I think it was -- so there's the SVRS
2 system where they log all the official reports and things
3 like that. I think it was called an estimate because we kept
4 an in-house spreadsheet, notes. That wasn't the official
5 documentation, so I think that's why they called it an
6 estimate.

7 Q. Did you personally witness or see how the absentee ballots
8 were being processed?

9 A. I was there for a short period of time. I had an intern with
10 me and we just kind of sat and watched for 15 or 20 minutes
11 maybe. And we did watch the election judges, you know, doing
12 their checks and balances, making sure the names and
13 signatures matched and things like that. But we left before
14 any envelopes were opened. It was just for informational
15 purposes.

16 Q. Did you -- did you observe that on October 17th?

17 A. I believe so. I have to look at the calendar to make sure,
18 but I believe so. The first day that they started processing
19 them, and that would have been the 17th, yeah.

20 Q. Did you observe it on October 18th?

21 A. No.

22 Q. And is Ms. Hensen currently employed by the City?

23 A. She is not.

24 MR. LeBEAU: I have no further questions.

25 THE COURT: All right. Thank you, Mr. LeBeau.

Mr. Zoll?

REDIRECT EXAMINATION

BY MR. ZOLL:

Q. You were just asked about a question that you posed in Exhibit 201 to Ms. Hensen of can you please define and/or better explain the "estimate" that Kay made. Do you recall that question?

A. Uh-huh.

THE COURT: Can you answer "yes" or "no"?

THE WITNESS: Yes.

THE COURT: Thank you.

THE WITNESS: I'm sorry.

THE COURT: That's all right.

BY MR. ZOLL:

Q. To your recollection, did Ms. Hensen ever respond to that email?

A. She did not in writing. After that, I had checked in with her a couple of times, said "How can I help?" You know, I was attempting to assist in the process. And no, she didn't respond in writing, and to the best of my recollection, it was just that they were unofficial records because the State keeps all the official records.

Q. If Kay had made an estimate, would Kay be the best person to explain that?

A. Yes.

1 MR. ZOLL: No further questions.

2 THE COURT: All right.

3 No other questions, Mr. LeBeau?

4 MR. LeBEAU: (Shaking head.)

5 THE COURT: All right. Thank you. You may step
6 down.

7 (The witness was excused.)

8 THE COURT: Mr. LeBeau?

9 MR. LeBEAU: Your Honor, I apologize. I have left
10 one final voter anxiously waiting in the hallway. So I would
11 like to call that individual at this time.

12 THE COURT: Seems like a --

13 MR. LeBEAU: And that will conclude all the voter
14 testimony.

15 THE COURT: All right. Thank you. And which voter
16 is that, what voter number?

17 MR. LeBEAU: One second. (Pause.) It would be
18 Voter Number 4.

19 THE COURT: Thank you.

20 (Witness entered the courtroom.)

21 THE COURT: Voter Number 4, why don't you come
22 forward to the area of the ramp, and once you get there, if
23 you could please raise your right hand and I'll get you
24 sworn. Thank you, sir.

25 (The oath was administered.)

1 THE WITNESS: Yes.

2 THE COURT: Thank you. You can have a seat on the
3 witness stand.

4 And then Mr. LeBeau, as to this voter, could you
5 please repeat the voter number?

6 MR. LeBEAU: Number 4.

7 THE COURT: As to Voter Number 4, have you verified
8 that Voter Number 4 is, in fact, the person who is identified
9 on the witness identification key that is filed under seal?

10 MR. LeBEAU: One second. I think I have the wrong
11 sheet of paper. (Pause.) Your Honor, if I could -- I just
12 want to confirm one more time because I know we're sensitive
13 about this and --

14 THE COURT: Sure, that's fine.

15 MR. LeBEAU: I believe I'm about 99.9 percent
16 correct.

17 THE COURT: We're off the record.

18 (Off-the-record discussion.)

19 THE COURT: And we will go back on the record.

20 MR. LeBEAU: Sorry. I apologize. I just wanted to
21 be absolutely certain.

22 THE COURT: All right. And so have you, in fact,
23 verified that Voter Number 4 is, in fact, the person who's
24 identified on the witness identification key as Voter
25 Number 4?

1 MR. LeBEAU: Yes, Your Honor.

2 THE COURT: All right. Thank you. Go ahead.

3 MR. LeBEAU: Thank you.

4 VOTER NUMBER 4,

5 having been first duly sworn, was examined and testified under
6 oath as follows:

7 DIRECT EXAMINATION

8 BY MR. LeBEAU:

9 Q. (Handing.) Sir, I'm showing you a document that's marked at
10 the top. It's I believe 304; is that correct?

11 A. Yes.

12 Q. Can you please identify that document?

13 THE COURT: Could you please slide closer to the
14 microphone, sir? I'm having a hard time hearing you. Thank
15 you.

16 A. This is the form to fill out when you come to register.

17 BY MR. LeBEAU:

18 Q. Is the first one titled "Signature Envelope"?

19 A. What's that?

20 Q. Is the first document titled "Signature Envelope"?

21 A. Yes.

22 Q. And is the second one titled "Minnesota Absentee Ballot"?

23 A. Yes.

24 Q. And are these signed by you?

25 A. Yes.

1 Q. Are these true and accurate representations of the signature
2 envelope and absentee ballot application that you filled out
3 for the 2024 election?

4 A. Yes.

5 MR. LeBEAU: Your Honor, I'd move that they be
6 admitted.

7 THE COURT: What exhibit is that?

8 MR. LeBEAU: Exhibit 304.

9 THE COURT: Any objection?

10 MR. ZOLL: No, Your Honor.

11 THE COURT: All right. Sealed Exhibit 304 is
12 received.

13 MR. LeBEAU: Thank you.

14 BY MR. LeBEAU:

15 Q. Sir, did you vote in the 2024 election?

16 A. Yes.

17 Q. And what day did you vote?

18 A. It was a Wednesday. Was it the 15th or 16th? (Pause.)
19 16th.

20 Q. And where did you vote?

21 A. City Hall.

22 Q. And why did you vote on that day?

23 A. I was going to be out of town on election day.

24 Q. And did you vote in the House District 54A race?

25 A. Yes.

1 Q. And for whom did you vote?

2 A. Mr. Paul.

3 MR. LeBEAU: Your Honor, I have no further
4 questions.

5 THE COURT: All right. Mr. Zoll?

6 MR. ZOLL: No questions.

7 THE COURT: All right. Thank you, sir. You may
8 step down.

9 (The witness was excused.)

10 THE COURT: Mr. LeBeau, do you have any other
11 witnesses?

12 MR. LeBEAU: No, Your Honor. My final witness is I
13 believe at this moment still in the air. And with opposing
14 counsel's indulgence as we moved some things around today,
15 I'll plan to call him tomorrow.

16 THE COURT: All right. Mr. Zoll, do you have any
17 other witnesses today?

18 MR. ZOLL: None that are presently available. We
19 do have witnesses available beginning tomorrow morning.

20 THE COURT: All right. That's fine. Then we'll
21 reconvene this matter at 9:00 tomorrow morning.

22 Counsel, I would just like to chat in chambers
23 about the plan for tomorrow and what witnesses you expect to
24 call. All right? Thank you.

25 (Proceedings concluded.)

REPORTER'S CERTIFICATE

I, MONICA R. MORIARTY, do hereby certify that I am an official court reporter for the First Judicial District, State of Minnesota; that as such reporter, I stenographically reported the proceedings held in the hearing of the afore-mentioned action; that I thereafter transcribed the proceedings by means of computer-aided transcription; and that the above and foregoing transcript, consisting of the preceding 203 pages, constitutes a full, true, and complete transcript of my stenographic notes of the hearing to the best of my ability.

Dated: December 23, 2024

/s/ Monica R. Moriarty

MONICA R. MORIARTY, RDR, CRR
Dakota County Judicial Center
1560 West Highway 55
Hastings, MN 55033
(651) 377-7960

[Section divider]

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF SCOTT

FIRST JUDICIAL DISTRICT

Aaron Paul,

COURT TRIAL
VOLUME II

Contestant,

v.

Court File No. 70-CV-24-17210

Brad Tabke,

Contestee.

The above-entitled matter came duly on for Court Trial before the Honorable TRACY L. PERZEL, one of the judges of the above-named Court, on the 17th day of December, 2024, at the Scott County Government Center, City of Shakopee, County of Scott, State of Minnesota.

A P P E A R A N C E S

FOR CONTESTANT AARON PAUL:

R. REID LeBEAU II, Attorney at Law
 CHALMERS, ADAMS, BACKER, and KAUFMAN
 525 Park Street, Suite 255
 St. Paul, MN 55103

FOR CONTESTEE BRAD TABKE:

DAVID J. ZOLL, Attorney at Law
 RACHEL A. KITZE COLLINS, Attorney at Law
 LOCKRIDGE GRINDAL NAUEN PLLP
 100 Washington Avenue South, Suite 2200
 Minneapolis, MN 55401

ALSO PRESENT: JEANNE ANDERSEN, Assistant Scott County Attorney

1 (Whereupon, the following proceedings were duly had
2 of record:)

3 THE COURT: We are back today for day two of the
4 court trial in the case of Aaron Paul, Contestant, vs. Brad
5 Tabke, Contestee, Scott County District Court File No.
6 70-CV-24-17210.

7 Counsel, would you please note your appearances.

8 MR. LeBEAU: Thank you, Your Honor. Reid LeBeau on
9 behalf of Contestant Aaron Paul.

10 MR. ZOLL: David Zoll on behalf of Contestee Brad
11 Tabke.

12 THE COURT: All right. Thank you. Good morning,
13 Mr. LeBeau, and good --

14 MR. ZOLL: And I don't want to lose my colleague.

15 MS. KITZE COLLINS: Rachel Kitze Collins on behalf
16 of Contestee Brad Tabke.

17 THE COURT: All right. Thank you. And good
18 morning, Mr. Zoll, and good morning, Ms. Kitze Collins.

19 Before we get started again, I will again do some
20 preliminary housekeeping matters. As I explained yesterday,
21 everyone in the courtroom is expected to present appropriate
22 courtroom behavior and follow the rules of decorum. If you
23 need to have a conversation with someone, unless you're
24 conferring at counsel table, please leave the courtroom to
25 have that conversation.

1 You must remain neutral in body language. You may
2 agree or disagree with something said in the courtroom, but
3 do not show it by your facial expressions, gestures, voice,
4 or other audible action.

5 Please turn off your cell phone completely. That's
6 more than simply silencing it and putting it in your
7 pocket -- put it in your pocket or bag, where it must remain
8 until you are outside this courtroom. There are to be no
9 cell phones out in the courtroom. And if for some reason,
10 you cannot follow these rules, I would ask that you leave the
11 courtroom at this time. As with any other court proceeding,
12 there is a deputy in the courtroom to assist in matters of
13 decorum, and a violation of the instructions will be
14 considered direct contempt.

15 My court reporter takes down all the proceedings.
16 The Court also takes notes; sometimes it does so on paper,
17 but most often by the computer, so you may hear from time to
18 time that tapping.

19 And as I said yesterday, sometimes we have to have
20 conferences at the bench. Those are to address logistical,
21 matters of law, and other things as needed. If I need to
22 make a record, we'll do that.

23 So, Mr. LeBeau or Mr. Zoll, was there anything we
24 needed to do further before we go back with the witnesses?

25 MR. LeBEAU: No, thank you, Your Honor.

1 THE COURT: All right.

2 MR. ZOLL: Nothing from me.

3 THE COURT: All right. As I understand it, there
4 is still one witness that Mr. LeBeau may choose to call today
5 depending upon timing, but that that witness is not available
6 now.

7 Is that correct?

8 MR. LeBEAU: That's correct.

9 THE COURT: And Mr. Zoll does have witnesses
10 available, so the parties are in agreement that we can go
11 forth with those witnesses.

12 Is that correct, Mr. Zoll -- or Mr. LeBeau?

13 MR. LeBEAU: That's correct, Your Honor.

14 THE COURT: All right. Thank you.

15 Mr. Zoll, go ahead and call your witness.

16 MR. ZOLL: Contestee calls Voter 9, who will be
17 appearing by Zoom.

18 THE COURT: All right. And at this point, it bears
19 repeating that there is to be no video recording of the
20 testimony of witnesses pursuant to the Court's prior order.

21 All right. Let's go off the record for a minute.

22 (Off-the-record discussion.)

23 THE COURT: We'll go back on the record.

24 Mr. Zoll, on behalf of the Contestee, has just
25 called --

1 Voter 9 you said, Mr. Zoll? Is that correct?

2 MR. ZOLL: That is correct.

3 THE COURT: All right. Voter 9, would you please
4 raise your right hand?

5 (The oath was administered.)

6 THE WITNESS: (Muted.)

7 THE COURT: We cannot hear you, so we need to work
8 with that issue. Why don't you lower your hand for just a
9 moment.

10 THE WITNESS: There. Now can you hear me?

11 THE COURT: Thank you. You can go ahead and raise
12 your hand again.

13 THE WITNESS: Okay.

14 THE COURT: I'm going to repeat the oath.

15 (The oath was administered.)

16 THE WITNESS: I do.

17 THE COURT: Thank you. You may lower your hand.

18 And Mr. Zoll, as to Voter 9, have you verified that
19 Voter 9 is, in fact, the individual identified as Voter 9 on
20 the voter identification key that is filed under seal with
21 the Court?

22 MR. ZOLL: Yes, I have, Your Honor.

23 THE COURT: All right. Thank you. You may
24 proceed.

25

1 VOTER NUMBER 9,
2 having been first duly sworn, was examined and testified under
3 oath remotely, via Zoom, as follows:

4 DIRECT EXAMINATION

5 BY MR. ZOLL:

6 Q. Voter 9, do you have a copy of Confidential Exhibit 309 with
7 you?

8 A. Yes, I do.

9 Q. And at the top of that document -- at the top of that
10 document, does it say "Confidential Exhibit 309"?

11 A. Yes.

12 Q. Do you recognize this document?

13 A. Yes, I do.

14 Q. What is it?

15 A. There are two sheets: one is the absentee ballot and
16 one is the -- what was printed on the outside of the yellow
17 envelope that my ballot went in to.

18 Q. Okay. And when you say "absentee ballot," do you mean the
19 form you completed --

20 A. Yes, the ballot that I completed.

21 THE COURT: And if you could, just wait until
22 Mr. Zoll is done asking his questions. My court reporter is
23 trying to report the proceedings in full, and if people talk
24 over each other, it's very hard to hear what the other person
25 is saying and for her to record that.

1 Mr. Zoll, why don't you ask your question again.

2 THE WITNESS: Okay.

3 BY MR. ZOLL:

4 Q. When you referred to the absentee ballot that you completed,
5 were you referring to the application that you completed to
6 receive the ballot?

7 A. Yes.

8 Q. Okay. Do these appear, the materials in Confidential Exhibit
9 309, appear to be true and correct copies of your absentee
10 ballot materials?

11 A. Yes.

12 MR. ZOLL: Your Honor, we would move for the
13 admission of Confidential Exhibit 309 under seal.

14 THE COURT: Any objection?

15 MR. LeBEAU: No, Your Honor.

16 THE COURT: All right. Thank you. 309 will be
17 received, and that is Sealed 309.

18 Mr. LeBeau, would you just mind pulling your
19 microphone down? It's just a little hard to hear you.

20 MR. LeBEAU: I'm sorry.

21 THE COURT: That's okay. Thank you.

22 BY MR. ZOLL:

23 Q. Did you vote in the most recent General Election?

24 A. Yes, I did.

25 Q. Where did you vote?

1 A. I voted at the Shakopee courthouse.

2 Q. Do you recall the day that you voted?

3 A. I voted on the Wednesday of MEA break. I had off from work.
4 16th of October.

5 Q. Okay. And the second page of Confidential 309 is an absentee
6 ballot application form. Did you fill that out?

7 A. Yes.

8 Q. Is that your name and your handwriting that appear on that
9 document?

10 A. Correct.

11 Q. Did you hand this completed form to an election official?

12 A. Yes, I did.

13 Q. What happened after you handed them this form?

14 A. They handed me the ballot, a white envelope, and a yellow
15 envelope, and instructed me to vote in the voting booth.

16 Q. Did you complete your ballot?

17 A. Yes, I did.

18 Q. Did you follow the instructions that were provided to you by
19 the election official?

20 A. Yes, I did.

21 Q. And when you had completed voting, did you place your ballot
22 in an envelope?

23 A. I placed my ballot in a white envelope, and then I placed
24 that white envelope into a yellow envelope.

25 Q. And then what did you do with those envelopes?

1 A. I put them in the box that I was instructed to.

2 Q. Okay. When you completed your ballot, did you vote in the
3 election for House District 54A between Brad Tabke and Aaron
4 Paul?

5 A. Yes, I did.

6 Q. Who did you vote for in that election?

7 A. Brad Tabke.

8 Q. Are you absolutely certain that you voted for Brad Tabke?

9 A. I'm positive.

10 MR. ZOLL: I have no further questions, Your Honor.

11 THE COURT: All right. Mr. LeBeau?

12 MR. LeBEAU: No questions, Your Honor.

13 THE COURT: All right. Thank you.

14 Voter 9, that concludes your testimony. You are
15 free to leave the Zoom proceeding, and the record should
16 reflect, as I've just said, that this voter was testifying by
17 Zoom.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: Thank you.

20 (The witness was excused.)

21 THE COURT: Mr. Zoll, go ahead and call your next
22 witness.

23 MR. ZOLL: (Pause.) Our next witness will be
24 Voter 5.

25 (Witness entered the courtroom.)

1 THE COURT: All right. Voter 5, if you could just
2 step forward down to this ramp area here and raise your right
3 hand.

4 (The oath was administered.)

5 THE WITNESS: Yes.

6 THE COURT: Thank you. You can have a seat on the
7 witness stand.

8 And Mr. Zoll, as to Voter 5, have you verified that
9 Voter 5 is, in fact, the person identified as Voter 5 on the
10 sealed witness identification key filed with the Court?

11 MR. ZOLL: Yes, I have, Your Honor.

12 THE COURT: All right. Thank you. You may
13 proceed.

14 MR. ZOLL: And may I approach the witness with a
15 copy of Confidential Exhibit 305?

16 THE COURT: You may.

17 VOTER NUMBER 5,
18 having been first duly sworn, was examined and testified under
19 oath as follows:

20 DIRECT EXAMINATION

21 BY MR. ZOLL:

22 Q. (Handing.) Good morning. Voter 5, do you have a copy of
23 Confidential Exhibit 305 in front of you?

24 A. Yes, I do.

25 Q. Does it indicate "Confidential Exhibit 305" at the top of

1 that document?

2 A. Yes, it does.

3 Q. Do you recognize this document?

4 A. Yes, I do.

5 Q. Can you describe what is on the first page of Confidential
6 Exhibit 305?

7 A. Yes. It shows the signature envelope with my name on it and
8 where I voted.

9 Q. And how about the second page of that document?

10 A. The second page is a copy of my absentee ballot.

11 Q. Do these appear to be true and correct copies of your
12 absentee ballot materials?

13 A. Yes.

14 Q. Did you vote in the most recent General Election in the State
15 of Minnesota?

16 A. Yes, I did.

17 Q. Where did you vote?

18 A. I voted at City Hall in Shakopee.

19 Q. Okay. Do you remember the date that you voted?

20 A. Yes. It was the 17th of October in 2024.

21 Q. Did you complete the form that appears as the second page of
22 Confidential Exhibit 305?

23 A. Yes, I did.

24 MR. ZOLL: And Your Honor, I believe I may have
25 skipped right over moving for the admission of Confidential

1 Exhibit 305 as a sealed exhibit.

2 THE COURT: Any objection?

3 MR. LeBEAU: No objection, Your Honor.

4 THE COURT: Sealed 305 will be received and filed
5 under seal.

6 BY MR. ZOLL:

7 Q. So I'm sorry: Did you say that you completed the form that
8 is on the second page?

9 A. Yes, that's my handwriting.

10 Q. Okay. After you completed that form, what did you do with
11 it?

12 A. I completed this form and I went to a ballot voting station.
13 I completed my ballot in all the elections presented to me,
14 sealed it in one envelope, sealed it in a second envelope,
15 and I placed it in a metal box with a slot on the top of the
16 box (indicating).

17 Q. Did you do that pursuant to instructions from the election
18 officials?

19 A. That's correct.

20 Q. When you completed your ballot, did you vote in the election
21 for House District 54A between Brad Tabke and Aaron Paul?

22 A. Yes, I did.

23 Q. Who did you vote for in that election?

24 A. I voted for Brad Tabke.

25 Q. Are you absolutely certain that you voted for Brad Tabke?

1 A. Absolutely certain. I have his yard sign at my house, and it
2 was presented throughout the election.

3 MR. ZOLL: I have no further questions for Voter 5.

4 THE COURT: All right. Mr. LeBeau?

5 MR. LeBEAU: No questions, Your Honor.

6 THE COURT: All right. Thank you.

7 Ma'am, you may step down.

8 THE WITNESS: Thank you.

9 (The witness was excused.)

10 MR. ZOLL: And Your Honor, for purposes of
11 sequestration, when witnesses have completed their testimony,
12 are they free to remain in the courtroom?

13 THE COURT: Provided those witnesses would not be
14 re-called, I'm fine with it.

15 MR. ZOLL: All right. Okay.

16 THE COURT: And Mr. LeBeau, is that acceptable to
17 you?

18 MR. LeBEAU: No objection, Your Honor.

19 THE COURT: Thank you.

20 MR. ZOLL: So you're welcome to remain in here.

21 THE COURT: Go ahead and call your next witness.

22 MR. ZOLL: Our next witness will be Voter 11.

23 THE COURT: All right.

24 (Witness entered the courtroom.)

25 THE COURT: Voter 11, please step forward to the

1 ramp area right here in front of this witness chair. Thank
2 you. And raise your right hand.

3 THE WITNESS: Okay.

4 (The oath was administered.)

5 THE WITNESS: Yes, I do.

6 THE COURT: Thank you. Please have a seat on the
7 witness stand.

8 And as to Voter 11, Mr. Zoll, have you verified
9 that Voter 11 is, in fact, the person identified on the voter
10 identification key that's filed under seal with the court?

11 MR. ZOLL: Yes, I have, Your Honor.

12 THE COURT: Okay. Thank you. You may proceed.

13 MR. ZOLL: May I provide the witness with a copy of
14 the exhibit?

15 THE COURT: You may, and you don't have to ask
16 again.

17 MR. ZOLL: Okay. Thank you.

18 VOTER NUMBER 11,
19 having been first duly sworn, was examined and testified under
20 oath as follows:

21 DIRECT EXAMINATION

22 BY MR. ZOLL:

23 Q. (Handing.) Voter 11, I just handed you a document, and can
24 you, for the record, identify, if it has an exhibit number at
25 the top, what that exhibit number is?

- 1 A. Yes, Exhibit -- Exhibit No. 311.
- 2 Q. Okay. Thank you. Do you recognize the first page of
- 3 Exhibit 311?
- 4 A. Yes, I do.
- 5 Q. What is that?
- 6 A. That is -- that is the first form I was given when I went to
- 7 vote.
- 8 Q. And if we look at the second page of 311, do you recognize
- 9 that document?
- 10 A. Yes, I do.
- 11 Q. And what was that?
- 12 A. That is the absentee ballot form.
- 13 Q. Is that the form you would have completed to receive your
- 14 ballot?
- 15 A. Yes.
- 16 Q. And then if we go back to the first page, does it say
- 17 "Signature Envelope" at the top of that document?
- 18 A. Yes.
- 19 Q. Does that refresh your memory as to what this document was?
- 20 A. Yes.
- 21 Q. And what would it have been?
- 22 A. Yeah, that was the envelope I slid my ballot into.
- 23 Q. Okay. Do these appear to be true and correct copies of your
- 24 absentee ballot materials?
- 25 A. Yes.

1 MR. ZOLL: Your Honor, we would move for the
2 admission of Confidential Exhibit 311 under seal.

3 THE COURT: Any objection, Mr. LeBeau?

4 MR. LeBEAU: No objection, Your Honor.

5 THE COURT: All right. 311 will be received; it's
6 filed under seal.

7 BY MR. ZOLL:

8 Q. Voter 11, if we turn our attention to the second page of this
9 exhibit, did you fill this form out?

10 A. Yes, I did.

11 Q. Is that your handwriting?

12 A. Yes.

13 Q. And your name appears on that document?

14 A. Yes.

15 Q. What did you do after you filled out that form?

16 A. After I filled out the form, I went in to -- back to vote,
17 and I had to -- I sealed my vote, the paper, and I slid it
18 into an envelope and another envelope before I cast it into
19 the metal box.

20 Q. And those steps that you described, were those steps or
21 instructions that were given to you by election officials?

22 A. Yes.

23 Q. And you said that you -- and correct me if I'm wrong -- did
24 you complete the ballot that was provided to you?

25 A. Yes, I did.

1 Q. When you voted -- or I'm sorry. Let me ask one more
2 question: Do you remember when you voted?

3 A. Yeah, I voted on the 17th of October.

4 Q. And where did you vote in the election?

5 A. At the Shakopee City Hall.

6 Q. Okay. When you completed your ballot, did you vote in the
7 election for House District 54A between Brad Tabke and Aaron
8 Paul?

9 A. Yes, I did.

10 Q. Who did you vote for in that election?

11 A. I voted for Brad Tabke.

12 Q. Are you absolutely certain that you voted for Brad Tabke?

13 A. Yes.

14 MR. ZOLL: I have no further questions, Your Honor.

15 THE COURT: Mr. LeBeau?

16 MR. LeBEAU: I do have a Cross.

17 THE COURT: All right. Thank you. You may step
18 forward.

19 MR. LeBEAU: Thank you.

20 CROSS-EXAMINATION

21 BY MR. LeBEAU:

22 Q. Voter 11, when you went to vote on October 17th, did you go
23 to the polling location with anyone?

24 A. Yeah, I went there alone.

25 Q. I'm sorry?

1 A. I was there alone.

2 Q. You were there alone? Did you travel to the polling location
3 with anybody?

4 A. No.

5 Q. Okay. Thank you.

6 MR. LeBEAU: No further questions.

7 THE COURT: All right. Thank you.

8 Any other questions, Mr. Zoll?

9 MR. ZOLL: No, Your Honor.

10 THE COURT: All right. Thank you, sir. You may
11 step down.

12 (The witness was excused.)

13 THE COURT: Mr. Zoll, did you want to retrieve that
14 exhibit?

15 MR. ZOLL: Oh, yes. Thank you.

16 Thank you, Your Honor.

17 THE COURT: All right. Why don't you go ahead and
18 call your next witness.

19 MR. ZOLL: Our next witness will be Voter 18.

20 THE COURT: All right.

21 (Witness entered the courtroom.)

22 THE COURT: Voter 18, you can just come up to the
23 ramp right here. And if you could pause, I'll have you raise
24 your right hand. Thank you.

25 (The oath was administered.)

1 THE WITNESS: I swear.

2 THE COURT: Thank you. You may have a seat on the
3 witness stand.

4 Mr. Zoll, as to Voter 18, have you verified that
5 Voter 18 is, in fact, the person identified on the voter
6 identification key that is filed under seal with the Court?

7 MR. ZOLL: Yes, I have, Your Honor.

8 THE COURT: All right. Thank you. You may
9 proceed.

10 MR. ZOLL: Can I double-confirm one question to
11 make sure --

12 THE COURT: Sure. We'll go off the record.

13 (Off-the-record discussion.)

14 THE COURT: We'll go back on the record.

15 VOTER NUMBER 18,
16 having been first duly sworn, was examined and testified under
17 oath as follows:

18 DIRECT EXAMINATION

19 BY MR. ZOLL:

20 Q. (Handing.) Voter 18, I handed you a document that has a
21 label at the top and confidential exhibit number. Can you,
22 just for the record, identify what that is, what number it
23 is?

24 A. It says "Confidential Exhibit 318."

25 Q. Okay. Thank you. Do you recognize the first page of

1 Confidential Exhibit 318?

2 A. Yes.

3 Q. And what is that?

4 A. It's a signature envelope.

5 Q. Is this a signature envelope that you would have used in
6 voting?

7 A. Yes.

8 Q. And how about the second page of Exhibit 318? Do you
9 recognize this document?

10 A. Yes.

11 Q. And what is it?

12 A. It is a form I filled out before I voted.

13 Q. Okay. Is this your handwriting and your name on that
14 document?

15 A. Yes, it is.

16 Q. Okay.

17 MR. ZOLL: Your Honor, we would move for the
18 admission under seal of Confidential Exhibit 318.

19 THE COURT: Any objection, Mr. LeBeau?

20 MR. LeBEAU: No objection, Your Honor.

21 THE COURT: All right. 318 will be received. It
22 is filed under seal.

23 BY MR. ZOLL:

24 Q. Voter 18, did you vote in the most recent General Election in
25 Minnesota?

1 A. Yes, I did.

2 Q. Where did you vote?

3 A. At the Shakopee City Hall.

4 Q. Do you recall the day that you voted?

5 A. October 15th.

6 Q. The second page of Exhibit 318, you testified that you filled
7 this out. What did you do with this after you completed the
8 form?

9 A. I walked into the room and handed it to the gentleman that
10 verified my name on the voters list.

11 Q. And then what happened?

12 A. He took it and explained the process of voting and the ballot
13 system and what to do with it.

14 Q. Were you given a ballot?

15 A. Yes.

16 Q. Were you given anything else with the ballot?

17 A. Two envelopes.

18 Q. Okay. Did you complete your ballot?

19 A. Yes, I did.

20 Q. What did you do after completing your ballot?

21 A. I placed the ballot in -- in the first smaller envelope and
22 put it in the other envelope and sealed it.

23 Q. Did you take those actions pursuant to instructions that were
24 given to you by the election officials?

25 A. Yes.

1 Q. Okay. When you completed your ballot, did you vote in the
2 election for House District 54A between Brad Tabke and Aaron
3 Paul?

4 A. Yes, I did.

5 Q. Who did you vote for in that election?

6 A. Brad.

7 Q. Full name, please?

8 A. Brad Tabke.

9 Q. Thank you. And are you absolutely certain that you voted for
10 Brad Tabke?

11 A. Yes, I am.

12 MR. ZOLL: I have no additional questions, Your
13 Honor.

14 THE COURT: Mr. LeBeau?

15 MR. LeBEAU: No questions, Your Honor.

16 THE COURT: All right. Thank you. You may step
17 down.

18 (The witness was excused.)

19 MR. ZOLL: And I'll take the copy -- here, I'll
20 take that back. Thank you.

21 THE COURT: You may call your next witness,
22 Mr. Zoll.

23 MR. ZOLL: Contestee calls Voter 20.

24 (Witness entered the courtroom.)

25 THE COURT: Voter 20, if you could please just come

1 down to this ramp area, I'll have you raise your right hand.

2 THE WITNESS: Okay.

3 (The oath was administered.)

4 THE WITNESS: Yes, I do.

5 THE COURT: Thank you. You may have a seat on the
6 witness stand.

7 Mr. Zoll, as to Voter 20, have you verified that
8 this person is, in fact, the person identified as Voter 20 on
9 the voter identification key that is filed with the Court
10 under seal?

11 MR. ZOLL: Yes, I have, Your Honor.

12 THE COURT: All right. Thank you. You may
13 proceed.

14 VOTER NUMBER 20,
15 having been first duly sworn, was examined and testified under
16 oath as follows:

17 DIRECT EXAMINATION

18 BY MR. ZOLL:

19 Q. (Handing.) Voter 20, I have handed you a document. At the
20 top of it, it has an exhibit name. Just for the record,
21 could you read that exhibit name?

22 A. Confidential Exhibit 320.

23 Q. And do you recognize the first page of Confidential Exhibit
24 320?

25 A. Yes. Yes, I do.

1 Q. What is that?

2 A. It's my voter envelope.

3 Q. And the second page of Confidential Exhibit 320, do you
4 recognize that?

5 A. Yes, it's my ballot.

6 Q. Your ballot or was this the form you completed to obtain a
7 ballot?

8 A. Yes, it's mine.

9 Q. There's no offices or ovals on this; right?

10 A. Correct.

11 Q. Is this your name in handwriting that appears on the second
12 page of Confidential Exhibit 320?

13 A. Yes, it is.

14 Q. And does your name also appear on the first page of
15 Confidential Exhibit 320?

16 A. Yep, that's my name and address.

17 Q. Okay. Do these appear to be true and correct copies of your
18 absentee ballot materials?

19 A. Yes, they are.

20 MR. ZOLL: Your Honor, we move for the admission of
21 Confidential Exhibit 320 under seal.

22 THE COURT: Any objection?

23 MR. LeBEAU: No objection, Your Honor.

24 THE COURT: 320 will be received. It will be filed
25 under seal.

1 BY MR. ZOLL:

2 Q. Voter 20, did you vote in the most recent General Election in
3 Minnesota?

4 A. Yes, I did.

5 Q. Where did you vote?

6 A. The City Hall.

7 Q. Shakopee City Hall?

8 A. Shakopee City Hall on Gorman.

9 Q. And do you recall the day that you voted?

10 A. October 15th.

11 Q. You indicated that you had completed the form that is the
12 second page of Confidential Exhibit 320. What happened after
13 you completed this form?

14 A. I handed it to the person and I got my ballot.

15 Q. Did you receive anything else when you received your ballot?

16 A. Envelopes?

17 Q. Okay. And what did you do after you received your ballot and
18 the envelopes?

19 A. I went to the booth; I filled it out. Once I was done, I put
20 it in the white envelope, and then there was another envelope
21 that I put it in, which was a brown one, I believe.

22 Q. Okay. And what did you do after placing your ballot into
23 those envelopes?

24 A. Then I put it in the square ballot box I was requested to put
25 it in.

1 Q. And all those steps you described, were those actions you
2 took pursuant to instructions from the election officials?

3 A. Yes. Yes.

4 Q. When you completed your ballot, did you vote in the election
5 for House District 54A between Brad Tabke and Aaron Paul?

6 A. Yes, I did.

7 Q. Who did you vote for in that election?

8 A. Brad Tabke, the Democrat.

9 Q. And are you absolutely certain that you voted for Brad Tabke?

10 A. Yes, I am.

11 MR. ZOLL: No further questions, Your Honor.

12 THE COURT: All right. Mr. LeBeau?

13 MR. LeBEAU: No questions.

14 THE COURT: All right. Thank you. You may step
15 down.

16 (The witness was excused.)

17 MR. ZOLL: And I'll take the copy of that. Thank
18 you.

19 THE COURT: Go ahead and call your next witness,
20 Mr. Zoll.

21 MR. ZOLL: Contestee calls Voter 12.

22 (Witness entered the courtroom.)

23 THE COURT: Voter 12, if you could just come down
24 to this ramp area, and I'll have you raise your right hand.

25 (The oath was administered.)

1 Q. What is that?

2 A. It's the signature envelope.

3 Q. And does your name appear on there?

4 A. Yes, it does.

5 Q. And turning to the second page of Confidential Exhibit 312,
6 do you recognize that document?

7 A. Yes, I do.

8 Q. And what is this?

9 A. This is the 2024 Minnesota absentee ballot that --
10 application that I filled out.

11 Q. Does this include your name in your handwriting?

12 A. Yes, it does.

13 Q. And does Confidential Exhibit 312 appear to be a true and
14 correct copy of your absentee ballot materials?

15 A. Yes, it does.

16 MR. ZOLL: Your Honor, we would move for the
17 admission of Confidential Exhibit 312 under seal.

18 THE COURT: Any objection?

19 MR. LeBEAU: No objection.

20 THE COURT: 312 will be received; it's filed under
21 seal.

22 MR. ZOLL: Thank you.

23 BY MR. ZOLL:

24 Q. Voter 12, you indicated that you completed the absentee
25 ballot application form that is the second page of this

1 exhibit. What did you do after completing this form?

2 A. After I completed the form, I brought it into the room that
3 there was the election workers working, and I gave it to them
4 and then followed all of the things that they asked me to do
5 and answered any questions they asked me to answer.

6 Q. Did they -- after you gave them the form, did they provide
7 you any materials?

8 A. Yes, they gave me my ballot and they gave me two envelopes.

9 Q. What did you do after receiving those materials?

10 A. After they said I could go vote, I walked over and filled out
11 my ballot. And when I was done filling out my ballot, I
12 placed it into the envelope as requested, sealed it, put it
13 inside the other envelope, and then put it in the ballot box.

14 Q. And did you take those steps that you just described pursuant
15 to instructions that were given to you by the election
16 officials?

17 A. Yes, that's correct.

18 Q. When you completed your ballot, did you vote in the election
19 for House District 54A between Brad Tabke and Aaron Paul?

20 A. Yes, I did.

21 Q. Who did you vote for in that election?

22 A. I voted for Brad Tabke.

23 Q. And are you absolutely certain that you voted for Brad Tabke?

24 A. Yes, I am.

25 MR. ZOLL: No further questions.

1 THE COURT: Any questions, Mr. LeBeau?

2 MR. LeBEAU: No questions.

3 THE COURT: All right. Thank you.

4 Voter 12, you may step down.

5 THE WITNESS: Thank you.

6 (The witness was excused.)

7 THE COURT: You may call your next witness,

8 Mr. Zoll.

9 MR. ZOLL: Your Honor, could I have two minutes to
10 organize my materials, and we will -- our next witness will
11 be Rocky Swearengin.

12 THE COURT: That's fine. Thank you.

13 MR. LeBEAU: Your Honor, if we may, could we go off
14 the record for just a second? I have one question I just
15 want to pose to you and Mr. Zoll.

16 THE COURT: Sure. Why don't you come up to the
17 bench.

18 We'll go off the record.

19 (Off-the-record bench discussion.)

20 THE COURT: We'll go back on the record.

21 You can go ahead and call your next witness,

22 Mr. Zoll.

23 MR. ZOLL: Contestee calls Rocky Swearengin.

24 THE COURT: All right. Mr. Swearengin, you may
25 step forward down to this ramp area and we'll get you sworn

1 in.

2 THE WITNESS: Sit here?

3 THE COURT: Why don't you just stop at the ramp --

4 THE WITNESS: Okay.

5 THE COURT: -- if you don't mind?

6 THE WITNESS: Yes, ma'am.

7 THE COURT: Could you raise your right hand?

8 THE WITNESS: Sure.

9 (The oath was administered.)

10 THE WITNESS: I do.

11 THE COURT: Thank you. You may have a seat on the
12 witness stand.

13 THE WITNESS: Okay. Thank you.

14 THE COURT: Just come right around that loop.

15 THE DEPUTY: Your Honor? He's asking a question,
16 the worker, the --

17 THE COURT: Let's go off the record for a minute.

18 (Off-the-record discussion.)

19 THE COURT: We'll go back on the record.

20 You can sit down, Mr. Swearengin. Thank you.

21 THE WITNESS: Yes, ma'am.

22 THE COURT: If you could slide into the microphone.

23 Would you please state and spell your full name?

24 THE WITNESS: Say again?

25 THE COURT: Could you please state and spell your

1 full name.

2 THE WITNESS: Rocky Swearengin. R-O-C-K-Y,
3 S-W-E-A-R-E-N-G-I-N.

4 THE COURT: Thank you.

5 You may proceed, Mr. Zoll.

6 MR. ZOLL: Thank you.

7 ROCKY SWEARENGIN,
8 having been first duly sworn, was examined and testified on his
9 oath as follows:

10 DIRECT EXAMINATION

11 BY MR. ZOLL:

12 Q. Good morning, Mr. Swearengin. Did you -- let me ask you a
13 different question to start: Are you appearing today
14 pursuant to a subpoena?

15 A. Yes, sir.

16 Q. Did you serve as an election judge in connection with the
17 2024 General Election?

18 A. Yes, sir.

19 Q. Was that with the City of Shakopee?

20 A. Yes, sir.

21 Q. And was that for election day voting or early voting?

22 A. Both.

23 Q. Okay. When you began working as an election judge, did you
24 take an oath to carry out your duties impartially and not in
25 a manner that would benefit a particular party or candidate?

1 A. Yes, sir.

2 Q. Does that commitment hold for the testimony that you will be
3 providing today as well?

4 A. Yes, sir, it does.

5 Q. Did you perform your duties as an election judge related to
6 early voting at a particular location?

7 A. Yes, sir.

8 Q. Where was that?

9 A. The Shakopee City Council area, courthouse area.

10 Q. Okay. At Shakopee City Hall?

11 A. City Hall, yes, sir. Thank you.

12 Q. I believe 485 Gorman Street?

13 A. Yes, sir.

14 Q. Okay. Was this your first year serving as an election judge?

15 A. Yes, sir.

16 Q. Did the City of Shakopee or Scott County provide training for
17 the election judges regarding the absentee balloting process?

18 A. Yes, sir, they did.

19 Q. Did you attend that?

20 A. Yes, sir, I did.

21 Q. Was there also a, for lack of a better term, on-the-job
22 component to the training?

23 A. Yes, there was.

24 Q. And what do you mean by that?

25 A. The training for the early voting part was -- consisted

1 primarily of a video that we watched for an hour or two on
2 that. Most of the judges in the room had had experience with
3 this before; I did not, so I attended that video. However,
4 most of the training that we received up to that point -- or
5 that I really gained was from on the job from the other
6 judges as well, in combination with watching the video.

7 Q. Okay. If you had questions about how to handle something
8 during that early voting process, were you able to ask
9 questions?

10 A. Oh, absolutely. They encouraged that.

11 Q. And did you receive answers to your questions?

12 A. Yes.

13 Q. Did you rely on the Shakopee city clerk or election staff to
14 ensure compliance with the requirements for how to handle the
15 absentee balloting process?

16 A. If I was unfamiliar, yes.

17 Q. Okay. And did they provide instruction and direction for how
18 to carry out your duties?

19 A. Yes.

20 Q. Did you serve as a member of the Shakopee Absentee Ballot
21 Board?

22 A. I did.

23 Q. I want to focus your attention on October 17th, 2024. Did
24 you work as an election judge on that day?

25 A. Yes, sir.

1 Q. On October 17th, 2024, did the Shakopee Absentee Ballot Board
2 take steps to review absentee ballots to determine if they
3 should be accepted?

4 A. Just to clarify, the Ballot Board didn't accept the ballots.
5 We did the process of reviewing the applications against the
6 signature envelopes in preparation for acceptance. And the
7 actual acceptance of those ballots was done by the City, its
8 staff.

9 Q. Okay. And when you refer to the "actual acceptance," is that
10 the step of designating those as being accepted?

11 A. Yes, sir.

12 Q. But is it your testimony that the Absentee Ballot Board
13 reviewed the envelopes and the applications?

14 A. Absolutely.

15 Q. Okay.

16 A. That was our part of that process, yes.

17 Q. Did the Absentee Ballot Board perform its part of that
18 process on October 17th?

19 A. Yes.

20 Q. And after reviewing those ballots -- or excuse me. After
21 reviewing those signature envelopes and applications on the
22 17th as a member of the Absentee Ballot Board, do you recall
23 what happened with those signature envelopes?

24 A. After we completed the review of them?

25 Q. Correct.

1 A. Okay. So just to clarify, the review process encompassed
2 three days, the prior Monday, Tuesday, and Wednesday.

3 Q. Right.

4 A. So yes, we went through and compared both the signature
5 envelopes and the applications for those three days
6 (indicating). Once all three judges verified that the
7 signatures and all the other identifying data matched on each
8 case and we completed for that day, we took them back into
9 the absentee room for the City to accept them.

10 Q. Okay. So they were -- correct me if anything I say here is
11 inaccurate, but the materials were returned back to where
12 they were maintained by the City?

13 A. Yes, they were maintained in the City's what they call the
14 "absentee voting room."

15 Q. Okay. On October 17, did the Absentee Ballot Board also
16 undertake the process of opening signature envelopes and
17 secrecy envelopes to prepare the absentee ballots for
18 counting?

19 A. Yes, sir.

20 Q. Did you participate in that process?

21 A. I did.

22 Q. Do you recall who the other members of the Absentee Ballot
23 Board were who participated in that process?

24 A. Latisha Porter and -- forgive me -- Richard -- I can't
25 remember his last name. I think it's Galligan or something

1 like that. Those were the three.

2 Q. Okay.

3 A. And myself.

4 Q. Can you describe -- and to the best you can, go one step at a
5 time, and I'll try to prompt you to move to the next step.
6 But it's easier for the Court and the court reporter if we
7 can take it step by step. But can you describe the process
8 used to open those envelopes to prepare the ballots for
9 counting?

10 A. Okay. Once we completed the ballot work process that I just
11 described for those three days -- I forget what the gap in
12 time was. It was a little bit; I think they were doing the
13 acceptance portion. And then Lori Hensen came in and said,
14 "Okay, we're going to start opening the ballots." She had a
15 piece of paper with the total number of ballots available as
16 of Wednesday that we were going to open, and each -- she had
17 each precinct on there with the number of absentee votes
18 that -- or ballots that had been received.

19 So when she came in, I believe we started with
20 Precinct 1. And we looked at the list and we counted that
21 precinct, and they didn't match.

22 Q. Let me just stop you right there. When you say you "counted
23 that precinct," what was it that you counted?

24 A. The number, actual number.

25 Q. Actual number of -- ?

1 A. The signature envelopes.

2 Q. Okay. Okay.

3 A. Because nothing had been opened up prior to that point.

4 Q. Okay. Got it. And you mentioned Lori Hensen. Who's Lori
5 Hensen?

6 A. She's the city clerk --

7 Q. Okay.

8 A. -- for Shakopee.

9 Q. And you mentioned a sheet of paper that had the number that
10 you were expecting. Was that broken out by individual
11 precincts?

12 A. Yes.

13 Q. And was that handwritten?

14 A. Yes.

15 Q. Okay. All right, so I interrupted you. You were discussing
16 starting counting in Precinct 1. Can you pick up there?

17 A. So she came in, essentially we counted them, and Lori looked
18 at the number for that precinct; whether it was one, I can't
19 recall. And she said, "Okay, these don't match" or "this
20 doesn't match that precinct." So she looked and then she
21 said, "Go back in, talk to Kay Gamble," who did the tracking
22 of the numbers. "Explain to her that I only want the numbers
23 of the actual absentee ballots received and I don't want any
24 of the additional ballots," meaning the spoiled ballots and
25 other types of ballots that may have occurred during that

1 time.

2 So I took them back in to her, explained that to
3 Kay. Kay went through the list and modified all those
4 numbers. I came back into the room. We counted that ballot
5 for that precinct again, and it matched the revised numbers
6 that Kay gave us.

7 Q. Okay. So after counting the signature envelopes for
8 Precinct 1 and confirming that they matched the revised
9 numbers that were provided to you by Ms. Gamble, what did you
10 do next?

11 A. Okay. For the first part of the process, the three judges,
12 all of us, we just sit there and opened up each envelope
13 (indicating), made sure that the signature envelopes were
14 separate; then we opened up the brown ones and then made sure
15 all the ballots are for that precinct. And between the three
16 of us, we made sure that the white envelopes were empty, the
17 secrecy envelopes were empty, and we had all ballots on that.
18 And then once we confirmed that, we took those ballots back
19 into the absentee room and put them back into the folder.

20 Q. Do you recall opening any signature envelopes that did not
21 contain a secrecy envelope?

22 A. No.

23 Q. Would that have stood out to you?

24 A. Oh, yes.

25 Q. Do you recall opening any secrecy envelopes that did not

1 contain a ballot?

2 A. No.

3 Q. Would that have stood out to you?

4 A. Yes.

5 Q. And the steps that you described, were those pursuant to
6 instructions from the Shakopee election officials?

7 A. Yes. Again, at the beginning when Lori came in, we went
8 through the numbers and did the validation. She essentially
9 kind of described -- I mean, it was fundamentally pretty
10 basic: We need to maintain record of the signature
11 envelopes. The brown envelopes on that, you know, don't
12 worry about those. And then bring the ballots in when you're
13 done opening up a precinct, and then she'd verify the
14 numbers.

15 Q. And I think I understood your testimony that after receiving
16 the revised numbers from Ms. Gamble, that your count of the
17 signature envelopes for Precinct 1 matched the expected
18 numbers. Is that correct?

19 A. The ones that Kay annotated on that sheet of paper, yes.

20 Q. Okay. Is it your understanding that the counts for the
21 remaining precincts also matched those numbers?

22 A. Yes, sir.

23 Q. And what is that based on? What is your understanding that
24 the numbers matched based on?

25 A. What we did is after we did the first couple of precincts and

1 realized how time-consuming this was going to be, and to kind
2 of expedite the process, the three judges, myself and the two
3 others, we each decided to take a precinct and then just open
4 them up, you know, based on the process I just described. So
5 each judge took a precinct.

6 We were all in the same room. They all -- they
7 counted and verified. I kept track of each precinct we
8 completed, and then if there was a discrepancy of any type,
9 the judge would tell me. If something like -- if there was a
10 discrepancy, it would have stopped the process. We'd have to
11 talk to the City about that and explain what we found. But
12 that did not occur. The numbers matched as we went through
13 all the precincts.

14 Q. So if I'm understanding what you said correctly, if
15 Ms. Porter was counting the signature envelopes for a
16 precinct, when she completed that, did she report that number
17 to you?

18 A. Yes, she said she was -- her numbers matched.

19 Q. Okay. And you made a note that --

20 A. Yeah. I just put a check mark by that precinct to say okay,
21 the numbers matched on that.

22 Q. Okay. Okay.

23 A. And then I turned that sheet back in to either Kay or the
24 City; I forget which.

25 Q. After completing the process you just described of opening

1 the signature envelopes and the secrecy envelopes, all the
2 way through that process, to those ballots being returned to
3 the absentee ballot room, after that was completed, did you
4 engage in any other activities related to absentee ballots on
5 October 17?

6 A. Not that I recall.

7 Q. Okay. And then did you perform any duties as an election
8 judge on October 18th?

9 A. Yes.

10 Q. Do you recall approximately when you arrived at Shakopee City
11 Hall on October 18th to perform those duties?

12 A. I believe I was scheduled to come in at noon and work 'til
13 the polls closed, and -- which was -- at that time, we
14 started direct balloting, so I was working in the absentee
15 room. Voters would come in; we'd check their registration,
16 give them a ballot. They'd mark it and put in the tabulator.

17 Q. Okay.

18 A. After the polls closed, myself and the other judge that I
19 worked with were asking -- were asked by the City to stay and
20 help put the ballots into the tabulator.

21 Q. Okay. And did you do so?

22 A. Yes, sir.

23 Q. Pursuant to instructions from the City?

24 A. Yes.

25 Q. And did you personally on October 18 engage in any actions as

1 an election judge related to the review of absentee ballot
2 signature envelopes?

3 A. On the 18th?

4 Q. On the 18th.

5 A. No.

6 Q. Okay.

7 MR. ZOLL: I have no further questions of this
8 witness, Your Honor.

9 THE COURT: All right. Thank you.

10 Mr. LeBeau? You may proceed.

11 CROSS-EXAMINATION

12 BY MR. LeBEAU:

13 Q. Mr. Swearengen -- I'm saying that correctly?

14 A. Yes, sir.

15 Q. Thank you. I want to make sure that I have the dates right,
16 just talking about October 17th and 18th. On October 17th,
17 what were you doing that day?

18 A. I was part of the Ballot Board process, and what we did is
19 there were two Ballot Boards that week. There was one on
20 Monday, which would look at all the absentee votes received
21 the week prior, and then we held a Ballot Board on Thursday
22 morning, which would look at all the absentee ballots, do
23 that same verification process for that Monday, Tuesday, and
24 Wednesday.

25 Q. So on the 17th, you were actually handling removing the

1 ballot from the envelope; is that correct?

2 A. A slight distinction: Yes, but they were two separate
3 processes. First we made sure the verification of the
4 application and the signature envelopes as part of the Ballot
5 Board process for those preceding three days. Once we
6 completed all that and turned those envelopes back over to
7 the City for acceptance, the City then asked and said we're
8 going to start opening all the ballots that we have received
9 up to this point.

10 Q. And is it your understanding that in the entirety of that
11 process, that is supposed to include two election judges
12 handling each of those ballots; is that correct?

13 A. We had three available to do that.

14 Q. And how many were actually doing it?

15 A. Three.

16 Q. And this was on the 17th.

17 A. Yes. I'm sorry, I want to clarify: You're asking me how
18 many judges we had opening the ballots on the 17th.

19 Q. Yes, correct.

20 A. Three.

21 Q. Three. And how many were opening and reviewing the ballots
22 on the (inaudible).

23 THE COURT: I'm sorry, I didn't hear the end of
24 your question.

25 MR. LeBEAU: Oh, I'm sorry. On the 18th.

1 THE COURT: Thank you.

2 A. There was only that period on the 17th, that Thursday -- late
3 Thursday morning and all of Thursday afternoon where we
4 opened up all the ballots. On the 18th, Friday, started
5 direct balloting.

6 BY MR. LeBEAU:

7 Q. Okay. Thank you.

8 A. So there wouldn't -- there shouldn't have been any additional
9 absentee ballots opened on the 18th.

10 Q. Okay. Thank you.

11 A. There shouldn't. I can't --

12 Q. Right. No, I understand.

13 A. I can't validate whether there were any on the 18th
14 available. I just know I didn't open any.

15 Q. You earlier were asked about Lori Hensen and identified her.
16 Did you witness her processing absentee ballots on the 17th
17 or 18th?

18 A. When you say "processing," do you mean doing the acceptance?

19 Q. Correct.

20 A. We would take the ballots in, and it was very busy that day
21 because absentee balloting was still occurring on the 17th.
22 Lori was in the room. When we took the ones that we
23 completed from the prior three days in to her, I'm going to
24 assume she was doing the acceptance process. I can't
25 validate whether she was or not.

1 Q. And do you recall if there was anybody in the room with her?

2 A. Yes, there were three other election judges who were working
3 on processing the absentee voters who were coming in on that
4 Thursday.

5 Q. But you don't know if they were doing the actual acceptance
6 part of the absentee ballots.

7 A. My understanding was the City did the acceptance. I never
8 saw any of the judges going into SVRS and actually doing the
9 acceptance process.

10 Q. Thank you. You referenced the document that you used to
11 balance out the different precincts. And you've mentioned
12 this was a handwritten document; is that right?

13 A. Yes.

14 Q. And that was the document provided by whom?

15 A. I think Lori had it. She brought (indicating) it into the
16 room, gave it to us. And that's when we got in the
17 discussions I highlighted earlier about making sure the
18 numbers, you know -- for example, again, when we started that
19 first precinct, the numbers that were on that sheet didn't
20 match the number of ballots. So again, she had me go back in
21 and talk to Kay Gamble, tell her to specify the exact number
22 of ballots we received, not to include any other types of
23 ballots.

24 Q. And this document was not an SVRS report or something --

25 A. No, it was handwritten.

1 Q. How many -- how many different opportunities did you -- in
2 this last election did you actually physically remove secrecy
3 ballots from the written envelope?

4 A. Just that one day, that Thursday, the 17th.

5 Q. The 17th? And do you recall what you or any of the other
6 election judges did with the secrecy envelopes after the
7 ballots were removed?

8 A. Okay. As far as I know, they were discarded.

9 Q. Do you know who discarded them?

10 A. No. They were still inside the courthouse area, the Council
11 room where we were; they were still in there. On that --
12 what they did with them after we completed the task, I don't
13 know.

14 Q. Do you recall if they were stored anywhere?

15 A. The brown envelopes? No, I don't know if they were or not.

16 Q. You mentioned earlier that you wanted to expedite the process
17 that was going on. What did you mean by "expedite the
18 process"?

19 A. We found it was very labor-intensive for three judges to do
20 one precinct at a time, and the City said we need to get all
21 the precincts opened up and ready to begin direct balloting
22 by Friday, the next day. So as I recall, there was probably
23 over a thousand envelopes that we had to go through. So we
24 indicated okay, we'll just divide and conquer, so to speak,
25 where each judge -- of the three judges, each one of us would

1 take a precinct and just start processing it.

2 Q. Is it your understanding that from the training, that process
3 is supposed to require two election judges?

4 A. No. Each judge made sure that the signature envelopes were
5 empty and that the brown envelopes were empty on that. But
6 they validated that when they counted the signature
7 envelopes, that number matched what was on the list that we
8 had.

9 Q. And are you familiar with the issue in this case of the
10 missing 20, 21 ballots?

11 A. Somewhat.

12 Q. Were you familiar -- did that become made aware to you on the
13 17th or the 18th of October?

14 A. No.

15 Q. When did you first learn about it?

16 A. In the news after the election.

17 Q. Did you ever have a conversation with Lori Hensen about the
18 missing ballots?

19 A. Shortly after the General Election on the 5th, she sent a
20 couple of text messages and emails asking the judges various
21 questions about the missing ballots. And in one email, she
22 stated -- and I'm paraphrasing here, so -- but essentially
23 she said, "They seem to have narrowed down the time frame was
24 around the 18th of October," that Friday, and asked us do we
25 remember anything unusual about that? And I didn't really

1 understand what she meant by "unusual" because again, the
2 direct balloting occurred all day, and then that evening, we
3 worked -- we helped her and the other City staff, me and the
4 other judge, put the opening ballots into the tabulator.

5 Q. And at that point and on the 18th, nothing was suggested to
6 you as being --

7 A. No.

8 Q. -- (inaudible).

9 A. No, not at all. And we were very careful with that because
10 Kay would -- what we started to do is keep track of what the
11 end-of-day tabulator number said, and then we'd look at what
12 the tabulator said or, you know, what the totals, I should
13 say, were on the next day. And the difference between the
14 two, we made sure we had that number of applications. So if
15 one day maybe we had 100 and the next day we had 200, we made
16 sure we had at least a hundred applications for that day.
17 And we kept track of the tabulator numbers each night.

18 Q. To the best of your knowledge, was -- were any of those
19 numbers verified against the SVRS system?

20 A. No. I didn't do that; Kay and Lori did that.

21 Q. And on the 17th and 18th, just so I'm clear, the room where
22 absentee ballots are being removed from the envelope, was
23 that in a different location than where the rest of you were
24 for voters that were coming in?

25 A. Yes, it was in the City Council area.

1 Q. Okay.

2 A. That's where we opened the ballots. Because voting was still
3 occurring, the lines were getting long, there wasn't room for
4 us to do that in there at all. And we wanted to make sure we
5 could safeguard the ballots, obviously, make sure the count
6 was good, and then make sure that we secured them back into
7 the cabinet where they were stored.

8 Q. Do you have any knowledge of the processing of absentee
9 ballots that would have led to the missing of the 20 or 21?

10 A. No.

11 MR. LeBEAU: I have no further questions.

12 THE COURT: All right. Thank you.

13 Mr. Zoll, do you have questions?

14 MR. ZOLL: No additional questions, Your Honor.

15 THE COURT: Mr. Swearengin, thank you. You may
16 step down.

17 THE WITNESS: Yes, ma'am. Thank you.

18 (The witness was excused.)

19 THE COURT: Do you have other witnesses, Mr. Zoll?

20 MR. ZOLL: We do, but would this be -- I know maybe
21 a little bit earlier than typical, but a good time for a
22 morning break?

23 THE COURT: If we need time so another witness can
24 get here, that's fine.

25 MR. ZOLL: No, I believe the witness is here, and

1 we can certainly call him. I just -- well, let's go for it.

2 THE COURT: All right.

3 MR. ZOLL: And if we need a break, we can take a
4 break.

5 THE COURT: Okay, that's fine. I just would prefer
6 to go for a little bit longer and then take our break. Thank
7 you.

8 MR. ZOLL: I will go retrieve our witness, Your
9 Honor. It will be Dr. Aaron Rendahl.

10 THE COURT: All right. Thank you.

11 MR. LeBEAU: Your Honor? My rebuttal witness is
12 sitting in the waiting room on Zoom, so I don't know if he
13 should be admitted now or wait 'til after.

14 THE COURT: Oh, you're asking to have your witness
15 observe the testimony; is that correct?

16 MR. LeBEAU: Yes, please.

17 THE COURT: All right. That's fine.

18 And Mr. Zoll, do you have any objection to that?

19 MR. ZOLL: That's fine.

20 THE COURT: All right. We'll go ahead and get Zoom
21 up. The video on Zoom, however, will be off, just so that's
22 clear.

23 MR. LeBEAU: Yes. Thank you.

24 (Witness entered the courtroom.)

25 THE COURT: Sir, why don't you come forward.

1 Actually, let's wait a second.

2 (Off-the-record discussion.)

3 THE COURT: We do have your witness, Mr. LeBeau, on
4 Zoom now, so --

5 MR. LeBEAU: Oh, thank you.

6 THE COURT: And maybe you can just unmute and
7 verify that he's able to hear.

8 THE CLERK: Sir, are you able to hear us?

9 THOMAS BRUNELL: Yes.

10 THE COURT: Okay. We're going to turn your video
11 off while the testimony is ongoing, and your audio as well,
12 and I'm just going to ask that you not turn that on during
13 the testimony. All right?

14 THOMAS BRUNELL: I understand.

15 THE COURT: Thank you.

16 (Off-the-record discussion.)

17 THE COURT: All right. Sir, would you come down
18 here to the ramp. We'll get you sworn in. Raise your right
19 hand.

20 (The oath was administered.)

21 THE WITNESS: Yes, I do.

22 THE COURT: All right. Thank you. Go ahead and
23 have a seat on the witness stand.

24 And once you get situated, could you please state
25 and spell your full name.

1 THE WITNESS: My name is Aaron Rendahl. A-A-R-O-N,
2 R-E-N-D-A-H-L.

3 THE COURT: Mr. Zoll, you may proceed.

4 MR. ZOLL: Thank you. And before I begin, I'm just
5 going to provide the witness with a binder with Exhibits 201
6 through 207.

7 THE COURT: All right. Thank you.

8 MR. ZOLL: I'll tell you when you need to look at
9 that.

10 THE WITNESS: Thank you.

11 DR. AARON RENDAHL,
12 having been first duly sworn, was examined and testified on his
13 oath as follows:

14 DIRECT EXAMINATION

15 BY MR. ZOLL:

16 Q. Dr. Rendahl, what is your profession?

17 A. I am a statistician.

18 Q. And where do you work?

19 A. I am at the University of Minnesota in the College of
20 Veterinary Medicine.

21 Q. And how long have you worked with the University of
22 Minnesota's College of Veterinary Medicine?

23 A. Since 2017.

24 Q. Okay. And what's your position there?

25 A. I am an Associate Professor of Statistics and Informatics.

1 Q. What is informatics?

2 A. Informatics is the use of computers and data-science
3 methodologies to handle big data; in my case, usually
4 genetics.

5 Q. Okay. Like a really big version of statistics?

6 A. Yes, when you've got big data sets that you can't handle with
7 more traditional methods.

8 Q. Okay. Can you describe your -- well, back up. Do you teach
9 any courses at the University of Minnesota?

10 A. Yes, I do.

11 Q. What courses do you teach?

12 A. I teach two courses: One is called Essential Statistics for
13 Life Sciences; the other one is Statistical Principles of
14 Experimental Design.

15 Q. Okay. Will you be grading final exams later this week?

16 A. Yes, they're due on Wednesday.

17 Q. Okay. Can you describe your post-secondary education?

18 A. Yes. I have a bachelor's degree in mathematics and physics
19 from Bethel University and a Ph.D. in statistics from the
20 University of Minnesota.

21 Q. And when did you obtain your Ph.D. in statistics from the
22 University of Minnesota?

23 A. 2008.

24 Q. And I didn't hear you reference a master's degree in between
25 your bachelor's and Ph.D. Is that correct?

1 A.: That's correct; it's a program that goes straight from a
2 bachelor's to a Ph.D.

3 Q.: Okay. In your role as an associate professor of statistics
4 and informatics, are you familiar with techniques used to
5 calculate probabilities?

6 A. Yes, I am.

7 Q. Can you briefly describe for the Court why it is helpful to
8 calculate probabilities?

9 A. Sure. In any particular situation, there may be various
10 possible outcomes. The reason we would compute a probability
11 of those outcomes is to be able to describe the likelihood of
12 any one of those possibilities.

13 Q. I'm going to give you an example, and I'm just going to ask
14 if this expresses the value of probabilities. If you had a
15 bag that had 99 red balls and one blue ball, how many
16 possible outcomes are there for drawing one ball out of the
17 bag?

18 A. Yes, that would be a situation where we could compute the
19 probabilities of various outcomes.

20 Q. But in terms of the possible outcomes, are there two possible
21 outcomes in that scenario, a red ball or a blue ball?

22 A. Yes. I see where you're going. Yes, there would be two
23 possible outcomes, one from each color.

24 Q. But if there's 99 of one color and one of the other, is it
25 50/50 probability that you'll get one or the other?

1 A. No, this is the distinction between a possibility and a
2 probability. There's two possibilities, one of each color,
3 but those possibilities do not have equal probabilities.

4 Q. Okay. And based on your knowledge and experience and your
5 educational background, are you able to calculate and
6 describe probabilities?

7 A. Yes, I am.

8 MR. ZOLL: Your Honor, Contestee moves to qualify
9 Dr. Rendahl as an expert under Rule 702 of the Rules of
10 Evidence because his specialized knowledge will assist the
11 Court in the understanding of the probabilities of certain
12 outcomes relating to this election.

13 THE COURT: Mr. LeBeau?

14 MR. LeBEAU: No objection.

15 THE COURT: So qualified.

16 MR. ZOLL: Thank you.

17 BY MR. ZOLL:

18 Q. In the binder in front of you, I'm just going to ask you to
19 turn to the tab for 207.

20 A. Yes.

21 Q. Dr. Rendahl, do you recognize this document?

22 A. Yes, I do.

23 Q. And what is this?

24 A. This is the expert report I wrote for this case.

25 Q. Okay. And if you look -- I don't have the exact page number

1 here, but if you look after your signature on this document,
2 the next page, what's reflected there?

3 A. (No audible response.)

4 Q. Or let me put it differently: Does this document include a
5 copy of your resume?

6 A. Oh. Yes, it does.

7 Q. Okay. What was the question that is addressed in your report
8 that is here as Exhibit 207?

9 A. Certainly. So in this case, Tabke received 14 more reported
10 votes than Paul but 20 votes were lost. I was therefore
11 asked to consider the probability that Paul would receive 14
12 more votes than -- 14 or more votes than Tabke out of those
13 20 if those 20 were to be considered a random sample from the
14 reported votes from that precinct.

15 Q. And at the end of your description of the question that is
16 addressed, you said if those ballots are assumed -- or if
17 they're a random sample? Is that an assumption that you made
18 in performing your analysis?

19 A. Yes, it is.

20 Q. And why is that an assumption that you made?

21 A. This analysis was meant to consider the probability of this
22 occurring by random chance if this were a random sample, and
23 therefore, that's the assumption that was made.

24 Q. Did you define the universe from which that random sample
25 would be pulled in any way?

1 A. That universe is a population of ballots with votes in
 2 proportion to that in the reported -- that -- with -- in
 3 proportion equal to the votes in the precinct of interest.

4 Q. And that would be Shakopee Precinct 10?

5 A. Yes, that's correct.

6 Q. Okay. So after making the assumption that the 20 uncounted
 7 ballots are representative of the remaining ballots in the
 8 precinct, how did you perform your analysis? What was the
 9 either next or maybe the first step in performing your
 10 probability analysis?

11 A. Sure.

12 MR. LeBEAU: Your Honor, I'm going to object at
 13 this point.

14 THE COURT: What's the objection?

15 MR. LeBEAU: Lack of foundation and relevance.
 16 There's nothing in the record that suggests this is -- the
 17 voting is random.

18 THE COURT: Why don't you come up.

19 (Off-the-record bench discussion.)

20 THE COURT: We'll go back on the record.

21 The objection's overruled.

22 BY MR. ZOLL:

23 Q. Let me restate the question, and I'll try to do it concisely.
 24 What was the first step that you took in performing your
 25 analysis?

1 A. In an analysis like this, you're looking for the
2 possibilities that result in the outcome of interest. The
3 outcome of interest here is that out of those 20 votes, Tabke
4 receives 14 or more than Paul. We therefore enumerate all of
5 those possibilities; there are 16 of them, and they are
6 listed in item 7 of my report. For each of those
7 possibilities, we then compute the probability of each of
8 those possibilities. That's done using what's called a
9 "multinomial formula." We can then add up all of those
10 probabilities to get the total probability that Tabke would
11 receive 14 or more votes than Paul out of the 20.

12 THE COURT: We're going to pause here, and we'll
13 take our morning recess. We'll take it for about 15 minutes,
14 and we'll come back at just a hint before 10:40.

15 (A recess was taken.)

16 THE COURT: Mr. Zoll, you may proceed.

17 MR. ZOLL: Thank you.

18 BY MR. ZOLL:

19 Q. Dr. Rendahl, I want to pick up where we had left off in your
20 testimony. And you were describing the methodology that's
21 laid out in paragraph 7, and there's a table that follows
22 paragraph 7 in your report. And am I understanding correctly
23 that this table demonstrates scenarios where Aaron Paul out
24 of a pool of 20 ballots would receive 14 more as a net than
25 Brad Tabke?

1 A. Yes, 14 or more.

2 Q. Okay, or more. So can you just look at line 1 of that table
3 and -- it may seem basic and intuitive, but just explain how
4 it works in that scenario.

5 A. Yes. So in the first line of this table, this represents the
6 possibility that Aaron Paul received 14 of the 20 votes,
7 Tabke received 0 of the 20, and the other 6 were for other
8 candidates or were blank. In that situation, Paul would have
9 received exactly 14 more than Tabke.

10 Q. And in the "Paul - Tabke" column, is that reflecting that
11 math of the Paul votes minus the Tabke votes in that
12 scenario?

13 A. Yes, that's correct.

14 Q. Okay. So let's look at, say, the last one in that column.
15 It's one, two, three, four, five, the sixth row, the last one
16 that starts with Paul with 16 votes. Can you just walk
17 through how the math works on that one?

18 A. The sixth row of the table, the last row in which Paul
19 received 16, in that row, Paul would receive 16 votes, Tabke
20 would receive 2 votes, and there would be 2 other votes, for
21 a net difference between Paul and Tabke of 14 votes.

22 Q. Okay. And that net difference of 14, that's what Aaron Paul
23 would need to make up to make this race a tie.

24 A. That's correct.

25 Q. Okay. And then the "Probability" column, what's reflected

1 there?

2 A. That's the probability of that particular outcome happening.
3 That's a number between zero and one that characterizes the
4 likelihood of that outcome.

5 Q. And how did you calculate that probability?

6 A. Each of those probabilities are calculated using the
7 multinomial formula. That formula calculates the probability
8 of any one arrangement of the votes that results in that
9 particular combination of numbers. It's then -- you then
10 count the number of arrangements that would result in that to
11 get the total probability for that line.

12 Q. Okay. And is that use of the multinomial formula, is that,
13 in your experience, a standard and accepted method for
14 calculating a probability such as this?

15 A. Yes.

16 Q. What's reflected at the bottom final row of the table
17 following paragraph 7?

18 A. That final row of the table is the sum of all of the
19 probabilities of these various possibilities.

20 Q. And why do you -- why do you calculate the sum of those
21 various probabilities?

22 A. Because each of these possibilities is distinct, we can just
23 add them up to get the total.

24 Q. And does that total reflect the probability that any one of
25 these 16 scenarios would occur?

1 A. Yes, that's the total probability out of all the
2 possibilities that are there that Paul would receive 14 or
3 more votes than Tabke out of the 20.

4 MS. KITZE COLLINS: I'm sorry, can we pull the
5 screen back up?

6 THE COURT: I haven't received the item into
7 evidence yet.

8 BY MR. ZOLL:

9 Q. Okay. Let me ask you this, Dr. Rendahl: Is Exhibit 207, is
10 that a true and correct copy of your expert report that you
11 prepared?

12 A. Yes, it is.

13 Q. Is that your signature that appears on the fourth page of the
14 document?

15 A. Yes, it is.

16 MR. ZOLL: Your Honor, Contestee moves the
17 admission of Exhibit 207.

18 THE COURT: Any objection?

19 MR. LeBEAU: I object on lack of foundation, Your
20 Honor.

21 THE COURT: All right. The objection's overruled.
22 207 is received.

23 BY MR. ZOLL:

24 Q. Dr. Rendahl, the process that you described of taking the sum
25 of the probability of the different scenarios, is that a

1 standard and accepted approach for calculating the
2 probability that any one of those scenarios would occur?

3 A. Yes, it is.

4 Q. Is that based on your education and experience as a
5 statistician?

6 A. Yes.

7 Q. When I've attended recounts in elections, I'll sometimes see
8 a series of six or ten ballots in a row for a particular
9 candidate. Is that type of run, where you have a sequence --
10 or a series of votes all for one candidate, is that type of
11 run accounted for in your analysis?

12 A. Yes, it is.

13 Q. Can you explain for the Court how that's accounted for in
14 your analysis.

15 A. Yes. A random sampling doesn't mean that everything's going
16 to be mixed up every other. It's certainly possible, like
17 when you flip a coin, to get a number of different heads in a
18 row. In this case, it's certainly possible that we got a
19 whole run of ballots for one candidate or the other in a row.
20 Those are some of the possibilities that are accounted for in
21 the table. For example, at an extreme, one of the
22 possibilities is that Paul would receive 20 ballots in a row.
23 That's the final line where Paul received all 20 ballots.

24 Q. And when you use the multinomial formula for calculating the
25 probabilities, does that account for the possibility of runs

1 like you just described?

2 A. Yes. Every possible arrangement of values, including ones
3 where you get a long run for one candidate or another, are
4 accounted for in the multinomial formula.

5 Q. So if we look at the example in your table where Aaron Paul
6 would receive 17 ballots and Brad Tabke would receive 3, are
7 you saying that you calculate every possible sequence of
8 ballots that would result in a total of 17 for Paul and 3 for
9 Tabke?

10 A. Yes, that's correct. That's part of the multinomial formula.

11 Q. Okay. And just to make sure that I'm clear in my
12 understanding, so there would be an example where there's 17
13 for Paul and then 3 for Tabke, and then maybe one where
14 there's 1 for Tabke, 16 for Paul, 1 for Tabke, 1 for Paul, 1
15 for Tabke. Is that what you're saying when you talk about
16 all the different possible arrangements?

17 A. Yes, that's correct.

18 Q. Okay. Is it your understanding that the margin -- the
19 certified total in this election, that the margin is 14 votes
20 that Brad Tabke -- strike that. Let me start this question
21 over.

22 Is it your understanding that the certified results
23 in this election show that Representative Tabke leads by a
24 margin of 14 votes?

25 A. Yes.

1 Q. So in order to change the outcome, is it your understanding
2 that Aaron Paul would need a net of at least 14 votes?

3 A. A net of 14, yes.

4 Q. Okay. If there are 20 ballots that remain to be counted and
5 4 of those are for Representative Tabke, is it possible for
6 Aaron Paul to earn enough votes to change the outcome of the
7 election?

8 MR. LeBEAU: Objection.

9 THE WITNESS: No.

10 THE COURT: Hold on one second.

11 What's the objection?

12 MR. LeBEAU: Calls for speculation.

13 THE COURT: Why don't you approach, counsel.

14 (Off-the-record bench discussion.)

15 THE COURT: At this time, the objection's
16 sustained.

17 BY MR. ZOLL:

18 Q. Dr. Rendahl, in the table in paragraph 7, you identify 16
19 scenarios in which Aaron Paul could earn sufficient votes out
20 of a pool of 20 in order to change the outcome of the
21 election. Is that correct?

22 A. Yes.

23 Q. Do you identify any scenario in which Brad Tabke could earn 4
24 of those 20 votes and Aaron Paul could earn a net of 14 for
25 the remaining ballots?

1 A. No, there are no possibilities where if Tabke receives 4
2 votes, there can be a net difference of 14.

3 Q. Can you explain why you would exclude that scenario from the
4 possible scenarios here.

5 A. If Tabke receives 4 additional votes, that puts the net
6 difference at 18, but there would only be 16 votes remaining,
7 and leaving Paul no way to catch up.

8 Q. Would that also be true if you were doing this analysis with
9 a pool of 21 votes?

10 A. Yes, that's correct. The margin after those 4 votes were
11 counted would still be 18, but there would then be only 17
12 votes remaining. Again, leaving no way to catch up.

13 MR. ZOLL: Your Honor, I have no further questions
14 for Dr. Rendahl.

15 THE COURT: All right. Thank you.

16 Dr. Rendahl, you may step down.

17 Oh, I'm sorry. I apologize. Cross-examination. I
18 got a little ahead of myself, Mr. LeBeau. I'm sorry about
19 that. Come up for cross-examination.

20 CROSS-EXAMINATION

21 BY MR. LeBEAU:

22 Q. Good morning, Dr. Rendahl. Have you spoken with anyone about
23 the testimony that you're providing in court today?

24 A. No.

25 Q. Your resume lists no election-related research; is that

1 correct?

2 A. That's correct.

3 Q. You are not an expert in elections; is that correct?

4 A. That is correct.

5 Q. You did not study voter characteristics of early voting
6 versus election day voting; is that correct?

7 A. That is correct.

8 Q. Is it true that you calculated the proportion of votes for
9 each candidate in Shakopee Precinct 10?

10 A. I'm sorry, could you repeat the question?

11 Q. Your calculations are -- you calculated the proportion of
12 votes for each candidate in Shakopee Precinct 10; is that
13 correct?

14 A. Oh, yes, that is correct.

15 Q. And you calculated probability; correct?

16 A. I calculated the proportion of votes that were received for
17 each candidate, and from those, I used those to calculate the
18 probability that Paul would receive 14 or more votes than
19 Tabke, yes.

20 Q. And you were asked to calculate this probability on behalf of
21 Contestee Brad Tabke; correct?

22 A. Yes.

23 Q. And your calculations assumed that the missing votes were
24 random; isn't that correct?

25 A. Yes. One possibility --

1 Q. Thank you.

2 A. Oh, thank you.

3 Q. You have no basis for knowing whether the missing votes
4 actually were random, do you?

5 A. No.

6 Q. The random votes would -- strike that.

7 Isn't it true that random votes would mean that
8 they were -- they were a representative sample of all the
9 votes in the pool?

10 A. The idea of random sampling assumes that we're starting with
11 a population where they are equal to the proportion of the
12 reported votes in the pool.

13 Q. So if the missing 20 votes were not random, your -- the
14 probability that you calculated would be meaningless;
15 correct?

16 A. (Pause.) My calculation assumes that they are random, yes.

17 Q. And so if they are not random, your probability is incorrect;
18 right?

19 A. You'd need some other mechanism to calculate that then, yes.

20 Q. In your analysis, you didn't account for any confounding
21 factors; isn't that true?

22 A. That is true.

23 Q. You, by your methodology, didn't account for different
24 demographics of voters, such as those that vote early versus
25 those that vote on election day; isn't that true?

1 A. That is true.

2 Q. Your assumptions were that these voters -- that the votes
3 that are missing were random; correct?

4 A. (Pause.) Yes.

5 Q. You do recognize that all of the voters -- maybe you don't
6 know this, but are you aware that the voters in this case
7 that owned the missing votes were early voters?

8 A. Yes.

9 Q. You don't have any basis for knowing whether these two pools,
10 early versus election day, are similar, do you?

11 A. No, that's beyond the scope of my expertise.

12 Q. But your calculated probability is based on a pooled election
13 result; correct?

14 A. That is correct.

15 Q. Your results also didn't account for early voters selecting
16 candidates at a different proportion than election day
17 voters; is that correct?

18 MR. ZOLL: Objection, asked and answered.

19 THE COURT: I don't think it was. Overruled.

20 A. Yes, that's correct.

21 BY MR. LeBEAU:

22 Q. So Doctor, if early voters vote for candidates at a different
23 proportion than election day voters, and you don't know the
24 early-versus-election-day results proportion, you have no way
25 of determining the probability that 14 of these voters would

1 have voted for Aaron Paul; isn't that correct?

2 A. If the proportions are different from what I assumed here,
3 we'd have to do a different calculation using those
4 proportions, yes.

5 MR. LeBEAU: Thank you. I have no further
6 questions.

7 THE COURT: All right. Mr. Zoll, any questions?

8 MR. ZOLL: I don't have any additional questions,
9 Your Honor.

10 THE COURT: All right. Thank you.

11 Doctor, you may step down.

12 THE WITNESS: Thank you.

13 (The witness was excused.)

14 THE COURT: All right, and let's go back to
15 Mr. LeBeau for a minute.

16 Mr. LeBeau, we were waiting on a witness of yours.
17 Do we yet have that witness?

18 MR. LeBEAU: Oh, the in-person witness, Your Honor?

19 THE COURT: Yes.

20 MR. LeBEAU: Could we take a moment? I can
21 explain.

22 THE COURT: Sure, that's fine.

23 We'll go off the record for a minute.

24 (Off-the-record bench discussion.)

25 THE COURT: We're going to take a short break. In

1 the meantime, there was a stipulation that Mr. LeBeau and
2 Mr. Zoll had reached regarding a relationship between two
3 voter witnesses.

4 Is that correct, Mr. Zoll?

5 MR. ZOLL: That is correct.

6 THE COURT: And if I recall, that was Voter 5 and
7 Voter 11? I just want to make sure before I state the
8 stipulation.

9 MR. ZOLL: That is my recollection as well, Your
10 Honor, but if I can double-check the confidential key to make
11 sure I'm not misstating the numbers.

12 THE COURT: That's fine. Why don't we do that on
13 the break. We'll take a few minutes and come back. I'm
14 going to remain on the bench, and hopefully we'll be
15 efficient.

16 MR. LeBEAU: Thank you.

17 (Off-the-record discussion.)

18 THE COURT: We'll go back on the record.

19 The parties or counsel are back in the courtroom.
20 Mr. LeBeau has indicated he does intend to call his rebuttal
21 witness.

22 Mr. LeBeau, could you state that witness's name,
23 please?

24 MR. LeBEAU: Yes, it's Dr. Tom Brunell.

25 THE COURT: All right. And I believe you said

1 Dr. Brunell was the one appearing by Zoom; correct?

2 MR. LeBEAU: Yes, Your Honor.

3 THE COURT: Then we'll go ahead and turn on the
4 Zoom screen.

5 Dr. Brunell, you have been called as a witness in
6 this proceeding. Are you able to hear us?

7 THE WITNESS: I can, Your Honor.

8 THE COURT: All right. Like another witness in the
9 case, you're appearing remotely testifying using Zoom
10 technology. Could you please raise your right hand, sir?

11 (The oath was administered.)

12 THE WITNESS: Yes.

13 THE COURT: Thank you. You may lower your hand.
14 Could you please state and spell your full name.

15 THE WITNESS: It's Thomas Brunell. T-H-O-M-A-S,
16 B-R-U-N-E-L-L.

17 THE COURT: All right. Thank you.

18 Mr. LeBeau, you may proceed.

19 MR. LeBEAU: Thank you, Your Honor.

20 DR. THOMAS BRUNELL,
21 having been first duly sworn, was examined and testified on his
22 oath remotely, via Zoom, as follows:

23 DIRECT EXAMINATION

24 BY MR. LeBEAU:

25 Q. Doctor, could you just restate your name?

1 A. Sure. I go by "Tom Brunell." My -- my -- my name on my
2 birth certificate is Thomas, but I go by "Tom."

3 Q. And where are you from?

4 A. I currently live in Dallas, Texas.

5 Q. And what's your occupation?

6 A. I'm a professor of political science at the University of
7 Texas at Dallas.

8 Q. And do you specialize in a particular field?

9 A. Yes, I study American elections.

10 Q. And where did you attend school?

11 A. I got my -- I got my bachelor's, master's, and Ph.D. all from
12 the University of California at Irvine, and all of them are
13 in political science.

14 Q. And what degrees do you possess?

15 A. B.A., M.A., and Ph.D.

16 Q. And we have Exhibit 7, which I believe we can put on the
17 screen. I just want you to identify that document. I'm
18 sorry.

19 THE COURT: Let's go off the record a minute.

20 (Off-the-record discussion.)

21 THE COURT: We'll go back on the record.

22 MR. LeBEAU: Thank you.

23 BY MR. LeBEAU:

24 Q. Doctor, can you identify the document that is currently on
25 your screen?

1 A. It's a copy of my current CV.

2 Q. And is this a true and accurate first page of your CV?

3 A. Yes.

4 MR. LeBEAU: Your Honor, we'd move to have
5 Exhibit 7 entered into the record.

6 THE COURT: Any objection, Mr. Zoll?

7 MR. ZOLL: No, Your Honor.

8 THE COURT: Seven is received.

9 BY MR. LeBEAU:

10 Q. Dr. Brunell, what specific training do you have in the
11 political science area?

12 A. Well, I studied -- like I said, I studied political science
13 as an undergraduate and as a graduate student at the
14 University of California Irvine, and I've continued studying.
15 You know, my entire career has been studying American
16 elections.

17 Q. And does that involve the study of voting in American
18 elections?

19 A. Yes. Among other things, yes.

20 Q. And can you please describe your background and research in
21 studying voting in American elections?

22 A. I've published many different articles in peer-reviewed
23 journals using survey data, for instance, on voting. I also
24 studied redistricting and the Voting Rights Act. I've used
25 demographic data, election outcomes, all sorts of different

1 relevant data to study whatever particular question I was
2 interested in at that moment.

3 Q. And how long have you been in this line of work?

4 A. This is the only thing I've ever done, so it's been quite
5 some time. So 30 years or so?

6 Q. And have you reviewed any documents in preparation for
7 testimony today?

8 A. Yes.

9 Q. And what are those documents?

10 A. I received Dr. Rendahl's expert report. Then you sent me
11 several legal filings for the case and some other -- some
12 letters and some data, so like recount data.

13 Q. And what particular principles or methods did you employ when
14 reviewing this information?

15 A. Well, sort of the main thing that I was asked to look at was
16 Dr. Rendahl's expert report. And his calculations are fine;
17 I have no -- I'm not disputing --

18 Q. Doctor, before we get into that, I just wanted to know your
19 methodology for doing --

20 A. I don't know what you mean exactly. Just how I reviewed
21 Dr. Rendahl's report or --

22 Q. Correct. Yeah.

23 A. Well, I read it and then I -- using my background in
24 statistics and elections, I had -- I had some very specific
25 critiques of his method.

1 Q. And before we get into those specifics, have you reached a
2 conclusion, based on your experience, on the report submitted
3 by Dr. Rendahl?

4 A. Yes.

5 Q. And do you believe your testimony will be helpful in
6 assisting the Court as to those conclusions and facts?

7 A. Yes, I hope so.

8 MR. LeBEAU: Your Honor, I would move that pursuant
9 to Rule 702, Dr. Brunell be certified as an expert.

10 THE COURT: Any objection, Mr. Zoll?

11 MR. ZOLL: No objection.

12 THE COURT: All right. So cert -- or so qualified.

13 MR. LeBEAU: Thank you, Your Honor.

14 BY MR. LeBEAU:

15 Q. Dr. Brunell, can you explain what conclusions you reached
16 regarding Dr. Rendahl's statistical analysis?

17 A. Sure. So as Dr. Rendahl explained, he was calculating the
18 probability that the Republican candidate could -- would
19 receive at least 14, a net of 14 ballots out of the 20
20 missing ballots. And the calculations are fine, but the key
21 thing -- the key reason that I think the Court ought to give
22 less weight to his findings are the two assumptions that he
23 makes, and Mr. LeBeau brought them up on cross-examination,
24 so the first of which is he assumes that these 20 votes were
25 drawn randomly from a distribution of votes equal to the

1 total votes in this particular precinct. And that's on
2 page -- just before -- that's in number 6, his paragraph
3 number 6. So he's assuming that Paul received exactly
4 39.2936 percent of the votes of these 20 -- I mean that's
5 drawn from a distribution where the probability is 0.392936,
6 and then Tabke has a probability of 0.537896. And then -- so
7 somebody voting for a different candidate, somebody other
8 than Paul or Tabke, the probability is 0.069169.

9 And this is the total votes for the precinct, and
10 these particular probabilities are going to have a huge
11 effect on his conclusions. And if there's reason to believe
12 that these probabilities are wrong, then we also will have to
13 conclude that his conclusions are wrong; that the probability
14 that he computes is wrong and that his conclusions are wrong.
15 So that's the first problem, you know, because these were --
16 what we do know, to the best of my knowledge, that these were
17 early votes. Early voters tend to be different than election
18 day voters, and so that's going to make the probability
19 distribution different.

20 And then sort of the second thing is that he
21 assumes that each of these 20 -- excuse me -- each of these
22 20 votes is a random draw from -- and they're all independent
23 of one another. Right? That's kind of the key thing, that
24 all these 20 draws are independent from the other ones.

25 So when would this not be the case? Excuse me. So

1 for instance, there may have been a couple that came in, a
2 man and a wife that walked in to vote on one of these days,
3 one of the 20 -- of the 20 votes, ballots that were lost.
4 And oftentimes, you know, couples might think and vote
5 exactly the same way.

6 MR. ZOLL: Objection, Your Honor. There's no
7 foundation for this testimony.

8 THE COURT: Why don't you approach, counsel.

9 (Off-the-record bench discussion.)

10 THE COURT: So the objection is sustained starting
11 with the answer portion that begins with "And then sort of
12 the second thing is that he assumes each of these 20 votes is
13 a random draw and they're all independent of one another."
14 From that point forward, the objection's sustained.

15 Go ahead, Mr. LeBeau.

16 MR. LeBEAU: Thank you, Your Honor.

17 BY MR. LeBEAU:

18 Q. Thank you, Doctor, and I know over Zoom can be kind of
19 difficult, so I do have some questions, so please try to
20 contain it to the question I'm asking.

21 But what would be -- in your experience, what would
22 be instances of patterns that would not be random? Of voting
23 patterns that would not be random.

24 A. Well, the -- there could be groups of voters that go to vote
25 together.

1 MR. ZOLL: Objection, there's still no foundation
2 for this testimony.

3 THE COURT: Sustained.

4 BY MR. LeBEAU:

5 Q. Doctor, in your experience evaluating elections, how have you
6 looked -- how do you research voting patterns?

7 A. That's a broad -- that's a broad question.

8 Q. Sorry.

9 A. I mean, there's lots of different ways. You know, the sort
10 of most common one is using survey research and those sorts
11 of databases.

12 Q. And are there any conclusions that you're able to make across
13 the board about different manners in which voters act that
14 would make voting totals not random?

15 A. Sure. People will often go to the polls with somebody else.
16 People -- people do vote on their own sometimes, but I've
17 voted with my kids, for instance. So there's lots of
18 different scenarios where you can imagine a group of people
19 traveling to the polls and voting together.

20 Q. And in your experience, would people -- when you have these
21 different instances, how does that affect randomness?

22 A. Yeah, then -- then these are no longer independent, random
23 draws from this distribution that Dr. Rendahl relied upon.
24 People that live together oftentimes have similar voting
25 behavior, and even if they don't -- you know, sometimes there

1 are instances where, you know, a child decides to vote
2 differently than his or her parents, right? And so that
3 doesn't matter because the key thing is is that the votes are
4 dependent upon one another. They're no longer independent
5 draws from a distribution.

6 Q. Doctor, are you familiar with the distinction between early
7 voting versus election day voting?

8 A. Yes.

9 Q. And are they different?

10 A. Yes.

11 Q. And how so?

12 A. Early voters can differ in lots of different ways, and the
13 most important thing for our -- for what we're doing here
14 today is that early voters have in the past been shown to
15 have different partisan preferences than election day voters.

16 Q. In your experience, does that affect randomness as well?

17 A. Sure.

18 Q. I believe you've answered the question -- if I can just check
19 the record, I believe you've answered the question as to your
20 conclusion about Dr. Rendahl's report; is that correct?

21 A. Are you asking me?

22 Q. Yes.

23 A. Yeah, I think I have.

24 Q. Okay. Thank you.

25 MR. LeBEAU: I have no further questions, Your

1 Honor.

2 THE COURT: Mr. Zoll?

3 MR. ZOLL: Thank you.

4 CROSS-EXAMINATION

5 BY MR. ZOLL:

6 Q. Dr. Brunell, you don't have any degrees in statistics, do
7 you?

8 A. I don't.

9 Q. All your degrees are political science degrees; correct?

10 A. Yes, although I've used statistics for my entire career.

11 Q. Okay, but my question was all of your degrees are in
12 political science; correct?

13 A. That is correct.

14 Q. When reviewing Dr. Rendahl's report, did you analyze the
15 demographics for the voters in Shakopee Precinct 10?

16 A. No.

17 Q. Did you analyze the returns of this election as split between
18 early votes and in-person votes?

19 A. No.

20 Q. So do you know whether there is a difference in the
21 characteristics between the early vote and in-person vote
22 returns in this election?

23 A. I don't have personal knowledge of that, no.

24 Q. I believe you testified in response to a question from
25 Mr. Paul's counsel that historically, early voters had voted

1 differently than in-person voters. Do you recall that
2 testimony?

3 A. I do.

4 Q. It's true that historically early voters tended to favor the
5 Democratic candidates; correct?

6 A. As a general rule, I would agree with that.

7 Q. Okay. Okay. If there's follow-up, your -- Mr. Paul's lawyer
8 can ask you.

9 A. Fair enough.

10 Q. Do you know one way or another whether that trend continued
11 for the 2024 election for House District 54A in Minnesota?

12 A. I haven't seen any data on that, no.

13 Q. So you don't know one way or the other.

14 A. I don't.

15 Q. If the early vote would favor the Democratic candidate, you
16 would agree that that pool of ballots would make it even more
17 difficult for Aaron Paul to close the gap in this election;
18 correct?

19 A. Yes.

20 Q. Have you been retained by counsel for Aaron Paul to provide
21 your testimony?

22 A. Yes.

23 Q. Are you being paid to provide your testimony?

24 A. I am.

25 Q. At what rate are you being paid?

1 A. \$500 an hour.

2 Q. You didn't calculate or perform your own probability
3 analysis, did you?

4 A. No.

5 Q. And you gave an example of where a family may vote together
6 and provided that as an example of a dependent vote. Did I
7 understand that correctly?

8 A. Yes.

9 Q. But you also acknowledged that family members don't
10 necessarily cast their ballots the same way; right?

11 A. Certainly not every family member casts their ballot the same
12 way. The critical point is that this violates the assumption
13 of Dr. Rendahl's model, and therefore, it casts doubt on its
14 utility.

15 Q. But you could have two non-family members, consecutive voters
16 in line, who vote the same way; right?

17 A. You could -- well, you almost certainly do --

18 Q. Or three or four.

19 A. Yeah, but that's a different point. The point here is that
20 the voters -- that one person's vote is dependent upon the
21 other voter standing next to them. In your example, they're
22 not.

23 Q. Right, but I just heard you say that you acknowledge that
24 even family members cast their ballots differently from each
25 other.

1 A. They can, and if it's on purpose, then it's a violation of
2 the assumption of the model, and therefore, the utility of
3 his calculations are less.

4 Q. Have you performed an analysis to determine with precision
5 how much more likely it is that a family member cast their
6 ballots similarly to another family member?

7 A. For this -- well, I don't think I've ever done that, so the
8 answer is no.

9 Q. Okay. And do you know of any way to quantify the dependence
10 that you claim exist in that scenario?

11 A. You could use survey data.

12 Q. Have you done that?

13 A. I have not.

14 Q. Okay. Do you know -- if that had been done, do you know how
15 much that would have changed the probability analysis in this
16 case?

17 A. Well, the main point is that we don't really know the
18 probability that the Republican can get a net of 14 votes;
19 that's my main point. We can't -- the Court shouldn't accept
20 Dr. Rendahl's conclusion that it's 0.0005 or whatever it is.
21 All 20 of these votes could be Republican, all 20 would be
22 Democratic. We don't know, and just sort of imputing missing
23 votes strikes me as kind of inconsistent with free and fair
24 elections.

25 Q. You heard Dr. Rendahl's testimony; correct?

1 A. I did.

2 Q. And you heard him indicate that his analysis accounts for the
3 possibility that all 20 ballots were count -- were cast for
4 Mr. Paul; correct?

5 A. I did, but that's not the point that I'm trying to make. The
6 point I'm trying --

7 Q. Well -- go ahead.

8 A. -- to make is that we don't -- we don't know how these 20
9 people voted.

10 Q. And therefore, a way to determine the likelihood of those 20
11 votes changing the outcome of the election would be to
12 conduct a probability analysis; correct?

13 A. No, not if the assumptions -- if the assumptions are
14 incorrect, then we should not conduct this probability
15 assessment. We don't know how these 20 people voted. They
16 could -- the Republican could win with some probability; the
17 Democrat could win with some probability. We don't know what
18 the probability is.

19 Q. And again, you didn't conduct your own probability analysis;
20 correct?

21 A. Because you shouldn't.

22 Q. That's your opinion, that we shouldn't do that.

23 A. Of course --

24 Q. That we should deprive ourselves of that information.

25 A. If the information is wrong, I don't know what the judge is

1 supposed to do with it.

2 Q. You testified as an expert witness in other proceedings,
3 Dr. Brunell?

4 A. I have.

5 Q. Have you ever testified on behalf of the Democratic
6 candidate?

7 A. I usually don't -- I usually testify -- it's usually not for
8 a candidate in particular.

9 Q. Have you provided expert testimony in connection with
10 redistricting matters, for example?

11 A. Yes.

12 Q. And has that been on behalf of one particular party?

13 A. Most of the time I work for Republicans, but there have been
14 a couple of instances where I've worked for Democrats.

15 Q. Do you consider yourself an expert -- well, strike that.

16 Did you hear Dr. Rendahl testify that if we have a
17 pool of 20 ballots and 4 of those are cast for Representative
18 Tabke, that it would be impossible for Aaron Paul to earn a
19 net of 14 votes?

20 A. I did hear that.

21 Q. Do you agree or disagree with that conclusion?

22 A. That I agree with.

23 Q. And did you hear Dr. Rendahl testify that if we had a pool of
24 21 ballots and 4 of those were cast for Representative Brad
25 Tabke, that it would be impossible for Aaron Paul to earn a

1 net of 14 votes?

2 A. I did.

3 Q. And do you agree or disagree with that testimony?

4 A. Yes, if -- if the Democrat got 4 out of that pool, there's no
5 way to make up the difference.

6 MR. ZOLL: I have no further questions, Your Honor.

7 THE COURT: All right. Thank you.

8 Mr. LeBeau?

9 MR. LeBEAU: Thank you.

10 REDIRECT EXAMINATION

11 BY MR. LeBEAU:

12 Q. Doctor, you were making a point about general early voting.

13 I just wanted to let you have the opportunity to finish.

14 A. Oh, yes. Thank you. So generally when we hear about early
15 voting, certainly in large cities -- like if we're talking if
16 this was Philadelphia -- historically, the Democrats have --
17 usually do far better than Republicans do in terms of net
18 votes that they get in early voting, although this past
19 election, the Republicans decided -- one of their main pushes
20 nationally was *Hey, we need people to vote early. We can't*
21 *keep saying early voting is bad. We need more Republicans to*
22 *vote early, not just because we want to win the early ballots*
23 *but because we might get more people to vote that way. So*
24 *it's possible -- I don't think we have all of the information*
25 *yet -- that the Republicans did better in 2024 than they have*

1 in past recent elections.

2 Q: Doctor, have you studied recount election contests throughout
3 the country?

4 A. I've studied elections throughout the country, yes.

5 Q. Are you aware of any jurisdiction where probability scenarios
6 were relied on to help determine or inform the result of a
7 recount or an election contest?

8 MR. ZOLL: Objection, beyond the scope of cross.

9 THE COURT: Sustained.

10 MR. LeBEAU: I don't have any further questions,
11 Your Honor. Thank you.

12 Thank you, Doctor.

13 THE WITNESS: Thank you.

14 THE COURT: Mr. Zoll, any other questions?

15 MR. ZOLL: Yes.

16 RECROSS-EXAMINATION

17 BY MR. ZOLL:

18 Q. Dr. Brunell, do you have or are you aware of any evidence
19 demonstrating that votes cast by early voters in Shakopee
20 Precinct 10 in the November 5, 2024, General Election are
21 inconsistent with the pool of ballots cast by all voters in
22 Precinct 10?

23 A. I don't know. I have no information about that.

24 Q. Okay.

25 MR. ZOLL: No questions, Your Honor.

1 THE COURT: Mr. LeBeau, anything else?

2 MR. LeBEAU: No, Your Honor.

3 THE COURT: All right. Mr. -- or excuse me --
4 Dr. Brunell, thank you for joining us today via Zoom. You
5 may disconnect.

6 THE WITNESS: Okay. Very well. Thank you.

7 (The witness was excused.)

8 THE COURT: All right. Why don't we start with
9 Mr. LeBeau first.

10 Do you have any additional witnesses, Mr. LeBeau?

11 MR. LeBEAU: No, Your Honor. The witness I was
12 going to call is not going to be available.

13 THE COURT: All right. And you didn't want to wait
14 for him, as I recall that; is that correct?

15 MR. LeBEAU: Correct. I don't think -- I don't
16 think we -- I don't want to hold the Court up.

17 THE COURT: All right. Mr. Zoll, did you have any
18 other witnesses?

19 MR. ZOLL: We have no additional witnesses, Your
20 Honor.

21 THE COURT: All right. And were you able to
22 confirm that stipulation?

23 MR. ZOLL: Yes.

24 THE COURT: All right. So the stipulation was, as
25 I recall it, that Voter 5 and Voter 11 were married.

1 Is that correct, Mr. LeBeau?

2 MR. LeBEAU: That's my understanding.

3 THE COURT: And Mr. Zoll, that's the correct
4 stipulation?

5 MR. ZOLL: Correct.

6 THE COURT: All right. So that will close the
7 record. We'll just make sure that all of the exhibits the
8 parties intended were stipulated to be received have, in
9 fact, been received. We'll do some work on that just to make
10 sure that's the case. And then I will issue my written
11 decision. We can talk about timing for post-trial briefing,
12 and then I can issue an order about that.

13 So we'll go off the record.

14 (Proceedings concluded.)
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REPORTER'S CERTIFICATE

I, MONICA R. MORIARTY, do hereby certify that I am an official court reporter for the First Judicial District, State of Minnesota; that as such reporter, I stenographically reported the proceedings held in the hearing of the afore-mentioned action; that I thereafter transcribed the proceedings by means of computer-aided transcription; and that the above and foregoing transcript, consisting of the preceding 90 pages, constitutes a full, true, and complete transcript of my stenographic notes of the hearing to the best of my ability.

Dated: December 23, 2024

/s/ Monica R. Moriarty

MONICA R. MORIARTY, RDR, CRR
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[Section divider]

Filed in District Court
State of Minnesota
1/14/2025

State of Minnesota
Scott County

District Court
First Judicial District

Court File Number: **70-CV-24-17210**

Case Type: Civil Other/Misc.

Notice of Filing of Order

FILE COPY

Aaron Paul vs Brad Tabke

You are notified that an order was filed on this date.

Dated: January 14, 2025

Vicky L. Carlson
Court Administrator
Scott County District Court
200 4th Avenue West JC 115
Shakopee MN 55379
952-496-8200

cc: RONDELL REID LEBEAU, II
CHARLES N NAUEN

A true and correct copy of this notice has been served pursuant to Minnesota Rules of Civil Procedure, Rule 77.04.