

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.

**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 Hocevar 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 Hocevar 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

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