Filed in District Court
State of Minnesota
12/23/2024 5:12 PM

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

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Filed in District Court
State of Minnesota
12/23/2024 5:12 PM

TABLE OF AUTHORITIES

Cases

Filed in District Court
State of Minnesota
12/23/2024 5:12 PM

Filed in District Court
State of Minnesota
12/23/2024 5:12 PM

Statutes

Other Authorities

Filed in District Court
State of Minnesota
12/23/2024 5:12 PM

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.

Filed in District Court
State of Minnesota
12/23/2024 5:12 PM

- 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

Filed in District Court
State of Minnesota
12/23/2024 5:12 PM

"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

Filed in District Court
State of Minnesota
12/23/2024 5:12 PM

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).

Filed in District Court
State of Minnesota
12/23/2024 5:12 PM

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.

Filed in District Court
State of Minnesota
12/23/2024 5:12 PM

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

Filed in District Court
State of Minnesota
12/23/2024 5:12 PM

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."

Filed in District Court
State of Minnesota
12/23/2024 5:12 PM

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

Filed in District Court
State of Minnesota
12/23/2024 5:12 PM

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

Filed in District Court
State of Minnesota
12/23/2024 5:12 PM

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

Filed in District Court
State of Minnesota
12/23/2024 5:12 PM

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*.

Filed in District Court
State of Minnesota
12/23/2024 5:12 PM

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

Filed in District Court
State of Minnesota
12/23/2024 5:12 PM

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.

Filed in District Court
State of Minnesota
12/23/2024 5:12 PM

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 election[9], 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

Filed in District Court
State of Minnesota
12/23/2024 5:12 PM

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.

Filed in District Court
State of Minnesota
12/23/2024 5:12 PM

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']

Filed in District Court
State of Minnesota
12/23/2024 5:12 PM

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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Filed in District Court
State of Minnesota
12/23/2024 5:12 PM

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 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 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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