

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:

Dated: 12/15/2024

Tracy L. Perzel
Judge of District Court