

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. Swarengin 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. Swarengin explained to Election Administrator Julie Hanson—and testified at trial—that the Shakopee absentee ballot board, consisting of Mr. Swarengin 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. Swarengin).

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. Swarengin).

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. Swarengin).

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. Swarengin); 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. Swarengin). 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. Swarengin); 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 Swearingin 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 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.

14. Contestant failed to introduce any evidence to support a finding that the single uncounted 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