

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF SCOTT

FIRST JUDICIAL DISTRICT

Court File No. 70-CV-24-17210

Aaron Paul,

Contestant

v.

Brad Tabke,

Contestee.

**CONTESTANT’S PROPOSED  
FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
ORDER**

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

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

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

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

**FINDINGS OF FACT**

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

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

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

23. The adopted Scott County canvass report reflected vote totals for House District 54A, which was within the margin for a state funded recount.
24. Candidate Aaron Paul officially requested a recount of the House District 54A totals on November 12, 2024.
25. A recount of the vote total for House District 54A occurred on November 21, 2024. The result of the recount reduced Tabke's lead by one vote, reverting back to 14 as reported on election night.
26. On November 26, 2024, Director Hanson signed an affidavit<sup>1</sup> swearing to the following facts:
  - a. While carrying out my election duties, I identified a discrepancy in the count of ballots, in which there were 20 more absentee ballot records than ballots counted in the Shakopee P-10 precinct from the City of Shakopee.
  - b. From the initial receipt of Shakopee P-10 precinct's ballots through the time in which the absentee ballots in dispute were identified as missing, the County was in possession of the 20 ballot envelopes.
  - c. I organized and conducted multiple search attempts with County and City staff to locate the 20 absentee ballots.
  - d. After exhausting all attempts to locate the missing 20 absentee ballots, the County determined the 20 absentee ballots have been lost and cannot be found.
  - e. Upon investigating the ballot count discrepancy, the County determined the missing 20 absentee ballots were validly cast by Minnesota residents entitled to vote in the general election for House District 54A.

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<sup>1</sup> Stipulated to by the parties as Exhibit 1 of the evidentiary hearing record.

- f. The missing 20 absentee ballots were not counted in the original count, nor in the recount, and were not included in any reported vote totals for House District 54A.
27. On November 27, 2024, Scott County Attorney Ron Hocevar issued a public letter<sup>2</sup> concerning the investigation into the missing ballots.
28. In the letter, the County Attorney made the following statements of fact:
- a. After reviewing the situation further, Scott County has come to the conclusion that the ballots were likely disposed of while they were in their secrecy envelopes, after being removed from their signature envelopes but before being tabulated.
  - b. While conducting normal auditing activities on Thursday, November 7, County staff found that there was a problem with the Shakopee returns in that there were 21-ballot discrepancy between two precincts (with more absentee voters recorded than ballots received). The issues were noted to be 20 ballot records for Precinct 10 (“P10”) and one for Precinct 12A. Based on experience, staff noted that it is not uncommon for one voter to check in and not vote, so the discrepancy in Precinct 12A was not pursued; the focus was on P10.
  - c. For P10, Shakopee reported processing 329 voters but reported results for 309 ballots; in addition, their transfer case held 309 ballots. The ballots for Shakopee Precinct 10 were counted at least four times with the total number equaling 309- while 329 people were checked in.
  - d. County staff worked to eliminate various possibilities for the discrepancy.
  - e. County staff then checked a spreadsheet report that was provided by City staff tracking absentee ballots submitted by Shakopee.

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<sup>2</sup> Stipulated to by the parties as Exhibit 2 of the evidentiary hearing record.

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

vi. That even if the 20 ballots were found, it is unlikely that their chain of custody can be proved to assure they have not been tampered with.

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

- **Irregularities in the Conduct of the Election:** The Elections Division materially deviated from proper election procedures, which directly impacted the results of the election.
  - **Question of Legally Cast Votes:** Uncertainty exists regarding which candidate received the largest number of votes legally cast.
  - **Deliberate, Serious, and Material Violations:** Scott County Elections officials engaged in deliberate, serious, and material violations of Minnesota Election Law.
31. At trial, Scott County Elections Director Julie Hanson testified to the additional relevant facts:
- a. On direct examination Ms. Hanson stated that the one missing vote in P-12 and 20 missing votes in P-10 were all from the absentee voting period at the City of Shakopee. Tx. 22: 14-18.
  - b. The discrepancy in the vote totals was first discovered by County staff and they informed the City of the error. The City never informed the County of the error. Tx. 62: 21-24.
  - c. A discrepancy in vote totals was first discovered by the County on November 7, 2024. Tx. 43: 2-3.
  - d. City staff indicated to County Officials as early as October 30 that they “thought they were a ballot off.” Tx. 43: 10-15.
  - e. 20 days lapsed from when it is assumed the ballots went missing to when County staff discovered the discrepancy in vote totals. Tx. 43: 2-6.



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

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

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

- o. Ms. Hanson testified that ballot balancing totals are to be done daily and that requirement is part of the County’s training for proper election administration. The City did not comply with that requirement. Tx. 32: 13.
- p. Ms. Hanson stated: “[T]he number from the tabulator was never actually written down on October 18, so staff took the number of voters that they had that day and subtracted from the number that was totally run. They did do math. I can’t call it an estimation, but there wasn’t verification through the SVRS system of what those totals should be.” Tx. 60: 18-23.
- q. The recording of ballot totals consisted of “[t]hat each night at the end of the day, they would – the staff in the room would hand-record a number on a piece of paper.” Tx. 87: 6-8.
- r. The recording was not done by the same person. “Most days she worked early morning, not closing shifts, so someone else at the end of the day wrote down or had written those numbers down, and she would move them into the spreadsheet.” Tx. 87: 9-12.<sup>4</sup>
- s. Based upon the County’s investigation they concluded that absentee ballots were not balanced until election day. “That was when we determined that [City Clerk] Lori [Hensen] was actually balancing the absentee, was on election day.” Tx. 104: 5-6.

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

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

Hensen to be credible in the information she provided during the investigation.  
Tx. 101: 11-23.

- dd. Ms. Hensen was the sole source of information concerning the activities that took place when she was alone. And it was during this time period that the missing ballots were processed. Tx. 108: 3-23.
- ee. City of Shakopee elections officials were trained as to reporting incidents in the incident log, no incident log notations were made for the lost ballots. Tx. 41: 10-24,; 42: 1-10.
- ff. The failure of the City to report the vote discrepancy was not in accordance with proper election administration procedure. Tx. 43: 19-24.
- gg. The County's conclusion that the ballots were thrown away is their "best guess" as to the fate of the missing ballots. Tx. 52: 22-25.
- hh. "There is not" a way for the County to be certain as to what happened to the missing ballots. Tx. 53: 1-3.
- ii. County staff cannot be certain whether or not ballots were removed from the secrecy envelopes. Tx. 56: 10-15.
- jj. Lori Hensen, Shakopee City Clerk was responsible for ballot security between the dates of October 15-18. Tx. 56: 16-18.
- kk. On cross examination, when asked about date information contained on the absentee ballot envelope, Ms. Hanson described another administration error by City officials: "We do train the staff and our Absentee Ballot Board to date these envelopes. We did find through this process that that [the dating of the envelope] was not done." Tx. 72: 1-6.

- ll. In her opinion the actions of the City of Shakopee elections officials losing 20, or 21, ballots is “inappropriate, something that should not have happened.” Tx. 59: 7-12.
  - mm. Ms. Hanson cannot say with “absolute certainty” that the 20 voters who have been identified as having missing ballots are the actual voters corresponding to the lost ballots. Tx. 61: 10-13, 18-22.
  - nn. Ms. Hanson does not have certainty that the City of Shakopee election officials followed all procedures for tabulating and counting ballots. Tx. 62: 2-6.
  - oo. Ms. Hanson indicated that she has never encountered an error like this before. She characterized this error as “Very large. This is a – it’s a big deal.” Tx. 112: 16-22.
32. At trial Kay Gamble testified to the following relevant facts:
- a. She was an election judge for the City of Shakopee during the 2024 General Election. Tx. 159: 14-15.
  - b. She created the spreadsheet, Exhibit 202. Tx. 161: 6-14.
  - c. The document was first created on October 26, 2024. Tx. 169: 17-19.
  - d. Prior to that totals were kept “[o]n a bright yellow sheet of paper” which she later identified as “Post-it notes” that were subsequently thrown away. Tx. 174: 15; 181: 22-24; 182: 1-12.
  - e. She admitted she did not follow the handbook procedures for balancing ballots on a daily basis. Tx. 179: 8-14.
  - f. The spreadsheet was an overall reflection of totals and not precinct by precinct. Tx. 170: 24-25; 171: 1-2.

- g. The total number for October 18, 2024 was not written down “so on Monday, I kind of did back-math to get that.” Tx. 168: 7-9.
  - h. She ran an SVRS report on October 17, 2024. Tx. 175: 17-24.
  - i. On October 17, the Ballot Board met to accept ballots from the 14, 15, 16. Tx. 175: 21-22; 184: 7; 187: 10-11.<sup>5</sup>
  - j. On October 18, she witnessed Lori Hensen processing absentee ballots alone. She witnessed Lori Hensen opening absentee ballots. Tx. 176: 17-25; 177: 1-4.
  - k. She asked Ms. Hensen “if she needs somebody else to be watching because that’s – a ballot board, you need two people to do that, usually one from each party.” Tx. 177: 10-14.
  - l. Neither she nor the other election judge assisted Ms. Hensen in processing the ballots. Tx. 177: 12-23.
  - m. She first noticed the error in the ballot totals on October 21, 2024. Tx. 180: 10-13.
33. At trial Chelsea Petersen testified to the following relevant facts:
- a. She is the Assistant City Administrator. Tx. 190: 9.
  - b. She first became aware of the missing 20 ballots in P-10 when contacted by Lori Hensen on November 8, 2024. Tx. 190: 10-17.
  - c. She stated that “procedures were missed” by City staff in administering the election. Tx. 196: 17-18.
  - d. She did not personally witness the administration of the election, except for one brief instance. Tx. 197: 9-11.

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

34. At trial Rocky Swearengin testified to the following relevant facts:
- a. He was an election judge for the 2024 General Election in Scott County in the City of Shakopee. Tx. 236: 16-19.
  - b. He was also a member of the Absentee Ballot Board. Tx. 238: 20-22.
  - c. The acceptance of absentee ballots was done by City staff. Tx. 239: 6-8.
  - d. He did not recall opening any signature envelopes that didn't contain a secrecy envelope or opening any secrecy envelopes that didn't contain a ballot. Tx. 243: 20-25; 244: 1-4.
  - e. He did not participate in review of absentee ballots on October 18, 2024. Tx. 247: 1-5.
  - f. He corroborated that the ballots processed on October 17, 2024 corresponded to ballots submitted to the City on October 14, 15,16. Tx. 247: 18-24.<sup>6</sup>
  - g. Secrecy envelopes were discarded after ballots were removed. Tx. 251: 5-8.
  - h. The handwritten ballot totals were not verified by the SVRS system. Tx. 253: 18-20.
35. In total 12 voters testified as to how they intended to cast their ballots. It is undisputed that these ballots are uncounted, lost, and irretrievable. It is uncertain whether these 12 voters were among the 20 voters whose ballots were not counted.
36. The record establishes that 7 of the 12 voters who testified are members of the same family and reside at the same address. *See*, Confidential Exhibits 305, 311, 307, 308, 314, 315, 310, 316, 317.
37. At trial Doctor Aaron Rendahl testified to the following relevant facts:

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

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



- a. He is a professor of political science at the University of Texas, Dallas. Tx. 277: 6-7.
- b. He reviewed Doctor Rendahl's report. Tx. 279: 10-25.
- c. He disagrees with Doctor Rendahl's report because it assumes the 20 voters were drawn randomly from a distribution of votes equal to the total votes cast in a particular precinct. Tx. 280: 17-25; 281: 1.
- d. Based on his expertise, early voters tend to be different than election day voters, which will affect the probability distribution relied on in Doctor Rendahl's report. Tx. 281: 17-19.
- e. Based on his expertise, "[p]eople that live together oftentimes have similar voting behavior, and even if they don't [...]the key thing is that the votes are dependent upon one another. They're no longer independent draws from a distribution." Tx. 283: 22-25; 284: 1-5.<sup>7</sup>
- f. Based upon his expertise, "early voters can differ in lots of ways, and the most important thing for our – for what we're doing here today is that early voters have in the past been shown to have different partisan preferences than election day voters." Tx. 284: 12-15.
- g. Dr. Brunnell concluded that "[T]he Court shouldn't accept Dr. Rendahl's conclusion that its 0.005 or whatever it is. All 20 of these votes could be Republican, all 20 could be Democratic. We don't know, and just sort of imputing missing votes strikes me as kind of inconsistent with free and fair elections." Tx. 288: 19-24.

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<sup>7</sup> The record demonstrates that seven of the voters who testified live at the same address and have the same surname.

**CONCLUSIONS OF LAW**

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

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

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

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

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

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

**ORDER**

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

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
Tracy L. Perzel  
Judge of the District Court

STATE OF MINNESOTA  
 COUNTY OF SCOTT

DISTRICT COURT  
 FIRST JUDICIAL CIRCUIT

<p>Aaron Paul,           Contestant,           v.           Brad Tabke,           Contestee.</p>	<p>Case No.: 70-CV-24-17210           Hon. Tracy Perzel</p>
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**CERTIFICATE OF SERVICE FOR CONTESTANT’S FINDINGS OF FACT,  
 CONCLUSION OF LAW, AND [PROPOSED] ORDER**

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

David J. Zoll, Esq.  
 Charles N. Nauen, Esq.  
 LOCKRIDGE GRINDAL NAUEN PLLP  
[cnauen@locklaw.com](mailto:cnauen@locklaw.com)  
[djzoll@locklaw.com](mailto:djzoll@locklaw.com)  
*Counsel for Contestee*

Jeanne Andersen  
[jandersen@co.scott.mn.us](mailto:jandersen@co.scott.mn.us)  
*Counsel for Scott County*

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

Dated: December 30, 2024




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