

1 STATE OF MINNESOTA

DISTRICT COURT

2 COUNTY OF SCOTT

FIRST JUDICIAL DISTRICT

3
4 Aaron Paul,

COURT TRIAL
VOLUME II

5 Contestant,

6 v.

Court File No. 70-CV-24-17210

7 Brad Tabke,

8 Contestee.

9
10 The above-entitled matter came duly on for Court Trial
11 before the Honorable TRACY L. PERZEL, one of the judges of the
12 above-named Court, on the 17th day of December, 2024, at the Scott
13 County Government Center, City of Shakopee, County of Scott, State
14 of Minnesota.

15
16 A P P E A R A N C E S

17 FOR CONTESTANT AARON PAUL:

18 R. REID LeBEAU II, Attorney at Law
19 CHALMERS, ADAMS, BACKER, and KAUFMAN
20 525 Park Street, Suite 255
St. Paul, MN 55103

21 FOR CONTESTEE BRAD TABKE:

22 DAVID J. ZOLL, Attorney at Law
23 RACHEL A. KITZE COLLINS, Attorney at Law
24 LOCKRIDGE GRINDAL NAUEN PLLP
100 Washington Avenue South, Suite 2200
Minneapolis, MN 55401

25 ALSO PRESENT: JEANNE ANDERSEN, Assistant Scott County Attorney

1 (Whereupon, the following proceedings were duly had
2 of record:)

3 THE COURT: We are back today for day two of the
4 court trial in the case of Aaron Paul, Contestant, vs. Brad
5 Tabke, Contestee, Scott County District Court File No.
6 70-CV-24-17210.

7 Counsel, would you please note your appearances.

8 MR. LeBEAU: Thank you, Your Honor. Reid LeBeau on
9 behalf of Contestant Aaron Paul.

10 MR. ZOLL: David Zoll on behalf of Contestee Brad
11 Tabke.

12 THE COURT: All right. Thank you. Good morning,
13 Mr. LeBeau, and good --

14 MR. ZOLL: And I don't want to lose my colleague.

15 MS. KITZE COLLINS: Rachel Kitze Collins on behalf
16 of Contestee Brad Tabke.

17 THE COURT: All right. Thank you. And good
18 morning, Mr. Zoll, and good morning, Ms. Kitze Collins.

19 Before we get started again, I will again do some
20 preliminary housekeeping matters. As I explained yesterday,
21 everyone in the courtroom is expected to present appropriate
22 courtroom behavior and follow the rules of decorum. If you
23 need to have a conversation with someone, unless you're
24 conferring at counsel table, please leave the courtroom to
25 have that conversation.

1 You must remain neutral in body language. You may
2 agree or disagree with something said in the courtroom, but
3 do not show it by your facial expressions, gestures, voice,
4 or other audible action.

5 Please turn off your cell phone completely. That's
6 more than simply silencing it and putting it in your
7 pocket -- put it in your pocket or bag, where it must remain
8 until you are outside this courtroom. There are to be no
9 cell phones out in the courtroom. And if for some reason,
10 you cannot follow these rules, I would ask that you leave the
11 courtroom at this time. As with any other court proceeding,
12 there is a deputy in the courtroom to assist in matters of
13 decorum, and a violation of the instructions will be
14 considered direct contempt.

15 My court reporter takes down all the proceedings.
16 The Court also takes notes; sometimes it does so on paper,
17 but most often by the computer, so you may hear from time to
18 time that tapping.

19 And as I said yesterday, sometimes we have to have
20 conferences at the bench. Those are to address logistical,
21 matters of law, and other things as needed. If I need to
22 make a record, we'll do that.

23 So, Mr. LeBeau or Mr. Zoll, was there anything we
24 needed to do further before we go back with the witnesses?

25 MR. LeBEAU: No, thank you, Your Honor.

1 THE COURT: All right.

2 MR. ZOLL: Nothing from me.

3 THE COURT: All right. As I understand it, there
4 is still one witness that Mr. LeBeau may choose to call today
5 depending upon timing, but that that witness is not available
6 now.

7 Is that correct?

8 MR. LeBEAU: That's correct.

9 THE COURT: And Mr. Zoll does have witnesses
10 available, so the parties are in agreement that we can go
11 forth with those witnesses.

12 Is that correct, Mr. Zoll -- or Mr. LeBeau?

13 MR. LeBEAU: That's correct, Your Honor.

14 THE COURT: All right. Thank you.

15 Mr. Zoll, go ahead and call your witness.

16 MR. ZOLL: Contestee calls Voter 9, who will be
17 appearing by Zoom.

18 THE COURT: All right. And at this point, it bears
19 repeating that there is to be no video recording of the
20 testimony of witnesses pursuant to the Court's prior order.

21 All right. Let's go off the record for a minute.

22 (Off-the-record discussion.)

23 THE COURT: We'll go back on the record.

24 Mr. Zoll, on behalf of the Contestee, has just
25 called --

1 Voter 9 you said, Mr. Zoll? Is that correct?

2 MR. ZOLL: That is correct.

3 THE COURT: All right. Voter 9, would you please
4 raise your right hand?

5 (The oath was administered.)

6 THE WITNESS: (Muted.)

7 THE COURT: We cannot hear you, so we need to work
8 with that issue. Why don't you lower your hand for just a
9 moment.

10 THE WITNESS: There. Now can you hear me?

11 THE COURT: Thank you. You can go ahead and raise
12 your hand again.

13 THE WITNESS: Okay.

14 THE COURT: I'm going to repeat the oath.

15 (The oath was administered.)

16 THE WITNESS: I do.

17 THE COURT: Thank you. You may lower your hand.

18 And Mr. Zoll, as to Voter 9, have you verified that
19 Voter 9 is, in fact, the individual identified as Voter 9 on
20 the voter identification key that is filed under seal with
21 the Court?

22 MR. ZOLL: Yes, I have, Your Honor.

23 THE COURT: All right. Thank you. You may
24 proceed.

25

1 VOTER NUMBER 9,
2 having been first duly sworn, was examined and testified under
3 oath remotely, via Zoom, as follows:

4 DIRECT EXAMINATION

5 BY MR. ZOLL:

6 Q. Voter 9, do you have a copy of Confidential Exhibit 309 with
7 you?

8 A. Yes, I do.

9 Q. And at the top of that document -- at the top of that
10 document, does it say "Confidential Exhibit 309"?

11 A. Yes.

12 Q. Do you recognize this document?

13 A. Yes, I do.

14 Q. What is it?

15 A. There are two sheets: one is the absentee ballot and
16 one is the -- what was printed on the outside of the yellow
17 envelope that my ballot went in to.

18 Q. Okay. And when you say "absentee ballot," do you mean the
19 form you completed --

20 A. Yes, the ballot that I completed.

21 THE COURT: And if you could, just wait until
22 Mr. Zoll is done asking his questions. My court reporter is
23 trying to report the proceedings in full, and if people talk
24 over each other, it's very hard to hear what the other person
25 is saying and for her to record that.

1 Mr. Zoll, why don't you ask your question again.

2 THE WITNESS: Okay.

3 BY MR. ZOLL:

4 Q. When you referred to the absentee ballot that you completed,
5 were you referring to the application that you completed to
6 receive the ballot?

7 A. Yes.

8 Q. Okay. Do these appear, the materials in Confidential Exhibit
9 309, appear to be true and correct copies of your absentee
10 ballot materials?

11 A. Yes.

12 MR. ZOLL: Your Honor, we would move for the
13 admission of Confidential Exhibit 309 under seal.

14 THE COURT: Any objection?

15 MR. LeBEAU: No, Your Honor.

16 THE COURT: All right. Thank you. 309 will be
17 received, and that is Sealed 309.

18 Mr. LeBeau, would you just mind pulling your
19 microphone down? It's just a little hard to hear you.

20 MR. LeBEAU: I'm sorry.

21 THE COURT: That's okay. Thank you.

22 BY MR. ZOLL:

23 Q. Did you vote in the most recent General Election?

24 A. Yes, I did.

25 Q. Where did you vote?

- 1 A. I voted at the Shakopee courthouse.
- 2 Q. Do you recall the day that you voted?
- 3 A. I voted on the Wednesday of MEA break. I had off from work.
4 16th of October.
- 5 Q. Okay. And the second page of Confidential 309 is an absentee
6 ballot application form. Did you fill that out?
- 7 A. Yes.
- 8 Q. Is that your name and your handwriting that appear on that
9 document?
- 10 A. Correct.
- 11 Q. Did you hand this completed form to an election official?
- 12 A. Yes, I did.
- 13 Q. What happened after you handed them this form?
- 14 A. They handed me the ballot, a white envelope, and a yellow
15 envelope, and instructed me to vote in the voting booth.
- 16 Q. Did you complete your ballot?
- 17 A. Yes, I did.
- 18 Q. Did you follow the instructions that were provided to you by
19 the election official?
- 20 A. Yes, I did.
- 21 Q. And when you had completed voting, did you place your ballot
22 in an envelope?
- 23 A. I placed my ballot in a white envelope, and then I placed
24 that white envelope into a yellow envelope.
- 25 Q. And then what did you do with those envelopes?

1 A. I put them in the box that I was instructed to.

2 Q. Okay. When you completed your ballot, did you vote in the
3 election for House District 54A between Brad Tabke and Aaron
4 Paul?

5 A. Yes, I did.

6 Q. Who did you vote for in that election?

7 A. Brad Tabke.

8 Q. Are you absolutely certain that you voted for Brad Tabke?

9 A. I'm positive.

10 MR. ZOLL: I have no further questions, Your Honor.

11 THE COURT: All right. Mr. LeBeau?

12 MR. LeBEAU: No questions, Your Honor.

13 THE COURT: All right. Thank you.

14 Voter 9, that concludes your testimony. You are
15 free to leave the Zoom proceeding, and the record should
16 reflect, as I've just said, that this voter was testifying by
17 Zoom.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: Thank you.

20 (The witness was excused.)

21 THE COURT: Mr. Zoll, go ahead and call your next
22 witness.

23 MR. ZOLL: (Pause.) Our next witness will be
24 Voter 5.

25 (Witness entered the courtroom.)

VOTER NUMBER 5 - DIRECT EXAMINATION

214

1 THE COURT: All right. Voter 5, if you could just
2 step forward down to this ramp area here and raise your right
3 hand.

4 (The oath was administered.)

5 THE WITNESS: Yes.

6 THE COURT: Thank you. You can have a seat on the
7 witness stand.

8 And Mr. Zoll, as to Voter 5, have you verified that
9 Voter 5 is, in fact, the person identified as Voter 5 on the
10 sealed witness identification key filed with the Court?

11 MR. ZOLL: Yes, I have, Your Honor.

12 THE COURT: All right. Thank you. You may
13 proceed.

14 MR. ZOLL: And may I approach the witness with a
15 copy of Confidential Exhibit 305?

16 THE COURT: You may.

17 VOTER NUMBER 5,
18 having been first duly sworn, was examined and testified under
19 oath as follows:

DIRECT EXAMINATION

20
21 BY MR. ZOLL:

22 Q. (Handing.) Good morning. Voter 5, do you have a copy of
23 Confidential Exhibit 305 in front of you?

24 A. Yes, I do.

25 Q. Does it indicate "Confidential Exhibit 305" at the top of

1 that document?

2 A. Yes, it does.

3 Q. Do you recognize this document?

4 A. Yes, I do.

5 Q. Can you describe what is on the first page of Confidential
6 Exhibit 305?

7 A. Yes. It shows the signature envelope with my name on it and
8 where I voted.

9 Q. And how about the second page of that document?

10 A. The second page is a copy of my absentee ballot.

11 Q. Do these appear to be true and correct copies of your
12 absentee ballot materials?

13 A. Yes.

14 Q. Did you vote in the most recent General Election in the State
15 of Minnesota?

16 A. Yes, I did.

17 Q. Where did you vote?

18 A. I voted at City Hall in Shakopee.

19 Q. Okay. Do you remember the date that you voted?

20 A. Yes. It was the 17th of October in 2024.

21 Q. Did you complete the form that appears as the second page of
22 Confidential Exhibit 305?

23 A. Yes, I did.

24 MR. ZOLL: And Your Honor, I believe I may have
25 skipped right over moving for the admission of Confidential

1 Exhibit 305 as a sealed exhibit.

2 THE COURT: Any objection?

3 MR. LeBEAU: No objection, Your Honor.

4 THE COURT: Sealed 305 will be received and filed
5 under seal.

6 BY MR. ZOLL:

7 Q. So I'm sorry: Did you say that you completed the form that
8 is on the second page?

9 A. Yes, that's my handwriting.

10 Q. Okay. After you completed that form, what did you do with
11 it?

12 A. I completed this form and I went to a ballot voting station.
13 I completed my ballot in all the elections presented to me,
14 sealed it in one envelope, sealed it in a second envelope,
15 and I placed it in a metal box with a slot on the top of the
16 box (indicating).

17 Q. Did you do that pursuant to instructions from the election
18 officials?

19 A. That's correct.

20 Q. When you completed your ballot, did you vote in the election
21 for House District 54A between Brad Tabke and Aaron Paul?

22 A. Yes, I did.

23 Q. Who did you vote for in that election?

24 A. I voted for Brad Tabke.

25 Q. Are you absolutely certain that you voted for Brad Tabke?

1 A. Absolutely certain. I have his yard sign at my house, and it
2 was presented throughout the election.

3 MR. ZOLL: I have no further questions for Voter 5.

4 THE COURT: All right. Mr. LeBeau?

5 MR. LeBEAU: No questions, Your Honor.

6 THE COURT: All right. Thank you.

7 Ma'am, you may step down.

8 THE WITNESS: Thank you.

9 (The witness was excused.)

10 MR. ZOLL: And Your Honor, for purposes of
11 sequestration, when witnesses have completed their testimony,
12 are they free to remain in the courtroom?

13 THE COURT: Provided those witnesses would not be
14 re-called, I'm fine with it.

15 MR. ZOLL: All right. Okay.

16 THE COURT: And Mr. LeBeau, is that acceptable to
17 you?

18 MR. LeBEAU: No objection, Your Honor.

19 THE COURT: Thank you.

20 MR. ZOLL: So you're welcome to remain in here.

21 THE COURT: Go ahead and call your next witness.

22 MR. ZOLL: Our next witness will be Voter 11.

23 THE COURT: All right.

24 (Witness entered the courtroom.)

25 THE COURT: Voter 11, please step forward to the

1 ramp area right here in front of this witness chair. Thank
2 you. And raise your right hand.

3 THE WITNESS: Okay.

4 (The oath was administered.)

5 THE WITNESS: Yes, I do.

6 THE COURT: Thank you. Please have a seat on the
7 witness stand.

8 And as to Voter 11, Mr. Zoll, have you verified
9 that Voter 11 is, in fact, the person identified on the voter
10 identification key that's filed under seal with the court?

11 MR. ZOLL: Yes, I have, Your Honor.

12 THE COURT: Okay. Thank you. You may proceed.

13 MR. ZOLL: May I provide the witness with a copy of
14 the exhibit?

15 THE COURT: You may, and you don't have to ask
16 again.

17 MR. ZOLL: Okay. Thank you.

18 VOTER NUMBER 11,
19 having been first duly sworn, was examined and testified under
20 oath as follows:

21 DIRECT EXAMINATION

22 BY MR. ZOLL:

23 Q. (Handing.) Voter 11, I just handed you a document, and can
24 you, for the record, identify, if it has an exhibit number at
25 the top, what that exhibit number is?

1 A. Yes, Exhibit -- Exhibit No. 311.

2 Q. Okay. Thank you. Do you recognize the first page of
3 Exhibit 311?

4 A. Yes, I do.

5 Q. What is that?

6 A. That is -- that is the first form I was given when I went to
7 vote.

8 Q. And if we look at the second page of 311, do you recognize
9 that document?

10 A. Yes, I do.

11 Q. And what was that?

12 A. That is the absentee ballot form.

13 Q. Is that the form you would have completed to receive your
14 ballot?

15 A. Yes.

16 Q. And then if we go back to the first page, does it say
17 "Signature Envelope" at the top of that document?

18 A. Yes.

19 Q. Does that refresh your memory as to what this document was?

20 A. Yes.

21 Q. And what would it have been?

22 A. Yeah, that was the envelope I slid my ballot into.

23 Q. Okay. Do these appear to be true and correct copies of your
24 absentee ballot materials?

25 A. Yes.

1 MR. ZOLL: Your Honor, we would move for the
2 admission of Confidential Exhibit 311 under seal.

3 THE COURT: Any objection, Mr. LeBeau?

4 MR. LeBEAU: No objection, Your Honor.

5 THE COURT: All right. 311 will be received; it's
6 filed under seal.

7 BY MR. ZOLL:

8 Q. Voter 11, if we turn our attention to the second page of this
9 exhibit, did you fill this form out?

10 A. Yes, I did.

11 Q. Is that your handwriting?

12 A. Yes.

13 Q. And your name appears on that document?

14 A. Yes.

15 Q. What did you do after you filled out that form?

16 A. After I filled out the form, I went in to -- back to vote,
17 and I had to -- I sealed my vote, the paper, and I slided it
18 into an envelope and another envelope before I cast it into
19 the metal box.

20 Q. And those steps that you described, were those steps or
21 instructions that were given to you by election officials?

22 A. Yes.

23 Q. And you said that you -- and correct me if I'm wrong -- did
24 you complete the ballot that was provided to you?

25 A. Yes, I did.

1 Q. When you voted -- or I'm sorry. Let me ask one more
2 question: Do you remember when you voted?

3 A. Yeah, I voted on the 17th of October.

4 Q. And where did you vote in the election?

5 A. At the Shakopee City Hall.

6 Q. Okay. When you completed your ballot, did you vote in the
7 election for House District 54A between Brad Tabke and Aaron
8 Paul?

9 A. Yes, I did.

10 Q. Who did you vote for in that election?

11 A. I voted for Brad Tabke.

12 Q. Are you absolutely certain that you voted for Brad Tabke?

13 A. Yes.

14 MR. ZOLL: I have no further questions, Your Honor.

15 THE COURT: Mr. LeBeau?

16 MR. LeBEAU: I do have a Cross.

17 THE COURT: All right. Thank you. You may step
18 forward.

19 MR. LeBEAU: Thank you.

20 CROSS-EXAMINATION

21 BY MR. LeBEAU:

22 Q. Voter 11, when you went to vote on October 17th, did you go
23 to the polling location with anyone?

24 A. Yeah, I went there alone.

25 Q. I'm sorry?

1 A. I was there alone.

2 Q. You were there alone? Did you travel to the polling location
3 with anybody?

4 A. No.

5 Q. Okay. Thank you.

6 MR. LeBEAU: No further questions.

7 THE COURT: All right. Thank you.

8 Any other questions, Mr. Zoll?

9 MR. ZOLL: No, Your Honor.

10 THE COURT: All right. Thank you, sir. You may
11 step down.

12 (The witness was excused.)

13 THE COURT: Mr. Zoll, did you want to retrieve that
14 exhibit?

15 MR. ZOLL: Oh, yes. Thank you.

16 Thank you, Your Honor.

17 THE COURT: All right. Why don't you go ahead and
18 call your next witness.

19 MR. ZOLL: Our next witness will be Voter 18.

20 THE COURT: All right.

21 (Witness entered the courtroom.)

22 THE COURT: Voter 18, you can just come up to the
23 ramp right here. And if you could pause, I'll have you raise
24 your right hand. Thank you.

25 (The oath was administered.)

1 THE WITNESS: I swear.

2 THE COURT: Thank you. You may have a seat on the
3 witness stand.

4 Mr. Zoll, as to Voter 18, have you verified that
5 Voter 18 is, in fact, the person identified on the voter
6 identification key that is filed under seal with the Court?

7 MR. ZOLL: Yes, I have, Your Honor.

8 THE COURT: All right. Thank you. You may
9 proceed.

10 MR. ZOLL: Can I double-confirm one question to
11 make sure --

12 THE COURT: Sure. We'll go off the record.

13 (Off-the-record discussion.)

14 THE COURT: We'll go back on the record.

15 VOTER NUMBER 18,

16 having been first duly sworn, was examined and testified under
17 oath as follows:

18 DIRECT EXAMINATION

19 BY MR. ZOLL:

20 Q. (Handing.) Voter 18, I handed you a document that has a
21 label at the top and confidential exhibit number. Can you,
22 just for the record, identify what that is, what number it
23 is?

24 A. It says "Confidential Exhibit 318."

25 Q. Okay. Thank you. Do you recognize the first page of

1 Confidential Exhibit 318?

2 A. Yes.

3 Q. And what is that?

4 A. It's a signature envelope.

5 Q. Is this a signature envelope that you would have used in
6 voting?

7 A. Yes.

8 Q. And how about the second page of Exhibit 318? Do you
9 recognize this document?

10 A. Yes.

11 Q. And what is it?

12 A. It is a form I filled out before I voted.

13 Q. Okay. Is this your handwriting and your name on that
14 document?

15 A. Yes, it is.

16 Q. Okay.

17 MR. ZOLL: Your Honor, we would move for the
18 admission under seal of Confidential Exhibit 318.

19 THE COURT: Any objection, Mr. LeBeau?

20 MR. LeBEAU: No objection, Your Honor.

21 THE COURT: All right. 318 will be received. It
22 is filed under seal.

23 BY MR. ZOLL:

24 Q. Voter 18, did you vote in the most recent General Election in
25 Minnesota?

- 1 A. Yes, I did.
- 2 Q. Where did you vote?
- 3 A. At the Shakopee City Hall.
- 4 Q. Do you recall the day that you voted?
- 5 A. October 15th.
- 6 Q. The second page of Exhibit 318, you testified that you filled
7 this out. What did you do with this after you completed the
8 form?
- 9 A. I walked into the room and handed it to the gentleman that
10 verified my name on the voters list.
- 11 Q. And then what happened?
- 12 A. He took it and explained the process of voting and the ballot
13 system and what to do with it.
- 14 Q. Were you given a ballot?
- 15 A. Yes.
- 16 Q. Were you given anything else with the ballot?
- 17 A. Two envelopes.
- 18 Q. Okay. Did you complete your ballot?
- 19 A. Yes, I did.
- 20 Q. What did you do after completing your ballot?
- 21 A. I placed the ballot in -- in the first smaller envelope and
22 put it in the other envelope and sealed it.
- 23 Q. Did you take those actions pursuant to instructions that were
24 given to you by the election officials?
- 25 A. Yes.

1 Q. Okay. When you completed your ballot, did you vote in the
2 election for House District 54A between Brad Tabke and Aaron
3 Paul?

4 A. Yes, I did.

5 Q. Who did you vote for in that election?

6 A. Brad.

7 Q. Full name, please?

8 A. Brad Tabke.

9 Q. Thank you. And are you absolutely certain that you voted for
10 Brad Tabke?

11 A. Yes, I am.

12 MR. ZOLL: I have no additional questions, Your
13 Honor.

14 THE COURT: Mr. LeBeau?

15 MR. LeBEAU: No questions, Your Honor.

16 THE COURT: All right. Thank you. You may step
17 down.

18 (The witness was excused.)

19 MR. ZOLL: And I'll take the copy -- here, I'll
20 take that back. Thank you.

21 THE COURT: You may call your next witness,
22 Mr. Zoll.

23 MR. ZOLL: Contestee calls Voter 20.

24 (Witness entered the courtroom.)

25 THE COURT: Voter 20, if you could please just come

VOTER NUMBER 20 - DIRECT EXAMINATION

1 down to this ramp area, I'll have you raise your right hand.

2 THE WITNESS: Okay.

3 (The oath was administered.)

4 THE WITNESS: Yes, I do.

5 THE COURT: Thank you. You may have a seat on the
6 witness stand.

7 Mr. Zoll, as to Voter 20, have you verified that
8 this person is, in fact, the person identified as Voter 20 on
9 the voter identification key that is filed with the Court
10 under seal?

11 MR. ZOLL: Yes, I have, Your Honor.

12 THE COURT: All right. Thank you. You may
13 proceed.

14 VOTER NUMBER 20,

15 having been first duly sworn, was examined and testified under
16 oath as follows:

17 DIRECT EXAMINATION

18 BY MR. ZOLL:

19 Q. (Handing.) Voter 20, I have handed you a document. At the
20 top of it, it has an exhibit name. Just for the record,
21 could you read that exhibit name?

22 A. Confidential Exhibit 320.

23 Q. And do you recognize the first page of Confidential Exhibit
24 320?

25 A. Yes. Yes, I do.

1 Q. What is that?

2 A. It's my voter envelope.

3 Q. And the second page of Confidential Exhibit 320, do you
4 recognize that?

5 A. Yes, it's my ballot.

6 Q. Your ballot or was this the form you completed to obtain a
7 ballot?

8 A. Yes, it's mine.

9 Q. There's no offices or ovals on this; right?

10 A. Correct.

11 Q. Is this your name in handwriting that appears on the second
12 page of Confidential Exhibit 320?

13 A. Yes, it is.

14 Q. And does your name also appear on the first page of
15 Confidential Exhibit 320?

16 A. Yep, that's my name and address.

17 Q. Okay. Do these appear to be true and correct copies of your
18 absentee ballot materials?

19 A. Yes, they are.

20 MR. ZOLL: Your Honor, we move for the admission of
21 Confidential Exhibit 320 under seal.

22 THE COURT: Any objection?

23 MR. LeBEAU: No objection, Your Honor.

24 THE COURT: 320 will be received. It will be filed
25 under seal.

1 BY MR. ZOLL:

2 Q. Voter 20, did you vote in the most recent General Election in
3 Minnesota?

4 A. Yes, I did.

5 Q. Where did you vote?

6 A. The City Hall.

7 Q. Shakopee City Hall?

8 A. Shakopee City Hall on Gorman.

9 Q. And do you recall the day that you voted?

10 A. October 15th.

11 Q. You indicated that you had completed the form that is the
12 second page of Confidential Exhibit 320. What happened after
13 you completed this form?

14 A. I handed it to the person and I got my ballot.

15 Q. Did you receive anything else when you received your ballot?

16 A. Envelopes?

17 Q. Okay. And what did you do after you received your ballot and
18 the envelopes?

19 A. I went to the booth; I filled it out. Once I was done, I put
20 it in the white envelope, and then there was another envelope
21 that I put it in, which was a brown one, I believe.

22 Q. Okay. And what did you do after placing your ballot into
23 those envelopes?

24 A. Then I put it in the square ballot box I was requested to put
25 it in.

1 Q. And all those steps you described, were those actions you
2 took pursuant to instructions from the election officials?

3 A. Yes. Yes.

4 Q. When you completed your ballot, did you vote in the election
5 for House District 54A between Brad Tabke and Aaron Paul?

6 A. Yes, I did.

7 Q. Who did you vote for in that election?

8 A. Brad Tabke, the Democrat.

9 Q. And are you absolutely certain that you voted for Brad Tabke?

10 A. Yes, I am.

11 MR. ZOLL: No further questions, Your Honor.

12 THE COURT: All right. Mr. LeBeau?

13 MR. LeBEAU: No questions.

14 THE COURT: All right. Thank you. You may step
15 down.

16 (The witness was excused.)

17 MR. ZOLL: And I'll take the copy of that. Thank
18 you.

19 THE COURT: Go ahead and call your next witness,
20 Mr. Zoll.

21 MR. ZOLL: Contestee calls Voter 12.

22 (Witness entered the courtroom.)

23 THE COURT: Voter 12, if you could just come down
24 to this ramp area, and I'll have you raise your right hand.

25 (The oath was administered.)

1 THE WITNESS: I do.

2 THE COURT: Thank you. You may have a seat on the
3 witness stand.

4 Mr. Zoll, as to Voter 12, have you confirmed that
5 Voter 12 is, in fact, the person identified as Voter 12 on
6 the voter identification key that was filed under seal with
7 the Court?

8 MR. ZOLL: Yes, I have, Your Honor.

9 THE COURT: Thank you. You may proceed.

10 VOTER NUMBER 12,
11 having been first duly sworn, was examined and testified under
12 oath as follows:

13 DIRECT EXAMINATION

14 BY MR. ZOLL:

15 Q. (Handing.) Voter 12, I handed you a copy of a document, and
16 at the top of that page, it identifies an exhibit number.
17 Can you, just for the record, read that exhibit number?

18 A. It's Exhibit 312.

19 Q. Does it say "Confidential Exhibit" before that?

20 A. Yes. Sorry.

21 Q. Okay. If you could move just a little bit closer to the
22 microphone, if that's possible.

23 Do you recognize the first page of Confidential
24 Exhibit 312?

25 A. Yes, I do.

1 Q. What is that?

2 A. It's the signature envelope.

3 Q. And does your name appear on there?

4 A. Yes, it does.

5 Q. And turning to the second page of Confidential Exhibit 312,
6 do you recognize that document?

7 A. Yes, I do.

8 Q. And what is this?

9 A. This is the 2024 Minnesota absentee ballot that --
10 application that I filled out.

11 Q. Does this include your name in your handwriting?

12 A. Yes, it does.

13 Q. And does Confidential Exhibit 312 appear to be a true and
14 correct copy of your absentee ballot materials?

15 A. Yes, it does.

16 MR. ZOLL: Your Honor, we would move for the
17 admission of Confidential Exhibit 312 under seal.

18 THE COURT: Any objection?

19 MR. LeBEAU: No objection.

20 THE COURT: 312 will be received; it's filed under
21 seal.

22 MR. ZOLL: Thank you.

23 BY MR. ZOLL:

24 Q. Voter 12, you indicated that you completed the absentee
25 ballot application form that is the second page of this

1 exhibit. What did you do after completing this form?

2 A. After I completed the form, I brought it into the room that
3 there was the election workers working, and I gave it to them
4 and then followed all of the things that they asked me to do
5 and answered any questions they asked me to answer.

6 Q. Did they -- after you gave them the form, did they provide
7 you any materials?

8 A. Yes, they gave me my ballot and they gave me two envelopes.

9 Q. What did you do after receiving those materials?

10 A. After they said I could go vote, I walked over and filled out
11 my ballot. And when I was done filling out my ballot, I
12 placed it into the envelope as requested, sealed it, put it
13 inside the other envelope, and then put it in the ballot box.

14 Q. And did you take those steps that you just described pursuant
15 to instructions that were given to you by the election
16 officials?

17 A. Yes, that's correct.

18 Q. When you completed your ballot, did you vote in the election
19 for House District 54A between Brad Tabke and Aaron Paul?

20 A. Yes, I did.

21 Q. Who did you vote for in that election?

22 A. I voted for Brad Tabke.

23 Q. And are you absolutely certain that you voted for Brad Tabke?

24 A. Yes, I am.

25 MR. ZOLL: No further questions.

1 THE COURT: Any questions, Mr. LeBeau?

2 MR. LeBEAU: No questions.

3 THE COURT: All right. Thank you.

4 Voter 12, you may step down.

5 THE WITNESS: Thank you.

6 (The witness was excused.)

7 THE COURT: You may call your next witness,

8 Mr. Zoll.

9 MR. ZOLL: Your Honor, could I have two minutes to
10 organize my materials, and we will -- our next witness will
11 be Rocky Swearengin.

12 THE COURT: That's fine. Thank you.

13 MR. LeBEAU: Your Honor, if we may, could we go off
14 the record for just a second? I have one question I just
15 want to pose to you and Mr. Zoll.

16 THE COURT: Sure. Why don't you come up to the
17 bench.

18 We'll go off the record.

19 (Off-the-record bench discussion.)

20 THE COURT: We'll go back on the record.

21 You can go ahead and call your next witness,

22 Mr. Zoll.

23 MR. ZOLL: Contestee calls Rocky Swearengin.

24 THE COURT: All right. Mr. Swearengin, you may
25 step forward down to this ramp area and we'll get you sworn

1 in.

2 THE WITNESS: Sit here?

3 THE COURT: Why don't you just stop at the ramp --

4 THE WITNESS: Okay.

5 THE COURT: -- if you don't mind?

6 THE WITNESS: Yes, ma'am.

7 THE COURT: Could you raise your right hand?

8 THE WITNESS: Sure.

9 (The oath was administered.)

10 THE WITNESS: I do.

11 THE COURT: Thank you. You may have a seat on the
12 witness stand.

13 THE WITNESS: Okay. Thank you.

14 THE COURT: Just come right around that loop.

15 THE DEPUTY: Your Honor? He's asking a question,
16 the worker, the --

17 THE COURT: Let's go off the record for a minute.

18 (Off-the-record discussion.)

19 THE COURT: We'll go back on the record.

20 You can sit down, Mr. Swearingin. Thank you.

21 THE WITNESS: Yes, ma'am.

22 THE COURT: If you could slide into the microphone.

23 Would you please state and spell your full name?

24 THE WITNESS: Say again?

25 THE COURT: Could you please state and spell your

1 full name.

2 THE WITNESS: Rocky Swearengin. R-O-C-K-Y,
3 S-W-E-A-R-E-N-G-I-N.

4 THE COURT: Thank you.

5 You may proceed, Mr. Zoll.

6 MR. ZOLL: Thank you.

7 ROCKY SWEARENGIN,
8 having been first duly sworn, was examined and testified on his
9 oath as follows:

10 DIRECT EXAMINATION

11 BY MR. ZOLL:

12 Q. Good morning, Mr. Swearengin. Did you -- let me ask you a
13 different question to start: Are you appearing today
14 pursuant to a subpoena?

15 A. Yes, sir.

16 Q. Did you serve as an election judge in connection with the
17 2024 General Election?

18 A. Yes, sir.

19 Q. Was that with the City of Shakopee?

20 A. Yes, sir.

21 Q. And was that for election day voting or early voting?

22 A. Both.

23 Q. Okay. When you began working as an election judge, did you
24 take an oath to carry out your duties impartially and not in
25 a manner that would benefit a particular party or candidate?

- 1 A. Yes, sir.
- 2 Q. Does that commitment hold for the testimony that you will be
3 providing today as well?
- 4 A. Yes, sir, it does.
- 5 Q. Did you perform your duties as an election judge related to
6 early voting at a particular location?
- 7 A. Yes, sir.
- 8 Q. Where was that?
- 9 A. The Shakopee City Council area, courthouse area.
- 10 Q. Okay. At Shakopee City Hall?
- 11 A. City Hall, yes, sir. Thank you.
- 12 Q. I believe 485 Gorman Street?
- 13 A. Yes, sir.
- 14 Q. Okay. Was this your first year serving as an election judge?
- 15 A. Yes, sir.
- 16 Q. Did the City of Shakopee or Scott County provide training for
17 the election judges regarding the absentee balloting process?
- 18 A. Yes, sir, they did.
- 19 Q. Did you attend that?
- 20 A. Yes, sir, I did.
- 21 Q. Was there also a, for lack of a better term, on-the-job
22 component to the training?
- 23 A. Yes, there was.
- 24 Q. And what do you mean by that?
- 25 A. The training for the early voting part was -- consisted

1 primarily of a video that we watched for an hour or two on
2 that. Most of the judges in the room had had experience with
3 this before; I did not, so I attended that video. However,
4 most of the training that we received up to that point -- or
5 that I really gained was from on the job from the other
6 judges as well, in combination with watching the video.

7 Q. Okay. If you had questions about how to handle something
8 during that early voting process, were you able to ask
9 questions?

10 A. Oh, absolutely. They encouraged that.

11 Q. And did you receive answers to your questions?

12 A. Yes.

13 Q. Did you rely on the Shakopee city clerk or election staff to
14 ensure compliance with the requirements for how to handle the
15 absentee balloting process?

16 A. If I was unfamiliar, yes.

17 Q. Okay. And did they provide instruction and direction for how
18 to carry out your duties?

19 A. Yes.

20 Q. Did you serve as a member of the Shakopee Absentee Ballot
21 Board?

22 A. I did.

23 Q. I want to focus your attention on October 17th, 2024. Did
24 you work as an election judge on that day?

25 A. Yes, sir.

1 Q. On October 17th, 2024, did the Shakopee Absentee Ballot Board
2 take steps to review absentee ballots to determine if they
3 should be accepted?

4 A. Just to clarify, the Ballot Board didn't accept the ballots.
5 We did the process of reviewing the applications against the
6 signature envelopes in preparation for acceptance. And the
7 actual acceptance of those ballots was done by the City, its
8 staff.

9 Q. Okay. And when you refer to the "actual acceptance," is that
10 the step of designating those as being accepted?

11 A. Yes, sir.

12 Q. But is it your testimony that the Absentee Ballot Board
13 reviewed the envelopes and the applications?

14 A. Absolutely.

15 Q. Okay.

16 A. That was our part of that process, yes.

17 Q. Did the Absentee Ballot Board perform its part of that
18 process on October 17th?

19 A. Yes.

20 Q. And after reviewing those ballots -- or excuse me. After
21 reviewing those signature envelopes and applications on the
22 17th as a member of the Absentee Ballot Board, do you recall
23 what happened with those signature envelopes?

24 A. After we completed the review of them?

25 Q. Correct.

1 A. Okay. So just to clarify, the review process encompassed
2 three days, the prior Monday, Tuesday, and Wednesday.

3 Q. Right.

4 A. So yes, we went through and compared both the signature
5 envelopes and the applications for those three days
6 (indicating). Once all three judges verified that the
7 signatures and all the other identifying data matched on each
8 case and we completed for that day, we took them back into
9 the absentee room for the City to accept them.

10 Q. Okay. So they were -- correct me if anything I say here is
11 inaccurate, but the materials were returned back to where
12 they were maintained by the City?

13 A. Yes, they were maintained in the City's what they call the
14 "absentee voting room."

15 Q. Okay. On October 17, did the Absentee Ballot Board also
16 undertake the process of opening signature envelopes and
17 secrecy envelopes to prepare the absentee ballots for
18 counting?

19 A. Yes, sir.

20 Q. Did you participate in that process?

21 A. I did.

22 Q. Do you recall who the other members of the Absentee Ballot
23 Board were who participated in that process?

24 A. Latisha Porter and -- forgive me -- Richard -- I can't
25 remember his last name. I think it's Galligan or something

1 like that. Those were the three.

2 Q. Okay.

3 A. And myself.

4 Q. Can you describe -- and to the best you can, go one step at a
5 time, and I'll try to prompt you to move to the next step.
6 But it's easier for the Court and the court reporter if we
7 can take it step by step. But can you describe the process
8 used to open those envelopes to prepare the ballots for
9 counting?

10 A. Okay. Once we completed the ballot work process that I just
11 described for those three days -- I forget what the gap in
12 time was. It was a little bit; I think they were doing the
13 acceptance portion. And then Lori Hensen came in and said,
14 "Okay, we're going to start opening the ballots." She had a
15 piece of paper with the total number of ballots available as
16 of Wednesday that we were going to open, and each -- she had
17 each precinct on there with the number of absentee votes
18 that -- or ballots that had been received.

19 So when she came in, I believe we started with
20 Precinct 1. And we looked at the list and we counted that
21 precinct, and they didn't match.

22 Q. Let me just stop you right there. When you say you "counted
23 that precinct," what was it that you counted?

24 A. The number, actual number.

25 Q. Actual number of -- ?

1 A. The signature envelopes.

2 Q. Okay. Okay.

3 A. Because nothing had been opened up prior to that point.

4 Q. Okay. Got it. And you mentioned Lori Hensen. Who's Lori
5 Hensen?

6 A. She's the city clerk --

7 Q. Okay.

8 A. -- for Shakopee.

9 Q. And you mentioned a sheet of paper that had the number that
10 you were expecting. Was that broken out by individual
11 precincts?

12 A. Yes.

13 Q. And was that handwritten?

14 A. Yes.

15 Q. Okay. All right, so I interrupted you. You were discussing
16 starting counting in Precinct 1. Can you pick up there?

17 A. So she came in, essentially we counted them, and Lori looked
18 at the number for that precinct; whether it was one, I can't
19 recall. And she said, "Okay, these don't match" or "this
20 doesn't match that precinct." So she looked and then she
21 said, "Go back in, talk to Kay Gamble," who did the tracking
22 of the numbers. "Explain to her that I only want the numbers
23 of the actual absentee ballots received and I don't want any
24 of the additional ballots," meaning the spoiled ballots and
25 other types of ballots that may have occurred during that

1 time.

2 So I took them back in to her, explained that to
3 Kay. Kay went through the list and modified all those
4 numbers. I came back into the room. We counted that ballot
5 for that precinct again, and it matched the revised numbers
6 that Kay gave us.

7 Q. Okay. So after counting the signature envelopes for
8 Precinct 1 and confirming that they matched the revised
9 numbers that were provided to you by Ms. Gamble, what did you
10 do next?

11 A. Okay. For the first part of the process, the three judges,
12 all of us, we just sit there and opened up each envelope
13 (indicating), made sure that the signature envelopes were
14 separate; then we opened up the brown ones and then made sure
15 all the ballots are for that precinct. And between the three
16 of us, we made sure that the white envelopes were empty, the
17 secrecy envelopes were empty, and we had all ballots on that.
18 And then once we confirmed that, we took those ballots back
19 into the absentee room and put them back into the folder.

20 Q. Do you recall opening any signature envelopes that did not
21 contain a secrecy envelope?

22 A. No.

23 Q. Would that have stood out to you?

24 A. Oh, yes.

25 Q. Do you recall opening any secrecy envelopes that did not

1 contain a ballot?

2 A. No.

3 Q. Would that have stood out to you?

4 A. Yes.

5 Q. And the steps that you described, were those pursuant to
6 instructions from the Shakopee election officials?

7 A. Yes. Again, at the beginning when Lori came in, we went
8 through the numbers and did the validation. She essentially
9 kind of described -- I mean, it was fundamentally pretty
10 basic: We need to maintain record of the signature
11 envelopes. The brown envelopes on that, you know, don't
12 worry about those. And then bring the ballots in when you're
13 done opening up a precinct, and then she'd verify the
14 numbers.

15 Q. And I think I understood your testimony that after receiving
16 the revised numbers from Ms. Gamble, that your count of the
17 signature envelopes for Precinct 1 matched the expected
18 numbers. Is that correct?

19 A. The ones that Kay annotated on that sheet of paper, yes.

20 Q. Okay. Is it your understanding that the counts for the
21 remaining precincts also matched those numbers?

22 A. Yes, sir.

23 Q. And what is that based on? What is your understanding that
24 the numbers matched based on?

25 A. What we did is after we did the first couple of precincts and

1 realized how time-consuming this was going to be, and to kind
2 of expedite the process, the three judges, myself and the two
3 others, we each decided to take a precinct and then just open
4 them up, you know, based on the process I just described. So
5 each judge took a precinct.

6 We were all in the same room. They all -- they
7 counted and verified. I kept track of each precinct we
8 completed, and then if there was a discrepancy of any type,
9 the judge would tell me. If something like -- if there was a
10 discrepancy, it would have stopped the process. We'd have to
11 talk to the City about that and explain what we found. But
12 that did not occur. The numbers matched as we went through
13 all the precincts.

14 Q. So if I'm understanding what you said correctly, if
15 Ms. Porter was counting the signature envelopes for a
16 precinct, when she completed that, did she report that number
17 to you?

18 A. Yes, she said she was -- her numbers matched.

19 Q. Okay. And you made a note that --

20 A. Yeah. I just put a check mark by that precinct to say okay,
21 the numbers matched on that.

22 Q. Okay. Okay.

23 A. And then I turned that sheet back in to either Kay or the
24 City; I forget which.

25 Q. After completing the process you just described of opening

1 the signature envelopes and the secrecy envelopes, all the
2 way through that process, to those ballots being returned to
3 the absentee ballot room, after that was completed, did you
4 engage in any other activities related to absentee ballots on
5 October 17?

6 A. Not that I recall.

7 Q. Okay. And then did you perform any duties as an election
8 judge on October 18th?

9 A. Yes.

10 Q. Do you recall approximately when you arrived at Shakopee City
11 Hall on October 18th to perform those duties?

12 A. I believe I was scheduled to come in at noon and work 'til
13 the polls closed, and -- which was -- at that time, we
14 started direct balloting, so I was working in the absentee
15 room. Voters would come in; we'd check their registration,
16 give them a ballot. They'd mark it and put in the tabulator.

17 Q. Okay.

18 A. After the polls closed, myself and the other judge that I
19 worked with were asking -- were asked by the City to stay and
20 help put the ballots into the tabulator.

21 Q. Okay. And did you do so?

22 A. Yes, sir.

23 Q. Pursuant to instructions from the City?

24 A. Yes.

25 Q. And did you personally on October 18 engage in any actions as

1 an election judge related to the review of absentee ballot
2 signature envelopes?

3 A. On the 18th?

4 Q. On the 18th.

5 A. No.

6 Q. Okay.

7 MR. ZOLL: I have no further questions of this
8 witness, Your Honor.

9 THE COURT: All right. Thank you.

10 Mr. LeBeau? You may proceed.

11 CROSS-EXAMINATION

12 BY MR. LeBEAU:

13 Q. Mr. Swearengin -- I'm saying that correctly?

14 A. Yes, sir.

15 Q. Thank you. I want to make sure that I have the dates right,
16 just talking about October 17th and 18th. On October 17th,
17 what were you doing that day?

18 A. I was part of the Ballot Board process, and what we did is
19 there were two Ballot Boards that week. There was one on
20 Monday, which would look at all the absentee votes received
21 the week prior, and then we held a Ballot Board on Thursday
22 morning, which would look at all the absentee ballots, do
23 that same verification process for that Monday, Tuesday, and
24 Wednesday.

25 Q. So on the 17th, you were actually handling removing the

1 ballot from the envelope; is that correct?

2 A. A slight distinction: Yes, but they were two separate
3 processes. First we made sure the verification of the
4 application and the signature envelopes as part of the Ballot
5 Board process for those preceding three days. Once we
6 completed all that and turned those envelopes back over to
7 the City for acceptance, the City then asked and said we're
8 going to start opening all the ballots that we have received
9 up to this point.

10 Q. And is it your understanding that in the entirety of that
11 process, that is supposed to include two election judges
12 handling each of those ballots; is that correct?

13 A. We had three available to do that.

14 Q. And how many were actually doing it?

15 A. Three.

16 Q. And this was on the 17th.

17 A. Yes. I'm sorry, I want to clarify: You're asking me how
18 many judges we had opening the ballots on the 17th.

19 Q. Yes, correct.

20 A. Three.

21 Q. Three. And how many were opening and reviewing the ballots
22 on the (inaudible).

23 THE COURT: I'm sorry, I didn't hear the end of
24 your question.

25 MR. LeBEAU: Oh, I'm sorry. On the 18th.

1 THE COURT: Thank you.

2 A. There was only that period on the 17th, that Thursday -- late
3 Thursday morning and all of Thursday afternoon where we
4 opened up all the ballots. On the 18th, Friday, started
5 direct balloting.

6 BY MR. LeBEAU:

7 Q. Okay. Thank you.

8 A. So there wouldn't -- there shouldn't have been any additional
9 absentee ballots opened on the 18th.

10 Q. Okay. Thank you.

11 A. There shouldn't. I can't --

12 Q. Right. No, I understand.

13 A. I can't validate whether there were any on the 18th
14 available. I just know I didn't open any.

15 Q. You earlier were asked about Lori Hensen and identified her.
16 Did you witness her processing absentee ballots on the 17th
17 or 18th?

18 A. When you say "processing," do you mean doing the acceptance?

19 Q. Correct.

20 A. We would take the ballots in, and it was very busy that day
21 because absentee balloting was still occurring on the 17th.
22 Lori was in the room. When we took the ones that we
23 completed from the prior three days in to her, I'm going to
24 assume she was doing the acceptance process. I can't
25 validate whether she was or not.

1 Q. And do you recall if there was anybody in the room with her?

2 A. Yes, there were three other election judges who were working
3 on processing the absentee voters who were coming in on that
4 Thursday.

5 Q. But you don't know if they were doing the actual acceptance
6 part of the absentee ballots.

7 A. My understanding was the City did the acceptance. I never
8 saw any of the judges going into SVRS and actually doing the
9 acceptance process.

10 Q. Thank you. You referenced the document that you used to
11 balance out the different precincts. And you've mentioned
12 this was a handwritten document; is that right?

13 A. Yes.

14 Q. And that was the document provided by whom?

15 A. I think Lori had it. She brought (indicating) it into the
16 room, gave it to us. And that's when we got in the
17 discussions I highlighted earlier about making sure the
18 numbers, you know -- for example, again, when we started that
19 first precinct, the numbers that were on that sheet didn't
20 match the number of ballots. So again, she had me go back in
21 and talk to Kay Gamble, tell her to specify the exact number
22 of ballots we received, not to include any other types of
23 ballots.

24 Q. And this document was not an SVRS report or something --

25 A. No, it was handwritten.

- 1 Q. How many -- how many different opportunities did you -- in
2 this last election did you actually physically remove secrecy
3 ballots from the written envelope?
- 4 A. Just that one day, that Thursday, the 17th.
- 5 Q. The 17th? And do you recall what you or any of the other
6 election judges did with the secrecy envelopes after the
7 ballots were removed?
- 8 A. Okay. As far as I know, they were discarded.
- 9 Q. Do you know who discarded them?
- 10 A. No. They were still inside the courthouse area, the Council
11 room where we were; they were still in there. On that --
12 what they did with them after we completed the task, I don't
13 know.
- 14 Q. Do you recall if they were stored anywhere?
- 15 A. The brown envelopes? No, I don't know if they were or not.
- 16 Q. You mentioned earlier that you wanted to expedite the process
17 that was going on. What did you mean by "expedite the
18 process"?
- 19 A. We found it was very labor-intensive for three judges to do
20 one precinct at a time, and the City said we need to get all
21 the precincts opened up and ready to begin direct balloting
22 by Friday, the next day. So as I recall, there was probably
23 over a thousand envelopes that we had to go through. So we
24 indicated okay, we'll just divide and conquer, so to speak,
25 where each judge -- of the three judges, each one of us would

1 take a precinct and just start processing it.

2 Q. Is it your understanding that from the training, that process
3 is supposed to require two election judges?

4 A. No. Each judge made sure that the signature envelopes were
5 empty and that the brown envelopes were empty on that. But
6 they validated that when they counted the signature
7 envelopes, that number matched what was on the list that we
8 had.

9 Q. And are you familiar with the issue in this case of the
10 missing 20, 21 ballots?

11 A. Somewhat.

12 Q. Were you familiar -- did that become made aware to you on the
13 17th or the 18th of October?

14 A. No.

15 Q. When did you first learn about it?

16 A. In the news after the election.

17 Q. Did you ever have a conversation with Lori Hensen about the
18 missing ballots?

19 A. Shortly after the General Election on the 5th, she sent a
20 couple of text messages and emails asking the judges various
21 questions about the missing ballots. And in one email, she
22 stated -- and I'm paraphrasing here, so -- but essentially
23 she said, "They seem to have narrowed down the time frame was
24 around the 18th of October," that Friday, and asked us do we
25 remember anything unusual about that? And I didn't really

1 understand what she meant by "unusual" because again, the
2 direct balloting occurred all day, and then that evening, we
3 worked -- we helped her and the other City staff, me and the
4 other judge, put the opening ballots into the tabulator.

5 Q. And at that point and on the 18th, nothing was suggested to
6 you as being --

7 A. No.

8 Q. -- (inaudible).

9 A. No, not at all. And we were very careful with that because
10 Kay would -- what we started to do is keep track of what the
11 end-of-day tabulator number said, and then we'd look at what
12 the tabulator said or, you know, what the totals, I should
13 say, were on the next day. And the difference between the
14 two, we made sure we had that number of applications. So if
15 one day maybe we had 100 and the next day we had 200, we made
16 sure we had at least a hundred applications for that day.
17 And we kept track of the tabulator numbers each night.

18 Q. To the best of your knowledge, was -- were any of those
19 numbers verified against the SVRS system?

20 A. No. I didn't do that; Kay and Lori did that.

21 Q. And on the 17th and 18th, just so I'm clear, the room where
22 absentee ballots are being removed from the envelope, was
23 that in a different location than where the rest of you were
24 for voters that were coming in?

25 A. Yes, it was in the City Council area.

1 Q. Okay.

2 A. That's where we opened the ballots. Because voting was still
3 occurring, the lines were getting long, there wasn't room for
4 us to do that in there at all. And we wanted to make sure we
5 could safeguard the ballots, obviously, make sure the count
6 was good, and then make sure that we secured them back into
7 the cabinet where they were stored.

8 Q. Do you have any knowledge of the processing of absentee
9 ballots that would have led to the missing of the 20 or 21?

10 A. No.

11 MR. LeBEAU: I have no further questions.

12 THE COURT: All right. Thank you.

13 Mr. Zoll, do you have questions?

14 MR. ZOLL: No additional questions, Your Honor.

15 THE COURT: Mr. Swearengin, thank you. You may
16 step down.

17 THE WITNESS: Yes, ma'am. Thank you.

18 (The witness was excused.)

19 THE COURT: Do you have other witnesses, Mr. Zoll?

20 MR. ZOLL: We do, but would this be -- I know maybe
21 a little bit earlier than typical, but a good time for a
22 morning break?

23 THE COURT: If we need time so another witness can
24 get here, that's fine.

25 MR. ZOLL: No, I believe the witness is here, and

1 we can certainly call him. I just -- well, let's go for it.

2 THE COURT: All right.

3 MR. ZOLL: And if we need a break, we can take a
4 break.

5 THE COURT: Okay, that's fine. I just would prefer
6 to go for a little bit longer and then take our break. Thank
7 you.

8 MR. ZOLL: I will go retrieve our witness, Your
9 Honor. It will be Dr. Aaron Rendahl.

10 THE COURT: All right. Thank you.

11 MR. LeBEAU: Your Honor? My rebuttal witness is
12 sitting in the waiting room on Zoom, so I don't know if he
13 should be admitted now or wait 'til after.

14 THE COURT: Oh, you're asking to have your witness
15 observe the testimony; is that correct?

16 MR. LeBEAU: Yes, please.

17 THE COURT: All right. That's fine.

18 And Mr. Zoll, do you have any objection to that?

19 MR. ZOLL: That's fine.

20 THE COURT: All right. We'll go ahead and get Zoom
21 up. The video on Zoom, however, will be off, just so that's
22 clear.

23 MR. LeBEAU: Yes. Thank you.

24 (Witness entered the courtroom.)

25 THE COURT: Sir, why don't you come forward.

1 Actually, let's wait a second.

2 (Off-the-record discussion.)

3 THE COURT: We do have your witness, Mr. LeBeau, on
4 Zoom now, so --

5 MR. LeBEAU: Oh, thank you.

6 THE COURT: And maybe you can just unmute and
7 verify that he's able to hear.

8 THE CLERK: Sir, are you able to hear us?

9 THOMAS BRUNELL: Yes.

10 THE COURT: Okay. We're going to turn your video
11 off while the testimony is ongoing, and your audio as well,
12 and I'm just going to ask that you not turn that on during
13 the testimony. All right?

14 THOMAS BRUNELL: I understand.

15 THE COURT: Thank you.

16 (Off-the-record discussion.)

17 THE COURT: All right. Sir, would you come down
18 here to the ramp. We'll get you sworn in. Raise your right
19 hand.

20 (The oath was administered.)

21 THE WITNESS: Yes, I do.

22 THE COURT: All right. Thank you. Go ahead and
23 have a seat on the witness stand.

24 And once you get situated, could you please state
25 and spell your full name.

DR. AARON RENDAHL - DIRECT EXAMINATION

1 THE WITNESS: My name is Aaron Rendahl. A-A-R-O-N,
2 R-E-N-D-A-H-L.

3 THE COURT: Mr. Zoll, you may proceed.

4 MR. ZOLL: Thank you. And before I begin, I'm just
5 going to provide the witness with a binder with Exhibits 201
6 through 207.

7 THE COURT: All right. Thank you.

8 MR. ZOLL: I'll tell you when you need to look at
9 that.

10 THE WITNESS: Thank you.

11 DR. AARON RENDAHL,
12 having been first duly sworn, was examined and testified on his
13 oath as follows:

DIRECT EXAMINATION

14 BY MR. ZOLL:

15 Q. Dr. Rendahl, what is your profession?

16 A. I am a statistician.

17 Q. And where do you work?

18 A. I am at the University of Minnesota in the College of
19 Veterinary Medicine.

20 Q. And how long have you worked with the University of
21 Minnesota's College of Veterinary Medicine?

22 A. Since 2017.

23 Q. Okay. And what's your position there?

24 A. I am an Associate Professor of Statistics and Informatics.
25

- 1 Q. What is informatics?
- 2 A. Informatics is the use of computers and data-science
3 methodologies to handle big data; in my case, usually
4 genetics.
- 5 Q. Okay. Like a really big version of statistics?
- 6 A. Yes, when you've got big data sets that you can't handle with
7 more traditional methods.
- 8 Q. Okay. Can you describe your -- well, back up. Do you teach
9 any courses at the University of Minnesota?
- 10 A. Yes, I do.
- 11 Q. What courses do you teach?
- 12 A. I teach two courses: One is called Essential Statistics for
13 Life Sciences; the other one is Statistical Principles of
14 Experimental Design.
- 15 Q. Okay. Will you be grading final exams later this week?
- 16 A. Yes, they're due on Wednesday.
- 17 Q. Okay. Can you describe your post-secondary education?
- 18 A. Yes. I have a bachelor's degree in mathematics and physics
19 from Bethel University and a Ph.D. in statistics from the
20 University of Minnesota.
- 21 Q. And when did you obtain your Ph.D. in statistics from the
22 University of Minnesota?
- 23 A. 2008.
- 24 Q. And I didn't hear you reference a master's degree in between
25 your bachelor's and Ph.D. Is that correct?

1 A. That's correct; it's a program that goes straight from a
2 bachelor's to a Ph.D.

3 Q. Okay. In your role as an associate professor of statistics
4 and informatics, are you familiar with techniques used to
5 calculate probabilities?

6 A. Yes, I am.

7 Q. Can you briefly describe for the Court why it is helpful to
8 calculate probabilities?

9 A. Sure. In any particular situation, there may be various
10 possible outcomes. The reason we would compute a probability
11 of those outcomes is to be able to describe the likelihood of
12 any one of those possibilities.

13 Q. I'm going to give you an example, and I'm just going to ask
14 if this expresses the value of probabilities. If you had a
15 bag that had 99 red balls and one blue ball, how many
16 possible outcomes are there for drawing one ball out of the
17 bag?

18 A. Yes, that would be a situation where we could compute the
19 probabilities of various outcomes.

20 Q. But in terms of the possible outcomes, are there two possible
21 outcomes in that scenario, a red ball or a blue ball?

22 A. Yes. I see where you're going. Yes, there would be two
23 possible outcomes, one from each color.

24 Q. But if there's 99 of one color and one of the other, is it
25 50/50 probability that you'll get one or the other?

1 A. No, this is the distinction between a possibility and a
2 probability. There's two possibilities, one of each color,
3 but those possibilities do not have equal probabilities.

4 Q. Okay. And based on your knowledge and experience and your
5 educational background, are you able to calculate and
6 describe probabilities?

7 A. Yes, I am.

8 MR. ZOLL: Your Honor, Contestee moves to qualify
9 Dr. Rendahl as an expert under Rule 702 of the Rules of
10 Evidence because his specialized knowledge will assist the
11 Court in the understanding of the probabilities of certain
12 outcomes relating to this election.

13 THE COURT: Mr. LeBeau?

14 MR. LeBEAU: No objection.

15 THE COURT: So qualified.

16 MR. ZOLL: Thank you.

17 BY MR. ZOLL:

18 Q. In the binder in front of you, I'm just going to ask you to
19 turn to the tab for 207.

20 A. Yes.

21 Q. Dr. Rendahl, do you recognize this document?

22 A. Yes, I do.

23 Q. And what is this?

24 A. This is the expert report I wrote for this case.

25 Q. Okay. And if you look -- I don't have the exact page number

1 here, but if you look after your signature on this document,
2 the next page, what's reflected there?

3 A. (No audible response.)

4 Q. Or let me put it differently: Does this document include a
5 copy of your resume?

6 A. Oh. Yes, it does.

7 Q. Okay. What was the question that is addressed in your report
8 that is here as Exhibit 207?

9 A. Certainly. So in this case, Tabke received 14 more reported
10 votes than Paul but 20 votes were lost. I was therefore
11 asked to consider the probability that Paul would receive 14
12 more votes than -- 14 or more votes than Tabke out of those
13 20 if those 20 were to be considered a random sample from the
14 reported votes from that precinct.

15 Q. And at the end of your description of the question that is
16 addressed, you said if those ballots are assumed -- or if
17 they're a random sample? Is that an assumption that you made
18 in performing your analysis?

19 A. Yes, it is.

20 Q. And why is that an assumption that you made?

21 A. This analysis was meant to consider the probability of this
22 occurring by random chance if this were a random sample, and
23 therefore, that's the assumption that was made.

24 Q. Did you define the universe from which that random sample
25 would be pulled in any way?

1 A. That universe is a population of ballots with votes in
2 proportion to that in the reported -- that -- with -- in
3 proportion equal to the votes in the precinct of interest.

4 Q. And that would be Shakopee Precinct 10?

5 A. Yes, that's correct.

6 Q. Okay. So after making the assumption that the 20 uncounted
7 ballots are representative of the remaining ballots in the
8 precinct, how did you perform your analysis? What was the
9 either next or maybe the first step in performing your
10 probability analysis?

11 A. Sure.

12 MR. LeBEAU: Your Honor, I'm going to object at
13 this point.

14 THE COURT: What's the objection?

15 MR. LeBEAU: Lack of foundation and relevance.
16 There's nothing in the record that suggests this is -- the
17 voting is random.

18 THE COURT: Why don't you come up.

19 (Off-the-record bench discussion.)

20 THE COURT: We'll go back on the record.

21 The objection's overruled.

22 BY MR. ZOLL:

23 Q. Let me restate the question, and I'll try to do it concisely.
24 What was the first step that you took in performing your
25 analysis?

1 A. In an analysis like this, you're looking for the
2 possibilities that result in the outcome of interest. The
3 outcome of interest here is that out of those 20 votes, Tabke
4 receives 14 or more than Paul. We therefore enumerate all of
5 those possibilities; there are 16 of them, and they are
6 listed in item 7 of my report. For each of those
7 possibilities, we then compute the probability of each of
8 those possibilities. That's done using what's called a
9 "multinomial formula." We can then add up all of those
10 probabilities to get the total probability that Tabke would
11 receive 14 or more votes than Paul out of the 20.

12 THE COURT: We're going to pause here, and we'll
13 take our morning recess. We'll take it for about 15 minutes,
14 and we'll come back at just a hint before 10:40.

15 (A recess was taken.)

16 THE COURT: Mr. Zoll, you may proceed.

17 MR. ZOLL: Thank you.

18 BY MR. ZOLL:

19 Q. Dr. Rendahl, I want to pick up where we had left off in your
20 testimony. And you were describing the methodology that's
21 laid out in paragraph 7, and there's a table that follows
22 paragraph 7 in your report. And am I understanding correctly
23 that this table demonstrates scenarios where Aaron Paul out
24 of a pool of 20 ballots would receive 14 more as a net than
25 Brad Tabke?

- 1 A. Yes, 14 or more.
- 2 Q. Okay, or more. So can you just look at line 1 of that table
3 and -- it may seem basic and intuitive, but just explain how
4 it works in that scenario.
- 5 A. Yes. So in the first line of this table, this represents the
6 possibility that Aaron Paul received 14 of the 20 votes,
7 Tabke received 0 of the 20, and the other 6 were for other
8 candidates or were blank. In that situation, Paul would have
9 received exactly 14 more than Tabke.
- 10 Q. And in the "Paul - Tabke" column, is that reflecting that
11 math of the Paul votes minus the Tabke votes in that
12 scenario?
- 13 A. Yes, that's correct.
- 14 Q. Okay. So let's look at, say, the last one in that column.
15 It's one, two, three, four, five, the sixth row, the last one
16 that starts with Paul with 16 votes. Can you just walk
17 through how the math works on that one?
- 18 A. The sixth row of the table, the last row in which Paul
19 received 16, in that row, Paul would receive 16 votes, Tabke
20 would receive 2 votes, and there would be 2 other votes, for
21 a net difference between Paul and Tabke of 14 votes.
- 22 Q. Okay. And that net difference of 14, that's what Aaron Paul
23 would need to make up to make this race a tie.
- 24 A. That's correct.
- 25 Q. Okay. And then the "Probability" column, what's reflected

1 there?

2 A. That's the probability of that particular outcome happening.
3 That's a number between zero and one that characterizes the
4 likelihood of that outcome.

5 Q. And how did you calculate that probability?

6 A. Each of those probabilities are calculated using the
7 multinomial formula. That formula calculates the probability
8 of any one arrangement of the votes that results in that
9 particular combination of numbers. It's then -- you then
10 count the number of arrangements that would result in that to
11 get the total probability for that line.

12 Q. Okay. And is that use of the multinomial formula, is that,
13 in your experience, a standard and accepted method for
14 calculating a probability such as this?

15 A. Yes.

16 Q. What's reflected at the bottom final row of the table
17 following paragraph 7?

18 A. That final row of the table is the sum of all of the
19 probabilities of these various possibilities.

20 Q. And why do you -- why do you calculate the sum of those
21 various probabilities?

22 A. Because each of these possibilities is distinct, we can just
23 add them up to get the total.

24 Q. And does that total reflect the probability that any one of
25 these 16 scenarios would occur?

1 A. Yes, that's the total probability out of all the
2 possibilities that are there that Paul would receive 14 or
3 more votes than Tabke out of the 20.

4 MS. KITZE COLLINS: I'm sorry, can we pull the
5 screen back up?

6 THE COURT: I haven't received the item into
7 evidence yet.

8 BY MR. ZOLL:

9 Q. Okay. Let me ask you this, Dr. Rendahl: Is Exhibit 207, is
10 that a true and correct copy of your expert report that you
11 prepared?

12 A. Yes, it is.

13 Q. Is that your signature that appears on the fourth page of the
14 document?

15 A. Yes, it is.

16 MR. ZOLL: Your Honor, Contestee moves the
17 admission of Exhibit 207.

18 THE COURT: Any objection?

19 MR. LeBEAU: I object on lack of foundation, Your
20 Honor.

21 THE COURT: All right. The objection's overruled.
22 207 is received.

23 BY MR. ZOLL:

24 Q. Dr. Rendahl, the process that you described of taking the sum
25 of the probability of the different scenarios, is that a

1 standard and accepted approach for calculating the
2 probability that any one of those scenarios would occur?

3 A. Yes, it is.

4 Q. Is that based on your education and experience as a
5 statistician?

6 A. Yes.

7 Q. When I've attended recounts in elections, I'll sometimes see
8 a series of six or ten ballots in a row for a particular
9 candidate. Is that type of run, where you have a sequence --
10 or a series of votes all for one candidate, is that type of
11 run accounted for in your analysis?

12 A. Yes, it is.

13 Q. Can you explain for the Court how that's accounted for in
14 your analysis.

15 A. Yes. A random sampling doesn't mean that everything's going
16 to be mixed up every other. It's certainly possible, like
17 when you flip a coin, to get a number of different heads in a
18 row. In this case, it's certainly possible that we got a
19 whole run of ballots for one candidate or the other in a row.
20 Those are some of the possibilities that are accounted for in
21 the table. For example, at an extreme, one of the
22 possibilities is that Paul would receive 20 ballots in a row.
23 That's the final line where Paul received all 20 ballots.

24 Q. And when you use the multinomial formula for calculating the
25 probabilities, does that account for the possibility of runs

1 like you just described?

2 A. Yes. Every possible arrangement of values, including ones
3 where you get a long run for one candidate or another, are
4 accounted for in the multinomial formula.

5 Q. So if we look at the example in your table where Aaron Paul
6 would receive 17 ballots and Brad Tabke would receive 3, are
7 you saying that you calculate every possible sequence of
8 ballots that would result in a total of 17 for Paul and 3 for
9 Tabke?

10 A. Yes, that's correct. That's part of the multinomial formula.

11 Q. Okay. And just to make sure that I'm clear in my
12 understanding, so there would be an example where there's 17
13 for Paul and then 3 for Tabke, and then maybe one where
14 there's 1 for Tabke, 16 for Paul, 1 for Tabke, 1 for Paul, 1
15 for Tabke. Is that what you're saying when you talk about
16 all the different possible arrangements?

17 A. Yes, that's correct.

18 Q. Okay. Is it your understanding that the margin -- the
19 certified total in this election, that the margin is 14 votes
20 that Brad Tabke -- strike that. Let me start this question
21 over.

22 Is it your understanding that the certified results
23 in this election show that Representative Tabke leads by a
24 margin of 14 votes?

25 A. Yes.

1 Q. So in order to change the outcome, is it your understanding
2 that Aaron Paul would need a net of at least 14 votes?

3 A. A net of 14, yes.

4 Q. Okay. If there are 20 ballots that remain to be counted and
5 4 of those are for Representative Tabke, is it possible for
6 Aaron Paul to earn enough votes to change the outcome of the
7 election?

8 MR. LeBEAU: Objection.

9 THE WITNESS: No.

10 THE COURT: Hold on one second.

11 What's the objection?

12 MR. LeBEAU: Calls for speculation.

13 THE COURT: Why don't you approach, counsel.

14 (Off-the-record bench discussion.)

15 THE COURT: At this time, the objection's
16 sustained.

17 BY MR. ZOLL:

18 Q. Dr. Rendahl, in the table in paragraph 7, you identify 16
19 scenarios in which Aaron Paul could earn sufficient votes out
20 of a pool of 20 in order to change the outcome of the
21 election. Is that correct?

22 A. Yes.

23 Q. Do you identify any scenario in which Brad Tabke could earn 4
24 of those 20 votes and Aaron Paul could earn a net of 14 for
25 the remaining ballots?

1 A. No, there are no possibilities where if Tabke receives 4
2 votes, there can be a net difference of 14.

3 Q. Can you explain why you would exclude that scenario from the
4 possible scenarios here.

5 A. If Tabke receives 4 additional votes, that puts the net
6 difference at 18, but there would only be 16 votes remaining,
7 and leaving Paul no way to catch up.

8 Q. Would that also be true if you were doing this analysis with
9 a pool of 21 votes?

10 A. Yes, that's correct. The margin after those 4 votes were
11 counted would still be 18, but there would then be only 17
12 votes remaining. Again, leaving no way to catch up.

13 MR. ZOLL: Your Honor, I have no further questions
14 for Dr. Rendahl.

15 THE COURT: All right. Thank you.

16 Dr. Rendahl, you may step down.

17 Oh, I'm sorry. I apologize. Cross-examination. I
18 got a little ahead of myself, Mr. LeBeau. I'm sorry about
19 that. Come up for cross-examination.

20 CROSS-EXAMINATION

21 BY MR. LeBEAU:

22 Q. Good morning, Dr. Rendahl. Have you spoken with anyone about
23 the testimony that you're providing in court today?

24 A. No.

25 Q. Your resume lists no election-related research; is that

1 correct?

2 A. That's correct.

3 Q. You are not an expert in elections; is that correct?

4 A. That is correct.

5 Q. You did not study voter characteristics of early voting
6 versus election day voting; is that correct?

7 A. That is correct.

8 Q. Is it true that you calculated the proportion of votes for
9 each candidate in Shakopee Precinct 10?

10 A. I'm sorry, could you repeat the question?

11 Q. Your calculations are -- you calculated the proportion of
12 votes for each candidate in Shakopee Precinct 10; is that
13 correct?

14 A. Oh, yes, that is correct.

15 Q. And you calculated probability; correct?

16 A. I calculated the proportion of votes that were received for
17 each candidate, and from those, I used those to calculate the
18 probability that Paul would receive 14 or more votes than
19 Tabke, yes.

20 Q. And you were asked to calculate this probability on behalf of
21 Contestee Brad Tabke; correct?

22 A. Yes.

23 Q. And your calculations assumed that the missing votes were
24 random; isn't that correct?

25 A. Yes. One possibility --

- 1 Q. Thank you.
- 2 A. Oh, thank you.
- 3 Q. You have no basis for knowing whether the missing votes
4 actually were random, do you?
- 5 A. No.
- 6 Q. The random votes would -- strike that.
- 7 Isn't it true that random votes would mean that
8 they were -- they were a representative sample of all the
9 votes in the pool?
- 10 A. The idea of random sampling assumes that we're starting with
11 a population where they are equal to the proportion of the
12 reported votes in the pool.
- 13 Q. So if the missing 20 votes were not random, your -- the
14 probability that you calculated would be meaningless;
15 correct?
- 16 A. (Pause.) My calculation assumes that they are random, yes.
- 17 Q. And so if they are not random, your probability is incorrect;
18 right?
- 19 A. You'd need some other mechanism to calculate that then, yes.
- 20 Q. In your analysis, you didn't account for any confounding
21 factors; isn't that true?
- 22 A. That is true.
- 23 Q. You, by your methodology, didn't account for different
24 demographics of voters, such as those that vote early versus
25 those that vote on election day; isn't that true?

1 A. That is true.

2 Q. Your assumptions were that these voters -- that the votes
3 that are missing were random; correct?

4 A. (Pause.) Yes.

5 Q. You do recognize that all of the voters -- maybe you don't
6 know this, but are you aware that the voters in this case
7 that owned the missing votes were early voters?

8 A. Yes.

9 Q. You don't have any basis for knowing whether these two pools,
10 early versus election day, are similar, do you?

11 A. No, that's beyond the scope of my expertise.

12 Q. But your calculated probability is based on a pooled election
13 result; correct?

14 A. That is correct.

15 Q. Your results also didn't account for early voters selecting
16 candidates at a different proportion than election day
17 voters; is that correct?

18 MR. ZOLL: Objection, asked and answered.

19 THE COURT: I don't think it was. Overruled.

20 A. Yes, that's correct.

21 BY MR. LeBEAU:

22 Q. So Doctor, if early voters vote for candidates at a different
23 proportion than election day voters, and you don't know the
24 early-versus-election-day results proportion, you have no way
25 of determining the probability that 14 of these voters would

1 have voted for Aaron Paul; isn't that correct?

2 A. If the proportions are different from what I assumed here,
3 we'd have to do a different calculation using those
4 proportions, yes.

5 MR. LeBEAU: Thank you. I have no further
6 questions.

7 THE COURT: All right. Mr. Zoll, any questions?

8 MR. ZOLL: I don't have any additional questions,
9 Your Honor.

10 THE COURT: All right. Thank you.

11 Doctor, you may step down.

12 THE WITNESS: Thank you.

13 (The witness was excused.)

14 THE COURT: All right, and let's go back to
15 Mr. LeBeau for a minute.

16 Mr. LeBeau, we were waiting on a witness of yours.
17 Do we yet have that witness?

18 MR. LeBEAU: Oh, the in-person witness, Your Honor?

19 THE COURT: Yes.

20 MR. LeBEAU: Could we take a moment? I can
21 explain.

22 THE COURT: Sure, that's fine.

23 We'll go off the record for a minute.

24 (Off-the-record bench discussion.)

25 THE COURT: We're going to take a short break. In

1 the meantime, there was a stipulation that Mr. LeBeau and
2 Mr. Zoll had reached regarding a relationship between two
3 voter witnesses.

4 Is that correct, Mr. Zoll?

5 MR. ZOLL: That is correct.

6 THE COURT: And if I recall, that was Voter 5 and
7 Voter 11? I just want to make sure before I state the
8 stipulation.

9 MR. ZOLL: That is my recollection as well, Your
10 Honor, but if I can double-check the confidential key to make
11 sure I'm not misstating the numbers.

12 THE COURT: That's fine. Why don't we do that on
13 the break. We'll take a few minutes and come back. I'm
14 going to remain on the bench, and hopefully we'll be
15 efficient.

16 MR. LeBEAU: Thank you.

17 (Off-the-record discussion.)

18 THE COURT: We'll go back on the record.

19 The parties or counsel are back in the courtroom.
20 Mr. LeBeau has indicated he does intend to call his rebuttal
21 witness.

22 Mr. LeBeau, could you state that witness's name,
23 please?

24 MR. LeBEAU: Yes, it's Dr. Tom Brunell.

25 THE COURT: All right. And I believe you said

1 Dr. Brunell was the one appearing by Zoom; correct?

2 MR. LeBEAU: Yes, Your Honor.

3 THE COURT: Then we'll go ahead and turn on the
4 Zoom screen.

5 Dr. Brunell, you have been called as a witness in
6 this proceeding. Are you able to hear us?

7 THE WITNESS: I can, Your Honor.

8 THE COURT: All right. Like another witness in the
9 case, you're appearing remotely testifying using Zoom
10 technology. Could you please raise your right hand, sir?

11 (The oath was administered.)

12 THE WITNESS: Yes.

13 THE COURT: Thank you. You may lower your hand.
14 Could you please state and spell your full name.

15 THE WITNESS: It's Thomas Brunell. T-H-O-M-A-S,
16 B-R-U-N-E-L-L.

17 THE COURT: All right. Thank you.

18 Mr. LeBeau, you may proceed.

19 MR. LeBEAU: Thank you, Your Honor.

20 DR. THOMAS BRUNELL,
21 having been first duly sworn, was examined and testified on his
22 oath remotely, via Zoom, as follows:

23 DIRECT EXAMINATION

24 BY MR. LeBEAU:

25 Q. Doctor, could you just restate your name?

1 A. Sure. I go by "Tom Brunell." My -- my -- my name on my
2 birth certificate is Thomas, but I go by "Tom."

3 Q. And where are you from?

4 A. I currently live in Dallas, Texas.

5 Q. And what's your occupation?

6 A. I'm a professor of political science at the University of
7 Texas at Dallas.

8 Q. And do you specialize in a particular field?

9 A. Yes, I study American elections.

10 Q. And where did you attend school?

11 A. I got my -- I got my bachelor's, master's, and Ph.D. all from
12 the University of California at Irvine, and all of them are
13 in political science.

14 Q. And what degrees do you possess?

15 A. B.A., M.A., and Ph.D.

16 Q. And we have Exhibit 7, which I believe we can put on the
17 screen. I just want you to identify that document. I'm
18 sorry.

19 THE COURT: Let's go off the record a minute.

20 (Off-the-record discussion.)

21 THE COURT: We'll go back on the record.

22 MR. LeBEAU: Thank you.

23 BY MR. LeBEAU:

24 Q. Doctor, can you identify the document that is currently on
25 your screen?

1 A. It's a copy of my current CV.

2 Q. And is this a true and accurate first page of your CV?

3 A. Yes.

4 MR. LeBEAU: Your Honor, we'd move to have
5 Exhibit 7 entered into the record.

6 THE COURT: Any objection, Mr. Zoll?

7 MR. ZOLL: No, Your Honor.

8 THE COURT: Seven is received.

9 BY MR. LeBEAU:

10 Q. Dr. Brunell, what specific training do you have in the
11 political science area?

12 A. Well, I studied -- like I said, I studied political science
13 as an undergraduate and as a graduate student at the
14 University of California Irvine, and I've continued studying.
15 You know, my entire career has been studying American
16 elections.

17 Q. And does that involve the study of voting in American
18 elections?

19 A. Yes. Among other things, yes.

20 Q. And can you please describe your background and research in
21 studying voting in American elections?

22 A. I've published many different articles in peer-reviewed
23 journals using survey data, for instance, on voting. I also
24 studied redistricting and the Voting Rights Act. I've used
25 demographic data, election outcomes, all sorts of different

1 relevant data to study whatever particular question I was
2 interested in at that moment.

3 Q. And how long have you been in this line of work?

4 A. This is the only thing I've ever done, so it's been quite
5 some time. So 30 years or so?

6 Q. And have you reviewed any documents in preparation for
7 testimony today?

8 A. Yes.

9 Q. And what are those documents?

10 A. I received Dr. Rendahl's expert report. Then you sent me
11 several legal filings for the case and some other -- some
12 letters and some data, so like recount data.

13 Q. And what particular principles or methods did you employ when
14 reviewing this information?

15 A. Well, sort of the main thing that I was asked to look at was
16 Dr. Rendahl's expert report. And his calculations are fine;
17 I have no -- I'm not disputing --

18 Q. Doctor, before we get into that, I just wanted to know your
19 methodology for doing --

20 A. I don't know what you mean exactly. Just how I reviewed
21 Dr. Rendahl's report or --

22 Q. Correct. Yeah.

23 A. Well, I read it and then I -- using my background in
24 statistics and elections, I had -- I had some very specific
25 critiques of his method.

1 Q. And before we get into those specifics, have you reached a
2 conclusion, based on your experience, on the report submitted
3 by Dr. Rendahl?

4 A. Yes.

5 Q. And do you believe your testimony will be helpful in
6 assisting the Court as to those conclusions and facts?

7 A. Yes, I hope so.

8 MR. LeBEAU: Your Honor, I would move that pursuant
9 to Rule 702, Dr. Brunell be certified as an expert.

10 THE COURT: Any objection, Mr. Zoll?

11 MR. ZOLL: No objection.

12 THE COURT: All right. So cert -- or so qualified.

13 MR. LeBEAU: Thank you, Your Honor.

14 BY MR. LeBEAU:

15 Q. Dr. Brunell, can you explain what conclusions you reached
16 regarding Dr. Rendahl's statistical analysis?

17 A. Sure. So as Dr. Rendahl explained, he was calculating the
18 probability that the Republican candidate could -- would
19 receive at least 14, a net of 14 ballots out of the 20
20 missing ballots. And the calculations are fine, but the key
21 thing -- the key reason that I think the Court ought to give
22 less weight to his findings are the two assumptions that he
23 makes, and Mr. LeBeau brought them up on cross-examination,
24 so the first of which is he assumes that these 20 votes were
25 drawn randomly from a distribution of votes equal to the

1 total votes in this particular precinct. And that's on
2 page -- just before -- that's in number 6, his paragraph
3 number 6. So he's assuming that Paul received exactly
4 39.2936 percent of the votes of these 20 -- I mean that's
5 drawn from a distribution where the probability is 0.392936,
6 and then Tabke has a probability of 0.537896. And then -- so
7 somebody voting for a different candidate, somebody other
8 than Paul or Tabke, the probability is 0.069169.

9 And this is the total votes for the precinct, and
10 these particular probabilities are going to have a huge
11 effect on his conclusions. And if there's reason to believe
12 that these probabilities are wrong, then we also will have to
13 conclude that his conclusions are wrong; that the probability
14 that he computes is wrong and that his conclusions are wrong.
15 So that's the first problem, you know, because these were --
16 what we do know, to the best of my knowledge, that these were
17 early votes. Early voters tend to be different than election
18 day voters, and so that's going to make the probability
19 distribution different.

20 And then sort of the second thing is that he
21 assumes that each of these 20 -- excuse me -- each of these
22 20 votes is a random draw from -- and they're all independent
23 of one another. Right? That's kind of the key thing, that
24 all these 20 draws are independent from the other ones.

25 So when would this not be the case? Excuse me. So

1 for instance, there may have been a couple that came in, a
2 man and a wife that walked in to vote on one of these days,
3 one of the 20 -- of the 20 votes, ballots that were lost.
4 And oftentimes, you know, couples might think and vote
5 exactly the same way.

6 MR. ZOLL: Objection, Your Honor. There's no
7 foundation for this testimony.

8 THE COURT: Why don't you approach, counsel.

9 (Off-the-record bench discussion.)

10 THE COURT: So the objection is sustained starting
11 with the answer portion that begins with "And then sort of
12 the second thing is that he assumes each of these 20 votes is
13 a random draw and they're all independent of one another."
14 From that point forward, the objection's sustained.

15 Go ahead, Mr. LeBeau.

16 MR. LeBEAU: Thank you, Your Honor.

17 BY MR. LeBEAU:

18 Q. Thank you, Doctor, and I know over Zoom can be kind of
19 difficult, so I do have some questions, so please try to
20 contain it to the question I'm asking.

21 But what would be -- in your experience, what would
22 be instances of patterns that would not be random? Of voting
23 patterns that would not be random.

24 A. Well, the -- there could be groups of voters that go to vote
25 together.

1 MR. ZOLL: Objection, there's still no foundation
2 for this testimony.

3 THE COURT: Sustained.

4 BY MR. LeBEAU:

5 Q. Doctor, in your experience evaluating elections, how have you
6 looked -- how do you research voting patterns?

7 A. That's a broad -- that's a broad question.

8 Q. Sorry.

9 A. I mean, there's lots of different ways. You know, the sort
10 of most common one is using survey research and those sorts
11 of databases.

12 Q. And are there any conclusions that you're able to make across
13 the board about different manners in which voters act that
14 would make voting totals not random?

15 A. Sure. People will often go to the polls with somebody else.
16 People -- people do vote on their own sometimes, but I've
17 voted with my kids, for instance. So there's lots of
18 different scenarios where you can imagine a group of people
19 traveling to the polls and voting together.

20 Q. And in your experience, would people -- when you have these
21 different instances, how does that affect randomness?

22 A. Yeah, then -- then these are no longer independent, random
23 draws from this distribution that Dr. Rendahl relied upon.
24 People that live together oftentimes have similar voting
25 behavior, and even if they don't -- you know, sometimes there

1 are instances where, you know, a child decides to vote
2 differently than his or her parents, right? And so that
3 doesn't matter because the key thing is is that the votes are
4 dependent upon one another. They're no longer independent
5 draws from a distribution.

6 Q. Doctor, are you familiar with the distinction between early
7 voting versus election day voting?

8 A. Yes.

9 Q. And are they different?

10 A. Yes.

11 Q. And how so?

12 A. Early voters can differ in lots of different ways, and the
13 most important thing for our -- for what we're doing here
14 today is that early voters have in the past been shown to
15 have different partisan preferences than election day voters.

16 Q. In your experience, does that affect randomness as well?

17 A. Sure.

18 Q. I believe you've answered the question -- if I can just check
19 the record, I believe you've answered the question as to your
20 conclusion about Dr. Rendahl's report; is that correct?

21 A. Are you asking me?

22 Q. Yes.

23 A. Yeah, I think I have.

24 Q. Okay. Thank you.

25 MR. LeBEAU: I have no further questions, Your

1 Honor.

2 THE COURT: Mr. Zoll?

3 MR. ZOLL: Thank you.

4 CROSS-EXAMINATION

5 BY MR. ZOLL:

6 Q. Dr. Brunell, you don't have any degrees in statistics, do
7 you?

8 A. I don't.

9 Q. All your degrees are political science degrees; correct?

10 A. Yes, although I've used statistics for my entire career.

11 Q. Okay, but my question was all of your degrees are in
12 political science; correct?

13 A. That is correct.

14 Q. When reviewing Dr. Rendahl's report, did you analyze the
15 demographics for the voters in Shakopee Precinct 10?

16 A. No.

17 Q. Did you analyze the returns of this election as split between
18 early votes and in-person votes?

19 A. No.

20 Q. So do you know whether there is a difference in the
21 characteristics between the early vote and in-person vote
22 returns in this election?

23 A. I don't have personal knowledge of that, no.

24 Q. I believe you testified in response to a question from
25 Mr. Paul's counsel that historically, early voters had voted

1 differently than in-person voters. Do you recall that
2 testimony?

3 A. I do.

4 Q. It's true that historically early voters tended to favor the
5 Democratic candidates; correct?

6 A. As a general rule, I would agree with that.

7 Q. Okay. Okay. If there's follow-up, your -- Mr. Paul's lawyer
8 can ask you.

9 A. Fair enough.

10 Q. Do you know one way or another whether that trend continued
11 for the 2024 election for House District 54A in Minnesota?

12 A. I haven't seen any data on that, no.

13 Q. So you don't know one way or the other.

14 A. I don't.

15 Q. If the early vote would favor the Democratic candidate, you
16 would agree that that pool of ballots would make it even more
17 difficult for Aaron Paul to close the gap in this election;
18 correct?

19 A. Yes.

20 Q. Have you been retained by counsel for Aaron Paul to provide
21 your testimony?

22 A. Yes.

23 Q. Are you being paid to provide your testimony?

24 A. I am.

25 Q. At what rate are you being paid?

1 A. \$500 an hour.

2 Q. You didn't calculate or perform your own probability
3 analysis, did you?

4 A. No.

5 Q. And you gave an example of where a family may vote together
6 and provided that as an example of a dependent vote. Did I
7 understand that correctly?

8 A. Yes.

9 Q. But you also acknowledged that family members don't
10 necessarily cast their ballots the same way; right?

11 A. Certainly not every family member casts their ballot the same
12 way. The critical point is that this violates the assumption
13 of Dr. Rendahl's model, and therefore, it casts doubt on its
14 utility.

15 Q. But you could have two non-family members, consecutive voters
16 in line, who vote the same way; right?

17 A. You could -- well, you almost certainly do --

18 Q. Or three or four.

19 A. Yeah, but that's a different point. The point here is that
20 the voters -- that one person's vote is dependent upon the
21 other voter standing next to them. In your example, they're
22 not.

23 Q. Right, but I just heard you say that you acknowledge that
24 even family members cast their ballots differently from each
25 other.

1 A. They can, and if it's on purpose, then it's a violation of
2 the assumption of the model, and therefore, the utility of
3 his calculations are less.

4 Q. Have you performed an analysis to determine with precision
5 how much more likely it is that a family member cast their
6 ballots similarly to another family member?

7 A. For this -- well, I don't think I've ever done that, so the
8 answer is no.

9 Q. Okay. And do you know of any way to quantify the dependence
10 that you claim exist in that scenario?

11 A. You could use survey data.

12 Q. Have you done that?

13 A. I have not.

14 Q. Okay. Do you know -- if that had been done, do you know how
15 much that would have changed the probability analysis in this
16 case?

17 A. Well, the main point is that we don't really know the
18 probability that the Republican can get a net of 14 votes;
19 that's my main point. We can't -- the Court shouldn't accept
20 Dr. Rendahl's conclusion that it's 0.0005 or whatever it is.
21 All 20 of these votes could be Republican, all 20 would be
22 Democratic. We don't know, and just sort of imputing missing
23 votes strikes me as kind of inconsistent with free and fair
24 elections.

25 Q. You heard Dr. Rendahl's testimony; correct?

1 A. I did.

2 Q. And you heard him indicate that his analysis accounts for the
3 possibility that all 20 ballots were count -- were cast for
4 Mr. Paul; correct?

5 A. I did, but that's not the point that I'm trying to make. The
6 point I'm trying --

7 Q. Well -- go ahead.

8 A. -- to make is that we don't -- we don't know how these 20
9 people voted.

10 Q. And therefore, a way to determine the likelihood of those 20
11 votes changing the outcome of the election would be to
12 conduct a probability analysis; correct?

13 A. No, not if the assumptions -- if the assumptions are
14 incorrect, then we should not conduct this probability
15 assessment. We don't know how these 20 people voted. They
16 could -- the Republican could win with some probability; the
17 Democrat could win with some probability. We don't know what
18 the probability is.

19 Q. And again, you didn't conduct your own probability analysis;
20 correct?

21 A. Because you shouldn't.

22 Q. That's your opinion, that we shouldn't do that.

23 A. Of course --

24 Q. That we should deprive ourselves of that information.

25 A. If the information is wrong, I don't know what the judge is

1 supposed to do with it.

2 Q. You testified as an expert witness in other proceedings,
3 Dr. Brunell?

4 A. I have.

5 Q. Have you ever testified on behalf of the Democratic
6 candidate?

7 A. I usually don't -- I usually testify -- it's usually not for
8 a candidate in particular.

9 Q. Have you provided expert testimony in connection with
10 redistricting matters, for example?

11 A. Yes.

12 Q. And has that been on behalf of one particular party?

13 A. Most of the time I work for Republicans, but there have been
14 a couple of instances where I've worked for Democrats.

15 Q. Do you consider yourself an expert -- well, strike that.

16 Did you hear Dr. Rendahl testify that if we have a
17 pool of 20 ballots and 4 of those are cast for Representative
18 Tabke, that it would be impossible for Aaron Paul to earn a
19 net of 14 votes?

20 A. I did hear that.

21 Q. Do you agree or disagree with that conclusion?

22 A. That I agree with.

23 Q. And did you hear Dr. Rendahl testify that if we had a pool of
24 21 ballots and 4 of those were cast for Representative Brad
25 Tabke, that it would be impossible for Aaron Paul to earn a

1 net of 14 votes?

2 A. I did.

3 Q. And do you agree or disagree with that testimony?

4 A. Yes, if -- if the Democrat got 4 out of that pool, there's no
5 way to make up the difference.

6 MR. ZOLL: I have no further questions, Your Honor.

7 THE COURT: All right. Thank you.

8 Mr. LeBeau?

9 MR. LeBEAU: Thank you.

10 REDIRECT EXAMINATION

11 BY MR. LeBEAU:

12 Q. Doctor, you were making a point about general early voting.

13 I just wanted to let you have the opportunity to finish.

14 A. Oh, yes. Thank you. So generally when we hear about early
15 voting, certainly in large cities -- like if we're talking if
16 this was Philadelphia -- historically, the Democrats have --
17 usually do far better than Republicans do in terms of net
18 votes that they get in early voting, although this past
19 election, the Republicans decided -- one of their main pushes
20 nationally was *Hey, we need people to vote early. We can't*
21 *keep saying early voting is bad. We need more Republicans to*
22 *vote early, not just because we want to win the early ballots*
23 *but because we might get more people to vote that way. So*
24 *it's possible -- I don't think we have all of the information*
25 *yet -- that the Republicans did better in 2024 than they have*

1 in past recent elections.

2 Q. Doctor, have you studied recount election contests throughout
3 the country?

4 A. I've studied elections throughout the country, yes.

5 Q. Are you aware of any jurisdiction where probability scenarios
6 were relied on to help determine or inform the result of a
7 recount or an election contest?

8 MR. ZOLL: Objection, beyond the scope of cross.

9 THE COURT: Sustained.

10 MR. LeBEAU: I don't have any further questions,
11 Your Honor. Thank you.

12 Thank you, Doctor.

13 THE WITNESS: Thank you.

14 THE COURT: Mr. Zoll, any other questions?

15 MR. ZOLL: Yes.

16 RECROSS-EXAMINATION

17 BY MR. ZOLL:

18 Q. Dr. Brunell, do you have or are you aware of any evidence
19 demonstrating that votes cast by early voters in Shakopee
20 Precinct 10 in the November 5, 2024, General Election are
21 inconsistent with the pool of ballots cast by all voters in
22 Precinct 10?

23 A. I don't know. I have no information about that.

24 Q. Okay.

25 MR. ZOLL: No questions, Your Honor.

DR. THOMAS BRUNELL - RECROSS-EXAMINATION

1 THE COURT: Mr. LeBeau, anything else?

2 MR. LeBEAU: No, Your Honor.

3 THE COURT: All right. Mr. -- or excuse me --
4 Dr. Brunell, thank you for joining us today via Zoom. You
5 may disconnect.

6 THE WITNESS: Okay. Very well. Thank you.

7 (The witness was excused.)

8 THE COURT: All right. Why don't we start with
9 Mr. LeBeau first.

10 Do you have any additional witnesses, Mr. LeBeau?

11 MR. LeBEAU: No, Your Honor. The witness I was
12 going to call is not going to be available.

13 THE COURT: All right. And you didn't want to wait
14 for him, as I recall that; is that correct?

15 MR. LeBEAU: Correct. I don't think -- I don't
16 think we -- I don't want to hold the Court up.

17 THE COURT: All right. Mr. Zoll, did you have any
18 other witnesses?

19 MR. ZOLL: We have no additional witnesses, Your
20 Honor.

21 THE COURT: All right. And were you able to
22 confirm that stipulation?

23 MR. ZOLL: Yes.

24 THE COURT: All right. So the stipulation was, as
25 I recall it, that Voter 5 and Voter 11 were married.

1 Is that correct, Mr. LeBeau?

2 MR. LeBEAU: That's my understanding.

3 THE COURT: And Mr. Zoll, that's the correct
4 stipulation?

5 MR. ZOLL: Correct.

6 THE COURT: All right. So that will close the
7 record. We'll just make sure that all of the exhibits the
8 parties intended were stipulated to be received have, in
9 fact, been received. We'll do some work on that just to make
10 sure that's the case. And then I will issue my written
11 decision. We can talk about timing for post-trial briefing,
12 and then I can issue an order about that.

13 So we'll go off the record.

14 (Proceedings concluded.)

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REPORTER'S CERTIFICATE

I, MONICA R. MORIARTY, do hereby certify that I am an official court reporter for the First Judicial District, State of Minnesota; that as such reporter, I stenographically reported the proceedings held in the hearing of the afore-mentioned action; that I thereafter transcribed the proceedings by means of computer-aided transcription; and that the above and foregoing transcript, consisting of the preceding 90 pages, constitutes a full, true, and complete transcript of my stenographic notes of the hearing to the best of my ability.

Dated: December 23, 2024

/s/ Monica R. Moriarty

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