

**MINNESOTA HOUSE OF REPRESENTATIVES  
ETHICS COMMITTEE**

**In the House District 54A Election Contest**

**PETITIONER'S BRIEF**

The election for House District 54A was plagued with irregularities starting just hours after polls closed on November 5, 2024, with erroneous reporting of results, and concluding months later with an advisory opinion from a district court judge that discounted sworn testimony that raised questions about the identities of the twenty voters whose ballots were destroyed in a race decided by just fourteen votes. Taken together, the errors, data discrepancies, failures to follow longstanding election procedures, and destroyed ballots have undermined confidence in Minnesota's election system and highlighted the need for sweeping reforms to prevent this string of problems from occurring again.

But for the purposes of the House's Constitutional obligation to be the final "judge of the election returns and eligibility of its own members," the fatal flaw in the 2024 House District 54A election is straightforward and undisputed. At least twenty ballots were destroyed, disenfranchising those twenty voters, in an election where the margin between the candidates was narrower than the number of disenfranchised voters. This resulted in an inconclusive election result, and a new election should be held in which every voter is given a chance to vote.

The district court's advisory opinion, in order to reach a contrary conclusion, relied upon exactly the type of testimony that the Minnesota Supreme Court and Minnesota Court of Appeals have held inadmissible: "for obvious reasons arising

from the inviolable secrecy of the ballot, direct evidence as to how contested votes were cast is not allowed.”<sup>1</sup> This established rule is essential to protecting the inviolability of the secret ballot and the integrity of our elections systems, and the district court’s disregard of that rule creates a dangerous precedent that the House should correct.

To be clear, Representative Brad Tabke is not accused of any impropriety. But the election in District 54A was inconclusive because 20 voters were denied their right to vote, resulting in a margin of only 14 votes between the two leading candidates. As a result, the House, acting in its role as judge of the returns and eligibility of its members, should vacate the election.

### **Election Night**

At approximately 11:00PM on November 5, 2024, results were posted to the Secretary of State website reflecting that with 100% of precincts reporting, GOP Challenger Aaron Paul had defeated Democratic-Farmer-Labor (DFL) Rep. Brad Tabke by 360 votes.<sup>2</sup> Thirty minutes later at approximately 11:15PM, all results for District 54A were removed without public announcement or explanation.<sup>3</sup> Hours later at approximately 2:00AM results were posted, once again showing 100% of

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<sup>1</sup> *Kearin v. Roach*, 381 N.W.2d 531, 533 (Minn. Ct. App. 1986); *see also Pennington v. Hare*, 62 N.W. 116, 117 (Minn. 1895).

<sup>2</sup> Callaghan, Peter, November 5, 2025, 10:45 PM, <https://x.com/CallaghanPeter/status/1854022147200496085> (“This would be another MN House GOP pickup in the back and forth Shakopee based district.”)

<sup>3</sup> Callaghan, Peter, November 5, 2014, 11:18 PM, <https://x.com/CallaghanPeter/status/1854030454329839772> (“Uhhh, ok Scott County. Where did the vote totals go in MN House 54a?”).

precincts reporting but with an entirely different result; incumbent DFL Rep. Brad Tabke now led by thirteen votes.

### **Re-Scanning of Ballots**

On November 8, 2024, Scott County announced that there had been a “ballot distribution error” and “ballot scanning malfunction” that necessitated a re-scanning of “proper ballots” set to start less than 90 minutes after the notice was released to the public, making it nearly impossible for campaigns and the public to attend and monitor the process.<sup>4</sup> Despite a news release from Scott County stating that the re-scanning process was estimated to “be completed by 10 PM,” the re-scan stretched late into the evening, and final results were not posted to the Secretary of State website until after midnight on November 9. Those updated totals showed a net one vote gain for Rep. Tabke, yet another change to the results. Those results were adopted on November 13, 2024 by the Scott County Canvassing Board as part of the canvassing report.<sup>5</sup>

### **Recount**

On November 21, 2024, a hand recount was conducted resulting in yet another change to the vote totals for the District 54A race. As the result of a

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<sup>4</sup> Scott County Minnesota, Re-scan scheduled for a portion of Shakopee ballots (November 8, 2024), <https://www.scottcountymn.gov/DocumentCenter/View/23028/MEDIA-RELEASE----Re-scan-scheduled-for-a-portion-of-Shakopee-ballots>

<sup>5</sup> Scott County Minnesota, Info. Release Nov. 13 (November 13, 2024), [https://www.scottcountymn.gov/DocumentCenter/View/23036/Info-release-Nov-13?fbclid=IwY2xjawGjIqtleHRuA2FlbQIxMAABHROIwEyeuSV07Rrys03tt0Tlwbo5wMm2EoiU2f3wYZAkuFeey-ZsKL2sgg\\_aem\\_EE-KYg5Nt4V8z4e1LDaAKQ](https://www.scottcountymn.gov/DocumentCenter/View/23036/Info-release-Nov-13?fbclid=IwY2xjawGjIqtleHRuA2FlbQIxMAABHROIwEyeuSV07Rrys03tt0Tlwbo5wMm2EoiU2f3wYZAkuFeey-ZsKL2sgg_aem_EE-KYg5Nt4V8z4e1LDaAKQ)

challenged ballot, Rep. Tabke’s lead was reduced by one vote, reverting back to the fourteen-vote margin reported on election night. The Scott County Canvassing Board met again on November 25, 2024, to adopt the results of the recount.<sup>6</sup>

### **Destroyed Ballots**

On November 27, 2024, the Scott County Attorney released the results of a preliminary investigation revealing that twenty ballots were destroyed, and that the City of Shakopee had incorrectly confirmed that the number of scanned ballots matched the amount of ballots that should have been reported on election night. According to the investigation, the discrepancy was discovered on November 7, 2024, and subsequent efforts to locate the ballots were unsuccessful, stating “the ballots most likely will not be recovered” and that “even if 20 ballots were found, it is unlikely that their chain of custody can be proven to assure they have not been tampered with.”<sup>7</sup>

### **District Court Proceedings**

On November 29, 2024, Aaron Paul filed an election contest asserting (1) a question of which candidate received the most votes, (2) irregularities in the conduct of the election which directly impacted the results of the election, and (3) deliberate,

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<sup>6</sup> Scott County Minnesota, Canvassing board certifies election results in Minnesota House district 54A, (November 25, 2024),

<https://www.scottcountymn.gov/CivicAlerts.aspx?AID=1594>

<sup>7</sup> Hocevar, Ron, Preliminary Investigation Summary (November 27, 2024),

<https://www.scottcountymn.gov/DocumentCenter/View/23098/Preliminary-investigation-summary>

serious, and material violations of the Minnesota Election Law.<sup>8</sup> Pursuant to the statutory process contained in Minn. Stat. § 209.10, Subd. 2, District Judge Tracy Perzel was selected to make an initial advisory decision in the election contest. The district court held an evidentiary hearing on December 16 and 17, 2024, and issued findings of fact and conclusions of law on January 14, 2025.<sup>9</sup>

Scott County Elections Administration attempted to identify the voters whose ballots were destroyed, and identified 20 voters in Shakopee P-10 who were likely to have been disenfranchised. Although this was factually contested at the hearing, the district court found this list to be credible and well founded.<sup>10</sup> There was also a missing ballot from Shakopee P-12A that has not been linked to an identifiable voter.<sup>11</sup>

At the evidentiary hearing, the district court heard testimony from 12 of the voters identified by Scott County Elections Administration as absentee voters in Shakopee P-10.<sup>12</sup> Although Paul argued that this testimony could not be relied upon based on controlling Minnesota precedent, the district court based its factual findings and legal conclusions on the premise that “the best available evidence as to who the 12 voter-witnesses voted for in the House District 54A race was their in-person testimony,” and this evidence was “probative of whether or not a question

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<sup>8</sup> *Paul v. Tabke*, No. 70-CV-24-17210, Index #1 (Nov. 29, 2024). Documents in the district court record are herein cited as “*Paul* Index # \_\_\_.”

<sup>9</sup> *Paul* Index # 37.

<sup>10</sup> *Id.* at ¶¶ 40-47, 107.

<sup>11</sup> *Id.* at ¶ 79.

<sup>12</sup> *Id.* at ¶¶ 65-78.

exists over which candidate received the most votes legally case and whether Paul can meet his burden of proof on the remaining election-contest grounds.”<sup>13</sup>

By disregarding the controlling precedent excluding this voter testimony, the district judge reasoned that “the evidence convincingly shows that there is no question of which candidate received the most votes cast.”<sup>14</sup> In addition, the district court acknowledged a number of irregularities in the conduct of the election, including “failure to comply with the requirements for storing and counting of envelope absentee ballots.”<sup>15</sup> But, apparently based on its reliance on voter testimony, the district court concluded that it was not proven that these irregularities “affected the outcome of the election.”<sup>16</sup>

**The House Should Correct the District Court’s Legal Error and Determine that the House District 54A Election was Inconclusive.**

When an election outcome potentially hinges on the testimony of certain voters about how they did or would have voted, courts in Minnesota (and elsewhere) have long held that such testimony cannot be used to determine the election. The reasons for this are obvious: if certain voters are required to testify in order for their votes to count, their right to a secret ballot has been destroyed. Even more concerning for the integrity of our election system, that limited subset of voters could be improperly influenced.

In 1895, the Minnesota Supreme Court confronted a similar question in

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<sup>13</sup> *Id.* at ¶¶ 99, 101.

<sup>14</sup> *Id.* at ¶ 109.

<sup>15</sup> *Id.* at ¶ 125.

<sup>16</sup> *Id.* at ¶ 133.

*Pennington v. Hare*. There, certain voters were improperly prevented from voting by election judges, and the Supreme Court was confronted with the question of whether testimony from those voters could be considered in a subsequent election contest. The Supreme Court held that they could not, and its reasoning is instructive:

[T]he record presents the simple question, can votes not cast, because of an error of judgment on the part of the election officers, be counted as if cast and returned? We are clearly of the opinion that they cannot be. . . [W]here, as in this case, the supposed ballots were never in existence, and we must rely upon the subsequent declarations of the electors as to how they intended to and would have marked and cast their ballots, if they had voted, it would be an uncertain and dangerous experiment to attempt the task of ascertaining and giving effect to their intentions, as ballots actually cast and returned. Uncertain, because it would be simply a matter of speculation; dangerous, because it would give to such electors the power of determining the result of an election, in a close contest. All that it would be necessary for them to do, in such a case, to decide the election, would be to declare that they intended to vote for a particular candidate. It would enable them to sell the office to the candidate offering the highest price for it, because they would not be called upon for their declaration until a contest arose, after the actual ballots had been counted, and the precise effect of their statement known. They could swear falsely as to their past intentions, without fear of punishment, for how would it be possible to disprove their statements as to their intentions with reference to a supposed act, if perchance they had acted?<sup>17</sup>

Many other states follow this sensible rule.<sup>18</sup> Nevertheless, the district

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<sup>17</sup> 62 N.W. at 117 (Minn. 1895).

<sup>18</sup> See, e.g., *McCavitt v. Registrars of Voters*, 434 N.E.2d 620, 623 (Mass. 1982) (“in the absence of evidence of fraud or intentional wrongdoing, a voter who has cast an absentee ballot in good faith may not be asked to reveal for whom he or she voted. Such a requirement burdens the fundamental right to vote and strikes at the heart of the American tradition of the secret ballot. If the outcome of an election depends on good faith absentee voters whose facially valid ballots must be rejected because of procedural mistakes, we believe that a new election is preferable to compelling those voters to disclose the candidate for whom they voted.”); *Huggins v. Superior*

court abandoned this rule based on irrelevant factual distinctions between this case and *Pennington*, as well as its speculation that “in polarized political times,” testimony of voters would be more reliable than the Supreme Court held in *Pennington*.<sup>19</sup> By disregarding controlling Minnesota legal precedent, and the sensible legal rule embraced by virtually every other state, the district court’s ruling creates a dangerous incentive structure—if votes are destroyed in a close election and the voters are identified, the entire outcome of that election hinges on *whether* those voters can be persuaded to testify, and *how* they are persuaded to testify. This creates exactly the potential for corrupt vote buying or voter intimidation that our secret ballot protections are

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*Court*, 788 P.2d 81, 83 (Ariz. 1990) (“Voter disclosure testimony, even where offered, is highly suspect. Courts have long recognized this weakness when contemplating testimony by legal voters whose attempted votes were erroneously unrecorded.”); *Briscoe v. Between Consol. Sch. Dist.*, 156 S.E. 654, 656 (Ga. 1931) (“[I]t would . . . be dangerous to receive and rely upon the subsequent statement of the voters as to their intentions, after it is ascertained precisely what effect their votes would have upon the result.”); *Young v. Deming*, 33 P. 818, 820 (Utah 1893) (“We know from common experience that those who do vote are usually unwilling that the character of their votes be made public, and that whenever there is an investigation as to the actual vote cast it is almost certain to bring about prevarication and uncertainty as to what the truth is; and while in this case before us no special reasons exist for casting reflections upon the truth of those who participated in the election, yet it is deemed unwise to lay down any rule by which the certainty and accuracy of an election may be jeopardized by the reliance upon any proof affecting such results that is not of the most clear and conclusive character.”); *Kirby v. Wood*, 558 S.W.2d 180, 182 (Ky. Ct. App. 1977) (internal citation omitted) (“Kentucky law is well settled that voters will not be permitted to testify as for whom they voted. The rationale for this holding is that it protects the integrity of the secret ballot, as well as the whole electoral process. If a person were permitted to testify, the Court would be relying upon voluntary witnesses and could possibly be confronted with a one-sided distorted viewpoint.”).

<sup>19</sup> *Paul* Index # 37 at ¶¶ 92-93, 98.



designed to prevent.

Under our Constitutional structure, the obligation to correct that legal error rests ultimately upon the House of Representatives, through its power to judge the returns and eligibility of its members. If that legal error is corrected, the admissible (and undisputed) evidence proves that the question of which candidate received the most votes is inconclusive, and the (undisputed) irregularities affected the outcome of the election.

### **CONCLUSION**

For the foregoing reasons, the House should conclude that, in the 2024 House District 54A election, City of Shakopee election officials engaged in a material irregularity in the administration of the 2024 General Election. The error puts the total legal votes cast for House District 54A into question. This error was serious, material, and deliberate. As a result, the election for House District 54A is in doubt and the winner is unable to be determined. A vacancy should be declared to be filled according to law.

Respectfully submitted,

**REPRESENTATIVE HARRY NISKA (31A)**

**Petitioner**