

FILED

August 24, 2026

**OFFICE OF
APPELLATE COURTS**

Court File No. _____

STATE OF MINNESOTA

IN THE SUPREME COURT

(Original Jurisdiction under Minn. Stat. § 204B.44(a)(4))

Michael J. Lindell,

Petitioner,

v.

Steve Simon, in his official capacity as
Minnesota Secretary of State, and
the Minnesota State Canvassing Board,

Respondents.

**MEMORANDUM OF LAW IN
SUPPORT OF MOTION FOR
TEMPORARY RESTRAINING
ORDER**

INTRODUCTION

Petitioner Michael J. Lindell (hereinafter “Lindell”), one of the Republican gubernatorial candidates in the August 11, 2026 primary, is seeking emergency relief to prevent his irreparable harm caused by Respondents’ bait and switch regarding his timely request for a recount of all votes under Minn. Stat. § 204C.35.

Contrary to Minnesota statute, Respondents adopted a Contingent Plan and Recount Procedures which provides that the recount include only the votes cast for two Republican candidates (Lindell and Lisa Demuth) and place every other candidate’s ballots into a third pile that will not be either counted or recorded. That limitation violates the plain language of Minn. Stat. § 204C.35, subd. 3,

which requires that the scope of the recount consist of “the determination of the number of votes validly cast for the office,” here, the gubernatorial race.

Furthermore, the Secretary of State’s office did not clarify the intended scope of the ambiguous Contingent Plan until today, the last day for Lindell to send the funds to pay for the recount. This bait-and-switch has put Lindell in an untenable position as Respondents have refused to comply with Minnesota statutory requirements for a discretionary recount, have insisted that Lindell must pay for the illegal recount, and informed Lindell that if he does not pay for the illegal recount, rather than the recount to which he is entitled by law and which he clearly requested, he will lose all rights to a legitimate recount.

In support of this threat, the Secretary of State’s office claims that it is unable to waive the statutory deadline for the payment of the recount even though it clearly violated the statutory requirements for a recount.

As a result, Lindell seeks a temporary restraining order to maintain the status quo until the Court determines whether the recount proposed by Respondents violate Minnesota law and whether Lindell is entitled to the recount of all votes.

Furthermore, if Lindell had wired the funds (and today he did provide the Secretary of State’s office with proof of those funds), a limited recount would have occurred beginning tomorrow, the incomplete results would then be certified, and

Lindell would have permanently lost his only opportunity to obtain the full recount as provided by Minnesota statute. Lindell thus seeks emergency relief.

FACTUAL BACKGROUND

Lindell was a candidate for Governor of Minnesota in the Primary Election held on August 11, 2026. Following the canvass, he timely requested a discretionary recount of the votes for the Offices of Governor and Lieutenant Governor pursuant to Minn. Stat. § 204C.35, subd. 2. *See* August 24, 2026 Declaration of Michael J. Lindell (“Lindell Decl.”) ¶¶ 1-2.

On August 18, 2026, Lauren Bethke, General Counsel of the Office of the Minnesota Secretary of State, wrote to Lindell estimating the cost of the discretionary recount at \$825,021.93 and requiring that an official request, together with a bond, cash, or surety for the full amount, be received no later than Monday, August 24, 2026. Lindell Decl. ¶ 3 & Ex. A.

The same day, the Secretary of State issued a “Contingent Plan for Discretionary Recount.” *See* Lindell Decl. Ex. B. The Plan provides that “[t]he State Recount Official may designate Deputy Recount Officials **to perform a recount of all ballots cast for the office requested to be recounted.**” *Id.* (emphasis added). In communications with the General Counsel for the Secretary of State, Lindell specifically requested that all votes cast for both the Republican and Democratic gubernatorial races be recounted. *Id.* ¶ 4.

The Recount Procedures that accompany the Contingent Plan are provided, in paragraph 8:

“One of the Table Officials will sort the ballots into three piles, based upon the principles of voter intent outlined in Minnesota Statutes, section 204C.22: one pile for Candidate A, one for Candidate B, and one for all other ballots (those for other candidates, undervotes, overvotes, or otherwise disqualified ballots).”

Lindell Decl. ¶ 13.

The Contingent Plan itself is ambiguous. It states only that the recount is limited to “the candidates to be recounted,” without identifying those candidates or explaining whether the votes of other candidates will be counted and recorded. The Recount Procedures describe sorting ballots into three piles but never state that the third pile will be counted by candidate or that totals for every candidate will be determined and recorded. Lindell did not understand the limited scope of the recount, pertaining solely to the votes cast for Lindell and Lisa Demuth, until the General Counsel for the Secretary of State clarified it until today, the statutory deadline for the payment of the recount.

Id. ¶¶ 6, 13.

Lindell informed the General Counsel, and provided proof of funds, indicating that he is ready, willing, and able to pay the full estimated cost of \$825,021.93 for the recount. *Id.* ¶ 12 & Ex. C.

Lindell also understood from the terms of the Contingent Plan quoted above (which provides for a recount of “all ballots”), his express request to have **all** of the gubernatorial votes recounted, and his payment of \$825,021.93, which was the costs for recount provided by the General Counsel, that the recount would include all of the gubernatorial votes cast in the context of both the Democratic and Republican gubernatorial races. *Id.* ¶ 6.

However, the proposed scope of the recount as clarified by the General Counsel today, fails to address the legitimate concerns Lindell has as a candidate for governor. *First*, the same ballot form was used for both the Democratic and Republican primary races and thus, a full recount of all of the ballots is warranted to ensure that there are no anomalies in the ballots, whether the votes cast are for the Democratic or Republican primaries. *Second*, by only counting a subset of the votes that had been cast in the Republican gubernatorial primary, Lindell will be unable to get a full picture of the actual number of Republican votes cast to determine if Lindell won the primary, particularly given the number of substantial number of votes that were reportedly cast for the candidate who obtained the third largest number of those votes in the Republican governor’s race. *Third*, the scope of the proposed recount was not made clear to Lindell until this morning, the day on which the payment for the recount was supposed to be made. *Id.* ¶ 9.

This purported “clarification” of the actual recount would be on the very last day Lindell was to pay for the recount is untenable. Lindell will suffer irreparable harm if forced to pay for an illegal recount which will not protect his legitimate interest in determining whether the election results were legitimate or tainted by the voting anomalies that have already surfaced. *Id.* ¶ 10.

Furthermore, the “Contingent” Plan is indefensible because the proposed recount violates Minnesota law, yet the General Counsel for the Secretary of State informed Lindell this evening that if he did not wire funds to pay for that invalid recount, he would allegedly lose any right to obtain a recount. *Id.* ¶ 11.

Furthermore, the Contingent Plan is ambiguous at best and deceptive at worst. The Plan states only that the recount is limited to “the candidates to be recounted,” without identifying those candidates or explaining whether the votes of other candidates will actually be counted and recorded. The accompanying Recount Procedures describe sorting ballots into three piles (Candidate A, Candidate B, and “all other ballots”) but never state that the third pile will be counted by candidate or that totals for every candidate will be determined and recorded. Because of that ambiguity, Lindell did not understand until this morning, the final day for payment, that the Secretary of State intended to limit the actual counting of votes to only two candidates and leave every other candidate’s ballots in an uncounted third pile. Respondents are now requiring Lindell to pay

\$825,021.93 today for a recount that violates the statute, while asserting that failure to pay will cause him to lose all rights to a recount. That last-minute clarification of an ambiguous plan, combined with the take-it-or-leave-it demand, is further irreparable harm. *Id.* ¶ 13.

Lindell also asked the General Counsel to have the Secretary of State waive or stay the statutory payment deadline. She replied that this could not be done. Yet the “Contingent” Plan violates another Minnesota statutory provision. *Id.* ¶ 14.

Legitimate and publicly recognized concerns exist about the security and accuracy of electronic voting equipment. A full manual recount of the votes for every candidate is the only means of providing a transparent, observable verification of the machine tabulations across both the Democratic and Republican gubernatorial primaries. Limiting the recount to two candidates prevents that verification. *Id.* ¶ 15.

If the Court does not grant a temporary restraining order requiring a full recount of all ballots cast for the office of Governor and Lieutenant Governor and the recording of votes for every candidate, the incomplete returns will become the certified results, and Lindell will permanently lose the opportunity for a complete administrative count of the votes for the office, and public confidence in the integrity of the election will be damaged. *Id.* ¶ 16.

Lindell thus asks the Court to grant his motion for a temporary restraining order to maintain the status quo until the Court can determine whether the proposed, limited recount violates Minnesota law.

LEGAL ARGUMENT

I. STANDARD

This Court has broad discretion to grant temporary injunctive relief under Minn. R. Civ. P. 65. Minnesota courts apply the following five factors:

- (a) the relationship between the parties before the dispute;
- (b) the harm the movant will suffer if relief is denied compared with the harm inflicted on the opposing party if the injunction is issued;
- (c) the likelihood that one party or the other will prevail on the merits;
- (d) the public interest involved; and
- (e) the administrative burdens involved in enforcing the relief requested.

Dahlberg Bros., Inc. v. Ford Motor Co., 137 N.W.2d 314, 321–22 (Minn. 1965).

All five factors strongly favor the issuance of a temporary restraining order.

A. The Parties' Relationship Before the Dispute

The relationship between the parties is defined by statute. Lindell is a candidate who has timely invoked his statutory right to a discretionary recount. Respondents are the election officials charged with conducting that recount according to law. The statute commands them to determine “the number of votes validly cast for the office.” Minn. Stat. § 204C.35, subd. 3. Their Contingent Plan

and three-pile procedure depart from that statutory duty. A temporary restraining order will simply require Respondents to perform the duty the Legislature has already imposed. This factor favors relief.

B. The Factors Pertaining to Irreparable Harm and the Balance of Harms Favor the Grant of a Temporary Restraining Order to Maintain the Status Quo.

Lindell will suffer multiple, concrete, and irreparable harm if Respondents are permitted to proceed with the limited recount they first disclosed this morning.

First, Respondents informed Lindell for the first time this morning (August 24, 2026) that the recount will include only two groups of votes—those of Lindell and Lisa Demuth—and will place all other candidates’ ballots into a third pile that will not be counted. That limitation violates the plain language of Minn. Stat. § 204C.35, subd. 3, which requires determination of “the number of votes validly cast for the office.” Once incomplete returns are certified, the opportunity for a complete administrative determination of the votes for the office is permanently lost.

Second, the same ballot form was used for both the Democratic and Republican gubernatorial primaries. A full recount of all ballots is therefore necessary to ensure there are no anomalies affecting either primary. Limiting the recount to a subset of Republican votes leaves those potential anomalies unexamined.

Third, by counting only a subset of the Republican gubernatorial primary votes, Lindell will be unable to obtain a complete picture of the actual number of Republican votes cast and will be unable to determine whether he won the primary—particularly given the substantial number of votes reportedly cast for the third-place Republican candidate. A partial recount necessarily produces an incomplete and potentially misleading official record of the election.

Fourth, the Contingent Plan is ambiguous on its face. It uses the vague phrase “candidates to be recounted” and the accompanying Procedures describe only a sorting process into three piles, without ever stating that the third pile will be counted by candidate. Respondents prepared the Plan last week but waited until the morning of the final payment deadline to resolve that ambiguity against Lindell by informing him that only two candidates’ votes would actually be counted. Respondents are now demanding that Lindell pay \$825,021.93 today for a recount that violates the statute, while asserting that failure to pay will cause him to lose all statutory rights. Forcing Lindell to fund an unlawful recount under threat of forfeiture of the right itself, after last-minute clarification of an ambiguous plan, constitutes independent and severe irreparable harm. Lindell Decl. ¶¶ 13-14.

Fifth, legitimate and publicly recognized concerns about the security and accuracy of electronic voting equipment make a complete manual recount of all ballots for the office essential. United States Senator Amy Klobuchar has publicly

stated concerns that there are only three major voting-machine companies and that the machines could be vulnerable. A full manual recount of the votes for every candidate is the only means of providing a transparent, observable verification of the machine tabulations across both the Democratic and Republican primaries. Limiting the recount to two candidates prevents that verification.

Sixth, the public interest in election integrity and voter confidence will be irreparably damaged if the official returns for a statewide constitutional office are certified on the basis of a selective count that ignores the votes of every candidate except two and leaves potential cross-primary anomalies unexamined. Once those incomplete returns are certified, the damage to public confidence cannot be undone.

The balance of harms tips decisively in Lindell's favor. The only burden on Respondents is the requirement that they perform the duty the statute already imposes: a full count of the ballots cast for the office. Lindell, by contrast, faces the permanent loss of a complete administrative count, the inability to verify true totals and the integrity of the ballots across both primaries, the forced funding of an incomplete recount under an artificial last-day deadline, and lasting damage to public confidence in the election. Those harms far outweigh any administrative inconvenience to Respondents.

C. Lindell Is Likely to Success on the Merits.

Lindell is also likely to succeed on the merits. The statutory text is clear and mandatory:

“A recount conducted as provided in this section is limited in scope to the determination of the number of votes validly cast **for the office** or question to be recounted. Only the ballots cast in the election and the summary statements certified by the election judges may be considered in the recount process.”

Minn. Stat. § 204C.35, subd. 3 (emphasis added).

Respondents’ Contingent Plan violates that statute. The Plan, according to the Secretary of State’s general counsel, permits only the recounting of the votes for Lindell and Demuth, and not the requisite determination of “the number of votes cast for the candidates to be recounted.” The accompanying procedures then operationalize that limitation by sorting ballots into three piles and counting only the piles for Candidate A (Lindell) and Candidate B (Demuth). The third pile—containing the votes of every other candidate—is never fully tallied.

The Plan therefore does not permit the determination of the number of votes validly cast **for the office**. Rather, it determines the number of votes cast for only two of the candidates who appeared on the ballot for that office. This Court has already confirmed that the purpose of an administrative recount is “the determination of the number of votes validly cast for the office to be recounted.”

Coleman v. Ritchie, 762 N.W.2d 218, 228 (Minn. 2009). Respondents’ selective counting procedure violates the statutory mandate for the scope of recounts.

The Contingent Plan and Recount Procedures are themselves ambiguous. The Plan never identifies “the candidates to be recounted” and the Procedures never state that the third pile will be counted or that totals will be recorded for every candidate. Respondents have resolved that ambiguity in the manner most restrictive of the statutory right. That resolution is inconsistent with Minn. Stat. § 204C.35, subd. 3, and with this Court’s holding in *Coleman*, 762 N.W.2d at 228 (ruling that a recount under § 204C.35 involves “the determination of the number of votes validly cast for the office”).

Lindell is therefore likely to succeed on the merits of his claim that Respondents’ limitation constitutes a wrongful act, omission, and error correctable under Minn. Stat. § 204B.44(a)(4).

D. The Public Interest Favors the Grant of a Temporary Restraining Order to Maintain the Status Quo.

Public policy strongly favors accurate determination of the will of the voters through a complete, observable recount conducted according to statute. A partial recount that ignores the votes of every candidate except two of the candidates undermines that policy, erodes public confidence in the integrity of the election process, and produces official returns that do not reflect the actual votes cast for the office. This factor strongly favors the grant of temporary relief.

E. The Administrative Burden Is Minimal.

The administrative burden is minimal. The Court need only order Respondents to perform the duty the statute already requires: a full count of the ballots cast for the office and the preparation of complete precinct summaries under Minn. R. 8235.0700. No complex monitoring or ongoing supervision is required. Lindell stands ready to pay the full estimated cost of \$825,021.93. There is no financial or logistical barrier to a complete and lawful recount.

CONCLUSION

All five Dahlberg factors favor the issuance of a temporary restraining order to maintain the status quo. The plain language of Minn. Stat. § 204C.35, subd. 3, requires a determination of the votes validly cast for the office—not a selective count of only two candidates. Respondents' Contingent Plan and three-pile procedure violate that mandate. Immediate relief is necessary to preserve the statutory status quo before incomplete results are certified.

Lindell thus asks the Court to grant the relief requested in the Petition and enter an order requiring Respondents to conduct a full recount of all votes for every candidate for the office of Governor in the August 11, 2026, Primary Election.

Dated: August 24, 2026

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