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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

KARI LAKE,

Plaintiff,

v.

KATIE HOBBS, *et al*.

Defendants.

No. CV2022-095403

SECRETARY OF STATE ADRIAN FONTES' MOTION TO EXCLUDE PLAINTIFF'S EXPERT WITNESS TESTIMONY

(BEFORE THE HON. PETER A. THOMPSON)

The Secretary of State moves for an order excluding Erich Speckin's offered testimony and declaration from trial.

Both the Supreme Court's mandate and this Court's under advisement ruling entered on May 15, 2023 (the "Ruling") state that Ms. Lake cannot challenge the effectiveness of the signature verification process. Mr. Speckin's offered testimony and declaration only challenge the effectiveness of the signature verification process. Therefore, Mr. Speckin's offered testimony and declaration are irrelevant. In addition, Mr. Speckin is not qualified to opine on mathematics, statistics, election administration, or computer science. *See* Ariz. R. Evid. 702. Mr. Speckin's offered testimony and declaration seek to opine on those topics. As such, Mr. Speckin is unqualified. This Court should exclude this irrelevant and unqualified "expert" from trial. We will explain in detail why.

I. ARGUMENT

A. THE SOLE ISSUE FOR TRIAL

"[T]he trial court's jurisdiction on remand is delimited by the terms of the mandate." *Tucson Gas & Elec. Co. v. Pima Cnty. Superior Ct.*, 9 Ariz. App. 210, 213 (1969) (citation

omitted, emphasis added). The Supreme Court ruled that Count III is a challenge "to the application of" the signature verification process, not to the process itself. Order at 3, *Lake v. Hobbs*, No. CV-23-0046-PR (March 22, 2023). Ms. Lake can prevail at trial only if she "can prove her claim as alleged under A.R.S. § 16-672 and establish that votes [were] affected in sufficient numbers to alter the outcome of the election based on a competent mathematical basis to conclude that the outcome would plausibly have been different, not simply an untethered assertion of uncertainty." *Id.* at 3–4 (cleaned up).

The sole issue for trial is narrow. It is confined to the "widest possible reading of Count III." Ruling at 3. Ms. Lake clarified that:

> she is contending that election officials failed to comply with the EPM and A.R.S. § 16-550 by not performing ANY steps to comply with level 2 or level 3 screening or notification of electors to cure ballots *where level 1 screeners found signatures were inconsistent*. Lake argues those ballots were counted in sufficient numbers to affect the outcome of the election.

Ruling at 3 (italic emphasis added). Moreover:

> [i]n her response and at oral argument, Lake conceded that she is not challenging the process of signature review as to any specific ballot(s), whether any given signature matches a voter's record, or that the process was effective. She is instead alleging misconduct by the Maricopa County Defendants through a wholesale failure at the 'higher-tier signature verification process' to reconcile non-conforming signatures, or to cure signatures pursuant to A.R.S. § 16-550. She alleges that Maricopa County entirely failed to perform the signature matching required by statute. As Lake put it in her response, she brings a *Reyes* claim, not a *McEwen* claim."

Id. at 4 (quotation marks omitted). Under *Reyes*, "having a handwriting expert on hand for exceptional cases might be a sound practice," but A.R.S. § 16-550(A) "does not require any special expertise on the part of the person making the comparison. *The statute merely requires that the comparison be made*." *Reyes v. Cuming*, 191 Ariz. 91, 93 (App. 1997) (emphasis added).

B. THE STANDARDS FOR EXPERT TESTIMONY

"A witness who is qualified as an expert by knowledge, skill, experience, training, or education" may offer expert testimony only if (a) "the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a

fact in issue"; (b) "the testimony is based on sufficient facts or data"; (c) "the testimony is the product of reliable principles and methods"; and (d) "the expert has reliably applied the principles and methods to the facts of the case." Ariz. R. Evid. 702.

"The party offering expert testimony must show that the witness is competent to give an expert opinion *on the precise issue* about which he is asked to testify." *Gaston v. Hunter*, 121 Ariz. 33, 51 (App. 1978) (emphasis added). "Like its federal counterpart, Arizona Rule of Evidence 702 provides that a trial judge serves as a 'gatekeeper' who makes a preliminary assessment as to whether the proposed expert testimony is relevant and reliable. *State ex rel. Montgomery v. Miller*, 234 Ariz. 289, 298, ¶ 18 (App. 2014) (citations omitted). Since "expert testimony can be both powerful and quite misleading," judges should exclude expert testimony "unless they are convinced that [the testimony] speaks clearly and directly to an issue in dispute in the case." *Senne v. Kansas City Royals Baseball Corp.*, 2022 WL 783941, at *9 (N.D. Cal. Mar. 15, 2022) (cleaned up). This is true even where the gatekeeper and the trier of fact are one and the same, as the Rule 702 inquiry concerns admissibility—not the weight—of expert evidence. *F.T.C. v. BurnLounge, Inc.*, 753 F.3d 878, 888 (9th Cir. 2014).

C. THIS COURT SHOULD EXCLUDE MR. SPECKIN'S OFFERED TESTIMONY AND DECLARATION

Mr. Speckin's offered testimony and declaration should be excluded for two reasons. First, Mr. Speckin is unqualified to opine on the sole issue for trial. Second, Mr. Speckin only offers irrelevant testimony or pure speculation.

1. MR. SPECKIN IS UNQUALIFIED TO OPINE ON THE SOLE ISSUE FOR TRIAL

Mr. Speckin is an ink analyst who examines "handwriting and signatures." *See* Contestant/Plaintiff's Expert Disclosure Statement ("Lake Disclosure"), Ex. A at 1 (forensic training in "the examination of questioned documents" and participated in a "[o]ne-year residency" on "the identification and dating of inks" in the mid-1990s). An expert in ink does not help this Court decide the sole issue for trial: whether Maricopa County performed "ANY" higher level signature reviews. Ruling at 3. That is a question of fact, not an issue appropriate

for expert opinion. Moreover, Mr. Speckin "had a 'penchant for exaggeration' regarding his own background." *E.E.O.C. v. Ethan Allen, Inc*., 259 F.Supp.2d 625, 632 (2003) (quoting *In re Estate of Wang The Huei*, 2002 WL 1341762, at ¶ 29.7 [2002] HKEC 1424 (Hong Kong Special Administrative Region Ct. of First Instance) (Nov. 21, 2002)). "For example, the American Board of Forensic Document Examiners accused Speckin of engaging in a 'fraudulent misrepresentation' by stating he was eligible for their certification, and Speckin falsely testified that he was 'a member of the Questioned Document Section of the Mid-Western Association of Forensic Scientists,'" when he was not. *Id.* (quoting *Wang*, 2002 WL 1341762, at ¶¶ 29.52, 29.29).

Although Mr. Speckin "has been involved in election matters[,]" not a single specific matter is identified in his CV, Lake's Disclosure, or his declaration. *See* Lake Disclosure, Ex. A at 3, Ex. B at 1; Plaintiff's Corrected Motion for Relief from Order ("Lake's Second Rule 60 Motion"), Ex. A.[1] Despite this Court graciously allowing Ms. Lake additional time to provide a fulsome expert disclosure, she failed to meet her burden to show this "expert" can say anything about the sole issue for trial (by choosing a person whose CV and offered testimony make it impossible for this Court or Defendants' counsel to establish that he is qualified). *Gaston*, 121 Ariz. at 51 (party propounding expert bears burden to show qualifications).

Mr. Speckin apparently has a Bachelor of Arts (not Science) in Chemistry, was trained by his dad in an internship in the 1990s and appears to lack accreditation from the American Board of Forensic Document Examiners. Lake Disclosure, Ex. A at 1. It is unknown whether Mr. Speckin can provide expert testimony on forensic document analysis, let alone topics like mathematics, statistics, election administration, or computer science. Lake Disclosure, Ex. B at 1 (Mr. Speckin will testify on matters based on his statistical analysis related to election administration of ballot signature verification based on his analysis of metadata).

2. MR. SPECKIN'S TESTIMONY IS IRRELEVANT BECAUSE IT ONLY ATTACKS THE EFFECTIVENESS OF THE SIGNATURE VERIFICATION PROCESS

[1] Because Mr. Speckin's declaration dated May 16, 2023 was produced after the deadline for expert disclosures, this Court should exclude any testimony on those undisclosed issues as untimely.

Even if this Court finds Mr. Speckin to be qualified, all his opinions attack the effectiveness of the signature review process. This falls outside the narrow scope of Count III for trial.

Mr. Speckin's offered testimony is couched as opining that "signature verification was not performed at all." Lake's Disclosure, Ex. B at 2. But the basis for his opinion is that many comparisons were done too quickly for his liking. *Id.* The fact that some signature comparisons were too quick for Mr. Speckin necessarily confirms that there were, in fact, comparisons done. *Reyes*, 191 Ariz. at 93 (statutorily compliance where comparison merely happens).

Additionally, Mr. Speckin cannot testify about the "effectiveness of the signature verification" processes employed by the high level reviewers at Maricopa County and what he believes would be the "standard" or "best practice" time allotted for an "effective" signature verification. These opinions already offered by Speckin, and likely to be offered at trial, have since been precluded per the Court's Ruling narrowing Ms. Lake's claim for trial. Based on the Court's Ruling, Ms. Lake's claim is not about the "effectiveness of the signature verification" process. *See* Ruling, at p. 4. Thus, it follows that Ms. Lake is precluded from offering or eliciting testimony regarding the effectiveness of Maricopa County's high level reviewer's signature verifications as it would not be relevant to the narrow issue for trial and would unnecessarily waste judicial resources and time.

Mr. Speckin's testimony is of no use to these proceedings because no witness may testify about the "effectiveness of the process". To the extent that Mr. Speckin argues that Maricopa election officials could not have verified certain amounts of signatures on ballots, this testimony should be precluded because it is an argument attacking the *effectiveness* of the verification of signatures done by Maricopa's higher level reviewers.

For example, Mr. Speckin will opine that "based on 1.3 million early ballots envelopes reviewed in the 2022 General Election to be signature compared and on the number of signatures rejected at the Level 1 analysis at 25% . . . and the number of Level 2 reviewers, ***a***

reliable and reasonable review of the 300,000+ signatures at level 2 could not have been made by me or similarly trained expert." *See* Lake's Expert Disclosure, at Ex. B (emphasis added). But neither a "reliable" nor a "reasonable review" of 300,000 plus signatures is at issue here. The only issue is whether "ANY review was done at all" or whether "Maricopa County entirely failed to perform the signature matching required by statute." *See* Ruling, at p. 4.

Similarly, Mr. Speckin's opinions regarding the time analysis (i.e. how long it should take to review and verify signatures) should be precluded as these opinions attack the "effectiveness" of Maricopa County's *signature review processes*. For example, Mr. Speckin declares (or Ms. Lake intends to elicit his opinions) regarding the following:

- That an average rate of "4.6 seconds per signature" "is not a signature review under any standard";
- That "the comparison of a signature to set of known signatures [] should not take less than 30 seconds";
- offering mathematical equations using "an average time of 30 seconds or more for each review of rejected signature at the Level 2 review";
- offering data which purportedly shows "evaluation time per envelope signature examined" which includes "less than or equal to 5 seconds per signature verification," "less than or equal to 4 seconds per signature verification," "less than or equal to 3 seconds per signature verification," "less than or equal to 2 seconds per signature verification," and "less than or equal to 1 seconds per signature verification."

See Lake's Expert Disclosure, at Ex. B; *see also* Lake's Corrected Motion for Relief from Order, at Ex. A, ¶¶ 9-10. What's more, Mr. Speckin's declaration does not even specify whether "[t]he data" is for level 1 reviewers or the high level reviewers. Lake's Corrected Motion for Relief from Order, at Ex. A. It is not Defendants' or this Court's job to lift Ms. Lake above her burden. That is her job.

These opinions attack the effectiveness of the verification of signatures. Ms. Lake and her expert, Mr. Speckin, clearly take issue with the reviewers not taking at least 30 seconds or longer to verify each signature. But, that issue is not set for trial because that issue is an argument about the "effectiveness of the signature verifications" and this Court, abiding by the

Supreme Court's mandate, explicitly delineated Ms. Lake's claim to preclude that argument. Thus, this testimony (and others like it) should be precluded.

Finally, Mr. Speckin offers no testimony related to the cure process. Ruling at 3 (Ms. Lake must show either no signature comparisons happened at higher levels or "no notification of electors to cure ballots where level 1 screeners found signatures were inconsistent."). Again, Mr. Speckin's testimony is wholly irrelevant to the narrow issue before this Court. There is no reason to include irrelevant testimony in these expedited proceedings.

II. CONCLUSION

Mr. Speckin is not qualified to opine on the narrow and limited issue set for trial, and even if he was, his opinions and testimony attack the "effectiveness of the signature verification process" which is not part of Ms. Lake's narrow Count III claim as defined by the Supreme Court and this Court's under advisement ruling.

RESPECTFULLY SUBMITTED: May 16, 2023.

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ORIGINAL of the foregoing filed via AZ TurboCourt this 16th day of May, 2023.

With a **COPY** of the foregoing served by email this 16th day of May, 2023 to:

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Motion: Secretary of State Adrian Fontes' Motion to Exclude Plaintiff's Expert Witness Testimony