

1 Daniel C. Barr (#010149)
2 DBarr@perkinscoie.com
3 Alexis E. Danneman (#030478)
4 ADanneman@perkinscoie.com
5 Austin C. Yost (#034602)
6 AYost@perkinscoie.com
7 Samantha J. Burke (#036064)
8 SBurke@perkinscoie.com
9 Perkins Coie LLP
10 2901 North Central Avenue, Ste. 2000
11 Phoenix, AZ 85012
12 Telephone: (602) 351-8000

13 Abha Khanna* (WA Bar #42612)
14 akhanna@elias.law
15 ELIAS LAW GROUP LLP
16 1700 Seventh Ave, Suite 2100
17 Seattle, WA 98101
18 Telephone: (206) 656-0177

19 Lalitha D. Madduri* (DC Bar #1659412)
20 lmadduri@elias.law
21 Christina Ford* (DC Bar #1655542)
22 cford@elias.law
23 Elena Rodriguez Armenta* (NY Bar # 5708367)
24 erodriguezarmenta@elias.law
25 ELIAS LAW GROUP LLP
26 250 Massachusetts Ave, Suite 400
27 Washington, D.C. 20001
28 Telephone: (202) 968-4490
* *Pro Hac Vice* application pending

Attorneys for Contestee Katie Hobbs

ARIZONA SUPERIOR COURT
MARICOPA COUNTY

KARI LAKE,
Plaintiff/Contestant,
v.
KATIE HOBBS,
Defendant/Contestee.

No. CV2022-095403

**CONTESTEE KATIE HOBBS'S
MOTION TO EXCLUDE
PLAINTIFFS' EXPERTS CLAY
PARIKH AND RICHARD BARIS
AND STRIKE EXPERT REPORTS**
Assigned to Hon. Peter Thompson

1 Defendant Governor-Elect Katie Hobbs moves under Arizona Rule of Evidence 702
2 for an order (1) excluding the declarations of Clay Parikh and Richard Baris; and
3 (2) excluding their testimony at trial.
4

5 **Introduction**

6 Yesterday, this Court dismissed eight of Plaintiff Kari Lake’s ten claims, allowing
7 only Counts II and IV to proceed to trial. Those claims relate to alleged misconduct with
8 (a) Maricopa County’s printing issues (Count II) and (b) Maricopa County’s compliance
9 with chain of custody laws (Count IV).

10 To support her allegations, Lake relies on the testimony of two supposed experts:

11 *First*, Clay Parikh submitted a declaration opining that, among other things,
12 Maricopa County’s printing issues must have been “intentional” because (1) these printing
13 issues arose at multiple voting centers, (2) Maricopa County “downplayed” the issue, and
14 (3) Maricopa County did not tweet out all five possible solutions to fixing the problem.
15 [Compl. Ex. A-13 at 9–10] He also opined—with no explanation—that “the most serious”
16 issue was a “break[]” in “the chain of custody.” [Compl. Ex. A-13 at 21 ¶ 31]
17

18 *Second*, Richard Baris submitted a declaration opining that Maricopa County’s
19 printing issues affected the outcome of the election because (1) some Election Day voters
20 answered in the affirmative when asked whether they had “any issues or complications
21 when trying to vote in person,” [Compl. Ex. A-11 at 1], and (2) if an additional 2.5% of
22 people had cast ballots on Election Day and if 75% of those votes favored Lake, then Lake
23 could have won. [Compl. Ex. A-11 at 10]

24 Neither one of these so-called experts has any business testifying at trial. Their
25 anticipated testimony is, in various parts, unreliable, unhelpful, and irrelevant. That’s
26 especially true given that these “experts” are unqualified to offer these opinions to begin
27
28

1 with. As a result, under Arizona Rule of Evidence 702, this Court should exclude their
2 declarations and bar these witnesses from testifying.

3 **Legal Standard**

4 “A witness who is qualified as an expert by knowledge, skill, experience, training,
5 or education” may offer expert testimony only if (a) “the expert’s scientific, technical, or
6 other specialized knowledge will help the trier of fact to understand the evidence or to
7 determine a fact in issue”; (b) “the testimony is based on sufficient facts or data”; (c) “the
8 testimony is the product of reliable principles and methods”; and (d) “the expert has
9 reliably applied the principles and methods to the facts of the case.” Ariz. R. Evid. 702.
10

11 The “proponent of the expert” has the burden of “proving admissibility.” *Cooper v.*
12 *Brown*, 510 F.3d 870, 942 (9th Cir. 2007) (citation omitted). “Rule 702 embodies the twin
13 concerns of reliability and helpfulness.” *Stilwell v. Smith & Nephew, Inc.*, 482 F.3d 1187,
14 1192 (9th Cir. 2007) (cleaned up). Because “expert testimony can be both powerful and
15 quite misleading,” judges should exclude expert testimony “unless they are convinced that
16 [the testimony] speaks clearly and directly to an issue in dispute in the case.” *Senne v.*
17 *Kansas City Royals Baseball Corp.*, 2022 WL 783941, at *9 (N.D. Cal. Mar. 15, 2022)
18 (cleaned up). This is true even in a bench trial, where the gatekeeper and the trier of fact
19 are one and the same, because the Rule 702 inquiry concerns the admissibility—not the
20 weight—of expert evidence. *F.T.C. v. BurnLounge, Inc.*, 753 F.3d 878, 888 (9th Cir. 2014).
21

22 Here, as explained below, Lake cannot carry her burden of proving that the
23 anticipated testimony of either Clay Parikh or Richard Baris is admissible.
24
25
26
27
28

1 **Argument**

2 **A. Neither of Lake’s proposed experts is qualified to provide expert testimony.**

3 Lake first must establish that both of her proposed experts are qualified to testify in
4 this election case. She cannot do so, as neither is qualified, and both have developed their
5 opinions solely for the purpose of undermining confidence in Arizona’s 2022 election.

6 *First*, Baris lacks the qualifications to testify on his proposed opinion that, for
7 example, there is “a reasonable degree of mathematical certainty that a modest depression
8 in turnout on Election Day would be significant enough to cast doubt on the overall result.”
9 [Compl. Ex. A-11 at 10] In support of this opinion, Baris does not reference any “training[]
10 or education,” Ariz. R. Evid. 702, including in mathematics or statistics. Nor does Baris
11 have any experience in election administration—including in Maricopa County or Arizona.
12 Rather, the basis for Baris’s testimony is only that he conducted an “exit poll in the state
13 of Arziona [sic] from November 1 to November 8, 2022,” and that for several years he has
14 worked as a “pollster,” including as the Director of Big Data Poll.¹ [Compl. Ex. A-11 at 1]
15 That is not enough—and would permit *any* pollster to qualify as an expert on election
16 administration. *See Koppell v. N.Y. State Bd. of Elections*, 97 F.Supp.2d 477, 481–82
17 (S.D.N.Y. 2000) (excluding testimony of political scientist who had “significant political
18 experience” but “lack[ed] any particular expertise” on the election practices at issue, and
19 where his work had “neither been tested nor subject to peer review”).²

20 Indeed, rather than “proposing to testify about matters growing naturally and
21 directly out of research [he] ha[s] conducted independent of litigation,” Baris has
22 “developed [his] opinions expressly for purposes of testifying.” *Daubert*, 43 F.3d at 1317.

23 _____
24 ¹ Big Data Poll is not well regarded in the polling community. It is one of 11 pollsters (out
25 of 493 total pollsters) that is banned from FiveThirtyEight due to receiving an “F” grade
26 for unreliable methodology, nontransparent methods, or inaccurate results. *See*
<https://projects.fivethirtyeight.com/pollster-ratings/big-data-poll>. It also does not appear to
27 be included in RealClearPolitics polling aggregations, or to be a member of any of the
28 major national associations of polling professionals. *See* DEFS00013 & n.19.

² Baris also claims he has “served as an expert . . . in both state and federal court cases”
involving “elections” (and “civil rights” cases) but does not identify any such case. [Compl.
Ex. A-11 at 1.] Nor has undersigned counsel been able to locate any so far.

1 For example, Baris posted on social media just yesterday about how “[p]eople have become
2 so accustomed to an unelected administrative state influencing elections.”³ And he
3 similarly has criticized the “lack of universal condemnation over Maricopa—or, rather, the
4 acceptance of such blatant voter suppression.”⁴ Baris is not qualified to testify here.

5 *Second*, Parikh similarly is not qualified to testify, including as he proposes about
6 how alleged printing issues and “numerous procedural violations . . . can only be
7 categorized as *intentional*.” [Compl. Ex. A-13 ¶ 7] In contrast to Baris, Parikh outlines
8 some education and training, including in computer science, cybersecurity, and
9 information technology. [*Id.* ¶ 2–3] But the extent of Parikh’s experience in the field of
10 elections appears to be that he has worked in laboratories that attempt to hack voting
11 systems. [*See id.* ¶ 5] Of course, expertise in one field does not “automatically translate
12 into expert status” in another field. *Aloe Vera of Am, Inc. v. United States*, No. CV-99-
13 01794, 2014 WL 3072981, at *7 (D. Ariz. July 7, 2014). Therefore, even to the extent that
14 Parikh has some training and education in IT issues, he is not an expert on the topics he
15 proposes to testify about—including actual election administration, election-day
16 operations, the reliability of election results, as well as his opinions that “[t]here were many
17 disenfranchised Maricopa County voters” or that “the most serious violation by a county
18 official was breaking the chain of custody.” [Compl. Ex. A-13 ¶¶ 31, 33] And there is
19 certainly no basis to believe that his technical background qualifies him to opine on the
20 “demeanor” of election officials as indicative of intent. [*Id.* ¶ 16]

21 In another case challenging Arizona election results, in fact, Parikh was asked
22 whether he had ever “actually examine[d] in any way the Electronic Voting Systems that

23 _____
3

24 [https://twitter.com/Peoples_Pundit/status/1604968376790487042?s=20&t=pczOTeH3IN](https://twitter.com/Peoples_Pundit/status/1604968376790487042?s=20&t=pczOTeH3INWLozmzONUsYA)
25 [WLozmzONUsYA](https://twitter.com/Peoples_Pundit/status/1601735915923046406?s=20&t=pczOTeH3INWLozmzONUsYA); *see* [https://twitter.com/Peoples_Pundit/status/1601735915923046406?s=20&t=pczOTeH3IN](https://twitter.com/Peoples_Pundit/status/1601735915923046406?s=20&t=pczOTeH3INWLozmzONUsYA) *also*
26 [WLozmzONUsYA](https://twitter.com/Peoples_Pundit/status/1601735915923046406?s=20&t=pczOTeH3INWLozmzONUsYA) (“The 2022 Arizona midterm elections were not conducted
legitimately.”).
4

27 [https://twitter.com/Peoples_Pundit/status/1597650900767895552?s=20&t=pczOTeH3IN](https://twitter.com/Peoples_Pundit/status/1597650900767895552?s=20&t=pczOTeH3INWLozmzONUsYA)
28 [WLozmzONUsYA](https://twitter.com/Peoples_Pundit/status/1597650900767895552?s=20&t=pczOTeH3INWLozmzONUsYA).

1 are currently being used in either Maricopa County,” to which Parikh responded: “Not
2 physically, no.” [*Lake v. Hobbs*, No. 2:22-cv-00677-JJT (D. Ariz.), 07/21/2022 Hr’g Tr. at
3 119:21-24, attached as Ex. 1] Parikh similarly offers no indication that he has actually
4 inspected the voting equipment at issue in this case. He therefore “lack[s] any particular
5 expertise” on these issues, and his work has “neither been tested nor subject to peer
6 review.” See *Koppell*, 97 F.Supp.2d at 481–82.

7 As demonstrated by his involvement in this and other litigation, in fact, Parikh is
8 biased in favor of undermining election systems and results wherever possible. In an
9 October 2022 interview about a case challenging Alabama’s voting machines, Parikh
10 admitted that he views *no* election hardware or software to be adequate and that he views
11 this as a matter of “good versus evil.”⁵ This viewpoint is evident from Parikh’s declaration
12 in this case, theorizing that unspecified actors committed *intentional* misconduct—without
13 citing any evidence or data or identifying any such individual. Parikh thus is not qualified
14 to testify as an expert in this case.⁶

15 **B. The anticipated testimony of Clay Parikh and Richard Baris is unreliable.**

16 An expert’s proponent “must explain the expert’s methodology and demonstrate in
17 some objectively verifiable way that the expert has both chosen a reliable scientific method
18 and followed it faithfully.” *State ex rel. Montgomery v. Miller*, 234 Ariz. 289, 298 ¶ 23
19 (App. 2014) (quoting *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 43 F.3d 1311, 1319
20 n.11 (9th Cir. 1995)). To assess an expert opinion’s reliability, courts consider:
21

22 _____
23 ⁵ Andrea Tice, *Black box voting: Confessions of an elections hacker (Part 2)*, 1819 News
24 (Oct. 16, 2022), [https://1819news.com/news/item/black-box-voting-confessions-of-an-
25 elections-hacker-part-2](https://1819news.com/news/item/black-box-voting-confessions-of-an-elections-hacker-part-2) (“Parikh spent nine years as a hacker in an election systems lab
26 and, as such, considers all election hardware and software to be woefully inadequate when
27 it comes to voting security. ... ‘This is about power,’ [Parikh] said. ‘The haves against the
28 have-nots and who is willing to pay to keep the power. Ultimately, I sum it up as good
versus evil.’”).

⁶ Many of Parikh’s erroneous conclusions also undermine the credibility of his other
opinions. For example, Parikh opines that malfunctions nullify the election’s certification.
That opinion, however, clearly contradicts Arizona law, as this Court knows. [Dkt. 926
at 6.]

1 (1) whether the expert’s theory or technique can be or has been tested; (2)
2 whether the theory or technique has been subjected to peer review and
3 publication; (3) whether the technique or theory is generally accepted within
4 the relevant scientific community; (4) the known or potential rate of error of
the technique or theory when applied; and (5) the existence and maintenance
of standards controlling application of the technique.

5 *Id.* at 299 ¶ 24 (citing *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 593–
6 94 (1993)). Other factors include whether: (1) “the expert’s testimony is prepared solely in
7 anticipation of litigation[] or is based on independent research; (2) the expert’s field of
8 expertise/discipline is known to produce reliable results; [and] (3) other courts have
9 determined that the expert’s methodology is reliable.” *Id.* ¶ 25. Under this standard, an
10 expert’s testimony is properly excluded when it is based only on “subjective beliefs or
11 unsupported speculation” that amounts to no more than “unreliable *ipse dixit* guesswork.”
12 *Friend v. Time Mfg. Co.*, 422 F. Supp. 2d 1079, 1081 (D. Ariz. 2005).

13 Lake’s purported experts do not even come close to meeting these requirements.
14 Citing YouTube, Twitter, and public news sites, Parikh suggests that Maricopa County’s
15 printing issues “can only be categorized as intentional” because (1) they happened at more
16 than one vote center, (2) Maricopa County “downplayed” the issue, and (3) Maricopa
17 County did not tweet out all five possible solutions to fixing the problem. [Compl. Ex. A-
18 13 ¶¶ 7, 16, 17, 18] This is as unscientific as it gets. Far from establishing a reliable, tested,
19 peer-reviewed, generally accepted scientific method for reaching his “conclusion” that
20 someone, somewhere, intentionally did something, Clay Parikh stitches together one
21 speculative belief after the next having never even inspected the voting machines at issue.
22 This is “the antithesis of the scientifically reliable expert opinion admissible under *Daubert*
23 and Rule 702.” *Cabrera v. Cordis Corp.*, 134 F.3d 1418, 1423 (9th Cir. 1998); *see also*
24 *Haynes ex rel. Haynes v. Nat’l R.R. Passenger Corp.*, 319 F. App’x 541, 543 (9th Cir.
25 2009) (affirming the exclusion of testimony that was based on a Google search and a
26
27
28

1 CNN.com report because they would “ordinarily be a basis for little more than lay
2 speculation” and “do not provide an appropriate basis for expert opinion”).

3 Parikh’s opinion on chain of custody issues fares no better. He baldly opines that
4 “the most serious” issue that he learned about was a “break[]” in “the chain of custody.”
5 [Compl. Ex. A-13 ¶ 31] He offers no explanation about the methodology that he applied to
6 reach his opinion that one poll worker’s observations raised “the most serious” issue that
7 occurred on Election Day. Nor does he try to show that an expert in the relevant field would
8 “reasonably rely” on this poll worker’s observations in the first place. Ariz. R. Evid. 703.
9 “Rule 703 does not authorize admitting hearsay on the pretense that it is the basis for expert
10 opinion when, in fact, the expert adds nothing to the out-of-court statements other than
11 transmitting them to the [factfinder].” *State v. Carlson*, 237 Ariz. 381, 391 ¶ 26 (2015)
12 (citation omitted); *see also State v. Lundstrom*, 161 Ariz. 141, 148 (1989) (holding that
13 expert testimony that merely parrots or summarizes another’s opinion is inadmissible).
14 Because Clay Parikh adds nothing to this poll worker’s observations besides the gloss that
15 he believes that the observations are “serious,” this Court should exclude this testimony.
16

17 Equally unreliable is Richard Baris’ anticipated testimony. His whole analysis is
18 based on an exit interview of Election Day voters—all of whom cast a ballot. [Compl. Ex.
19 A-11 at 5] He does not report a single person who said that they were unable to vote. Utterly
20 lacking from his declaration is any effort to establish a reliable, tested, peer-reviewed,
21 generally accepted scientific method that would allow anyone to infer anything about the
22 motivations of hypothetical non-voters based only on the experiences of voters.
23

24 His analysis only devolves from there. He bases his conclusions on one (and only
25 one) question: “Did you have any issues or complications when trying to vote in person,
26 such as tabulators rejecting the ballot or voting locations running out of ballots?” [*Id.*] But
27 basing anything on answers to this question defies all logic because it encompasses “any
28

1 issue[]” that a voter may have experienced (including issues unrelated to this case) and
2 includes a false premise (there is no allegation of any vote centers “running out of ballots”).
3 Then, he leaps to speculate about what might have happened if an additional 2.5% of voters
4 had cast ballots on Election Day. [*Id.* at 10] But he plucks this number out of thin air. At
5 no point does he estimate that 2.5% of voters were discouraged from voting because of
6 printing issues.

7
8 Compounding this error, he next applies this 2.5% to the total number of votes cast
9 in Maricopa County (1,562,758), including the more than one million voters who had
10 already voted absentee and could not have been affected by printing issues on Election
11 Day. [*Id.*] Even then, he finds that Governor-Elect Hobbs still would have won if 70% of
12 those hypothetical 2.5% additional voters had voted for Lake. [*Id.* (finding that Hobbs still
13 would have won by 2,000 votes)] It is only when he calculates what would have happened
14 if Lake had won 75% of those additional votes—an outcome that he fails to establish
15 occurred in any precinct for Lake—that he claims that Lake could have won. [*Id.*] This is
16 nonsense, not science. Putting one speculative assertion on top of another is precisely the
17 type of unreliable “guesswork” that courts exclude. *Friend*, 422 F. Supp. at 1081.

18 **C. The anticipated testimony of Clay Parikh and Richard Baris will not help**
19 **resolve Lake’s remaining claims.**

20 As set forth in the Court’s dismissal order, Lake “specifically alleges [in Count II]
21 that a person employed by Maricopa County interfered with BOD printers in violation of
22 Arizona law.” [Dkt. 926 at 6] The Court laid out a specific roadmap for what Lake must
23 therefore prove at trial for her claim for misconduct, *see* A.R.S. § 16-672(A)(1): “Plaintiff
24 must show at trial that the BOD printer malfunctions were intentional, and directed to affect
25 the results of the election, and that such actions did actually affect the outcome.” [Dkt. 926
26 at 7] Moreover, because of Lake’s specific allegations that a particular person interfered
27
28

1 with the BOD printers, the Court clarified that, as to the first element, Lake must prove
2 “the malfeasant person was covered under” A.R.S. § 16-672(A)(1). [Dkt. 926 at 6]

3 Neither Parikh nor Baris provide any assistance to the trier of fact in resolving any
4 of these issues. The Court should therefore issue an Order precluding Plaintiff from
5 presenting opinions or testimony from either “expert” for this additional, independent
6 reason.

7 **1. Clay Parikh**

8 The Court’s December 19, 2022 dismissal order renders much of Parikh’s
9 commentary completely irrelevant, including all of his statements that certain components
10 of the voting system, such as the BOD printers and others, did not meet certification
11 requirements under Arizona and federal law. [Compl. Ex. A-13 ¶¶ 8-15] Because the
12 certification portion of Lake’s claim was dismissed [Dkt. 926 at 5], Parikh’s certification
13 opinions will not only *not* assist the trier of fact in resolving any claim still at issue in the
14 case, but would also confuse and mislead the issues actually before the Court.

15 The rest of Parikh’s opinions fare no better in terms of assisting the trier of fact on
16 anything still at issue in the case. Although sometimes difficult to discern, the remaining
17 portion of Parikh’s declaration offers commentary on the following topics:

- 18 (1) That a percentage of tabulators was not functioning properly on election day and
19 that election officials downplayed the issue and did not adequately inform voters
20 of all of their options in the event of a tabulation error [Compl. Ex. A-13 ¶¶ 16-19];
- 21 (2) The mechanics of how a tabulator reads a ballot and how a ballot is printed—such
22 as the size of the paper—may impact its tabulation [*id.* ¶¶ 20-25]; and
- 23 (3) That County officials did not properly follow “plans and procedures.” In support
24 of this point, Parikh states that: (i) in troubleshooting the printers, the County did
25 not act quickly enough, adapt well enough, and sometimes did not fix the printer
26 issue [*id.* ¶¶ 27, 28, 30]; (ii) County officials did not properly spoil ballots
27 [*id.* ¶ 29]; (iii) one poll worker tried to shut down two printers that were not
28

1 working properly and a County Inspector turned them back on [*id.*]; and (iv) pre-
2 election Logic and Accuracy tests were invalid because of updates to the printers
3 that Maricopa County performed prior to election day [*id.* ¶ 32].

4 Not one of Parikh’s statements would assist the trier of fact in determining whether
5 the “BOD printer malfunctions were intentional,” the first element of Claim II as set forth
6 in the Court’s dismissal order. [*See* Dkt. 926 at 7]⁷ Rather, except for his statements
7 regarding how a tabulator objectively reads a ballot and what factors may objectively
8 impact that (none of which suggest anything about malfunctioning or intentionality)
9 [Compl. Ex. A-13 ¶¶ 20-25], nearly all of Parikh’s statements concern actions that occurred
10 *post-malfunctioning*.

11 Assuming without conceding that Parikh’s characterization of events was true, the
12 fact that troubleshooters did not arrive (in Parikh’s opinion) fast enough or were sometimes
13 unable to fix the printing issue has nothing to do with whether the malfunctioning was
14 intentional in the first place. Similarly, Parikh’s statements that certain Tweets by election
15 officials sent after malfunctioning was discovered did not adequately convey to voters all
16 of their options says nothing about the malfunctioning itself being intentional. Likewise,
17 who and how officials spoiled ballots *after* particular *tabulators* failed to read them does
18 not aid the trier of fact in determining that BOD *printer* problems were intentionally caused
19 by anyone.

20 Indeed, Parikh’s only statement regarding any action that purportedly took place
21 *before* the malfunctioning occurred is in regard to the pre-election Logic and Accuracy
22 tests. [Compl. Ex. A-13 ¶ 32] But Parikh’s single paragraph on this topic utterly fails to
23 support an inference that any printer malfunctioning was intentional. Instead, he merely
24 asserts that Maricopa County did not conduct testing on every ballot style before the
25 election. But the fact that the County allegedly did not perform unspecified testing on every

26 ⁷ Parikh’s conclusory deduction that these discreet issues lead to the conclusion that
27 the malfunctioning was intentional (Compl. Ex. A-13 ¶ 7) does not help the trier of fact
28 because none of his underlying statements themselves support that inference.

1 single type of ballot in no way supports a conclusion that the printer malfunctioning on
2 election day was intentional.

3 Nor does any of Parikh’s commentary assist the trier of fact in resolving the other
4 two issues that the Court held Plaintiff must prove to succeed under Count II: that the
5 “intentional” BOD printer malfunctions were “directed to affect the results of the election,”
6 and that “such actions did actually affect the outcome.” [See Dkt. 926 at 7] Parikh does not
7 purport to offer opinions on either of these issues in any event.

8 **2. Richard Baris**

9 Baris purports to offer opinions on the “likely voter suppression” that he claims
10 occurred on election day by providing purported statistics about voting preferences and
11 voter exit-polling opinions. [Compl. Ex. A-11 at 3] He does not purport to offer opinions
12 regarding whether the malfunctioning of the printers was intentional, the first element
13 required to prove Plaintiff’s misconduct claim under Count II, as set forth in the Court’s
14 dismissal order. [See Dkt. 926 at 6, 7] Rather, ostensibly, Baris is being offered by Plaintiff
15 to attempt to show that the printing malfunctioning affected the outcome of the election.
16 But none of Baris’s statements would aid the trier of fact in making that determination, and
17 he should therefore be precluded from offering any testimony.

18 Baris’s declaration is primarily made up of repetitive statistics aimed at
19 demonstrating the well-known fact that voters are more likely to vote for Republicans on
20 Election Day and more likely to vote for Democrats in early voting. [Compl. Ex. A-11 at
21 2-5] This does not help the trier of fact determine any fact in issue in Claim II.

22 Beyond that, Baris states that in an exit poll of 813 voters, 58.6% of voters
23 identifying as Republicans “reported having issues while trying to cast a ballot on Election
24 Day,” whereas Democrats and Independents reported having issues in lower numbers. For
25 several reasons, these limited exit poll responses do not assist the trier of fact in determining
26 whether the malfunctioning printers affected the outcome of the election. First, the question
27 itself that was allegedly posed to voters, Question 6, includes “tabulators rejecting the
28

1 ballot” as just one example of “issues” that voters may have had on election day. [*See*
2 Compl. Ex. A-11 at 5] The very question also provides another example—“voting locations
3 running out of ballots”—as being an “issue” that a voter could report, which has nothing
4 to do with the remaining claim regarding the BOD malfunctions. [*Id.*] Second, and
5 importantly, Baris does not state that these alleged “issues” actually caused any of the
6 polled voters to *not cast a vote*. In other words, simply because voters had “issues” “when
7 trying to vote in person” in no way supports an inference that they did not, let alone that
8 those “issues” affected the outcome of the election.

9 In short, Baris and Parikh offer nothing that could aid the trier of fact to resolve the
10 very limited remaining issues in this case. Under this Court’s gatekeeping function, they
11 should therefore be precluded from offering an opinion.

12 **Conclusion**

13 For the above reasons, this Court should exclude the purported expert testimony of
14 Clay Parikh and Richard Baris.

RETRIEVED FROM DEMOCRACYDOCKET.COM

1 Dated: December 20, 2022

PERKINS COIE LLP

2
3 By: s/ Alexis Danneman

Alexis E. Danneman
Daniel C. Barr
Austin C. Yost
Samantha J. Burke
2901 North Central Avenue, Suite 2000
Phoenix, Arizona 85012-2788

7 Abha Khanna*

ELIAS LAW GROUP LLP

1700 Seventh Avenue, Suite 2100
Seattle, WA 98101

11 Lalitha D. Madduri*

Christina Ford*

Elena A. Rodriguez Armenta*

ELIAS LAW GROUP LLP

250 Massachusetts Ave NW, Suite 400
Washington, D.C. 20001

15 *Attorneys for Defendant/Contestee Katie Hobbs*

RETRIEVED FROM DEMOCRACYDOCKET.COM

1 Rule 7.1(h) Good Faith Consultation Certificate

2 I certify that Defendant/Contestee Katie Hobbs has endeavored in good faith to
3 resolve the matters raised herein. Undersigned counsel attempted to speak with counsel
4 for Plaintiff, including arranging a telephone conference for that purpose. Due to the
5 expedited nature of this proceeding, counsel for Plaintiff were unavailable to speak with
6 Plaintiff's counsel.
7

8 Dated: December 20, 2022

9 /s/ Alexis Danneman

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
RETRIEVED FROM DEMOCRACYDOCKET.COM

1 Original efiled with the Maricopa County
2 Superior Court and served through
3 AZTurboCourt this 20th day of December,
4 2022:

5 Honorable Peter Thompson
6 Maricopa County Superior Court
7 c/o Sarah Umphress
8 sarah.umphress@jbazmc.maricopa.gov

9 Bryan James Blehm
10 Blehm Law PLLC
11 10869 North Scottsdale Road, Suite 103-256
12 Scottsdale, Arizona 85254
13 bryan@blehmlegal.com

14 Kurt Olsen
15 Olsen Law, P.C.
16 1250 Connecticut Ave., NW, Suite 700
17 Washington, DC 20036
18 ko@olsenlawpc.com

19 *Attorneys for Contestant/Plaintiff*

20 Joseph La Rue
21 Joe Branco
22 Karen Hartman-Tellez
23 Maricopa County Attorney's Office
24 225 West Madison St.
25 Phoenix, AZ 85003
26 laruej@mcao.maricopa.gov
27 brancoj@mcao.maricopa.gov
28 hartmank@mcao.maricopa.gov
c-civilmailbox@mcao.maricopa.gov

Attorneys for Maricopa County Defendants

1 D. Andrew Goana
Coppersmith Brockelman PLC
2 2800 N. Central Ave., Ste. 1900
Phoenix, AZ, 85004
3 agaona@cblawyers.com

4 Sambo (Bo) Dul
State United Democracy Center
5 8205 S. Priest Dr., #10312
Tempe, AZ 95284
6 bo@stateuniteddemocracy.org

7 *Attorneys for Defendant Arizona Secretary*
8 *of State Katie Hobbs*

9 *s/ Indy Fitzgerald*
10 _____

RETRIEVED FROM DEMOCRACYDOCKET.COM

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28