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15 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
16 **IN AND FOR THE COUNTY OF MARICOPA**

17 Kari Lake,
18 Contestant/Plaintiff,

19 v.

20 Katie Hobbs, personally as Contestee and
21 in her official capacity as Secretary of
22 State; Stephen Richer in his official
23 capacity as Maricopa County Recorder;
24 Bill Gates, Clint Hickman, Jack Sellers,
25 Thomas Galvin, and Steve Gallardo, in
26 their official capacities as members of the
27 Maricopa County Board of Supervisors;
28 Scott Jarrett, in his official capacity as
Maricopa County Director of Elections;
and the Maricopa County Board of
Supervisors,

Defendants/Contestees.

Case No. CV2022-095403

(Honorable Peter Thompson)

**PLAINTIFF'S RESPONSE TO
DEFENDANTS' MOTION TO
EXCLUDE EXPERT WITNESS CLAY
PARIKH**

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INTRODUCTION

Defendants have challenged the admissibility of Clay Parikh’s December 8, 2022 Declaration and testimony concerning his investigation into failures of Maricopa County’s election equipment. They do so with little more than a recitation of the Daubert standard and its *suggested* factors for evaluating compliance with that standard, with no real analysis of those factors other than conclusory allegations that the factors have been satisfied. More concerning, Defendants seek to bar all of Mr. Parikh’s testimony even though their brief identifies a few words and phrases from a few paragraphs of Mr. Parikh’s 23-page, 33-paragraph Declaration. Defendants’ challenge is unfounded both legally and factually and must be rejected.

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ARGUMENT

A witness who is qualified as an expert may testify if he has specialized knowledge that will aid the jury in understanding the evidence or a fact in issue, when his testimony is based on sufficient facts, and when his testimony is the product of reliable principles and methods, and such principles and methods have been reliably applied. ARIZ. R. EVID. 702. Arizona state courts have adopted the federal standard for admissibility of expert testimony set forth in *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993) and its progeny. *State v. Favela*, 323 P.3d 716, 718 (Ariz. Ct. App. 2014). Accordingly, in addition to their own interpretation of *Daubert*, Arizona state courts look to federal authority for guidance. *Id.*

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I. MR. PARIKH IS QUALIFIED TO TESTIFY AS AN EXPERT.

1 To qualify as an expert in Arizona courts, a witness need only have "skill and
2 knowledge superior to that of [people] in general." *State v. Guitierrez*, 2020 Ariz. App.
3 Unpub. LEXIS 844 *24 (Ariz. Ct. App. Aug. 12, 2020) (quoting *State v. Girdler*, 138
4 Ariz. 482, 490, 675 P.2d 1301 (Ariz. 1983)). An expert is not unqualified simply because
5 their experience does not precisely match the matter at hand. The degree of an expert
6 witness's qualifications goes to the weight of the expert's testimony, not its admissibility.
7 *Id.*, see also *Johnson v. Big Lots Stores, Inc.*, 2008 U.S. Dist. LEXIS 35316 *47-48 (E.D.
8 La. April 29, 2008) (given the relatively low threshold for qualification, questions about
9 an expert's experience go to credibility and not admissibility).

10 Here, Mr. Parikh is more than qualified to offer the opinions set forth in his
11 declaration. As his Declaration makes clear, Mr. Parikh is a cyber security expert with a
12 Master of Science in Cyber Security and a Bachelor of Science in computer science. He
13 has multiple certifications including Certified Hacker Forensic Investigator. Mr. Parikh
14 has worked in cyber security positions for NATO, the United States Government, and
15 Lockheed Martin. Most importantly for purposes of the present case, Mr. Parikh has nine
16 years of experience performing security tests on vendor voting systems for certification
17 using criteria from the United States' Election Assistance Commission ("EAC") or
18 specific states' Secretary of State. Thus, Mr. Parikh has extensive experience in applying
19 state and federal certification requirements designed to ensure that election equipment is
20 secure, accurate and reliable.

21 A fair reading of Mr. Parikh's entire Declaration reveals that it is focused on his
22 areas of expertise. Each of the paragraphs are directed at his assessment of the security,
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1 accuracy and reliability of the Maricopa County election equipment for the most recent
2 Arizona general election. Despite that, Defendants seek to exclude the *entirety* of Mr.
3 Parikh's Declaration and testimony even though they are able to do little more than
4 quibble with a few words or sentences from about five paragraphs of his thirty-three
5 paragraph Declaration.
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7 Defendants' specific complaints are somewhat vague. Based upon their citations
8 to Mr. Parikh's Declaration, they appear base their motion on: "9-10" of Mr. Parikh's
9 Declaration, although it is unclear whether they are referring to pages 9-10 or paragraphs
10 9-10. And, if they are referring to pages 9-10, it is unclear exactly what portion of those
11 pages concern them. They also complain about paragraphs 7 (use of the word
12 "intentional"), 16 (use of the word "downplayed"), 31 (opinion that the break in chain of
13 custody was a serious violation, even though Defendants do not deny that Mr. Parikh is a
14 *certified forensic investigator*) and 33 (conclusion that there were many disenfranchised
15 voters). These paragraphs, however, focus on Mr. Parikh's areas of undoubted expertise
16 – cyber security and certification of the Maricopa County election equipment and
17 forensic investigation. To the extent that Defendants take issue with a word or phrase
18 here or there in his extensive analysis and opinions, their concerns go to the weight of
19 Mr. Parikh's testimony, not its admissibility.¹ See *B.K. v. Faust*, 2020 U.S. Dist. LEXIS
20 90245, *12-15 (D. Ariz May 22, 2020).
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26 ¹ Defendants also complain about Mr. Parikh's alleged bias
27 because he has spoken out against the insecurity of election
28 equipment generally. Questions of alleged bias, however, at

1 **II. MR. PARIKH’S TESTIMONY WILL BE HELPFUL TO THE COURT**
2 **BECAUSE IT IS RELEVANT AND RELIABLE.**

3 Under the *Daubert* standard, trial judges act as gatekeepers to ensure that expert
4 testimony is both relevant and reliable. [State v. Salazar-Mercado, 234 Ariz. 590, 593,](#)
5 [325 P.3d 996, 999](#) (Ariz. 2014).

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7 But that gatekeeping function is principally “designed to protect
8 juries” from being inappropriately swayed by problematic
9 testimony, and “is largely irrelevant in the context of a bench
10 trial.” *United States v. Flores*, 901 F.3d 1150, 1165 (9th Cir. 2018)
11 (quoting *Deal v. Hamilton Cty. Bd. of Educ.*, 392 F.3d 840, 852
12 (6th Cir. 2004)). During a bench trial, “where the factfinder and
13 the gatekeeper are the same, the court does not err in admitting the
14 evidence subject to the ability later to exclude it or disregard it if it
15 turns out not to meet the standard of reliability established by Rule
16 702.” *Id.* (quoting *In re Salem*, 465 F.3d 767, 777 (7th Cir. 2006)).

17 *B.K. v. Faust*, 2020 U.S. Dist. LEXIS 90245, *8-9 (D. Ariz May 22, 2020). Thus,
18 contrary to Defendants’ assertions in their brief, a *Daubert* motion has little applicability
19 in the context of this bench trial.

20 When it is appropriate to engage in such an analysis, courts consider whether the
21 expert’s testimony is based upon reliable principles and whether those methods and
22 principles and methods have been reliably applied. *State ex rel. Montgomery v. Miller*,
23 [234 Ariz. 289, 298, 321 P.3d 454, 463](#) (Ariz Ct. App. 2014). An expert’s methods are
24 reliable if the expert can “explain how his methods, reasoning and opinions are based on
25 ‘an accepted body of learning or experience.’” *Id.* (quoting Rule 702). The expert’s

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27 most, go to the weight or credibility of his testimony, not its
28 admissibility.

1 methodology, however, need not be established to a degree of scientific certainty. *Id.*
2 Other factors that can be considered in determining whether an expert's methodology is
3 reliable include: (1) non-judicial uses for the expert's methodology; (2) whether other
4 courts have determined the expert's methodology is reliable; and (3) whether the expert's
5 field of expertise is known to produce reliable results. 234 Ariz. at 299, 321 P.3d at 464.
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7 Mr. Parikh's methodology meets all these requirements. First, Mr. Parikh's
8 Declaration describes the methodology and grounds underlying his opinions. Second,
9 Mr. Parikh's expertise in cyber security and certification of election equipment have been
10 relied upon by state and local governments for at least nine years. Third, Mr. Parikh's
11 area of expertise is known to produce reliable results as state and federal governments
12 have relied upon such expertise to ensure that voting equipment is secure, accurate and
13 reliable.
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15 **CONCLUSION**

16 Because this matter will be tried by the court, sitting without a jury, the court's
17 gatekeeping role as it pertains to expert testimony "is largely irrelevant." Instead, what is
18 relevant is that Mr. Parikh's decades experience as a cyber security expert, with particular
19 expertise in voting equipment, will be helpful to the court in evaluating the security,
20 accuracy and reliability of the Maricopa County voting equipment. His Declaration and
21 testimony on the matters set forth therein should be admitted.
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28 RESPECTFULLY SUBMITTED this 21st day of December 2022.

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