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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

Kari Lake,

Contestant/Plaintiff,

v.

Katie Hobbs, personally as Contestee and in her official capacity as Secretary of State; Stephen Richer in his official capacity as Maricopa County Recorder; Bill Gates, Clint Hickman, Jack Sellers, Thomas Galvin, and Steve Gallardo, in their official capacities as members of the Maricopa County Board of Supervisors; 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 RICHARD BARIS

INTRODUCTION

Defendants have challenged the admissibility of Richard Baris' testimony regarding the polling data, analysis and opinions drawn therefrom set forth in the December 8, 2022 Declaration of Richard Baris ("Declaration"). Mr. Baris' polling data, analysis and opinions should be admitted because Mr. Baris has extensive qualifications as a pollster and his polling data, analysis and opinions are relevant and reliable.

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. BARIS IS QUALIFIED TO TESTIFY AS AN EXPERT.

To qualify as an expert in Arizona courts, a witness need only have "skill and knowledge superior to that of [people] in general." *State v. Guitierrez*, 2020 Ariz. App. Unpub. LEXIS 844 *24 (Ariz. Ct. App. Aug. 12, 2020) (quoting *State v. Girdler*, 138 Ariz. 482, 490, 675 P.2d 1301 (Ariz. 1983)). The degree of an expert witness's qualifications go to the weight of the expert's testimony, not its admissibility." *Id.*

(quoting *State v. Davolt*, 207 Ariz. 191, ¶ 70, 84 P.3d 456 (2004)); see also *Johnson v. Big Lots Stores, Inc.*, 2008 U.S. Dist. LEXIS 35316 *47-48 (E.D. La. April 29, 2008) (given the relatively low threshold for qualification, questions about an expert's experience go to credibility and not admissibility).

Mr. Baris is qualified to testify as to polling data and his conclusions from that data. Mr. Baris received his B.A. in Political Science from the University of Florida. He has worked as a pollster for six years, both as the Director of Big Data Poll and as the chief pollster for The Epoch Times. He has particular expertise in conducting, analyzing and interpreting political polling, including exit polls. His polling, election forecast modeling and analysis have been relied upon by major media outlets ranging from Bloomberg to Fox News. Mr. Baris has served as an expert witness and jury consultant in state and federal cases with subject matter ranging from elections to civil rights.

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II. MR. BARIS' TESTIMONY IS RELIABLE.

Under the *Daubert* standard, trial judges act as gatekeepers to ensure that expert testimony is both relevant and reliable. *State v. Salazar-Mercado*, 234 Ariz. 590, 593, 325 P.3d 996, 999 (Ariz. 2014). To be reliable, the expert's testimony must be based upon reliable principles and methods and those principles and methods must be reliably applied. *State ex rel. Montgomery v. Miller*, 234 Ariz. 289, 298, 321 P.3d 454, 463 (Ariz Ct. App. 2014). The court's gatekeeping role, however, "does not supplant or replace the adversary system." *Id.* Within a field of expertise, it is the jury's province to determine the weight and credibility of the expert's opinion. *Id.* An expert's methods are reliable if the expert can "explain how his methods, reasoning and opinions are based on 'an

accepted body of learning or experience." *Id.* (quoting Rule 702). The expert's methodology, however, need not be established to a degree of scientific certainty. *Id.* Other factors that can be considered in determining whether an expert's methodology is reliable include: (1) non-judicial uses for the expert's methodology; (2) whether other courts have determined the expert's methodology is reliable; and (3) whether the expert's field of expertise is known to produce reliable results. 234 Ariz. at 299, 321 P.3d at 464.

Mr. Baris' methodology meets all these requirements. First, in his Declaration, Mr. Baris explains his exit polling/survey methodology and how he applied that methodology to reach his conclusions. Second, exit polling and surveys have uses beyond the present litigation. Exit polls and surveys such as Mr. Baris' are routinely used in academia, by the media, and by candidates for elected office. Indeed, Mr. Baris work is routinely cited by the media ranging from Bloomberg to Fox News. Third, because courts have found that survey data is known to produce reliable results, courts have admitted survey data and opinions formed therefrom in evidence. The Ninth Circuit has held that, "as long as they are conducted according to accepted principles, survey evidence should ordinarily be found sufficiently reliable under *Daubert*. Unlike novel scientific theories, a jury should be able to determine whether asserted technical deficiencies undermine a survey's probative value." *Southland Sod Farms v. Stover Seed Co.*, 108 F.3d 1134,1143 n.8 (9th Cir. 1997) (citations omitted); see also *e.g., Sentius Int'l LLC v. Microsoft Corp.*, 2015 U.S. Dist. LEXIS 8782, *9-10 (N.D. Cal. Jan. 23, 2015); *Johnson v. Big Lots Stores, Inc.*, 2008 U.S. Dist. LEXIS 35316 *15 (E.D. La. April 29, 2008) Any alleged defects in the methodology go to the weight of the testimony, not its admissibility. *Id.*

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CONCLUSION

Mr. Baris' years of experience as a pollster qualify him to testify as to the matters set forth in his Declaration. Polling data and opinions drawn therefrom have regularly been admitted into evidence. Mr. Baris' polling data and opinions should be admitted.

RESPECTFULLY SUBMITTED this 21st day of December 2022.

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EXHIBIT A