

No. _____

In the Arizona Court of Appeals
Division One

KARI LAKE,
Plaintiff-Contestant/Appellant,

v.

KATIE HOBBS, PERSONALLY AS CONTESTEE AND IN HER
OFFICIAL CAPACITY AS THE SECRETARY OF STATE,
Defendant-Contestee /Appellee,

and

STEPHEN RICHER IN HIS OFFICIAL CAPACITY
AS MARICOPA COUNTY RECORDER, *ET AL.*,
Defendants/Appellees.

ON APPEAL FROM ARIZONA SUPERIOR COURT,
MARICOPA COUNTY, ACTION NO. CV2022-095403,
HON. HON. PETER THOMPSON

**APPENDIX TO
PETITION FOR SPECIAL ACTION**

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APPENDIX

Date	Description	Page #
12/09/2022	Complaint in Special Action and Verified Statement of Election Contest Pursuant to A.R.S. § 16-672	1
11/29/2022	Declaration of Leslie D. White (Trial Ex. 47; Ex. 8 to Declaration of Kurt B. Olsen (Dec. 9, 2022))	71
12/07/2022	Declaration of Denise Marie (Trial Ex. Ex. 46; Ex. 7 to Declaration of Kurt B. Olsen (Dec. 9, 2022))	75
12/09/2022	“Heat Map,” (Trial Ex. 53; Ex. 1 to Declaration of Mark Sonnenklar (Dec. 9 2022))	79
12/19/2022	Under Advisement Ruling, Motions to Dismiss	85
12/21/2022	Hearing Transcript (Day 1)	98
12/21/2022	Plaintiff’s Response to Defendants’ Motion in Limine under Rule 807	388
12/22/2022	Hearing Transcript (Day 2)	402
12/24/2022	Under Advisement Ruling, Bench Trial	682
12/27/2022	Minute Entry	692
11/26/2022	Maricopa County Board of Supervisors, attachment to response to Arizona Attorney General	696

Date	Description	Page #
Dec. 2019	Ariz. Sec'y of State, <i>2019 Elections Procedures Manual</i> (excerpts)	706
111/08/2022	T-Tech text message excerpts (Trial Ex. 58)	715

Dated: December 30, 2022

Respectfully submitted,

/s/ Bryan James Blehm

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JEFF FINE
 Clerk of the Superior Court
 By Stephanie Myers, Deputy
 Date 12/09/2022 Time 16:50:31
 Description Amount
 ----- CASE# CV2022-095403 -----
 ELECTION CONTEST:NEW 333.00

 TOTAL AMOUNT 333.00
 Receipt# 29040582

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

Kari Lake,

Contestant/Plaintiff,

v.

Case No. CV 2022--095403

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.

**COMPLAINT IN SPECIAL ACTION
 AND
 VERIFIED STATEMENT OF
 ELECTION CONTEST
 PURSUANT TO A.R.S. § 16-672**

SUMMARY OF CASE

1. The eyes of the Country are on Arizona. On November 30, 2022, Rasmussen Reports published a poll of likely U.S. voters asking about the Election Day problems with vote tabulation in Maricopa County. This poll asked whether responding voters agreed or disagreed with Contestant Kari Lake's statement calling the election "botched" and stating, "This isn't about Republicans or Democrats. This is about our sacred right to vote, a right that many voters were, sadly, deprived of on [Election Day], November 8th." The results of that poll are stunning. Seventy-two percent (72%) of Likely Voters said they agree with Lake's statement, including 45% who Strongly Agree.

2. The number of illegal votes cast in Arizona's general election on November 8, 2022, far exceeds the 17,117 vote margin between Arizona Republican gubernatorial candidate Kari Lake and Democrat gubernatorial candidate Secretary of State Katie Hobbs, certified at the official state canvass on December 5, 2022. Witnesses who were present at the Maricopa County Tabulation and Election Center ("MCTEC"), Runbeck Election Services ("Runbeck"), and a multitude of Maricopa County vote centers, as well as other facts meticulously gathered, show hundreds of thousands of illegal ballots infected the election in Maricopa County.

3. In addition, on Election Day, thousands of Republican voters were disenfranchised as a result of Maricopa County election officials' misconduct in connection with the widespread tabulator or printer failures at 59% of the 223 vote centers in Maricopa County.

1 4. These facts preclude Arizona's vote totals canvassed on December 5, 2022,
2 from being used to determine the next governor of Arizona. In *Findley v. Sorenson*, the
3 Arizona Supreme Court held that mistakes, omissions, and irregularities in the conduct
4 of an election may void it if they "affect the result, or at least render it uncertain." 35
5 Ariz. 265, 269 (1929).
6

7 5. But this case is about more than just those bad acts. Rampant and clear
8 violations of federal and state law have become pervasive at the Secretary of State level
9 under Secretary Hobbs and in the Maricopa County Recorder and Elections Department.
10 This case is about restoring trust in the election process—a trust that Maricopa County
11 election officials and Hobbs have shattered. The judicial system is now the only vehicle
12 by which that trust can be restored.
13

14 6. Just a few days ago, the public learned Secretary Hobbs and Maricopa
15 County election officials, including Recorder Stephen Richer, participated in an
16 unconstitutional government censorship operation using an Election Misinformation
17 Reporting Portal created by the Department of Homeland Security ("DHS") and the
18 Cybersecurity and Information Security Agency ("CISA"). State and local election
19 officials sent censorship requests to the Election Misinformation Reporting Portal, which
20 the federal government, in partnership with social media companies and other platforms
21 like Twitter and Facebook, would then remove speech they did not like from public view.
22 Hobbs, Richer, and others participated in this secret censorship operation.
23

24 7. Their actions were per se violations of Arizona citizens' free speech rights
25 under the United States Constitution and the Arizona State Constitution. These actions,
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1 and others, also constituted election “misconduct” in accordance with A.R.S. § 16-
2 672(A)(1).

3 8. There is much more. The debacle that occurred in Maricopa County on
4 November 8, 2022 (“Election Day”) – was “chaos” as Maricopa County’s Board of
5 Supervisors Chairman Bill Gates admitted on live TV during a press conference held
6 shortly after Election Day. Republicans vote at a 3:1 ratio over Democrats on Election
7 Day and were thus disproportionately and adversely affected.

9 9. The tabulators’ rejection of thousands of ballots set off a domino chain of
10 electoral improprieties, rampant administrative chaos and confusion, lengthy delays at
11 polling sites, and ultimately the prevention of qualified voters from having their votes
12 counted. Video footage, first-hand accounts, and expert testimony directly contradict
13 Maricopa County officials’ public statements deliberately attempting to downplay these
14 events. Such acts, along with the government censorship programs described above in
15 which Defendants Hobbs and Richer participated, only serve to amplify Americans’
16 deepening distrust in our election system.

17 10. The evidence, including a detailed sworn declaration by a cyber expert who,
18 among other things, spent nine years testing electronic voting machines on behalf of the
19 same voting system testing lab (“VSTL”) that certified the machines in Maricopa, shows
20 that the machine failures Arizona voters experienced in Maricopa County on Election
21 Day could not have occurred absent intentional misconduct.

22 11. Thousands of voters, disproportionately Republican, gave up voting due to
23 the long wait times or simply avoided the polls after seeing the chaos reported on the
24

1 news. The expert evidence shows conservatively that at least between 15,603 and 29,257
2 Republican voters were disenfranchised from voting as a direct consequence of the voting
3 machine failures in Maricopa.

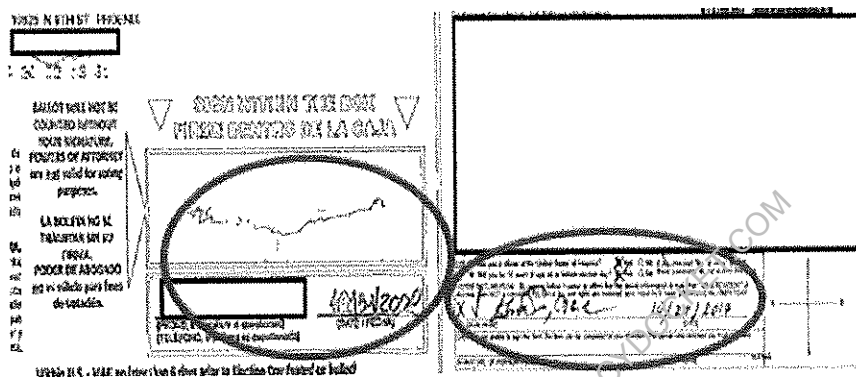
4 12. In addition, it is well known that mail-in ballots are one of the voting methods
5 most vulnerable to election fraud. After the contested 2000 Presidential election, the
6 bipartisan Jimmy Carter-James Baker commission identified absentee ballots as “the
7 largest source of potential voter fraud.” BUILDING CONFIDENCE IN U.S. ELECTIONS:
8 REPORT OF THE COMMISSION ON FEDERAL ELECTION REFORM, at 46 (Sept. 2005). In the
9 2022 general election, over 1.3 million ballots were cast through the mail-in vote or
10 placed in drop boxes in Maricopa County.
11

12 13. Testimony by whistleblowers and witnesses with first-hand knowledge
13 shows that Maricopa County officials violated Arizona chain of custody laws for
14 hundreds of thousands of these mail-in ballots. These chain of custody laws are a critical
15 deterrent to keep illegal mail-in votes from infecting the election. With no chain of
16 custody, there is no way to tell whether over 300,000 ballots cast in Maricopa County are
17 legal ballots.
18

19 14. Maricopa County officials also permitted the counting of tens of thousands
20 of mail-in and drop box ballots that did not satisfy signature verification requirements.
21 Signature verification, whereby the signature on the ballot envelope is compared to the
22 voter’s signature on file to help confirm that the person who completed the ballot is
23 actually the voter, is one of the most important methods of preventing mail-in ballot
24 fraud. If the signature associated with the ballot does not match the signature on file with
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1 the government, the ballot cannot be counted unless the signature mismatch is properly
2 cured.

3 15. Below is an example of a 2020 ballot envelope submitted in Maricopa
4 County with the ballot signature shown on the left and official file signature of the voter
5 shown on the right.
6



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14 16. The fact that these two signatures do not match is clear even from a cursory
15 glance. Maricopa County election officials allowed tens of thousands of ballots with
16 signature mismatches like this one to be counted in 2020. They did the same thing in the
17 2022 general election.

18
19 17. The official election results certified by Secretary of State Katie Hobbs in the
20 marquee race at the top of the ballot, a contest for the governorship between Hobbs
21 herself and Kari Lake, showed a difference in votes between the two candidates of
22 approximately 0.67% (17,117 votes out of about 2,559,485 cast). The separation of votes
23 between Hobbs and Lake is far narrower than the number of presumptively illegal and
24 illegally cast ballots in Arizona.
25
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1 18. The fact that 72% of voters don't believe this election can be trusted is a
2 wakeup call. The Election Day debacle, together with other illegal and improper
3 procedures through which the election was administered, preclude the Defendants in this
4 action from certifying Hobbs as the winner of the election.
5

6 JURISDICTION AND VENUE

7 19. This Court has jurisdiction to hear Contestant's claims pursuant to Article 6,
8 § 14 of the Arizona Constitution, A.R.S. § 16-672, and Arizona Rule of Procedure for
9 Special Actions 3.
10

11 20. Under the doctrine of concurrent jurisdiction, this Court has jurisdiction to
12 resolve claims under the federal Constitution and under federal election law.

13 21. Venue is proper in Maricopa County for election contests pursuant to A.R.S.
14 § 16-672(B).
15

16 22. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401, where
17 defendants reside.
18

19 PARTIES

20 23. Plaintiff/Contestant Kari Lake was a candidate for the office of Governor of
21 Arizona in the election held on November 8, 2022 ("Election Day"). Lake is also an
22 elector of the State of Arizona and of Maricopa County. She resides in Arizona and in
23 Maricopa County.

24 24. Defendant/Contestee Katie Hobbs is the Secretary of State of Arizona, and
25 candidate for the office of Governor of Arizona in the election held on November 8, 2022.
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1 25. Defendant Stephen Richer is the Recorder of Maricopa County and is named
2 in this action in his official capacity only. Defendant Richer is an officer in charge of
3 elections in Maricopa County. The County Recorder is an “officer” within the meaning
4 of A.R.S. § 39-121.01(A)(1).
5

6 26. Defendant Scott Jarrett is the Director of Elections for Election Day and
7 Emergency Voting in Maricopa County and is named in this action in his official capacity
8 only. Director Jarrett is an “officer” within the meaning of A.R.S. § 39-121.01(A)(1).
9

10 27. Defendants Bill Gates, Clint Hickman, Jack Sellers, Thomas Galvin, and
11 Steve Gallardo are sued in their official capacities as members of the Maricopa County
12 Board of Supervisors (“Maricopa Board”).

13 28. Under A.R.S. § 16-452 (A), the Maricopa Board is vested with the authority
14 to:
15

- 16 • “[e]stablish, abolish and change election precincts, appoint inspectors and judges
17 of elections, canvass election returns, declare the result and issue certificates
18 thereof...”
- 19 • “[a]dopt provisions necessary to preserve the health of the county, and provide
20 for the expenses thereof”;
- 21 • “[m]ake and enforce necessary rules and regulations for the government of its
22 body, the preservation of order and the transaction of business.”
23

24 29. Defendant Maricopa County is a political subdivision of the State of Arizona.
25 Maricopa County is charged by law with various duties under the Public Records Act and
26 charged by law with conducting elections within its jurisdictional boundaries, including
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1 through its Board of Supervisors, hiring and training permanent and temporary
2 employees to perform vital election related functions, including verifying ballot envelope
3 signatures. See A.R.S. §§ 11-251(3) and (30), 16-531, and 16-532; Elections Procedure
4 Manual at pp. 68–69. The Maricopa County Board of Supervisors is a “public body”
5 within the meaning of A.R.S. § 39-121.01(A)(2).
6

7 30. The particular grounds of this election contest are misconduct on the part of
8 election board and members thereof in Maricopa County, and on the part of officers
9 participating in the canvass of votes for the election of Governor of Arizona; illegal votes;
10 and that by reason of erroneous count of votes the person declared elected, Hobbs, did
11 not in fact receive the highest number of votes for the office of Governor of Arizona.
12 Contestant additionally alleges that the conduct of the 2022 general election violated her
13 right to vote under the United States Constitution and the Arizona Constitution.
14
15

16 **APPLICABLE LEGAL PRINCIPLES**

17 31. The Arizona Constitution, Art. 2, § 21, provides that that “elections shall be
18 free and equal” and that “no power, civil or military, shall at any time interfere to prevent
19 the free exercise of the right of suffrage.” The right to a free and equal election “is
20 implicated when votes are not properly counted.” *Chavez v. Brewer*, 222 Ariz. 309, 320,
21 214 P.3d 397, 408 (Ct. App. 2009). “Election laws play an important role in protecting
22 the integrity of the electoral process,” and public officials may not “in the middle of
23 an election, change the law based on their own perceptions of what they think
24 it should be,” because this would “undermine public confidence in our democratic system
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1 and destroy the integrity of the electoral process.” *Ariz. Pub. Integrity All. V. Fontes*, 250
2 *Ariz.* 58, 61, 475 P.3d 303, 306 (2020).

3 32. Voting is a right “of the most fundamental significance under our
4 constitutional structure.” *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (internal
5 quotation marks and citation omitted). “No right is more precious in a free country than
6 that of having a voice in the election of those who make the laws under which, as good
7 citizens, we must live. Other rights, even the most basic, are illusory if the right to vote
8 is undermined.” *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). States may not, by arbitrary
9 action or other unreasonable impairment, burden a citizen’s right to vote. *Baker v. Carr*,
10 369 U.S. 186, 208 (1962). “Since the right to exercise the franchise in a free and
11 unimpaired manner is preservative of other basic civil and political rights, any alleged
12 infringement of the right of citizens to vote must be carefully and meticulously
13 scrutinized.” *Reynolds v. Sims*, 377 U.S. 533, 562 (1964).

14 33. The right to vote requires states to adopt methods of voting, vote collection,
15 vote counting, and vote tallying that ensure fair, accurate, and secure counting of all legal
16 ballots and exclude any attempt to change the total results reported to differ from the true
17 sum of the votes legally cast. The fundamental right to vote is “the right of qualified
18 voters within a state to cast their ballots and have them counted.” *United States v. Classic*,
19 313 U.S. 299, 315 (1941). It necessarily encompasses the right to have all votes counted
20 accurately. “Every voter’s vote is entitled to be counted once. It must be correctly counted
21 and reported.” *Gray v. Sanders*, 372 U.S. 368, 380 (1963).

1 36. Maricopa County ("Maricopa") is the fourth largest county in the United
2 States. Approximately 60% of the 2,592,313 votes cast in the 2022 Arizona general
3 election came from Maricopa. Of that figure, Maricopa reported that approximately
4 248,000 votes were cast on Election Day, November 8, 2022, by in-person votes at one
5 of Maricopa's 223 vote centers. Maricopa reported that more than 1.3 million early
6 ballots were returned via drop box or through the U.S. Postal Service.

8 37. According to figures published by Maricopa County, Lake received 752,714
9 votes in Maricopa County, while Hobbs received 790,352 votes in Maricopa County. The
10 difference between Hobbs and Lake in Maricopa County, 37,638 votes, is larger than the
11 difference between the two candidates statewide, which was only 17,177 votes.

13 38. Maricopa residents voted in the 2022 general election through several
14 methods.

16 39. Some residents voted using mail-in ballots. Mail-in ballots are sent out by a
17 county contractor, Runbeck Election Services ("Runbeck"). Runbeck prints the name and
18 address of the voter on an outer mailing envelope. The outer mailing envelope contains
19 a packet including a ballot and a return ballot affidavit envelope. The voter completes the
20 ballots, seals it inside the return envelope, and signs the return envelope. By signing the
21 return envelope, the voter declares under penalty of perjury that he or she is the actual
22 voter of the ballot contained in the envelope. A voter can return the mail-in ballot to
23 Maricopa by United States Postal Service.

26 40. A voter can also drop off a mail-in ballot at an official Maricopa ballot drop
27 box.

1 41. Maricopa voters can also vote early in-person at a vote center. To do so, the
2 voter must provide identification. Then the voter's ballot is printed on a ballot on-demand
3 printer. The voter completes the ballot, seals it inside a white affidavit envelope, signs
4 the envelope, and deposits it in a drop box inside the vote center.
5

6 42. Maricopa County voters can also vote in-person on Election Day in the
7 conventional, traditional manner, by completing a ballot at a vote center operated by
8 Maricopa County.
9

10 43. Ballots returned to Maricopa County by US Postal mail or at a ballot drop
11 box go through a multi-step process prior to tabulation.

12 a. Ballots deposited in drop boxes are retrieved daily by ballot couriers. The
13 ballots are placed in a transport container, sealed, and then transported to
14 MCTEC, where they are counted, documented, sorted and placed in bins.
15 This process, count, audit and chain of custody must be recorded on Early
16 Voting Ballot Transport Statement Forms.
17

18 b. The bins are then transported to Runbeck by a Maricopa County driver.
19 Typically, on route to Runbeck, the County driver stops at the USPS facility
20 in Phoenix to pick up mail-in ballots. Upon arrival at Runbeck, the ballots
21 are transferred to the custody of Runbeck employees and must be recorded
22 on Inbound Receipt of Delivery chain of custody forms.
23

24 c. At Runbeck, the ballot envelopes are scanned, and the signature images are
25 captured for electronic signature verification.
26
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1 d. The scanned ballot envelope signatures are then electronically transmitted
2 back to MCTEC, where each ballot signature is reviewed and compared with
3 the voter's control signature on file with Maricopa County. Signatures that
4 matched are approved, meaning those voters' ballots are cleared for
5 tabulation.
6

7 e. Maricopa County then notifies Runbeck which signatures are approved.
8 Runbeck collects the ballot envelopes corresponding to the approved
9 signatures and packages them for transportation back to MCTEC.
10

11 f. At MCTEC, the approved ballot envelopes are opened, the ballots removed,
12 and the ballots eventually tabulated by feeding them into electronic
13 Tabulation equipment.
14

15 **Tens of Thousands of Ballots with Mismatched Signatures Were Illegally Counted**
16 **In Violation Of Arizona Law**

17 44. A Maricopa County voter who chooses to cast an early ballot must enclose
18 the ballot in an envelope containing a sworn affidavit, signed by the voter, that certifies
19 the voter's qualifications and personal signature affixation, and affirms his or her
20 understanding of the criminal prohibition against casting multiple ballots in the same
21 election. *See* A.R.S. § 16-547(A).
22

23 45. Upon receipt of a returned early ballot envelope, the County Recorder or the
24 Recorder's designee must "compare the signatures thereon with the signature of the
25 elector on the elector's registration record." A.R.S. § 16-550(A). If "the signatures
26 correspond," the early ballot is processed and tabulated. *Id.* If "the signature is
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28

1 inconsistent with the elector's signature on the elector's registration record,” then the early
2 ballot is invalid and cannot be tabulated, unless the putative voter cures the signature
3 discrepancy within five business days of an election for federal office (or the third
4 business day after any other election). *Id.*¹

5
6 46. After a lengthy investigation into “election failures and potential misconduct
7 that occurred in 2020,” Attorney General Brnovich issued a report on April 6, 2022
8 making numerous findings including that “the early ballot affidavit signature verification
9 system in Arizona, and particularly when applied to Maricopa County, may be
10 insufficient to guard against abuse.” The Attorney General stated that “[r]equiring a
11 match between the signature on the ballot affidavit and the signature on file with the State
12 is currently *the most important election integrity measure when it comes to early*
13 *ballots.*”²

14
15 47. Steve Robinson and Shelby Busch co-founded We the People AZ Alliance
16 (“WPAA”), an organization whose purpose is to provide oversight of and transparency
17 for government to the public.³ WPAA employs a robust public records department and a
18 highly skilled staff of data analysts, cybersecurity experts and an investigative team. *Id.*
19 at ¶¶ 4-5.

20
21 48. On April 15, 2021, WPAA was appointed by Former Secretary of State and
22 Senate Liaison, Ken Bennett, as Deputy Senate Liaisons to the 2020 Senate Election
23
24

25
26 ¹ See also Attorney General Mark Brnovich’s report to Honorable Karen Fann dated
April 6, 2022 (“Brnovich Report”) at p. 7, attached as Ex. 5, Olsen Decl.

27 ² *Id.* at 4.

28 ³ See Declaration of Shelby Busch attached as Ex. 12 to the Declaration of Kurt Olsen.

1 Audit. *Id.* ¶ 6. After the close of that audit, WPAA continued investigating election
2 related issues in Arizona.

3 49. Subsequently, WPAA's data analysts confirmed multiple instances of voters
4 reporting that their voter record had been changed or that for some unknown reason to
5 them they were registered to vote, unsolicited. WPAA then contacted Senator Fann on
6 June 20, 2022 and presented those findings. Senator Fann provided WPAA access to the
7 Maricopa County external drive that the Arizona Senate had previously received from
8 Maricopa County under subpoena and court order in connection with the 2020 Senate
9 Election Audit to allow WPAA to evaluate issues regarding the validity of voters, their
10 corresponding signatures and any potential voter registrations contained on this external
11 drive.
12 drive.

13 50. Upon examining the hard drive, WPAA's Data Director located multiple
14 hidden files and a cross-reference between ballot envelopes and registration forms that
15 was provided by the county. WPAA discovered multiple irregularities in the voter
16 registration data contained on the hard drive. A group of Senators then approved a full-
17 scale investigation of the voter signatures on the ballot envelopes from the 2020 general
18 election using actual control signatures found on the hard drive for comparison, which
19 were also apparently used by Maricopa County for signature verification. *Id.* at ¶¶ 10-12
20 election using actual control signatures found on the hard drive for comparison, which
21 were also apparently used by Maricopa County for signature verification. *Id.* at ¶¶ 10-12
22 election using actual control signatures found on the hard drive for comparison, which
23 were also apparently used by Maricopa County for signature verification. *Id.* at ¶¶ 10-12

24 51. A signature review of 230,339 of the 1.9 million ballot envelopes (12.12%
25 of the total) using the same control signatures available to Maricopa County revealed the
26 following stunning discrepancies:
27 following stunning discrepancies:
28 following stunning discrepancies:

1 a. 18,022 signatures had egregious mismatches to the reference signatures
2 meaning the mismatch was plainly seen at first glance. This equates to 8.5%
3 of the ballot envelopes reviewed – meaning that of the 1.9 million 2020 ballot
4 envelopes, approximately 156,000 ballot envelopes were likely to have
5 egregious signature mismatches.
6

7 b. 19,631 signatures failed the Arizona Secretary of State standards which
8 means that of the 1.9 million 2020 ballot envelopes, approximately 9.1% or
9 165,600 ballots are likely to fail the Arizona Secretary of State standards.
10

11 52. By comparison, in the 2020 election, Maricopa rejected **just 587 ballots** for
12 mismatched signatures. Brnovich Report at 5.

13 53. WPAA then compared names associated with the signatures of the
14 mismatched voters from 2020 against the record of voters who cast ballots in the 2022
15 election less the later early ballots for which data was not available. Even though the
16 full 2022 voter file was not available:
17

18 a. 4,328 of the **same names** associated with 18,022 egregious signature
19 mismatches from 2020 voted again in 2022 general election.
20

21 b. 5,289 of the **same names** associated with 19,631 failed Arizona signature
22 standards mismatches from 2020 voted again in the 2022 general election.

23 54. For the 2022 general election, there were approximately 32 workers involved
24 in Maricopa County's signature verification and signature curing process. Three
25 signature verification workers have signed sworn declarations concerning their
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1 experience at Maricopa County during the 2022 general election.⁴ These three witnesses
2 testified that their and their co-workers' rejection rates while verifying signatures ranged
3 from 35-40% (Onigkeit Decl. ¶¶ 19-22), 15%-30% (Myers Decl. at ¶¶ 18, 21), to 35%-
4 40% (Nystrom Decl. ¶ 13). These figures are consistent with the rejection rate of WPAA
5 discussed above equating to tens of thousands of illegal ballots being counted.
6

7 55. Each of these witnesses testified to deep flaws in the ballot signature
8 verification and/or curing process employed by Maricopa County.

9 56. Jacqueline Onigkeit reviewed approximately 42,500 ballots and rejected
10 about 13,000 to 15,000 of them, with rejection rates in the 25% - 40% range. Her co-
11 workers complained of similar rejection rates. Onigkeit Decl. ¶¶ 23, 25.

12 57. Andy Myers described Maricopa's process for signature verification and
13 curing:
14

15 In my room we had a white board that Michelle would update with the
16 number of ballots to be verified that day. Throughout the day Michelle would
17 update the progress the people were making in verifying signatures. *The*
18 *math never added up*. Typically, we were processing about 60,000
19 signatures a day. I would hear that people were rejecting 20-30% which
20 means I would expect to see 12,000 to 15,000 ballots in my pile for curing
21 the next day. However, I would consistently see every morning only about
22 1000 envelopes to be cured. *We typically saw about one tenth of the rejected*
23 *ballots we were told we would see.*

24 Andrew, one of the signature reviewers, would tell me every day that I was
25 going to get crushed the next day because he was excepting (rejecting) a
26 "ton" of bad signatures. However, we never saw a correlation.

27 ⁴ See Declaration of Andrew Myers ("Myers Decl."), Declaration of Yvonne Nystrom
28 ("Nystrom Decl."), and Declaration of Jacqueline Onigkeit (Onigkeit Decl.) attached
as Exs. 6, 7, and 8, respectively, to the Olsen Decl.

1 The most likely explanation for this discrepancy is that the level 2 managers
2 who re-reviewed the rejections of the level 1 workers *were reversing and*
3 *approving signatures that the level 1 workers excepted and rejected*. This
4 seems to me to be the more likely explanation. If this is the case, then the
5 level 2 managers were changing about 90% of the rejected signatures to
6 accepted.

7 Myers Decl. ¶¶ 21-23 (emphasis added).

8 58. Most of the work of these level 2 managers was not subject to the
9 accountability of observers, but their reversal of rejected ballots should be properly
10 recorded in the computer records of the EVRT program. Nystrom Decl. ¶ 16.

11 59. Maricopa's signature verification managers had a practice of sending already
12 rejected ballots back through the process with the implication that they wanted those
13 ballots approved:

14 On the last day of work, November 15, we were asked by manager Celia to
15 go through perhaps 5,000 to 7,000 ballots, that had already been rejected at
16 levels 1, 2 and 3. We were asked to go to the SHELL program and to only
17 find one signature that matched the green envelope, even if all other
18 signatures in the program did not match the green envelope. The implication
19 from Celia is that was desperate to get the work complete and that she wanted
20 the ballots approved. These 5,000 to 7,000 ballots *had already been through*
21 *the full level 1, 2, and 3 process and been rejected*. Therefore, I do not know
22 why [we were] going through them again, and that is why it seemed that
23 Celia wanted them approved."

24 Nystrom Decl. ¶ 21.

25 60. This practice of pushing rejected ballots back through the system with the
26 hope that they would be un-rejected was also attested by Andy Myers:

27 When the excepted numbers grew the managers would resend those excepted
28 signatures back out into the general pool, hoping that someone would
approve those same signatures, which would thereby reduce the excepted
signature load.

1 Myers Decl. ¶ 11.

2 61. Maricopa permitted any signature reviewer to un-reject ballots without
3 accountability using curing stickers. Workers were able to obtain massive amounts of
4 these stickers and use them to cure ballots without oversight. Onigkeit explained:
5

6 In order to perform the curing process, we were given a batch of stickers to
7 place on a ballot, which included stickers with abbreviations. Some, but not
8 all, of the ballot stickers and abbreviations were as follows: "VER" meant
9 that we verified the voter's information, and their ballot was approved to be
counted, "WV" meant that a voter did not want to verify their ballot over the
phone, and "LM" meant that we called the voter and left a message.

10 One of the problems with the stickers was that nothing prevented a level 1, 2
11 or 3 worker from requesting a massive amount of "approved" stickers and
12 placing them on ballots. Again, observers did not watch any level 3 work and
13 did not watch most of level 2 work. Once stickers were placed on ballots,
14 there was no record on the ballot or elsewhere to determine who placed the
15 sticker there. We were told to not sign or initial the sticker, but to only date
it. Accordingly, there was no way to know who placed "verified" stickers on
ballots. The system was wide open to abuse and allowed for potential false
placement of "verified" stickers without accountability.

16 Onigkeit Decl. ¶¶ 17-18.

17 62. From the available information, an off-site, third-party contractor, Star
18 Center, was part of the process of curing ballots that were previously rejected by all levels
19 of signature review. This off-site group was not accountable to observers. Nystrom
20 explained,
21

22 Star Center, which was a third-party contractor that worked completely off-
23 site but had the same access to the voter's file information as we did on the
24 computers at MCTEC, to cure their affidavit signature. My understanding of
25 the Star Center's curing process was to verify information from the voter's
26 file, i.e., the last 4 of their SS #, driver's license #, street address, full name
27 and any other identifying information in their file. It is my understanding that
the Star Center was able to cure and did cure ballots, but were not able to see
the actual ballot with the signature on it. It is my understanding that the Star

Center work was not monitored with observers, whereas my work was required to be monitored by observers. Since they had the ability to cure and reverse the rejection of signatures, I do not know why their work was not monitored by observers.

Nystrom Decl. ¶ 17.

Ballot Printers and Tabulator Failures At More Than 59% of Maricopa County's 223 Vote Centers Created Chaos on Election Day

63. The rampant errors, confusion, and equipment failures on Election Day in Maricopa County reduced the number of votes cast and votes counted from citizens who chose to vote on Election Day. The result of this confusion was predictable – a larger reduction in the number of votes cast for Lake, a much smaller reduction in the number of votes cast for Hobbs, and a highly improper relative advantage created for Hobbs.

a. Election-Day voters in Maricopa County favored Lake in the race for Governor of Arizona by a wide ratio, approximately 3:1.

b. The citizens who were deterred from voting, or whose votes were not counted on Election Day, would have given Lake a material gain of votes that could have changed the outcome of the race.

Maricopa County Roving Attorney Program

64. The Republican National Committee ran an Election Integrity program in Arizona on November 8, 2022. The Election Integrity program engaged 18 volunteer attorneys (“Roving Attorneys”) who were each tasked with traveling to and observing select Vote Centers throughout Maricopa County on election day. Declaration of Mark Sonnenklar (“Sonnenklar Declaration”), ¶ 2.

1 65. Plaintiff has obtained declarations from twelve of the eighteen Roving
2 Attorneys (collectively, the “Roving Attorney Declarations”). Sonnenklar Declaration, ¶
3 4. The Roving Attorney Declarations detail problems witnessed at each Vote Center the
4 attorney visited. Together, these twelve Roving Attorneys observed a total of 105 vote
5 centers, or 47% of the total 223 vote centers in Maricopa County. Sonnenklar
6 Declaration, ¶ 41-44.

8 66. The Roving Attorney Declarations are supplemented by declarations from
9 approximately 221 additional poll workers, observers, and voters who witnessed
10 problems at numerous Maricopa County Vote Centers on election day (together with the
11 Roving Attorney Declarations, collectively, the “Vote Center Declarations”). Sonnenklar
12 Declaration, ¶ 3-44, Attach. A-1-A219. The Vote Center Declarations provide a clear
13 look at the actual voter experience in Maricopa County on November 8, 2022. The
14 testimony from the Vote Center Declarations are mapped onto a spreadsheet attached as
15 Exhibit 1, separated by Vote Center and election day issues. Sonnenklar Declaration, ¶
16 3, Ex. 1, Vote Center Spreadsheet.

19 **Vote Center Chaos**

20 67. The Vote Center Spreadsheet and the Vote Center Declarations together
21 show widespread election day chaos throughout the Vote Centers in Maricopa County on
22 election day.

24 68. The ballot tabulators and ballot printers experienced rampant breakdowns at
25 no less than 132 out of the total 223 Maricopa County vote centers (59.2%), which
26

1 prevented the ballot tabulators from scanning many voter's ballots (the
2 "Printer/Tabulator Breakdown"). Sonnenklar Declaration, Ex. 1, Vote Center
3 Spreadsheet.

4 69. At the vote centers witnessed by the roving attorneys, the percentage of
5 ballots that these tabulators were unable to read ranged from 5% to 100% at any given
6 time on election day, with the average having a failure rate between 25% and 40%.
7 Sonnenklar Declaration, ¶¶ 40-43.
8

9 70. The chaos that ensued from the Printer/Tabulator Breakdowns throughout
10 Maricopa County is documented in the text threads among 16 of the County's hired "T-
11 Techs"⁵ who were trying to fix the rampant problems.
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27 ⁵ IT workers hired by Maricopa County to fix election day technical problems.
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Tabulators aren't reading ballots. It's maybe 50/50 11/8/22 8:00 AM

3981
Ballots are coming out crooked 11/8/22 8:00 AM



3463 11/8/22 6:26 AM

I'm having a 911

3463 11/8/22 6:26 AM
Tabulators aren't rooting

3463 11/8/22 6:26 AM
Reading



What is the current record for T Tech mileage on election day because I'm at 166 11/8/22 7:19 PM

Ryan Miller T Tech

Worship and word church still has at least 50. They had line around building all day. I'll help break equipment down when they close unless told otherwise. Miller 11/8/22 7:38 PM

Jose Luis Arballo

11/8/22 7:42 PM

Tear down chandler

11/8/22 7:50 PM

Ryan Miller T Tech

Heh. I was wrong. 50 inside and about 100 outside still waiting. Coffee pls 11/8/22 7:50 PM



1 Sonnenklar Declaration, ¶ 3, Ex. 1, at Index #A17, Bettencourt Declaration pgs. 10, 31.

2 71. The Tabulator Breakdown persisted at almost all of the problematic vote
3 centers long after the Maricopa County Board of Supervisors (“BOS”) suggests that the
4 problems had been fixed.⁶ For example, the Maricopa County Board of Supervisors’
5 Report (“BOS Report”) states: (1) at 10:14 a.m. on election day, the “Printer technicians
6 identified a potential solution [to the Tabulation Breakdown] to adjust printer
7 settings...Confirmed successful print and tabulation at one site”; (2) at 11:30 a.m. on
8 election day, the BOS “[i]ssued guidance to all technicians in the field to make settings
9 changes to the Oki printers; and (3) “[b]y mid-afternoon, most sites were no longer
10 experiencing the printer issue.” See Maricopa County BOS Report, pages 3-4. These BOS
11 statements are inaccurate. In fact, the Vote Center Declarations show persistent Tabulator
12 Breakdown issues throughout election day. The Vote Center Spreadsheet demonstrates
13 that, at a minimum, the Tabulator Breakdowns continued at no fewer than 34 vote centers
14 after 3 p.m. See Sonnenklar Decl., Exhibit 1, Vote Center Spreadsheet, Column K. At
15 many vote centers, Tabulator Breakdowns persisted from the beginning until the end of
16 election day. *Id.*

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22 ⁶ The Maricopa County Attorneys’ Office issued a November 27, 2022 letter, in response
23 to Assistant Attorney General Jennifer Wright’s Letter of November 19, 2022 (publicly
24 available at <https://elections.maricopa.gov/asset/jcr:474f2301-1ff1-476d-a7fa-08945131f86c/LTR-2022.11.27-Liddy-to-Wright-FINAL.pdf>). The Maricopa County
25 Attorneys’ Office November 27, 2022 letter cites to Maricopa County Board of
26 Supervisors’ Report, with Exhibits numbered 1 through 11 (publicly available at
27 <https://elections.maricopa.gov/asset/jcr:d294ebcd-eb4d-4efc-83d7-bd85f2fd7f9d/2022.11.27-Final-Report-and-Exhibits>).

1 72. The Maricopa County's BOS Report also details the BOS's investigation into
2 the Vote Center Tabulator Breakdowns on election day and attempts to minimize the
3 number of vote centers affected. See Maricopa County BOS Report Ex. 7. The BOS
4 Report is not accurate. In fact, of the twenty vote centers which the Maricopa County
5 BOS claims did **not** have Tabulator Breakdowns, the Vote Center Declarations prove at
6 a minimum 16 of these vote centers had persistent Tabulator Breakdowns on election
7 day.⁷ Sonnenklar Decl., Exhibit 1, Vote Center Spreadsheet, Column J.

9 73. The Vote Center Declarations and the Vote Center Spreadsheet also prove
10 that long lines were widespread and lasting across Maricopa County on election day. The
11 aggregate numbers are significant. Out of a total of 223 Maricopa County Vote Centers,
12 at least 64 (28.7%) of the Vote Centers had long lines on election day, mostly due to the
13 Tabulator Breakdowns. Sonnenklar Decl., Exhibit 1, Vote Center Spreadsheet, Column
14 N. Moreover, despite the BOS's claims that the Tabulator Breakdowns were resolved by
15 mid-afternoon on election day, the long lines persisted long past mid-afternoon for at
16 least 24 vote centers. *Id.*, at Column O. It cannot be disputed that the oppressively long
17 lines on election day resulted in depressed voter turnout in Maricopa County.

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21 74. The Vote Center Declarations prove that because of the Tabulator
22 Breakdowns and long lines at so many vote centers frustrated voters left at least sixteen
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24 ⁷ The 16 vote centers are: Buckeye Fire Station 704, Chandler United Methodist Church,
25 Copper Hills Church/Westwing, Glendale Christian Church, Lifeway Church, Queen
26 Creek Library, Scottsdale Elks Lodge, Shadow Rock Congregational Church, Skyway
27 Church, Standing Stones Community Church, Surprise Senior Center, Tomahawk
28 School, Youngker High School, Central Christian Church/Mesa, Church of Jesus Christ
of LDS Buckeye, and Church of Jesus Christ of LDS Gilbert.

1 Maricopa County Vote Centers without voting. *Id.*, at Column P. For example, Mr.
2 Steele, a poll worker on election day at First United Methodist Church in Gilbert, was
3 tasked with helping voters check into the site books from 1:30 p.m. until the last voter
4 left the vote center around 10:30 p.m. (Sonnenklar Declaration, ¶ 4, Ex. 1, attach. A-189,
5 Steele Declaration ¶ 2. Mr. Steele testified that in his estimation 170-175 voters waiting
6 in line on the evening of election day gave up and did not vote. *Id.* ⁸ The election day
7 chaos also affected senior Maricopa County voters, who were unable to stand in line to
8 vote. ⁹ Due to chaos that occurred at so many Vote Centers on election day, it is safe to
9 assume that many more voters abandoned the voting line to cast a ballot or were
10 discouraged from traveling to a Vote Center in the first place.
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15 ⁸ Additional testimony from one of the Roving Attorneys: "I observed at least five voters
16 ... tell the Poll Inspector that, earlier in the day, they left this vote center because of the
17 printer/tabulator issues and are now returning in the evening to vote but, since they
18 arrived just after 7:00 p.m., the Poll Inspector turned them away and they were not
19 allowed to vote." Sonnenklar Declaration, ¶ 4, Ex. 1, attach. A-115, Ludwig Declaration
20 ¶ 29.

21 ⁹ 68-year-old Ms. Weiman showed up to vote on election day at Desert Hills Community
22 Church. There were no parking spaces and a long line that was moving very slowly. She
23 checked the Arizona election website for an alternate vote center, but the only other vote
24 center within 20 miles was Outlets on Anthem, and the election website reported that it
25 had a line of 350-400 people with an estimated wait time of 2-3 hours. In Peggy's words,
26 "I did not feel my body could stand in line for such a long time." So, she came back to
27 Desert Hills Community Church a few hours later. The line was still "about a mile long
28 down the street." So, Peggy drove home without voting. She checked the election
website one last time at 6:45 p.m. and saw that Desert Hills Community Center still had
a line of approximately 110 people. Peggy says "This was infeasible for me. I ended up
not being to vote—the first time that I have not voted since 1981." Sonnenklar
Declaration, ¶ 4, Ex. 4, attach. A-206, Weiman Declaration ¶¶ 5-10.

1 75. Although widespread across Maricopa County, a bi-partisan county, this
2 voter suppression did not affect Republican and Democrat voter equally. For November
3 8, 2022, election day voting, Republican voters significantly outnumbered Democrat
4 voters statewide, with an even greater delta for election day voting specifically in
5 Maricopa County.¹⁰ Thus, it cannot be disputed that the Tabulator Breakdowns on
6 election day impacted Republican voters more than Democrat voters.
7

8 **Commingling of Tabulated and Non-Tabulated Ballots on Election Day**

9 76. The Vote Center Declarations also prove that there were numerous instances
10 in which vote centers co-mingled tabulated and non-tabulated ballots. At the close of
11 election day, prior to transporting the ballots to MCTEC, at least 16 Vote Centers
12 improperly commingled tabulated ballots (deposited into tabulator Doors 1 and 2) and
13 non-tabulated ballots (deposited into Door 3) into the same black canvas transport bag or
14 other containers. Sonnenklar Declaration, ¶ 4, Ex. 1, Vote Center Spreadsheet, Column
15 M. The BOS Report states that this commingling was intentional: “[d]uring the
16 November 2022 General Election, the Elections Department provided direction to poll
17 workers that they could use one of the two black ballot transport canvass bags that each
18 Vote Center was provided to transport the Door 3 ballots if the quantity exceeded the
19 capacity of the envelope.” Maricopa County BOS Report, page 6. The BOS report further
20 concludes that the co-mingling occurred at only two Vote Centers. *Id.* Both of these
21 statements are false.
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26 ¹⁰ 2022 Arizona Statewide canvas of election results, December 5, 2022:
27 <https://results.arizona.vote/#/state/33/0>.
28

1 77. According to Maricopa County election procedure, to ensure ballots are not
2 co-mingled, Door 3 non-tabulated ballots must be transported to MCTECH in a separate
3 envelope or bag.¹¹ Due to the widespread Tabulator Breakdowns on election day, Vote
4 Centers were overwhelmed with an unprecedented number of Door 3 ballots. Most Vote
5 Centers with Tabulator Breakdowns would not have been able to fit their Door 3 ballots
6 into the separate designated envelopes. Without a second special transport bag, the Vote
7 Centers were forced to package these ballots alongside already tabulated ballots.
8 MCTECH was not made aware of this when it received the transported ballots.
9 Declaration of Kurt Olsen (“Olsen Declaration”), ¶ 17, Ex. 14, Kuchta Declaration ¶¶ 9-
10 11. The improper transport process could have easily resulted in Door 3 ballots not being
11 properly counted, or in some cases ballots being double-tabulated, both at the vote center
12 and at MCTEC for at least twenty-six vote centers. *Id.*, at ¶¶ 16-19.

13 78. The Maricopa County BOS Report suggests that the Tabulator Breakdown
14 problem, even if widespread, is irrelevant. The BOS Report states that Maricopa voters
15 had the option to place their misread ballots in “Door 3”, therefore, the tabulator
16 breakdown did not affect voting on election day.” Maricopa County BOS Report, page
17 3-5. This argument ignores the facts on the ground. Maricopa County election day voters
18 generally express a strong preference to have their ballots tabulated at the vote centers.
19 For some voters, this is the reason they choose to vote specifically on election day.
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25 ¹¹ Maricopa County August Primary & November General Election Procedure Training
26 Manual, at pages 129, 134. Publicly available at
27 [https://elections.maricopa.gov/asset/jcr:2f02b340-4bc1-4782-8fa1-](https://elections.maricopa.gov/asset/jcr:2f02b340-4bc1-4782-8fa1-9813afabb37a/FINAL%202022%20Primary%20General%20Manual_Redacted1.pdf)
28 9813afabb37a/FINAL%202022%20Primary%20General%20Manual_Redacted1.pdf

1 Maricopa County election day voters want to ensure that their vote is counted at the vote
2 center. If a voter deposits their vote into Door 3, it involves a more complicated tabulation
3 process, first requiring transport to MCTEC, with a stronger possibility that a voter's
4 ballot will not be properly counted. The Vote Center Declarations indicate that a
5 significant percent of voters did not believe that ballots deposited into Door 3 would be
6 properly counted. This belief was validated by the November 8, 2022, election, with
7 widespread reports of ballots being improperly co-mingled, and rampant chain of custody
8 problems throughout Maricopa County.

9
10 79. The Maricopa County BOS claims to have processed "16,724 Door 3 ballots"
11 Maricopa County BOS Report, page 3. From the evidence in the Vote Center Spreadsheet
12 and the massive amount of voter declarations detailing the number of Door 3 ballot drops,
13 there is good reason to believe that the number of Door 3 ballots is far greater.
14

15 **Maricopa County Claims Relating to Vote Center Wait Times**

16
17 80. The Maricopa County BOS Report attempts to deny the existence of long
18 lines and wait times at many vote centers on election day. It cannot be disputed that there
19 were oppressively long lines at the Vote Centers with Tabulator Breakdowns. Sonnenklar
20 Declaration, ¶3, Ex. 1 Vote Center Spreadsheet, Column N. For example, the BOS
21 Report states that only 16 vote centers had average wait times on election day that
22 exceeded 60 minutes, with only 7 of those 16 vote centers having wait times between 80-
23 115 minutes (including Asante Library, ASU West, Biltmore Fashion Park, Church of
24 Jesus Christ LDS—Southern, Desert Hills Community Church, Living Word Bible
25 Church, and Red Mountain Community College). *See* Maricopa County BOS Report,
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1 page 1. The Vote Center Declarations show a completely different story. In fact, at least
2 64 vote centers out of the total 223 Maricopa County vote centers (28.7%) had long
3 enough lines on election day for them to be noted by various declarants. Although the
4 BOS Report states that only seven vote centers had wait times greater than 80 minutes,
5 witness testimony indicates that wait times of at least 80 minutes occurred at many other
6 vote centers not listed in the BOS Report, including the following:
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Declarant's Name	Vote Center	Paragraph Number (if applicable)	Comment regarding wait time/line
Ariane Buser (A-29)	Cave Creek Town Hall	¶ 8 & 9	90-minute wait
Gary Lasham (A-100)	Dove of the Desert United Methodist	¶ 7	120-minute wait
Earl Shafer (A-181)	First United Methodist Church of Gilbert	Page 3	120-minute wait
Mary Ziola (A-219)	Happy Trails Resort	¶ 7	120-minute wait
Claire Morgan (A-134)	Mesquite Groves Aquatic Center	No ¶ numbers	120-minute wait
Peggy Weiman (A-206)	Outlets at Anthem	¶ 7	2-3 hour, 350-400 people in line
Roie Bar (A-220)	Radiant Church Sun City	¶ 13	120-minute wait for most of the day
Erinn Tatom (A-195)	Sunland Village East	¶ 6	90-minute wait

1 Sonnenklar Declaration, ¶ 4, Ex. 1.

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3 81. The BOS Report further states that only 16 vote centers had average wait
4 times on election day that exceeded 60 minutes. The Vote Center Declarations prove
5 there were wait times of at least 60 minutes at the following vote centers throughout
6 Maricopa County, none of which were included in the BOS Report:
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Declarant's Name	Vote Center	Paragraph Number (if applicable)	Comment regarding wait time/line
Jeffrey W. Crockett (A-44)	ASU Sun Devil Fitness Center	¶ 26	More than 200 people; at least a two-hour wait
Jeffrey W. Crockett (A-44)	Avondale City Hall	¶ 14	97 people in line
Duane Schooley (A-178)	Buckeye City Hall	¶ 6(a) & (b)	35-75 people in line
Kathryn Baillie (A-11)	Cactus High School	¶ 25	200 people in line
Michael Brenner (A-25)	Compass Church	¶ 10	60+ minutes wait for most of day
Mark Sonnenklar	Copper Canyon School	¶ 34	100 people in line
Tabatha LaVoie (A-101)	El Dorado Community Center	¶ 28	At times, hour long wait
Kristine Moss (A-136)	First United Methodist Church of Gilbert	¶ 29	80 people in line
Keith Evanson (A-60)	First United Methodist Church of Gilbert	¶ 7 & 8(a)	120 people in line
Mark Sonnenklar	Fountain Hills Community Center	¶ 10	150 people in line
Kevin Beckwith (A-15)	Glendale Community College – North	¶ 14	100-120 people in line
Aaron Ludwig (A-115)	Happy Trails Resort	¶ 27	200 people in line
Mary Ziola (A-219)	Happy Trails Resort	¶ 7	2-hour wait
Tabatha LaVoie (A-101)	Indian Bend Wash Visitor Center	¶ 35	1.25 hour wait
Kathryn Baillie (A-11)	Journey Church	¶ 35	“very long” wait
Tabatha LaVoie (A-101)	Messinger Mortuary	¶ 31	60 people in line
Aaron Ludwig (A-115)	Mountain Vista Club/Vistancia	¶ 22	100-120 people in line
Aaron Ludwig (A-115)	Radiant Church Sun City	¶ 30	100-120 people in line

Christian Damon (A-46)	San Tan Village	¶ 14	"a long line of voters"
Aaron Ludwig (A-115)	Sheriffs Posse of Sun City West	¶ 16	80-100 people in line
Aaron Ludwig (A-115)	Surprise City Hall	¶ 10	200 people in line
Kristine Moss (A-136)	Tumbleweed Recreation Center	¶ 21	Between 250- 500 people in line
Mark Sonnenklar	Venue 8600	¶ 32	"line extending outside the building"
Mark Sonnenklar	Via Linda Senior Center	¶ 21	150 people in line
Kathryn Baillie (A-11)	Worship & Word Church	¶ 9, 14 & 16	80-100 people in line
Ken Mettler (A-131)	Worship & Word Church	¶ 5	100-125 people in line and 1.0- 1.5 hour wait

1 Sonnenklar Declaration, ¶ 4, Ex. 1.

2 82. To further prove the unreliability of the Maricopa County BOS data, Black
3 Mountain Baptist Church and Cave Creek Town Hall were two vote centers in which **all**
4 the onsite tabulators were not operational for a significant part of election day. Id., attach.
5 A-196, Teixeira Declaration. These two vote centers turned away voters and directed
6 potential voters to other vote centers nearby. Despite this, the BOS Report does not list
7 these two vote centers as vote centers with significant wait times.
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10 83. As another example of inaccurate BOS supplied data, the BOS Report states
11 that the longest reported wait times for Desert Hills Community Church and the Church
12 of Jesus Christ of LDS—Southern vote centers were 85 minutes and 88 minutes,
13 respectively. See Maricopa County BOS Report, page 1. This data is also directly
14 contradicted by the Vote Center Declarations:
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Declarant's Name	Vote Center	Paragraph Number (if applicable)	Comment regarding wait time/line
Inspector Harold Darcangelo (A-47)	Church of Jesus Christ of LDS—Southern	¶ 1	120-minute wait, 275 people in line
Clerk Debbie Gillespie (A-67)	Desert Hills Community Church	¶ 3	120-minute wait

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1 Sonnenklar Declaration, ¶ 3, Ex. 1, at attach. A-47, Darcangelo Declaration, ¶ 1; attach.
2
3 A-67, Gillespie Declaration, ¶3.

4 84. As further proof of the outright chaos in Maricopa County on election day,
5 Plaintiff points to videos taken by voters of the oppressively long lines at the Via Linda
6 Senior Center vote center and the Copper Canyon Elementary School vote center. See
7 Sonnenklar Declaration, ¶ 45. It cannot be disputed, that the data provided by the
8 Maricopa County BOS Report relating to vote center wait times and tabulator
9 breakdowns is not reliable. Since election day, in an attempt to validate and certify the
10 election, the Maricopa County Board of Supervisors has consistently downplayed the
11 unfolding chaos that occurred in Maricopa County on November 8, 2022. Plaintiff's
12 numerous Vote Center Declarations prove otherwise. It cannot be disputed, that the
13 Tabulator Breakdowns and long lines at the vote centers, improperly suppressed election
14 day voter turnout in Maricopa County.
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17 **The Catastrophic Failures of Tabulators At More Than Half Of Maricopa County's**
18 **Vote Centers Disenfranchised Between At Least 15,603 and 29,257 Republican**
19 **Voters Who Would Have Cast Their Vote For Kari Lake**

20 85. On Election Day, Maricopa County operated 223 sites ("Vote Centers") at
21 which voters could check in and cast a ballot. At each Vote Center, voters were supposed
22 to complete the following process cast their ballots: (a) present acceptable identification
23 to "check in," (b) receive a ballot printed by an on-demand on-site printer, (b) complete
24 the ballot using a pen, (4) feed the ballot into a computerized scanner ("tabulator"). The
25 tabulator was then supposed to count the votes marked on the ballot. After voting ended
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1 and the Vote Centers closed, the ballots cast at the Vote Centers were packaged and
2 transported to MCTEC.

3 86. Election data published show stark differences in the proportions of votes
4 received by candidates Lake and Hobbs for each different type of voting. According to
5 the figures published by the Arizona Secretary of State, Lake received 70% (330,249 out
6 of 469,822) of the votes cast statewide at polling places, while Hobbs received 55%
7 (1,144,948 out of 2,080,363) of the votes cast statewide through early balloting.
8

9 87. The chaos and confusion at Maricopa County's Vote Centers on Election
10 Day adversely and disproportionately affected Lake's vote total in the election. Voters
11 deterred from voting by the long lines and tabulator malfunctions would have voted in
12 favor of Lake by a margin of 70% to 30%.
13

14 88. Richard Baris is a professional data analyst who performs polling, election
15 forecast modeling, and analysis for his clients. His work has been cited in media outlets
16 including Bloomberg and Fox News, and he has served as an expert and voir dire
17 researcher in state and federal court cases with subject matter ranging from elections to
18 civil rights.¹²
19

20 89. Baris's firm, Big Data Poll, conducted a voting exit poll in the state of
21 Arizona from November 1 to November 8, 2022, obtaining responses from voters who
22 voted in a variety of different ways, such as early in-person, depositing an early ballot in
23 a ballot dropbox, and mail-in voting. The sample included 813 residents of Maricopa
24
25

26
27 ¹² Declaration of Richard Baris ("Baris Decl.") attached as Ex. 11 to the Declaration of
Kurt Olsen.

1 County. This poll provides a scientific basis to determine a predictable turnout for the
2 election as a whole, based on accepted metrics. Election Day respondents were also
3 asked, "Did you have any issues or complications when trying to vote in person, such as
4 tabulators rejecting the ballot or voting locations running out of ballots?"

5 A much larger proportion of poll respondents identifying as Republican reported having
6 issues while trying to cast a ballot on Election Day, as compared to respondents
7 identifying as Democrats, by a margin of 58.6% to 15.5%. The rate of those reporting
8 issues was 39.7% for voters who identified as "independent" or as an "other" party.
9

10 90. Baris's expert opinion, based on accepted mathematical principles and
11 Maricopa County voter histories, is that the tabulator breakdowns suppressed Election
12 Day turnout, and that absent the machine breakdowns at Vote Centers across Maricopa
13 County, Kari Lake would conservatively have gained between 15,603 and 29,257 votes
14 over Katie Hobbs in Maricopa's final election canvass.
15

16
17 **Hobbs' And Maricopa Officials' Unlawful and Unconstitutional Censoring of**
18 **Election Related Information on Social Media and Other Platforms**

19 91. Freedom of speech is one of the most sacred rights in the U.S. Constitution.
20 Documents produced in the recent case of *Missouri. v. Biden*, No. 3:22 cv 01213 (W.D.
21 La.) (the "*Missouri First Amendment Litigation*") revealed that DHS and CISA secretly
22 created "a centralized portal" in April 2020 for state and local election officials to report
23 so-called disinformation that was counter to whatever narrative these government
24 officials sought to promote.¹³ CISA or the Center for Internet Security ("CIS") acting on
25

26
27 ¹³ Ex. 1 attached to the Olsen Decl.
28

1 CISA's behalf, would take reports from election officials, like Hobbs, complaining about
2 posts on e.g. Twitter or Facebook. CISA would then contact social media companies and
3 other platforms to censor election related information. Such acts are per se violations of
4 the First Amendment. A one-page summary of the so-called Elections Misinformation
5 Reporting Portal produced in the *Missouri First Amendment Litigation* is attached as Ex.
6 1 to the Olsen Declaration. This document lists a number of "[b]enefits to state-level
7 elections offices" including:
8

9 The ability to look across the elections jurisdictions to identify patterns and
10 potential impact of misinformation activity. This will permit national-level
11 organizations to help put priority on response actions and make decisions
12 regarding media engagement in parallel with actions taken by the social
13 media companies.

14 92. These federal, state, and local government officials did not simply attempt to
15 publicly correct information that they believed was inaccurate. Rather, they secretly
16 sought to remove information from the public domain that they disagreed with. Upon
17 information and belief, hundreds of thousands of censorship requests by state and local
18 election officials were processed through this portal between 2020 and 2022.

19 93. Secretary Hobbs, and Recorder Richer directly participated in this program
20 censoring Americans.
21

22 94. For example, Ex. 2 to the Olsen Declaration is an email chain from Hobbs'
23 office to CIS "Misinformation Reports" requesting deletion of two Twitter posts that
24 Hobbs claimed "undermine[d] confidence in the election institution in Arizona." The
25 time elapse from Hobbs' initiating complaint to Twitter's acknowledgement of removal
26 took less than eight hours.
27

1 95. In another complaint Hobbs made to misinformation@cisecurity.org, Hobbs
2 complained about a *private* Facebook post stating that Trump had won.¹⁴ Upon
3 information and belief Hobbs and other Maricopa County officials sent many more
4 censorship requests. Lake issued a public records request for such documents on
5 December 9, 2022.
6

7 96. Richer also participated directly in a propaganda and censoring program at
8 the national level of CISA through the 2022 election cycle. For example, attached as Ex.
9 3 to the Olsen Declaration is a CISA memorandum regarding a meeting on March 29,
10 2022 that included, among others, three Maricopa County employees from the Recorder's
11 office, CISA officials, and the general counsel of Twitter, Vijaya Gadde. The
12 memorandum states the purpose of the meeting as:
13

14 The purpose of the CISA Cybersecurity Advisory Committee (CSAC)
15 Protecting Critical Infrastructure from Misinformation & Disinformation
16 (MDM) Subcommittee meeting was to hear a brief from Mr. Stephen Richer,
17 County Recorder in Maricopa, AZ, on current election processes and needs
among elections officials and to discuss CISA's role in the MDM space.

18 97. Richer then gave a case study presentation on how he believed censorship of
19 election related information that he disagreed with was necessary.
20

21 98. Hobbs and Richer are striving to secretly stifle facts and manipulate voters'
22 opinions about elections—while at the same time allowing or participating in the
23 violations of Arizona election laws described herein.
24
25
26

27 ¹⁴ Ex. 4 Olsen Decl.
28

1 99. Hobbs's and Richer's actions are a per se violation of the First Amendment
2 of the U.S. Constitution and art, II, § 6 of the Arizona Constitution.

3 **Maricopa County Election Officials Are Responsible for The Failures of The Ballot**
4 **On Demand Printers And Tabulators Which Resulted From Intentional**
5 **Misconduct And Disproportionately Targeted Republican Voters**

6 100. Given the policies and procedures governing the testing and use of electronic
7 voting systems in Arizona, the extent and character of the problems and breakdowns
8 encountered at Vote Centers in Maricopa County on Election Day eliminate any plausible
9 explanation other than intentional causation as the reason for the widespread breakdowns
10 of printers and/or tabulators at the Vote Centers that day. Maricopa County did not
11 experience these kinds of widespread breakdowns in the days leading up Election Day,
12 or during the limited testing performed on the election equipment. The sudden
13 widespread appearance of preventable breakdowns on Election Day, a day on which it
14 was known that the electorate would be heavily weighted toward voters favoring Lake,
15 was an outcome materially and adversely and Maricopa indicates that the problems were
16 intentionally caused.

17 101. Clay Parikh is a qualified cyber expert with nearly twenty years' experience.
18 He has operated at some of the highest levels in the U.S. government in the areas of
19 Information Assurance (IA), Information Security and Cyber Security, Vulnerability
20 Management, Security Test and Evaluation (ST&E) and system accreditation.¹⁵ Mr.
21 Parikh has provided cyber work and support to organizations such as NATO, NASA-

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27 ¹⁵ See Declaration of Clay Parikh attached as Ex. 13 to the Olsen Declaration at ¶¶ 2-4.

1 Marshall Space Flight Center, and multiple Department of Defense agencies within the
2 U.S. government. *Id.* at ¶ 3

3 102. Mr. Parikh also spent nine years from 2008-2017 “perform[ing] security tests
4 on vendor voting systems for certification from the Election Assistance Commission
5 (EAC) or various Secretaries of State. *Id.* at ¶ 5.

6
7 103. In his declaration, Mr. Parikh details his assessment of the events
8 that gave rise to the catastrophic failures with the printers and tabulators on
9 Election Day at Vote Centers in Maricopa County.

10
11 104. His conclusions as to the widespread printer and/or tabulator breakdowns on
12 Election Day at Vote Centers in Maricopa County are damning:

13 Some components of the voting system used in the election were not
14 certified thus endangering the entire voting process. The use of one of these
15 uncertified components violates Arizona law. There were numerous
16 procedural violations that can only be categorized as intentional. Maricopa
17 County experienced a widespread technical breakdown across a significant
18 portion of their vote centers. They reported 70 sites out of 223 (31.8%)
19 voting centers were affected. Other reports list as high as 132 sites out of
20 223 (59.2%) were affected. Whichever figure is correct, given the required
21 standards and procedures involved with the election process, an
22 unintentional widespread failure of this magnitude occurring could not arise
23 absent intentional misconduct. The explanations given to the public and
24 media for what caused the technical issues were not correct. The county
25 also did not sufficiently provide the affected voters with instructions nor the
26 poll workers with procedures for the contingency plan or “back up plan”,
27 let alone ensure the plan and the mitigation was implemented effectively
28 and efficiently.

24 *Id.* at ¶ 7.

1 105. Mr. Parikh's findings and conclusions also warrant an immediate
2 and full forensic audit "to include the SiteBooks and [ballot on demand] printers
3 to conduct a proper analysis and root cause of these issues." *Id.* at ¶ 33.

4 **Illegal Ballot Handling and Chain of Custody Failures with Respect To Over**
5 **300,000 Ballots Make The Outcome of the Election Uncertain**

6 106. Maricopa County election officials engaged in numerous breaches of
7 Arizona election law in their handling and custody of ballots, making it impossible to
8 conclude that the vote tallies reported by Maricopa County accurately reflect the votes
9 cast by Arizona voters.

11 107. Arizona law requires that "[t]he county recorder or other officer in charge of
12 elections shall maintain records that record the chain of custody for all election equipment
13 and *ballots during early voting through the completion of provisional voting*
14 *tabulation.*" Ariz. Stat. § 16-621(E) (emphasis added). *See also* Arizona Elections
15 Procedures Manual 61-61.

17 108. A proper chain of custody is not ministerial. The U.S. Election Assistance
18 Commission instructs that "Chain of custody is essential to a transparent and trustworthy
19 election."¹⁶ "Chain of custody documents provide evidence that can be used to
20 authenticate election results, corroborate post-election tabulation audits, and demonstrate
21 that election outcomes can be trusted." *Id.* at 3.

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25 ¹⁶

26 [https://www.eac.gov/sites/default/files/bestpractices/Chain_of_Custody_Best_Practices.](https://www.eac.gov/sites/default/files/bestpractices/Chain_of_Custody_Best_Practices.pdf)
27 [pdf](https://www.eac.gov/sites/default/files/bestpractices/Chain_of_Custody_Best_Practices.pdf) at 2.

1 109. A.R.S. § 16-452(C) states, "A person who violates any rule adopted
2 pursuant to this section is guilty of a class 2 misdemeanor." This criminal penalty
3 underscores the Arizona state legislature's recognition of the critical nature of expressly
4 following chain of custody requirements with respect to ballots. *See also* A.R.S. § 16-
5 1016(7), (8).
6

7 110. The Arizona Elections Procedure Manual, pages 61-62, establishes required
8 procedures for secure ballot retrieval and chain of custody for all drop box ballots. The
9 requirements include that each county must confirm receipt of the retrieved ballots by
10 signing the retrieval form and indicating the date and time of receipt on the form. The
11 retrieval form must be attached to the outside of the transport container or maintained in
12 a way that ensures the form is traceable to the respective ballot container. Significantly,
13 when the secure transport container is opened by the county recorder, "the number of
14 ballots inside the container shall be counted and noted on the retrieval form."
15
16

17 111. Maricopa County election officials received two categories of early voting
18 ballots on Election Day, EV ballots received at ballot drop-off sites and mail-in ballots
19 returned through the U.S. Postal Service. Maricopa County delivered these ballots to
20 Runbeck to obtain electronic images of the signatures on the ballots. After scanning, the
21 ballots were eventually transferred back to the Maricopa County Tabulation and Election
22 Center.
23

24 112. Maricopa County failed to maintain and document the required secure chain
25 of custody for hundreds of thousands of ballots, in violation of Arizona law, including as
26 described below, for over 298,942 ballots delivered to Runbeck on Election Day.
27
28

- 1 a. A Runbeck employee observed that Maricopa County election workers
2 delivered Early-Vote ("EV") ballots retrieved from ballot drop boxes and
3 mail-in ballots from the Postal Service, neither of which were accompanied
4 by any of the required chain of custody paperwork which, among other
5 things, would document the number of ballots received from ballot drop
6 boxes. According to the employee, Runbeck received 298,942 ballots on
7 Election Day which includes the EV ballots. The required chain of custody
8 for these ballots does not exist. Indeed, two days later, on November 10,
9 2022, the employee observed that Maricopa County had to ask Runbeck how
10 many ballots Runbeck had received on election night, demonstrating that
11 Maricopa County itself did not know how many EV ballots had been
12 retrieved from ballot drop boxes on Election Day in violation of Arizona
13 law.¹⁷
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17 b. The Runbeck employee's testimony is confirmed by Maricopa County's
18 response to a public records request for chain of custody forms. Early Voting
19 Ballot Transport Statements were produced by Maricopa County on
20 December 6, 2022, in response to a public records request by Lake. Maricopa
21 County produced 1149 of these documents dated October 12th through
22 November 7th but not a single document from Election Day drop box ballot
23 retrievals. The official canvass report indicated that Maricopa County
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27 ¹⁷ Ex. 9 Olsen Decl., Declaration of Denise Marie.
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1 received over 292,000 EV ballots (not including provisional and ballots
2 picked up by the U.S. Postal Service) dropped off on Election Day. However,
3 Maricopa County did not produce chain of custody documents for these
4 reported Election Day drop box ballots.

- 5
6 c. The fact that no required chain of custody documentation exists for these
7 298,942 ballots (as well as others) is further confirmed by the sworn
8 testimony of a credentialed election observer at MCTEC on Election Day.
9 That observer testified she observed the trucks and vehicles delivering ballots
10 and memory cards from the Vote Centers and ballot drop boxes. She
11 observed the delivery of the transport containers of ballots retrieved from
12 drop boxes on Election Night. The witness observed the receipt and
13 processing of the ballot transport containers. She saw MCTEC workers cut
14 the plastic security seals off of the ballot transport containers and let them
15 fall to the floor without any attempt to record seal numbers. When the
16 transport containers were opened, the ballots inside the containers were not
17 counted and therefore no numbers were recorded on retrieval forms. She
18 observed the transport containers of early voting ballots delivered without
19 any required documentation or paperwork on the outside of the containers.
20 No Early Voting Ballot Transport Statements were utilized. She observed
21 early ballot envelopes being removed by workers from opened containers
22 without any attempt to count them or document them as required by Arizona
23 law. She observed packages of misfed/misread ballots collected and moved
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1 around with no discernable process to track or account for the ballots. She
2 observed temporary employees moving unsecured metal carts full of ballots
3 without any security or monitoring.¹⁸

4 113. The entire ballot transfer process provides opportunities for legal ballots to
5 be lost or illegal ballots to be added. Chain of custody procedures and documentation
6 prevent ballots from being lost or added. Chain of custody documentation must show the
7 location, ballot container seal numbers, date, time, and ballot couriers for every transfer.
8 Yet ballots were transferred without documentation of chain of custody.

9 114. The Runbeck employee also testified that she observed Runbeck employees
10 were permitted to add their own and family members' ballots into the batches of incoming
11 ballots, without any documentation or tracking the chain of custody of these ballots.
12 There is no way to know whether 50 ballots or 50,000 ballots were unlawfully added into
13 the election in this way. The Runbeck facility is not a legal ballot drop off site. Ballots
14 not delivered to the office of the county recorder are not valid and should not be counted.
15 A.R.S. § 16-547(D). A.R.S. § 16-1016 states that it is unlawful to "knowingly adds a
16 ballot to those legally cast at any election, by fraudulently introducing the ballot into the
17 ballot box either before or after the ballots in the ballot box have been counted." Given
18 this blatant violation of Arizona law, there is no way to tell the number of ballots that
19 were illegally injected into the 2022 election.
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27 ¹⁸ Ex. 10 Olsen Decl., Declaration of Leslie White.

1 115. Throughout the 2022 election cycle Runbeck printed duplicate ballots. These
2 are duplicates of ballots that had been damaged in some way or could not be read by the
3 tabulator. The selections from the voter were supposed to be filled in and a new, duplicate
4 ballot printed. The Runbeck employee stated that there were at least 9,530 duplicate
5 ballots printed. When these ballots were picked up by Maricopa County, there was no
6 documentation – no delivery/shipping receipt, no chain of custody document, no
7 signature. They were simply handed over to the delivery driver.
8

9 116. In 2021, the Arizona Attorney General expressly warned Maricopa that it has
10 been violating ballot chain of custody procedures. Specifically, on April 6, 2021,
11 Attorney General Mark Brnovich issued a report concluding that Maricopa County
12 violated Arizona law by failing to maintain proper chain of custody for early ballots
13 retrieved from ballot drop boxes in connection with the 2020 Election.¹⁹ The Attorney
14 General wrote, “these procedures designed to preclude ballot tampering are critical given
15 the volume of early ballots that were dropped at these locations during the 2020 general
16 election.” Yet Maricopa County again violated Arizona law concerning the chain of
17 custody for early ballots retrieved from ballot drop boxes during the 2022 Election.
18
19

20 117. On October 25, 2022, Secretary Hobbs wrote in a letter to Cochise County
21 that it had “no discretion to deviate” from the requirements that are established by the
22 Arizona Legislature and in the EMP concerning elections. Secretary Hobbs made clear
23 the importance that counties to adhere “precisely what that statute and the 2019 Election
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27 ¹⁹ <https://www.azag.gov/sites/default/files/2022-04/2022-04-06%20Fann%20letter.pdf>
28

1 Procedures Manual ('EPM') require." Under Arizona law, the Board has only those
2 powers "expressly conferred by statute," and the Board "may exercise no powers except
3 those specifically granted by statute and in the manner fixed by statute." *Hancock v.*
4 *McCarroll*, 188 Ariz. 492, 498 (App. 1996).

5
6 **Over 25,000 Ballots Were Added to The Total Ballots Collected After Election Day**
7 **Indicating A Chain Of Custody Failure**

8 118. Highlighting the chain of custody failures discussed above is the fact that
9 two days after Election Day was completed Maricopa County found more than 25,000
10 additional ballots, whereas properly followed chain of custody procedures would require
11 Maricopa County election officials to know the exact number of ballots submitted by the
12 day after Election, November 9, 2022.

13
14 119. Specifically, Maricopa County's public statements concerning remaining
15 ballots to be counted on November 9, 2022, and November 10, 2022, show an increase
16 of approximately 25,000 votes with no explanation of why the number of remaining
17 ballots could increase. On November 9, the County Recorder announced that "275,000+
18 ballots" had been sorted for scanning and signature verification after the Maricopa
19 Counting Vote Centers closed. On November 10, Maricopa County election official Celia
20 Nabor contacted the County's contractor Runbeck and asked how many ballots were
21 scanned at Runbeck, and Runbeck reported 298,000 ballots, an unexplained increase of
22 25,000 after the legal deadline for accepting ballots had closed.
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Date	Source/Event	Source	Ballots Counted	Ballots Left to Count	Total Ballots
11/9/22	Updated Unofficial Results	https://elections.maricopa.gov/news-and-information/elections-news/maricopa-county-election-results-updated-november-9-2022.html	1,136,849	410,000	1,546,849
11/9/22	SoS 19:14	https://web.archive.org/web/20221110100341/https://apps.azona.vote/info/bps/2022-general-election/33/0	1,136,849	407,664	1,544,513
11/10/22	Updated Unofficial Results	https://elections.maricopa.gov/news-and-information/elections-news/maricopa-county-election-results-updated-november-10-2022.html	1,215,718	350,000	1,565,718
11/10/22	SOS 23:03	https://web.archive.org/web/20221111111931/https://apps.azona.vote/info/bps/2022-general-election/33/0	1,215,718	353,885	1,569,603
11/11/22	Updated Unofficial Results	https://elections.maricopa.gov/news-and-information/elections-news/maricopa-county-election-results-updated-november-11-2022.html	1,290,669	275,000	1,565,669
11/11/22	SoS 20:11	https://web.archive.org/web/20221111114733/https://apps.azona.vote/info/bps/2022-general-election/33/0	1,290,669	274,885	1,565,554
11/21/22	Official Results	https://results.azona.vote/#/featured/33/0	1,562,758	0	1,562,758

1 120. This unexplained increase in EV ballots was also reflected on the Department
2 of State website between November 9 and November 10. On November 9th, Maricopa
3 County reported to the AZ Department of State that it had counted 1,136,849 ballots and
4 had 407,664 ballots left to be tabulated. That is a total of 1,544,513 ballots. By November
5 11, 2022 Maricopa County reported and the Department of State published that the
6 Maricopa had counted 1,290,669 ballots and had 274,885 ballots left to tabulate, which
7 is a total of 1,565,554 ballots. The shifting numbers of ballots evidence Maricopa
8 County's failure to account for EV ballots and failure to maintain security and chain of
9 custody for the ballots as required by Arizona Law.
10

11
12 **Maricopa County Officials Conflicts of Interest and False Public Statements**
13 **Constitute Misconduct**

14 121. Key Maricopa County officials have actively opposed Lake's political views
15 and priorities. Election Day chaos that depressed the number of votes for Lake, under the
16 administrative responsibility of these officials, leads to the inference that the Election
17 Day failures were not unwelcome to the officials on whose watches these failures
18 occurred.
19

20 122. Secretary Hobbs, who ran for governor while overseeing her own election,
21 recently threatened county supervisors with arrest if they did not certify the election.²⁰
22 Arizona law requires supervisors to canvass the election results—it does not require the
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26 ²⁰ [https://townhall.com/tipsheet/saraharnold/2022/12/01/katie-hobbs-office-threatened-](https://townhall.com/tipsheet/saraharnold/2022/12/01/katie-hobbs-office-threatened-county-board-with-arrest-if-they-didnt-certify-results-n2616629)
27 [county-board-with-arrest-if-they-didnt-certify-results-n2616629](https://townhall.com/tipsheet/saraharnold/2022/12/01/katie-hobbs-office-threatened-county-board-with-arrest-if-they-didnt-certify-results-n2616629)
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1 Board of Supervisors to rubber stamp and “certify” them. A.R.S. § 16-622. Threatening
2 government officials in the performing their duties itself is a crime. A.R.S. § 13-2402.

3 123. Federal election disclosure records show that Maricopa County Recorder
4 Stephen Richer has raised thousands of dollars for a political action committee he
5 founded, Pro-Democracy Republicans PAC, which was expressly created to oppose Lake
6 and her political allies.²¹ Richer has additionally made public statements in opposition
7 to Lake and her political allies, taking credit for founding this political action committee.
8 The stated mission of Richer’s PAC is “to support pro-democracy Arizona Republicans”
9 who reject “conspiracy theorists and demagoguery” from candidates who maintain the
10 2020 presidential election in Arizona was stolen. However, “[w]hile Richer’s PAC claims
11 to support Republicans, it has received money from a man who donates to almost
12 exclusively Democrats and in direct opposition to GOP gubernatorial nominee Kari Lake,
13 GOP Secretary of State nominee Mark Finchem, several state legislators and candidates
14 for Maricopa County Supervisor.” Richer is responsible for the conduct of an election for
15 the fourth largest county in the United States, and he is directly advocating against
16 candidates for office in the very county over which he oversaw the election.
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21 124. Maricopa County election officials’ false public statements during and after
22 the election downplaying this debacle also support a finding of misconduct in this
23 election. Nor is this the first time Maricopa County officials made false statements and
24 obfuscated investigation of their election process. For example, during a House Oversight
25

26
27 ²¹ <https://arizonasuntimes.com/2022/11/23/maricopa-county-recorder-stephen-richers-founding-of-partisan-pac-raises-ethical-and-legal-questions-of-possible-misconduct/>

1 and Government Reform Committee hearing, Representative Andy Biggs questioned
2 Maricopa County officials about their deletion of 2020 election data in order to avoid a
3 state senate subpoena for election records. Maricopa County Board of Supervisors
4 Chairman Jack Sellers and the board vice chairman, Bill Gates, admitted they
5 intentionally deleted election data—data which had been subpoenaed by the Arizona
6 Senate and this court had ordered Maricopa County to produce.²²

8 **Improper Certification of Election**

9 125. On December 5, 2022, The Secretary of State, Katie Hobbs, formally
10 certified that she, Hobbs, received 1,287, 891 votes in the 2022 Election and Kari Lake
11 received 1,270,774 votes, a difference of 17,117 votes.

12
13 126. The rampant equipment failures and illegal processes in Maricopa County
14 make it impossible to know with any reasonable degree of confidence whether an
15 outcome determinative number of votes for Lake were not counted, miscounted, or
16 illegally deterred.
17

18 127. With the available information, no one can know whether Hobbs actually
19 received more votes than Lake in this election whose administration was overseen by
20 Hobbs.
21

22 128. As set forth above, the Maricopa County election board and the election
23 officers in Maricopa County engaged in misconduct that nullifies the results of the 2022
24 election in Maricopa County, by failing to prevent the entirely foreseeable problems that
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26 _____
27 ²² <https://www.youtube.com/watch?v=RURMyR7P4eE&t=112s>

1 afflicted the voting at Vote Centers on Election Day; and by failing to follow Arizona
2 law with respect to signature verification and chain of custody.

3 129. As set forth above, the inclusion of vast numbers of illegal votes in the vote
4 totals reported by Maricopa County preclude the inclusion of Maricopa County votes in
5 the tallies for the election of Governor of Arizona. In order to avoid disenfranchising the
6 legal voters in Maricopa County, the county must re-do its vote for the 2022 election,
7 eliminating illegal votes from the count.
8

9 130. As set forth above, the maladministration and illegal votes in Maricopa
10 County caused the State of Arizona to wrongfully name Hobbs as the candidate who
11 received the most votes in the election of Governor of Arizona. Lake received the greatest
12 number of votes and is entitled to be named the winner. Alternately, the election must be
13 re-done in Maricopa County to eliminate the effects of maladministration and illegal
14 votes on the vote tallies reported by Maricopa County.
15

16 131. As set forth above, the maladministration and illegal votes in Maricopa
17 County during the 2022 election caused grossly inaccurate vote tallies to be reported,
18 unconstitutionally infringing Lake's right as a voter to have her vote counted only in
19 accordance with all legal votes, and her right as a candidate to have all votes counted
20 from all voters who wanted to vote for her. Maricopa County's denial of Lake's
21 constitutional right to vote precludes Maricopa County from certifying the results of its
22 unconstitutional election.
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COUNT I.

Freedom of Speech
U.S. Const. amend. I, Ariz. Const. art. II, § 6
Misconduct, A.R.S. § 16-672(A)(1)

132. Lake incorporates the foregoing paragraphs as if fully set forth herein.

133. Defendants Hobbs and Richer used their public office to violate the free-speech protections of the federal and Arizona Constitutions to further their own interests—Hobbs’s candidacy and Richer’s PAC—which would constitute misconduct, even without the conflict of interest.

134. The misconduct by defendants Hobbs and Richer warrants not only *vacatur* of the actions that each has taken in the canvassing and certifying the 2022 general election but also their recusal from any remaining participation in the 2022 general election as Secretary of State and Recorder, respectively.

135. Accordingly, Lake is entitled to an order vacating Maricopa County’s canvass and Arizona’s certification of the results of the 2022 election, with the renewed Maricopa County canvas and Arizona certification awaiting the final resolution of the other relief demanded here, which would affect that eventual canvas and certification.

COUNT II.

Illegal Tabulator Configurations
52 U.S.C. § 21081; A.R.S. § 16-442(B)
Misconduct and Illegal Votes, A.R.S. § 16-672(A)(1), (A)(4)

136. Lake incorporates the foregoing paragraphs as if fully set forth herein.

137. Under A.R.S. § 16-442(B), devices used in Arizona elections must be certified and must comply with the Help America Vote Act (“HAVA”).

1 138. In 52 U.S.C. § 21081(b), HAVA deems the “total combination” of all
2 components used to cast and count votes.

3 139. The knowing modification of the software, hardware, or source code for
4 voting equipment without receiving approval or certification pursuant to A.R.S. § 16-442
5 is guilty of a class 5 felony. A.R.S. § 16-1004(B).
6

7 140. Protections such as certification requirements are not “advisory” if the
8 violation of those protections “affect the result, or at least render it uncertain.” *Findley v.*
9 *Sorenson*, 35 Ariz. 265, 269, 276 P. 843, 844 (1929).
10

11 141. The BOD printers involved in the tabulator problems that certain Maricopa
12 County vote centers experienced on election day are not certified and have vulnerabilities
13 that render them susceptible to hacking, as set out in the Parikh declaration.
14

15 142. As further set out in the Parikh declaration, the tabulator problems that
16 certain Maricopa County vote centers experienced on election day were the result of
17 intentional action.

18 143. As set out in the Baris declaration, the tabulator problems that certain
19 Maricopa County vote centers experienced on election day disproportionately affected
20 Republicans in two ways: (a) election-day voters are disproportionately Republican, and
21 (b) even among the cohort of election-day voters, Republican areas within Maricopa
22 County were disproportionately affected. Taken together, these factors affected the
23 outcome of the Governor race.
24

25 144. The Vote Center Declarations establish that the tabulator issues at Maricopa
26 County’s vote centers was significantly more prevalent and of longer duration than the
27
28

1 Maricopa Defendants have acknowledged.

2 145. If the intentional actor was a Maricopa County election official covered by
3 A.R.S. § 16-672(A)(1), that official misconduct also would constitute an Equal Protection
4 and Due Process violation.

5 146. Indeed, even if a Maricopa County election official covered by A.R.S. § 16-
6 672(A)(1) did not intentionally hack the use of uncertified election equipment
7 nonetheless constitutes misconduct under that subsection.

8 147. If the intentional actor was *not* a Maricopa County election official covered
9 by A.R.S. § 16-672(A)(1), the resulting Maricopa County voting was nonetheless illegal
10 under Arizona law because the use of uncertified election systems in violation of A.R.S.
11 § 16-442(B) rendered the Maricopa County voting “uncertain” under *Findley v.*
12 *Sorenson*, 35 Ariz. at 269, 276 P. at 844, and its progeny. Specifically, this interference
13 qualifies as the type of “fraudulent combinations, coercion, and intimidation” that
14 requires striking the entire vote:
15
16
17

18 It is to be observed that the fraud imputed to this precinct by
19 contestee in his answer and assignment is not that kind of fraud,
20 such as intimidation, bribery, or violence, or other misconduct
21 so flagrant that the extent of its influence may rarely, if ever,
22 be exactly computed, and the evil influence of which is so
diffusive that the result of the election is made uncertain. It is
said in 9 R.C.L., Elections, § 107:

23 "There is a distinction between particular illegal votes the
24 effect of which may be proven and exactly computed and
25 fraudulent combinations, coercion, and intimidation. *It can*
26 *never be precisely estimated how far the latter extends. Their*
27 *effect cannot be arithmetically computed. It would be to*
encourage such things as part of the ordinary machinery of
political contests to hold that they shall avoid only to the

1 *extent that their influence may be computed. So wherever*
2 *such practices or influences are shown to have prevailed, not*
3 *slightly and in individual cases, but generally, so as to render*
4 *the result uncertain, the entire vote so affected must be*
5 *rejected."*

6 It is influence of this sort in those cases where the extent
7 thereof may be determined with reasonable certainty, which is
8 rarely the case, that it is the duty of the court to purge the
9 returns of such fraud. A court, however, will exercise the
10 power to reject the votes of an entire precinct and disfranchise
11 a body of electors only where an imperative public necessity
12 requires. It will do so as a last resort where it is found
13 impossible to compute the wrong. If the illegal effect may be
14 proven and computed with reasonable certainty, the returns
15 will be purged to that extent only. But it is obvious here that, if
16 the asserted fraud exists at all, it consists in the election officers
17 fraudulently changing specific ballots which were marked and
18 voted for contestee to appear as if marked and voted for
19 contestant and counting them as voted for contestant. It is
20 apparent that, if the proofs adduced are sufficient to justify the
21 trial court in finding that such ballots were so fraudulently
22 changed and counted, the identical proof that would sustain it
23 must necessarily and with reasonable precision compute the
24 extent of the fraud perpetrated.

25 *Hunt v. Campbell*, 19 Ariz. 254, 265-66, 169 P. 596, 601 (1917) (emphasis added).

26 148. Accordingly, Lake is entitled to an order setting aside the election in its
27 entirety.

28 COUNT III.

Mail-In Ballots with Invalid Signatures

A.R.S. § 16-550(A)

Misconduct, A.R.S. § 16-672(A)(1)

149. Lake incorporates the foregoing paragraphs as if fully set forth herein.

150. To be lawful and eligible for tabulation, the signature on the affidavit
accompanying an early ballot must match the signature featured on the elector's

1 "registration record." A.R.S. § 16-550(A).

2 151. Upon information and belief, a material number of early ballots cast in the
3 November 8, 2022 general election were transmitted in envelopes containing an affidavit
4 signature that the Maricopa County Recorder or his designee determined did not match
5 the signature in the putative voter's "registration record." The Maricopa County Recorder
6 nevertheless accepted a material number of these early ballots for processing and
7 tabulation.
8

9 152. Specifically, the invalid-signature ballot envelopes established in the Busch
10 and Parikh declarations demonstrate that Maricopa County's elections suffered from
11 outcome-determinative number of illegal votes from mail-in ballots in 2020 and 2022.
12 The illegal votes require the Court to act to set aside the 2022 general election:
13

14 This is not a case of mere technical violation or one of dotting
15 one's "i's" and crossing one's "t's." At first blush, mailing versus
16 hand delivery may seem unimportant. But in the context of
17 absentee voting, it is very important. Under the Arizona
18 Constitution, voting is to be by secret ballot. Ariz. Const. art
19 VII, § 1. Section 16-542(B) advances this constitutional goal
20 by setting forth procedural safeguards to prevent undue
21 influence, fraud, ballot tampering, and voter intimidation. [...
22 A] showing of fraud is not a necessary condition to invalidate
23 absentee balloting. It is sufficient that an express non-technical
24 statute was violated, and ballots cast in violation of the statute
25 affected the election. We therefore vacate the opinion of the
26 court of appeals and reinstate the judgment of the trial court
27 setting aside the election.
28

24 *Miller*, 179 Ariz. at 180, 877 P.2d at 279.

25 153. To the extent the Elections Procedures Manual purports to authorize the
26 validation of early ballot affidavit signatures by reference to a signature specimen that is
27

1 not found in the voter's "registration record," the Manual is contrary to the plain language
2 of A.R.S. § 16-550(A), and hence unenforceable.

3 154. The remedy for illegal absentee ballots is either to set aside the election under
4 *Miller*, 179 Ariz. at 180, or proportionately to reduce each candidate's share of mail-in
5 ballots under *Grounds*, 67 Ariz. at 183-85.
6

7 155. Accordingly, Lake is entitled both to an order requiring the Maricopa
8 Defendants to revisit all or a representative sample of the EV ballot envelopes to check
9 for valid signatures and to an order either setting aside the election or proportionately
10 reducing the tabulated returns of early ballots.
11

12 COUNT IV.

13 Invalid Chain of Custody 14 A.R.S. §§ 16-521(E), 16-1016 15 Misconduct, A.R.S. § 16-672(A)(1)

16 156. Lake incorporates the foregoing paragraphs as if fully set forth herein.

17 157. Procedural protections such as chain-of-custody requirements are not
18 "advisory" if the violation of those protections "affect the result, or at least render it
19 uncertain." *Findley v. Sorenson*, 35 Ariz. 265, 269, 276 P. 843, 844 (1929).
20

21 158. The Runbeck whistleblower indicated that Runbeck employees could add
22 ballots to the batches of incoming ballots, without any documentation or tracking the
23 chain of custody of the added ballots and thus with no way to know whether 50 ballots
24 or 50,000 ballots were added in violation of A.R.S. § 16-1016.

25 159. Including EV ballots scanned at Runbeck, Maricopa County's total EV
26 ballots fluctuated upward by approximately 25,000 ballots two days after the election.
27
28

1 160. Runbeck prepared at least 9,530 duplicate ballots with no chain of custody
2 as required under Arizona law.

3 161. Especially in light of Maricopa's documented chain-of-custody violations
4 with respect to the 2020 election, repeating those violations in the next election renders
5 the result uncertain, especially when the votes in question affect the canvassed margin of
6 victory.
7

8 162. Accordingly, Lake is entitled to an order either setting aside the election or
9 proportionately reducing the tabulated returns of early ballots.
10

11 COUNT V.

12 Equal Protection

13 U.S. Const. amend. XIV, § 1, cl. 4, Ariz. Const. art. II, § 6
14 Misconduct and Illegal Votes, A.R.S. § 16-672(A)(1), (A)(4)

15 163. Lake incorporates the foregoing paragraphs as if fully set forth herein.

16 164. Assuming *arguendo* that a state actor caused the tabulator problems that
17 certain Maricopa County vote centers experienced on election day, the disproportionate
18 burden on a class of voters—Republicans—warrants a finding of intentional
19 discrimination and a shift of the burden of proof to defendants.

20 165. On information and belief, even among the cohort of election-day voters, the
21 BOD printer problem occurred with greater frequency and burdened Republican election-
22 day voters more than 15 standard deviations than it burdened non- Republican election-
23 day voters. *See Castaneda v. Partida*, 430 U.S. 482, 496 n.17, 97 S. Ct. 1272, 1281
24 (1977).
25

26 166. Under those circumstances, the one-man, one-vote principle requires
27
28

1 counting all valid votes and not counting all invalid votes. *Reynolds*, 377 U.S. at 554-55;
2 *Bush v. Gore*, 531 U.S. 98, 103 (2000) (per curiam) (“the votes eligible for inclusion in
3 the certification are the votes meeting the properly established legal requirements”).

4 167. Accordingly, Lake is entitled to an order setting aside the election in its
5 entirety.
6

7 COUNT VI.

8 Due Process

9 U.S. Const. amend. XIV, § 1, cl. 3, Ariz. Const. art. II, § 6 10 Misconduct and Illegal Votes, A.R.S. § 16-672(A)(1), (A)(4)

11 168. Lake incorporates the foregoing paragraphs as if fully set forth herein.

12 169. Assuming *arguendo* that a state actor caused the tabulator problems that
13 certain Maricopa County vote centers experienced on election day, the disproportionate
14 burden on a class of voters—Republicans—warrants a finding of a due-process violation.

15 170. When election practices reach “the point of patent and fundamental
16 unfairness,” the integrity of the election itself violates substantive due process. *Griffin v.*
17 *Burns*, 570 F.2d 1065, 1077 (1st Cir. 1978); *Duncan v. Poythress*, 657 F.2d 691, 702 (5th
18 Cir. 1981); *Florida State Conference of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1183-
19 84 (11th Cir. 2008); *Roe v. State of Ala. By & Through Evans*, 43 F.3d 574, 580-82 (11th
20 Cir. 1995); *Roe v. State of Alabama*, 68 F.3d 404, 407 (11th Cir. 1995); *Marks v. Stinson*,
21 19 F. 3d 873, 878 (3rd Cir. 1994).
22

23 171. With respect to procedural due process, not only intentional failure to follow
24 election law as enacted by a State’s legislature but also random and unauthorized acts by
25 state election officials and their designees in local government can violate the Due
26
27

1 Process Clause. *Parratt v. Taylor*, 451 U.S. 527, 537-41 (1981), *overruled in part on*
2 *other grounds by Daniels v. Williams*, 474 U.S. 327, 330-31 (1986); *Hudson v. Palmer*,
3 468 U.S. 517, 532 (1984).

4 172. Accordingly, Lake is entitled to an order setting aside the election in its
5 entirety.
6

7 COUNT VII.

8 Non-Secret Mail-In Ballots

9 U.S. Const. amend. XVI, § 1, cl. 3, Ariz. Const. art, VII, § 1 10 Illegal Votes, A.R.S. § 16-672(A)(4)

11 173. Lake incorporates the foregoing paragraphs as if fully set forth herein.

12 174. Mail-in ballots pursuant to A.R.S. § 16-547 do not satisfy the ballot-secrecy
13 requirements of Arizona's Constitution. Ariz. Const. art, VII, § 1.

14 175. The Arizona Republican Party challenged mail-in ballots and sought interim
15 relief prior to the 2022 general election, and that litigation is pending in the Court of
16 Appeals as *Arizona Republican Party v. Hobbs*, No. CA-CV-22-0388 (Ct. App. Div. 1)
17 (argued Dec. 7, 2022).

18 176. All absentee ballots cast in the 2022 general election are illegal votes for the
19 purposes of A.R.S. § 16-672(A)(4).
20

21 COUNT VIII.

22 Incorrect Certification

23 A.R.S. § 16-650

24 Illegal Votes and Erroneous Count of Votes, A.R.S. § 16-672(A)(4)-(5)

25 177. Lake incorporates the foregoing paragraphs as if fully set forth herein.

26 178. Whether absolutely or on a *pro rata* basis, the cumulative impact of the
27

1 foregoing counts invalidates significantly more Hobbs votes than the certified margin of
2 victory for Hobbs.

3 179. Pursuant to A.R.S. § 16-672(A)(5), “by reason of erroneous count of votes
4 the person declared elected ... did not in fact receive the highest number of votes,” *id.*,
5 and this Court must vacate the certification and direct the Secretary of State or Acting
6 Secretary of State to certify Lake as the duly elected Governor. A.R.S. § 16-676(C).
7

8 COUNT IX.

9 Inadequate Remedy

10 A.R.S. § 16-672

11 Declaratory Judgment, A.R.S. §§ 12-1831-1846

12 180. Lake incorporates the foregoing paragraphs as if fully set forth herein.

13 181. To the extent that the special nature of these proceedings precludes bringing
14 concurrent federal claims against Maricopa County’s 2022 general election, this Court
15 has jurisdiction under Arizona’s Uniform Declaratory Judgments Act to declare that the
16 remedy provided by A.R.S. § 16-672 is inadequate to protect those federal rights and
17 requirements.
18

19 COUNT X.

20 Federal Constitutional Rights

21 U.S. Const. amend. XIV, § 1, cl. 3-4

22 Civil Rights Action, 42 U.S.C. § 1983

23 182. Lake incorporates the foregoing paragraphs as if fully set forth herein.

24 183. To the extent that a non-governmental actor intentionally caused the
25 tabulator problems that certain Maricopa County vote centers experienced on election
26 day and the Court does not set aside the election under A.R.S. § 16-442(B) for uncertified
27

1 election systems or under *Hunt v. Campbell*, 19 Ariz. at 265-66, 169 P. at 601, and its
2 progeny for “fraudulent combinations, coercion, and intimidation,” Maricopa County’s
3 selective weakening of early-voting protections (which benefits Democrat voters) and
4 exposing election-day voters to nongovernmental hacking (which harms Republican
5 voters) violations the Equal Protection and Due Process Clauses of the Fourteenth
6 Amendment, which this Court can enforce separate from A.R.S. § 16-672 under 42
7 U.S.C. § 1983 and concurrent jurisdiction.
8

9 184. Accordingly, Lake is entitled to an order setting aside the election in its
10 entirety and ordering a new election.
11

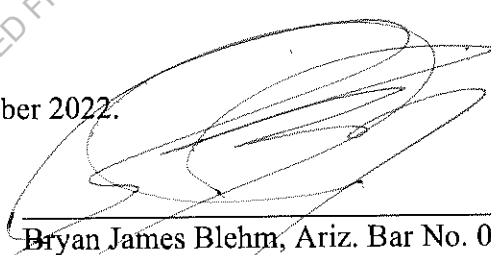
12 **DEMAND FOR RELIEF**

13 WHEREFORE, Contestant Kari Lake demands relief in the following forms:

- 14 a. An opportunity to inspect Maricopa County ballots from the 2022 general
15 election, including ballot signature envelopes and the corresponding signatures
16 on file with Maricopa County, prior to trial;
17
18 b. A root cause analysis and forensic examination into the causes and extent of
19 the printer-tabulator problems encountered on election day;
20
21 c. Trial of all disputed factual issues;
22
23 d. An order striking all signatures on file with Maricopa County that are not the
24 "registration record" pursuant to A.R.S. § 16-550(A);
25
26 e. An order striking any invalid ballots or types of ballots on an absolute or
27 prorated basis;
28

- 1 f. An order setting aside the certified result of the 2022 Arizona gubernatorial
2 election and declaring that Kari Lake is the winner of the 2022 Arizona
3 gubernatorial election, pursuant to A.R.S. § 16-676;
4
5 g. In the alternative, an order vacating the certified results of the 2022 Arizona
6 gubernatorial election, pursuant to A.R.S. § 16-676 or 42 U.S.C. § 1983, and
7 an injunction requiring that Maricopa County re-conduct the gubernatorial
8 election in conformance with all applicable law and excluding all improper
9 votes, under the direction of a special master;
10
11 h. Recusal of defendants Hobbs and Richer from further participation in matters
12 involving the 2022 general election, including any new election and the review
13 of any issues related to the 2022 general election and any new election.
14
15
16

17 DATED this 9th day of December 2022.

18
19 
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**to be admitted pro hac vice*

Attorneys for Plaintiff-Contestant

RETRIEVED FROM DEMOCRACYDOCKET.COM

Verification

I, Kari Lake, depose and say:

I have read the foregoing Verified Special Action Complaint and know the contents thereof by personal knowledge. I know the allegations of the Verified Special Action Complaint to be true, except the matters therein on information and belief, which I believe to be true.

Signed under penalty of perjury on this 9th day of December 2022.

A handwritten signature in cursive script that reads "Kari Lake". The signature is written in dark ink and is positioned above a horizontal line.

Kari Lake

RETRIEVED FROM DEMOCRACYDOCKET.COM

I, Leslie White, state the following as my declaration pursuant to 28 U.S.C. §1746:

1. I am a citizen of the United States and a resident of the State of Arizona.
2. On November 8, 2022, I was a credentialed Prop 309 observer at Maricopa County Tabulation and Election Center (MCTEC) located at 510 S 3rd Ave, Phoenix, AZ 85003. I first arrived at approximately 8:00AM. Throughout the day, I observed various areas at MCTEC including adjudication, duplication, signature verification and processing. At approximately 4:00PM, all activities at MCTEC were completed and I was told to go home.
3. I returned to MCTEC at approximately 7:30PM and went to the warehouse to observe the receipt of the incoming ballots from the vote centers and drop boxes. When I first arrived, Stephen Richer, Maricopa County Recorder, greeted me and asked why I was there. There was a Republican poll observer in the warehouse when I arrived, and he remained there after I left.
4. Between approximately 9:00PM and 9:30PM, the first delivery of ballots arrived. Some ballots arrived in personal vehicles and others arrived in the large Penske trucks.
5. The receiving dock has several bays. I was assigned to a specific location of the warehouse near the 100+ video monitors, near the location of the security / police officer. I was given a chair in my assigned location. From my location, I could see the dock receiving team and I could hear them talk to the drivers.
6. There was one person who was responsible for retrieving the memory cards and the tabulator result tapes from the vote centers delivery. He was a young male, approximately mid-20s. He would remove the memory cards, walk right past me into the tabulator room. He would give the memory card to a team of two people in the tabulator room. The team would scan it as received and would give to another man who would take it to his computer and upload the data from the memory card.
7. Scott Jarret, Director of Maricopa Elections, would take the memory card and place it on one of two ten foot tables. The tables were laid out in grids with a specific location for each vote center. As he received the memory cards, he would place them on the grid.
8. From my assigned location, I did not have a clear view of the activities on the truck or on the dock. I could not see exact location or and documentation associated with the removal of the memory cards. During the BoS meeting on 11/28/2022, Scott Jarrett said that seals were scanned. If scanning was done on the truck on the dock, I likely would not have seen that.
9. The other supplies that came back from the vote center included a black bag, blue top plastic container, red top plastic container. The black bag contained tabulated ballots. There were a group of people who were responsible for receiving the black ballot bags.

They took the black bags to a desk. I was told that those ballots were going to be put into the caged area in a designated location for each vote center.

10. The red top plastic containers were removed from the delivery vehicle and taken directly to the "red line" (designation location called for red top plastic containers) which was a table. These containers sometimes contained a large white envelope with misfed/misread ballots inside. Some of the large envelopes had labels printed and others were handwritten. I walked over to the red line to get a closer look and saw at least one red top container that was nearly full of misfed/misread ballots.
11. Also in the red top plastic container were the spoiled ballots in clear plastic bags. Other miscellaneous materials such as signs, posters, training manuals. This container also included the poll worker sign in sheets.
12. The blue top containers were removed from the delivery vehicles and either hand carried or pushed on metal carts to the blue line (designation location called for blue top plastic containers). The blue line area was right in front of my assigned location for observing. From my location I was within 10 to 15 feet of the blue top containers and I would have definitely seen if any counting or auditing was taking place.
13. Workers would cut off the plastic seals. There were two workers who were cutting off the plastic seals on the blue top containers. One was Stephen Richer and the other was Celia Nabor. As they cut the seals, the seals would drop on the floor. Nobody looked at the seals, nobody recorded the seal numbers. All were just left on the floor.
14. Richer and Nabor were opening the containers. In some cases, the blue top containers would have white envelopes with misfed/misread ballots. When these envelopes were removed from the container, they were placed on a table in a pile.
15. These blue top containers mostly held large numbers of the Early Voting Ballots. These were ballots with green envelopes and possibly some provisional ballots as well. There were no documents or paperwork on the outside of the containers.
16. I was flabbergasted that they were just opening the containers and just sliding the open containers down the aisle. At the end of the aisle, there were temporary employees who were removing the envelopes from the containers and loading them onto trays.
17. I did not see any person count any ballots or record any information on documents. The temporary employees were just working quickly to place all of the ballots into trays. The trays were large plastic USPS mail trays. They are approximately 2ft X 1 ½ ft wide with USPS on the side. They would fill a tray and then they would load the tray onto a metal rolling cage with a solid back but open front.
18. The staff referred to location where the blue plastic top containers were put as the "blue line". In the blue line they were collecting the envelopes of misfed/misread ballots and there were also envelopes with misfed/misread ballots on the red line. There was

no discernable process to account for these ballots. I was concerned with the disorganized way that the ballots were handled.

19. I asked one of the employees how many ballots were on each metal cart. I was told that each cart held approximately 13,500 ballots. It is my understanding that the EPM requires the county to count and record the exact number of ballots that were inside each container.
20. On three different occasions, I saw people carrying 3 tabulators. It was unclear where the tabulators were coming from. These appeared to be 3 tabulators from vote centers. These are the same type of tabulators in which a voter would put a ballot thru when casting a vote at a Vote Center.
21. When a cart was filled, the temporary employee or Maricopa Election Staffer, would roll the unsecured metal cart into a hall for storage. There was no security and no personnel monitoring the carts. When I questioned the employees, they said that the cameras were sufficient for monitoring the ballots on the carts. I was also told that those carts were going to be delivered to Runbeck where they would be scanned in to allow for signature verification the next day.
22. I asked the officer monitoring the cameras if he was a county employee. He said that he did not work for Maricopa County—he said he was a contractor.
23. At approximately 1:00AM, I went into the tabulator room. Scott Jarret was inside, and all of the trucks had been received and all of the memory cards/tabulation tapes had been received. All grid boxes on Scotts Vote Center Table had memory cards in their designated box. Each box on the grid represented a Vote Center and each Vote Center had 2 Memory Cards, which meant, 2 tabulators were at each Vote Center. All trucks had been received in from the Vote Centers. So, I asked Scott if he was going to upload the Election Day results to share with the people / voters in AZ and he said no.
24. I left the warehouse at approximately 1:30AM on November 9th, 2022.
25. On November 28, 2022, I was at the Maricopa County Board of Election Meeting I heard Scott Jarret talking about ballot chain of custody. I was surprised to hear him claim that they had chain of custody because that is not what I saw while I was observing.
26. Specifically, Scott Jarrett said:
"Mr. Chairman, if I could just interject. We had a couple of questions from some of the members of the audience about those 292,000 that Mr. Valenzuela just mentioned, um, and so those were dropped off throughout the entire day on Election Day. So, state statute does not allow us to go and retrieve those until the polls close and those are transported from those voting locations by poll workers of different parties. They are actually transport containers they all have blue lids on them. They all have tamper evident seals all of those are logged and they're scanned in as they're received. Then we send those over once they come back to the elections department we organize all of them and we send them in

bipartisan teams over to our vendor Runbeck to scan those in to get that digital image so we can start that signature verification process. We had bipartisan team, actually, Republican there appointed by the county chair observing and participating in that process as we are scanning those so we maintain chain of custody over them through that entire process.

27. The claim that Republican observers were “participating” in the process is false. I did not participate, and the other observers did not participate at any time while I was there. We only observed. We were not able to touch ballots or cut tamper evident seals. We were only able to observe, take notes and ask questions.

28. The claim that Republican observers saw all scanning, logging or properly maintaining chain of custody is false. Jarrett said that the tamper evident seals were “logged and scanned as they are received” -- it was not done under my observation, and I did not participate in any process.

29. I did, however, observe the entire process from the time the seals were cut off of the containers and dropped on the floor and at no time did any person count or record any information about the seals removal or the number or type of ballots inside the blue top containers. This did not happen.

I declare under penalty of perjury that the foregoing is true and correct. Signed on the 29th day of November, 2022.

Leslie D. White

Leslie D. White

DECLARATION

STATE OF: Arizona

COUNTY OF: Maricopa

I, Denise Marie, a resident of Gilbert, AZ state the following as my declaration pursuant to 28 U.S.C. §1746. I am an employee of Runbeck Election Services. I have been employed by Runbeck Election Services as a sorter operator since February 2022.

While working at Runbeck on Maricopa County Elections, I witnessed the following:

Ballot Chain of Custody Issues

Election Night Ballot Receiving Process Changed

Prior to Election Day, November 8, 2022, mail-in ballots were delivered in red bins with a chain of custody form from MCTEC noting how many bins and the quantity received. That form is called the "Maricopa County Delivery Receipt." The top of the form was filled out to include the total number of ballot packets including Regular MOB (green envelope), early in-person CTR (white envelope) and out of specification ballots.

On Election Night, instead of receiving the ballots in red bins, the ballots from the drop boxes had been placed in mail trays and loaded onto mail cages. MCTEC did not include the Maricopa County Delivery Receipt forms with any of the Election Day drop box ballot deliveries. There were no chain of custody forms with the ballots and no count of the number of ballots that were delivered.

Again, no paperwork accompanied the ballots from the MCTEC on Election Night. Instead, Runbeck created a document with an estimate of the ballots received that was calculated by counting the number of trays and multiplying by 350 or 400 (estimated number of ballots per tray - this number varied by operator). These estimates were created by Runbeck employees and were recorded on a form called MC INBOUND - RECEIPT OF DELIVERY.

At 6:47am on 11/8, a delivery was made by MTEC that included 33,994 regular MOBs, 7,844 CTRs and 1041 needs packet ballots. Maricopa County provided delivery receipts for this part of the delivery that showed these numbers. There were also an estimated 5,600 ballots that came from the post office. No paperwork included on the post office ballots (see below).

The next delivery from MCTEC came at 7:15pm. While it is not referenced as such on the receipt of delivery form generated by Runbeck, the delivery driver's helper indicated that it came from the post office. I could also tell that it came from the post office because there was non-election mail and blue envelopes mixed in. One of the sorter operators estimated the number of ballots for this delivery to be 1,750.

The next delivery from MCTEC did not come until 10pm. I was told by my lead and other staff members that it was unusual that we did not have multiple deliveries throughout the day or that another delivery had not been made prior to me leaving at 9pm. Several drops were made throughout the night after 10 pm and when I arrived at 6am the next morning, there was a line of cages waiting to be run through the inbound process.

Total count of the ballots received and scanned by Runbeck on Election Day was:

Inbound: 290,735
Provisionals: 6,978
Overs: 123
Under: 3
Invalid App ID (wrong election envelope): 1,016
Unreadables: 41
Counter reissue: 46
Total: 298,942

On 11/9, at approximately 5:30PM, my lead asked me to get a count of all of the ballots received by Runbeck on Election Day. Using the Incoming Scan forms, I manually calculated the total numbers above. When I gave the information to my lead, he mentioned that it was "close" to what Celia (Nabors) of MCTEC had estimated. I believe he either texted or emailed her with the count from his phone.

As described above, prior to Election Day, mail-in ballots from the drop boxes that came from the county were transported in red bins with security seals and brought to Runbeck. The delivery included a 3 part half sheet that had the total count of Mail-in Ballots (MOBs), early in-person (CTR) ballots and out of specification ballots. This form is initialed off by the person who counted them at MCTEC and then initialed off by a Runbeck operator and security upon delivery.

Before the 2022 primary, a change was made to the way the paperwork was done for the red bins. Instead of a form for each bin with its own place to notate the security seal number, it was changed to one form for all the red bins received. Instead of listing the seal numbers, it had a count of the number of bins. For example, it would say "62 bins secured." Each bin did have a security seal, but the seal numbers were NOT notated on any of the paperwork unless only one bin was received. Therefore, there was no way for Runbeck employees or security to verify the seal numbers.

It also appeared that the bins had been consolidated from the different drop-off locations. Early in person (CTR) ballots were separated from the mail-in ballots (regular MOB) and placed in their own bins. During the primary, the red bins were mostly dropped off in the morning. For the general election they were mostly dropped off in the evening.

USPS Post Office - Lack of Inbound Ballot Chain of Custody

When mail-in ballots are brought from the post office to Runbeck, the postal receipts that are with them are NOT used as part of the chain of custody. Estimates are used instead.

On the Runbeck incoming paperwork, (MC Inbound Receipt of Delivery) an estimate is made of the number USPS (post office inbound) ballots received by counting the number of trays and multiplying by 350 or 400 (the estimated amount per tray) This number varied by operator. Despite the fact that the post office typically

included a postal receipt with the USPS ballots identifying the number of ballots being delivered, the postal receipts were not used. When I questioned why the postal receipts were not used on a smaller election last spring, I was told that they did not use it, it was never correct, and it was usually just thrown out.

I realized that the reason the receipt from the post office was “never correct,” was because they were not adding the ballots brought from MTEC to the ones from the post office – and then reconciling it with the number counted by the sorting machine. When I brought that to my lead’s attention (and showed him how they did balance out), he reiterated that they do not use the receipts, they take too much time to find when it’s a big election and we cannot slow down the process. (To be fair, the receipts are hard to find when there are a lot of cages dropped off).

Not being able to throw away what I considered to be an important part of chain of custody, I did ask the Maricopa driver if they needed the postal receipts. He took them, but my recollection was that he was unsure and needed to check. I started sending them with pickups after that. Sometime later, a group of Maricopa County employees came over for a tour. The postal receipts came up in conversation and one of them mentioned that they didn’t even know that the receipts existed. This is how the change was made to send postal receipts back to Maricopa.

But they still were not used to track the incoming number of ballots from the post office. My lead told me that I could try to use them, however if it slowed things down, he would pull me from the inbound process. I brought the issue up to him several times trying to get the change made as part of our process. The last time I asked him about it, he reiterated that I could try to use them as long as I did not slow down the process, but if I brought the subject up again, he would not have me do the inbound process at all. He did not want me to do something that I wasn’t comfortable with. This last conversation occurred just before we got busy with outbound. I didn’t bring it up again.

No Chain of Custody for Runbeck Employee Ballots

Runbeck employees are allowed to bring in their ballots and give them to the sorting department to be inserted into the batches at Runbeck. Typically, they are run in the next batch of incoming. This is permitted by management. Runbeck employees are also permitted to bring family members ballots in for insertion into batches. (See attached sample of my family member’s ballot on the sorting feeder just prior to being run through the inbound process during the primary.)

I estimated that I personally saw about 50 ballots given to the sorting department by employees to be inserted into the next inbound batch during the general election. There is no formal tracking of these ballots, nor is there any kind of check that the ballot is for the employee or family member (privacy issues is cited as the reason for not checking). Maricopa County would have no record of these ballots until they are scanned by Runbeck because they were never in possession of Maricopa County. They are simply added to the next incoming ballot batch run. (Note: From what I saw, the ballots were legitimately employee or employee family’s ballots, however I did not see all of them. Allowing this practice to occur, opens the door to potential problems.)

Maricopa Security Coverage

To my knowledge, the security provided by Maricopa has limited hours. A security officer provided by Maricopa is on location from I believe 8a-4p. Prior to election day, ballot deliveries were made at about 6:30am in the morning and then often at 6:30pm. The two busiest times for drop offs and I don't recall seeing their security officer on site.

During the primary, the Maricopa Security Guard came down and signed the paperwork. During the general election, Runbeck Security came to sign the paperwork. To my knowledge, there was not a Maricopa Security Guard on duty for night crew.

No Chain of Custody for Duplicate Ballots

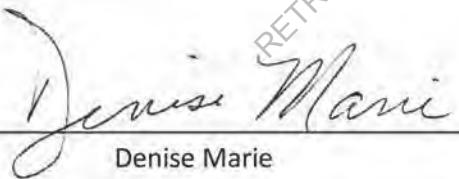
Throughout the 2022 election cycle for both the primary and general elections, Runbeck printed duplicate ballots. These are duplicates of ballots that had been damaged in some way or the tabulator could not read them. The selections from the voter were filled in and a new, duplicate ballot was printed. To my knowledge, there were at least 9,530 duplicate ballots printed. When these ballots were picked up by Maricopa, there was no paper trail. No delivery/shipping receipt, no chain of custody document, no one signs for them. They are simply handed over to the delivery driver.

During the 2022 primary, I was able to track down one receipt to send with the duplicated ballots. There was no place for a signature and Runbeck did not keep a copy. It came from the shipping department and was generated by the CSM. For next couple of orders, the receipt was not available before pickup and eventually I stopped asking for it.

I declare under penalty of perjury that the foregoing is true and correct.

Signed on the 7th day of December 2022.

Signed by:


Denise Marie

[illegible]

71	EL TIANGUIS MERCADO	9201 S AVENIDA DEL VALLE	Stuart Bout (Paragraph 7)				Lisa O'Toole (Paragraph 6-7)		
	EL COMODO PARK COMMUNITY CENTER	7441 E ALBUQUERQUE, SCOTTSDALE, AZ 85259	Teddie Layton (Paragraph 20)				Teddie Layton (Paragraph 20) (info on line)		
72	EVANSON COMMUNITY CENTER	3800 E UNIVERSITY DR, MESA, AZ 85205	Catherine Nemes-Symcox			Lynne M. Speer			
73	ESTADANTE COMMUNITY CENTER/FAIR	2150 E ORANGE ST, TEMPE, AZ 85281							
74	ESTRELLA FOOTHILLS HIGH SCHOOL #201	15033 S ESTRELLA HWY, GILBERT, AZ 85138							
75	ESTRELLA MOUNTAIN COMMUNITY COLLEGE	3000 N VICTORY RD, AURORA, AZ 85018	Michael Brown (Paragraph 2-9)						
	ESTRELLA MOUNTAIN COMMUNITY COLLEGE	3000 N VICTORY RD, AURORA, AZ 85018	Admission on Exhibit 7 & 805 Report						
76	FAITH LUTHERAN CHURCH	7233 N 7TH AVE, GLENDALE, AZ 85303	Dwaine Hickey (Paragraph 7)						
	FAITH LUTHERAN CHURCH	801 E CAMERLACK RD, PHOENIX, AZ 85014	Gary Reuther (Paragraph 7 to 8)						
77	FIRST BAPTIST CHURCH CHANDLER	3405 S ANZONA AVE, CHANDLER, AZ 85248	Bradley D. Beltracconi (Pages 16 & 19)						
78	FIRST UNITED METHODIST CHURCH OF GILBERT	331 S COOPER RD, GILBERT, AZ 85233	Charles Sanchez Steven Shale East Stair (Pg. 1) West Stair (Pg. 1) Steven Shale (Pg. 1) Kristina Kloss (Paragraph 20-24) Lauren Maren (Pg. 1) Steven Shale (Pg. 1)						
	FIRST UNITED METHODIST CHURCH OF GILBERT	331 S COOPER RD, GILBERT, AZ 85233	Keith Evanson (Paragraph 3a) Kristina Kloss (Paragraph 20-24)						
79	FORT MONTELL INDIAN COMM. REC. CENTER	13001 N LA MONTELLA DR, FOUNTAIN HILLS, AZ 85088	Nicole Anderson Nicole Anderson Thomas E. Maloney Mark Somerville (Paragraphs 7 & 9) Jeffrey W. Crocker (Paragraphs 10-10)						
80	FOUNTAIN HILLS COMMUNITY CENTER	13001 N LA MONTELLA DR, FOUNTAIN HILLS, AZ 85088	Bryan White Gladys B. Otero Jennifer J. Amodeo Debra Sue Frazee Sara Nicole Paces Scott Pratt Jens May o Paces			Debra Sue Frazee			
81	FOURTEEN GOOD YEAR	1300 S LUTHERFIELD RD, GILBERT, AZ 85024	Kevin Brown (Paragraphs 10-11)						
82	FOURTEEN GOOD YEAR	8850 E PINNACLE PEAK RD, SCOTTSDALE, AZ 85259							
83	FOURTEEN GOOD YEAR	201 E JEFFERSON ST, PHOENIX, AZ 85004							
84	FOURTEEN GOOD YEAR	18402 N FORT McDOWELL RD, PHOENIX, AZ 85024							
85	FOURTEEN GOOD YEAR	13001 N LA MONTELLA DR, FOUNTAIN HILLS, AZ 85088							
86	FOURTEEN GOOD YEAR	6107 VYAN BUREN ST, PHOENIX, AZ 85044							
87	FOURTEEN GOOD YEAR	60 N RICKER RD, GILBERT, AZ 85234							
88	FOURTEEN GOOD YEAR	5727 W HARRY VALLEY RD, GLENDALE, AZ 85043							
89	FOURTEEN GOOD YEAR	1501 N MARTIN AVE, GILBERT, AZ 85207	Christina Marie (Pg. 2)						
90	FOURTEEN GOOD YEAR	11411 E GILBERT RD, GILBERT, AZ 85234							
91	FOURTEEN GOOD YEAR	225 E GILBERT RD, GILBERT, AZ 85234	Bradley D. Beltracconi (Pages 16)						
92	FOURTEEN GOOD YEAR	18402 N FORT McDOWELL RD, PHOENIX, AZ 85024	Kathryn Balle (Paragraph 20)						
93	FOURTEEN GOOD YEAR	8000 W OLIVE AVE, GILBERT, AZ 85234	Admission on Exhibit 7 to Bob Report						
94	FOURTEEN GOOD YEAR	8000 W OLIVE AVE, GILBERT, AZ 85234	Admission on Exhibit 7 to Bob Report						
95	FOURTEEN GOOD YEAR	8000 W OLIVE AVE, GILBERT, AZ 85234	Admission on Exhibit 7 to Bob Report						
96	FOURTEEN GOOD YEAR	8000 W OLIVE AVE, GILBERT, AZ 85234	Admission on Exhibit 7 to Bob Report						
97	FOURTEEN GOOD YEAR	8000 W OLIVE AVE, GILBERT, AZ 85234	Admission on Exhibit 7 to Bob Report						
98	FOURTEEN GOOD YEAR	8000 W OLIVE AVE, GILBERT, AZ 85234	Admission on Exhibit 7 to Bob Report						
99	FOURTEEN GOOD YEAR	8000 W OLIVE AVE, GILBERT, AZ 85234	Admission on Exhibit 7 to Bob Report						
100	FOURTEEN GOOD YEAR	8000 W OLIVE AVE, GILBERT, AZ 85234	Admission on Exhibit 7 to Bob Report						
101	FOURTEEN GOOD YEAR	8000 W OLIVE AVE, GILBERT, AZ 85234	Admission on Exhibit 7 to Bob Report						
102	FOURTEEN GOOD YEAR	8000 W OLIVE AVE, GILBERT, AZ 85234	Admission on Exhibit 7 to Bob Report						
103	FOURTEEN GOOD YEAR	8000 W OLIVE AVE, GILBERT, AZ 85234	Admission on Exhibit 7 to Bob Report						
104	FOURTEEN GOOD YEAR	8000 W OLIVE AVE, GILBERT, AZ 85234	Admission on Exhibit 7 to Bob Report						
105	FOURTEEN GOOD YEAR	8000 W OLIVE AVE, GILBERT, AZ 85234	Admission on Exhibit 7 to Bob Report						
106	FOURTEEN GOOD YEAR	8000 W OLIVE AVE, GILBERT, AZ 85234	Admission on Exhibit 7 to Bob Report						
107	FOURTEEN GOOD YEAR	8000 W OLIVE AVE, GILBERT, AZ 85234	Admission on Exhibit 7 to Bob Report						
108	FOURTEEN GOOD YEAR	8000 W OLIVE AVE, GILBERT, AZ 85234	Admission on Exhibit 7 to Bob Report						
109	FOURTEEN GOOD YEAR	8000 W OLIVE AVE, GILBERT, AZ 85234	Admission on Exhibit 7 to Bob Report						
110	FOURTEEN GOOD YEAR	8000 W OLIVE AVE, GILBERT, AZ 85234	Admission on Exhibit 7 to Bob Report						
111	FOURTEEN GOOD YEAR	8000 W OLIVE AVE, GILBERT, AZ 85234	Admission on Exhibit 7 to Bob Report						

145	ISLAMIC CENTER - SCOTTSDALE	12125 E VIA LINDA, SCOTTSDALE, AZ 85255	Michaela Jones (Paragraph 1) Admission on Exhibit 7 to BGS Report Mark Woodburn (Paragraph 7) Percy Coleman (Pg. 1)	Mark Woodburn (Paragraphs 6-7)		Mark Woodburn (Paragraphs 7a & 10) (line 10a & 10b of paragraph)	Mark Woodburn (Paragraphs 7a & 11) (line 42 of paragraph 11)	
146	ISLAMIC CENTER OF THE EAST VALLEY	425 N ALMA SCHOOL RD, CHANDLER, AZ 85224						
147	ISLAMIC COMMUNITY CENTER OF PHOENIX	4500 W CAMPBELL AVE, PHOENIX, AZ 85032	Rebecca Davis (Paragraph 33) Kathryn Bailey (Paragraph 33) Admission on Exhibit 7 to BGS Report	Kathryn Bailey (Paragraphs 33-34)		Rebecca Davis (Paragraph 33) Kathryn Bailey (Paragraph 33) Bruce A. Lee	Kathryn Bailey (Paragraph 33)	
148	JOURNEY CHURCH							
149	KANAKA VALLEY COMMUNITY CENTER	1 KANAKA VILLAGE, GILA BEND, AZ 85337	Robert A. Henry Lee Blawie			Lee Blawie	Lee Blawie (5:30 PM - 7:15 PM)	
150	KANAKA VALLEY LODGE	1600 E AVONCE BLVD, TEMPE, AZ 85281						
151	KANAKA VALLEY LODGE	1600 E AVONCE BLVD, TEMPE, AZ 85281						
152	KANAKA VALLEY LODGE	1600 E AVONCE BLVD, TEMPE, AZ 85281						
153	KANAKA VALLEY LODGE	1600 E AVONCE BLVD, TEMPE, AZ 85281						
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197	KANAKA VALLEY LODGE	1600 E AVONCE BLVD, TEMPE, AZ 85281						
198	KANAKA VALLEY LODGE	1600 E AVONCE BLVD, TEMPE, AZ 85281						
199	KANAKA VALLEY LODGE	1600 E AVONCE BLVD, TEMPE, AZ 85281						
200	KANAKA VALLEY LODGE	1600 E AVONCE BLVD, TEMPE, AZ 85281						

	NORTH PHOENIX BAPTIST CHURCH/PV CAMPUS	16033 N 32ND ST. PHOENIX, AZ 85032	Carlynn Cott						
151	NORTH VALLEY FREE WILL BAPTIST CHURCH	16220 N 20TH ST. PHOENIX, AZ 85022	Keen Becker (Paragraph 7)	Keen Becker (Paragraphs 5-7)		Keen Becker (Paragraph 7)	Keen Becker (Paragraphs 5-7)		
152	NOWAM AQUATIC CENTER	250 S RYENIE RD. CHANDLER, AZ 85226							
153	OAKS COMMUNITY CHURCH	1650 N 98TH ST., SCOTTSDALE, AZ 85254	Morgan Perry (Paragraph 2) Mark Sonnenklar (Paragraph 3)						
154	OUTLET'S AT ANTIEM	4250 W ANTIEM WAY 110, PHOENIX, AZ 85046	Erin Smith Lawrence Sarabaglio Erin Smith (Paragraph 1) Rivonder Rags			Erin Smith Lawrence Sarabaglio Erin Smith (Paragraph 1) Rivonder Rags		Erin Smith	
155									
156	PALM LAKE SCHOOL	2043 N 16TH DR. PHOENIX, AZ 85035	Aaron Ludwig (Paragraph 18)			Aaron Ludwig (Paragraph 18)	Aaron Ludwig (Paragraph 18)	Aaron Ludwig (Paragraph 18)	
157	PALM SPRING RECREATION CENTER	13800 W OBER VALLEY DR. SUN CITY WEST, AZ 85375							
158	PALM SPRING VALLEY COMMUNITY COLLEGE	1601 N 32ND ST. PHOENIX, AZ 85032							
159	PARADISE VALLEY TOWN HALL	1601 N 32ND ST. PHOENIX, AZ 85032							
160	PEACE LUTHERAN CHURCH	16208 N 80TH AVE. PEORIA, AZ 85362							
161	PEPPERDINE SCHOOLS/STRICT OFFICE	3902 N 9TH AVE. PHOENIX, AZ 85017							
162	PERDUE BAPTIST CHURCH	1686 E QUEEN CREEK RD. GILBERT, AZ 85234							
163	PHOENIX ART MUSEUM	1425 CENTRAL AVE. PHOENIX, AZ 85004							
164	PHOENIX AREA LUTHERAN CHURCH	1601 N 32ND ST. PHOENIX, AZ 85032							
165	PHOENIX UNION HIGH SCHOOL DISTRICT OFFICE	4602 N CENTRAL AVE. PHOENIX, AZ 85018							
166	PROGRESSIVE BAPTIST CHURCH	2551 N AZUCENA AVE. S. CHANDLER, AZ 7 81 8 HORNE, MESA, AZ 85204	Kristina Moss (Paragraph 4-6) James P. Knox (Paragraph 3-4)	Kristina Moss (Paragraphs 4-6)		James P. Knox (Paragraph 3-4)	James P. Knox (Paragraph 3-4)	James P. Knox (Paragraph 3-4)	
167	PYLE DOLL RECREATION CENTER	855 E SOUTHERN AVE. TEMPE, AZ 85282							
168	QUEEN CREEK LIBRARY	2 807 S BILBOMONT RD. QUEEN CREEK, AZ 85 42	Robert D'Amico Del Salvo (Pg. 1-2)						
169	RADANT CHURCH SUN CITY	10701 WISWELL BLVD. SUN CITY, AZ 85373	Aaron Ludwig (Paragraph 28) Amin Othman (Paragraph 18) Civickation (Pg. 1)						
170									
171	SALT RIVER PHARMACY COMMUNITY CENTER	1680 N LONGMORE RD. SCOTTSDALE, AZ 85257							
172	SALT RIVER VALLEY COMMUNITY COLLEGE	2700 N 10TH AVE. GILBERT, AZ 85233							
173	SALT RIVER VALLEY COMMUNITY COLLEGE	2700 N 10TH AVE. GILBERT, AZ 85233	Damon Christian (Paragraph 15)			Damon Christian (Paragraph 14)			
174	SAVING THE FAMILY	129 UNIVERSITY DR. MESA, AZ 85201	Thelma Lavoie (Paragraph 25) Martha Koch (Pg. 1)	Martha Koch (Pg. 1)		Martha Koch (Pg. 2)	Martha Koch (Pg. 2)	Martha Koch (Pg. 2)	
175	SCOTTSDALE ELVIS LODGE PHOENIX 14	6918 E OAK ST., SCOTTSDALE, AZ 85257							
176	SCOTTSDALE WORSHIP CENTER	6908 E OAK ST. RD. SCOTTSDALE, AZ 85254	Brian Jennings (Pg. 1) J. Mann (Pg. 1)	Brian Jennings (Pg. 1) J. Mann (Pg. 1)		Brian Jennings (Pg. 1)			
177	SE REGIONAL LIBRARY/GILBERT	1715 N GREENFIELD RD. GILBERT, AZ 85234							
178	SECOND CHURCH OF CHRIST REFORMERS	1010 N RIVER RD. SCOTTSDALE, AZ 85233	Admission on Exhibit 7 to B&B Report Brad Whitehouse (Paragraph 6-8)	Brad Whitehouse (Paragraphs 4 & 6-8)					
179	SEYMOUR AFB SCHOOL	8919 S WILSON AVE. PHOENIX, AZ 85038	Keen Marie Child Admission on Exhibit 7 to B&B Report Jan Nelson (Paragraph 3-5)	Jan Nelson (Paragraph 3-5)					
178	SHADOW MOUNTAIN HIGH SCHOOL	2902 E SHEA BLVD. PHOENIX, AZ 85028							
180	SHADOW ROCK CONGREGATIONAL CHURCH	138 61 N 11TH AVE. PHOENIX, AZ 85028	Erin Smith Michelle Ingram Jennifer A. Wright Admission on Exhibit 7 to B&B Report Thelma Lavoie (Paragraph 18-17)						
181	SHEPHERD OF THE HILLS UNITED CHURCH OF CHRIST	1624 E LAMAR AVE. PHOENIX, AZ 85018							
182	SHEPHERD'S POSE OF SUN CITY WEST	20450 N STRAUSS BLVD. SUN CITY WEST, AZ 85375	Sharon Burge Aaron Ludwig (Paragraph 15) Rosenberg Stalling (Pg. 12)	Aaron Ludwig (Paragraph 15) (20-30 people in line) Rosenberg Stalling (Pg. 12)					
183	SIMPLY CHURCH - WEST VALLEY	14800 V VAN BUREN ST., GROUND YEAR, AZ 85024	Michael Barnes (Paragraph 7)						
184	SOUTH PHOENIX BAPTIST CHURCH	2001 E BROADWAY RD. PHOENIX, AZ 85032							
185	SOUTH PHOENIX BAPTIST CHURCH	1680 W CLEVELAND BLVD. SUPPHESE, AZ 85067							
186	SOUTH PHOENIX BAPTIST CHURCH	3107 W CHOLLA ST. PHOENIX, AZ 85028							
187	ST ANDREW LUTHERAN CHURCH	7205 N 15TH AVE. GLENDALE, AZ 85301							
188	ST JOHN'S LUTHERAN CHURCH	2335 S WASHINGTON DR. TEMPE, AZ 85283	Dana A. Spencer Christie A. Gibson Michael Merinos	Michael Merinos (20-30 Pg)					
189	ST VINCENT'S CATHOLIC CHURCH	11900 N 16TH PL. PHOENIX, AZ 85028							
190	STANDISH UNITED COMMUNITY CHURCH	20750 N NORTH VALLEY PKWY. PHOENIX, AZ 85028	Erin Smith Luis Rodriguez (Pg. 1)			Erin Smith Luis Rodriguez (Pg. 1) (20 people in line)			
191	STANLEY UNITED METHODIST CHURCH	984 E RIGGS RD. CHANDLER, AZ 85248	Mya Fung Kristina Moss (Paragraph 12-13) Luis Rodriguez (Pg. 1)	Erin Smith Luis Rodriguez (Pg. 1) (20 people in line)					
192	STANLEY VALLEY EAST	2455 S PARKWAY DR. MESA, AZ 85209							
193	STANLEY UNITED METHODIST CHURCH	19324 N 17TH AVE. PHOENIX, AZ 85027							
194	STANLEY UNITED METHODIST CHURCH	2277 E BERTALAN PHOENIX, AZ 85027							
195	STANLEY UNITED METHODIST CHURCH	16000 N GIVIC CENTER PL. SUPPHESE, AZ 85374							
196	SUPPHESE UNION CENTER	15837 N HOLLYWOOD ST. SUPPHESE, AZ 85378	Aaron Ludwig (Paragraph 7)			Aaron Ludwig (Paragraph 10) (20-30 people in line) Baker Bishop (Pg. 1)			
197	TEMPLE HISTORY MUSEUM	1440 E BROADWAY AVE. TEMPE, AZ 85282							
198	TEMPLE MOUNTAIN PARK HEALTH CENTER	1440 E BROADWAY AVE. TEMPE, AZ 85282							
199	THE REFINERY CHRISTIAN CHURCH	19727 WINDYBUSH SCHOOL RD.							
200	TOLLESON COUNCIL CHAMBERS	9555 W VAN BUREN ST. TOLLESON, AZ	Jeffrey W. Crockett (Paragraph 12)						

[illegible]

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403

12/19/2022

HONORABLE PETER A. THOMPSON

CLERK OF THE COURT

V. Felix

Deputy

KARI LAKE

BRYAN JAMES BLEHM

v.

KATIE HOBBS, et al.

DAVID ANDREW GAONA

THOMAS PURCELL LIDDY
COURT ADMIN-CIVIL-ARB DESK
DOCKET CV TX
JUDGE THOMPSON

UNDER ADVISEMENT RULING

After considering the filings and arguments of the Parties and considering all alleged facts and drawing reasonable inferences therefrom in the light most favorable to the non-movant Contestant, the court finds as follows.

BACKGROUND

Contestant Kari Lake initiated this election contest with the filing of her Complaint in Special Action and Verified Statement of Election Contest, naming as Defendants Katie Hobbs, personally as Contestee and in her official capacity as Secretary of State and the following, identified as the "Maricopa County Defendants": 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. On December 5, 2022, Secretary of State Katie Hobbs published the official canvass for the general election, identifying 1,270,774 votes cast for Plaintiff and 1,287,891 for Contestee Katie Hobbs.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403

12/19/2022

Pending before the Court are the three Motions to Dismiss Plaintiff's Complaint and Verified Statement of Election Contest filed individually by the Maricopa County Defendants, Katie Hobbs in her capacity as Secretary of State, and Katie Hobbs in her personal capacity as Contestee. Plaintiff filed a combined Response to the motions, and those who had moved to dismiss individually filed replies. The court heard oral argument on the pending motions to dismiss on December 19, 2022.

DISCUSSION

A motion to dismiss ought to be granted if there is no interpretation of the facts alleged in the verified statement, susceptible to proof, that entitles the plaintiff to relief. *Ariz. R. Civ. P.* 12(b)(6); *see also Coleman v. City of Mesa*, 230 Ariz. 352, 356, ¶ 8 (2012). The court assumes the truth of "well-plead factual allegations and will indulge all reasonable inferences therefrom." *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419, ¶ 7 (2008). "[A]llegations consisting of conclusions of law, inferences or deductions that are not necessarily implied by well-pleaded facts, unreasonable inferences or unsupported conclusions from such facts, or legal conclusions alleged as facts," are not presumed true. *Jeter v. Mayo Clinic Ariz.*, 211 Ariz. 386, 389, ¶ 4 (App. 2005).

A court must apply "all reasonable presumptions" in "favor [of] the validity of an election." *Moore v. City of Page*, 148 Ariz. 151, 155 (App. 1986). "[H]onest mistakes or mere omissions on the part of election officers, or irregularities in directory matters, even though gross, if not fraudulent, will not void an election, unless they affect the result, or at least render it uncertain." *Findley v. Sorenson*, 35 Ariz. 265, 269 (1929). An election challenger is required to structure her verified statement in conformity with the applicable election challenge statute, and this court accordingly cannot grant relief in an election contest that falls outside the statute. *See Donaghey v. Att'y Gen.*, 120 Ariz. 93, 95 (1978); *see also Burk v. Ducey*, No. CV-20-0349-AP/EL, 2021 WL 1380620, at *2 (Ariz. Jan. 6, 2021), *cert. denied*, 209 L. Ed. 2d 735, 141 S. Ct. 2600 (2021) (applying *Donaghey* to dismiss election contest).

I. Count I – Violation of Freedom of Speech

Plaintiff's first count alleges that Defendants Hobbs and Richer's actions constitute "per se violation[s]" of the First Amendment (and its Arizona Constitution cognate) that merit invalidation of the election results. Not only does the verified statement fail to set forth an unconstitutional infringement on Plaintiff's (or anyone else's) speech, even if it did, it would not set forth misconduct under A.R.S. § 16-672(A)(1).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403

12/19/2022

Plaintiff complains of two acts: 1) the Secretary and Recorder's "censorship" of certain social media posts by reporting them to the Department of Homeland Security and Center for Internet Security's ("CISA's") Election Misinformation Reporting Portal and 2) the Recorder's presentation to CISA on "the needs of election officials" concerning purported election misinformation.

It is unclear after briefing what legal argument Plaintiff is attempting to make by use of the word "censorship." In their response to Defendants' motions to dismiss, Plaintiff argued that she need not set forth a First Amendment claim to prevail – but then argues that the challenged acts were illegal. On what basis illegality of these acts could be argued apart from an alleged infringement of the freedom of speech, the verified statement does not say. Though the quintessential censorship—prior restraint—makes no appearance in the verified statement, given that the verified statement frames this as a First Amendment challenge, the court will proceed on that basis.

It is certainly true that a government "has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Police Dep't of Chicago v. Mosley*, 408 U.S. 92, 95 (1972). Indeed, "[c]ontent-based laws—those that target speech based on its communicative content are presumptively unconstitutional" and must pass muster under strict scrutiny. *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). But this analysis is premised on state action—the First Amendment does not restrain private parties from opposing speech, or choosing what to publish. *See Manhattan Comm. Access Corp. v. Halleck*, 139 S.Ct. 1921, 1928 (2019) ("The threshold problem [of state action] is a fundamental one" in the context of a First Amendment claim).

This is the key deficiency with the claim against the Recorder and Secretary's respective reports to the Election Misinformation Reporting Portal—after the report is made, there is no further conceivable state action. Twitter (to take one example) takes down posts that offend its terms of service after a report is made, and neither the Recorder nor the Secretary are alleged to have control over that process or are alleged to have the authority to *compel* such a take-down. *See Amer. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 52 (1999) ("Action taken by private entities with the mere approval or acquiescence of the State is not state action."). Twitter, or any other social media company, is a private actor, and Plaintiff has alleged no fact – taken in the light most favorable to her – that leads to the reasonable inference of government coercion or control by the Recorder or Secretary.

Nor does the First Amendment restrain the government from engaging in speech contrary to the views of some constituents—a proposition which defeats the claim against the Recorder for his presentation to CISA. *See Pleasant Grove City v. Summum*, 555 U.S. 460, 467-68 (2009) ("A government entity has the right to speak for itself. It is entitled to say what it wishes and to select the views that it wants to express.") (cleaned up). As the United States Supreme Court held in

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403

12/19/2022

Matel v. Tam: “When a government entity embarks on a course of action, it necessarily takes a particular viewpoint and rejects others. The Free Speech Clause does not require government to maintain viewpoint neutrality when its officers and employees speak about that venture.” 137 S.Ct. 1744, 1757 (2017). Put another way, nothing in the First Amendment keeps a government official from presenting his views on election misinformation to another government body or a private entity. Both of which, in this case, were free to adopt or reject the Recorder’s position. Nothing about this allegation raises a First Amendment claim.

To the extent that the verified statement raises the Arizona Constitution’s independent, and broader, guarantee of free speech, they do not defend this argument in the briefing. *See generally* Ariz. Const. art. 2 § 6; *see also Brush & Nib Studio, LC v. City of Phoenix*, 247 Ariz. 269, 281-82, ¶ 45 (2019) (state constitutional protection of speech is broader than under federal constitution). In any event, the Court finds no support for the proposition that Arizona’s Constitution somehow restrains the government from articulating a viewpoint to a public or private party.

Moreover, even if Plaintiff successfully pled a First Amendment challenge, she cannot argue that these alleged First Amendment violations constitute election misconduct. The statute requires misconduct “on the part of election boards or any members thereof in any of the counties of the state, *or* on the part of any officer making or participating in a canvass for a state election.” A.R.S. § 16-672(A)(1). (emphasis added). Two types of misconduct are therefore implicated: 1) by election boards or members, and 2) any officer making or participating in a canvass. The Secretary and Recorder are not automatically members of election boards, *see* A.R.S. § 16-531(A), so if Defendants committed misconduct, it must be done while “making or participating in a canvass” to come within the ambit of (A)(1). Both actions alleged to be misconduct took place months prior to canvassing, and consequently cannot be considered misconduct under the statute. Even viewing the allegations in the light most favorable to Plaintiff, she has not stated a claim.

Count I must be dismissed.

Count II – Illegal Tabulator Configurations

Plaintiff alleges that the ballot-on-demand (“BOD”) printers that malfunctioned on election day were not certified and “have vulnerabilities that render them susceptible to hacking” according to a declaration attached to the statement. Plaintiff alleges separately that the BOD printers malfunctioned because of an “intentional action.” Plaintiff alleges that these combined to provide grounds for setting aside election results based on both (A)(1) for misconduct and (A)(4) for illegal votes.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403

12/19/2022

The Court takes Plaintiff to mean two things by this count: 1) the use of BOD printers lacking certification was misconduct by some responsible official and 2) that someone did something to the printers to cause them to misprint ballots.

The former is not enough to state a claim. Plaintiff cites 52 U.S.C. § 21081(b) and A.R.S. § 16-442 for the proposition that devices such as tabulators and election software must be certified under the Help America Vote Act (“HAVA”). But Plaintiff goes further, arguing that the BOD printers, because they fall under the definition of “voting system” under HAVA, must also be certified. Defendants argue, making reference to the title of A.R.S. § 16-442, under Arizona law only the “vote *tabulating* system” is required to be certified pursuant to HAVA. However, this Court will only result to using the title of the statute to help discern legislative intent when the statute is ambiguous. *See* A.R.S. § 1-212; *Secure Ventures, LLC v. Gerlach in and for Cnty. of Maricopa*, 249 Ariz. 97, 100, ¶ 7, n.1 (App. 2020).

Recourse to such methods is unnecessary where context is fruitful. *State v. Martinez*, 202 Ariz. 507, 510, ¶ 15 (App. 2002) (courts “give the words of a statute their commonly accepted meaning unless . . . a special meaning is apparent from the context.”) From context alone, the Court agrees with Defendants that the “machines and devices” in subsection (B) are the same as those in (A). And thus, only machines and devices that record or tabulate votes must be certified in compliance with HAVA to comply with Arizona law. A.R.S. § 16-442(A)-(B). Moving from there to A.R.S. § 16-444, the Court finds the definition of “vote tabulating equipment” must apply to: any “apparatus necessary to automatically examine and count votes as designated on ballots and tabulate the results.” A.R.S. § 16-444(A)(7).

Consequently, a ballot printer, which neither examines nor counts, nor tabulates, is not a component of the vote tabulating system and need not be laboratory certified. *See also* A.R.S. § 16-449(B)-(C) (requiring logic and accuracy testing of “electronic ballot *tabulating* systems”). While the federal definition of “voting system” certainly is more expansive, and could conceivably include ballot printers, the federal “voting system” definition does not limit the devices that Arizona can employ for printing ballots, and in fact prescribes neither a certification requirement for printers nor a federal remedy (i.e. reconducting an election) for failure to certify equipment. *See* 52 U.S.C. § 21081(b). Nor does that statute even reference laboratory certification. *Id.* Indeed, since state use of federally accredited laboratories for certification is discretionary, a federal penalty would make no sense. *See* 52 U.S.C. § 20971(a)(2). Thus, the lack of certification of any BOD printer cannot give rise to a claim under A.R.S. § 16-672(A)(4).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403

12/19/2022

The twin allegation that the BOD printer failures render the vote illegal also fails. An illegal vote is one that is either cast by a voter who is ineligible to vote, *see Moore v. City of Page*, 148 Ariz. 151, 156-7 (App. 1986), or one cast in a manner that – by statute – *invalidates* the vote. *See Miller v. Picacho Elementary Sch. Dist. No. 33*, 179 Ariz. 178, 180 (1994). What Plaintiff is essentially arguing is essentially a fruit of the poisonous tree argument – that contamination in one part of an election process renders the result illegal. However, that is not the framework given in either the election statutes (which, again, this Court must construe in favor of an election result) or the over a century of Arizona caselaw interpreting these statutes. Plaintiff cannot point to a single case where an illegal vote was a *missing* vote. To the extent such a claim is cognizable, it is under (A)(5) and is not raised here. Because Plaintiff does not allege that the BOD printer failure either 1) caused a vote to be cast by an ineligible voter, or 2) caused a vote to be cast *and counted* when the vote *should not have been*, she has not stated a claim under subsection (A)(4).

While the Court finds that Plaintiff does not state a claim under A.R.S. § 16-672(A)(4), the Court finds that Plaintiff does state a claim under (A)(1). Viewing the Complaint in the light most favorable to the non-movant, Plaintiff specifically alleges that a person employed by Maricopa County interfered with BOD printers in violation of Arizona law, resulting in some number of lost votes for Plaintiff. Plaintiff is entitled to attempt to prove at trial that 1) the malfeasant person was a covered person under (A)(1); 2) the printer malfunctions caused by this individual directly resulted in identifiable lost votes for Plaintiff; and 3) that these votes would have affected the outcome of the election.

Plaintiff initially cited to *Hunt* for the proposition that, instead, if this count survives it must result in a revote of the entire election because of “fraudulent combinations coercion and intimidation.” *See Hunt v. Campbell*, 19 Ariz. 254, 265-66 (1917); *see also Findley v. Sorenson*, 35 Ariz. 265, 269 (1929). But Plaintiff has not alleged fraud, nor plead it with particularity. *See Ariz. R. Civ. P. 9(b)* (fraud must be plead with particularity); *see also Hunt*, 19 Ariz. at 264 (“[Fraud] ought never to be inferred from slight irregularities, unconnected with incriminating circumstances; nor should it be held as established by mere suspicions, often having no higher origin than partisan bias and political prejudices.”) (citation omitted). Indeed, on pages 6 and 7 of Plaintiff’s response to the instant motions and at oral argument, she disclaimed her previous theory of fraud. The Court therefore dismisses any claim under Count II alleging fraud.

Plaintiff has, nonetheless, also alleged intentional misconduct sufficient to affect the outcome of the election and thus has stated an issue of fact that requires going beyond the pleadings. The Court takes no position as to the evidentiary weight it will give Plaintiff’s proffered experts at trial and notes that, at trial, it must indulge all reasonable assumptions in favor of the election when weighing the evidence before it. However, evidence is not before the Court at the motion to dismiss stage—pleadings, made under the auspices of Rule 11 are. Accordingly, Plaintiff

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403

12/19/2022

must show at trial that the BOD printer malfunctions were intentional, and directed to affect the results of the election, and that such actions did actually affect the outcome.

Defendants' motions are denied as to Count II as narrowed above.

Count III – Invalid Signatures on Mail-In Ballots

Plaintiff next argues that the signature validation methodology utilized by Maricopa County did not comply with the statute. Specifically, Plaintiff argues that the review of mail-in ballot signatures, conducted pursuant to the Maricopa County Election Manual was inadequate. She makes reference to Maricopa County signature reviewer declarations that are critical of the process used to cure ballots that, at first glance, did not match the signature on file for that voter. But the Defendants argue that this claim is subject to laches.

Laches is an equitable doctrine that precludes claims that are brought 1) after an unreasonable delay where 2) that unreasonable delay prejudices the other parties, the administration of justice, or the public. *League of Ariz. Cities and Towns v. Martin*, 219 Ariz. 556, 558, ¶ 6 (2009); *Prutch v. Town of Quartzsite*, 231 Ariz. 431, 435, ¶ 13 (App. 2013). This doctrine bars procedural challenges by election contestants after an election has already taken place. *See e.g., Allen v. State*, 14 Ariz. 458, 462 (1913); *Tilson v. Mofford*, 153 Ariz. 468, 470 (1987) (“[P]rocedures leading up to an election cannot be questioned after the people have voted, but instead the procedures *must* be challenged before the election is held.”) (citing *Kerby v. Griffin*, 48 Ariz. 434, 444-46 (1936)). A challenger may not “ambush an adversary or subvert the election process by intentionally delaying a request for remedial action to see first whether they will be successful at the polls.” *McComb v. Super. Ct. in and for Cnty. of Maricopa*, 189 Ariz. 518, 526 (App. 1997) (quoting *United States v. City of Cambridge, Md.*, 799 F.2d 137, 141 (4th Cir. 1986)).

“Election procedures generally involve ‘the manner in which an election is held.’” *Sherman v. City of Tempe*, 202 Ariz. 339, 342, ¶ 10 (2002) (quoting *Tilson*, 153 Ariz. at 470). The reconciliation of ballot envelope signatures with voter file signatures is an election procedure, as this process takes place in the course of the election itself – the casting and counting of ballots. Thus, absent a reason for the delay or a lack of prejudice, the challenge may not proceed after the election has taken place.

Considering first Plaintiff’s delay, Plaintiff makes much of a report by Arizona Attorney General Mark Brnovich – issued on April 6, 2022 – that reported that the “early ballot affidavit signature verification system in Arizona, and particularly when applied to Maricopa County, may be insufficient to guard against abuse.” Whatever the merits of that position, applied to these facts, Plaintiff was on notice by April (at the latest) of the procedural defects she now raises in her challenge and offers no explanation for the delay. *See Mathieu v. Mahoney*, 174 Ariz. 456, 459

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403

12/19/2022

(1993) (applying laches to election challenge based on publicly available documents). To the extent she relies on a ballot review conducted of 2020 ballot signatures, the report Plaintiff relies on was presented in June 2022, again months before the instant election. To bring a belated action under these circumstances is not justifiable.

As for prejudice, as another department of this Court indicated in dismissing another election claim, any procedural challenge post-election “ask[s] us to overturn the will of the people as expressed in the election.” *Finchem v. Fontes*, CV2022053927, at 5 (Maricopa Cnty. Super. Ct. Dec. 16, 2022) (quoting *Sherman*, 202 Ariz. at 342, ¶ 11). This is an exceedingly high degree of prejudice against both the parties and the public, which this Court is loath to excuse. Therefore, because Plaintiff was on notice (at a minimum) months before the election as to the nature of the ballot signature reconciliation process and chose not to challenge it then, her claim is barred by laches.

Count III must be dismissed.

Count IV – Ballot Chain of Custody

Plaintiff next claims that violations of the County Election Manual pertaining to chain of custody constitute misconduct pursuant to A.R.S. § 16-672(A)(1). Specifically, Plaintiff argues that: 1) the ability of employees of the county’s ballot contractor to add ballots of family members and 2) the lack of an Inbound Receipt of Delivery form both constitute misconduct. This is in addition to complaints about the handling of ballots in the 2020 election. The allegations concerning 2020 have no bearing on this contest, and the Court does not consider them.

Plaintiff alleges that ballots, of some number, were added by Runbeck employees to the total in violation of A.R.S. § 16-1016. Further, Plaintiffs allege that the lack of Receipt of Delivery forms were violations of state law that permitted an indeterminate number of votes to be added to the official results, constituting misconduct. The Court, drawing inferences in the light most favorable to Plaintiff as it must at this stage, finds that Plaintiff has stated a claim of misconduct by a person under control of Maricopa County that affected the canvass under A.R.S. § 16-672(A)(1). Defendants argue that laches applies. However, laches do not apply to contests arising from *violation* of election day procedures as opposed to challenges to the procedures themselves. *See McComb*, 189 Ariz. at 525-26 (laches inapplicable where “little time” existed before election to file suit). Delay, to the extent there was any, was reasonable here.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403

12/19/2022

Defendants dispute the lack of compliance with chain of custody laws and claim that Plaintiff has misunderstood the forms required. As presented, whether the county complied with its own manual and applicable statutes is a dispute of fact rather than one of law. This is true as to whether such lack of compliance was both intentional and did in fact result in a changed outcome.

Consequently, Plaintiff has stated a claim under A.R.S. § 16-672(A)(1).

Defendants' motions are denied as to Count IV.

Count V: Equal Protection and Count VI: Due Process

In her Counts V and VI, Plaintiff asserts that various facts she alleges warrant findings of, respectively, "intentional discrimination" and "a due process violation," under the United States or Arizona Constitution. The nearest Plaintiff comes to suggesting the relevance of these allegations to her contest is her citation to A.R.S. Section 16-672(A)(1), which permits election contest on the ground of official misconduct, and (A)(4), which permits election contest on the ground of illegal votes.

Even if the Court assumes officials' alleged violations of equal protection and due process in the conduct of an election would constitute "misconduct" contemplated by Section 16-672(A)(1), allegations of such violations are merely cumulative and unnecessary to successfully plead an election contest. An instance of misconduct by either an election board or a person making or participating in a canvass need not result in a harm against a protected class in order to be successful. A bootstrapped constitutional argument takes the verified statement beyond the remedies provided by the election contest statute, which is impermissible. *See Donaghey*, 120 Ariz. at 95.

Nor is it apparent from the Complaint that Plaintiff has successfully pled a successful due process or equal protection challenge at all. *Cf. Aegis of Ariz., L.L.C. v. Town of Marana*, 206 Ariz. 557, 570 (App. 2003) (government acts in violation of law, in bad faith, or beyond jurisdiction do not necessarily equate to a due process or equal protection challenge); *Vong v. Aune*, 235 Ariz. 116, 123, ¶ 31 (App. 2014) (equal protection protects against discriminatory classifications). Plaintiff does not clearly allege that an actor actually discriminated against a class (i.e. Republicans) or that this discrimination could actually alter the outcome given ticket splitters even among election day voters. Plaintiff has trouble even at this stage drawing a through-line from purported discrimination to well-pled impact.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403

12/19/2022

In any event, a finding of either violation is not necessary ultimately to succeed in an election contest under either Section 16-672(A)(1) or (A)(4). The addition of this constitutional argument is unnecessary. Even assuming equal protection or due process claims lie in the circumstances surrounding the 2022 election, they are outside of the scope of Plaintiff's Section 16-672 election contest.

Count V and Count VI must be dismissed.

Count VII – Secrecy Clause

Plaintiff argues that the mail-in ballot procedure is unconstitutional under the Arizona Constitution's Secrecy Clause. *See* Ariz. Const., art. VII, § 1. Whatever merit this challenge has, it is squarely barred by laches for the same reasons as Count III. The current absentee ballot statute was adopted in 1991. 1991 Ariz. Sess. Laws, ch. 51, § 1. Lake could have brought this challenge at any time in the last 30 years. To do so now is to invite confusion and prejudice when absolutely no explanation has been given for the unreasonable delay. Laches conclusively bars this challenge as to the instant election.

Count VII must be dismissed.

Count VIII: Incorrect Certification

As noted in Ms. Hobbs's motions in her capacity as Secretary of State and Contestee, Plaintiff's Count VIII contains no new factual allegations. The Count only asserts that "the cumulative impact of [Counts I through VII] invalidates significantly more Hobbs votes than the certified margin of victory for Hobbs" and that the court will have to declare Hobbs' certification of election invalid and declare that Plaintiff is elected governor. *See* A.R.S. § 16-676(C). The court reads Count VIII as Plaintiff's request for the specific relief available under A.R.S. Section 16-676(C) if any of Counts I through VII are sufficiently proven but dismisses it as an independent cause of action because it is not a cause of action in itself.

Count VIII must be dismissed.

Count IX: Inadequate Remedy

In her Count IX, Plaintiff asserts that, "[t]o the extent that the special nature of these proceedings precludes bringing concurrent federal claims against Maricopa County's 2022 general election, this Court has jurisdiction under Arizona's Uniform Declaratory Judgment Act to declare that the remed[ies] provided by A.R.S. § 16-672 [are] inadequate to protect those federal rights and requirements."

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403

12/19/2022

First, insofar as the “federal claims” to which Plaintiff here refers are those included in her complaint, the “special nature of these proceedings” does *not* preclude concurrently bringing those claims against appropriate parties, so Plaintiff’s Count IX invocation of the Court’s jurisdiction to provide declaratory relief is unnecessary and outside the scope of an election challenge.

Second, in any case, the Court may not provide the suggested relief. A court may provide declaratory judgment only over a “justiciable controversy between plaintiff and defendant that is ripe for adjudication.” *Moore v. Bolin*, 70 Ariz. 354, 355 (1950). The specific question of whether A.R.S. § 16-672 is adequate to protect Plaintiff’s “federal rights and requirements” was not in controversy between Plaintiff and the Defendants before declaratory action was brought. “No proceeding lies under the declaratory judgments acts to obtain a judgment which is merely advisory or which merely answers a moot or abstract question,” *Id.* at 357 (quoting 16 Am. Jur., Declaratory Judgments, § 9, p. 282), such as the adequacy of Section 16-672 to remedy federal claims. Beyond all this, the request for the court to concoct a new remedy is a straightforward invitation for judicial legislation which must be denied. *See McNamara v. Citizens Protecting Tax Payers*, 236 Ariz. 192, 195-96, ¶¶ 10-11 (App. 2014) (declining in campaign finance context to “infer a statutory remedy . . . that the legislature eschewed”) (quoting *Pacion v. Thomas*, 225 Ariz. 168, 169, ¶ 9 (2010)). Count IX must be dismissed because it is unnecessary by its own terms and requests an unavailable remedy.

Plaintiff in her reply argues that “the Court has a justiciable controversy as to whether it may consider at trial claims in an election-contest action,” Resp. at 30, but this misunderstands the nature of a declaratory action. The “justiciable controversy” requirement is provided by a plaintiff’s assertion of “a legal relationship, status or right” in which the party has a definite interest and “the denial of it by the other party.” *Original Apartment Movers, Inc. v. Waddell*, 179 Ariz. 419, 420 (App. 1993) (quoting *Morris v. Fleming*, 128 Ariz. 271, 273 (App. 1980)). The relationship of the Plaintiff and the Defendants exists prior to the bringing of the declaratory action and does not arise, as claimed here, by the Defendants defending against a claimed right in the midst of litigation.

Count IX must be dismissed.

Count X: Constitutional Rights

In her Count X, Plaintiff alleges that certain actions of Maricopa County may have violated the Equal Protection and Due Process Clauses of the Fourteenth Amendment. Plaintiff states that such violations may be remedied by this court under 42 U.S.C. § 1983 independently of A.R.S. § 16-672 and then claims that, “[a]ccordingly, [Plaintiff] is entitled to an order setting aside the election in its entirety and ordering a new election.” The statement is correct insofar as “this

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403

12/19/2022

Court”—the superior court as Arizona’s “single unified trial court of general jurisdiction,” *see Marvin Johnson, P.C. v. Myers*, 184 Ariz. 98, 102 (1995)—may hear such claims under Section 1983. However, when, as here, the gravamen of her complaint is the improper conduct of an election, her challenge must conform with the provisions of Section 16-672. *See Donaghey*, 120 Ariz. at 95. This Court may hear Plaintiff’s civil rights claims in a separate action, but they must be dismissed from this election contest as out of the scope of Section 16-672.

Count X must be dismissed.

CONCLUSION

IT IS ORDERED dismissing all counts of Plaintiff’s Verified Statement of Election contest except for Count II and Count IV.

IT IS FURTHER ORDERED affirming this Court’s prior order concerning ballot inspection to take place at 8:00 a.m. on Tuesday, December 20, 2022.

IT IS FURTHER ORDERED accepting and adopting Maricopa County’s recommendation, appointing Lynn Constable as the Court’s inspector pursuant to A.R.S. § 16-677(B).

****FURTHER ORDERS AND TRIAL INSTRUCTIONS****

The Court originally allocated two days for the trial of this election challenge. That allocation of time was based on the original nine counts of the Petition being heard. The ruling on the Motions To Dismiss has reduced the number of remaining counts substantially. Therefore, the original time estimate should be more than adequate to accommodate a full hearing on the merits.

The compressed time for presentation is based not only on the time constraints imposed by A.R.S. § 16-676 and the short time frame before January 2, 2023, but the parties’ expressed desire to leave at least some time to file an appeal of this Court’s rulings before January 2, 2023.

The time allocated means each side will have five and a half hours available for opening statement, direct examination of witnesses, cross examination of opposing witnesses, re-direct examination of witnesses and closing argument. Thirty minutes is deducted from each side’s allocated six hours to allow for a 15-minute break each morning and afternoon.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403

12/19/2022

IT IS ORDERED that the parties shall meet and confer to provide the Court with the list of witnesses to be called by each party together with anticipated time required for direct, cross, and re-direct examinations as well as opening statements and closing arguments by 12:00 noon on Tuesday, December 20, 2022.

IT IS FURTHER ORDERED that the parties shall either have physically marked and exchanged all hearing exhibits or uploaded all electronic exhibits to be used at the hearing to the Electronic Exhibits Portal of the Clerk of Maricopa County Superior Court not later than 12:00 noon on Tuesday, December 20, 2022.

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

- - -

KARI LAKE,

Contestant/Plaintiff,

CV2022-095403

- vs -

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.

December 21, 2022

Courtroom 206, Southeast Facility
Mesa, Arizona

BEFORE: THE HONORABLE PETER A. THOMPSON, J.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BENCH TRIAL - DAY 1

Reported by:

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- - -

I N D E X

WITNESSPAGE

Stephen Richer

By Mr. Blehm

13, 46

By Mr. LaRue

38

R. Scott Jarrett

By Mr. Olsen

49, 75

By Mr. LaRue

71

Clay Uday Parikh

By Mr. Blehm

81, 131

By Mr. Liddy

114

Heather Honey

By Mr. Blehm

151, 235

By Mr. LaRue

212

Bradley Bettencourt

By Mr. Olsen

247

By Ms. Ford

258

Mark Sonnenklar

By Mr. Olsen

262, 282

By Ms. Ford

274

- - -

P R O C E E D I N G S

(Proceedings begin, 9:00 a.m.)

THE COURT: This is the time set for the hearing in CV2022-095403. This is Kari Lake v. Katie Hobbs, et al.

I'll take appearances, please.

MR. BLEHM: Bryan Blehm and Kurt Olsen on behalf of Plaintiff, Kari Lake, Your Honor.

THE COURT: Okay. Who do you have with you at table?

MR. BLEHM: Oh, this is our audio/visual technician, Your Honor. Is he fine there?

THE COURT: He is fine there. That's fine.

MR. BLEHM: I figured it's easier than me yelling across the courtroom.

THE COURT: That's fine.

For defendants?

MS. KHANNA: Your Honor, Abha Khanna from Elias Law Group, on behalf of Governor-Elect Hobbs.

THE COURT: Thank you.

MR. LIDDY: Your Honor, Thomas Liddy on behalf of Maricopa County Board of Supervisors and Maricopa County Recorder Stephen Richer. With me is Joseph LaRue and Karen Hartman-Tellez, and Emily Craiger for The Burgess Law Group is of counsel for defense.

1 THE COURT: Thank you.

2 MR. GOANA: And, Your Honor, Andy Goana with
3 Coppersmith Brockelman and Bo Dul with States United
4 Democracy Center, on behalf of Secretary of State Hobbs,
5 in her official capacity.

6 THE COURT: Thank you. All right.

7 I appreciate the list of witnesses and
8 anticipated time for examination for each witness in
9 this matter. We'll endeavor to stay as close as we can
10 to that schedule.

09:02:26

11 There are two matters that have been brought
12 to my attention that I'll address in a second. As a
13 housekeeping matter, there are two sides to the case.
14 I'm not going to divide the time by attorneys, because
15 it's inconceivable to me that I would affirm the
16 election, or make a ruling as to one defendant and not
17 the other. So as far as defendants go, I will leave it
18 to you as to who will be the lead to examine witnesses.

19 As far as argument goes, I can hear from
20 each of you with regard to closing argument, that type
21 of thing. But for objection's sake, I will assume, if
22 you wish me to, that all three defendants join in any
23 objection made by any attorney who is handling a
24 particular witness.

09:02:59

25 Will that be a fair process?

1 MS. KHANNA: Yes, Your Honor, I appreciate
2 it.

3 THE COURT: Mr. Liddy?

4 MR. LIDDY: Yes, Your Honor.

5 THE COURT: Mr. Goana?

6 MR. GOANA: Yes, Your Honor. We agree.

7 THE COURT: Very well then. All right.

8 There were two motions that were filed last night and
9 responses that I've considered. The first is there's a
10 motion to exclude plaintiffs expert witnesses. I've
11 considered those. What I intend to do at this time, to
12 expedite things, I believe that under the local rule
13 it's been briefed. I have everything I need to decide
14 it, so I don't need oral argument on that, because we
15 need to get started on the actual trial.

16 With regard to the motion to exclude
17 Plaintiff's experts, Rule 702(a) allows me to consider
18 expert testimony if they have qualifications or
19 expertise beyond that of, in this instance, is going to
20 be the Court with regard to particular matters relating
21 directly to this case. I find that is the case, that
22 the experts do have some expertise that will allow them
23 to opine to certain things. However, that's subject to
24 foundation, and it is also going to be -- to relevance
25 because the motion went as far as to seek to strike the

1 reports of both experts. I haven't had those offered in
2 evidence, but I will tell you that my inclination is if
3 the witness is testifying, it's cumulative to have a
4 report; and furthermore, the reports also contain
5 opinions that go beyond the remaining counts that we
6 have for trial. So my position on that, I will -- if
7 you seek to admit them, I will rule at that time, but
8 I've given you an indication of what you might expect.

9 The other motion under Rule 807, there are
09:05:16 10 many, many affidavits in this case. I've read them.
11 This is a trial to the Court. I am persuaded that under
12 Rule 807, given the intersection of Rule 807 with the
13 time constraints set by the legislature for holding
14 election contest, that there is no alternative
15 reasonable method that the Plaintiffs have to get 219
16 witnesses in front of me and allow cross-examination.

17 Second of all, those affidavits that are
18 attached to Mr. Sonnenklar's affidavit that deal with
19 observations by voters, poll workers, or persons present
09:06:10 20 on the voting day, November 8, 2022, are under oath; and
21 I have no reason to suspect there's any indicia of
22 unreliable information in the affidavit. So I would
23 grant the request to enter those into evidence, but
24 Plaintiff's exhibit numbering system left something to
25 be desired, and the clerk has now numbered your

1 exhibits. You identified them by description and not
2 number. So what I need is a clarification of which
3 exhibits you are actually offering for the record, not
4 right now, because I'm not going to take up your time to
5 do that. At the first opportunity, I want you to go
6 through and the record -- for the record what I am
7 asking you to do is to provide me the exhibit numbers
8 for what are attached in your pleadings, Plaintiff, as
9 Exhibits A1 through A220 of your Complaint.

09:08:17 10 Also, it appears that you're seeking to
11 admit affidavits, or you will be seeking to admit
12 affidavits that were attached to the declaration of Mr.
13 Olsen. You're acting as counsel, Mr. Olsen, so under
14 Rule 3.7 of the Rules of Professional Conduct say you
15 can't be a lawyer and a witness. So unless it's a
16 matter that's something I'm willing to take judicial
17 notice of, I don't think anything in this case is
18 something I'm going to take judicial notice of. So I'm
19 not admitting your affidavit, but it's the attachments
09:08:55 20 to the affidavit that I believe that are being sought to
21 be entered.

22 And to that end, specifically, Exhibit 1
23 attached to your affidavit, Mr. Olsen, is not relevant,
24 nor is Exhibit Number 2, because of the rulings of the
25 19th.

1 Exhibit 3, same thing; Exhibit 4, same
2 thing; and Exhibit 5, same thing.

3 Next, Exhibits 6, 7, 8, 9, 10, 11 -- well,
4 10, are -- fall within what I believe or construe as is
5 that 807 exception to allow for observations that took
6 place at the time and place of the election and the
7 persons who are the declarants. The others, the
8 declaration of Mr. Baris, he's an expert. He's retained
9 for the purpose of litigation. He's got a report, et
10 cetera, and I've talked about that. The declaration of
11 Shelby Bush is also not pertinent to what I have before
12 me. The affidavit of Clay Parikh, is that how I
13 pronounce it?

14 MR. OLSEN: Yes, Your Honor.

15 THE COURT: And Kelly KJ Custer, they are
16 all prepared in anticipation of litigation, and I'm not
17 admitting those under 807, okay?

18 So what I need for you to do is to get with
19 the defendants, show them your exhibit numbers, get me
20 those numbers, and then I can address admitting those at
21 a later point.

22 Now, after having said all that, either at
23 the time we move to admit them actually or right now, I
24 can allow the defendants to take some of their time to
25 make an additional record. I've read what you've wrote

1 already in your responses. That is a matter of record
2 and I'm saying right here in open court that that is
3 preserved as an objection to what I'm doing. If you
4 have something additional you want to add as a record,
5 I'll let you do it now, or I can let you do it at the
6 time that Mr. Olsen complies with my request or
7 identifies specific exhibit numbers.

8 MS. KHANNA: Nothing further, Your Honor.
9 Thank you.

09:11:51 10 MR. LIDDY: We'll rest on our papers, Your
11 Honor. We reserve the right to object if something has
12 no probative value to the remaining counts.

13 THE COURT: Thank you, Mr. Liddy.

14 Obviously, I'm the Trier of Fact. This
15 trial is going to be conducted with the eye that I am
16 able to give things the weight that I deem appropriate
17 anywhere from zero to great weight. And so I will rely
18 upon you, counsel, on both sides, to present argument or
19 to present the case in a manner that indicates to me
09:12:27 20 what you think has more weight.

21 To that end, I'm a little concerned that
22 you've allocated yourself 15 minutes and five minutes
23 for closing argument, so you may want to rethink that.

24 So I believe those are all the matters that
25 I have before we can get started.

1 MS. KHANNA: One housekeeping item, Your
2 Honor. If we could, defendants would like to invoke the
3 rule to exclude any non-expert testifying witnesses from
4 the courtroom.

5 THE COURT: Join?

6 MR. BLEHM: We have no objection.

7 MR. OLSEN: No objection, Your Honor.

8 THE COURT: Well, the rule has been invoked.
9 I'm going to have to rely upon counsel, because I don't
09:13:12 10 know these people by sight, if they are persons who are
11 non -- nonparties, who are witnesses to this case who
12 are present. They must leave the courtroom, not discuss
13 their testimony, before or after they testify, with
14 anyone other than the attorneys.

15 MR. LIDDY: Your Honor, Mr. Scott Jarrett,
16 the Elections Department Director, is here as a party
17 representative, but he's also listed as a witness, Your
18 Honor.

19 THE COURT: Very well. I'll accept the
09:13:47 20 designation. Very well. Ready to proceed?

21 MR. OLSEN: Yes, Your Honor.

22 THE COURT: Ready to proceed, Defense?

23 MS. KHANNA: Yes, Your Honor.

24 THE COURT: Mr. Liddy?

25 MR. LIDDY: Yes, Your Honor.

1 THE COURT: Mr. Goana?

2 MR. GOANA: Yes, Your Honor.

3 THE COURT: Very well. Mr. Olsen or Mr.
4 Blehm.

5 MR. BLEHM: Your Honor, we would like to
6 start with Recorder Stephen Richer. My understanding is
7 he's online and prepared to give his testimony now.

8 THE COURT: Okay. We have Mr. Richer then.

9 Very well. If you would swear Mr. Richer
09:14:47 10 in, please.

11 STEPHEN RICHER,
12 called as a witness, having been duly sworn, virtually
13 testified as follows:

14 THE COURT: Very well. Mr. Blehm, you may
15 proceed.

16 MR. BLEHM: Is there a way I can see the
17 witness via video, or is it just an audio feed, Your
18 Honor?

19 THE COURT: I'm not sure. I think the
09:15:15 20 answer that I received, someone with technical
21 knowledge, is the witness needs to turn his camera on.

22 DIRECT EXAMINATION

23 BY MR. BLEHM:

24 Q. Recorder Richer, can you please turn your camera
25 on? Thank you very much.

1 All right. Could you please state your full name
2 for the record?

3 A. Stephen Richer, R-I-C-H-E-R.

4 Q. What is your occupation?

5 A. Maricopa County Recorder.

6 Q. Maricopa County Recorder. How long have you held
7 that position?

8 A. I was elected in the November 2020 Election. I
9 took office on January 4, 2021.

09:15:51 10 Q. Thank you. And as Maricopa County Recorder, you
11 play a pivotal role in Arizona elections, do you not?

12 A. I am statutorily responsible for recording
13 operations, voter registration and early voting.

14 Q. With respect to your recording of operations,
15 does that include maintaining written chain of custody
16 for all ballots?

17 A. The recording operations I refer to are the
18 recording of public documents, mostly related to the
19 real estate industry, such as titles and deeds.

09:16:31 20 Q. And, all right, do you maintain in your office
21 with respect to your duties, election-related duties,
22 chain of custody documents for ballots?

23 A. Yes, sir.

24 Q. All right. Are those required by law?

25 A. Yes.

1 Q. Yes. And Arizona [sic] is significantly a larger
2 county than any other in the State of Arizona, correct?

3 A. That's correct.

4 Q. All right. And so is it fair to say that as
5 Maricopa County goes, so, too, goes Arizona?

6 A. I don't follow.

7 Q. Well, the population center in Maricopa County is
8 significantly larger than all the other counties; isn't
9 that correct?

09:17:18 10 A. That's correct, but it's not dispositive, as was
11 shown in the superintendent of public instructions race
12 and other statewide races

13 Q. And a Republican won that race; is that correct?

14 A. I believe that race is in recount.

15 Q. Okay. Thank you very much.

16 All right. So explain to the Court then what
17 your role is in running elections in Maricopa County?

18 A. As mentioned before, I'm responsible for
19 registering voters, so intaking those, doing all the
09:17:50 20 background checks, confirming identity, confirming
21 location, maintaining the voter registration database,
22 having that available at the cut-off date, which this
23 election was 28 days before the election date.
24 Ordinarily, that's 29 days before Election Day, but this
25 year we had Columbus Day on the 29th day, and so it

1 moved to the 28th day.

2 On the 27th day, we mail out early ballots to all
3 people who are either on the Active Early Voting List or
4 who have requested a one-time early ballot, that this
5 General Election was approximately 1.9 million
6 registered voters out of the approximately 2.4 million
7 registered voters overall in Maricopa County.

8 We send those out. We're also responsible for
9 all forms of early voting; that could include dropping
09:18:47 10 off a ballot at a drop box, that could include dropping
11 off a ballot at a voting location, that could include
12 going to an early voting location, getting a new ballot
13 printed, that's still governed by early voting laws,
14 meaning it has to go in an envelope, that envelope has
15 to be sealed and signed, and it comes back to us.

16 My office is also responsible for things like
17 UOCAVA, which is U.S. Uniformed and Overseas Voting.
18 Now, that begins actually 45 days under federal law
19 before the election.

09:19:25 20 Q. Okay.

21 A. We are not responsible for Election Day
22 operations or emergency voting, which is the weekend
23 before Election Day, or for ballot tabulation.

24 Q. All right. And so those responsibilities lie
25 with the Maricopa County Board of Supervisors, correct?

1 A. That's correct, and that's true of all 15
2 counties.

3 Q. All right. And so I believe you mentioned
4 drop-boxes. You were responsible for those and for
5 ensuring that the ballots get from drop-boxes to
6 Maricopa County, correct?

7 A. That's correct.

8 Q. Okay. And you testified earlier you're required
9 by law to maintain chain of custody. That includes
09:20:04 10 chain of custody from pick up at drop box to delivery to
11 Maricopa County; isn't that correct?

12 A. That's correct.

13 Q. Okay. Does that also include when they leave
14 Maricopa County and they are delivered to Runbeck?

15 A. They never leave our chain of custody because
16 they are with our personnel at all times; but, yes, they
17 go to Runbeck.

18 Q. Okay. So are Runbeck your personnel?

19 A. No.

09:20:31 20 Q. No. They are a third-party vendor, correct?

21 A. Correct.

22 Q. Are you the only county in the State of Arizona
23 that uses a third-party vendor for intake of its
24 ballots?

25 A. Maricopa County has been doing this since the

1 1990s --

2 Q. My question was a simple yes or no. Are you the
3 only county in the State of Arizona that uses a
4 third-party vendor for intake of your ballots?

5 A. No.

6 Q. Okay. And so was your testimony just a moment
7 ago with respect to my question on chain of custody with
8 delivery of Maricopa County ballots from your custody
9 and control at MCTEC to Runbeck, a third-party vendor,
10 that they are not governed by chain of custody laws?

11 A. They are.

12 Q. They are. And that would also apply to the
13 return of those ballots from the third party vendor
14 Runbeck to MCTEC; is that correct?

15 A. I'm not sure I follow, but the --

16 Q. Chain of custody. Are you required to maintain
17 chain of custody from third-party vendor Runbeck back to
18 Maricopa County?

19 A. Chain of custody is preserved throughout all
20 times of the early voting process. It's documented when
21 it goes to Runbeck. It never leaves the sight of our
22 personnel. It's documented when it comes back to MCTEC,
23 correct.

24 Q. So you document every transported ballots from
25 MCTEC to Runbeck?

1 A. Correct.

2 Q. What kind of forms do you use?

3 A. It's a ballot transportation slip. It's a white
4 form.

5 Q. Does that include the total number of ballots
6 you're taking to Runbeck?

7 A. It does include the total number of ballots for
8 early voting.

09:22:24 9 Q. Okay. Thank you. That would include Election
10 Day ballots?

11 A. Election Day ballots are treated a little
12 differently, if you're talking about Election Day
13 ballots that are voted onsite, those are under the
14 domain of Board of Supervisors. If you're talking about
15 early ballots that are dropped off on Election Day,
16 those come and those all come to MCTEC first where they
17 are gathered, and then they are transferred over to
18 Runbeck where they are counted by our people at Runbeck
19 because they have a high-speed counter, because that's
09:22:56 20 the only day in which approximately 300,000 early
21 ballots come in on one day.

22 Q. Okay. Is it your testimony here today that you,
23 when Election Day happens, are no longer legally
24 responsible for the ballots that are dropped into drop
25 boxes?

1 MR. LARUE: Your Honor -- Your Honor, this
2 line of questioning is calling for a legal conclusion
3 from the witness. I object.

4 MR. BLEHM: Your Honor, he understands the
5 laws. They apply to his job.

6 THE COURT: You're asking for the witness's
7 understanding; is that correct?

8 MR. BLEHM: I'm asking if that's his
9 understanding. He just testified that the drop-boxes in
10 the voting centers, Your Honor, are under the control of
11 the Maricopa County Board of Supervisors.

12 MR. LARUE: Your Honor, with that being the
13 question, we withdraw the objection.

14 THE COURT: That's fine. I was -- Mr.
15 Richer, these questions --

16 THE WITNESS: Yes, sir.

17 THE COURT: -- these questions are directed
18 to you and your understanding. And if you understand
19 the question, we'll presume that that's the case. If
20 you don't understand the question, you can ask to have
21 it rephrased.

22 Do you need this last question rephrased, or
23 do you remember it, sir?

24 THE WITNESS: Well, perhaps, because that
25 was an inaccurate representation of --

1 THE COURT: Wait.

2 THE WITNESS: -- of my position.

3 THE COURT: Mr. Richer?

4 MR. BLEHM: Okay. Mr. Richer --

5 THE COURT: We'll let Mr. Blehm ask a
6 question. Proceed.

7 BY MR. BLEHM:

8 Q. Mr. Richer, with respect to drop boxes in vote
9 centers on Election Day, who is it that is responsible
10 for those ballots?

11 A. Voting locations on Election Day are overseen by
12 Board of Supervisors in all 15 counties.

13 Q. I understand that -- I understand that, Recorder,
14 but you're not answering my question.

15 Is it not true that the drop boxes are under your
16 purview as Recorder?

17 A. When the ballots get back to MCTEC, the early
18 ballots, we then process those. We oversee them; we
19 organize them; we get them all aligned in the same
20 manner; we count them. We then send them with our
21 personnel to MCTEC so somebody can be scanned and imaged
22 overnight so at 7:00 a.m. on Wednesday morning we could
23 begin the signature verification process for those
24 290,000 ballots, the early ballots, that were dropped
25 off on Election Day. I was distinguishing those from

1 the day-of ballots which are cast in person which is
2 overseen by the Maricopa County Board of Supervisors.

3 Q. Okay. So the statute -- are you familiar with
4 the statute, first of all, that governs chain of custody
5 of ballots?

6 A. I am generally familiar with Title 16 and
7 Title 19.

8 Q. Does the statute draw a distinction between
9 Election Day drop box ballots and early ballots that
10 take place before Election Day?

09:26:01 11 A. It does.

12 Q. Okay. Does it draw a distinction with respect to
13 your responsibility to provide chain of custody for all
14 drop box ballots?

15 A. I don't follow the line of questioning.

16 Q. All right. Does the statute require you to
17 maintain chain of custody for all drop box-related
18 ballots, say "shall" or "may"?

19 A. We must maintain chain of custody for all early
09:26:35 20 ballots.

21 Q. Okay. So now, again, you're parsing with early
22 versus those dropped at a polling center in a drop box,
23 correct?

24 A. I'm not attempting to. I'm just distinguishing
25 those from ballots that are cast in person on Election

1 Day. There are early ballots that are dropped off on
2 Election Day. We maintain chain of custody for those
3 ballots.

4 Q. Let me ask you this: Do you know if any chain of
5 custody exists for the transport of ballots from drop
6 boxes at vote centers to MCTEC --

7 A. It does.

8 Q. -- on Election Day. It does, okay. So you can
9 tell me exactly how many ballots left each vote center
10 on Election Day that came from a drop box?

09:27:23

11 A. I can tell you how many early ballots we received
12 on Election Day.

13 Q. Okay. Can you tell me, based on chain of custody
14 documents, how many ballots left the drop boxes from the
15 vote centers and were transported to MCTEC?

16 A. Yes.

17 Q. Based on documents that you have in your
18 possession?

19 A. Yes.

09:27:55

20 Q. Okay. Thank you very much.

21 You're familiar with EPM, correct?

22 A. Are you referring to the Elections Procedures
23 Manual?

24 Q. Yes, I am. Thank you very much.

25 A. I am.

1 Q. Okay. And that also contains specific language
2 with respect to early ballots and drop box ballots;
3 isn't that correct?

4 A. That's correct.

5 Q. Okay. And it contains the same statutory
6 language as "shall" as opposed to "may"; is that
7 correct?

8 A. I can't recollect.

9 Q. Okay. When you first took office in Maricopa
09:28:33 10 County, were there some concerns about drop box chain of
11 custody in Arizona?

12 A. If you're asking if there were in the general
13 public, yes; and I'm certainly aware of many things that
14 have been alleged over the last two years, perhaps most
15 notable of which was the documentary *2000 Mules*.

16 Q. All right. And are you aware of a report issued
17 by Arizona Attorney General with respect to drop box
18 ballot chain of custody?

19 A. I am, and that pertained to the 2020 General
09:29:17 20 Election.

21 Q. The 2020 General Election, okay. Well, and that
22 was the basis of my question.

23 When you took office, did you make any changes to
24 chain of custody forms based upon that report?

25 A. Based upon that report which came out in

1 April 2022, no.

2 Q. No. Okay. So you changed forms prior to that
3 period of time?

4 A. We did change forms prior to that period of time,
5 correct.

6 Q. All right. Why did you do that?

7 A. For the same reason that we changed personnel,
8 for the same person that we added personnel, for the
9 same reason that we revisited all our processes, for the
10 same reason we're rebuilding our voter registration
11 database, for the same reason that we rebuilt the
12 website, because I'm in this office to try to move it
13 forward. I hope to leave it better than I inherited it,
14 and I'm sure the next person will want to do the same.

15 Q. Okay. Thank you very much. And so you testified
16 to me that you know you can tell exactly how many
17 ballots were transported by vote center -- from vote
18 center drop boxes to MCTEC on Election Day. I believe
19 -- do you recall Tweeting at about 11:00 a.m., I believe
20 it was -- could we go ahead and pull up Exhibit 61?

21 That's the Court's exhibit number. I'm
22 sorry, G1 Bates number 007815.

23 THE COURT: For the record, I need to have
24 the official number.

25 MR. BLEHM: Yes, Your Honor, and that's why

1 I said 61.

2 MR. OLSEN: It's 63.

3 MR. BLEHM: 63, my mistake, Your Honor. 63.

4 THE COURT: Thank you.

5 BY MR. BLEHM:

6 Q. Are you able to see what's on -- that's not it.

7 Be right here -- G1.

8 MR. OLSEN: It's appearing on the laptop.

9 BY MR. BLEHM:

09:32:00 10 Q. While we're pulling this up, you help supervise
11 the transport of EVBTS containers; is that correct, on
12 Election Day?

13 A. Yes, I was part of the team that spent the whole
14 evening organizing the early ballots as they came back
15 to MCTEC.

16 Q. Okay. And you did not at any time see any chain
17 of custody forms attached to those EVBTS bins, did you?

18 A. I don't quite know what you mean. We scan in
19 every single box as it comes in.

09:32:39 20 Q. Okay. And what does that scan tell you, where it
21 came from?

22 A. So when the early ballots are removed from their
23 blue container at the voting location, they are placed
24 in a Tupperware.

25 Q. Okay. You've gone beyond the question I asked.

1 They unload these blue containers from the vehicle or
2 the truck, whatever, it's a Ryder rental or personal
3 van, PV, and they unload them and place them on what's
4 called the blue line; isn't that correct?

5 A. No.

6 Q. No? Where do they put them?

7 A. Well, your previous statement was inaccurate.

8 Q. Okay. Do they contain any documentation

9 contained on the bins for chain of custody from

09:33:26 10 transport to the polling -- from the vote center to
11 MCTEC?

12 A. Yes.

13 Q. They contain those forms on Election Day?

14 A. Yes.

15 Q. On Election Day, okay?

16 A. Yes.

17 Q. So if we were to show video of you opening some
18 of those bins, would we be able to see those forms?

19 A. There's a piece of paper on the side of the bin.

09:33:53 20 The bin is also affixed with two scannable serialized
21 tamper evidence seals that we scan in upon receipt. We
22 then take that piece of paper that is on the side of it
23 after we have broken those seals, and then we begin
24 processing those early ballots on Election Day.

25 Q. Okay. So that piece of paper tells you exactly

1 how many ballots were in each bin?

2 A. No, not on Election Day.

3 Q. Okay. That's the nature of my question. You
4 don't have any idea how many ballots were in those bins,
5 do you?

6 A. We count them at MCTEC.

7 Q. Okay. You count them at MCTEC, okay. And then
8 do you create --

9 A. Correct.

09:34:37 10 Q. -- a chain of custody form on Election Day at
11 MCTEC?

12 A. Yes, before it goes to Runbeck.

13 Q. Have you produced all of those in response to a
14 FOIA request that was submitted to your office?

15 A. I don't think we're bound by federal law.

16 MR. LARUE: Objection, Your Honor.

17 BY MR. BLEHM:

18 Q. Have you submitted them in respect to public
19 records request under Arizona law?

09:35:05 20 A. Sorry. I see Joe standing up, but I don't know
21 if that's --

22 MR. BLEHM: He's sitting. I can see him,
23 too. He's sitting.

24 THE WITNESS: I believe we have.

25 BY MR. BLEHM:

1 Q. Okay. And so on Election Day, it would have been
2 easy for you to figure out how many ballots you
3 received?

4 A. Yeah. Well, we had to get them all in and it was
5 quite a process, and I don't believe --

6 Q. You could look at the forms and add the numbers,
7 correct, you could have a staff member do that?

8 A. No, we added them up. They are not counted at
9 the individual voting locations. They are counted when
09:35:44 10 they get back to MCTEC and then they are recounted at
11 Runbeck.

12 Q. All right. And so you reported then on, I
13 believe, it was the 9th, that's the day after the
14 election, that there were 270,000 early ballots
15 received; is that correct?

16 A. That was my estimate at the time.

17 Q. No, you Tweeted it, correct?

18 A. If you say so.

19 Q. And then you said that again in the afternoon in
09:36:13 20 a press conference; is that correct?

21 A. I said I believe there were at least 275,000
22 early ballots dropped off on Election Day.

23 Q. All right. And was that the same number you
24 reported to the Secretary of State's Office on that day?

25 A. I do not report to the Secretary of State's

1 Office. That's handled by the tabulation side.

2 Q. Okay. And that would be the Maricopa County
3 Recorder?

4 A. I am the Maricopa County Recorder. No, that
5 would be the Maricopa County Board of Supervisors.

6 Q. All right. So they count the ballots when they
7 come in?

8 A. No.

9 Q. All I want to know is, does anybody know when
09:36:53 10 those ballots leave the polling centers, the voting
11 centers, how many are in the bins?

12 A. When the ballots leave the -- the early ballots
13 leave the voting centers, no, they are not counted at
14 the voting centers.

15 Q. So nobody knows how many are in the bins when
16 they arrive at MCTEC, correct?

17 A. Correct.

18 Q. But according to your testimony, they contain
19 documents that tell you how many were in the bins?

09:37:19 20 A. No, they contain chain of custody documents.

21 Q. And it's your testimony that you count them at
22 MCTEC?

23 A. Correct.

24 MR. BLEHM: All right. Can we go ahead and,
25 I guess, just pull up a different exhibit, if that one

1 is not working? (Pause.)

2 BY MR. BLEHM:

3 Q. Do you recall sending an e-mail on the 10th to
4 the Board of Supervisors essentially saying that you
5 really have no idea how many ballots there are?

6 A. No.

7 Q. You don't recall that?

8 A. I do not recall that.

9 Q. All right. So I'm not finding it and I want to
09:39:24 10 get over this really quickly. Do you recall on the 10th
11 of November on 2022 at 2:13 p.m. sending an e-mail to
12 Ray Valenzuela, Scott Jarrett, Megan Gilbertson, Matthew
13 Roberts, Philip Mosley, as well as cc'ing Bill Gates and
14 a few others that states -- and I'll read this verbatim
15 if anybody wants to challenge it -- "unable to currently
16 reconcile SOS listing with our estimates from
17 yesterday."

18 Do you recall sending that e-mail?

19 A. That -- if you say that I said that, then I said
09:40:03 20 that.

21 MR. LARUE: Your Honor, I would like to
22 lodge an objection. We need to see the exhibit if he's
23 going to use it.

24 MR. BLEHM: There you go, please. Correct
25 the record if I quoted that wrong.

1 THE COURT: That will be fine. In fact,
2 that's required, if you're going to use an exhibit that
3 you show the other side before.

4 MR. BLEHM: I am. Understood, Your Honor.
5 My apologies.

6 THE COURT: Is that one of the --

09:40:36

7 MR. BLEHM: This is, Your Honor. This is
8 Exhibit 69. But for some reason, we did come in and
9 test this system with that computer with this AV
10 technician prior to trial, Your Honor, and everything
11 functioned perfectly fine. We're not sure what the
12 disconnect is at this time.

13 THE COURT: Okay.

14 MR. BLEHM: Any objection?

15 MR. LARUE: No. No objection, Your Honor.
16 Thank you.

17 MR. BLEHM: I would move to admit then
18 Exhibit 69, Your Honor.

09:41:02

19 THE COURT: No objection? I'm asking if
20 they had an objection.

21 MR. LARUE: The e-mail that I just looked
22 at, there's no objection. I don't know if that's number
23 69 or not, but assuming it is, there's no objection to
24 the admission.

25 MR. BLEHM: Thank you, Your Honor.

1 THE COURT: You're avowing to me that it is
2 69?

3 MR. BLEHM: I'm pretty sure. Yes, Your
4 Honor.

5 THE COURT: Pretty sure isn't going to get
6 us there.

7 MR. BLEHM: Yeah, Exhibit 69, Your Honor.

8 THE COURT: Thank you. Then Exhibit 69 is
9 admitted.

09:41:27 10 MR. LARUE: Your Honor? Your Honor, I'm
11 sorry, before we move on, they provided letter numbers,
12 can we get the letter numbers so that we can just keep
13 track of...

14 MR. BLEHM: I'll have a list provided to
15 Counsel that gives our numbers with the Court's numbers,
16 Your Honor.

17 THE COURT: Thank you. But for the interim,
18 I'd like to use the Court's numbering system.

19 MR. BLEHM: Understood, Your Honor, and
09:41:58 20 that's what I'm doing. What I said, Exhibit 69, Your
21 Honor.

22 THE COURT: Thank you.

23 MR. BLEHM: And my AV tech knows which
24 exhibit that is.

25 THE COURT: Thank you. We're going to have

1 to pause to make sure they understand what you're
2 referring to before we go forward.

3 MR. LARUE: Your Honor, I would like to
4 request that despite me saying that I have no objection
5 to the admission, assuming it's 69, that we confirm that
6 exhibit number before the Court actually admits it.

7 THE COURT: That's what you're supposed to
8 do at the time he's seeking to admit it. I'm not going
9 to put an asterisk next to it.

09:42:34 10 MR. LARUE: There's no way, Your Honor,
11 without seeing the number system and making sure that
12 we're not objecting to the right exhibit.

13 THE COURT: Okay. Can you pull Exhibit 69
14 up?

15 MR. LARUE: Your Honor, he's shown me the
16 list. There's no objection to the admission.

17 THE COURT: Gentlemen, let me do this for
18 you: Because the numbers were not correctly -- the
19 exhibits were not correctly labeled by Plaintiff, my
09:43:05 20 clerk worked on this until 11 o'clock last night.

21 MR. BLEHM: Understood, Your Honor.

22 THE COURT: So I'm not -- let me finish --
23 she has a list that she's using to correlate what you
24 originally submitted with the numbers that have been
25 assigned. So what we will do is once you are referring

1 to an exhibit for the record, Mr. Blehm, as you've done,
2 I appreciate that, then she will provide the Defendants
3 with the reference that is associated with your list
4 that you shared with them yesterday; is that fair?

5 MR. BLEHM: Your Honor, if it please the
6 Court, I can cite both. I can say Court's exhibit,
7 defense exhibit.

8 THE COURT: That would be -- that would be
9 fine -- well, if the Defendants are all right with that.
10 Are you good with that?

11 MR. LARUE: Yes, Your Honor.

12 THE COURT: Very well then. Thank you, Mr.
13 Blehm. Let's move on.

14 BY MR. BLEHM:

15 Q. Recorder Richer, did you have anyone from your
16 office call Runbeck on December 10th asking them how
17 many ballots they processed?

18 A. Not at my direction.

19 Q. Not at your direction. On November 10th, did you
20 know actually how many ballots you had processed with
21 respect to drop boxes? I mean, yes or no?

22 A. I mean, process is not even a term we use, so I'm
23 a little confused at best to that, and also we do it at
24 Runbeck. It is not done by Runbeck, it is our personnel
25 at Runbeck under the observation of the parties.

1 Q. Okay. So do you recall reporting to the
2 Secretary of State on the 10th of December that there
3 were actually 200 -- or would that have been the
4 Maricopa County Board of Supervisors? My apologies.

5 A. My office and I do not report to the Secretary of
6 State's board.

7 Q. All right. And so the numbers you were putting
8 out of 275,000 on December 9th were not correct; is that
9 correct?

09:44:58 10 A. I believe I said 275,000 plus.

11 Q. Okay. And so the correct number, as reported at
12 least by the Maricopa County Board of Supervisors, are
13 you familiar with that as being 292,000?

14 A. That sounds right.

15 Q. Okay. And are you familiar with Maricopa County
16 delivery receipts?

17 A. I -- well, which particular receipt? I know them
18 under a different name.

19 Q. Maricopa County delivery receipts are those --
09:45:30 20 Maricopa County uses to deliver ballots to Runbeck?

21 A. The white slip that's the -- the one that has two
22 dates, serial number, transport staff, that's --

23 Q. That's fine. I'm not going to spend the time if
24 you don't understand your own documents.

25 MR. LARUE: Objection, Your Honor.

1 THE COURT: Mr. Blehm, that's not a
2 question. That was a comment.

3 MR. BLEHM: Thank you.

4 THE COURT: Strike that.

5 MR. BLEHM: I'll strike the comment and the
6 question, Your Honor.

7 THE COURT: That's your first strike.

8 BY MR. BLEHM:

9 Q. Okay. Has the Attorney General opened
09:46:05 10 investigation into the 2022 Maricopa County election?

11 A. No.

12 Q. You don't know? Have you received --

13 A. No, no, no, no. I said no.

14 Q. Yes, I understand that. My next question is:
15 Have you received correspondence from the Arizona
16 Attorney General's Office asking you to explain certain
17 components of the election?

18 A. They were almost exclusively directed to the
19 Board of Supervisors. I responded. I have not received
09:46:32 20 a response back from Ms. Wright.

21 Q. Okay. Almost exclusively, correct?

22 A. I believe there were some questions about
23 provisional ballots.

24 MR. BLEHM: Okay. I have no further
25 questions at this point.

1 THE COURT: Thank you.

2 If you would like to proceed.

3 MR. LARUE: Your Honor, is there any way
4 that we can have the camera on me so that the Recorder
5 can see me?

6 THE WITNESS: I could not see Mr. Blehm, I
7 believe it was, asking the questions.

8 THE COURT: I'm not sure if it's automated
9 or not.

09:47:15 10 MR. LARUE: Okay. We can move on. That's
11 all right.

12 THE WITNESS: I can see Mr. Blehm now and I
13 can see... I can see the both attorneys' benches.

14 MR. LARUE: It's all right. We can move on.

15 THE COURT: Please.

16 CROSS-EXAMINATION

17 BY MR. LARUE:

18 Q. Good morning, Mr. Recorder. Good to see you.

19 A. Good morning, Joe.

09:47:34 20 Q. You don't have to identify the exact location,
21 but where are you right now?

22 A. Panama City.

23 Q. All right. And so are you on vacation?

24 A. First time in four years.

25 Q. All right. And have you been busy the last

1 couple of years?

2 A. I have been. It's been exciting and worthwhile.

3 Q. All right. And just for the record, Recorder,
4 would you normally appear in court without a suit?

5 A. I most certainly would not, and I apologize for
6 any breach of sartorial standard. It was all I had
7 available to me when I was made aware that this might be
8 a possibility.

9 Q. All right. Thank you, Recorder. I'm sure Your
09:48:16 10 Honor understands.

11 I want to ask just a few questions to follow up
12 with what Mr. Blehm asked you.

13 First, do you have in your employ a co-director
14 of the Elections Department for early voting?

15 A. I do. His name is Mr. Valenzuela. He would be
16 more knowledgeable about these topics than I.

17 Q. Okay. And I know you're very hands-on, but you
18 have appointed him to oversee the Recorder's early
19 voting operations; is that correct?

09:48:50 20 A. Him and many others, but he leads those, correct.

21 Q. Okay. Would Ray's oversight extend to the
22 receipt of early ballots at MCTEC?

23 A. It would.

24 Q. Do you have an employee who oversees public
25 records requests?

1 A. We do.

2 Q. And you have a small team that handles public
3 records requests; isn't that right?

4 A. We have a team that handles constituent
5 relations, but there is only one individual who is
6 exclusively tasked with public records request, and she
7 has been quite busy over the last two years.

8 Q. Yeah, quite busy. I don't expect you to know the
9 exact number, but do you have a reasonable estimate how
09:49:37 10 many public records request your office has received
11 this calendar year?

12 A. I believe it's about 1,500, which represents an
13 approximately ten-fold increase over previous years.

14 Q. Okay. And do you personally respond to public
15 records requests, as the Recorder?

16 A. I do not.

17 Q. You do not, okay. And so while you're very
18 hands-on on election operations, would you say you're
19 hands-on on public records requests?

09:50:07 20 A. I have a system that is built, but no, I do not
21 see that, and that's by design, because a lot of the
22 public records requests make requests of my e-mails
23 specifically. And so I think it's a good practice to
24 delegate that to other people, especially people who are
25 not the target of as many requests.

1 Q. So a line employee?

2 A. Correct.

3 Q. Okay.

4 A. A celebrated and appreciated line employee.

5 Q. Very much so, Recorder.

6 So as you sit here today and as you're sitting
7 here testifying, do you actually know whether your
8 public records team has completely responded to a public
9 records request for chain of custody to documents?

09:51:00 10 A. I do not.

11 Q. Okay. Thank you.

12 On election night, in the first few days
13 following the election, do you know whether your office
14 and the Board of Supervisors sometimes make estimates
15 regarding how many ballots were returned?

16 A. We try to make estimates as quickly as we can
17 while still doing it responsibly, which is why I gave
18 that 275,000 plus, because as I'm sure you'll
19 appreciate, candidates, campaigns have a strong interest
09:51:35 20 in assessing the size of remaining ballots to run their
21 own models to assess whether it's over or whether they
22 still have a chance; and so we try to get those out,
23 like I said, as quickly as possible while also being
24 responsible.

25 Q. Okay. So when you wrote 270,000 plus or 275,000

1 plus, I don't remember the exact number, but when you
2 included that "plus," what exactly were you trying to
3 communicate?

4 A. The "plus" I thought was a clear indication that
5 it was an estimate. Obviously it was 275,000 followed
6 by three zeros, which would be unlikely if that were the
7 final number. I apologize if that wasn't clearly
8 conveyed.

9 Q. I think it was clear, Recorder.

09:52:31 10 Do you know whether -- whether sometimes
11 estimates are done by counting the trays of ballots by
12 counting the number of trays in which ballots are?

13 A. Correct, and that is what we are doing throughout
14 the evening. So we'll get these between 10:00 p.m. and
15 midnight on election night. This is mostly early ballot
16 drop-offs. Now, we received 120,000 more early ballot
17 drop-offs on election night than the office had ever
18 received before, so as these boxes were coming in and as
19 we were organizing them, we were assessing them by tray
09:53:10 20 before confirming the official count, and that's how I
21 most likely got that estimate number.

22 Q. Okay. Thank you, Recorder.

23 Again, I'm not -- I'm not asking you to be a
24 legal expert, I'm asking do you know or do you have an
25 understanding.

1 Do you have an understanding of whether the law
2 requires that early ballots be counted at the vote
3 center?

4 A. Early ballots actually cannot be counted at the
5 vote center because they are governed still by early
6 voting law, which is my domain, if you will. We have to
7 do a whole bunch of things before we can properly
8 tabulate the ballot that is inside that early ballot
9 envelope, and that includes scanning it in, that
09:54:01 10 includes imaging it, that includes signature verifying
11 it, that includes sending it to a signature verification
12 audit queue, that includes sending it to a bipartisan
13 processing team. We keep all tabs all through this
14 process.

15 If somebody, for instance, puts two ballots in
16 one envelope or if they -- a ballot is damaged inside of
17 an envelope, that will be marked by the bipartisan team,
18 and that's actually what I spent a lot of my time on
19 Thursday, Friday and Saturday in that big room doing.
09:54:32 20 And then at that point, we send them in batches of 200
21 with that slip, that pink and yellow and white slip,
22 into the Board of Supervisors so they can then tabulate
23 them.

24 Q. Okay. Thank you, Recorder. And I believe you
25 testified earlier -- well, let me just ask you because I

1 don't have what you testified in front of me.

2 Is it true that early ballots are transported in
3 a secure and sealed transport container back to -- from
4 the vote center back to MCTEC?

5 A. Yeah, I'll add a little more color to that, if
6 you don't mind.

7 Q. Please.

8 A. So prior to Election Day, they make daily sweeps.
9 And when I say "they," I mean a bipartisan team of two
09:55:18 10 temporary employees of the Maricopa County Recorder's
11 Office. They go to, say, a voting location where
12 there's a ballot drop box. They will sign the form.
13 The person at the location will sign the form. They
14 will write down the tamper evidence seals on the
15 Tupperware bin in which the early ballots are placed
16 after removing them from that big blue container. They
17 will write down the seals. They will make sure that the
18 seals are affixed. They'll put back in the truck.
19 We'll have one of these for every single box. Then when
09:55:55 20 they go back to MCTEC, they'll make sure that the seals
21 are still affixed. They'll make sure that the numbers
22 are the same. They'll scan them in, and then they'll
23 break those seals, and then they will count the number
24 of early ballots there. And they will sign off at the
25 MCTEC as well.

1 Q. Thank you, Recorder. Just a few more questions
2 and we are done.

3 First, would you state for the record your party
4 affiliation?

5 A. I'm a registered Republican.

6 Q. Okay. Recorder, I'm going to ask you a very
7 direct question.

8 Did you personally do anything to sabotage the
9 election, the 2022 Election, including some type of
09:56:36 10 activity performed on the printers to make the printers
11 not print correctly?

12 A. Absolutely not. And as mentioned previously,
13 Election Day operations are not under my statutory
14 control, but certainly -- irrespective of that, I
15 certainly wouldn't have done that. I feel that the
16 early voting process would -- with the August Primary,
17 the November General Election, we'll continue to analyze
18 it, we'll continual to hopefully improve it. I'm
19 already talking with the state legislature about maybe
09:57:10 20 changes to our law so that we can continue to improve
21 the system. But no, to answer your question directly,
22 Joe, that would be unacceptable. And the first thing
23 that I tell every single new employee is that integrity
24 is of the utmost importance to this office, mostly
25 because of the values that we should seek to cherish,

1 and because of the intense spotlight. And so even
2 something like an e-mail like that that Mr. Blehm
3 referenced, we would, of course, document and we
4 produced. I assume that e-mail was produced by our
5 public records office, and we do that because it's the
6 appropriate thing to do and because we have nothing to
7 hide.

8 Q. Okay. Final question Mr. Recorder, and thank
9 you.

09:57:49 10 Are you aware of anybody who purposefully
11 interfered with the printers' ability to print ballots
12 dark enough to be read by precinct-based tabulators?

13 A. Absolutely not.

14 MR. LARUE: Thank you, Mr. Recorder. And we
15 appreciate your time for being here.

16 Nothing further, Your Honor.

17 THE COURT: Thank you.

18 MR. BLEHM: I've just got a couple of quick
19 questions.

09:58:13 20 REDIRECT EXAMINATION

21 BY MR. BLEHM:

22 Q. Recorder, isn't it true that you did not support
23 my client in the election for Governor's race?

24 A. I don't believe I ever made a single public
25 comment about Ms. Lake's candidacy or her as a person

1 prior to November 8, 2022.

2 Q. Isn't it true that you ran a political action
3 committee that was opposed, and spent money opposing my
4 client for Governor?

5 A. That is 100 percent false.

6 Q. 100 percent false?

7 A. Correct.

8 MR. BLEHM: Thank you. And I have no
9 further questions of this witness, Your Honor.

09:58:50 10 THE COURT: May we excuse the witness?

11 MR. BLEHM: Yes.

12 MR. LARUE: Yes.

13 THE COURT: Thank you, Mr. Richer. You're
14 excused, sir.

15 THE WITNESS: And thank you. And, Your
16 Honor, apologize again for my attire.

17 THE COURT: Mr. Blehm, did you have
18 something before I excused him?

19 MR. BLEHM: No, I don't.

09:59:06 20 THE COURT: Thank you. You're excused, Mr.
21 Richer.

22 THE WITNESS: Thank you.

23 (Witness excused.)

24 MR. BLEHM: I just want to take about a
25 minute to address the technical issue, Your Honor.

1 As I've informed this Court, my audio and
2 video specialist and I did come to this courtroom and
3 test our audio video equipment on this Court's system,
4 Your Honor, and we used a cable that was attached in
5 this desk here that is no longer present. Everything
6 functioned perfectly at that test, Your Honor. And so
7 we came today and that cable is gone and we're using a
8 different cable. It's my understanding the staff is
9 working with the technical side to try and fix what's
10 happening, but I wanted the Court to be aware that we
11 did do our due diligence and we come before this Court
12 to do that.

13 THE COURT: Thank you, Mr. Blehm. Okay.
14 Who would be your next witness?

15 MR. OLSEN: Your Honor, Plaintiffs would
16 call Mr. Jarrett.

17 THE COURT: All right. Sir, if you'll make
18 your way in front of my clerk, she will swear you in.

19 ROBERT SCOTT JARRETT,
20 called as a witness, having been duly sworn, testified
21 as follows:

22 THE COURT: Thank you, sir. If you would
23 just make your way over to the witness stand.

24 As soon as you're ready, Mr. Olsen, you may
25 proceed.

1 MR. OLSEN: Yes, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. OLSEN:

4 Q. Good morning, Mr. Jarrett.

5 A. Good morning.

6 Q. Could you please state your full name for the
7 record?

8 A. Yeah, Robert Scott Jarrett.

9 Q. And what is your occupation?

10:01:05 10 A. I am the Co-Elections Director. I oversee
11 in-person voting and tabulation.

12 Q. How long have you held that position?

13 A. So I was appointed by the Board of Supervisors,
14 the Maricopa County Board of Supervisors, in June 2019.

15 Q. Okay. Can you please explain to the Court what
16 your role is in overseeing elections in that capacity?

17 A. Yeah. So I oversee all in-person voting
18 operations, which -- for that I actually report up to
19 both the Maricopa County Board of Supervisors and the
10:01:37 20 Recorder, so that would be the early in-person, as well
21 as the Election Day operations. That includes
22 recruitment and training of poll workers, that includes
23 our warehouse operations for distributing all materials
24 and supplies out to voting locations, and then I also
25 oversee all tabulation functions.

1 Q. When you say it includes all tabulation
2 functions, what do you mean by that?

3 A. So that would include tabulation at our central
4 count facility, so where we had about 84 percent of the
5 early ballots come through and be tabulated at central
6 count. That would also include at our voting locations
7 where we have an on-site tabulator as well. So it would
8 include the programming of that equipment or the staff
9 that do the actual programming. I oversee them and
10 supervise them, as well as any of the tabulation that
11 happens on-site, so the poll workers and the training on
12 how they would assist voters as they are inserting their
13 ballots into those tabulators.

14 Q. And are you following the procedures set forth in
15 the 2019 Election Procedure Manual when you're
16 performing the tests of the tabulators prior to an
17 election?

18 A. That's correct.

19 Q. And would that -- would those procedures require
20 you to perform logic and accuracy testing?

21 A. That's correct.

22 Q. And what is logic and accuracy testing?

23 A. So a logic and accuracy test, that is a two
24 different sets of tests for a federal or a statewide
25 election that requires that a test be performed by the

1 County itself as well as a test performed by the
2 Secretary of State. So I don't oversee the Secretary of
3 State's logic and accuracy test, I have to make the
4 equipment available for the Secretary of State's logic
5 and accuracy test. For the County's logic and accuracy
6 test, that is to run test ballots through; and for the
7 County's tests, it's thousands of test ballots through
8 our tabulation equipment, both the central count
9 tabulation equipment as well as the tabulation equipment
10 that would be used at the vote centers, to make sure
11 that they are accurately programmed to tabulate those
12 ballots.

13 Q. And when you say that to make sure that they are
14 accurately programmed to tabulate those ballots, what
15 are you referring to being programmed?

16 A. So for every election, we have to design a unique
17 election program to tabulate the specific ballot,
18 because each ballot is unique or specific to an
19 election. In Maricopa County, we had over 12,000
20 different ballot styles, and so -- and that were for all
21 the various different precincts that we have in Maricopa
22 County, as well as our early ballot style or provisional
23 ballot style, and our Election Day ballot style. So,
24 essentially, making sure that the tabulation equipment
25 will then be able to read a ballot and then be able to

1 determine how that -- if a voter fills in that ballot
2 that it will accurately count the votes for those
3 ballots.

4 Q. So it's very important for the tabulator to read
5 the ballots, that it would be properly programmed with
6 respect to the ballot definition, correct?

7 A. That's correct.

8 Q. And Maricopa County uses ballot on-demand
9 printers, correct?

10:04:47 10 A. That's correct.

11 Q. And what is a ballot on-demand printer?

12 A. So a ballot on-demand printer, we have two
13 different ballot on-demand printers, one is a Lexmark
14 printer and one is an OKI printer, and those allow us at
15 our voting locations to print any one of those 12,000
16 ballot styles.

17 Q. Prior to performing logic and accuracy testing
18 prior to the 2022 General Election, did you perform, or
19 did your office perform logic and accuracy testing with
10:05:18 20 test ballots from ballot on-demand printers in the
21 precinct-based tabulators?

22 A. So, yes, we did. We printed ballots from our
23 ballot on-demand printers, and those were included in
24 the tests that the Secretary of State did. We also
25 performed stress testing before the logic and accuracy

1 tests with ballots printed from our ballot on-demand
2 printers that went through both central count tabulation
3 equipment as well as our precinct-based tabulators for
4 the voting locations.

5 Q. And how are those test ballots configured in
6 terms of the size of the ballot?

7 A. They were the exact same size of the ballot that
8 we were using in -- in the General Election.

9 Q. And what size was that, sir?

10:06:02 10 A. 20-inch ballot.

11 Q. 20-inch ballot.

12 What would happen if a ballot was printed out of
13 a ballot on-demand printer at the vote center if it was
14 printed with a 19-inch image on 20-inch paper and run
15 through the tabulator?

16 A. You need to be more specific with your question.

17 Q. So we talked about the ballot definition, and for
18 the 2022 General Election, Maricopa was operating with a
19 20-inch ballot image, correct?

10:06:47 20 A. That's correct.

21 Q. And the tabulators at the vote center were
22 programmed for -- to accept and read a ballot with a
23 20-inch image, correct?

24 A. That's correct.

25 Q. What would happen if the ballot on-demand printer

1 printed out a 19-inch image on the 20-inch paper and ran
2 it through the tabulation?

3 A. We do not specifically test for that, because in
4 this specific election, because none of the ballots on
5 our ballot on-demand printers had a 19-inch ballot, they
6 all had a 20-inch ballot. So I can answer a question
7 about our testing related to the 20-inch ballot that was
8 installed on all of our ballot on-demand printers.

9 Q. If a 19-inch image was installed -- or strike
10 that. If a 19-inch ballot image was printed out on a
11 print -- a ballot on-demand printer and run through the
12 tabulation that was configured for the 2022 General
13 Election, would that tabulator accept that ballot or
14 reject it?

15 MR. LARUE: Objection, Your Honor. First,
16 this calls for speculation, and, second, I think the
17 witness just said he hasn't run that test. I don't --

18 THE COURT: I got your objection,
19 speculation, without speaking objection.

10:08:09 20 So, Mr. Jarrett, if you've understood the
21 question, you can answer it. If you haven't understood
22 the question, you can ask to have it rephrased; or if
23 you don't know, don't guess. Just tell us you don't
24 know.

25 So, do you want the question re-asked or

1 rephrased, sir, before you answer?

2 THE WITNESS: So I'm willing to say that I
3 don't know specifically for this 2020 Election. I know
4 based on my historical -- or the 2022 Election. I know
5 based on my historical knowledge, the timing marks on
6 the ballot matter, and it would need a 20-inch ballot to
7 run through that tabulation equipment; but we did not
8 specifically test a 19-inch ballot through the 2022
9 tabulation equipment because there was no 19-inch ballot
10 images installed on ballot on-demand printers.

10:08:59

11 BY MR. OLSEN:

12 Q. Prior to the 2022 General Election, did Maricopa
13 County employ a 19-inch ballot image?

14 A. Yes, we did.

15 Q. And when did Maricopa County employ a 19-inch
16 image just prior to the 2022 General Election?

17 A. The most recent election would be the August 2022
18 Primary Election.

19 Q. Did Maricopa County perform logic and accuracy
20 testing -- strike that.

10:09:27

21 What evidence exists that shows the results of
22 the logic and accuracy testing that you say was
23 performed in connection with the 2022 General Election?

24 A. So the stress testing, we have a report that
25 summarizes that stress testing that we performed of --

1 so I'm aware of that. That would be documentation. I
2 also know that the Secretary of State produces a
3 summary-level report for their testing that they
4 performed using those ballot on-demand printers, 20-inch
5 ballot on our precinct-based tabulators or vote center
6 tabulators.

7 Q. So if we were to issue a subpoena or a discovery
8 request, would your office be able to produce such
9 testing results?

10:10:24 10 A. I can produce them for the ones that -- Maricopa
11 County has that information, yes.

12 Q. Yes. Mr. Jarrett, I would like to introduce what
13 has been marked as Defendants' Exhibit 3 -- or excuse
14 me, 2 -- which is the 2022 Elections Plan. And it's up
15 on the screen, if you can see that.

16 A. I can see it.

17 Q. Is this a document that you oversaw the creation
18 of?

19 A. That's correct.

10:11:24 20 Q. And what's the purpose of this document, sir?

21 A. This purpose was to establish the guidance that
22 the Elections Department would use in carrying out the
23 August Primary Election and the November General
24 Election, and it is to present that information to the
25 Maricopa County Board of Supervisors so then they can

1 approve the plan, and then our team within the Elections
2 Department will implement that plan based on this
3 document.

4 Q. How much effort is put in by your office in
5 creating this plan?

6 A. Significant amount of effort.

7 Q. And why such a significant amount of effort?

8 A. Because carrying out elections in the second
9 largest voting jurisdiction with millions of different
10 voters and hundreds of different voting locations and
11 then tabulating millions of different ballots takes a
12 significant amount of planning and preparations.

13 Q. And part of that is because you want these
14 elections to go off without a hitch, all things
15 considered, correct?

16 A. I'd say there's no perfect election, but yes, to
17 minimize the issues and then be able to have redundancy
18 plans to be able to respond to those issues.

19 Q. I'd like to go to the page that's Bates stamped
20 last three digits 041, which is page 11 of the actual
21 document.

22 While we're doing that, sir, do you have any
23 reason to not believe that this is a true and accurate
24 copy of the 2022 Election Plan?

25 A. I have no reason to believe. I take your word

1 for that.

2 Q. And this is your counsel's production, so do you
3 have any reason to disbelieve?

4 A. No, I do not.

5 MR. OLSEN: And, Your Honor, at this time, I
6 would like to move to enter this exhibit into the
7 record.

8 THE COURT: Exhibit 2?

9 MR. OLSEN: Yes, Your Honor.

10:13:30 10 THE COURT: Any objection?

11 MS. KHANNA: No objection, Your Honor.

12 THE COURT: Exhibit 2 is admitted.

13 Thank you.

14 BY MR. OLSEN:

15 Q. Sir, at Bates number last three digits 041, which
16 is, again, page 11 of actual document, you'll see at the
17 top there's a section entitled: 2.0 - Forecasting
18 Turnout and Reducing Wait Times.

19 Do you see that?

10:13:56 20 A. Yes, I do.

21 Q. What is the purpose of forecasting turnout?

22 A. It is to guide us on resource planning to
23 determine how many poll workers we need to hire, how
24 many poll workers -- sorry -- not just poll workers, but
25 temporary workers that work at MCTEC, how much training

1 we need to provide, how many voting locations that we
2 need to identify and find, how many check-in stations
3 that we will need in each of our voting locations, how
4 much paper we need to procure. So all of those types of
5 information are based off the forecast.

6 Q. How much of an effort does your office place on
7 producing an accurate forecast in order to plan for the
8 election?

9 A. So every election is unique, so we go back to
10 historical elections, similar or like-type elections, to
11 try to identify how many people participate in those
12 different elections, because that's the best guidepost.
13 So usually it's the most recent-liked elections, so in
14 this case it would have been the 2018 Gubernatorial
15 Election or the 2014 Gubernatorial Election, but then we
16 also use other factors, other similar and close
17 elections, so the 2020 elections; differences in how a
18 -- the difference in the turnout between a gubernatorial
19 election and the subsequent presidential election, how
20 that impacts turnout. And then we also went back to
21 decades and decades of turnout rates and ranges to
22 identify.

23 So a significant amount of effort goes into
24 forecasting turnout.

25 Q. And is that performed -- is that analysis

1 performed in-house, or do you outsource it to, you know,
2 an outside?

3 A. It's performed in-house.

4 Q. Okay. And is it fair to say that you rely on
5 those forecasts in planning for the election, correct?

6 A. Yes, that's correct.

7 Q. And a significant amount of money is expended by
8 the County in reliance on this forecast, correct?

9 A. That's correct.

10:16:00 10 Q. And you generally trust those forecasts before
11 you promulgate them in this document, before you, you
12 know, go ahead and start actually undertaking actual
13 efforts to -- to manage the election?

14 A. We understand that they are forecasts.

15 Q. Correct.

16 A. So they are not exact, yes, but we use those
17 forecasts to make decisions.

18 Q. I'd like to turn to the page that is Bates
19 stamped last three digits 043, it's actually page 13 of
10:16:37 20 the actual document.

21 Do you see that, sir?

22 A. I do.

23 Q. Do you see where it says, The First Forecast
24 Model - 2022 November General Election?

25 A. I do.

1 Q. And under 2022, projected voters for Election Day
2 turnout, the forecast was for 291,863, correct?

3 A. That's correct.

4 Q. And if we turn to the next page, Bates stamped
5 044, you'll see a second forecast model.

6 Do you see that, sir?

7 A. I do.

8 Q. And the projected turnout under the second
9 forecast model was a lower number of 251,615, correct?

10:17:26 10 A. That's correct.

11 Q. Why did you do two forecast models?

12 A. Again, because you're looking at historical
13 elections, and variances can occur. So the first
14 forecast model looked at 2014 and 2018. My
15 recollection, 2014 was a historically low turnout year.
16 2018 was one of the higher turnout years. So we
17 expanded this model to look at more and broader number
18 of elections to include in that forecast model. So it
19 was the two combined, which gave us a guiding. And when
10:18:01 20 I look at this 251,615, we had 248,000 in-person voters
21 on Election Day, so very close.

22 Q. So this document was put out prior to the 2022
23 Primary Election, correct?

24 A. In May of 2022.

25 Q. And how was the turnout for the Election Day

1 turnout for the Primary for the 2022 Primary Election?

2 A. I don't remember the specific, but it was, I
3 think, right around 106 or 108,000, which was in line
4 with our turnout forecast for the August Primary as
5 well.

6 Q. And if we turn back to the page that's Bates
7 stamped, the preceding page 043, and you see the first
8 forecast model for the 2022 August Primary Election,
9 that's 108,080, correct?

10:19:10 10 A. That's correct.

11 Q. And that's associated with the first forecast
12 model which was the higher turnout, correct?

13 A. That's correct.

14 Q. So the second forecast model, which had a lower
15 Election Day turnout for the Primary, was not the most
16 accurate, correct?

17 A. It was within the range of both. But, yes, this
18 first forecast model for the August Primary aligned
19 closer with the turnout for August or the in-person
10:19:49 20 turnout for the August Primary.

21 Q. Part -- did the forecast -- well, strike that.

22 You recall that there were issues with ballots
23 being rejected on November 8, 2022, in the Election Day,
24 correct?

25 A. I don't recall ballots -- issues with ballots

1 being rejected.

2 Q. Do you recall tabulators rejecting ballots at, at
3 least, 70 vote centers during Election Day?

4 A. Yes, I recall that there's about 70 voting
5 locations that we sent technicians out to change printer
6 settings at because our tabulators were not reading
7 those ballots in.

8 Q. Okay. And did -- did your forecast model for the
9 -- for the second forecast where you forecasted 251,615
10 Election Day turnout figures, do you see that?

10:20:55

11 A. Yes, I do.

12 Q. Did that take into account the problems you just
13 mentioned in terms of the tabulators at 70 locations
14 having issues to reject ballots?

15 A. What is your specific question?

16 Q. So was the Election Day issues that we just
17 discussed, and by the County's own admission occurred at
18 70 vote centers, was that event factored into or an
19 event like it, factored into the second forecast model?

10:21:36

20 A. So, first, let me clarify. I didn't acknowledge
21 that there were 70 vote centers that had printer issues.
22 I acknowledged that we sent out 70 technicians to 70
23 voting locations.

24 Now, for this forecast was just based off of
25 prior historical models turnout. There was no analysis

1 to include if there was an issue on-site at any voting
2 location.

3 Q. So there was no analysis in the second forecast
4 model of 251,000 projected turnout that took into
5 account a disruption in the election on Election Day
6 November 8, 2022?

7 A. None of the forecast models include that type of
8 analysis.

9 Q. Okay. Would a disruption, such as what was
10 experienced -- I mean, would you agree with me there's a
11 disruption on November 8, 2022, in the election?

12 A. I would say that we had some printers that were
13 not printing some tiny marks on our ballots dark enough
14 to be read in by our tabulation equipment. Voters had
15 legal and ballot options to still be able to participate
16 within our voting locations, so I don't agree and would
17 not couch it as a disruption.

18 Q. So you don't believe that what happened on
19 November 8th was not a disruption in the election
20 process?

21 A. I do not couch it as that.

22 Q. Are you aware that Supervisor Gates came out on
23 Election Day and said 20 percent of all vote centers
24 were affected by these issues with ballots being
25 rejected by the tabulators?

1 A. Again, we didn't have ballots rejected by
2 tabulators, they weren't being read in by tabulators;
3 but that's not a disruption when voters still had valid
4 options to participate in ballots in our Secure Door
5 Number 3, which is a similar process that eight other
6 counties use as their only option for voters to be able
7 to return their ballots.

8 Q. Sir, you're not answering my question. My
9 question isn't what other options existed for other
10 voters, my question is: Would you agree there's a
11 disruption of at least 20 percent of the vote centers in
12 Maricopa that caused delays in the voting process?

13 MR. LARUE: Objection, Your Honor. The
14 witness has already answered this question as to whether
15 he characterizes it as a disruption.

16 THE COURT: I'll overrule. If you can
17 answer it, you may, sir.

18 THE WITNESS: I'm not changing my response.

19 BY MR. OLSEN:

20 Q. Okay. Is it -- do you believe that -- did you
21 hear of any reports of wait times to vote of over
22 60 minutes?

23 A. Yes, I did.

24 Q. And what is the target wait time for in your --
25 in your model? Do you know?

1 A. On average, a half an hour.

2 Q. Please turn to Bates number 047, that's page 17.

3 THE COURT: Still Exhibit 2, correct?

4 MR. OLSEN: Yes, Your Honor.

5 THE COURT: Thank you.

6 BY MR. OLSEN:

7 Q. Do you see the section entitled: Time Needed to
8 Vote a Ballot, Mr. Jarrett?

9 A. Yes, I do.

10:24:57 10 Q. And do you see the second paragraph under that
11 section where it says, "on average, we estimate that it
12 will take voters between 4.4 and 6.4 minutes to vote in
13 the 2022 Primary ballot and between 8.5 and 10.5 minutes
14 to vote the 2022 November General Election ballot"?

15 A. That's to complete and fill out the ballot.

16 Q. So is it your testimony then that 30 minutes is
17 the time allotted projected for a normal election to
18 enter into the vote center, cast your ballot and leave?

19 A. No. Our average was 30 minutes in line to check
10:25:42 20 in, and then to -- a few minutes to receive their
21 ballot, upwards of 8.5 to 10.5. So on the 2020 General
22 Election, 8.5 to 10.5 minutes to complete the ballot,
23 and there could be some time to then wait in line at the
24 tabulator to put in their ballot and feed it into a
25 tabulator.

1 Q. Did you ever become aware of multiple reports at
2 various vote centers in Maricopa County where wait times
3 exceeded two hours?

4 A. Exceeded two hours, no.

5 Q. You were not aware of that?

6 A. Our data shows that we had some voting locations
7 approaching two hours, but not exceeding.

8 Q. Even at some locations approaching two hours,
9 would you consider that a disruption?

10:26:34 10 A. That's why we post wait times on our website,
11 which was highly publicized and advertised. And all of
12 those locations, we had close-by locations.

13 So, for example, Biltmore was approaching two
14 hours in the last hour of the voting day. With two
15 miles away at Faith Lutheran there was a voting location
16 that had a one-minute wait time, during that same time,
17 the longest time, that last hour of the day.

18 So there were options for voters to participate
19 even at those other voting locations.

10:27:06 20 Q. What are you basing your report, the accuracy of
21 the reported wait times on?

22 A. Information that poll workers returned to us, so
23 it's the number of voters in line at that point in time.
24 They report those every 15 minutes, and then we can
25 calculate the wait time based on how long it would take

1 someone to check in at a voting location.

2 Q. So if those poll workers were testifying under
3 oath of wait times over -- exceeding two hours at
4 multiple locations, how would that square with what the
5 County was reporting on its system? Are they just
6 mistaken or --

7 A. Saying people can make estimates, but unless they
8 are actually timing them they could be inaccurate. Our
9 wait times are based off exactly how long it takes a
10 voter to check in through that process and have a ballot
11 printed, and based off those numbers of voters that are
12 standing in line at that point in time.

13 Q. And how is that figure calculated? You say it's
14 based off that number, how do you calculate it?

15 A. Based off prior elections. So we can gauge how
16 long it takes a voter to get checked in, then we can
17 also see how many voters are checking in at a voting
18 location throughout the day.

19 Q. Okay. So you're basing the wait time calculation
20 on prior elections, not on what's actually happening on
21 scene at the day of election?

22 A. Based on how quickly a voter can check in through
23 that process, that's correct.

24 Q. Sir, I want to go back to the earlier question
25 about the 19-inch ballot image being placed on a 20-inch

1 paper.

2 Did you hear of any reports of that occurring in
3 the 2022 General Election?

4 A. I did not.

5 Q. Okay. If that occurred, would that be a failure
6 of Maricopa County's election process?

7 A. I'm not aware of it occurring, and I'd be
8 surprised if there was a ballot on a printer that had a
9 19-inch ballot on it.

10:29:21 10 Q. I understand that, sir.

11 A. And the reason why is we did not design a 2022
12 General Election on a 19-inch ballot. That ballot does
13 not exist. The only ballot that exists is a 20-inch
14 ballot.

15 Q. Okay. And when you say "we designed," who
16 designed the ballot? Is that outsourced to another
17 company, or is that done in-house by Maricopa?

18 A. In-house by Maricopa County staff.

19 Q. Who -- what department would that staff fall
10:29:47 20 under? Is there a specific name for it?

21 A. Our Ballot Tabulation Team, so reports to me.

22 Q. And do you maintain records as to the ballot
23 definition that was created for the 2022 General
24 Election?

25 A. Yes, we have records of all the ballots that were

1 designed.

2 Q. And so I'll go back to my question again.

3 If a 19-inch ballot image was put on a 20-inch
4 paper in the 2022 General Election, would that be a
5 failure of your election process?

6 A. It would -- if something like that happened,
7 which I don't know how it would, yes, it would have been
8 a mistake.

9 Q. Could that have also been a deliberate act?

10:30:41 10 A. Again, you're asking me to speculate about things
11 that I have no knowledge of occurring, so I don't know
12 if it could have been a deliberate act or not. I don't
13 believe that that occurred.

14 Q. How involved are you in creating the ballot
15 definition?

16 A. So my team does, and then I overview it, and I'll
17 review examples of those, yes.

18 MR. OLSEN: Thank you, Mr. Jarrett. I don't
19 have any further questions at this time.

10:31:15 20 THE COURT: Okay. Thank you.

21 MR. LARUE: Your Honor, a quick clarifying
22 question as to how the Court would like us to proceed.
23 We intend to call Mr. Jarrett in our case in chief
24 tomorrow, and so if the Court would like me to reserve
25 all questions for him until tomorrow, we are happy to do

1 that. However, I would like to ask him a few questions
2 directed just to what was just discussed during the
3 direct examination of Mr. Jarrett.

4 THE COURT: You can choose to do it either
5 way you wish. I won't dictate how you try your case,
6 but you need to stay within the time.

7 MR. LARUE: Understood, Your Honor. I have
8 just a very brief cross then.

9 THE COURT: Very well.

10:32:00 10 CROSS-EXAMINATION

11 BY MR. LARUE:

12 Q. Good morning, Mr. Jarrett. Thank you for being
13 here today.

14 A. Thanks, Joe.

15 Q. Just a few very quick questions.

16 I believe you testified that your Election Day
17 Plan called for, you know, assumed an average wait time
18 of a half hour for each vote center.

19 Was that what you testified?

10:32:28 20 A. That's correct.

21 Q. Okay. Do you know what the actual average wait
22 time was?

23 A. It was less than a few minutes on Election Day,
24 average for all of our vote centers.

25 Q. Average for all vote centers were less than a few

1 minutes on Election Day, is that what you said?

2 A. That's correct. In our Canva's presentation, we
3 have the exact number. I don't recall it off the top
4 right now.

5 Q. Thank you, Mr. Jarrett.

6 Are you aware that one of the political parties
7 urged their voters to forgo early voting and vote in
8 person on Election Day?

9 A. Yes, I'm aware of that.

10:33:02 10 Q. Okay. You're aware of that today?

11 A. That's correct.

12 Q. All right. Were you aware of that when you
13 prepared your analysis for the Election Day Plan?

14 A. No, I was not.

15 Q. Okay. So I'm assuming that -- you tell me,
16 please, this urging by a political party was not
17 factored into your Election Day Plan; is that correct?

18 A. That's correct.

19 Q. Okay. Thank you.

10:33:26 20 Prior to each election -- strike that.

21 Are you familiar with the term EMS?

22 A. Yes, Election Management System.

23 Q. The Election Management System. What does the
24 Election Management System do?

25 A. So it is our tabulation system. So it's what we

1 use to program and design all the ballots. It is also
2 the system that as we're running ballots through our
3 tabulators that it's then counting those ballots. It's
4 also then what sends ballots to be sent to our
5 electronic adjudication system. Then it also holds the
6 application for our results tallying and reporting.

7 So everything that was related to the ballot
8 creation, to tabulating the ballots, to reporting
9 results, is housed within our Election Management
10 System.

11 Q. Okay. How many elections can be housed within
12 the EMS?

13 A. Well, multiple elections can be housed. Given
14 the number of ballots that Maricopa County has to
15 tabulate, we usually only have, especially for a General
16 Election, we will only have one housed on our Election
17 Management System at a time.

18 Q. Okay. So for the 2022 General, did you only have
19 the 2022 General on the EMS?

20 A. That's correct. That's what my understanding is.
21 We only had those and all the data related to those
22 files.

23 Q. What happens to the other data, the 2022 Primary?
24 What happened to it?

25 A. So we transferred those to backup archived

1 storage devices and store those. We have one storage
2 device onsite within our tabulation center and one
3 offsite.

4 Q. Okay. And, Mr. Jarrett, you testified earlier
5 that I believe you said you did not design a 19-inch
6 ballot for the 2022 General Election; is that correct?

7 A. That's correct.

8 Q. So if it was not designed for the 2022 General
9 Election, does it stand to reason that there would not
10 have been a 19-inch ballot on the EMS?

11 A. That's correct.

12 Q. And if there was no 19-inch ballot on the EMS,
13 does that also mean that there would have been no
14 19-inch ballot programmed into the ballot on-demand
15 printers?

16 A. That's correct.

17 Q. Okay. Thank you, Mr. Jarrett.

18 You were asked about deliberate acts with regard
19 to the printers. Mr. Jarrett, I'm going to ask you a
20 very direct question: Did you personally do anything to
21 any ballot on-demand printer to cause it to print too
22 lightly to be read by a precinct-based tabulator?

23 A. No, I did not.

24 Q. Did you give an order to any of your personnel to
25 do any such thing?

1 A. I did not.

2 Q. Are you aware of any order like that being given?

3 A. I'm not aware of that.

4 Q. Are you aware of any of your personnel engaging
5 in such an act?

6 A. I am not aware.

7 Q. Are you aware of anybody engaging in such an act
8 on any of our ballot on-demand printers used in the
9 2020 -- 2022 General Election?

10:36:26 10 A. I'm not aware.

11 MR. LARUE: That's all I have, Your Honor.
12 Thank you.

13 THE COURT: Very well. May we excuse the
14 witness?

15 MR. OLSEN: Brief recross, sir?

16 THE COURT: Recross?

17 MR. OLSEN: Well, redirect, excuse me. I'll
18 be brief, Your Honor.

19 THE COURT: Very well.

10:36:41 20 REDIRECT EXAMINATION

21 BY MR. OLSEN:

22 Q. Mr. Jarrett, I believe you were just asked if
23 questions about whether or not members of a political
24 party encouraged their constituents, the Republican
25 party, to come out and vote on Election Day.

1 Do you recall that?

2 A. Yes.

3 Q. And was that event factored into your forecast
4 for turnout on Election Day?

5 A. When we made the initial forecast for the plans
6 that were mentioned to the Board in May, no, it was not.

7 Q. So your estimates in the forecast would
8 necessarily be low because they didn't take into account
9 that factor, correct?

10:37:32 10 A. Our forecast forecasts 251,000, our lowest model,
11 and there's 248,000. So I think they pretty accurately
12 forecasted how many people turned out in person on
13 Election Day.

14 Q. Well, tell me how that squares when, you know,
15 counsel just asked you a question, you know, were you
16 aware that members of the Republican party were telling
17 Republican voters to come out on Election Day, and you
18 didn't account for that, how does that square with a
19 lower forecast number?

10:38:07 20 A. Well, we had record turnout -- near record
21 turnout for the 2022 General Election, so 64 percent.
22 You have -- the only turnout in the recent several
23 decades that exceeded that was actually 2018, which was
24 64-point-something percent turnout as well.

25 So our forecast model was forecasting at

1 potentially the highest turnout percentage that the
2 voters would turn out, so that's why it captured and
3 forecasted 251,000 which was very close to 248,000.

4 Q. Actually, your forecast model, you had the other
5 one, forecasted over 290,000, correct?

6 A. That's correct.

7 Q. And that model didn't take into account
8 Republican leaders telling their -- their Republicans to
9 come out on Election Day and vote, correct?

10:38:57 10 A. It did not. It factored in 2020 Presidential and
11 2016 Presidential factors, which usually a presidential
12 election is much higher, so that's why it was ranging up
13 to 290,000.

14 Q. Counsel asked you some questions about a 19-inch
15 ballot image being projected onto a 20-inch paper.

16 Do you recall that I asked you questions about
17 that?

18 A. Yes, I recall that.

19 Q. Do you have any idea how that could occur?

10:39:52 20 A. I do not.

21 Q. Would it require two different ballot definitions
22 to be installed on the EMS?

23 A. Your first question asks if I have any idea how
24 it could occur and I said I do not.

25 Q. Okay. Do you know what a site book is?

1 A. Yes, that's our check-in station.

2 Q. And the site book pulls up the vote -- voter,
3 correct?

4 A. Yes, it's connected to our -- the Recorder's
5 voter registration system through a virtual private
6 network secure, so that when a voter checks in, it pulls
7 up their specific information, and would alert our
8 ballot on-demand printer which ballot style to print.

9 Q. So where does the ballot definition reside then?

10:40:37 10 A. So it's on a laptop that's connected to our
11 ballot on-demand printers.

12 MR. OLSEN: Thank you. I have nothing
13 further.

14 THE COURT: May we excuse the witness?

15 MR. OLSEN: Yes, Your Honor.

16 MS. KHANNA: Subject to recall tomorrow in
17 our case in chief, of course.

18 THE COURT: Very well. Thank you, Mr.
19 Jarrett. Please step down, sir.

10:41:01 20 (Witness excused.)

21 THE COURT: I've allocated some time to take
22 a midmorning break, some of that has to do with my court
23 reporter. So we do need to take a recess for that.

24 Who would you be calling as your next
25 witness?

1 MR. OLSEN: Your Honor, as a matter of fact,
2 I was just talking with counsel about asking the Court
3 for a short break. I want to reassess given the time,
4 and so if I may.

5 THE COURT: Yes. You certainly may because
6 I'm going to have a midmorning break here. So what I'm
7 trying to assess, though, is whether I can shave five
8 minutes off of that or not.

9 MR. OLSEN: Your Honor, whatever you --

10:41:59 10 THE COURT: Do you need a full 15 minutes?

11 MR. OLSEN: No, Your Honor.

12 THE COURT: Okay. Ten minutes. We'll be
13 back on the record then. We'll stand in recess.

14 COURTROOM ASSISTANT: All rise.

15 (Recess taken, 10:42 a.m.)

16 (Proceedings resume, 10:53 a.m.)

17 THE COURT: All right. We're back on the
18 record in CV2022-095403, Lake v. Hobbs. Present for the
19 record are parties and counsel, their representatives
10:53:38 20 and counsel.

21 I was just going to bring up a moment -- a
22 matter of housekeeping. You okay with Mr. Blehm not
23 being here, Mr. Olsen?

24 MR. OLSEN: Yes, Your Honor.

25 THE COURT: All right. Okay. At the risk

1 of OSHA violations from my court reporter, I'm -- what I
2 would like to do is try and maximize the amount of time
3 we have. Rather than starting at 1:30, we'll start back
4 at 1 o'clock. So we'll go from 12:00 to 1:00, cutting
5 30 minutes off of the lunch break. So we'll do that
6 today. And tomorrow I'd like to start at 8:30 tomorrow
7 rather than 9 o'clock, if we can, stretch a little more
8 out of the day. But I think by 4:30 -- you know, I
9 don't want to burn the midnight oil on this. I think
10 that we need to have focus and attention and be
11 clear-minded by, I think, starting at 8:30, coming back
12 early from lunch that I'm not taxing anybody's mental
13 capacity with that.

14 Do you agree, Plaintiffs?

15 MR. OLSEN: Yes, Your Honor.

16 THE COURT: Defendants?

17 MS. KHANNA: Yes, Your Honor.

18 MR. LARUE: County agrees, Your Honor.

19 MR. GOANA: Fine with the Secretary, Your
20 Honor.

21 THE COURT: So that's what we'll do.

22 All right. Are you prepared for your next
23 witness?

24 MR. BLEHM: Yes, Your Honor.

25 MR. OLSEN: Yes, Your Honor. We call Clay

1 Parikh.

2 THE COURT: Very well, sir.

3 Mr. Parikh, if you could come forward, sir,
4 and stand in front of my clerk to be sworn, sir.

5 CLAY UDAY PARIKH,
6 called as a witness, having been duly sworn, testified
7 as follows:

8 THE COURT: Sir, if you could make your way
9 around to the witness stand and have a seat. As soon as
10 your witness is situated you may begin. Are you doing
11 the questioning, Mr. Olsen?

12 MR. OLSEN: Yes, Your Honor.

13 DIRECT EXAMINATION

14 BY MR. BLEHM:

15 Q. Good morning, Mr. Parikh. Could you please state
16 your full name for the record?

17 A. My name is Clay Uday Parikh.

18 Q. And where do you currently work?

19 A. I work at Northrop Grumman, a defense contractor.

10:55:52 20 Q. And what do you do with Northrop Grumman?

21 A. I'm an information security officer. I,
22 basically, spend my week auditing classified systems,
23 making sure the systems are functioning properly,
24 looking for insider threats and those such actions.

25 Q. And do you have any experience with electronic

1 voting systems?

2 A. Yes, sir, I do. I have nine years of experience
3 in three voting labs. It's actually two physical sites,
4 because while I transferred the NTS laboratories,
5 national testing lab, and then at Pro V & V.

6 Q. Does this relate to -- are you familiar with
7 what's called is the EAC, the Election Assistance
8 Commission?

9 A. Yes, sir, I am. In 2008, my very first tasking
10:56:38 10 was to evaluate Wyle Laboratories test procedures in
11 which I had to evaluate the voting system guidelines.

12 Q. And did you perform testing on electronic voting
13 systems in order to certify them in accordance with EAC
14 guidelines?

15 A. Yes, sir, I was.

16 Q. And you did that for how long?

17 A. For nine years.

18 Q. And that was through Pro V & V, a voting system
19 testing lab?

10:57:04 20 A. I was through a professional staffing company,
21 and that's how I was -- I was contracted on, because
22 they had -- none of the labs had a permanent security
23 specialist on -- on the payroll. I was the only one.

24 Q. And when you say you refer to the labs, in this
25 case Pro V & V, what is a voting system testing lab?

1 A. The voting system testing lab is where a vendor
2 submits to the EAC a test plan. It gets submitted to
3 the EAC. It gets approved and they go to a voting
4 system test lab, there's a project that's done up, and
5 they get tested. These tests can go either by the EAC
6 for federal certification or they can go by the
7 Secretary of the State, that depends on the state's
8 requirements under their laws as far as their
9 certification efforts.

10 Q. Do you know what voting system testing lab
11 certifies the electronic voting machines used in
12 Maricopa County?

13 MS. KHANNA: Objection, Your Honor.
14 Relevance. I believe this line of question about
15 certification is no longer on the table given the
16 Court's ruling earlier this week.

17 THE COURT: Yeah, I'll allow the question
18 for certification, I mean, qualifications purposes. So
19 I'll give a little bit of leeway. You can answer the
20 question if you're able to, Mr. Parikh.

21 THE WITNESS: Yes, it's Pro V & V.
22 BY MR. OLSEN:

23 Q. Do you have a background in cyber security, Mr.
24 Parikh?

25 A. I have about 20 years experience in cyber

1 security.

2 Q. Can you, you know, just briefly go through some
3 of your qualifications with the Court in cyber security?

4 A. Yes, sir, I can. I have a Master of Science in
5 cyber security, which it's on a computer science track.
6 Also I have a bachelor's in computer science systems
7 major. I have Certified Information Systems Security
8 Professional certification, I've had that for since the
9 beginning of 2007. That is the gold standard as far as
10 security certifications are considered. I'm also a
11 Certified Ethical Hacker and I'm also a Certified
12 Hacking Forensic Investigator.

13 Q. What is a Certified Hacking Forensic
14 Investigator?

15 A. That means, you go in, you do a forensic analysis
16 specifically looking for malicious malware, you do root
17 cause analysis; you find out what the malware was, how
18 it infected. These are not your standard forensics-type
19 approaches that most law enforcement agencies would use.
20 Their standard is a little bit slower because of the
21 evidentiary stuff; but if you're in an incident response
22 center, as I've helped run in the past, when you have an
23 emergency or something happens, you have to react then.
24 And these are the type of actions that you learn. You
25 learn to get in, do the analysis quickly, make sure

1 you're secure in your analysis, because you have to come
2 up with remediation efforts.

3 Q. Prior to -- how long have you been at Northrop
4 Grumman?

5 A. Just about three years.

6 Q. So prior to working with Northrop Grumman, did
7 you work in cyber capacity for the U.S. government?

8 A. Yes, I have.

9 Q. Could you -- could you describe some of your
11:00:22 10 positions starting, you know, for the past 15 years, 20
11 years, that you've been involved in and what you did,
12 just briefly?

13 A. I've worked in anywhere from midsize companies
14 that dealt with cyber security information assurance to
15 as large as some of the larger ones. I've worked with
16 Lockheed Martin, which is a good tenure of my time.
17 Leidos Corporation, VAE Systems, and in all those
18 capacities, I did inform assurance, cyber security. Had
19 one stint with a smaller company I was to perform threat
11:00:55 20 for an agency within the United States Army.

21 Q. Did you ever work with the Marshall Space Flight
22 Center?

23 A. Yes, I was. I was the IT security manager for
24 the enterprise operations.

25 Q. And just briefly what -- what does the IT

1 security manager do?

2 A. I'm in charge of making sure the vulnerability
3 scans were done, that all the security configurations,
4 that all the governance and compliance that NASA
5 developed for their security postures in daily
6 operations and continuity of operations were followed.

7 Q. Did you ever work for the Army Corps of
8 Engineers?

9 A. Yes, sir. I was the deputy cyber manager for
11:01:34 10 their enterprise operation, which includes 52 major
11 sites throughout the world.

12 Q. And in that capacity, what were your job
13 responsibilities?

14 A. I was the deputy cyber manager, and because of my
15 certification and qualifications, I helped the security
16 operation center manager, handled his task in
17 monitoring, and I also helped the security incident
18 response manager in her functions, because they were the
19 ones that react to when the Army Corps is attacked, and
11:02:08 20 they are attacked a lot.

21 Q. Do you possess a security clearance, Mr. Parikh?

22 A. Yes, sir, I do. I'm currently a Top Secret
23 cleared, but I've held SCI levels before.

24 Q. Okay. Were you -- did you ever work with the
25 Army Threat Systems Management Office?

1 A. Yes, sir, that's where I played threat. I attack
2 systems, and -- whether it was an information systems, a
3 medical system or a weapon system.

4 Q. Do you have any other certifications besides
5 CISSP or the certified forensic -- Certified Hacking
6 Forensic Investigator or Certified Ethical Hacker?

7 A. Yes, sir. I have an ITIL 3 certification, which
8 is an international process for handling IT service
9 management. It's much like the Six Sigma, several
11:03:02 10 companies like Lockheed Martin have their own, that's
11 called LM21, these are all process improvements to
12 refine and affect the quality output and service that
13 you provide.

14 Q. Have you ever -- are you familiar with the phrase
15 of root cause analysis?

16 A. I am very familiar with root cause analysis.

17 Q. Could you please just briefly explain what root
18 cause analysis refers to?

19 A. In simple -- in simple terms, it's basically
11:03:27 20 troubleshooting, but you have to find what caused the
21 initial issue to happen. Sometimes this can be very
22 complicated. Sometimes it can be fairly easy, but you
23 have to have an intense understanding of the overall
24 process involved in any organization. And this root
25 cause analysis could be done from what's called a

1 governance perspective, where you look at documentation
2 process and procedures, because faults within those can
3 produce the issue, or it can be from a technical
4 finding. I've done hundreds to probably thousands of
5 root cause analyses in all different types of
6 environments.

7 Q. Could you give an example of an actual event in
8 which you led the effort for a root cause analysis and
9 just kind of a quick overview?

11:04:21 10 A. I've done one for the Navy Marine Corps internet,
11 which is the world's largest WAN, which has tens of
12 thousands of workstations. There was an issue that
13 resolved. They were having after upgrades of the
14 operating systems, they had technical issues. And based
15 on those type of issues, I analyzed and know what was
16 going on. I requested that the bios data be provided
17 and that ended up the root cause, because the problem
18 systems have that, because they did not properly manage
19 the bios. That's a low-level technical one.

11:04:54 20 There's been others involved where the Air Force
21 had what's -- I would say world facing internet site.
22 It was on the internet, got pulled down because a
23 vulnerability was found. And I did the root -- I was
24 put in charge to do the root cause analysis to find out
25 how the system was compromised, what happened, and

1 suggested the mitigation efforts.

2 Q. Have there ever been any criminal prosecutions
3 that have resulted from your work?

4 A. Yes, both federally and from -- privately from an
5 employer.

6 Q. So the federal government relied on your
7 assessment of a situation in order to bring criminal
8 charges against somebody?

9 A. Several times. Some of those I cannot talk about
10 because of the nature and the classification.

11 Q. Did you do an analysis of the events that took
12 place in the Election Day operations in Maricopa County?

13 A. Yes, sir, I did.

14 Q. And what did you do in terms of your assessment
15 of that situation?

16 A. I do like I do with any system that's involved
17 with electronic voting systems, I look at the state
18 statutes and what they reported to the federal
19 government. As in this case, Arizona follows HAVA, and
20 that's in their laws and statutes. Then I go from that,
21 look at the systems they use, then I look at the
22 procedures. I downloaded the Secretary of State's
23 Elections Manual, the Maricopa Elections Manual. I've
24 read through testimony, declarations. I reviewed the
25 EAC certification of the electronic voting system, the

1 test reports from Pro V & V concerning the election
2 system. I read -- I downloaded and read the applicable
3 Title 16 part of the Arizona statutes, which covers the
4 election systems. Then I read a lot of testimony, I
5 watched a lot of the video televised meetings that
6 Maricopa conducted and a lot of the video testimonies.

7 Q. Okay. And did you interview or speak with any
8 Election Day workers, like technicians, who
9 participated, retained by Maricopa, to work at the
10 various vote centers on November 8, 2022?

11:07:24

11 A. Yes, sir, I did. I had spoken with a -- after
12 seeing the declaration and interview conducted for the
13 declaration, I asked to interview them and asked
14 specific questions.

15 Q. Did you perform an inspection of the ballots on
16 behalf of Plaintiff in connection with an inspection
17 pursuant to A.R.S. 16-677?

18 A. Yes, sir, I did.

19 Q. And when did that inspection take place?

11:08:02

20 A. That was just yesterday.

21 Q. And without saying what your conclusion was from
22 that inspection, did you reach a conclusion?

23 A. It confirmed my initial -- my initial assumptions
24 on the possible effects of what caused the technical
25 issues, yes, sir.

1 MR. OLSEN: Your Honor, at this time, we'd
2 like to offer Mr. Parikh as an expert.

3 THE COURT: Arizona doesn't do that.
4 Basically, you can ask the questions and then it's an
5 objection as to foundation, so --

6 MR. OLSEN: Okay. Yes, Your Honor.

7 BY MR. OLSEN:

8 Q. Mr. Parikh, you examined the ballots and the
9 inspection performed at MCTEC yesterday, correct?

11:08:49 10 A. Yes, I was allowed to select a sampling, per the
11 request in the Court's instruction.

12 Q. Did you have a plan going into that inspection
13 with what ballots you wanted to select and inspect?

14 A. Yes, sir.

15 Q. Could you describe that plan?

16 A. Through a FOIA request the cast vote records were
17 publicly available. I reviewed those, analyzed the data
18 and selected the roundness based so I could follow the
19 Court's directions for the petition. So I knew exactly
11:09:23 20 what to request, because it was time-consuming and
21 Maricopa County was gracious enough to give us that
22 time, and I wanted to use it wisely and make my decision
23 quickly and accurately.

24 Q. Approximately do you know how many vote centers
25 you were able to inspect ballots from?

1 A. I was allowed to inspect from six vote centers.

2 Q. Were you able to execute on your plan after you
3 went into MCTEC to select ballots?

4 A. There were some modifications to the plans
5 because the Election Day ballot data, the cast vote
6 records, which would be referred to as a system of
7 record, because it has to be maintained in its
8 integrity, was no longer valid due to the recounts.

9 Q. When you say it was no longer valid, what do you
10 mean?

11 A. The ballots had been -- they had been
12 re-tabulated for the recounts, thus they -- Maricopa
13 County was unable to map those back.

14 Q. And were some of the ballots that you inspected
15 duplicated ballots?

16 A. Yes, sir, they were.

17 Q. And what are duplicated ballots?

18 A. Duplicated ballots are when there's an issue with
19 the ballot and it cannot be ran through the tabulation
20 system; therefore, it is duplicated and then that
21 duplication is run through the system.

22 Q. And is that duplication then the ballot that is
23 actually tabulated and counted?

24 A. Yes, sir. The way the process works is the
25 original ballot has to have the duplication ID attached

1 to it, which Maricopa did. The part where they filled
2 in the statute is, according to the standards, that
3 duplication ballot is supposed to be easily relatable to
4 the original ballot. They said they could not find --
5 let me correct that -- they could not find the
6 duplicated ballot which was tabulated.

7 Q. So you inspected the original ballot that was
8 duplicated?

9 A. Yes, sir.

11:11:28 10 Q. And do I understand correctly that under -- your
11 understanding of Arizona law is that the -- the
12 duplicate ballot and the original ballot are supposed to
13 be maintained together physically?

14 A. Yes, sir. That's -- that's the EAC requirement.
15 That's -- that's a standard. When duplication is done.

16 Q. And the duplicate ballot which is the ballot that
17 was counted?

18 A. Yes, sir.

19 Q. Was not available for you to inspect because of
11:11:56 20 that?

21 A. No, sir, it was not.

22 Q. Why would there be -- could you tell me again why
23 there might be a duplicated ballot situation?

24 A. It would be because it physically -- it was
25 physically damaged. I did see torn ballots. They could

1 have coffee stains on them. They could have ink marks,
2 or they could just be improperly configured.

3 Q. How long did you take to conduct your inspection?

4 A. We were there all day except for a 45-minute
5 lunch break. It took the morning because of not being
6 able to track the selected ballots that I wanted to look
7 at. We worked together and found the samplings, and
8 that took all morning to get that sorted out.

9 Q. And did you take notes contemporaneously with
10 your inspection?

11 A. Yes, sir.

12 Q. Approximately how many ballots did you inspect?

13 A. There were 348 that were set aside, and then
14 there were approximately 25, because we did not finish
15 because of the time restraint.

16 Q. And out of that 348 that were set aside, how many
17 were ballots printed from that ballot on-demand printer?

18 A. In what I analyzed, between the six vote centers,
19 I specifically -- and then there were the spoiled
20 ballots that could be examined, I requested that the
21 spoiled ballots be from those same vote centers. This
22 allows me a more accurate response to look at a spoiled
23 ballot and see it's the same ballot ID and the same
24 actual ballot style as another ballot within that same
25 voting center. The one thing that I have to point out

1 is out of all the spoiled ballots and the duplicated
2 original ballots, there were a total of 113 ballots
3 examined. 48 of those existed because there was a
4 19-inch image of a ballot printed on 20-inch paper.

5 MS. KHANNA: Objection, Your Honor. Move to
6 strike as non-responsive. I'm not sure what question he
7 was answering.

8 THE COURT: Well, I don't know that it was
9 non-responsive. I'll overrule it. You can
10 cross-examine.

11 MS. KHANNA: Thank you, Your Honor.

12 BY MR. OLSEN:

13 Q. So, Mr. Parikh, it's your testimony upon
14 inspection of these ballots that you determined that
15 there was a 19-inch ballot image projected onto the
16 20-inch paper; is that accurate?

17 A. Yes, that is accurate. That's one of the initial
18 things when I initially reviewing evidence that was
19 presented, and in the public, I saw that the ballots --
20 and it was, to me, it was easily identifiable.

21 Q. Okay. And is this something that's going into
22 this inspection you had seen evidence of?

23 A. Yes, sir.

24 Q. And what evidence was that?

25 A. That was a photograph of a spoiled ballot right

1 next to the reprinted ballot from a vote center, and
2 that's included in my declaration.

3 Q. When you say that's included, do you mean the
4 photographs?

5 A. Yes, sir.

6 Q. So when you were inspecting the ballots yesterday
7 and you determined that the duplicated ballots and the
8 spoiled ballots -- strike that.

9 How many duplicated ballots did you inspect?

11:15:35 10 A. Fifteen total.

11 Q. And out of that -- and duplicated, again, means
12 that the ballot was not -- was rejected by the
13 tabulation for some reason?

14 A. Yes, sir. It could not be tabulated either at
15 ICP2's, which are at the vote center, or the ICC at
16 MCTEC.

17 Q. Out of that 15, how many of those contained a
18 19-inch ballot image on 20-inch paper?

19 A. Fourteen.

11:16:05 20 Q. Fourteen. What about the other remaining?

21 A. It was physically defective. It was slightly
22 torn.

23 Q. Slightly torn. Can you explain to the Court how
24 a 19-inch ballot image -- strike that.

25 How did you determine that it was a 19-inch

1 ballot image projected on to 20-inch paper?

2 A. Because these ballot images are a PDF file, which
3 gets stored along with configuration settings. That's
4 what makes up the ballot style and the ballot
5 definition, which is created usually on that EMS, which
6 the actual application that does the ballot style was
7 called EED, right? That's the application that actually
8 does the ballot style. It's usually installed on the
9 EMS servers. That application creates that style, the
10 definition, because it needs those things because it
11 gets loaded on the tabulator that's how it's evaluated
12 when the image is created and that's the print job, to
13 use a common term, that gets sent to the printer.

14 Q. And how could an -- how did you determine that it
15 was actually a 19-inch image projected on to a 20-inch
16 paper?

17 A. I can -- I can determine that 100 percent of all
18 the ballots are rejected because the mechanics of a
19 printer, the feeds are not always accurate. On the
20 20-inch ballots, you can see the same -- I refer to them
21 as tick marks, but they are actually the borders of the
22 image that is sent. And on the 20-inch ballot, you'll
23 see at the very corner above the borders where there's
24 misfeed. On the 19-inch ballots, they were well
25 viewable in the margins. They are 90-degree right

1 angles at each corner of the page, of the image.

2 Q. And did you physically measure the ballots to
3 determine that?

4 A. Yes, sir, I did. I requested a ruler and
5 Maricopa graciously got me one, and they got one of the
6 other inspectors a ruler.

7 Q. How could a 19-inch ballot image appear -- well,
8 strike that.

9 You've heard previous testimony, were you here
10 for Mr. Jarrett's testimony?
11:18:26

11 A. Yes, sir, I was.

12 Q. And did you hear Mr. Jarrett testify that in the
13 November 2022 General Election a 20-inch ballot was
14 used?

15 A. Yes, sir, I did.

16 Q. And did you hear Mr. Jarrett testify that it
17 would be a failure of the system if a 19-inch ballot
18 image was projected on to a 20-inch paper?

19 MR. LIDDY: Objection, Your Honor. That
11:18:53 20 misstates the testimony of the prior witness, as to the
21 word failure.

22 THE COURT: I'm assuming you're going to
23 follow up with a question. For an opinion, I think you
24 can frame it as a hypothetical without arguing about --

25 MR. OLSEN: Yes, Your Honor.

1 THE COURT: Go ahead. Rephrase.

2 BY MR. OLSEN:

3 Q. In an election which is purportedly designed to
4 take place with a 20-inch ballot image on 20-inch paper,
5 how could a 19-inch ballot image appear?

6 MS. KHANNA: Objection. Calls for
7 speculation.

8 THE COURT: Let's ask a question first. Yes
9 or no, if you can tell. Ask him if he can tell, and
10 then the objection, and you can re-ask the question.

11:19:40

11 MR. OLSEN: Yes, Your Honor.

12 BY MR. OLSEN:

13 Q. Mr. Parikh, given your experience and training
14 particularly with electronic voting systems, nine years,
15 can you tell what the cause of a 19-inch ballot image
16 being projected on 20-inch paper would be?

17 A. Yes, I can. I can give you both the technical
18 ways that it could happen. There are only two ways that
19 it can happen.

11:20:14

20 Q. Can you tell the Court the two ways that that can
21 happen?

22 A. One way is by changing the printer adjustments
23 that would make the printer adjustments and settings
24 override the image file that was sent. The other is
25 from the application side, or the operating system side.

1 This is the same for anybody who ever prints anything at
2 home. Your Microsoft Word can send the settings or it
3 can use the default settings of the printers. The
4 application doing it, in this case, as it's a ballot,
5 would have to be that there was a 19-inch image ballot
6 definition.

7 Q. And where does that definition reside?

8 A. That can vary depending on the system. But from
9 what I heard in the testimony, it resides on the laptop
10 that's connected to the printer, which would -- I've
11 seen it referred to as a control printer, but this is
12 actually what would be called a print spooler, and it
13 controlled the print jobs to allow the printer to take
14 on the load. And as there were multiple site books,
15 this would be the technical use that that laptop should
16 be used for.

17 Q. Is there any way, in your opinion, for a 19-inch
18 ballot image to be projected on a 20-inch ballot by
19 accident?

20 A. No, sir.

21 Q. Why not?

22 A. Because the settings and the configurations and
23 the procedures that are used cannot allow that. These
24 are not a bump up against the printer and the settings
25 changed. They are security configurations. I've

1 reviewed the evidence and the printers are configured
2 via script which, by any large organization that has to
3 do multiple systems, is a standard. This takes away the
4 human error of somebody miscoding in the instructions
5 either on the printer.

6 Q. Prior to an election, would the -- strike that.

7 Prior to an election, would it be detectable that
8 a 19-inch ballot image had been projected onto 20-inch
9 paper?

11:22:31 10 A. Yes. If logic and accuracy tested that all
11 voting styles or ballot definitions were included, which
12 a standard logic and accuracy testing should test every
13 style that's available and there should be a listing of
14 such styles.

15 Q. Is it -- you performed testing for EAC
16 certification, correct?

17 A. Yes, sir, I have.

18 Q. Is it permissible to have two different ballot
19 definitions in the same election with respect to the
11:23:08 20 size of the ballot image?

21 A. No, sir. If, for example, if you live in an
22 apartment building and your neighbor and you have the
23 same school board district, you have the same precinct,
24 all the jurisdictions for whether it's local, county,
25 state or federal are basically the same, that

1 ballot-style definition, the ID for it, should be
2 singular. If you do not, then you have two different
3 styles, you're assessing them differently. That can
4 also produce forgery. There's only supposed to be one
5 ballot style per those voting options, and that --
6 that's what controls it.

7 Q. The 19-inch ballot image that you observed in
8 your inspection on multiple ballots including duplicated
9 and spoiled ballots, correct?

11:23:56 10 A. Yes, sir.

11 Q. What effect would a 19-inch ballot image
12 projected on a 20-inch piece of paper used in the
13 election in Maricopa for November 2022 have when it was
14 placed into one of these vote center tabulators?

15 A. It would cause it to be rejected. According to
16 the Dominion's documentation, they performed somewhere
17 between 200 and 300 checks on the actual physical paper
18 ballot that gets inserted into the system. They state,
19 and this is according to Dominion, the vendor who
20 created the application, that it can reject the ballot
21 for any one of those. A 19-inch image being on 20-inch
22 paper increases the margin. Once the timing marks are
23 seen and they are evaluated, the actual physical printer
24 that created the image is saying by the application
25 telling it, you're done, but there's a remaining inch of

1 paper in there, so it would assume there's a paper jam.
2 And to detect, I specifically asked, there were paper
3 jams to where he opened up and there was no paper.

4 So from a programming perspective, the machine
5 would throw the paper jam error, but yet there would be
6 no paper.

7 Q. And you're referring to a tech, you said you
8 spoke to a tech, would that be Aaron Smith?

9 A. Yes, sir.

11:25:15 10 Q. Okay. And what did Mr. Smith tell you -- first
11 of all, who is Aaron -- who is your -- what is your
12 understanding of Mr. Smith's role during the
13 November 2022 election?

14 A. I think he repeatedly followed all the procedures
15 that he was instructed to follow. He put a good solid
16 effort forward to resolve the issues. It finally became
17 to where the issue could not be resolved, according to
18 the procedures, and he had to actually request a
19 replacement tabulator, which so happened to be
11:25:52 20 mis-configured.

21 Q. Do you know why Aaron wanted to testify today?

22 A. I think --

23 MS. KHANNA: Objection, Your Honor. Calls
24 for speculation, lack of foundation.

25 THE COURT: That's going to call for

1 speculation.

2 MR. OLSEN: Withdraw the question, Your
3 Honor.

4 BY MR. OLSEN:

5 Q. You mentioned that there are only two
6 possibilities for how a 19-inch image could be
7 configured onto the system to be put on a 20-inch piece
8 of paper, correct?

9 A. Yes. My assessment applies to anything that is
10 printed, not just -- not just the specifics of this, but
11 to anything that's printed. These are the way the
12 technology functions.

13 Q. But you testified that there's only two ways --

14 A. Yes, there is.

15 Q. -- this situation could arise?

16 A. There are only two.

17 Q. What would it take for you to determine which of
18 the two possibilities is what occurred?

19 A. Specifically, as I did yesterday, inspecting the
11:27:11 20 ballots. There were some ballots that were spotty, but
21 the spottiness was also on batches from the vote centers
22 that were correctly tabulated, so that confused me. And
23 the stuff that was mentioned about the fusers and the
24 heating, because, too, they first said it was a toner
25 issue, which it was not, it's a tray weight issue, which

1 affects the heat of the fusers.

2 The mechanical function of a fuser and heater
3 from what I observed from the spottiness did not match
4 what is a standard error or example that would be
5 demonstrated. There were one or two occasions that were
6 exactly that way, but that was about two ballots out of
7 all that I examined.

8 Q. But if you were to try to determine whether it
9 was a printer issue, configuration issue, or an issue
11:27:59 10 with the ballot definition with respect to how a 19-inch
11 image was projected onto 20-inch paper, what would you
12 need to do?

13 A. I would need to see the ballot styles and the
14 ballot definitions. In totality, if there's 15,000 of
15 them, all of them should be examined.

16 Q. Do you have -- obviously you have been practicing
17 in the cyber field for two decades, correct?

18 A. Yes, sir, and it includes everything to include
19 printers.

11:28:41 20 Q. That's what I was going to ask you. Can you --
21 do you work with printers? Do you understand how
22 printers function and work, and at what level is your
23 experience?

24 A. To a detailed level to where I actually caused
25 one of the government agencies in the missile defense

11:29:31

1 side to get highly upset, because I understand the
2 protocols that run. And it's not just printers, there
3 are multifunctional devices, MFDs as we refer to them,
4 because they can scan, they can print, they can send
5 file transfers. And I've evaluated protocols, I've also
6 done root cause analysis, because classified printers
7 have -- they could print classified data even when they
8 are not supposed to because of the rollers, and this is
9 one thing I called -- refer to as ghost printing. I did
10 see that repeatedly on the early vote ballots that were
11 printed by Runbeck, because in my opinion the ink was a
12 little bit too deep and too shiny for that, and that --
13 and I did. I was able to even see candidates' names in
14 white space. It's very light gray, but that's why I
15 refer to it as ghost printing.

16 Q. Um-hum. What would you recommend be done with
17 the ballots currently stored at MCTEC now, given your
18 findings from the inspection?

11:30:13

19 MS. KHANNA: Objection to relevance. Lack
20 of foundation. Speculation.

21 THE COURT: You need to rephrase the
22 question. I'm going to sustain it.

23 BY MR. OLSEN:

24 Q. Do you have any concerns regarding the security
25 of the ballots, given your findings from your inspection

1 yesterday that a 19-inch image was projected onto the
2 samples from six different vote centers that you
3 examined of 20-inch paper?

4 A. Yes, I can. If it's okay with the Court, I have
5 to answer this in two ways. They are both pertinent.
6 But, first, I observed while ballots were being pulled
7 out and sampled, and they obliged in every direction,
8 whether top, middle, or that, that they were provided.
9 I observed more improperly imaged ballots that were not
10 inspected that were there.

11:31:16

11 Now, to answer the question, those should be
12 secured. I will state in my capacity I handle
13 everything from physical security to accrediting
14 buildings for classified information storage. I've been
15 a classified courier, which means I'm authorized to
16 transport classified information. As a forensic
17 investigator, I fully understand chain of custody. And
18 what I will cite is that the facility and the security
19 and chain of custody at the vault and the tabulation
20 center are highly inaccurate, and those ballots could be
21 tampered with. They should be -- they should be sealed
22 and appropriate actions.

11:31:52

23 For example, security seals were only placed on
24 the boxes that we inspected, and that was due to the
25 court order, and they wanted to ensure that the proper

1 security was done.

2 MS. KHANNA: Objection, Your Honor. I'm
3 going to move to strike as non-responsive. I'm not
4 sure, again, what question that was answering.

5 THE COURT: That was non-responsive to the
6 questions and beyond the scope, so -- of what's before
7 the Court, so --

8 MS. KHANNA: Thank you, Your Honor.

9 THE COURT: -- strike the last part of his
10 answer dealing with the security measures.

11 MR. OLSEN: Your Honor, just a point of
12 clarification. You said strike the last part and --

13 THE COURT: His answer, he had two parts to
14 his answer. He said, first, he observed ballots,
15 improperly imaged ballots beyond what was sampled. That
16 was part 1. Part 2 is the commentary about the
17 continued or ongoing storage, and the -- it's all right,
18 I've been accused of soft-spoken. Part 2 was the
19 testimony that related to the ongoing security concerns.
20 That's the part that is not relevant to the issues that
21 are before the Court today.

22 MR. OLSEN: Yes, Your Honor.

23 BY MR. OLSEN:

24 Q. Mr. Parikh, you mentioned that you saw other
25 ballots that you could see -- do I understand that

1 correctly -- had a 19-inch ballot image projected onto
2 20-inch paper?

3 A. Yes, sir.

4 Q. And how could you tell that?

5 A. Because the difference in the margin, as they
6 were being taken out of the box and placed on the table
7 and shuffled around, it was obvious. It was apparent to
8 me.

9 Q. Okay. Is there -- when -- on these ballots with
10 a 19-inch image, are there marks that kind of -- that
11 are different around the corners than the 20-inch
12 ballots?

13 A. Yes, sir. You will see the corner edges of the
14 image, which would be considered, you know, the actual
15 size of the paper. Those right-angle marks at each --
16 the top left, top right, bottom left, bottom right, are
17 within the margin space. They are clearly visible.

18 Q. Did you -- you mentioned that you kept notes --

19 A. Yes, sir.

11:34:17 20 Q. -- of your inspection. Did you draft a report
21 that summarized those notes with conclusions?

22 A. Yes, sir, I did.

23 Q. If the Court were to ask you for it, would you be
24 able to provide it to the Court?

25 A. Yes, sir, I would.

1 Q. And would that report be -- would you swear to
2 the accuracy of your conclusions in that report?

3 A. Yes, I would.

4 Q. And would you swear to the accuracy of your --
5 the results of your inspection in that report?

6 A. Yes, sir, I would.

7 Q. You testified earlier that having a 19-inch
8 ballot image projected on a 20-inch ballot as you
9 observed appearing from ballots cast in six different
10 vote centers --

11:35:23

11 A. Yes.

12 Q. -- duplicated ballots, spoiled ballots, that
13 could only arise from -- could it be by accident or is
14 it?

15 A. No, sir, it could not be by accident. Those are
16 configuration changes they are administrative level on
17 the printer aren't -- with a ballot style or ballot
18 definition file, and those are done on the EMS system,
19 which has password security and everything else. The
20 EED application is actually the one that creates the
21 ballot style. That's what's used. It's commonly --
22 it's commonly put on the EMS server because that's,
23 like, the centerpiece, and those two systems are
24 controlled access.

11:35:54

25 Q. You testified earlier that you have been involved

1 in other assessments of failures relating to
2 cyber-related issues, correct?

3 A. Yes, sir.

4 Q. And that we call that a root cause analysis,
5 correct?

6 A. Yes, sir. I was part of the working group that
7 established what was called the IARA process, which is a
8 risk analysis and assessment process for the missile
9 defense agency years ago. It's a standard risk analysis
10 and assessment, and in order to do that, that's the
11 basis of how you analyze threat and then you also,
12 that's why you conduct root cause analysis, because you
13 have to be specific when you assess risk -- risk, excuse
14 me.

15 Q. In the performance, in your experience, and you
16 testified earlier that the federal government -- was it
17 the federal government that had actually criminally
18 prosecuted people based on your findings in a root cause
19 analysis?

20 A. Yes, sir, and sometimes they ignored my analysis,
21 but that's beyond.

22 Q. Given your opinion that -- strike that.

23 Given your opinion and your knowledge of how
24 ballot definitions are configured and how printers work,
25 does your finding of a 19-inch image, ballot image base

1 placed on 20-inch paper, does that implicate violations
2 of criminal law?

3 MS. KHANNA: Objection.

4 THE COURT: Wait. Hold on before you answer
5 that.

6 MS. KHANNA: Objection, Your Honor. Calls
7 for speculation. Lack of foundation, and it calls for
8 legal conclusion.

9 THE COURT: It does call for a legal
10 conclusion.

11 MR. OLSEN: Your Honor, the witness has
12 testified that --

13 THE COURT: I heard.

14 MR. OLSEN: Yes, Your Honor. I'll sit down.
15 BY MR. OLSEN:

16 Q. Based on what you have determined on your
17 physical examination of these ballots, your experience
18 both in the industry as a Certified Forensic Hacking
19 Investigator, your CISSP, your skills with, I believe,
20 you called it IRAP, is that --

21 A. It's IARA, that's the acronym that does it. They
22 are different -- and this is specifically for technical
23 risk and assessment. This is one of the issues when I
24 worked for the voting system test labs to get all the
25 vendors, I've dealt with over seven of them to my

1 memory, right, none of them performed it. The labs
2 didn't perform it. I eventually convinced one lab to do
3 this, because this is vital to when you're doing system
4 testing let alone security system testing, and this
5 applies not just to an electronic voter systems, this is
6 to all information systems, all technology. These are
7 standard engineering principles.

8 Q. Is there any way you could be wrong about a
9 19-inch image being placed on 20-inch paper?

11:39:43 10 A. No, sir. I give the technical options that are
11 there. There are two ways that this can happen, and
12 based on this system and the controls in place, this
13 could not have been an accident, and there are only two
14 options. It would take further investigation, further
15 forensic examination for me to determine exactly which
16 one it was.

17 MR. OLSEN: Thank you, Mr. Parikh.

18 Cross.

19 THE COURT: Cross-exam, will that be you,

11:40:20 20 Mr. Liddy?

21 MS. KHANNA: Your Honor, I think we're going
22 to break up the cross-examination, if possible. One
23 from the County and one for the Governor-Elect Hobbs as
24 well, and if we could do the County's first, I think we
25 might get to the other one after lunch.

1 THE COURT: Mr. Liddy?

2 CROSS-EXAMINATION

3 BY MR. LIDDY:

4 Q. Thank you, Your Honor. I appreciate that as some
5 of these allegations go directly to the conduct of the
6 election by my client Maricopa County.

7 Mr. Parikh, is that correct pronunciation?

8 A. Yes, sir, it is.

9 Q. And where do you reside, Mr. Parikh?

11:40:57 10 A. I reside in Huntsville, Alabama.

11 Q. You traveled up to Maricopa County for this
12 proceeding?

13 A. Yes, sir, I did.

14 Q. And who paid for your travel?

15 A. The attorney fund.

16 Q. The attorney fund. What's the attorney fund?

17 A. It's the legal fund. I believe it's -- it's for
18 all the attorneys associated with this.

19 Q. With this particular litigation?

11:41:23 20 A. Yes.

21 Q. And did the attorney fund pay for lodging as
22 well? Paid for your lodging?

23 A. Yes, lodging is always considered travel.

24 Q. And are you being paid for your time?

25 A. Yes.

1 Q. And what is the rate at which you're being paid
2 for your time?

3 A. \$250 an hour.

4 Q. That's also coming from the attorney fund?

5 A. Yes.

6 Q. Are you familiar with an event called Michael
7 Lindell's Moment of Truth?

8 A. Yes, I spoke at the event.

9 Q. You appeared and spoke at the event?

11:41:54 10 A. Yes, I did.

11 Q. And where was that event held?

12 A. In Missouri.

13 Q. In Missouri. And was your travel from Alabama to
14 Missouri paid for by someone other than yourself?

15 A. Yes, sir.

16 Q. And who paid for that?

17 A. That, I assume, would be Michael Lindell. All
18 the travel was arranged. He asked me to speak at the
19 event and I spoke.

11:42:17 20 Q. And that would be true for your time, did you
21 also get paid for your time there?

22 A. I did not charge for my time.

23 Q. And your lodging?

24 A. That's considered travel that was provided to me.

25 Q. And when you say Mr. Lindell, you're referring to

1 the My Pillow guy?

2 A. Yes, sir.

3 Q. And you are a cyber security professional?

4 A. Yes, sir, I am.

5 Q. During your investigation of this election, did
6 you detect any hacking involved in the '22 General
7 Election in Maricopa County?

8 A. No, sir.

9 Q. I believe you testified that yesterday you were
11:43:15 10 down at MCTEC performing the court-ordered inspection of
11 the ballots; is that correct?

12 A. Yes, sir, I was.

13 Q. And you were asked to select batches of ballots?

14 A. Yes.

15 Q. You were asked to identify them. Did you use a
16 highlighter and highlight the boxes?

17 A. Yes, I did.

18 Q. Did you observe the custodian of those ballots
19 opening those boxes?

11:43:40 20 A. Yes.

21 MR. OLSEN: Objection.

22 THE WITNESS: They opened them in front of
23 all the inspectors. There was a court report inspected,
24 there was the other inspector for the other, the
25 gentleman sitting over there that says he was an

1 attorney. We all were there as they went through.

2 BY MR. LIDDY:

3 Q. Did the individual who opened the box break the
4 seal?

5 A. By seal, are you referring to the red tape, which
6 is simply red tape and not a security seal?

7 Q. Well, I'm asking you what you observed.

8 A. I would not categorize what closed the boxes as a
9 seal.

11:44:13 10 Q. Did you see the serial numbers on it?

11 A. There were no serial numbers.

12 Q. So in your professional opinion, the ballots were
13 not sealed?

14 A. The ballots did not have an appropriate security
15 seal on the boxes.

16 Q. That's -- so, okay, fine. My question was: Were
17 the ballots sealed?

18 A. They were closed with tape.

19 Q. And where were they stored?

11:44:41 20 A. In the vault and in the tabulation center.

21 Q. Now, would you say in your profession, details
22 are important?

23 A. Yes, they are highly important.

24 Q. And you said that you reviewed the statutes prior
25 to initiating this investigation?

1 A. I always have to do that, because it's relevant,
2 especially if a state has a statute.

3 Q. So that's a yes?

4 A. Yes.

5 Q. And you also reviewed federal statutes?

6 A. Yes.

7 Q. HAVA, I think you said?

8 A. I go as far back as the 1990 FEC standards. I
9 reviewed them all, every version of the VVSG.

11:45:33 10 Q. And you downloaded Title 16?

11 A. Yes, I like to have references for when they are
12 referred to, because they have been referred to. And in
13 the Secretary of State's manual, they were referred to
14 in the Maricopa manuals and procedures. So I like to
15 actually read what's referred to, to ensure that it's
16 accurate.

17 Q. And when you read those documents, you pay close
18 attention to detail, because that's required by your
19 profession; is that correct?

11:45:58 20 A. I'm not a legal attorney, and so I read the laws
21 for what they state and how they are.

22 Q. Now, you testified that you reviewed some
23 documents that were provided to the Lake campaign by a
24 FOIA request; is that accurate?

25 MR. OLSEN: Objection, Your Honor. I don't

1 believe he ever testified to that.

2 THE COURT: Well, it's cross-exam, so he can
3 answer the question, if he understands it. If you don't
4 understand the questions, Mr. Parikh --

5 THE WITNESS: No, these were public record
6 requests. They came from me from other technical
7 professionals.

8 BY MR. LIDDY:

9 Q. So they were not FOIA requests?

11:46:36 10 A. Those records were obtained via FOIA requests.

11 Q. Are you familiar with FOIA? Can you tell me what
12 F-O-I-A stands for?

13 A. It's the Freedom of Information Act.

14 Q. Is that statute a federal statute or a state
15 statute?

16 A. That depends on what you're requesting the FOIA
17 for. That's categorized at the federal level and state
18 levels, to my knowledge.

19 Q. So a FOIA can either be a state or a federal, in
11:47:00 20 your understanding?

21 A. Yes.

22 Q. And federal was FOIA and state was a public
23 records request under the Arizona statute, that would be
24 a detail that doesn't interest you?

25 A. That -- if -- if the data was illegally obtained

1 --

2 Q. That's not the question. The question is: Is
3 the detail, the difference between a federal statute and
4 a state statute, of interest to you?

5 A. When I'm provided evidence, I always ask the
6 source of it. And I have received, in my experience, I
7 have received evidence from law enforcement officials
8 that, in my opinion, were not properly attained. And as
9 a forensic investigator who understands chain of custody
10 and all the legal ramifications, because for the court's
11 record, the majority of that deals with the statutes.

12 For example, the lock picks that I own as part of
13 my security thing, in my state, I have to have a private
14 investigator license. These are the statutes that a
15 forensic investigator handling evidence has to be aware
16 of.

17 Q. Thank you. And when you're working with your
18 security thing, as you said it, are you familiar with
19 federal statutes and state statutes?

20 MR. OLSEN: Objection, Your Honor. I'm not
21 sure about the question.

22 THE COURT: Well, if he's confused --

23 MR. LIDDY: I'll withdraw the question, Your
24 Honor.

25 THE COURT: Thank you. Next question.

1 BY MR. LIDDY:

2 Q. You just testified that you receive information
3 from law enforcement that's both federal and state law
4 enforcement; is that correct?

5 A. I didn't say that. I said it was law enforcement
6 and I --

7 Q. And you testified both federal law enforcement
8 and state law enforcement; is that correct?

9 A. What I just told you is I said I received it from
10 law enforcement.

11 Q. Well, when you receive information in your
12 profession from law enforcement, are you familiar
13 whether the law enforcement is federal or state?

14 A. Yes, when they provide me the evidence, yes.

15 Q. Is that a detail that's important to you?

16 A. Yes.

17 Q. I believe you testified that you examined some
18 ballots that had been duplicated; is that correct?

19 A. Yes.

11:49:06 20 Q. And you testified that you examined the
21 originals, but not the duplicates; is that correct?

22 A. That's correct.

23 Q. And you examined -- and you testified that the
24 duplicates were not kept next to the duplicate -- the
25 duplicates were not kept next to the originals; is that

1 correct?

2 A. That's correct. They are supposed to be
3 traceable and easily identifiable. Mr. Jarrett said
4 that he would have to get his techs busy and it would
5 take them over a week to try and find them.

6 Q. That's your recollection of what Mr. Jarrett
7 said?

8 A. That is what Mr. Jarrett said.

9 Q. And if the ballots, the originals and the
10 duplicates, were in the boxes right next to each other,
11 would that surprise you?

12 A. The duplicates that I was shown, because they
13 were duplicated, were part of, one, of the vote centers,
14 and he opened both those boxes; and, two, because they
15 couldn't identify some of the original duplicates, they
16 had to run and count them so they could try to map them
17 back to which site they belonged to.

18 Q. So that's your recollection of what Mr. Jarrett
19 said when you asked to see the originals of the
20 duplicates?

21 A. No.

22 Q. That's a detail that's important. You're telling
23 this Court that when you asked Mr. Jarrett to view the
24 duplicates of the originals that he told you it would
25 take six hours?

1 A. To clarify, I did not ask to see duplicates.
2 They were part of the vote center, and they provided the
3 entirety of what they had for the vote center. They
4 could not provide what was --

5 Q. Thank you, Mr. Parikh. I think the important
6 point, and I want to ask you this to make sure that I
7 understand it correctly, is that you did not ask to see
8 the duplicates?

9 MR. OLSEN: Objection. Misstates his prior
11:51:02 10 testimony. Argumentative.

11 THE COURT: This is cross. Just for
12 reference, on all cross, if he doesn't understand the
13 question, he can have it rephrased; but particularly
14 with an expert witness, I think he's capable of
15 answering. If you don't understand, you can have him
16 rephrase. If you do understand, you can go ahead and
17 answer.

18 Would you like the question restated to you?

19 THE WITNESS: Yes, sir, if you would.

11:51:24 20 THE COURT: Please, Mr. Liddy.

21 BY MR. LIDDY:

22 Q. Mr. Parikh, is it your recollection that when you
23 asked Mr. Jarrett to see the duplicates and the
24 originals that he told you it would take six hours to
25 get them?

1 A. One, I did not ask to see them. They were --

2 Q. That's the answer to my question, Mr. Parikh.
3 You did not ask to see them.

4 THE WITNESS: Your Honor, if I may --

5 THE COURT: Wait. There's just -- your
6 counsel will have redirect.

7 THE WITNESS: Yes, sir.

8 THE COURT: So just answer his questions.

9 THE WITNESS: Yes, sir. I just want to

11:52:09 10 state we were following --

11 THE COURT: Wait

12 MR. LIDDY: I have another question, if it's
13 appropriate.

14 THE COURT: Please.

15 BY MR. LIDDY:

16 Q. You've testified that you have a working theory
17 that some of the ballots for the 2022 General Election
18 were on 20-inch paper but were printed at 19 inches; is
19 that correct?

11:52:31 20 A. 19-inch image printed on 20-inch paper, it is not
21 a theory.

22 Q. Okay. So it was 20-inch paper, the ballot was
23 20 inches, correct?

24 A. The paper was 20 inches.

25 Q. And the image was 19 inches, according to your

1 testimony, correct?

2 A. The ballot image was 19 inches, yes.

3 Q. Are you familiar with a shrink-to-fit setting on
4 a printer?

5 A. Yes, I am.

6 Q. Could a shrink-to-fit setting account for some of
7 the ballots you observed being 19 inches on 20-inch
8 paper?

9 A. That is a possibility, but it would -- it would
11:53:08 10 violate the configuration settings they had for the
11 voting systems and the tabulators.

12 Q. And you've testified that you're familiar with
13 the election process?

14 A. Yes, sir.

15 Q. And you testified that if one were to take a
16 20-inch ballot that's shrunk to 19 inches and put it
17 into a vote center precinct tabulator, it would not get
18 tabulated?

19 A. It would not get tabulated at any tabulator.

11:53:38 20 Q. Any tabulator?

21 A. That encompasses ICP or ICCs at central.

22 Q. So if it went down to central, according to your
23 understanding, and it was tried to run through the tower
24 tabulators, it would also not be tabulated; is that
25 correct?

1 A. That is correct.

2 Q. And you've just testified that you observed some
3 duplicated ballots. Is it your understanding that a
4 ballot that cannot be tabulated by precinct-based
5 tabulator and cannot be tabulated by a tower-configured
6 tabulator at central would then be duplicated?

7 A. It would have to be, because it wouldn't be
8 tabulated, so it would require duplication.

9 Q. And after duplication, what would happen to that
10 ballot?
11:54:18

11 A. The duplicated ballot which is supposed to be
12 marked with a specific ID and that ID must be recorded
13 on the original, and I saw those stickers on the
14 originals.

15 Q. The question is: What would happen to that
16 ballot?

17 A. Then the ballot would be re-run through the --
18 the duplicated ballot would be run through the
19 tabulator.

11:54:38 20 Q. So it would be tabulated, is that your testimony?

21 A. The duplicated ballot would be tabulated, yes, it
22 should be.

23 Q. Okay. So if a voter walked into a vote center on
24 Election Day, filled out a ballot, maybe had a
25 shrink-to-fit setting on it so it wouldn't be counted on

1 the tabletop, would go into Door Number 3, goes on down
2 to MCTEC. They put it into a tower -- tower tabulator,
3 it doesn't get counted, and then it gets duplicated and
4 then it gets counted, so that voter's ballot was voted
5 and tabulated; is that your understanding?

6 A. But you started -- you started --

7 Q. Is that your understanding?

8 THE WITNESS: Your Honor, I can't answer
9 that question the way he asked the question because it's
10 inaccurate.

11 THE COURT: If you don't understand, you can
12 say I don't understand and he can rephrase it so you can
13 understand. But if you don't like the way it's phrased,
14 that's something that your counsel has to clear up.

15 THE WITNESS: Yes, sir. Your Honor, if I
16 may address the Court?

17 THE COURT: No.

18 THE WITNESS: I'm provided for technical
19 expertise and give those options. And if the technical
20 scenario is inaccurate, I cannot answer the question.

21 MR. LIDDY: Let me try again.

22 BY MR. LIDDY:

23 Q. Ms. Lake right here in this room, bona fide
24 candidate for Governor of the Grand Canyon state,
25 hundreds of thousands of voters would love to have had

1 her as the next governor. One of them chooses not to
2 vote in the 26 days of early voting or mail-in voting,
3 or emergency vote center voting, but chooses to show up
4 on Election Day, gets a ballot from a ballot on-demand
5 printer, and somebody either intentionally or
6 inadvertently has hit the shrink-to-fit setting, and
7 this 20-inch ballot paper comes out 19 inches, this
8 voter fills it out. Kari Lake, wanting her bid to be
9 next governor, throws it into the precinct tabulator.

11:56:49 10 It comes out, goes into Door Number 3, goes down to
11 MCTEC, the much more sensitive tabulators, according to
12 you, it would not count it. It would then go to
13 duplication, it would be duplicated, then it would be
14 tabulated.

15 Is that your understanding of the elections in
16 Maricopa County?

17 A. Your technical description is not possible.

18 Q. I apologize. I wasn't attempting to give a
19 technical description. I was just saying what happens.

11:57:25 20 Based on your testimony, so you're saying in that
21 scenario, that voter who wanted to vote for Kari Lake
22 would never have that vote tabulated; is that your
23 testimony?

24 A. My testimony is that a shrink-to-fit setting
25 would rely at the application level, which would reside

1 on the EMS, which Mr. Jarrett just testified sends the
2 print job to the printer. Therefore, it can't be
3 accidental as all the employees that man the EMS are
4 trained.

5 Q. Whether it's accidental or inadvertent --

6 A. I gave the two options, sir.

7 Q. Please allow me to ask the question, and I'll
8 allow you to answer.

9 Whether it's accidental or inadvertent, if the
11:58:11 10 shrink-to-fit 19-inch ballot has to be duplicated, once
11 it's duplicated, would it be tabulated, to your
12 understanding?

13 A. There are two technical ways that that image
14 would be there. None of the ways you --

15 MR. LIDDY: Your Honor --

16 THE WITNESS: It's not possible, Your Honor.

17 THE COURT: I understand what you're saying,
18 Mr. Parikh. That's not responsive to his question. If
19 you are able to answer his question, you can do that.

11:58:45 20 BY MR. LIDDY:

21 Q. Sir, are you able to answer the question?

22 A. I'm unable to answer your question.

23 Q. Okay. Let me ask a different question.

24 Are duplicated ballots tabulated, Maricopa County
25 General Election, 2022?

1 A. If they are duplicated correctly and they are
2 configured correctly, yes, they should be.

3 MR. LIDDY: Thank you. No further
4 questions, Your Honor.

5 THE COURT: Okay. We're at the point where
6 we need to break. We're going to take a one-hour, not
7 one-and-a-half-hour recess. So we'll be back here at
8 1 o'clock to resume. So just come back at 1 o'clock,
9 Mr. Parikh, and we'll resume where we left off.

11:59:33 10 THE WITNESS: Yes, sir. And I realize I'm
11 still under oath, sir.

12 THE COURT: You read my mind.

13 THE WITNESS: Yes, sir.

14 THE COURT: Thank you very much.

15 (Recess taken, 11:59 a.m.)

16 (Proceedings resume, 12:58 p.m.)

17 THE COURT: All right. This is
18 CV2022-095403. This is Lake v. Hobbs, et al.
19 Continuation of the hearing on the election challenge.

13:00:16 20 Present for the record are parties -- are party
21 representatives and their respective counsel. We have
22 Mr. Parikh still on the witness stand under oath, and we
23 are ready to continue with the cross examination. This
24 will be by, Ms. Khanna, I believe.

25 MS. KHANNA: With the opportunity to

1 streamline over the lunch break, we have no further
2 questions at this time.

3 THE COURT: Well then. Thank you.

4 MR. OLSEN: Your Honor, I have very brief
5 redirect to clear up a few points, Your Honor.

6 THE COURT: No, that is fine. You get
7 redirect. I'm smiling because I have a lawyer
8 characterizing something as brief and --

9 MR. OLSEN: I do my best, Your Honor.

13:00:53 10 THE COURT: Excuse my smile.

11 But there is redirect, Mr. Olsen. You may
12 proceed.

13 REDIRECT EXAMINATION

14 BY MR. OLSEN:

15 Q. Mr. Parikh, Mr. Liddy asked you some questions
16 about duplicate ballots. And kind of like, hey, if
17 there was a shrink-to-fit that that was no big deal
18 because the duplicate would be captured or accepted by
19 the tabulator.

13:01:21 20 What happens during the duplication process?

21 A. The original ballot is examined, another clean
22 ballot is set beside it and the ballot is duplicated.
23 All those votes are transferred and verified.

24 Q. In the duplicated -- duplication process, could
25 the image of a 19-inch image from the original be

1 transposed onto a 20-inch ballot?

2 A. As the duplicated ballot?

3 Q. Yes. In other words, if you had a 19-inch image
4 on 20-inch paper, the original image, and then the
5 ballot is duplicated and run through the scanner, could
6 the duplicated ballot be brought up to a 20-inch image
7 or --

8 A. Yes, it should be if the ballot was originally a
9 20-inch ballot, the blank ballot that they would bring
10 to put the votes transfer the votes to would be 20-inch,
11 so yes, it would be -- it would be tabulated.

12 Q. It would necessarily be moved to a 20-inch image
13 in order to be tabulated?

14 A. Yes, that's the only way it could be tabulated.

15 Q. Yes. And at the point of duplication, anything
16 could happen to alter, or not, the original ballot,
17 correct, if you're duplicating a ballot?

18 A. Yes.

19 Q. What's to stop somebody from altering the ballot
20 from its original --

21 MS. KHANNA: Objection, Your Honor. My
22 apologies. This is beyond the scope of direct and
23 cross, I believe. He's asking for new opinions that he
24 never offered.

25 MR. OLSEN: Your Honor, if I may? Mr. Liddy

1 is the one who brought up duplication and then it was no
2 big deal. This is directly relevant to his examination
3 and implication that duplication means that no harm, no
4 foul.

5 THE COURT: I agree with you in terms of the
6 scope of redirect. I'm a little concerned about
7 foundation, but --

8 MR. OLSEN: Yes, Your Honor.

9 THE COURT: -- go ahead and ask whatever
10 questions.

11 Mr. Liddy, you're standing.

12 MR. LIDDY: Thank you, Your Honor. I
13 apologize. The duplication process is in Title 16, it's
14 a very important part of the process. I would never and
15 have never characterized it as no big deal, and I object
16 as mischaracterization of my description of that
17 important process.

18 THE COURT: Not a problem, so noted.

19 Mr. Olsen, do you have another question,
20 please?

21 BY MR. OLSEN:

22 Q. Mr. Parikh, Mr. Liddy asked you if you had asked
23 for the duplicated ballots, and you said in the
24 beginning of your testimony is that you had asked Mr.
25 Jarrett and were given an answer that there was no way

1 to trace. And then subsequent to that when you were
2 asked the question again, you said you did not ask.

3 What was the distinction that you were drawing in
4 terms of asking for the duplicated ballot?

5 A. I thought Mr. Liddy was asking me if I had
6 planned on -- if it was in my plan of what I selected
7 and wanted to see, as far as the sample size, and I did
8 not plan that. I did not plan that. It was made clear
9 there was time taken to ensure that all the inspectors
10 were aware of how the process would be, the amounts we
11 were allowed, and all that. And they -- they were --
12 they were provided to us. And when they were, I asked
13 were the duplicates -- I did ask where the duplicated
14 were, but that was part of the court order process to
15 look at those, yes.

16 Q. And when you -- so that the record is clear, when
17 you asked for the duplicated ballot while you were there
18 at MCTEC, and what was the -- and who did you ask again,
19 Mr. Jarrett?

20 A. Mr. Jarrett, yes.

21 Q. And what was his response?

22 A. He said they would have to get techs and it would
23 take up to a week to trace that down.

24 Q. Okay. And you heard Mr. Jarrett testify that
25 there was no way that a 19-inch image was placed on

1 20-inch paper in the November 2022 General Election,
2 correct?

3 A. Yes, sir.

4 Q. And is there any way that a 19-inch ballot image
5 placed on 20-inch paper in this election in Maricopa,
6 whether it was tabulated by the vote center tabulator or
7 the tabulators at MCTEC, that that 19-inch ballot image
8 would be accepted by the tabulator?

9 A. There is no way a 19-inch image on 20-inch paper
10 could be accepted by the tabulator.

11 Q. You also examined early votes, correct?

12 A. Yes, sir, I did.

13 Q. And you testified that those were votes that were
14 printed by Runbeck?

15 A. Yes, sir.

16 Q. Did you see out of any of those early votes that
17 you inspected or observed a 19-inch image on 20-inch
18 paper?

19 A. No, sir, I did not.

13:06:35 20 Q. So the 19-inch image on 20-inch paper was only an
21 existing condition on the ballot on-demand printed
22 ballots, which were the day of the election; is that
23 accurate?

24 A. Yes, sir, that's accurate.

25 Q. You took a picture of those ballots side by side

1 in your report, correct?

2 A. I did not take the picture physically. The
3 photograph was provided to me.

4 Q. Okay.

5 A. When I initially saw it, it may not to a normal
6 voter or user to pick this up; but again, I examine all
7 types of media in all types of way, and it jumped out at
8 me. And I requested to get a copy of that image,
9 because to me that -- that was very damning. And then
10 that photograph was an overlay, and it did confirm my
11 conclusions that it was a shrinkage and that it was a
12 19-inch image printed on a 20-inch ballot.

13 Q. Should there ever be, as Mr. Liddy characterized,
14 a shrink-to-fit ballot that comes out for some people's
15 ballots and not others?

16 A. I'm here to state the technical scientific facts.
17 I gave the options. Mr. Liddy's assumptions of a
18 shrink-to-fit is inaccurate, and to boot -- or to
19 further on add -- that if the ballot definition is
20 20 inches and you print it on 20-inch paper,
21 shrink-to-fit will do nothing. The margins will be
22 exactly the same as they are on a regular ballot, and
23 they should be tabulated. But what he referred to
24 cannot happen. The only other technical possibility for
25 that happening is if somebody messed with the print

1 drivers and made -- even though 20-inch paper was
2 loaded -- made the printer think it was 19 inches and
3 that would cause the shrink-to-fit. Those are the only
4 technical -- that's the only technical option that would
5 address Mr. Liddy's scenario.

6 MR. OLSEN: Thank you, Mr. Parikh. No
7 further questions, Your Honor.

8 THE COURT: Well, may we excuse the witness?

9 MS. KHANNA: Yes, Your Honor.

13:09:07 10 MR. OLSEN: Yes, Your Honor.

11 THE COURT: Thank you, Mr. Parikh. You are
12 excused, sir.

13 (Witness excused.)

14 THE COURT: Mr. Blehm, Mr. Olsen, who is
15 your next witness?

16 MR. OLSEN: Your Honor, at this time, we
17 would like to call Aaron Smith.

18 MS. KHANNA: Your Honor, I'm not sure that
19 we have Mr. Smith on the witness list.

13:09:39 20 MR. OLSEN: Absolutely was disclosed.

21 MS. KHANNA: On the witness list that you
22 filed with the Court yesterday?

23 MR. OLSEN: I have to look, but I know that
24 we disclosed him.

25 THE COURT: I don't see a Mr. Smith on the

1 list yesterday. (Pause.)

2 MR. BLEHM: The list I'm looking at, Your
3 Honor, Mr. Smith as a witness. If Your Honor wants to
4 give me a few minutes, I can go through my e-mails.

5 THE COURT: I'm looking at what the Court
6 was given and --

7 MR. OLSEN: I don't know that we provided
8 that list, Your Honor.

9 MS. KHANNA: We also, I think, there was an
10 e-mail communication from Plaintiff's counsel expressly
11 asking us to take Mr. Smith off of the list.

12 MR. OLSEN: No we did not take Mr. Smith
13 off.

14 THE COURT: Well, we're now burning time
15 trying to find out who Mr. Smith is and where he is,
16 so --

17 MR. OLSEN: Right. (Pause.)

18 Your Honor, at this time, we would call
19 Bradley Bettencourt.

13:12:28 20 THE COURT: Very well.

21 MR. BLEHM: Your Honor, we're going to have
22 a change and call Heather --

23 THE COURT: I couldn't catch that. I heard
24 change of plans and he turned around.

25 MR. OLSEN: We're going to call another

1 witness, Your Honor. Heather Honey.

2 THE COURT: Okay.

3 MR. BLEHM: Sorry about that, Your Honor.

4 THE COURT: Is the witness waiting outside?

5 MR. BLEHM: Yes. She's coming in now.

6 THE COURT: Could you just hold on one
7 second? Have her stay outside.

8 MR. BLEHM: Hold on one second.

9 THE COURT: Thank you. This was another
10 issue that was raised in the 807 notice by Plaintiffs
11 that they were going to use hearsay. I apologize, Mr.
12 Olsen, you're having a hard time hearing me and I'll try
13 and speak up.

14 The disclosure that I received had listed
15 Exhibit A, there was no attachment. So all I have is
16 information that this witness is going to testify about
17 a voicemail from someone with a first name, no last
18 name.

19 MR. BLEHM: Well, Your Honor --

13:14:34 20 THE COURT: I don't have any substance.

21 MR. BLEHM: Okay. It's a voicemail from
22 somebody by the name of Betty, who identifies herself as
23 working at the Department of Elections for Maricopa
24 County. The voicemail was left to my client in response
25 to a FOIA request, a Public Records Act request, that

1 was made for chain of custody documentation. And the
2 voicemail we believe, Your Honor, is a statement against
3 interest, because they basically say, well, don't know.

4 THE COURT: Okay.

5 MR. BLEHM: It has been disclosed, Your
6 Honor.

7 THE COURT: Okay. There's -- who is going
8 to respond?

9 MR. LIDDY: Your Honor, I will.

13:15:24 10 THE COURT: Thank you, Mr. Liddy.

11 MR. LIDDY: Thank you, Your Honor. I'm
12 going to object to calling this witness for purposes of
13 hearsay testimony by somebody named Betty, who is not a
14 party in this case and, therefore, cannot make any
15 statements, admissions on behalf of the party. And this
16 so-called voicemail has no authentication, so I would
17 object on foundation as well, Your Honor.

18 And, Your Honor, we don't have it. It
19 hasn't been disclosed.

13:15:50 20 MR. BLEHM: It's been disclosed, Your Honor.
21 This Court even has it as a trial exhibit. But, Your
22 Honor, Betty identifies herself as someone working in
23 the Maricopa County Department of Elections. She also
24 identifies that she is responding to my client regarding
25 a Public Records Act request that was -- I'm sorry -- I

1 said my client -- she was responding to my witness
2 regarding a Public Records Act request. It was my
3 client who made that Public Records Act request, and
4 Betty is explaining in the voicemail that she's -- they
5 are still looking for the records, but they have no
6 idea. And she's got to go on vacation, so she should
7 call back and talk to somebody else. It's a Public
8 Records Act request, Your Honor, that is directly
9 relevant to the trial here today.

13:16:42 10 THE COURT: That's not my problem. I agree
11 with you, I see the relevance of what you're arguing.
12 My problem and where I'm focusing my questioning is the
13 authentication and the disclosure of this, because
14 you're asking for this under 807 as an exception because
15 there's not another recognized exception to the hearsay
16 rule, and I didn't see anything disclosed. You're
17 telling me this today, this is the first I'm hearing it.

18 So --

19 MR. BLEHM: Well, Your Honor --

13:17:14 20 THE COURT: You're asking -- 807 is the
21 exception when everything else is gone, this is the Hail
22 Mary that says --

23 MR. BLEHM: Understood, Your Honor.

24 THE COURT: -- I've got nothing else, Judge.

25 MR. BLEHM: We put it in 807 just in case,

1 but I believe it is a statement against interest,
2 especially in this case. We have pending litigation
3 between my client and the County regarding their
4 operation to this election, Your Honor, and it is a
5 statement made by Betty identifying herself as an
6 employee of the Maricopa County Records Department. My
7 witness, Your Honor, will get on the stand and testify
8 that she deals with Betty with respect to public records
9 requests.

13:18:03 10 THE COURT: Okay. Very well then, okay. So
11 that's your offer of proof that your client -- not
12 client -- your witness who is going to testify that this
13 is a known person to her; in other words, she could
14 recognize a voice. She knows this person. She has
15 dealt with this person as a representative of the
16 defendants with other public records request.

17 Did I get it right?

18 MR. BLEHM: You got it right, Your Honor.

19 THE COURT: Mr. Liddy?

13:18:26 20 MR. LIDDY: Your Honor, first, we have not
21 received this, so we would object on that basis. And
22 second, there is no Betty that's a party. We can't
23 authenticate who she is and she cannot make an admission
24 on behalf of any of the parties in this litigation. And
25 the fourth point, Your Honor, is a public records

1 request is not one of the two counts before this Court
2 at this time.

3 MR. BLEHM: Public records request, Your
4 Honor, is specifically aimed at Mr. Richer's testimony
5 this morning that they have documents related to chain
6 of custody for Election Day activity when they don't,
7 Betty says on this voicemail, Your Honor.

8 MR. LIDDY: Objection, Your Honor. This is
9 -- now counsel is testifying.

13:19:09 10 MR. BLEHM: I'm not testifying. I'm making
11 argument, Your Honor, regarding the evidence.

12 THE COURT: What you're making is an offer
13 of proof, correct, Mr. Blehm?

14 MR. BLEHM: I'm doing that as well, and I
15 can submit one formally, if you would like, Your Honor.

16 THE COURT: No.

17 MR. BLEHM: But in terms of offering proof
18 to this Court, A, my -- my witness will testify that she
19 is familiar with Betty. My witness will testify that
13:19:33 20 her employees are familiar with Betty. My witnesses
21 will testify that she works with Betty in getting
22 records from Maricopa County.

23 THE COURT: Okay.

24 MR. BLEHM: In response to FOIA requests,
25 Your Honor.

1 THE COURT: And you've also told me that
2 this was disclosed previously. Yes?

3 MR. BLEHM: I am, Your Honor, yes.

4 THE COURT: When was it disclosed to
5 defense?

6 MR. BLEHM: Oh, I'm sorry, Your Honor. This
7 last week has been, like, four months, and I -- if you
8 want, Your Honor, it's going to take me a good
9 45 minutes to look for disclosure.

13:20:07 10 THE COURT: Wait. Stop one second. You're
11 an officer of the Court. I'm just asking for your word.
12 If you tell me it was within the last week --

13 MR. BLEHM: I'm telling you it was
14 disclosed, Your Honor.

15 THE COURT: You're telling me within the
16 last week, as opposed to this morning, something like
17 that?

18 MR. BLEHM: I believe, Your Honor, that I
19 have created on two separate occasions at their request
13:20:24 20 that I give them access to all of our records via a link
21 so they can go online and download them, and I can show
22 this Court that I have provided them at least two links
23 to do so.

24 THE COURT: Wait a minute. I don't want to
25 waste a bunch more time on this. We've already spent a

1 lot of time on it. I'm just down to the last little
2 consideration, which is disclosure, so they are not
3 shocked by this. Disclosure is different than saying
4 here's -- here's where all my stuff is, you can dig it
5 out, or it's in there somewhere. This would be specific
6 you did a specific notice under 807, and so you realized
7 that there's an issue with the authentication and the
8 hearsay. So all I'm looking to do is verify that this
9 is not something brand-new today in terms of identifying
10 this witness in court today.

13:21:16

11 MR. BLEHM: It is not, Your Honor.

12 THE COURT: Thank you.

13 Mr. Liddy?

14 MR. LIDDY: Your Honor, we've been able to
15 find under 73 and 74 document titled Placeholder For
16 Voicemail, and then E, document titled Placeholder For
17 Voicemail. I would argue, Your Honor, that that does
18 not fit the requirement for disclosure.

19 THE COURT: Are you going to play the
20 voicemail?

13:21:39

21 MR. BLEHM: Yes, I am, Your Honor, but that
22 is the Court's exhibit list. I am not allowed to upload
23 audio visual files to the court system. I had an
24 assistant come by and drop before noon -- just before
25 noon a flash drive, which was rejected. They have these

1 -- they have these audio recordings, Your Honor. I
2 would guarantee you, as I stand here today, they know
3 who Betty is.

4 THE COURT: Wait. Stop.

5 MR. BLEHM: Somebody knows who Betty is,
6 because she works in the Elections Department.

7 THE COURT: When I say "stop," that means
8 stop, okay?

9 MR. BLEHM: Yes, Your Honor.

13:22:16 10 THE COURT: First of all, your understanding
11 of the website uploading links is different than mine.
12 You can upload those.

13 Second of all, you did bring a flash drive
14 by yesterday, but your office was told we can't do that.
15 The Clerk of the Court uploads and the exhibits, and so
16 those have to be uploaded through that website link.
17 And, apparently, there isn't anything uploaded there.

18 MR. BLEHM: Your Honor --

19 THE COURT: Is there uploaded today?

13:22:47 20 MR. BLEHM: -- they were uploaded to this --
21 we took everything that we had in our disclosure and we
22 uploaded it to the system. (Pause.)

23 THE COURT: The clerk is telling me they
24 don't have your exhibit uploaded. So what you would be
25 doing is playing something extraneous that you have

1 that's not been uploaded into the system.

2 MR. BLEHM: Your Honor, we tried to upload
3 all of our documents.

4 THE COURT: Okay.

5 MR. BLEHM: But we are unable to load audio
6 --

7 THE COURT: I'm not doubting you, Mr. Blehm,
8 in that regard at all.

9 Coming back to this, what I want to focus on
10 is whether the defense had notice of this or not.

11 Have you heard the voicemail before?

12 MR. LIDDY: No Your Honor. I have not
13 heard the voicemail. None of the attorneys here have
14 heard the voicemail and we can avow that there's no one
15 in the Department of Elections Public Records Department
16 named Betty.

17 THE COURT: Well, why don't -- here's what
18 I'm going to do, okay, because it's taking too long.
19 You can call your witness. Your witness can testify and
20 cross-examination can happen, but not play the video or
21 the audio clip, because it's not uploaded. It's not in
22 the system. I don't have that disclosed.

23 MR. BLEHM: Your Honor, based on
24 representations by counsel, we could always play it real
25 quick before I bring the witness in. Counsel

1 represented that there's no one by -- by that name who
2 works at the Elections Department.

3 THE COURT: No, I'm not going to have an
4 evidentiary hearing on this issue, okay? It was raised
5 earlier in your notice. I told you that the attachment
6 wasn't there. Now it's not in the exhibits. We're just
7 going to move on. You can go ahead and call your
8 witness. There will be cross-examination, you can
9 redirect, but we're not going to play a clip that's not
10 uploaded and not previously disclosed.

13:24:58

11 MR. BLEHM: Thank you, Your Honor. Would
12 your Honorable Court reconsider if I can go online at
13 some point today before I'm done with my witness and
14 show something that says you cannot upload audio/visual
15 files through the system from this link? I tried
16 anyway, Your Honor.

17 THE COURT: I have no doubt you tried.

18 Okay. I'm listening to two sources. Since
19 statehood, the Clerk of the Court has been separate from
20 Maricopa County Superior Court for whatever reasons were
21 decided at the time of statehood, so they have a
22 separate system. I cannot tell the Clerk of the Court
23 how to do business, they run the exhibits. And so I'm
24 looking to that website and my understanding of it, my
25 clerk telling me what can be uploaded. I am not

13:25:39

1 doubting you, Mr. Blehm, that you tried to upload the
2 exhibit. The operative question is whether or not it's
3 a surprise to them, meaning the defendants, because they
4 have not heard the video clip. That would be something,
5 whether it's uploaded or not, you would have given them
6 previously.

7 So your question to me is whether I would
8 reconsider that ruling after having heard the evidence
9 if you would make an offer of proof separate and apart
10 from the witness's testimony, correct?

11 MR. BLEHM: Yes, Your Honor.

12 THE COURT: Okay. I'll accept that. You
13 can -- you can go ahead and make an offer of proof.

14 Do you have that right now?

15 MR. BLEHM: The audio recording?

16 THE COURT: Yes.

17 MR. BLEHM: Yes, Your Honor. We can pull it
18 up.

19 THE COURT: Well, that's what I want you to
20 do for your offer of proof.

21 MR. BLEHM: All right. And may I play it,
22 Your Honor?

23 THE COURT: Playing it for me, yes.

24 MR. BLEHM: Yes, that's what I mean, Your
25 Honor.

1 THE COURT: This is part of your offer of
2 proof, Mr. Blehm.

3 MR. BLEHM: This is what's listed as
4 Exhibit 74, Your Honor. For defense counsels' sake, it
5 is listed as Q1.1.

6 And now, Your Honor, I'm hoping she didn't
7 say she was Betsey.

8 (Audio played in open court.)

9 THE COURT: Okay. Is that the same one?

13:29:13 10 THE TECHNICIAN: It just looped, Your Honor.

11 THE COURT: Looped, very good.

12 MR. BLEHM: That would make an interesting
13 crank phone call, Your Honor, that somebody -- that
14 somebody identifies themselves from the Maricopa County
15 Elections Department stating their name and saying we're
16 still waiting for records responsive to your request,
17 Your Honor. My client will testify as to who this
18 individual is -- I'm sorry, not my client -- my witness.
19 My witness will testify, Your Honor, that she interacts
13:29:46 20 with this individual.

21 THE COURT: Okay.

22 MR. BLEHM: When she's fulfilling FOIA
23 requests from the Maricopa County Recorder's Office
24 Department of Elections.

25 THE COURT: Very good. Okay. Go ahead and

1 call your witness. I'm going to give it the weight I
2 deem appropriate, and, you know, when all the dust
3 settles. But you can go ahead and call your witness.

4 MR. BLEHM: Thank you, Your Honor.

5 THE COURT: Ma'am, if you could just come
6 forward, if you would. Stand in front of my clerk.
7 Raise your right hand, she'll swear you in.

8 HEATHER HONEY,
9 called as a witness, having been duly sworn, testified
10 as follows:

13:30:40

11 THE COURT: Ma'am, if you could just move
12 your way, make your way around to the witness stand and
13 have a seat. As soon as she's situated, you may
14 proceed, Mr. Blehm.

15 DIRECT EXAMINATION

16 BY MR. BLEHM:

17 Q. Good afternoon, Ms. Honey. Can you please state
18 your full name for the record?

19 A. Heather Honey.

13:30:59

20 Q. What do you do, Ms. Honey, for a living?

21 A. I'm an investigator. I'm also an auditor. I do
22 supply chain consulting as well.

23 Q. Okay. How long have you engaged in that type of
24 work, namely, as an investigator?

25 A. Over 30 years.

1 Q. Over 30 years, okay.

2 And so what do you do as an investigator? You
3 just investigate?

4 A. Yeah, I mean, I do corporate investigations. I
5 do, as I mentioned, supply chain investigations,
6 counter-diversion, those sorts of things. And recently
7 over the course of the last, about two and a half years,
8 our research has sort of expanded into, you know, sort
9 of government accountability, transparency and
10 elections.

13:31:43

11 Q. Okay. Do you also conduct a great deal of
12 open-source research?

13 A. I do.

14 Q. And what is open-source research?

15 A. Open-source investigations, open-source
16 intelligence is just the use of publicly available
17 information, public records, to do investigations or
18 research.

19 Q. All right. So, like, Maricopa County Elections
20 Department records, would that be correct?

13:32:07

21 A. Yes.

22 Q. Okay. And you can get those through how?

23 A. In Arizona, it's a public records request that
24 you submit.

25 Q. All right. And so in terms of your work doing

1 open-source investigations and things of that nature, I
2 know you're shy, but I also know you teach people.

3 Can you give me background in that area?

4 A. Yeah, I do training on open-source
5 investigations, open-source research. I've been doing
6 that sort of training for about five years now, and I
7 instruct people.

8 Q. Who do you -- who do you train on behalf of?

9 A. Well, I'm -- I'm a small-business owner. I own
10 my own company, and I wrote my own curriculum, and I
11 train clients in military clients, special forces. I
12 train law enforcement. I train private corporations,
13 and I train journalists as well. So that's an awesome
14 use of open-source investigations, skills for
15 journalism.

16 Q. And I think you said special forces?

17 A. Yeah.

18 Q. Do you do any work with the department of -- or
19 the DEA, I'll abbreviate?

13:33:26 20 A. I don't believe I've ever had students from the
21 DEA, like Secret Service. Like I said, law enforcement
22 agencies, local police departments, those sorts of
23 things.

24 Q. All right. All right, very good. And so you --
25 you said you also got involved in election integrity

1 issues how long ago?

2 A. About two and a half years ago now.

3 Q. Three and a half -- two and a half years ago?

4 Okay. And just what states have you done research in?

5 A. Well, some of our research has been in all 50
6 states, specifically looked into a vulnerabilities in
7 the UOCAVA, nonmilitary UOCAVA voters. In addition to
8 that, we've done very specific types of research in
9 Pennsylvania, Michigan and Arizona, and a little bit of
10 -- a little bit of stuff in Georgia as well.

13:34:20

11 Q. All right. And so with respect to your work in
12 the State of Arizona, do you know what is the EPM?

13 A. Yeah, the Election Procedures Manual. I'm
14 familiar.

15 Q. I'd like to pull up the Elections Procedures
16 Manual right now, Your Honor, Exhibit 60.

17 All right. And can you see the monitor in front
18 of you?

19 A. I can.

13:34:53

20 Q. Does that appear to be the Elections Procedures
21 Manual?

22 A. It does.

23 Q. Are you fairly well versed in that document?

24 A. I mean, I haven't committed it to memory in its
25 entirety, but I'm familiar with the relevant statutes as

1 they relate to the research that I've done in Arizona.

2 Q. Okay. Thank you. And so let's -- let's talk
3 about just generally, explain to this Court, how you
4 became knowledgeable about Arizona elections as it
5 relates specifically to the issue of chain of custody?

6 A. Yeah. So, you know, obviously the idea here, I
7 mean, do like vulnerability assessments, I do supply
8 chain consulting. So what you're looking for, right, is
9 researching what are the vulnerabilities in the election
10 system, for example. And so one of the areas that we
11 looked at was the drop-box chain of custody, and the
12 Election Procedure Manual specifically, has guidelines
13 starting on page 61, item number 7. There are about
14 eight specific requirements that the Recorder is
15 required to do regarding the chain of custody of
16 drop-box ballots.

17 So in addition to the EPM when we were
18 researching this, we spoke with representatives who had
19 actually participated in the process. We talked to
20 ballot couriers who had actually retrieved ballots from
21 drop box as we spoke with Celia in the Maricopa County
22 Elections Department. She was very helpful. She
23 provided a lot of really useful information in terms of
24 their process. The EPM is sort of the guideline for the
25 entire state, but how each county implements the -- the

1 process is different.

2 For example, we did, you know, research and
3 investigations into the chain of custody in a couple of
4 elections in Arizona, several in Maricopa, but we also
5 looked at the process in Pima County as well.

6 Q. Okay. So you've spent a great deal of time
7 talking to people in Arizona that actually work in the
8 Elections Department?

9 A. Yes.

13:37:05 10 Q. That actually work at Runbeck?

11 A. Well, I mean, I spoke with Jeff Ellington about
12 -- I want to say nearly a year ago or so -- and he was
13 able to answer a bunch of questions about how Runbeck
14 works. Jeff Ellington is the CEO of Runbeck, and
15 recently I had the opportunity to talk to a Runbeck
16 employee, who provided a declaration in this case.

17 Q. Okay. And you also have the opportunity to work
18 with other election integrity experts and attorneys --

19 A. Yes.

13:37:39 20 Q. -- in the State of Arizona?

21 A. I do.

22 Q. All right. And so let's go back to Pennsylvania
23 really quick. Pennsylvania is where you got your start,
24 isn't it?

25 A. Well, I'm from Pennsylvania, so that's what --

1 that's what definitely piqued my interest in sort of the
2 vulnerabilities in the election system and what could be
3 done to fix that.

4 Q. In Pennsylvania, I believe it's 2020, wasn't
5 it --

6 A. Yes.

7 Q. -- what did you identify as a particular
8 vulnerability in Arizona at that time?

9 A. Well, in Pennsylvania, I think you mean.

13:38:10 10 Q. Yes, Pennsylvania.

11 A. Yeah. So --

12 MR. LIDDY: Your Honor, objection.
13 Relevance.

14 THE COURT: Sustained.

15 MR. BLEHM: Your Honor --

16 THE COURT: Sustained.

17 MR. BLEHM: Sorry.

18 BY MR. BLEHM:

19 Q. All right. So with respect to the State of
13:38:29 20 Arizona again, how many elections have you looked at in
21 the State of Arizona with respect, specifically, to the
22 chain-of-custody issue?

23 A. Three.

24 Q. Three. Which ones were those?

25 A. It was the 2020 Election, there was a 2021 -- I'm

1 sorry -- 2022 Municipal Election and then this 2022
2 General.

3 Q. Okay. And so I've got a demonstrative
4 presentation, Your Honor, I would like to pull up, and
5 it has citations to all of our exhibits.

6 MR. LIDDY: Your Honor, I would like a
7 moment to review this with my co-counsel before it's
8 published to the witness.

9 THE COURT: That would be fine. (Pause.)

13:39:57 10 MR. LIDDY: Your Honor, I'm going to object
11 in that this exhibit seems to be more of an exhibit more
12 than demonstrative, contains many signatures from
13 individuals whose signatures should not be published to
14 the public, Your Honor.

15 MR. BLEHM: Your Honor, signatures are
16 routinely published.

17 THE COURT: Let me ask a question, if I
18 could, please, Mr. Blehm.

19 MR. BLEHM: Yes, Your Honor.

13:40:25 20 THE COURT: Are these signatures related to
21 the 2020 Election in Arizona?

22 MR. BLEHM: You know, I believe these are.

23 THE WITNESS: May I answer that question?

24 THE COURT: Well --

25 MR. BLEHM: Yes, these are related to 2022.

1 This is the 2022 Election, Your Honor. The documents
2 contained within this PowerPoint are from the 2022
3 Election. They were all provided either in response to
4 my client's FOIA request, or they are public source
5 documents that are published online, including there's a
6 citation right off the bat, Your Honor, for the EPM, and
7 so there's nothing in here that's been a surprise. This
8 chart made by my client has also been disclosed, and
9 with respect to the signatures, Your Honor, signatures
10 are public all the time. Signatures of voters, people
11 -- people check their -- their list, their roster list.
12 I'm sorry. I'm not active in politics. I don't know
13 what it's called when you run for office. You got to
14 have, whatever it is, enough signatures to get on the
15 ballots. Those are accessible to the public. I can go
16 on the County Recorder's web page right now, today, this
17 very second, and I can pull up titles, deeds, financial
18 documents, all kinds of records that specifically
19 contain signatures.

20 These documents, Your Honor, which I'm going
21 to move all of the underlying documents into the record,
22 contain no PII. We're not talking about birth dates,
23 Social Security numbers, we're not talking about
24 driver's license. We're talking about Maricopa County's
25 own documents.

1 THE COURT: Mr. Liddy?

2 MR. LIDDY: Your Honor, if -- if I heard
3 counsel correctly, he wants to move these in as exhibits
4 so, therefore, they are not a demonstrative and they
5 have not been provided on his exhibit list.

6 MR. BLEHM: Your Honor, I'll tell you what,
7 the moment I come across the document that has not been
8 provided on my exhibit list, this Court doesn't have,
9 then I'll stop with the demonstrative. I'm not seeking
10 to admit this demonstrative exhibit into the record. I
11 may do so after my client -- my witness testifies, Your
12 Honor. But right now, I would like to walk through this
13 demonstrative, which is based on documents received from
14 open source, the EPM. You can go online, you can Google
15 it and there it is, documents that were provided by
16 Maricopa County.

17 MR. LIDDY: If I may, Your Honor?

18 THE COURT: Yes.

19 MR. LIDDY: These documents appear to fall
20 under Title 16-168, any person in possession of precinct
21 registered list, in whole or in part, or any
22 reproduction of precinct registered list shall not
23 permit the register or list to be used, but shall
24 otherwise transfer for any purpose other than otherwise
25 authorized in this section. And this is not the use

1 authorized in the section for these documents.

2 MR. BLEHM: Was that section F?

3 MR. LIDDY: Section F. It's for -- excuse
4 me -- it's for election officials, or perhaps, expanded
5 by court to government officials, and the witness is not
6 a government official or an election official, Your
7 Honor.

8 MR. BLEHM: Your Honor, if the entirety of
9 section F were read, there are very clear and very
10 specific exclusions, including the media, Your Honor.
11 The media have access to signatures. Elections, Your
12 Honor, is an exclusion. It does not say government
13 officials running elections, and this case, Your Honor,
14 is about an election.

15 THE COURT: What's the statute again, 16
16 what?

17 MR. LIDDY: Your Honor, it's
18 Title 16-168(f). If I may, Your Honor, I would ask that
19 the counsel direct his comments to the Court and not to
20 my co-counsel.

21 MR. BLEHM: Sorry. I look around when I
22 talk.

23 THE COURT: Okay. Your representation is
24 that there's none of the information prohibited in the
25 form of month, date and year of birth, Social Security

1 number, driver's license number, non-operating
2 identification license number, Indian census number,
3 father's name, mother's maiden name, state or country of
4 birth, none of that is contained, and then signatures
5 and voters' e-mail addresses. And then none of that is
6 contained in the information, or are you saying it's an
7 exception because it's available to the media?

8 MR. BLEHM: There are signatures contained,
9 Your Honor, but following the portion I believe you just
10 read, it's specifically carves out exclusions, and one
11 of them are for elections. If we didn't have these
12 exclusions, Your Honor, candidates wouldn't be able to
13 get on the ballot because they couldn't do signature
14 petitions, okay? There are exclusions for the media. I
15 believe it goes elections media, Your Honor, but I may
16 be mistaken. I tend to forget.

17 THE COURT: This is limited to 16(f) is
18 limited to persons in possession of precinct voter
19 registration or lists, and then it says --

20 MR. BLEHM: Well, then, Your Honor --

21 THE COURT: It says, can't be bought, sold
22 or otherwise transferred for any purpose, except for
23 uses otherwise authorized by this section. And you're
24 correct that it talks about authorized uses, including
25 newspaper, radio, television.

1 MR. BLEHM: I would also point out, Your
2 Honor --

3 THE COURT: Yes.

4 MR. BLEHM: -- that none of the documents
5 contain within this -- within this presentation --

6 THE COURT: Okay.

7 MR. BLEHM: -- are poll lists.

8 MR. LIDDY: Your Honor --

9 MR. BLEHM: None of them.

13:47:41 10 THE COURT: What are we going -- what is the
11 demonstrative exhibit and the testimony going to
12 demonstrate?

13 MR. BLEHM: It's a demonstrative exhibit,
14 Your Honor, prepared by my witness to walk the Court
15 through the various chain of custody documents used by
16 the Maricopa County Recorder's Office, as well as the
17 Court -- as well as the Board of Supervisors. I think
18 this --

19 THE COURT: To show?

13:48:08 20 MR. BLEHM: -- just to show Your Honor and
21 the court and the witness. The media deserves to know,
22 Your Honor.

23 THE COURT: Show what?

24 MR. BLEHM: To show the process, the
25 documents used, okay, how the flow of ballots move.

1 THE COURT: Okay.

2 MR. BLEHM: And I will tell you, Your Honor,
3 it's one of our contentions that because Maricopa County
4 does not adequately maintain chain of custody of drop
5 box and mail ballots that it becomes much easier to
6 infuse ballots into the system, and that's one of our
7 allegations, Your Honor.

8 THE COURT: Okay. I understand what your
9 offer of proof is about.

13:48:51 10 MR. LIDDY: Your Honor, the signatures
11 contained in the proposed demonstrative are not voters'
12 signatures, so I would withdraw any objection based on
13 that.

14 THE COURT: Very good. Then we can proceed.
15 Mr. Blehm, you can proceed with your demonstration, and
16 we'll get to that other part later about the exhibits
17 you want to admit after you're finished.

18 MR. BLEHM: Thank you, Your Honor. Did I
19 move to admit Exhibit 60, the EPM? If not, I do so now.

13:49:17 20 THE COURT: Any objection?

21 MS. KHANNA: Yes.

22 MR. LIDDY: Yes, Your Honor. Objection to
23 relevance.

24 THE COURT: The EPM, not the demonstrative
25 exhibit.

1 MR. LIDDY: No objection, Your Honor.

2 THE COURT: I didn't think so.

3 MR. LIDDY: Thank you.

4 THE COURT: 60 is admitted.

5 BY MR. BLEHM:

6 Q. All right. And so your familiarity with EPM came
7 from your reading it and talking to other people,
8 correct?

9 A. Yeah, I mean, the extensive research we did, yes.

13:49:40 10 Q. And the EMG has guidelines -- I'm sorry, I think
11 I misspoke, didn't I? They are not guidelines?

12 A. I believe they are requirements. It says that
13 the Recorder shall develop and implement the secure
14 ballot retrieval and chain-of-custody process.

15 Q. Okay. So the County Recorder or officer in
16 charge of elections shall develop and implement secure
17 ballot retrieval and chain-of-custody procedures?

18 A. Yes. There's eight guidelines. This slide only
19 has a couple of them on there, but the requirements are
13:50:12 20 things like, you know, two couriers of differing
21 parties, date and time of arrival at the drop box, date
22 and time of departure from the drop box, and the date
23 and time you arrive at the County. But most
24 importantly, it requires that when that secure transport
25 container is opened that the number of ballots inside

1 that container shall be counted and noted on the
2 retrieval form. And, of course, these retrieval forms
3 are specific to a -- one specific drop box, so it's a
4 one-to-one correspondence.

5 Q. Okay. So based on the law then, if I were to go
6 to what's designated as drop box P57 and retrieve the
7 ballots from there, I would create a chain-of-custody
8 record that identifies the two people who went to get
9 the ballots, it identifies the time they went there, and
10 more importantly, it identifies the number of ballots
11 contained within that box?

12 A. Well, to be clear, the -- the form is called the
13 Early Voting Ballot Transport Statement, and it is --
14 the ballots are not counted at the time of retrieval.
15 Instead, what happens is those couriers, they go out to
16 the drop box, they open the drop box, they retrieve all
17 of the ballots, they put them inside. Again, I'm going
18 to tell you how Maricopa County does it. It's not
19 necessarily how all of the counties do, but specifically
20 in Maricopa County, the two couriers put the ballots in
21 the box. They close the -- the transport container.
22 They zip-tie it with security seals, and they document
23 the fact that it was the two of them, the location, the
24 time, et cetera, as I already mentioned. And then that
25 secure container is transported back to the County.

1 Q. Okay. And does it sound like a pretty secure
2 process when that is done?

3 A. Yeah, I mean, that's -- that's the process and
4 that's compliant with the law in Arizona, so...

5 Q. But do you think it's important to have the
6 number of ballots in each box?

7 A. Well, what the law requires is that when it's
8 transported back to the County and when the Recorder or
9 the Recorder's designee opens up that container, that at
10 that point when the container is opened, the Recorder
11 must count those ballots and record the precise number
12 of ballots inside the container on that retrieval form
13 and, again, the retrieval form is required in the EPM.

14 Q. Okay. And really quickly, I'm going to sort of
15 interrupt your PowerPoint from time to time, because I
16 think you said EVBTS?

17 A. Yes.

18 Q. Early Votes Ballot Transport Statement?

19 A. I actually have that on one of the slides so that
20 you can see it.

21 Q. Understood. But I want the Court to be able to
22 see a standalone of that document, and then we'll turn
23 back to your slide; is that fair?

24 A. Understood, sure.

25 Q. Can you please pull up Exhibit 75, R1, on this

1 slide.

2 All right. Can you see the document that's
3 currently on the screen?

4 A. Yes.

5 Q. And that's an Early Voting Ballot Transport
6 Statement, correct?

7 A. Correct, it's the retrieval form used in
8 Maricopa.

9 Q. Does that look like it's completely filled out?

13:54:07 10 A. Yeah, it looks great. It has all of the required
11 fields. If I was doing an audit of that, I would say
12 that's a perfect score.

13 Q. So you say perfect score for this one Bates
14 number 009916, correct?

15 A. Yes.

16 Q. Okay. You're happy with that?

17 A. Yeah.

18 Q. Good. So you're not here just to criticize to
19 criticize, are you?

13:54:32 20 A. I'm not here to criticize at all. I just want to
21 sort of shed some light on the vulnerabilities in the
22 system in the hopes that they'll be fixed.

23 Q. And how many, in response to my client's FOIA
24 request -- or I keep saying FOIA, I apologize -- Public
25 Records Act request, how many of these specific

1 documents did you get?

2 A. I apologize, I -- the precise count has escaped
3 me, but I will tell you that they produced -- they said
4 that they produced all the documents that they had. We
5 specifically asked for these documents as well as a
6 bunch of others, but they said that they provided all of
7 the Early Voting Ballot Transport Statements that they
8 had for the entire election, and we had them for every
9 day that drop boxes were opened. So, you know, we
10 compared that to the list of locations when they were
11 open, and we did have these transport -- transport
12 statements for each and every day that they were open,
13 with the exception of Election Day. There were no Early
14 Voting Ballot Transport Statements provided for Election
15 Day.

16 Q. And that's where I was going next. The exhibit
17 we have currently on screen, Exhibit Number 75, and
18 really quickly, I'm just going to move to admit Exhibit
19 Number 75, Your Honor?

20 THE COURT: Any objection?

21 MR. LIDDY: No objection, Your Honor.

22 THE COURT: 71 is admitted. Oh, wait, is it
23 75?

24 MR. BLEHM: 75, Your Honor. It's your --
25 your 75, our R1.

1 THE COURT: No, it's -- there's only one
2 number. It's the Court's number that we're referring
3 to, not mine, yours and his. It's 75, and 75 is
4 admitted.

5 MR. BLEHM: Understood, Your Honor.

6 I say our R1 for their benefit --

7 THE COURT: Got it.

8 MR. BLEHM: Very good. 75, Your Honor.

9 BY MR. BLEHM:

13:56:26 10 Q. All right. And, you know, I'm going to sort of
11 divert a little bit here, because do you have any
12 problems with any of the Early Ballot Transport
13 Statements that you reviewed for early voting until
14 Election Day?

15 A. No, I think that they actually compared to
16 previous elections they did a really -- a significantly
17 better job with the documents this time around. But
18 again, there were no documents produced for Election Day
19 which amounted to a significant number of drop box
13:57:08 20 ballots.

21 Q. All right. And so let's go back a little bit to
22 talk a little bit more about your history as we sort of
23 go through this. But what did you find when you did the
24 2020 Election? You looked at all of the documents they
25 had for chain of custody, correct?

1 A. Yeah. So -- so we made a couple of observations.
2 The first one was that there were a significant number
3 of -- of these Early Voting Ballot Transport Statements
4 that were not properly completed; specifically, I would
5 say, the biggest issue was that there were quite a few
6 of them that did not --

7 MR. LIDDY: Objection, Your Honor. The
8 witness testifying about 2020, relevance.

9 THE COURT: Yes, she is.

13:57:42 10 MR. BLEHM: Yes, Your Honor. It's just
11 relevant to my client's -- sorry -- my witness's
12 history, A, and it's also relevant to, you know,
13 Richer's testimony. He said he came in and he made it
14 better and changed forms, and it was my witness, Your
15 Honor, that sort of led that effort to get the forms
16 changed.

17 THE COURT: Okay. But that count was
18 dismissed. The process changes. They could have been
19 done either by the Arizona House, Senate, Governor
13:58:18 20 working together or the Supreme Court. Might have been,
21 whatever could have been, that is dismissed.

22 So I understand, I'm not going to debate
23 with you --

24 MR. BLEHM: Understood, Your Honor.

25 THE COURT: -- endlessly. Move on.

1 MR. BLEHM: I understand, Your Honor. I
2 won't go there.

3 THE COURT: But you are now.

4 MR. BLEHM: I'm sorry, Your Honor. I'm not
5 trying to be argumentative or anything. If we get at
6 the end of our presentation of evidence and defendants
7 stand up here and raise the laches allegation.

8 THE COURT: They won't be doing that because
9 the motion ruled on that. There was the laches argument
10 that was upheld with regard to the 2020 Election and the
11 other part of the case.

12 MR. BLEHM: Okay.

13 THE COURT: So today we're talking about,
14 hopefully, she's shedding light in her statement
15 shedding light on vulnerabilities to be fixed is exactly
16 what was dismissed. I'm looking at today what happened
17 in the 2020 Election and understanding that, and to that
18 end, I've allowed this presentation. And so far even
19 though she said that, you're explaining how it's -- how
20 the process works, and that's fine. But going into the
21 2020, we're out of that.

22 MR. BLEHM: Understood, Your Honor.

23 THE COURT: Thank you.

24 BY MR. BLEHM:

25 Q. All right. Can we change the slide?

1 Thank you very much. Can you please explain
2 to the Court what this -- this all means.

3 A. Yeah. So this is a diagram of Maricopa County
4 ballot chain of custody from the voter to tabulation.
5 And so what you notice is if you vote on Election Day,
6 you put your ballot in the tabulation. But if you vote
7 early in person in Maricopa, or if you vote by mail,
8 there are several transfers of the ballot and,
9 therefore, requirements for chain of custody. And
14:00:09 10 what's interesting or unique about Maricopa County is,
11 to my knowledge, they are one of the only counties in
12 the country that outsources the intake or the receipt of
13 their ballots to a third-party organization.

14 So, for example, we talked about the EPM and the
15 requirement for chain of custody from the drop box to
16 the County. In most counties, that's the end of the
17 road, you know. You retrieve the ballot from the drop
18 box, you transport it securely to the county, and it's
19 tabulated there. That's not the case in Maricopa
14:00:42 20 County.

21 In Maricopa County, they then have to, after they
22 have received it in the County and processed it,
23 according to the Arizona law, then they must again
24 maintain secure chain of custody as they transfer it
25 from Maricopa County to Runbeck, and then again, when it

1 comes back the other way.

2 Q. Okay. Thank you very much. And how many steps
3 are there? If you vote, let's say you get -- you
4 either, I guess, you get a vote by mail, couldn't you or
5 you could go into the vote center and get a ballot
6 early?

7 A. Right. So on the next slide, I kind of just
8 point out the fact that a drop box in Maricopa County
9 does not just contain mail ballots, right? So mail
10 ballots that are, you know, sent to the voter and in the
11 mail through the U.S. Postal Service -- it was the next
12 slide.

13 Q. Well, I'm not done asking you questions, Ms.
14 Honey.

15 A. Oh, I'm sorry. I thought you were asking me
16 about the different ways. I'm sorry.

17 Q. All right. Why is it that chain of custody when
18 all of these transfers take place is so important?

19 A. Well, I mean, chain of custody, first of all,
20 it's the law. And, secondly, it's what allows sort of
21 the security of the ballot, right? If you have ten
22 ballots and, you know, you have ten ballots and they are
23 transferred to the next location and they are still ten
24 ballots, then, you know, you feel like that's a pretty
25 good secure chain. But, you know, if there are ballots

1 added or subtracted, you become aware of that if you are
2 properly managing chain of custody.

3 Q. Okay. So is what you're saying that at each of
4 these different points in this process where a transfer
5 is made, there are vulnerabilities in the system that
6 could either induce or reduce the number of ballots?

7 A. Well, I mean, I think the reason that you
8 maintain chain of custody, the reason that it's part of
9 business, it's part of elections is because if failure
10 to maintain chain of custody presents, a situation where
11 ballots could be added, but ballots could also be
12 removed, and so that's why this whole chain of custody
13 is important enough to have its own laws written about
14 it.

15 Q. Okay. And can you pull up Exhibit 102?

16 THE COURT: Is there another exhibit they
17 are pulling up?

18 MR. BLEHM: Excuse me, Your Honor?

19 THE COURT: Is there another exhibit he's
20 pulling up?

21 MR. BLEHM: They are pulling up Exhibit 102,
22 Your Honor.

23 THE COURT: 102.

24 BY MR. BLEHM:

25 Q. Okay. All right. And so you can see the screen,

1 Ms. Honey?

2 A. Yes.

3 Q. And is that the chart you made that is -- that we
4 marked, the Court has marked as Exhibit 2?

5 A. It is.

6 MR. BLEHM: I move to admit Exhibit 2, Your
7 Honor.

8 MR. LIDDY: Objection, Your Honor.
9 Foundation.

14:04:16 10 THE COURT: 102?

11 MR. BLEHM: I'm sorry.

12 THE COURT: You said 2.

13 MR. BLEHM: I am sorry, Your Honor, 102.

14 THE COURT: That's why I had this look on my
15 face.

16 MR. BLEHM: I'm sorry. 102, Your Honor.

17 THE COURT: And is there an objection?

18 MR. LIDDY: Yes, Your Honor. This is
19 offered as demonstrative. We're fine with that, but if
14:04:34 20 it's going to be offered as an exhibit, it lacks
21 foundation and no authentication.

22 THE COURT: Well, okay.

23 MR. BLEHM: Ms. Honey, did you make this
24 document?

25 THE COURT: Wait. Let me rule. I think

1 that that's what the witness has done is she testified
2 as to her understanding, and that's what this
3 represents, her understanding of the system as the law.
4 And your objection next might be?

5 MR. LIDDY: My objection is I would like to
6 know where she got it, who created it.

7 THE COURT: Go ahead.

8 BY MR. BLEHM:

9 Q. Did you make this chart, diagram, whatever?

14:05:07 10 A. I made it in PowerPoint.

11 Q. And did you make this based upon your --

12 MR. LIDDY: Thank you, Your Honor. Based on
13 that, no objection.

14 THE COURT: Great. 102 is admitted. Thank
15 you.

16 BY MR. BLEHM:

17 Q. All right. Can we go back to the slide and move
18 on to the next one?

19 THE COURT: Which is? Which exhibit?

14:05:26 20 MR. BLEHM: Oh, the demonstrative. I'm
21 sorry, the PowerPoint.

22 THE COURT: I'm sorry.

23 BY MR. BLEHM:

24 Q. All right. Can you tell us what this slide
25 shows, Ms. Honey?

1 A. Yes, so this slide shows that in a lot of
2 counties a drop box is only for a place for people, an
3 alternative returning their mail ballot by mail. But in
4 Maricopa County, the drop boxes are, in fact, a
5 repository for a ballot that's mailed to a voter they
6 choose not to return by postal service, but it's also
7 where people who vote early in person who vote -- who go
8 into a vote center, show their ID; they, you know, get
9 their ballot printed, they vote, put it in an envelope
10 and they sign the envelope, and they drop that ballot
11 envelope into a drop box. So when we talk about
12 drop-box ballot retrieval for early voting, it includes
13 early in-person and mail ballots that are deposited in a
14 drop box as well, so it's those two different types of
15 drop-box ballots.

16 Q. Okay. And so I believe you had testified
17 previously that you have reviewed all of the early
18 ballot EVBTS's?

19 A. Right.

20 Q. And it's my understanding you praise Maricopa
21 County for having improved their documents and actually
22 followed their procedures?

23 A. Yes, on the documents that were completed; but
24 again, there's the absence of documents for Election Day
25 ballots, which again, is a significant number.

1 Q. Okay. Well, your FOIA request, my client's FOIA
2 request, requested all the chain of custody documents
3 for Maricopa County Election Day, correct?

4 A. Correct.

5 Q. Have they provided any to you?

6 A. Yes, they actually provided all of the documents
7 that we requested, with the exception of the Maricopa
8 County Delivery Receipt Form.

9 Q. Okay. The Maricopa County Delivery Receipt Form,
10 can you please tell the Court what that is?

11 A. So the Maricopa County Delivery Receipt, as I
12 mentioned in that, like, previous sort of thing, I think
13 -- you can go to the one that actually has it on there,
14 the -- it is the document, the chain-of-custody document
15 that is created at Maricopa County to record the precise
16 number -- that's not this slide. If you go to, like,
17 two more -- the precise, that's the one -- perfect,
18 thank you -- oops. Back one. There you go, perfect.

19 It's in this diagram here, it's the number 2,
20 right? So when the drop box -- when the ballots are
21 retrieved from the drop box, the Early Voting Ballot
22 Transport Statement is used to document the chain of
23 custody from the drop box to Maricopa County.

24 Again, when it gets to Maricopa County, what the
25 law requires is that they break open the seals and they

1 count the number of ballots inside that transport
2 container and they document, they record that precise
3 count of ballots on the Early Voting Ballot Transport
4 Statement.

5 From there, again, this is unique to Maricopa
6 County, Maricopa County election officials then create
7 this delivery receipt form, which is like a half sheet,
8 and that has on it the precise count of the ballots that
9 they are then loading on a truck and transferring to
10 Runbeck. The larger thing there, the thing that has the
11 number 3 on it, is a document that's created at Runbeck,
12 basically, just saying, hey, this is how many ballots
13 were dropped off.

14 Q. Okay.

15 A. And to answer your question, what we did not
16 receive is the number 2, the delivery receipts.

17 Q. All right. And I'd like to move away from the
18 PowerPoint really quickly and open Exhibit Number 67.

19 THE COURT: I couldn't hear you because you
20 turned away.

21 MR. BLEHM: I'm sorry, Your Honor, 67.

22 BY MR. BLEHM:

23 Q. All right. Ms. Honey, you were talking about the
24 Early Voting Ballot Transport Statement, is this it?

25 A. I mean, this is one of them. This is from ASU

1 West from October 25th.

2 Q. Okay. By one of them, you mean there were many
3 of these?

4 A. Yeah. So there's one of these forms for each day
5 that a drop box is opened, and so if there are 50 drop
6 boxes opened on a particular day, there are 50 of these
7 forms created because there are 50 retrievals of
8 ballots.

9 Q. Okay. And you reviewed all of these?

14:10:23 10 A. We did.

11 Q. All right. And --

12 MR. BLEHM: Did I already move this one into
13 evidence?

14 THE COURT: I don't have that you did.

15 MR. BLEHM: I don't believe I did.

16 I would like to move 67 into evidence, Your
17 Honor.

18 MR. LIDDY: No objection, Your Honor.

19 MR. BLEHM: Thank you.

14:10:39 20 THE COURT: 67 is admitted.

21 BY MR. BLEHM:

22 Q. All right. Do you have any problem with any of
23 these statements for the early voting period?

24 A. No.

25 Q. No, you've reviewed them all?

1 A. Yeah, I mean, I think they -- like I said, they
2 did a much -- much better job.

3 Q. Okay. So could you actually go through all of
4 these, add them up and figure out exactly how many
5 ballots Maricopa County retrieved from drop boxes up
6 until the day of the election?

7 A. Exactly, yes.

8 Q. Okay. And you can do that, is that what you're
9 supposed to be able to do?

14:11:09 10 A. I mean, on a daily basis, yeah. You have to do
11 it for each and every retrieval, according to the law.

12 Q. All right. Thank you very much. And so
13 Transport Receipt, again, what is that?

14 A. So the delivery receipt is, again, that half
15 sheet that I had on the display there which is created
16 at Maricopa County at MCTEC that accompanies the ballots
17 as they traveled from Maricopa County to Runbeck so that
18 when they arrive at Runbeck, Runbeck knows precisely how
19 many ballots are on that shipment.

14:11:44 20 Q. All right. Do you have all of Maricopa County
21 delivery receipt documents?

22 A. We do not have any. We requested them, but they
23 said they had misplaced them.

24 Q. And those are the ones that were for Election
25 Day, correct?

1 A. Well, actually, we didn't get a single one of
2 those for the entire election. It is -- the testimony
3 of the -- in the declaration of the Runbeck employee is
4 that no such documents existed for Election Day.

5 Q. For Election Day?

6 A. Right.

7 Q. Okay. What about prior to the election?

8 A. Yeah, so this form was actually created for all
9 of the days prior to Election Day.

14:12:25 10 Q. And, I'm sorry, but my question was specifically
11 related to Election Day.

12 A. There were --

13 Q. There were none?

14 A. Well, we did not receive any. They said they
15 misplaced them and the Runbeck employee said that none
16 existed.

17 Q. Okay. All right.

18 Have you been trying to get the records?

19 A. We have.

14:12:44 20 Q. Do you know somebody by the name of Betty that
21 works at Maricopa County Department of Elections?

22 A. So we, as in response to our public records
23 request for these documents on behalf of Kari Lake, some
24 of the documents they provided to us electronically and
25 others they said were in binders, and we had to go and

1 copy them ourselves. So we had a couple representatives
2 go down to Maricopa County Elections Office to copy
3 them, and they were -- and Betty and Christie were sort
4 of overseeing their copying of records.

5 Q. Okay. Have you met Betty?

6 A. I have not met Betty.

7 Q. Then I've got to correct a misrepresentation to
8 the Court, Your Honor. I believe that my witness had,
9 and so I apologize and I correct that.

14:13:33 10 Are you familiar with Betty's voicemail?

11 A. Well, I called Betty a couple of times to try to
12 get the records, but when they were there actually
13 scanning all of the records, she exchanged business
14 cards with Michelle, who was one of the representatives.

15 Q. Have you spoken with Betty?

16 A. No, she's not responded.

17 Q. Have you been able to get ahold of her?

18 A. No.

19 Q. Okay. All right. Can we go to the next slide,
14:14:05 20 please? What is this document again?

21 A. So this document is created at Runbeck, and this
22 records the total count of the ballots that are received
23 from the MCTEC delivery truck.

24 Q. Um-hum.

25 A. So they break this down into a couple of

1 different ways, you know, the post office inbound is
2 separated because, of course, those are slightly
3 different ballots and we're not really talking about
4 those together. But the regular MOB is the mail
5 ballots, right, so that would be the green envelopes.
6 And then you'll see down at the bottom the CTR, that's
7 the vote center ballots. Those are the white envelopes
8 for early in-person voting.

14:14:51 9 Q. Okay. All right. And what do these documents
10 really tell you?

11 A. So these documents -- these documents reflect the
12 number of ballots that are received at Runbeck. So,
13 again, this is created at Runbeck, and you'll see, like,
14 in the line here this document is dated 11/6, and it is
15 the precise number of pieces of regular MOB, and the
16 precise number of pieces of the CTR. And that's because
17 they copy this information from the delivery receipt
18 form, that half sheet that's generated at MCTEC, and
19 then this form accompanies it and, again, they keep a
14:15:30 20 copy of it, and the other copy goes back with the driver
21 to -- to Maricopa County to document that, in fact, he
22 did take the ballots as he was supposed to, delivered
23 them to the possession of Runbeck, and completes that
24 chain of custody.

25 Q. Okay. Okay. So these then are created by

1 Runbeck when Maricopa County officials drop ballots off
2 at their third party; is that correct?

3 A. Correct. It's the drivers, so it's not, like,
4 actually like the Recorder or anybody doing that
5 delivery.

6 Q. Understood. And so Runbeck employees, they
7 simply estimate the number of ballots?

8 A. No, just to make the distinction. For the post
9 office inbound, what happens is the driver, if there
10 are, you know, stops -- sometimes he makes special
11 delivery, but sometimes he also stops on the way. So
12 he'll go to the U.S. postal facility.

13 So the post office doesn't deliver the ballots to
14 Runbeck, the post office doesn't deliver the ballots to
15 Maricopa County, the driver goes to the facility in
16 Phoenix, and then he loads the trays of mail ballots
17 onto the truck, and then that is taken to Runbeck. And
18 for those ballots, they count the number of trays, the
19 number of postal trays and they estimate that. There is
20 a receipt that accompanies the post office ballots, but
21 Maricopa County does not use that to record the precise
22 number; however, they started preserving that at
23 Runbeck.

24 Q. Okay. So Runbeck is starting preserving
25 documents obtained from United States Postal Service

1 regarding how many ballots the U.S. Postal Service was
2 transferring to Maricopa County's care and control?

3 MR. LIDDY: Objection, Your Honor.

4 MR. BLEHM: Custody and control. Is that
5 your understanding?

6 THE COURT: Hold on. There's an objection.

7 MR. LIDDY: Objection, Your Honor. The
8 witness said the post office provides estimates, not
9 counts of the number of ballot packages.

14:17:29 10 MR. BLEHM: Shaking her head no, Your Honor.
11 That's not what she said.

12 THE COURT: Well, he's objecting to the form
13 of the question. I think what he's saying, it's
14 leading.

15 MR. BLEHM: That's fine.

16 THE COURT: Rephrase it.

17 MR. BLEHM: I'll ask the question in another
18 way, Your Honor.

19 THE COURT: Thank you.

14:17:43 20 BY MR. BLEHM:

21 Q. Based upon your knowledge, training and
22 experience with respect to Maricopa County chain of
23 custody and election-related mail ballots, do you know
24 if the postal service provides receipts showing the
25 exact number of mail-in ballots that the United States

1 Postal Service is transferring to Maricopa County?

2 A. Right. Yes. The answer to that is it is my
3 understanding that they do. They tuck them into the
4 tray, so it's, again, my understanding that they are
5 difficult to find, but that's how they base how much
6 they are going to charge. That's, like, how they bill
7 for the postage, so that's how they count it. And, of
8 course, they have, like, machines that do that at the
9 post office.

14:18:22 10 Q. Okay. And so Maricopa County then gets a receipt
11 or, at least, the Maricopa County driver gets a receipt
12 from the postal service that says, essentially, how many
13 pieces of mail ballots were delivered to Maricopa County
14 driver, correct?

15 A. That is my understanding.

16 Q. Okay. Does the County maintain those documents?

17 A. So to my knowledge, they didn't turn over any to
18 us, so let me just start with that. We didn't receive
19 any in response to our request for those public records,
14:18:53 20 but it's also my understanding that -- that the Runbeck
21 employees attempted to sort of return them to Maricopa
22 County, and they said they didn't need them.

23 Q. Okay. And so is there any way to tell, other
24 than this inbound receipt given by Runbeck to the
25 Maricopa County driver, exactly how many ballots left

1 Maricopa County were picked up at the post office and
2 actually delivered to Runbeck?

3 A. Well, on this form here, on 11/6, you can see
4 that they have a precise count. But, unfortunately, on
5 Election Day, because they were not using the other
6 chain of custody documents that we described, they were
7 -- this was the one and only form that was -- that was
8 used, according to, again, the records request that were
9 produced for us and based on the Runbeck employees, who
10 described receiving these trucks coming with no
11 corresponding documentation.

12 Q. Thank you. Thank you, Ms. Honey.

13 And so I would like to -- Exhibit 66? Is this
14 66? Go to 66.

15 THE COURT: Are we on 66?

16 MR. BLEHM: 66, Your Honor.

17 THE COURT: Thank you.

18 BY MR. BLEHM:

19 Q. If you look at the screen, Ms. Honey, these look
20 like the Maricopa County Audit Challenges receipts?

21 A. Yes.

22 MR. BLEHM: I'd move to admit Exhibit 66
23 into the record, Your Honor.

24 MR. LIDDY: No objection.

25 THE COURT: 66 is admitted. Thank you.

1 MR. BLEHM: Thank you.

2 BY MR. BLEHM:

3 Q. Okay. Go back to the PowerPoint.

4 Ms. Honey, how many ballots did Maricopa County
5 claim they received on Election Day that were not
6 tabulated ballots?

7 A. So I think that -- I think your question is how
8 many drop box ballots did they report?

9 Q. Yes.

14:21:39 10 A. Yeah, so initially on the morning after the
11 election, they reported that there had been 275,000, I
12 think, that Stephen Richer said approximately 275,000
13 drop box ballots had been dropped off on Election Day.

14 Q. Okay. Did that number change?

15 A. That number did change.

16 Q. What's the number now?

17 A. I believe that that -- that -- the number went
18 from the 275 on the 9th. They also had a press
19 conference during which the press at the press
14:22:14 20 conference, Recorder Richer also talked about what an
21 extraordinary number the 275 was.

22 Q. Ms. Honey, that was not my question.

23 A. I'm sorry.

24 Q. My question was: What is the number now?

25 A. I believe they ultimately said it was 292,000

1 that had been dropped off at drop boxes.

2 Q. As you sit here today, how many of those ballots
3 have legal chain of custody?

4 A. Based on the documents provided, none.

5 MR. LIDDY: Your Honor, objection. Calls
6 for conclusion.

7 MR. BLEHM: Rule --

8 THE COURT: Wait. Wait. You're asking her,
9 according to her understanding from what she's
10 experienced and observed, what's her number?

11 MR. BLEHM: Yes, Your Honor.

12 THE COURT: Ma'am, if you can answer it, go
13 ahead and answer it.

14 THE WITNESS: So we viewed all of the
15 documents provided by Maricopa County in response to our
16 request, and the answer is that none of the documents
17 that they created meet the requirements from the EPM.

18 BY MR. BLEHM:

19 Q. You had the opportunity to talk to somebody from
20 Runbeck following this election; is that correct?

21 A. I did.

22 Q. All right. And did you have an opportunity to
23 read that -- that Runbeck employee's declaration?

24 A. I did.

25 MR. BLEHM: All right. And so I would like

1 to -- let's see here -- 46, and while he's pulling this
2 up, Your Honor, may I ask the Court a quick procedural
3 question?

4 THE COURT: Go ahead.

5 MR. BLEHM: When we began this morning, Your
6 Honor noted that it would be unduly difficult to get
7 this many witnesses through. So it said it was going to
8 admit the declarations with the exception of Kurt Olsen
9 that were attached to the Complaint, Your Honor.

14:24:34 10 THE COURT: No, I didn't say that.

11 MR. BLEHM: Well I'm sorry then. I
12 misunderstood.

13 THE COURT: I know what I said, but I know
14 where you're going. You want to admit those now.

15 MR. BLEHM: I would like to, yes, Your
16 Honor, admit Leslie White and --

17 THE COURT: Ms. White.

18 MR. BLEHM: -- Denise Marie and Leslie
19 White, and those are listed as Denise Marie is

14:25:01 20 Exhibit 46, Leslie White is Exhibit 47.

21 THE COURT: Okay. Yes, Mr. Liddy?

22 MR. LIDDY: Objection. Hearsay, Your Honor.

23 THE COURT: Very well. All of your
24 objections were preserved. These are two of the ones
25 that I had listed specifically this morning and told you

1 that I needed the numbers. Now, I have the numbers for,
2 at least, two of these, okay? So your objections are
3 all preserved, all three defendants have joined. They
4 were in writing under the Rule 807 notice, and so over
5 your objection, I'm going to admit 46 and 47.

6 MR. BLEHM: Thank you, Your Honor.

7 BY MR. BLEHM:

8 Q. Ms. Honey, the Runbeck employee, Denise, did she
9 -- did she tell you that -- did she tell you about any
10 problems at Runbeck with respect to chain of custody?

11 A. Yes, she expressed her concern over the fact that
12 the procedure that had been well-established throughout
13 the election was not used for the large number of
14 Election Day drop box ballots that were received.

15 MR. GOANA: Your Honor, I want object and
16 move to strike everything that was said there while the
17 declaration was admitted. Now we have this witness
18 testifying about separate hearsay statements made by
19 this Denise individual, who allegedly used to work at
20 Runbeck. This seems to me to be a separate issue from
21 the admission of the declaration, itself, and I just
22 want to clarify that the hearsay objection extends to
23 any hearsay testimony that this witness will offer in
24 addition to what may or may not be in the declaration.

25 MR. LIDDY: Your Honor, the County joins

1 that objection.

2 THE COURT: Which exhibit was it in, this
3 is?

4 MR. BLEHM: This is --

5 THE COURT: Denise Marie, 46?

6 MR. BLEHM: Denise Marie, 46.

7 THE COURT: 46.

8 MR. BLEHM: Your Honor, I'm not asking any
9 questions outside the scope of this declaration.

14:26:59 10 MR. GOANA: Your Honor, the declaration is
11 in evidence. It's in evidence now, over our objection.
12 This witness should not be able to repeat hearsay again
13 in a sense, put Ms. Marie's words into her own mouth
14 that Ms. Marie said them herself in her declaration.
15 The Court can consider Ms. Marie's declaration giving it
16 whatever weight it deems fit, but to have this witness
17 repeat what is already hearsay again, I think is
18 inappropriate.

19 THE COURT: Okay. We're not going to go
14:27:25 20 back and forth. Here's, I believe -- as I told Mr.
21 Olsen earlier, the Court does not print out somebody an
22 expert, but if they are testifying and they have an
23 information, experience or -- or education beyond that
24 of the trier of fact, it's instructive or informative,
25 and this witness, I find, meets that. If she's relying

1 upon which she has just said to formulate her opinions,
2 I'll let her do that. I understand the objection is
3 that it's hearsay, but that's going to be something that
4 you can cross-examine; for instance, if that's incorrect
5 then your -- I'm not going to tell you how to
6 cross-examine. You already understand all of that.

7 So, Mr. Blehm, proceed, please.

8 BY MR. BLEHM:

9 Q. Okay. So lack of chain of custody was one of her
10 concerns?
14:28:12

11 A. It was.

12 Q. All right. You talked to Leslie White as well?

13 A. I did.

14 Q. Was lack of chain of custody one of her concerns?

15 A. Yeah, so Leslie was actually an observer at MCTEC
16 on election night when the ballots were received back
17 from the drop boxes, and her concern was that
18 specifically the seals were being removed from the
19 transport containers and the ballots inside were not
20 counted. She, you know, that was a requirement as she
14:28:44 21 understood it, and the fact that they were just taking
22 those ballots out of the transport containers without
23 counting them was -- was her primary concern.

24 Q. Okay. So we have two different people you have
25 spoken to working in two different places, correct?

1 A. Correct.

2 Q. One is here at Runbeck, the third-party vendor,
3 and one's here at MCTEC, right?

4 A. Correct.

5 Q. From MCTEC?

6 A. Um-hum.

7 Q. And both of them, both of them, are telling you
8 there's no chain of custody on Election Day for ballots
9 being transported from MCTEC to Runbeck; is that
10 correct?

11 A. Correct. They weren't following the legal
12 requirements for chain of custody. So there were seals
13 on the containers when they transported them, but the
14 specific issues were that they were just cutting them
15 open, taking the ballots out, putting them in trays
16 without regard to how many, or there was no
17 documentation. There were handbags and purses where
18 they were processing the ballots, and that was --

19 Q. All right. With respect to -- with respect to --
20 sorry. I just lost my train of thought.

21 With respect to Denise White, Denise White, did
22 she raise other concerns with you regarding potential
23 vulnerabilities with our election system in Maricopa
24 County?

25 A. Yes. So, I mean, two issues, right? So the

1 first one was that the trucks were coming with ballots
2 that there was no -- no associated counts, right? So
3 that was number 1. They just didn't know how many they
4 were, should have had. So she was concerned about that;
5 but then after the election, on the evening of
6 November 9th, right -- so November 8th is Election Day,
7 November 9th in the evening she was called by her
8 supervisor and asked to go down to the system and
9 actually pull the total number of ballot packets that
10 had gone through the system to provide a count to
11 Maricopa County.

12 Q. Why?

13 A. Well, I --

14 MR. GOANA: Objection to foundation and
15 hearsay on this one as well.

16 MR. BLEHM: I'll withdraw the question, Your
17 Honor.

18 THE COURT: Thank you.

19 MR. BLEHM: Improper, I admit.

20 BY MR. BLEHM:

21 Q. Okay. And so she gets a call, she gets tasked
22 with an assignment, a job, and that is to go find what
23 the numbers are to report those to Maricopa County
24 because they don't know?

25 MR. GOANA: Objection, Your Honor. Again,

1 foundation.

2 MR. BLEHM: Is that what she told you?

3 MR. LIDDY: County joins.

4 THE COURT: Great. What I told you before,
5 I'm going to assume all the defendants join all the
6 other objections you've made, okay, and your objection
7 is speculation.

8 MR. GOANA: Your Honor, just foundation and
9 speculation. And I just want to make clear that we have
10 a continuing objection to any of these continued hearsay
11 conversations that this witness is relaying.

12 THE COURT: So noted.

13 MR. BLEHM: I'm almost done, Your Honor.

14 THE COURT: Pardon me?

15 MR. BLEHM: I'm almost done, Your Honor.

16 THE COURT: That doesn't take care of this
17 question.

18 MR. GOANA: I was going to say, Your Honor,
19 the question was what did she say and why, and now we're
20 getting into this witness's motivations which is now
21 beyond hearsay and pure speculation and lacks
22 foundation.

23 THE COURT: My understanding was it was
24 calling for this witness to speculate about why Maricopa
25 County did something, and so rephrase the question.

1 BY MR. BLEHM:

2 Q. Did this witness tell you that she was concerned
3 about how Maricopa County was conducting operations with
4 respect to drop-box ballots?

5 A. Yes.

6 Q. Okay. Did this witness, Denise, did she also
7 tell you about possible vulnerabilities where people can
8 inject ballots into this system?

9 A. Right. So what she said that Runbeck employees
10 were permitted almost, like, it was a perk of employment
11 to bring their ballots from home, so their ballots from
12 home, their family members' ballots, bring them from
13 home and add them to the inbound scans.

14 Q. Is that consistent with Arizona law?

15 A. No.

16 MR. GOANA: Objection, Your Honor. Calls
17 for a legal conclusion.

18 THE COURT: You're asking for her
19 understanding, correct?

14:32:59 20 MR. BLEHM: Yes, Your Honor.

21 THE COURT: Your understanding, ma'am, if
22 you can answer it based on that.

23 THE WITNESS: I can. It is my understanding
24 that ballots must be returned to an authorized drop-off
25 location. Maricopa County publishes a list of those

1 authorized drop-off locations and Runbeck elections is
2 not one of those.

3 BY MR. BLEHM:

4 Q. All right. Are you familiar with these social
5 media posts I put up here?

6 A. I am.

7 Q. Okay. And this is -- these are Tweets by
8 Maricopa County Elections Department, correct?

9 A. Correct.

14:34:01 10 MR. BLEHM: I'd move to admit these, Your
11 Honor, Exhibit 63.

12 THE COURT: Mr. Blehm, can you bring those
13 back up on the screen?

14 MR. BLEHM: Oh, I apologize. I didn't take
15 it off.

16 THE COURT: Give the defendants a moment to
17 look at it.

18 Any objection?

19 MR. LARUE: No objection.

14:34:56 20 THE COURT: Very well. That was 63. It
21 will be admitted.

22 MR. LARUE: We're not sure about the number.

23 MR. LIDDY: I believe it's 70, Your Honor.

24 MR. BLEHM: It's 63.

25 Did I say that was Stephen Richer?

1 THE COURT: I'm looking at 63. I pull them
2 up as you discuss them.

3 MR. BLEHM: 70 is Stephen Richer.

4 THE COURT: Which one?

5 MR. LARUE: Maybe it's misnumbered on the
6 sheet we received.

7 THE COURT: Which one are we moving, Mr.
8 Blehm?

9 MR. BLEHM: You know, I think I might have
10 written these down backwards, Your Honor. I'm going to
11 move in Exhibit 70 and then we will --

12 THE COURT: Before you're going to get to
13 63, I think that you looked at 63, Defendants, correct?
14 Did you have any objection to 63?

15 MR. LARUE: Your Honor, I have not looked at
16 63, but I did look at 70. And we have no objection to
17 70. Is this 63 right here? Just one moment.

18 THE COURT: Thank you.

19 MR. LARUE: No objection, Your Honor.

14:36:02 20 THE COURT: Are you moving 63 and 70 into
21 evidence, Mr. Blehm?

22 MR. BLEHM: Yes, Your Honor.

23 THE COURT: They are admitted.

24 MR. BLEHM: Thank you.

25 BY MR. BLEHM:

1 Q. Okay. And so are you familiar with the Tweets
2 that are up here from Stephen, Recorder Richer?

3 A. Yes.

4 Q. Is this where he was saying there were 275,000
5 ballots?

6 A. Yeah, there was a series of Tweets, sort of,
7 after they -- the day after the election where he
8 explains that they had processed all of the ballots and
9 transferred them to Runbeck. And, again, it was 275,000
10 was the number he says, over 275, 275 plus. Obviously
11 it's a round number, right, it's 000. So, you know, and
12 not an exact count.

13 MR. BLEHM: May I approach, Your Honor?

14 THE COURT: You may.

15 MR. BLEHM: All right.

16 BY MR. BLEHM:

17 Q. In this Tweet, Mr. -- I'm sorry -- Recorder
18 Richer says, last night from midnight to 5:00 a.m., we
19 sorted those 275 plus thousand documents or ballots so
20 they can be scanned in and imaged, captured at Runbeck?

21 A. Correct.

22 Q. Or signature captured; is that correct?

23 A. Yes.

24 Q. Okay. Does that indicate that those ballots that
25 already had been sent to Runbeck at some point -- at

1 that time or at some point after?

2 MR. GOANA: Objection, Your Honor.

3 Speculation and foundation. The Tweet speaks for
4 itself. Mr. Richer was on the stand.

5 MR. BLEHM: I was going to withdraw the
6 question.

7 THE COURT: Withdrawn. Thank you.

8 BY MR. BLEHM:

9 Q. Did they count these ballots before they put them
10 in a truck and sent them to Runbeck?
14:38:01

11 A. There are --

12 MR. GOANA: Objection, Your Honor.
13 Foundation again.

14 THE COURT: Which ballots? Rephrase,
15 please.

16 BY MR. BLEHM:

17 Q. The 275 Mr. Richer is talking about?

18 MR. GOANA: Same objection.

19 THE COURT: I'm sorry. Rephrase the whole
14:38:16 20 question for the witness, please.

21 MR. BLEHM: Okay.

22 BY MR. BLEHM:

23 Q. Do you have any evidence they counted these
24 ballots before they put them in a truck, departed from
25 the Maricopa County facility with ballots from Maricopa

1 County residents, and delivered them to a third party?

2 A. No, there's no record that they counted any of
3 them.

4 Q. Thank you.

5 Did Maricopa County, knowing that we had
6 these claims, come here with their exhibits saying, hey,
7 look, no harm, no foul? Sorry we got them to you late?

8 MR. GOANA: Objection, Your Honor.
9 Argumentative. Foundation.

14:38:56 10 MR. BLEHM: Yes or no?

11 THE COURT: Save it for close. Sustained.

12 BY MR. BLEHM:

13 Q. Did you, Ms. Honey, have a chance to review the
14 documents that Maricopa County submitted as exhibits
15 before this Court?

16 A. Yes.

17 Q. Did they provide those missing documents?

18 A. They did not.

19 Q. Did they provide any documents that allow them or
14:39:17 20 their witnesses to sit up here before this Court and do
21 the math?

22 MR. GOANA: Objection, Your Honor.
23 Speculation and foundation.

24 MR. BLEHM: She has reviewed the exhibits.

25 THE COURT: You can rephrase it by saying,

1 to her knowledge.

2 BY MR. BLEHM:

3 Q. To your knowledge, Ms. Honey, will they be able
4 to put witnesses up before this Court and do the math,
5 based on their own disclosures and exhibits?

6 A. No, to my knowledge, no. And I will, like, to
7 also expand that we looked at the chain-of-custody
8 documents that they did use on Election Day, which are
9 those are called the precinct ballot reports, and the
10 precinct ballots reports are really the chain of custody
11 for those voted ballots that come from the vote center
12 on Election Day; and it also includes, by the way, a
13 count of the Door 3 ballots. Those documents, which I
14 have on one of these exhibits here --

15 MR. GOANA: Objection, Your Honor. I'm
16 going to move everything the witness just said about the
17 precinct-based ballots as being completely
18 non-responsive to the question.

19 THE COURT: Re-ask the question. I'm too
20 busy trying to follow, take notes, and keep up with the
21 two of you. Re-ask the question.

22 BY MR. BLEHM:

23 Q. Well, to use an old adage, that's a road we're
24 getting ready to hoe, Your Honor. So we'll just start
25 from scratch and then we'll go down that road.

1 So I believe we pulled up what has been marked as
2 Exhibit 65. What is that document, Ms. Honey?

3 A. This is an example of a Precinct Ballot Report.

4 Q. Precinct Ballot Report. What are they?

5 A. These are the documents, according to the
6 Maricopa County poll worker training and the poll worker
7 manual, these are the documents that are used when they
8 close the polling places to provide chain of custody for
9 the voted ballots that are, you know, voted on Election
10 Day. In addition to that, the poll worker training
11 requires the poll workers to empty the drop boxes of all
12 of the early voting ballots and place those in a
13 container. And, of course, there's no counting of those
14 ballots, there's nowhere on this form to record a
15 number, is really the point of this.

16 Q. Thank you, Ms. Honey.

17 Anywhere in this form can you find -- well, I
18 will withdraw that. Strike that.

19 Did you have a chance to review each and every
20 one of these documents the County provided to you?

21 A. I did.

22 Q. You did. On any one of those for Election Day,
23 did you see any documentation of drop box ballots and
24 the number of ballots contained within the drop box?

25 A. Definitely not the number of ballots. The seal

1 numbers that were put on those containers are on here,
2 but there's no ballot counts.

3 Q. All right. And so if I look at the vote totals
4 for tabulator 1, 494 in this example, and tabulator 2,
5 384 in that example, that's how many ballots were
6 contained in the black bags; is that correct?

7 A. Correct. If they followed the procedure, the
8 misread ballots, the 101, would have been transported
9 separately in that blue tote as well.

14:43:04 10 Q. All right. If -- if Recorder Richer
11 hypothetically were to testify that, oh, no, I'm not
12 responsible for drop boxes on Election Day, would that
13 be accurate?

14 A. It's my understanding, according to the EPM, that
15 it specifically makes the Recorder or the Recorder's
16 designee responsible for the secure retrieval of ballots
17 deposited in drop boxes. So it would be my
18 understanding that that applies to Election Day. There
19 is no exception to the requirements for Election Day.

14:43:46 20 MR. BLEHM: All right. Thank you, Ms.
21 Honey. Now, I forgot what Exhibit it is, Your Honor.
22 Exhibit Number 65, I move it into evidence.

23 THE COURT: Any objection?

24 MR. LARUE: No objection, Your Honor.

25 THE COURT: 65 is admitted.

1 MR. BLEHM: Thank you.

2 BY MR. BLEHM:

3 Q. You had an opportunity to review some of Recorder
4 Richer's e-mails, is that not correct?

5 A. Yes.

6 Q. All right. And I'm looking for them on my list
7 right now, but --

8 A. They are on the PowerPoint.

9 Q. What?

14:44:38 10 A. They are on the PowerPoint.

11 Q. Oh, they are on the PowerPoint. Thank you, Ms.
12 Honey.

13 Did you want to finish your PowerPoint? All
14 right. I just -- don't want -- I don't want Ms. Honey
15 to be duplicative for the Court.

16 A. Sure.

17 MR. BLEHM: But you -- I do kind of want to
18 -- I think Recorder Richer's e-mail is exceptionally
19 important, and I believe I moved this into evidence
14:45:15 20 earlier, Your Honor?

21 These are 69, Your Honor.

22 MR. LIDDY: This morning, Your Honor.

23 MR. BLEHM: Go to the last page of this
24 Exhibit.

25 BY MR. BLEHM:

1 Q. Ms. Honey, aside from making guesses, did
2 Recorder Richer, based on documents, really know exactly
3 how many ballots Maricopa County had in its possession?

4 MR. LARUE: Objection. So it calls for her
5 speculation, and Recorder Richer was on the stand this
6 morning. He could have asked the Recorder that.

7 MR. BLEHM: I believe I did, Your Honor. My
8 question was related to based on County documents, does
9 Recorder Richer have any clue as to how many ballots he
10 has aside from an estimate based on County records.

11 MR. LARUE: And I make the same objection
12 that it calls for speculation, Your Honor, as to what
13 Recorder Richer, how he understands County documents.

14 THE COURT: Right. I believe the question
15 can be phrased in terms of does any of the documentation
16 show or provide a method where someone, County person,
17 would know.

18 BY MR. BLEHM:

19 Q. Does any of the documentation show that Recorder
20 Richer had any idea how many ballots he had on Election
21 Day other than, you know, mere guesses?

22 A. No.

23 Q. The exhibit on the board, what does that say?

24 A. It's an e-mail from Stephen Richer, it looks like
25 it's Thursday, the 10th, so two days after the election.

1 And he says he's unable to reconcile, basically, there's
2 a 15,000 difference somewhere, and...

3 Q. Unable to reconcile. The number he throws out is
4 15,000, right?

5 A. Correct.

6 Q. I don't know where these come from. Is that any
7 way to run an election, Ms. Honey?

8 MR. GOANA: Objection, Your Honor, to the
9 extent the editorial comment was embedded in the
10 question. It should be stricken.

11 THE COURT: Which part of the question?

12 MR. GOANA: Your Honor, I can't even
13 remember what the exact wording was, it was --

14 MR. BLEHM: I can't either, Your Honor.
15 It's been a long week.

16 MR. GOANA: Maybe Mr. Blehm could re-ask the
17 question, we can avoid --

18 MR. BLEHM: I don't remember what it was. I
19 don't know how I'm going to re-ask it.

14:48:50 20 THE COURT: Go ahead.

21 MR. BLEHM: All right. Ms. Honey, thank
22 you. I don't have any further questions at this time.

23 Oh, really quickly, before I -- before I
24 stop, I want to move in Exhibit 69, Your Honor.

25 THE COURT: Any objection to 69?

1 MS. KHANNA: I think it was already admitted
2 this morning, but I don't believe we have any other
3 objection.

4 THE COURT: You're correct, it was admitted
5 this morning.

6 MR. BLEHM: Okay. Very good. Thank you,
7 Your Honor.

8 THE COURT: All right. Thank you.

9 MR. LARUE: Just one moment, Your Honor.

14:49:46 10 Hold on one second.

11 THE COURT: I think that we should be taking
12 an afternoon break for the sake of my court reporter's
13 carpal tunnel syndrome, if we don't. And so I would
14 rather take a break now than start and take a break in
15 ten minutes. So let's recess for -- I'm not going to do
16 the math, whatever until 3 o'clock, we'll come back at
17 3:00 and resume with the cross-examination, okay. We're
18 off the record until then.

19 (Recess taken, 2:50 p.m.)

15:00:31 20 (Proceedings resume, 3:00 p.m.)

21 THE COURT: We are back on the record in
22 CV2022-095403. This is Lake v. Hobbs, et al. Present
23 are the parties, their representatives and counsel. We
24 have Heather Honey on the stand remaining under oath,
25 and we're ready to begin the cross-examination. You may

1 proceed whenever you're ready, Mr. LaRue.

2 MR. LARUE: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. LARUE:

5 Q. Good afternoon, Ms. Honey.

6 A. Good afternoon.

7 Q. Thank you for being here today, this trial. I
8 know that all the parties appreciate your attendance. I
9 just have a few questions for you.

15:01:09 10 It's obvious to me that you've done a lot of work
11 to try to understand elections and that's, you know,
12 more than what a lot of citizens do. But would you
13 agree with me that election law is a complicated area of
14 law?

15 A. I would agree with that.

16 Q. Okay. And there are a lot of complexities to
17 running an election, would you agree with that?

18 A. Yes.

19 Q. Okay. Have you ever taken the Election Officer
15:01:39 20 Certification course that's offered by the Secretary of
21 State?

22 A. I have not.

23 Q. Okay. Have you ever worked as an election
24 official in Arizona?

25 A. No.

1 Q. Have you ever worked as a poll worker in Arizona?

2 A. No.

3 Q. All right. Have you ever been an observer at
4 MCTEC, observing the processes there? And by observer,
5 I mean an Election Day observer or a ballot count
6 observer, an observer and in an official capacity at
7 MCTEC?

8 A. No, I've never been a credentialed observer at
9 MCTEC.

15:02:14 10 Q. You've been to MCTEC, correct?

11 A. Yeah, sort of.

12 Q. Sort of?

13 A. I've not gotten a tour, if that's what you mean.
14 I mean, I've been there, but I haven't gotten a tour.

15 Q. Okay, all right. Now, you testified that you
16 didn't receive certain forms in response to your public
17 records request, correct?

18 A. Correct.

19 Q. Okay. And is it fair to say that because you
15:02:42 20 didn't receive those forms, you're assuming that they do
21 not exist?

22 A. No, quite the contrary. I know they exist. They
23 exist in more than one copy. I know that they exist at
24 Runbeck, because I've seen photographs of them, so I --
25 I know they exist. And, in fact, the e-mail

1 correspondence between the attorney for -- for Ms. Lake
2 and the -- your office was that, hey, if you can't find
3 yours, your copy, could you get the copy at Runbeck for
4 us.

5 Q. So you know the forms exist, they just haven't
6 been provided to you?

7 A. They haven't been provided in about three weeks.

8 Q. Okay. And, Ms. Honey, I will let you know that
9 we -- we believe you're being honest that you don't
10 believe you've received them. We take a different
11 position. Do you think it's possible that you were
12 provided them and you simply missed them in the large
13 stack of documents that you were offered to review?

14 A. Absolutely not.

15 Q. Okay. All right. Have you ever -- sorry. Have
16 you ever observed the ballot pickup at the post office
17 when the Maricopa County employees come, the Election
18 Department employees come and pick up the ballots to
19 transport to Runbeck? Have you ever been there to
20 observe that?

21 A. I'm sorry, when they pick up the ballots at the
22 post office?

23 Q. At the post office.

24 A. No, but I did actually speak to three people at
25 the Phoenix postal facility.

1 Q. But you've never personally observed that?

2 A. I have not personally observed, no.

3 Q. Okay.

4 MS. KHANNA: Your Honor, I apologize for
5 interrupting, but I believe we have the rule to exclude
6 from the courtroom any testifying non-expert witnesses,
7 and I believe one of those witnesses just entered. Mr.
8 Sonnenklar, I believe.

9 THE COURT: I have to rely on counsel for
10 that.

11 MR. SONNENKLAR: What's the question?

12 MR. OLSEN: You need to leave.

13 THE COURT: He's been sitting there for the
14 last hour.

15 MR. OLSEN: I did not see him, Your Honor.
16 I was focused this way.

17 MS. KHANNA: I believe the attention was
18 brought to opposing counsel and he thought it was Mr.
19 Baris, but it was not.

15:04:59 20 THE COURT: I don't know who the gentleman
21 is. I wasn't privy to your conversation. I just know
22 that gentleman has been sitting there for the last hour
23 plus. But, so... I don't believe it was intentional. I
24 believe you're like me, you're intent and focused on
25 what's in front of you. So I'm not casting any

1 aspersions. I'm just -- let's be all more astute, I
2 guess. That's the best I can do.

3 Thank you for pointing it out.

4 MS. KHANNA: Thank you, Your Honor.

5 THE COURT: Go ahead and proceed.

6 MR. LARUE: Thank you, Your Honor.

7 BY MR. LARUE:

8 Q. Now, Ms. Honey, I believe you testified earlier,
9 correct me if I have this wrong, but I believe you
15:05:41 10 testified earlier that the United States Postal Service
11 provides an exact count of the ballots that are picked
12 up by the Elections Department staff. Was that your
13 testimony?

14 A. So I think what I said was that in the trays,
15 they include a receipt, which basically is, like, a
16 bill, how many ballots were -- and it includes, like,
17 the total amount of postage on that form, and it's
18 actually tucked into the trays. I have some photographs
19 of that as well.

15:06:09 20 Q. Okay. And you said they put it in. You mean
21 United States Postal Service employees?

22 A. That is my understanding.

23 Q. Prepare the receipt and put it in.

24 Okay. And is it your understanding that that
25 receipt includes an exact number of ballots for that

1 tray?

2 A. I don't believe it's for the tray. I think it's
3 for the entire, like, pickup.

4 Q. For the entire pickup?

5 A. Right, so however many trays are included. It's
6 not a one for one, like, this is how many are in this
7 tray. I think it's the whole, that's my understanding.

8 Q. Would it surprise you to learn that the United
9 States Postal Service actually weighs the trays and
10 makes an estimated determination based on the weight of
11 the tray?

12 A. Well, that would, I mean, obviously that's a
13 great way to do it. Weight counting is a very effective
14 way of method of counting paper.

15 Q. Okay. Thank you.

16 I want to talk to you for just a minute
17 about the woman who, I believe, is identified as Denise
18 Marie.

19 Do you know who I'm speaking about?

15:07:11 20 A. I do.

21 Q. Okay. And I believe you testified that she was
22 an employee at Runbeck; is that right?

23 A. She still is an employee at Runbeck.

24 Q. Okay. Do you know how long she's been employed
25 there?

1 A. I think probably close to a year, but you'd have
2 to look at her declaration just to be certain. I'm not
3 100 percent sure.

4 Q. Okay. Do you know what her position is?

5 A. I know what her position -- well, no.

6 Q. All right. I want to talk with you about Leslie
7 White. And, again, when I say Leslie White, you know to
8 whom I'm referring?

9 A. I do.

15:07:57 10 Q. Okay. I believe you testified that she was an
11 observer at MCTEC; is that correct?

12 A. Correct.

13 Q. Do you know whether she was a first-time
14 observer, whether she was a repeat observer, what her
15 background is with regard to the observation process?

16 A. I believe she said that that was the first time
17 that she had been credentialed to observe that
18 particular process, right. So that was a little bit
19 different than, like, the MCTEC observers who are
15:08:26 20 watching, say, signature verification, for example,
21 which I believe she -- she also witnessed that process.
22 But this was unique in that she was credentialed to
23 watch that sort of incoming close-of-election-night
24 process.

25 Q. But your belief is she was a first-time observer?

1 A. I believe that was the first time she observed
2 that process, if that's what you're asking. I'm sorry.

3 Q. No, no, no. That's fine.

4 Did she, by any chance, mention to you that from
5 her assigned location where she was at she did not have
6 a clear view of the activities on the truck or on the
7 dock?

8 A. Right.

9 Q. Okay. Do you agree with me when I say that
10 Leslie White did not actually say in her declaration
11 that she was worried that ballots were not being
12 counted, that she didn't actually say that, I'm worried
13 that ballots are not being counted?

14 A. Are you asking if that was -- if those were her
15 words specifically in her --

16 MR. BLEHM: I'm going to object, Your Honor.
17 The declaration speaks for itself.

18 THE COURT: You can ask the question related
19 to the -- to this, her -- her statement; but I thought
20 there was testimony as well about conversations with
21 people. So re-ask it, Mr. LaRue.

22 BY MR. LARUE:

23 Q. Would you agree with me that Ms. White, Leslie
24 White, never actually said in her declaration or to you
25 that she was worried the ballots were not being counted?

1 A. She most certainly said to me that she saw the
2 seals being removed, the transport containers being
3 opened, and that there was absolutely -- that's in her
4 words -- absolutely no counting of the ballots. They
5 were simply picking them up out of the transport
6 container and putting them into trays and then putting
7 those trays onto, like, what she was calling a cage or a
8 cart, and that they were just moving these through. She
9 was concerned about that.

15:10:43 10 Q. So in her declaration, she doesn't say that. She
11 says, and I'm wondering if she said any of this to you:
12 She was concerned with the disorganized way the ballots
13 were being handled. She said, I did not see any person
14 count any ballots or record any information. I didn't
15 see it, but she didn't say it didn't happen.

16 When she spoke with you, did she talk about what
17 she saw and what she observed, or was she making
18 statements beyond that?

19 A. So I think you're mischaracterizing what she
15:11:20 20 said. But if you would like me, if you have a copy of
21 her statement, I'd be happy to point out what I'm --
22 what I'm talking about.

23 Q. It's all right. We'll move on.

24 A. Okay.

25 Q. I want to talk about -- I want to come back to

1 Denise Marie. You testified that, I believe, you
2 testified that she told you that Runbeck had -- well,
3 Runbeck allowed or maybe it just happened -- I don't
4 remember exactly what you said. But employees brought
5 in ballots from home.

6 Do you remember talking about that?

7 A. Yes.

8 Q. Okay. And Denise Marie was concerned about that,
9 correct?

15:11:58 10 A. Denise was concerned that this -- that this was,
11 basically, announced as though it was a perk of working
12 at Runbeck and that they were permitted to do it. She
13 thought it was, you know, in her conversation with me,
14 she thought it was, you know, questionable practice, but
15 -- but that, you know, people did it. She saw people do
16 it.

17 Q. Did she tell you how many people or how many
18 ballots she estimated might have -- might have been
19 subject to this?

15:12:27 20 A. Yeah. So she said she personally saw at least 50
21 that were brought in by employees and added at that
22 point.

23 Q. Okay. Thank you.

24 Now, continuing on with Denise Marie, there
25 was some back and forth between Mr. Blehm and someone

1 for the defense counsel and some objections were lodged,
2 and so I'm not sure if you ever answered the question
3 Mr. Blehm asked. I believe he asked you if it was true
4 that Denise Marie was asked to go get a ballot count
5 because Maricopa didn't know.

6 Did you answer that question? Do you have
7 knowledge as to whether Denise claimed that she was
8 asking to do get a ballot count because Maricopa didn't
9 know?

15:13:23 10 A. I don't believe that's what she said.

11 Q. Okay. Very good.

12 A. But to clarify, I mean, she was asked to go get a
13 count and report it back so that they could call
14 Maricopa and say, hey, this is how many ballots we
15 scanned, and subsequently the number that the County was
16 reporting increased by the same difference, you know.
17 He was reporting 275, she counted the actual number of
18 inbound scans, reported 298, and subsequently the number
19 that Maricopa was reporting as the total ballots in the
20 election increased by 25,000.

21 Q. Let's talk about that for a minute.

22 In your experience, just based on your knowledge
23 in working with elections, is it typical for elections
24 departments to do reconciliation of ballots and make
25 sure that they have the numbers right?

1 A. Reconciliation should happen in multiple
2 different places. For example, you reconcile the number
3 of voters who check in to a vote center to the number of
4 ballots cast in a vote center. Those types of
5 reconciliation are incredibly important.

6 Q. Okay. And -- let's move on from that. I want to
7 talk about what happens at Runbeck. Do you know what
8 happens to the ballots actually at Runbeck, what the
9 Elections Department and Runbeck employees do with the
10 ballots there?

11 A. Yes.

12 Q. What do they do?

13 A. So they run -- they load the ballots on the
14 inbound machine, and the inbound machine, by the way, is
15 only operated by Runbeck employees, so they load them
16 on, and they go through and they cut them off at about a
17 10, 11,000 batch size. At that point they stop, they
18 create the paperwork for that particular, you know,
19 batch of signature verification files, right. So they
20 are scanning the signature on the envelope. They are
21 creating a file for that, that is then transmitted to
22 Maricopa County so that they can start that signature
23 verification process.

24 Q. All right. So they go to Maricopa County to
25 start the signature verification process. Is it your

1 understanding that before a ballot, an early ballot, is
2 tabulated, the Elections Department has to examine the
3 signature and determine whether the signature matches
4 the signature in the voter registration file?

5 A. I'm sorry. Can you repeat that question?

6 Q. Yeah. Is it your understanding that before an
7 early ballot is tabulated, the Elections Department
8 looks at the signature on the affidavit envelope and
9 must determine whether it matches a signature in the
10 voter registration file for that voter before it's going
11 to go to tabulation?

12 A. Yes.

13 Q. Okay. So if employees at Runbeck put ballots
14 into the stream at Runbeck, now, let's say
15 hypothetically that did happen, is it your understanding
16 that those ballots would then go to MCTEC to be
17 signature verified?

18 A. Well, to be clear, the ballots don't go for
19 signature verification, the ballot images do. And, yes,
20 when they go through the inbound scan, they would be,
21 but I don't believe that that's the point. The point is
22 is that Arizona law says they are invalid ballots if
23 they are not returned to an authorized location. So
24 that's an opportunity to insert ballots, and if Maricopa
25 County was aware of the precise number of ballots, then

1 if they inserted two, they would know they inserted two.

2 Q. So if Arizona --

3 MR. BLEHM: Your Honor, I'm going to object
4 to this line of questioning. This Court would not let
5 us come before it with evidence of signature
6 verification. We wanted to, and now he's going right
7 down that road, Your Honor. And if he keeps going down
8 this road, I'm going to ask for a couple days next week
9 to come to this Court and talk about signatures.

15:17:41 10 THE COURT: You mean about the process?

11 MR. BLEHM: The process is part of it, Your
12 Honor, and he's talking exclusively about process. Her
13 direct examination, Your Honor, was limited to talking
14 about chain of custody with respect to drop box to
15 Runbeck and not beyond that point. And so, Your
16 Honor --

17 THE COURT: I understand.

18 MR. BLEHM: -- if that door was still open,
19 I'm more than happy to drive a truck through it.

15:18:14 20 MR. LARUE: May I respond, Your Honor, or do
21 you want to rule?

22 THE COURT: Go ahead.

23 MR. LARUE: All right. My response would be
24 the road I'm driving down is a different road, I think,
25 than Mr. Blehm wants to drive his truck. I'm talking

1 about what actually happens, and I'm talking about it
2 from the limited perspective of understanding what the
3 effect of these votes that might have been -- may have
4 been inserted at Runbeck may actually be. I'm not
5 really talking about the signature verification process
6 itself. I'm simply talking about what happens to a
7 ballot that is at Runbeck as it moves through the
8 system.

9 MR. BLEHM: Your Honor, may it please the
10 Court, I'll stipulate that those 50 ballots they talked
11 about got counted; but I'll also do so only in the
12 understanding, Your Honor that that is a concession by
13 defendants that it is possible to inject illegal ballots
14 into the system.

15 MR. LARUE: Your Honor, may I respond one
16 more time?

17 THE COURT: Well, he's offered to stipulate
18 is out there.

19 MR. LARUE: I understand. But I think this
20 needs to be cleared up. Mr. Blehm is making a legal
21 argument that ballots that are harvested are illegal
22 ballots and should not be counted. That's a legal
23 argument.

24 MR. BLEHM: Your Honor, I don't believe -- I
25 don't believe in my direct examination of this client I

1 ever even said the word "harvested." Now, more than
2 happy to talk about it, and as a matter of fact, I
3 believe it was defense counsel who brought up 2000
4 Mules. I haven't said anything about it, Your Honor.
5 I'm talking about chain of custody, the legal documents
6 this County has --

7 MR. LARUE: Your Honor --

8 MR. BLEHM: -- to prove how many ballots
9 they picked up from drop boxes and took to Runbeck.

15:20:09 10 THE COURT: Right.

11 MR. LARUE: Let me change my statement. I
12 understand it may have inadvertently irritated Mr.
13 Blehm. I didn't mean to do that with my choice of
14 words, and I apologize.

15 THE COURT: Well, it's not about irritating
16 Mr. Blehm, it's just about making sure we get it right
17 as far as what's allowed to go into, so if you want --

18 MR. LARUE: Let me amend my statement.

19 What I was attempting to say was that Mr.
15:20:33 20 Blehm is making a legal argument that a ballot that is
21 not deposited into the United States Postal Service mail
22 or dropped off in a drop box is an illegal ballot, I
23 believe is what he said, and that's a legal argument.

24 THE COURT: No, I think we're talking about
25 chain of custody, if we could distinguish things, and he

1 did discuss chain of custody very thoroughly with this
2 witness. I believe I understand what you're asking
3 about, but he's correct that what you're discussing is
4 the process for validation of signatures as it would
5 relate to possible injection of ballots into the system
6 without the chain of custody accounting for them.

7 Have I got that right, Mr. Blehm?

8 Did you listen to what I said?

9 MR. BLEHM: I did, Your Honor, but I'm kind
10 of hard of hearing.

11 THE COURT: Well I'm speaking soft maybe.
12 Do you want me to say it again?

13 MR. BLEHM: Probably a combination of both,
14 if you would, please. Sure.

15 THE COURT: If I understand your objection,
16 Mr. Blehm, it's that you've limited your direct
17 examination to chain of custody and what is being talked
18 about here by Mr. LaRue. The questioning is to elicit
19 testimony about the handling of ballots that might
20 violate the chain of custody if they are into the system
21 and why those ballots would still be subject to
22 verification through the signature validation process,
23 regardless of how they came in. Your point is that you
24 are saying, wait, it's only about the chain of custody
25 and if it violates the chain of custody. That's the

1 analysis that you're -- end of story. That's where it
2 goes.

3 MR. BLEHM: What I'm saying is, Your Honor,
4 the direct examination was about chain of custody and
5 the importance of chain of custody.

6 THE COURT: Got that.

7 MR. BLEHM: So that there are no points of
8 access of illegal votes into the system.

9 THE COURT: Well, he's taking issue with the
10 word "illegal," and he's talking about the legal
11 argument. What you're talking about that there's not --
12 that there are votes that are not accounted for under
13 the chain of custody that are placed into the ballot
14 system or the election system. And go ahead.

15 MR. BLEHM: I didn't go down that road, Your
16 Honor. It's illegal for a county elections official not
17 to do a job they are legally required to do. So if we
18 want to talk about illegality, we can go into that
19 point.

15:23:10 20 THE COURT: I understand your point, but I
21 guess you're objecting to Mr. LaRue going into his
22 argument that separate and apart from your position
23 there that if, in fact, ballots were somehow put into
24 the system in this instance, I think we're talking about
25 the Runbeck ballots.

1 MR. BLEHM: And, Your Honor, that's fine.
2 I'll let him go down this road, because it's my
3 understanding what he's saying is -- doesn't matter,
4 their ballots were counted. So I'll let him go down
5 this road, Your Honor, but I'm going to reserve my
6 argument.

7 THE COURT: Well, certainly. And I'm going
8 to talk to you all about closing arguments at the end of
9 the day today.

15:23:51 10 MR. BLEHM: Thank you, Your Honor.

11 THE COURT: Mr. Larue, go ahead.

12 MR. LARUE: Thank you, Your Honor.

13 BY MR. LARUE:

14 Q. Just a few more questions, Ms. Honey.

15 You're not an attorney, correct?

16 A. No.

17 Q. Okay. So I'm going to ask you a legal question,
18 but you only have to answer if you have an understanding
19 about it. If you don't have an understanding, it's
15:24:12 20 perfectly fine to say "I don't know."

21 Are you aware that under Arizona law a ballot is
22 not actually unlawful if it is -- the term that's used
23 sometimes is harvested or ballot collection -- but if
24 somebody who is not authorized to handle it deposits it,
25 or like what happened at Runbeck, if somebody brings it

1 and inserts it into the stream but not into a designated
2 authorized drop box, are you aware under Arizona law
3 that is not actually an unlawful ballot?

4 A. I think the term in the law is an invalid ballot.

5 MR. LARUE: Okay. Just one minute, Your
6 Honor.

7 No more questions. Thank you very much, Ms.
8 Honey.

9 THE COURT: Okay.

15:25:17 10 MR. GOANA: Your Honor, can we have a moment
11 to confer on this side to see if we have any questions?

12 THE COURT: Yes, you may.

13 BY MR. GOANA:

14 Q. Good afternoon, Ms. Honey. My name is Andy
15 Goana. I represent Secretary Hobbs in her official
16 capacity. I want to echo Mr. LaRue's thanks for being
17 here today. I'm going to be -- and I may surprise Judge
18 Thompson as well, I'll be very brief.

19 First of all, as you sit here today, you have no
15:25:47 20 evidence that anybody intentionally interfered with the
21 chain of custody of ballots in Maricopa County for the
22 2022 General Election, do you?

23 A. Well, I don't think I said that anybody
24 interfered with it. I said they failed to maintain
25 their legally required chain of custody.

1 Q. So your answer to my question then is, yes, you
2 have no evidence that anybody intentionally interfered
3 with the chain of custody for ballots cast in Maricopa
4 County for the 2022 General Election, correct?

5 MR. BLEHM: Asked and answered, Your Honor.

6 THE COURT: Well, I didn't hear it, so if
7 you can answer. If you understand it, ma'am, you can
8 ask it -- answer it -- excuse me. If you need it
9 rephrased, I'll have him rephrase it.

10 THE WITNESS: Well, I think you're asking a
11 question and sort of saying it in a way that I didn't
12 say it. So if you would ask it in, maybe, a different
13 way, that would be good.

14 BY MR. GOANA:

15 Q. Sure. You have no evidence that anybody
16 intentionally did not obey the law with respect to the
17 chain of custody in -- with respect to any ballots cast
18 in Maricopa County for the 2022 General Election?

19 A. I believe I understand your question.

20 Q. Okay.

21 A. And I would say that somebody, a person, and it's
22 my understanding that the Recorder is responsible for
23 maintaining chain of custody, somebody made the decision
24 not to do it. And I would say that when they made that
25 decision, knowing what the law is in Arizona, that that

1 was an intentional decision.

2 Q. I'm sorry, Ms. Honey. That's not what I'm
3 asking. What evidence -- you have no evidence that
4 anybody made an intentional decision to do anything
5 here, correct?

6 A. Well, I think --

7 MR. BLEHM: Asked and answered.

8 MR. GOANA: Your Honor, I think this is a
9 yes or no question.

10 THE COURT: Yes, it is, if you understand
11 the question. If you don't understand it, ma'am.

12 THE WITNESS: I don't understand the
13 question. I think I felt like I answered it, so I'm
14 sorry. I don't understand.

15 BY MR. GOANA:

16 Q. Okay. Other than the 50 ballots or so that were
17 mentioned in one of the declarations about family
18 members at Runbeck, you have no evidence that any other
19 ballots were quote, unquote, injected into the system at
20 any point in time, correct?

21 A. Well, unfortunately because of the failure --

22 Q. I'm sorry, Ms. Honey. Again, it's a yes or no
23 question. Other than those 50, you have no evidence of
24 that, correct?

25 A. Can you ask the question in a different way?

1 Q. Certainly.

2 There was some discussion earlier that the
3 employee at Runbeck told you, and it's reflected in her
4 declaration, that she estimated that approximately --
5 there were approximately 50 ballots of either Runbeck
6 employees or Runbeck employee family members who dropped
7 off their ballots at the Runbeck facility; is that
8 correct?

9 A. Correct.

15:28:27 10 Q. Okay. And my question is. Beyond what that
11 particular person told you with respect to those
12 approximately 50 ballots, you have no evidence that any
13 other ballots were quote, unquote, injected into the
14 system at any point in Maricopa County for the 2022
15 General Election; is that correct?

16 A. I could say that's not an answerable question.

17 Q. As you sit here right now, you have nothing else
18 to say on that issue beyond the 50 ballots that were
19 specifically mentioned to you by that individual,
15:28:57 20 correct?

21 A. No, I have something to say.

22 Q. No, I'm asking about evidence. Do you have
23 evidence?

24 A. Yes, I think that the failure to have chain of
25 custody makes it impossible to know how many ballots

1 were or were not transferred.

2 Q. But as you sit here now, the only ones you know
3 about are the 50 that were mentioned to you by the one
4 witness, correct? The only identifiable ballots that
5 you can speak to today are the 50 that were mentioned by
6 the Runbeck witness?

7 A. I can't identify those 50. I don't know who they
8 are.

9 MR. GOANA: Okay. Thank you. I have
10 nothing further, Your Honor.

11 THE COURT: All right. Done with cross?

12 MR. LARUE: Yes, Your Honor. I'm sorry. We
13 have no further questions, and we have no objection to
14 the witness being excused.

15 REDIRECT EXAMINATION

16 BY MR. BLEHM:

17 Q. Ms. Honey, do you recall the last question you
18 were asked?

19 A. Yes.

15:29:59 20 Q. All right. Is your point that it is impossible
21 to know if any and/or how many illegal votes were
22 injected into a system without valid chain of custody?

23 A. Correct. You can't tell how many potentially
24 were added or how many were removed even. I mean,
25 that's the whole point of chain of custody, to have that

1 sort of security and that -- without chain of custody,
2 there's -- there's no way to know and, you know, coupled
3 with, you know, the sort of changing numbers, it's very
4 concerning.

5 Q. All right. Defense counsel asked you if there
6 was any evidence of intentional conduct.

7 Do you recall that?

8 A. Yes.

9 Q. All right. If I hypothetically have a choice to
10 get a cup of coffee or a cup of water, and I choose
11 coffee, I didn't choose water, do I have a choice?

12 A. Yes.

13 Q. Did somebody choose, A, either not to make these
14 documents or, B, to produce them to my client's
15 attorney?

16 MR. GOANA: Objection. Calls for
17 speculation. Foundation.

18 THE COURT: I'm assuming you're asking the
19 witness to the extent of her knowledge.

15:30:53 20 MR. BLEHM: To the extent of your knowledge,
21 Ms. Honey. Yes, I am.

22 THE COURT: Go ahead.

23 THE WITNESS: I forget question again.

24 MR. BLEHM: I forget these real quick, Ms.
25 Honey.

1 THE WITNESS: Me too.

2 BY MR. BLEHM:

3 Q. And so, Ms. Honey, A or B, to the extent of your
4 knowledge, would it be an intentional act for somebody
5 to choose not to make chain-of-custody documents to
6 count the number of ballots, or would it also be an
7 intentional act to choose not to produce the documents
8 that had been created?

9 A. Well, again, to the extent that they didn't count
10 them, I think that there's no reason to believe that
11 they -- that they did count them or any documents exist.
12 I believe somebody made a decision not to maintain the
13 chain of custody and not to follow the laws as they are
14 written in the EPM. Somebody had to decide that.

15 Q. Just as I chose to come to court today instead of
16 stay home on the sofa, I made a choice. Thank you.
17 They have a legal requirement, don't they,
18 to choose to make these documents. They don't have a
19 choice not to make them, do they?

15:32:36 20 A. Right. There's no exception in the EPM to --
21 to --

22 Q. I believe it was -- I believe wasn't it --
23 where's my exhibit list? I believe Secretary of State
24 Hobbs, as a matter of fact, in a recent matter involving
25 Cochise County, and I think we got correspondence on

1 that as an exhibit, and did you see correspondence from
2 Secretary of State Hobbs --

3 A. I did.

4 Q. -- to Cochise County?

5 A. Yes.

6 Q. What did she tell them in that correspondence
7 with respect to Arizona law and EPM?

8 MR. GOANA: Objection, Your Honor. This is
9 beyond the scope of the cross-examination or the direct
10 at this point, and irrelevant.

11 MR. BLEHM: It is not, Your Honor. They
12 asked my client specifically if she had any evidence,
13 and I want to make the point, Your Honor, that even
14 their client says you have no -- you have no choice.
15 You must follow the law. When she told Cochise County,
16 you just certify your election, Your Honor.

17 THE COURT: They are two different --

18 MR. BLEHM: She said it in her letter.

19 THE COURT: Just to clarify, I'm not sure
20 what the letter says that you're referring to. It says
21 you must what?

22 MR. BLEHM: She told the Board of
23 Supervisors for Cochise County that they have no choice
24 but to do their legal duty.

25 THE COURT: Oh.

1 MR. BLEHM: And certify the election to make
2 her Governor of the State of Arizona.

3 THE COURT: And that --

4 MR. BLEHM: My argument here, Your Honor,
5 that that same legal duty applies to Maricopa County
6 with respect to their obligation to follow Arizona law
7 and the Elections Procedure Manual.

8 THE COURT: No, okay. You are correct, they
9 are obligated to follow the procedures in the manual;
10 but the question that was asked is whether she has any
11 direct evidence that there was an intentional decision
12 to not make the documents or not produce the documents
13 is what I recall.

14 MR. BLEHM: Okay.

15 THE COURT: And she didn't answer it
16 directly. What she said in response was they are
17 supposed to do this, and the fact that it didn't get
18 done tells me somebody must have made a decision, and
19 that was the answer. So I think it's been asked and
20 answered. To the extent that you're going to ask her
21 about it, a conclusion of law, that's --

22 MR. BLEHM: Fair enough, Your Honor.

23 THE COURT: -- not appropriate.

24 MR. BLEHM: I only got a few more questions
25 anyway.

1 THE COURT: Please proceed, Mr. Blehm.

2 BY MR. BLEHM:

3 Q. I think if you'll recall cross-examination
4 correctly, I got the impression that defense counsel was
5 sort of downplaying the injection to 50 ballots into the
6 system.

7 Do you recall those questions?

8 A. I do.

9 Q. I believe they were -- do you have any evidence
10 those 50 votes were not counted or something along those
11 lines? Do you recall that question?

12 A. I do.

13 Q. Okay. You don't have any evidence that those
14 votes were not counted, do you?

15 A. I don't know which ballots those were.

16 Q. Okay. Is that the point?

17 A. That is the point. I mean, Denise said that she
18 observed -- personally observed 50. She's not there all
19 the time, so we don't know what that number is. And the
20 reason we don't know what number that is is because we
21 don't know how many there were supposed to be.

22 Q. Right. Could it be 5,000?

23 MR. GOANA: Objection, Your Honor.
24 Speculation, foundation.

25 MR. BLEHM: I agree, Your Honor.

1 THE COURT: That's your point. That's your
2 point, so sustained.

3 MR. BLEHM: Can't blame a guy for trying.

4 BY MR. BLEHM:

5 Q. That's all we can do, isn't it, Ms. Honey, is
6 speculate, isn't it?

7 A. Well, I strongly dislike speculating, but I think
8 there's just no way to know the answer, and that's the
9 problem, there's no way.

15:36:52 10 Q. Any question I ask you about how many ballots it
11 could have been would be nothing but pure speculation;
12 isn't that right?

13 A. Correct.

14 Q. And isn't that the problem? You testified
15 earlier and this gets back to, you know, their questions
16 about chain of custody being complicated.

17 Do you recall that?

18 A. Yes.

19 Q. Is it complicated?

15:37:13 20 A. I mean, it's more complicated in Maricopa because
21 they outsource it, but, you know, chain of custody is
22 chain of custody. I want to know how many ballots I'm
23 transferring from point A to point B and, you know, if
24 you understand, the EAC says it's incredibly important.
25 It's critical for --

1 Q. Now, let's go back to your history and your
2 background just very briefly so I can wrap this up.
3 Supply chain management, what do you do in that area?

4 A. I do consulting in the supply chain space, again,
5 a lot of it is counter-diversion, but it's also in terms
6 of loss prevention.

7 Q. Okay. Loss prevention, all right.

8 And so do companies pay -- and let's talk
9 about widgets, because everybody likes widgets. Do
10 companies pay millions of dollars every year to
11 consultants to help them with their supply chain
12 management?

13 MR. LARUE: Your Honor, I'm going to object.
14 It seems to me this is beyond the scope of the
15 cross-examination.

16 THE COURT: It is.

17 MR. BLEHM: Your Honor, he asked her
18 specifically -- specifically he asked her is chain of
19 custody complicated.

20 MR. LARUE: Your Honor, I don't believe that
21 was my question.

22 THE COURT: Hold on.

23 MR. BLEHM: My argument is this, Your
24 Honor --

25 THE COURT: Wait. I'm not in the habit of

1 debating objection and rulings of objections.

2 MR. BLEHM: Understood. I was just going to
3 make a legal argument.

4 THE COURT: Which is an argument with a
5 Judge about the ruling on the objections.

6 MR. BLEHM: Oh, no. I'm not trying to argue
7 with the Judge. I want to make a challenge to his
8 objection.

9 THE COURT: It may be a distinction without
10 a difference, Mr. Blehm.

11 MR. BLEHM: All right. Thank you, Your
12 Honor.

13 THE COURT: But if you're ever in a position
14 where I make a ruling and you think that you need to
15 make an offer of proof to show that I may be mistaken, I
16 will let you do that, okay, but not back-and-forth --

17 MR. BLEHM: Understood.

18 THE COURT: -- argument, okay? So I've --

19 MR. BLEHM: I'd like to make a quick offer
20 of proof right now, Your Honor.

21 THE COURT: Then go ahead and do that.

22 BY MR. BLEHM:

23 Q. Heather Honey, do companies spend millions of
24 dollars a year --

25 THE COURT: Wait. You're just continuing

1 the questioning?

2 MR. BLEHM: Okay.

3 THE COURT: As far as an offer of proof, I
4 want you to tell me what you expect to prove and how
5 that would make a difference with regard to my ruling.
6 That's what an offer of proof is.

7 MR. BLEHM: I guess, Your Honor, I would
8 expect to prove that -- that, you know, companies, big
9 companies spend millions of dollars every year, you
10 know, to get 5,000 widgets to your local Ace Hardware
11 store, and they do it successfully.

12 THE COURT: I'm not arguing -- wait -- I'm
13 not arguing the concept. I'm arguing that whether or
14 not your offer of proof is going to show me that this is
15 something that was touched on in his cross.

16 MR. BLEHM: Understood, Your Honor. And
17 I'll just move on to my last -- my last point.

18 BY MR. BLEHM:

19 Q. You were a part of the 2021 Arizona election
20 other than that, correct, Ms. Honey?

21 A. I was.

22 Q. And this is relevant to Mr. LaRue's question to
23 you about the postal service receipts. You recall that
24 question?

25 A. I do.

1 Q. Okay. And Mr. LaRue was telling you -- well,
2 those aren't really receipts, are they? Are those are
3 weights; isn't that true?

4 A. I believe Mr. LaRue asked if it was possible that
5 they were weight counts.

6 Q. Okay. And are weight counts a valid tool to
7 count paper documents?

8 A. Yes.

9 Q. Okay. Why is that?

15:41:00 10 A. Scales are precise and you can determine the
11 weight of a single sheet of paper. You can determine
12 the weight of a single ballot and then weigh it. And,
13 you know, you're within -- it's a pretty accurate
14 measurement. That's how -- that's what weight counting
15 is.

16 Q. Let me ask you this question: Did -- during the
17 2021 audit, did you and your crew weigh all of the
18 ballots?

19 MR. GOANA: Objection, Your Honor.

15:41:34 20 Relevance.

21 MR. BLEHM: I'm getting to my relevance.

22 THE COURT: I'll give him some leeway. Go
23 ahead. If you can answer it, ma'am. Go ahead.

24 THE WITNESS: We didn't weigh all of them,
25 no. We weighed some boxes.

1 BY MR. BLEHM:

2 Q. Okay. Now, the boxes that you did weigh, was the
3 weight count consistent with the other counts?

4 A. Yes.

5 Q. How many counts did you do? Different counts?

6 A. I can't say. I mean, half maybe.

7 Q. The machine count, right?

8 A. Oh, oh, I'm sorry. I didn't understand your
9 question. Yes, there was a hand count, a weigh count, a
10 machine count, and in some cases, an audit count, and
11 then there was a count of ballot images as well.

12 Q. Ballot images because you photographed each
13 ballot?

14 A. Correct.

15 Q. So you could count those images. And were they
16 all consistent with the weight count?

17 A. Yes.

18 Q. And so if the United States Postal Service or
19 some other large company wants to bill their client for
20 50,000 pieces of mail, it's an effective way to do so by
21 measuring the weight; isn't that correct?

22 A. If it's the same piece of mail type.

23 MR. BLEHM: Same mail type. All right. I
24 have no further questions, Your Honor.

25 THE COURT: Okay. Can we excuse the

1 witness?

2 MR. BLEHM: I excuse the witness.

3 THE COURT: Defendants?

4 MR. LARUE: No objection, Your Honor.

5 THE COURT: Ma'am, you're excused.

6 (Witness excused.)

7 THE COURT: Your next witness. I think
8 we're okay. Your next witness will be?

9 MR. OLSEN: Your Honor, our next witness is
10 Bradley Bettencourt, please.

11 THE COURT: Sir, if you could just stand
12 there in front of my clerk she'll swear you in.

13 BRADLEY BETTENCOURT,
14 called as a witness, having been duly sworn, testified
15 as follows:

16 THE COURT: Thank you, sir. If you'll make
17 your way around to the witness stand and have a seat,
18 please. Who is going to do this examination?

19 MR. OLSEN: I am, Your Honor.

15:44:36 20 THE COURT: Whenever you're ready, Mr.
21 Olsen.

22 MR. OLSEN: Yes, Your Honor.

23 DIRECT EXAMINATION

24 BY MR. OLSEN:

25 Q. Good afternoon, Mr. Bettencourt. Could you

1 please state your full name for the record?

2 A. Bradley David Bettencourt.

3 Q. What is your occupation?

4 A. Well, I generally work with real estate and have
5 my own company and work with my dad.

6 Q. Okay. Did you have occasion to be hired by
7 Maricopa County for any elections?

8 A. Yes, I decided to work as a T Tech with them.
9 They reached out, I applied, and they reached out after.

15:45:08 10 Q. And when did they reach out to you?

11 A. A little over a month before the election.

12 Q. And you're referring to the 2022 General
13 Election?

14 A. Correct.

15 Q. Or the Primary?

16 A. The General Election.

17 Q. Okay. And what is a T tech?

18 A. Well, we would set up the sites beforehand and
19 site watch on the days of polling.

15:45:34 20 Q. And in terms of setting up the sites beforehand,
21 what kind of work were you doing?

22 A. Well, we focus mainly on the site books, the
23 printers, and the MoFi, which is like a WiFi, basically.

24 Q. And the site books are the device that's used to
25 check in a voter and have their ballot directed towards

1 whatever precinct they are in?

2 A. Correct, yes.

3 Q. And did you have -- did you participate in the
4 election prior to Election Day in any kind of fashion?

5 A. I was working with them for about a month
6 approximately, and we set up sites beforehand, some of
7 the early polling sites. And we also site watched
8 early, and we actually created a T Tech group, a text
9 group, to stay in touch while we were site watching.

15:46:26 10 Q. How was that group set up? Was it through your
11 supervisor or --

12 A. Yeah, it was through the supervisor.

13 Q. And who was that?

14 A. That was Jose.

15 Q. Do you have a last name?

16 A. Jose Luis Arpaio.

17 Q. Is he an employee of Maricopa County?

18 A. He's a permanent employee, yes.

19 Q. What's his function at Maricopa County?

15:46:46 20 A. Well, he was basically our supervisor for the T
21 Techs. He had been a T Tech previously as a temporary
22 employee, and he wound up getting a permanent position.

23 Q. And how many T Techs were in this group that he
24 set up?

25 A. Well, there was him as the supervisor and then 15

1 T Techs.

2 Q. And approximately how many vote centers would be
3 covered by these 15 T Techs of which I assume you were
4 one of them?

5 A. Correct, yes. I was a T Tech.

6 So on Election Day, if that's what you're
7 referring to, we all started out at one location. Some
8 of us stayed at that location the whole day and other
9 ones moved around to multiple locations. If you
10 actually look in one of the exhibits on the text
11 messages one person had well over 100 miles driving
12 around to probably about five or six sites throughout
13 the day.

14 Q. Do you have an estimate as to how many vote
15 centers were covered by the 15 T Techs, approximately?

16 A. I would say a minimum of 20 to 30. That's a bare
17 minimum.

18 Q. Um-hum. And at this point, I would like to bring
19 up Exhibit 58, Your Honor. And Exhibit 58 is a series
20 of about over 54 pages of text messages.

21 Do you recognize this document, sir?

22 A. Absolutely, yes.

23 Q. And what is it?

24 A. It's the group text from that day, the Election
25 Day.

1 Q. And is this a group text chats from your phone?

2 A. Yes. Yes, sir.

3 Q. And did you provide a declaration in this case?

4 A. Yes.

5 Q. And you swore under oath under the penalty of
6 perjury to tell the truth, correct?

7 A. Absolutely, correct.

8 Q. And did you, in connection with this declaration,
9 provide screenshots of your text messages with the other
10 T Techs, the other 15 T Techs that day?

15:48:55

11 A. Yes, correct.

12 Q. Do you believe this to be, and you can scroll
13 through some, does this appear to be a true and accurate
14 copy of your text messages?

15 A. Yes, sir, it does. There are a lot of issues
16 that came up throughout the day, and including at times
17 they would -- people, T Techs, would say that the
18 ballots look pristine, but the tabulators aren't reading
19 them. So that would really not have to do with the
20 printers from our point of view, and that wasn't just
21 one person. There were other persons that said similar
22 things.

15:49:43

23 Q. Do these text messages represent communications
24 that were happening as they were occurring on Election
25 Day?

1 A. Yes. Yes, in real-time, absolutely.

2 MR. OLSEN: Your Honor, at this point, we
3 would like to move for Exhibit 58 to be entered into the
4 record as evidence. It is hearsay; however, under
5 present impression and excited utterance, you will see
6 some of them. For example, if we could go to -- go to
7 page Bates number 367, and at the bottom you'll see,
8 Your Honor, it says, I'm having a 9-1-1. I would say
9 that there are a number of -- as you just can scroll
10 through would classify or qualify as either an excited
11 utterance or present sense impression, certainly. So we
12 would move to have them admitted in the record under
13 those exceptions, Your Honor.

14 THE COURT: Any objections?

15 MS. FORD: Your Honor, Christina Ford on
16 behalf of the Governor-Elect. We do object to these
17 coming in. There are more than, I believe, 50 pages of
18 these texts and one -- one text out of 50 pages that
19 potentially qualifies for an excited utterance doesn't
20 make up for 50 pages of texts from this day of otherwise
21 out-of-court statements that they are trying to enter
22 for the truth of the matter.

23 MR. OLSEN: Your Honor, I --

24 THE COURT: Go ahead.

25 MR. OLSEN: -- I also submitted them, sir,

1 with the -- under the present sense impression. These
2 are real-time messages, text messages, that are being
3 typed in as the events are unfolding the day of
4 Election, and I believe it falls under that exception as
5 well.

6 THE COURT: Okay. I'm going to allow them
7 because I think that they represent the correspondence
8 back and forth between the techs who were working with
9 their immediate impressions of trying to resolve
10 problems. So go ahead. So what you're offering, what's
11 the number again?

12 MR. OLSEN: It's 58, Your Honor.

13 THE COURT: 58. So I'll admit 58 over
14 objection.

15 MS. FORD: Thank you, Your Honor.

16 THE COURT: Go ahead.

17 BY MR. OLSEN:

18 Q. Mr. Bettencourt, can you describe what was going
19 on with -- between you and your other T Techs on
20 Election Day, if you had to characterize it?

21 A. Yeah, it was we were consistently talking back
22 and forth trying to solve the problems, and this group
23 was really trying hard, because there were a lot of
24 issues that popped up. And actually our main fix turned
25 out to be walk up to the printer, open up the printer,

1 take out the ink cartridge and shake it, so that was our
2 main fix. That was the big one we were tending to do.
3 I know the official County statement was that changed
4 the printer settings; but I would say based on the techs
5 I saw, that was probably about 10 to 20 percent of the
6 issue there, so that I would say that would be an
7 incomplete description of the issues, from my point of
8 view, seeing the techs.

9 Q. Did the situation resolve very quickly, or did it
10 last throughout the day with the problems?
15:53:17

11 A. It depended on the location. Some got better and
12 some kept having issues. I mean, we had issues, I
13 believe, there was one even after closing time where
14 they were asking someone to go over to Biltmore, I
15 believe it is. You can confirm towards the end there.

16 Q. How long have you -- how old are you, sir?

17 A. I'm 34 years old.

18 Q. Okay. And how long have you been in Arizona?

19 A. Well, I've been off and on. I actually lived in
15:53:46 20 five states, but overall a little over a decade in
21 Arizona in total.

22 Q. So you've been voting for how long?

23 A. Well, I've been voting for 16 years, you know, in
24 some different states, but mostly in Arizona during that
25 time.

1 Q. How would you characterize the events on Election
2 Day that you observed personally and also communicated
3 with the fellow T Techs that were servicing between 20
4 and 30 vote centers compared to elections that you even
5 just participated in as a voter?

6 A. It felt a bit chaotic. I have people from the
7 other places I've lived reaching out and saying, what's
8 going on in Maricopa County down there? So it felt a
9 little chaotic, I would say.

15:54:31 10 Q. Were these problems that continued throughout the
11 day at many of these vote centers?

12 A. Yeah, and like I said, we tried to shake the ink
13 cartridge. They cleaned the Corona wire. They would
14 have the inspector call over the troubleshooter, try and
15 clean the tabulation, because like I said, sometimes in
16 there the prints looked good, but the tabulator wasn't
17 taking them anyway.

18 Q. Did you hear of any long lines outside of the
19 vote centers?

15:55:05 20 A. Yeah, there were a lot of long lines, and in
21 there actually describes at least one in there that
22 describes -- and I know of other locations where they
23 completely wound up shutting down for a certain amount
24 of time -- and they were basically sending people to
25 other locations.

1 Q. How upset were voters that you interacted with or
2 heard about?

3 A. Well, they -- well, I heard some people being
4 very upset, more so at other locations. We didn't have
5 quite as many issues at our location, but it did shut
6 down for about five to ten minutes at one point with
7 both tabulators being down, and that actually happened
8 because one lady had put in a ballot and I was standing
9 there when I saw this, the tabulator took it through.
10 It didn't reject it. I took it through, but it didn't
11 have the green checkmark or say that it can be
12 successfully cast. So I hadn't seen that on anything
13 else, so we called the inspector over and she called the
14 hotline. And they said she should open up the blue bin
15 where the tabulator is, pull out the ballots. They were
16 going to count those downtown and then restart,
17 basically, from zero, restart counting the ballots that
18 go into that tabulator from that point on.

19 Q. Did the problems with the tabulators, did they,
20 in your opinion, create the long lines that you heard
21 about from different T Techs?

22 A. I would say it made it worse because we have
23 lines to begin the day, and once those tabulator issues
24 start happening, you know, the lines just backed up
25 more.

1 Q. And were there lines outside of the voting
2 center?

3 A. Oh, yeah. At our place, there was a line outside
4 the door all day and, you know, we had less problems
5 than a lot of other places.

6 Q. And do you understand the check-in process?

15:57:14

7 A. That's more the polling worker side of it, the
8 site book area. That's more the poll worker is
9 responsible for that. I wasn't responsible for that
10 part of it.

11 Q. Okay. Did you hear about long lines extending
12 past 8:00 o'clock at night?

15:57:50

13 A. Yes, it's in the texts. I know at least one or
14 two places, and then I know someone who wasn't in this
15 group, because this was the East Valley group, and there
16 was a West Valley group as well. So I know someone in
17 the West Valley, he didn't get home -- I left my site at
18 about 10:00 and we had had a short line, you know, at
19 the end of the night, probably wrapped up about
20 8:00 p.m., and then this other guy from the west group
21 had left about 10:30, 10:45 and I know there was at
22 least one or two people in this group that left later
23 than me.

24 Q. Do you -- do you know whether or not any people
25 who were waiting in line just simply gave up waiting in

1 line or saw things on the news and decided not that they
2 just didn't have the time to come out and vote?

3 MR. GOANA: Objection, Your Honor.
4 Speculation, foundation.

5 THE COURT: He can answer it yes or no. He
6 was asked do you know. Sir, if you're able to, you can
7 answer yes or no.

8 THE WITNESS: Yes, I don't know that
9 personally. As I said, my site had less problems than
10 the others, so I can only speak for my site, and I don't
11 have any knowledge of that specifically.

12 MR. OLSEN: Thank you, Mr. Bettencourt.

13 THE COURT: Cross-exam.

14 CROSS-EXAMINATION

15 BY MS. FORD:

16 Q. Good afternoon, Mr. Bettencourt.

17 A. Good afternoon.

18 Q. I understand from your testimony and from your
19 declaration in this case that you helped set up
20 equipment in preparation for Election Day?

21 A. Correct.

22 Q. You didn't intentionally cause the tabulators to
23 reject ballots, correct?

24 A. No. Actually, we weren't even specifically
25 focused on the tabulators with our position.

1 Q. And you don't know of any T Techs who
2 intentionally caused the issue?

3 A. They were temporary employees, so I don't know of
4 any T Techs that caused that issue, no.

5 Q. And you said here today that you were hired along
6 with your other T Techs to help resolve problems that
7 were occurring at polling locations, correct?

8 A. Yes, that was part of it, the setting up of sites
9 along with resolving problems when they arose.

15:59:52 10 Q. And then you were, in fact, employed to help
11 resolve these issues when they did spike up, correct?

12 A. Yes.

13 Q. Would you agree with me that sometimes tabulators
14 cannot read a ballot due to the way that the voter marks
15 the ballot?

16 A. Yes, and I actually wrote that in my declaration
17 as well. That's part of it, but that wasn't the whole
18 part. So I could specify that definitely wasn't the
19 whole part. There was some that looks very good and the
16:00:21 20 voters had marked them very well and they weren't being
21 read.

22 Q. Okay. Well, I wanted to go through some of
23 those. So I understand from your declaration that you
24 and your fellow T Techs sometimes found that cleaning
25 the Corona wire in the printer would sometimes help fix

1 the tabulator issue; is that correct?

2 A. Yes, and the Corona wire that was on the older
3 printers, I actually had the new Lexmarks in the
4 location that I was at, so that wasn't part of the
5 location I was at.

6 Q. Okay. And the group also found that changing the
7 toner, shaking the toner, could sometimes make
8 improvements to the tabulators?

9 A. Yeah, shaking the toner actually worked a decent
10 amount. It wasn't perfect, but it helped at times.

11 Q. Okay. And then you also found that letting the
12 printer warm up could also improve the situation?

13 A. I would have to go back through the texts and
14 confirm that. I don't recall that specifically, but
15 there were a lot of techs in there, so I don't recall
16 every text that we had.

17 Q. Okay. You have no personal knowledge as to
18 whether the printing and tabulator errors changed the
19 outcome of the collection -- sorry -- the outcome of the
20 election, correct?

21 A. I don't see how there's any way I could prove
22 that one way or the other.

23 Q. But you have no personal knowledge?

24 A. I believe I just said I can't prove anything one
25 way or another by myself.

1 Q. Okay. So you similarly don't have any personal
2 knowledge whether the printing errors were the result of
3 an intentional scheme to undermine the election?

4 A. Well, I was just a temporary employee doing what
5 I was employed to do there.

6 MS. FORD: Okay. Thank you. No further
7 questions.

8 MR. OLSEN: Nothing further, Your Honor.
9 Nothing further, Your Honor.

16:02:25 10 THE COURT: Nothing further. Okay. Can we
11 excuse the witness?

12 MR. OLSEN: Yes, Your Honor.

13 MS. FORD: Yes, Your Honor.

14 THE COURT: You're free to go.

15 (Witness excused.)

16 THE COURT: Next witness?

17 MR. OLSEN: Your Honor, we next call Mark
18 Sonnenklar.

19 THE COURT: Mr. Sonnenklar, if you could
16:03:34 20 just come over in front of the clerk and be sworn in,
21 sir.

22 MARK SONNENKLAR,
23 called as a witness, having been duly sworn, testified
24 as follows:

25 THE COURT: If you could just have a seat

1 and make your way over to the witness stand, please.

2 Go ahead, Mr. Olsen.

3 DIRECT EXAMINATION

4 BY MR. OLSEN:

5 Q. Good afternoon, Mr. Sonnenklar.

6 A. Good afternoon.

7 Q. Would you please state your full name for the
8 record?

9 A. Mark Sonnenklar, S-O-N-N-E-N-K-L-A-R.

16:04:12 10 Q. And what is your occupation, sir?

11 A. I'm a lawyer.

12 Q. And how long have you been a lawyer?

13 A. Twenty-six, almost 27 years.

14 Q. Did you have an opportunity to -- strike that.
15 How long have you lived in Arizona?

16 A. Moved back to Arizona about two years ago, a
17 little more than two years ago. I was here from age 9
18 through 21, so I don't know, 13 years total.

19 Q. Did you have an opportunity to participate in the
16:04:43 20 2022 Election cycle?

21 A. I did.

22 Q. And in what capacity did you participate in that
23 cycle?

24 A. I was a roving attorney in the Republican
25 National Committee's Election Integrity Program for the

1 Primary and the General Election.

2 Q. And what does a roving attorney do?

3 A. A roving attorney goes to the vote centers and
4 just observes what is happening at the vote centers to
5 determine if, you know, things are going well or not,
6 whether things are working in accordance with law.

7 Q. Okay. And when did you first act as a roving
8 attorney?

9 A. During the Primary on August 2, 2022.

16:05:29 10 Q. And can you describe what you did as a roving
11 attorney during the Primary?

12 A. The process that I used, which we were trained to
13 use for both the Primary and the General Election, was
14 to go to the vote center, talk to the inspector, go
15 directly to the inspector of that vote center.

16 Q. Who is an inspector?

17 A. The inspector is the -- the lead person -- the
18 lead poll worker at a vote center.

19 Q. Were they employed by Maricopa County?

16:06:05 20 A. Yes, I believe they are paid by Maricopa County.

21 Q. Is that a temporary position or are they a
22 full-time employee of Maricopa?

23 A. They are temporary.

24 Q. Okay.

25 A. So I would go to the vote center, I would ask for

1 the inspector. I would ask the inspector if there was a
2 Republican observer inside the vote center, because
3 there's not by law, we're not allowed to have more than
4 two observers from any one party within the vote center.
5 I would ask to speak with the Republican observer, if
6 there was one, outside. I would ask that Republican
7 observer how things were going, you know, what he or she
8 was seeing inside the vote center. I would take notes
9 on -- on what the observer, the Republican observer,
10 told me. I would then ask the Republican observer to
11 stay, remain outside, and then I would go back into the
12 vote center and speak with the inspector and ask really
13 the same questions that I had asked the Republican
14 observer. How are things going? If there were issues,
15 I would ask more questions about those issues. And I
16 was trying to determine whether, you know, what the
17 Republican observer was -- was telling me was matching
18 up with what the inspector was telling me. And I took
19 notes while I was talking with the inspectors as well.

16:06:56 20 Q. Did you create a report in connection after the
21 election associated with that, and I'm talking about the
22 Primary?

23 A. I did. I had a sense that there was going to be
24 litigation, and I knew that I had information that would
25 be critical to that litigation, and so I reached out to

1 -- there were 17 -- 17 or 18, I'm not clear exactly, but
2 I believe there were 17 roving attorneys in the program
3 with the RNC, and I reached out to all of them and asked
4 them what their experience was. And they reported to
5 me, and I created a report based on my own personal
6 experience at ten vote centers during the General
7 Election, and 105 other vote centers that the roving
8 attorneys who responded to me, which I believe were ten,
9 I believe, responded to me and were willing to, you
10 know, tell me what -- what had occurred, what they had
11 seen. So the 11 of us put together, observed 115 vote
12 centers.

13 Q. How many vote centers did you personally visit?

14 A. Ten.

15 Q. Ten. And this is during the General Election,
16 correct?

17 A. Yes.

18 Q. And what was your experience what you personally
19 saw at those ten vote centers?

20 A. Well, it was really pandemonium out there
21 everywhere. I was within from Fountain Hills to North
22 Scottsdale where my vote centers were. I started out in
23 Fountain Hills and immediately, I mean, there was a line
24 -- there was a line of 150 people at Fountain Hills.
25 The tabulators were not working, and that was what I saw

1 at, you know, I saw the same thing happening at six of
2 my ten vote centers. There were different things
3 happening at some of the other ones too, but six of them
4 in particular were really bad, you know.

5 Q. And so you -- you have been voting for a number
6 of years, correct?

7 A. Yeah.

8 Q. How would you characterize the events of the 2022
9 General Election compared to other elections that you
10 witnessed?

11 A. Oh, this was a completely different animal here.
12 So I was a roving attorney at -- during the Primary, and
13 there were, you know, some minimal problems there too,
14 but the General Election was a complete -- completely
15 different situation. There were lines out the door,
16 which did not -- you did not see during the Primary at
17 many of the vote centers. There were angry and
18 frustrated voters who did not want to put their ballots
19 in the Box 3, and there, you know, it was just -- and
20 then there were the poll workers who were extremely
21 frustrated and really didn't know what to do. Most of
22 them, I would say, were doing their best, you know, to
23 -- to figure out a solution to the fact that the
24 tabulators were down, were not reading the ballots.
25 Everyone was just freaked out.

1 Q. I have a question for you. There's been some
2 testimony earlier about wait times. Do you have an
3 understanding of how the County measures wait times?

4 A. Yes. I understand that one of the poll workers
5 is supposed to check the line every 15 minutes and
6 report back to MCTEC, is my understanding. It would
7 have been difficult. I don't know where you're going
8 with the question, but it would have been very difficult
9 for the poll workers who were crazed trying to figure
10 out just how to get the -- the tabulators to read the
11 ballots. I can't imagine that -- that there was time
12 for any poll workers at the worst vote centers anyway to
13 actually go out and check the line.

14 Q. Okay. I believe you mentioned that you visited
15 personally about ten vote centers?

16 A. Yes.

17 Q. And that the other roving attorneys that you were
18 working with, it was a total of about 115 vote centers
19 in total?

20 A. Yes.

21 Q. And that's 115 out of about, I think, 223 vote
22 centers, correct?

23 A. That's correct.

24 Q. So that's a little over half of the vote centers?

25 A. I believe it was 52 percent.

1 Q. Are you able to characterize what your other --
2 the other roving attorneys were experiencing, whether it
3 was similar to what you were experiencing or worse or --
4 or maybe not as bad? How would you characterize?

5 A. Well, I would say that most of the roving
6 attorneys had a similar experience to mine. I can't
7 think of -- I can't think of one that had a different
8 experience. There may be, but -- but for the most part,
9 you know, aggregated together, pretty much everyone had
10 the same experience.

16:12:59

11 Q. And if somebody were to characterize the events
12 of that day as minor technical difficulties that should
13 be expected in any election, what would you say to that?

14 A. I would say that's nonsense. When you have 132
15 -- we've been able to document that there were at least
16 132 vote centers with tabulator problems out of 227,
17 which comes out to about 59 percent. I don't see how
18 that could be characterized as a small matter.

16:13:44

19 Q. You mentioned you created a report along with the
20 other roving attorneys that you worked with. Did you
21 disseminate that report to anybody?

22 A. I did send that report out. Yes, I did.

23 Q. Do you believe that report is accurate in its
24 recitation of the events of Election Day?

25 A. Absolutely. I was very careful not to

1 exaggerate, overstate. I was careful to be factual.

2 Q. And is that report based on sworn -- your
3 conversations plus sworn declarations from the other
4 roving attorneys that were given to you?

5 A. Yes, it is.

6 MR. OLSEN: And if you would call up
7 Exhibit 52?

8 THE COURT: Is there a problem?

9 MR. OLSEN: I'm being told that the person
10 over here needs...

11 (Discussion off the record.)

12 BY MR. OLSEN:

13 Q. Mr. Sonnenklar, is this --

14 MR. LIDDY: Your Honor, for Maricopa County,
15 I would object to this document to the extent it's
16 duplicative of this witness's testimony, just provided
17 in this Court. And to the extent that it is intended to
18 be admitted for the truth of the matter asserted for
19 persons he's talked to, it would be hearsay.

16:15:54 20 MR. OLSEN: Your Honor, we have submitted
21 this report under Rule 807. It is one of the documents
22 that we gave notice to, and I would say that Your Honor
23 can judge the value of the weight; but given as the
24 witness has testified to, we're talking of about 105
25 vote centers and so to -- he and his other fellow roving

1 attorneys gave sworn testimony about the occurrences
2 there. It's -- I think it should go to the weight, Your
3 Honor. I think it would be probative, and given the
4 limited time we have to, you know, talk about 105 vote
5 centers that we respectfully request Your Honor to admit
6 it.

7 THE COURT: Well, he's here to testify about
8 what he saw and he observed, and so it's cumulative as
9 to that. I think this morning I told you that I was
10 willing to admit under 807 the attached statements of
11 the other roving attorneys, so you can choose. You can
12 choose to either have those affidavits admitted under
13 807, or you can forgo that and ask him questions about
14 it and go with his report. But I'm not going to do
15 both.

16 MR. OLSEN: Your Honor, just point of
17 clarification.

18 THE COURT: That's a three-fer. That's him
19 testifying, his report, and the affidavits that he's
20 referring to in his testimony and his report. So I
21 don't know if you understood this morning that I was
22 willing to admit the affidavits attached to Mr.
23 Sonnenklar's affidavit under 807 provided that you can
24 -- because I've read them.

25 MR. OLSEN: Yes, Your Honor.

1 THE COURT: And I believe that under 807 the
2 same analysis applies to what I told you this morning
3 that they appear to also be very factual as opposed to
4 advocate -- advocacy, even though I believe that he's
5 just said all of this was prepared in anticipation of
6 litigation. The affidavits are sworn to and contain
7 facts rather than advocacy or opinions; so after all my
8 speaking, your choice how you wish to proceed, Mr.
9 Olsen, but I'm not going to do both. I'm not going to
10 put in all those affidavits and have him talk about
11 everything in his report and all the hearsay.

12 MR. OLSEN: I think I know where I'm going,
13 sir. We will forgo -- we will keep them into evidence
14 as Your Honor alluded to, and we will move on to another
15 topic.

16 THE COURT: Okay. Very good, sir.

17 MR. OLSEN: Your Honor, at this time, we
18 would like to open up Exhibit 91.

19 BY MR. OLSEN:

20 Q. Mr. Sonnenklar, up on the screen is what has been
21 marked for identification as Exhibit 91. It is an
22 exhibit that was part of a response letter by Maricopa
23 County to the AG -- AG's letter dated November 19th
24 questioning some of the events around Election Day.

25 Have you ever seen this document before?

1 A. Yes, I've read it multiple times.

2 Q. And do you recognize this as a document that was
3 produced by Maricopa County?

4 A. Yes.

5 Q. Do you have any reason to doubt that it's a true
6 and accurate copy?

7 A. No.

8 MR. OLSEN: Your Honor, at this time, we
9 would move to admit Exhibit 91 into evidence.

16:21:11 10 MR. LIDDY: No objection, Your Honor.

11 THE COURT: 91 is admitted. I think it's a
12 self-authenticating document.

13 MR. OLSEN: Yes, Your Honor.

14 BY MR. OLSEN:

15 Q. Mr. Sonnenklar, do you see where it states on the
16 first page of this document in the paragraph beginning
17 "while a few"? Do you see that "while a few, 2022
18 General Election locations encountered 115-minute
19 waiting times on Election Day, Maricopa County posted
16:21:51 20 these wait times on our website informing voters of
21 other nearby options that had shorter times"?

22 A. Yes, I see it.

23 Q. Do you have an understanding based on your work
24 whether or not that's an accurate statement?

25 A. That's not an accurate statement.

1 Q. And why do you say that?

2 A. There were many more vote centers. I mean, I
3 must have had, I believe I had two, at least, just in my
4 ten that had longer wait times than 80 minutes, and they
5 are not included in the list in footnote 1.

6 Q. And you're talking about footnote 1 on the page
7 that's Bates stamped last three digits 715, the first
8 page of this document?

9 A. And in addition to that, you know, there were --
10 we documented through declarations that there were many,
11 many other vote centers that had over 80-minute wait
12 times.

13 Q. Do you have an opinion as to whether or not the
14 County has been trying to understate the extent of the
15 problems at the vote centers that arose on Election Day?

16 A. Yes.

17 MS. FORD: Your Honor, object to foundation
18 and speculation.

19 THE COURT: All right. As to foundation,
20 I'll overrule it. So if you're able to answer it, and I
21 assume you're asking him based on his personal
22 knowledge.

23 MR. OLSEN: Yes, Your Honor.

24 THE COURT: If you're able to answer it, Mr.
25 Sonnenklar.

1 THE WITNESS: Thank you. Well, I mean, I
2 was the one who oversaw the -- the, you know, putting
3 together of the issues spreadsheet, which showed how
4 many vote centers had tabulator problems, how many vote
5 centers had long lines. I've also read this Board of
6 Supervisors report multiple times, and there are many,
7 many mischaracterizations and flat-out falsehoods in
8 this. Now, so, yes, I believe that they have not
9 presented the truth here in this document.

16:24:56 10 MR. OLSEN: We have nothing further at this
11 time, sir.

12 THE COURT: All right. Cross-exam, please.

13 CROSS-EXAMINATION

14 BY MS. FORD:

15 Q. Good afternoon, Mr. Sonnenklar.

16 A. Good afternoon.

17 Q. I'm here on behalf of the Governor-Elect.

18 Your declaration gives some figures about how
19 many vote centers were affected with tabulator issues
16:25:21 20 and lines, and these figures were gathered from reports
21 of yourself, other RNC roving attorneys and Republican
22 observers, correct?

23 A. That's correct.

24 Q. Your declaration in this case concludes that 64
25 of 223 vote centers had long lines on Election Day,

1 correct?

2 A. Yeah, that's correct.

3 Q. So you concluded that more than 70 percent of
4 vote centers on Election Day did not have long lines?

5 A. You could infer that, but -- but actually, what I
6 would say about that is that we had time constraints in
7 putting together our issues spreadsheet, and so I firmly
8 believe that had we had additional time, basically, we
9 had to put it together in two weeks. So we had to

16:26:12 10 gather declarations from a lot of people in order to
11 prove what we wanted to prove, you know, in order for
12 the evidence to show 64 -- we showed on the issues
13 spreadsheet that 64 vote centers had long lines. Had we
14 had more time, I firmly believe that we would have been
15 able to show that more vote centers had long lines.

16 Q. The same declaration concluded that only 24 of
17 223 vote centers had long lines on Election Day after
18 3:00 p.m., correct?

19 A. I would say the same thing, had we had more time
16:26:49 20 to gather the evidence, we probably would have been able
21 to find that more than 24. But what we were able to
22 document in the time period that we had was that 24,
23 which in my view is a lot of vote centers to have
24 problems after 3:00 p.m., given the fact that the Board
25 of Supervisors stated that the problem was completely

1 resolved as of midafternoon quote, unquote, according to
2 the Board of Supervisors report that was just brought
3 into evidence.

4 Q. But the evidence that you put forward in your
5 declaration was that only 24 of 223 had long lines after
6 3:00 p.m., correct?

7 A. That's all I was able to conclude in the time
8 that I had to put together the issue spreadsheet.

9 Q. Any voter in Maricopa County may go to any vote
10 center they wish, correct?
16:27:41

11 A. That's my understanding.

12 Q. You did not personally witness any voter who left
13 a vote center without casting a ballot after
14 encountering a tabulator rejection, correct?

15 A. I wasn't looking for that.

16 Q. So here today you can't tell me that you
17 witnessed that?

18 A. I can't, but a lot of the declarations do
19 indicate that did occur over and over.

20 Q. You have no personal knowledge as to whether
21 these printing errors changed the outcome of the
22 election, correct?
16:28:06

23 MR. OLSEN: Objection, Your Honor.
24 Foundation.

25 MS. FORD: Your Honor, I'm just asking

1 whether he knows.

2 THE COURT: His knowledge, it's the same
3 thing. If you know, sir, and you're able to answer, go
4 ahead.

5 THE WITNESS: Well, I would say, you know,
6 there's only 17,000, roughly, votes separating the two
7 candidates for governor. Based on what I saw on
8 Election Day, I would say there's no question in my mind
9 that had there not been tabulator issues at 132 vote
10 centers, this election would have ended up Kari Lake
11 winning.

12 MS. FORD:

13 Q. That's an inference you're making, correct?

14 A. You asked me for my opinion, I gave it.

15 Q. I didn't ask for your opinion. I asked if you
16 had personal knowledge.

17 A. I don't have knowledge of specific numbers, no.

18 MS. FORD: Okay. No further questions,
19 thank you.

20 BY MR. LIDDY:

21 Q. Mr. Sonnenklar, you testified that the Maricopa
22 County Board of Supervisors in drafting its
23 correspondence to Jennifer Wright at the Attorney
24 General's Office intended to deceive her; is that
25 correct?

1 A. I don't see how you could --

2 Q. Is that correct?

3 A. I don't see how you could view what happened on
4 Election Day and issue that report in good faith.

5 Q. Do you have any evidence that the authors of that
6 wrote that report with an intent to deceive?

7 A. It's just common sense, sir.

8 Q. Is that a yes or a no?

9 A. Common sense tells you that if they issued that
16:30:14 10 report and they, and you know, they are the ones in
11 charge of the election, then -- and so many things in
12 that report were false, that, yeah, they were trying to
13 cover up.

14 Q. So that's what common sense tells me is that your
15 testimony?

16 A. Yeah, common sense tells me, that there was a
17 cover-up here.

18 Q. Okay. That tells you, but not me, as you earlier
19 testified, correct?

16:30:42 20 A. I don't know what's in your mind, sir.

21 Q. But you do know what's in the mind of the five
22 members of the Board of Supervisors?

23 A. All I can say is that I have that -- I believe
24 they were trying to cover up here because I don't see
25 how else you could explain the Board of Supervisor

1 report. It was blatantly false in so many ways.

2 Q. But you have no evidence of that, correct?

3 A. Oh, no, I have a lot of evidence.

4 Q. Evidence of their intent to deceive the Attorney
5 General's Office?

6 A. My conclusion is that there's an intent to
7 deceive.

8 Q. Okay. So your testimony today is you can't read
9 my mind, but you can read the mind of the members of the
10 Board of Supervisors; is that correct?

11 A. I don't see how else you could interpret the
12 statements on the Board of Supervisor report other than
13 to conclude that there was an intent to minimize the
14 problems on Election Day, because they probably knew
15 they were going to be in this courtroom today.

16 Q. Well, it's interesting that you've just responded
17 to my query by saying problems plural, because when you
18 initially testified, you said problems singular, and
19 your testimony was about problems related to tabulators.

16:31:56 20 Do you remember that testimony?

21 A. Do you mean in my declaration?

22 Q. No, I mean in your testimony right here in this
23 courtroom a few minutes ago?

24 A. Yes, I recall my testimony.

25 Q. Okay. And you recall that you had witnessed at

1 least two vote centers, and you've heard of a lot of
2 others that have problems with tabulators?

3 A. No, there were six vote centers out of ten in my
4 -- that I observed at that had material tabulator
5 problems.

6 Q. Okay. Did any of them have printer problems?

7 A. Yeah, you know, my -- my understanding is that
8 the printers were not printing dark enough, that is one
9 theory anyway.

16:32:33 10 Q. Was that your understanding from your direct
11 observation?

12 A. Yes.

13 Q. So you were able to observe the printers putting
14 in not enough ink in some of the ballots?

15 A. So my declaration sets this out that one of the
16 vote centers that I went to I spoke with the inspector.
17 They had a massive problem with the tabulator not
18 working.

19 Q. Okay. Thank you. You've already testified about
16:32:56 20 your conversation with the inspector. I heard that, and
21 I thank you for that.

22 A. No, may I actually answer your question?

23 Q. Yes, please. My question was your observation.

24 A. This is my observation.

25 Q. Excuse me. Your observation with the problems

1 with the printers, not what you heard from inspectors.

2 Can you answer that?

3 A. My observation was in relation to a conversation
4 I had with the inspector.

5 Q. So that would be you heard it from somebody else
6 who observed it, but you didn't?

7 A. I'm not a technical person. I don't know exactly
8 what caused the problem, okay, but an inspector showed
9 me the ballots.

16:33:33 10 Q. Okay. So you don't know what caused the problem,
11 right? But you know that whatever the Board of
12 Supervisors said was intended to deceive the Attorney
13 General, even though you don't know, correct?

14 A. I don't see what one thing has to do with the
15 other.

16 Q. There's a problem as well.

17 How about wet pens, wet pens that might cause
18 problems with the tabulators? Did you observe any of
19 that?

16:33:55 20 A. No, I didn't note that at all.

21 Q. No. So you had testified earlier that you had
22 voted several times in Arizona, but you've never seen
23 lines like the lines you saw in the General Election of
24 2022; is that correct?

25 A. That is correct.

1 Q. Did you vote in the presidential preference of
2 2016?

3 A. No, I wasn't here in 2016.

4 Q. Okay. Would it surprise you to find out that in
5 many instances all over this country there will be lines
6 far longer than those to which you just testified to?

7 A. I would be surprised by that now.

8 MR. LIDDY: Thank you. No further
9 questions.

16:34:36 10 MR. OLSEN: Your Honor, I just have a brief
11 question on redirect.

12 THE COURT: It's your favorite word. Go
13 ahead.

14 REDIRECT EXAMINATION

15 BY MR. OLSEN:

16 Q. Mr. Sonnenklar, would it surprise you if people
17 in Maricopa County, voters in Maricopa County heard
18 about the problems at all the vote centers and simply
19 didn't get into line to vote because they didn't have
16:35:04 20 time?

21 MR. GOANA: Objection to foundation,
22 speculation, beyond the scope as well.

23 THE COURT: Sustained.

24 BY MR. OLSEN:

25 Q. Do you have a belief as to -- and it's a yes or

1 no question -- do you have a belief as to whether or not
2 voters on Election Day -- strike that.

3 Do you have a belief that there are -- there were
4 voters on Election Day that were not able to cast their
5 vote and wanted to?

6 MR. GOANA: Same objections, Your Honor.

7 THE COURT: Sustained.

8 MR. OLSEN: Your Honor, I have no further
9 questions. I do have a housekeeping matter. I just

16:36:08 10 wanted to make sure with our 807, I just want to make
11 point of clarification. We had a summary Exhibit 2,
12 summary exhibits that were attached to his declaration,
13 and we are moving those -- I want to make sure that was
14 part of the evidence that Your Honor was --

15 THE COURT: Are you planning to rest?

16 MR. OLSEN: Pardon me?

17 THE COURT: Are you planning to rest now?

18 MR. OLSEN: Yes.

19 THE COURT: Okay. Can we excuse this

16:36:34 20 gentleman?

21 MR. OLSEN: Yes.

22 THE COURT: Thank you, Mr. Sonnenklar.

23 You're excused, sir.

24 (Witness excused.)

25 THE COURT: Okay. I'm pushing my court

1 reporter beyond what I should.

2 What I'm hearing is, is Plaintiffs are
3 willing to rest with the exception of addressing the
4 exhibit issue. I understand you need to address the
5 issue before you rest.

6 MR. OLSEN: We're not resting our case, Your
7 Honor, so I have a couple more witnesses to do.

8 THE COURT: Okay.

9 MR. OLSEN: I wasn't resting on that.

16:37:15 10 THE COURT: Okay. Do you have -- do both
11 sides have worked out the exhibit numbers that would
12 apply to my ruling this morning? No?

13 MR. OLSEN: I don't think we talked so much.

14 THE COURT: Here's what I can't do at the
15 end of this day. I can't put my court reporter through
16 another hour of us going back and forth about whether a
17 certain exhibit fits within my ruling or not. This is
18 probably a poor question -- in fact, I won't ask it.
19 I'm going to restate what I told you this morning. I
16:37:59 20 said that the 807 ruling was extended to admitting
21 whatever exhibits are associated with the following
22 exhibits or attachments to the affidavit that you filed,
23 Mr. Olsen. Exhibit 6, Exhibit 7, Exhibit 8, 9 and 10
24 have already been admitted today, and that takes care of
25 all the attachments to the affidavit that was filed by

1 Mr. Olsen.

2 There's a more extensive list constituting
3 what Plaintiffs have labeled Exhibits A1 through A220
4 that were attached to, I believe, Mr. Sonnenklar's
5 affidavit. I don't have before me the corresponding
6 exhibit numbers for the exhibits that would have been
7 the other attorney poll workers that were submitted, but
8 those were included in that.

9 So here's what I want you to do is I want
10 you to get together, caucus, come up with an agreed list
11 of what those numbers are. I basically told you what
12 the ruling is, I just need you to make sure that we got
13 clear which exhibits are coming in, okay, so I can spare
14 my clerk and my court reporter all that back and forth.
15 I need that by the morning, okay.

16 MR. OLSEN: Yes, Your Honor.

17 MR. LIDDY: Yes, Your Honor.

18 MS. KHANNA: Yes, Your Honor.

19 THE COURT: I haven't -- I've been keeping
20 track of the time, but I haven't got a grand total.
21 Somebody else keeping track closely?

22 Do you know where you are with regard to
23 time?

24 MR. OLSEN: We have somebody tracking, Your
25 Honor, for us. But I don't --

1 THE COURT: Okay. How many more witnesses
2 do you have, Mr. Olsen?

3 MR. OLSEN: Your Honor I believe, it's just
4 one, which is Richard Baris.

5 THE COURT: That's going to take awhile. If
6 it's anything like Mr. Parikh, which is our other
7 expert.

8 MR. OLSEN: Your Honor, I don't think it
9 will take as long as Mr. Parikh. Famous last words.

16:41:21 10 THE COURT: I'm smiling again because we're
11 down to the brief, "and I've only got a few things, Your
12 Honor."

13 MR. LIDDY: Your Honor, if I may, our
14 records indicate the Plaintiff has consumed 272 minutes
15 22 seconds and defense together has consumed 87 minutes
16 27 seconds.

17 MR. OLSEN: Your Honor, I'll have to check
18 with our person.

19 THE COURT: If I take his total, that puts
16:42:06 20 you at four and a half hours.

21 MR. OLSEN: Yes, Your Honor.

22 THE COURT: So you would still have another
23 hour with Mr. Baris, right? What about your case --
24 well, all three of you, what do you think about -- how
25 many witnesses are you thinking about calling and --

1 MS. KHANNA: We have four witnesses that we
2 intend to call if we put on our case in chief tomorrow.

3 THE COURT: Part of my problem is if you
4 spent all your time, then there's nothing left for
5 cross-examination.

6 MR. OLSEN: I'm aware of that, Your Honor.

7 THE COURT: Okay. It's a strategy call, so
8 you got four witnesses. How much time do you think;
9 again, I'm skating fast on thin ice talking to lawyers
10 about time estimates.

11 MS. KHANNA: Well, I will, of course,
12 promise that we're going to be as efficient as possible.
13 We'll use tonight to make sure. We have estimates in
14 what we submitted to the Court, and we'll go back and
15 see if we can pare those down to make sure we're staying
16 within time.

17 THE COURT: Okay. That's fair.

18 Here's my -- here's my concern, and even
19 with -- I know what I said about the time, but I'm
20 concerned about closing arguments, okay?

21 I do want to hear closing argument, okay.

22 So I'm not saying that that means you got to
23 go out and drag in more witnesses tomorrow to use up all
24 your time, but we'll see how it goes tomorrow.

25 MR. LIDDY: On my notes estimate, our

1 estimate is that we'll come in below the time
2 significantly. We will probably only need another two
3 and a half hours.

4 THE COURT: Okay. All right.

5 MS. KHANNA: We'll reserve time for closing.

6 THE COURT: That will probably put us,
7 though, realistically we're going to start at 8:30,
8 we're going to come back at 1:00, midafternoon? I mean,
9 that may be fuzzy math, but it's best guesstimate. So

16:44:16 10 at that point in time, I do want you to prepare
11 closings. How much time do you think you would need to
12 sum it all up? That's the both of you, I'm asking.

13 MR. OLSEN: Your Honor, I would think that
14 we would not need more than 15 minutes.

15 MS. KHANNA: I think we would be more like
16 20, Your Honor.

17 THE COURT: Well, okay. But they carry the
18 burden, so I'm not going to hold you to the, you know,
19 15, 20. If they have 20, you do 15; if you want five
16:44:58 20 rebuttal at the end, I'd give it to you.

21 MR. BLEHM: Thank you, Your Honor.

22 THE COURT: Sound fair?

23 MR. OLSEN: Thank you, Your Honor.

24 THE COURT: Sound fair?

25 MR. OLSEN: Yes.

1 MS. KHANNA: Yes, Your Honor. Thank you.

2 THE COURT: Well, the goal is to get all of
3 that done by tomorrow then, okay.

4 So tonight, you're going to put your heads
5 together, come up with a list of exhibits for me by
6 morning. Get the exhibits straightened out. We'll do
7 that as a matter of housekeeping first thing, and I
8 think that's all I've got for you tonight. I can let
9 you go.

16:45:30 10 Is there anything else absolutely essential
11 before my court reporter collapses?

12 MR. OLSEN: I'm not saying anything.

13 MS. KHANNA: Nothing for defendants, Your
14 Honor.

15 THE COURT: Thank you, all. I'll see you
16 tomorrow morning at 8:30.

17 (Proceedings conclude, 4:45 p.m.)

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C E R T I F I C A T I O N

I, ROBIN G. LAWLOR, Registered Professional Reporter, Registered Merit Reporter, Certified Realtime Reporter, Federal Certified Realtime Reporter, Certified Court Reporter, Certificate No. 50851, in and for the State of Arizona, do hereby certify that the foregoing pages constitute a full, true, and accurate transcript of all proceedings had in the foregoing matter, all done to the best of my skill and ability.

WITNESS my hand this 25th day of December, 2022.

/s/Robin G. Lawlor

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15 **ARIZONA SUPERIOR COURT**

16 **MARICOPA COUNTY**

17 KARI LAKE,

18 Contestant/Plaintiff,

19 v.

20 KATIE HOBBS, personally as Contestee and
21 in her official capacity as the Secretary of
22 State; et al.,

23 Defendants.

24) No. CV2022-095403

25) **PLAINTIFF'S RESPONSE TO**
26) **DEFENDANTS' MOTION IN LIMINE**
) **UNDER RULE 807**

) (Assigned to Hon. Peter Thompson)

27 **INTRODUCTION**

28 Defendants' motion to *in limine* to exclude testimony offered by Plaintiff in the form of
29 Declarations from witnesses concerning their observations during the 2022 general election in
30 Maricopa County, and charts derived from such Declarations, attached to Plaintiff's Complaint

1 through Mr. Sonnekler's Declaration, attached as Exhibit B to the Plaintiff's Complaint filed
2 December 9, 2022. Plaintiff properly filed Rule 807 Notice on the early morning of December
3 20th within hours of the Court's ruling on Defendants' motion to dismiss.
4

5 The issue here is straightforward, when there were printer/tabulator problems at 132 vote
6 centers and long lines at least 64 vote centers, it is not possible for Plaintiff to prove her case at
7 a 5-hour trial without introducing her evidence via Rule 807. The reason there are so many
8 declarations is not that Plaintiff wanted to overburden the Defendants at trial, but rather because
9 there were 223 vote centers and Plaintiff needed to cover as many of them as possible to make
10 the case to this Court regarding how widespread this issue was. Indeed, if Plaintiff had more
11 time before the deadline for filing this election contest, Plaintiff would have obtained even more
12 declarations about printer/tabulator issues at even more than 132 vote center and long lines at 64
13 vote centers. Plaintiff simply had no other way to prove her case in such a short trial.
14
15

16 SUMMARY OF ARGUMENT

17

- 18 1. Defendant has had access to Plaintiff's list of Declarants since the date of Complaint filing
19 on December 9th, 2022. The assertion that the names and volume of Plaintiff's Declarants
20 is a surprise to Defendants is not well founded.
21
- 22 2. As to the reliability of Plaintiff's Declarants, as Plaintiff stated in the Rule 807 Notice, all
23 declarants swore under penalty of perjury. A large portion of which did so to the sitting
24 Attorney General of Arizona's office.
25
26

- 1 3. Rule 807(a)(1): all of the 219 declarations corroborate what Declarant Sonnenklar saw
2 with his own eyes at the 10 vote centers he visited on election day “out of court statement
3 must have circumstantial guarantees of trustworthiness equivalent to the traditional
4 exceptions.” *State v. Valencia*, 186 Ariz. 493, 497 (App. 1996).
5
- 6 4. Rule 807(a)(2): Given the 5-hour length of this trial, there is no other way to introduce
7 evidence of how widespread the problems were at such a large quantity of vote centers.
8 It is impossible for all declarants to testify, and they are therefore unavailable. Plaintiff
9 is willing to bring all of the declarants to court to testify, because that would give Plaintiff
10 a better opportunity to convey how detrimental the problems were to the election day
11 vote, but Plaintiff is prohibited from doing so by time constraints on this trial. “[T]o be
12 admissible under the residual hearsay exception; the declarant must be unavailable, and
13 his out-of-court statement must have circumstantial guarantees of trustworthiness
14 equivalent to the traditional exceptions.” *State v. Valencia*, 186 Ariz. 493, 497–98 (App.
15 1996).
16
17
- 18 5. Defendants’ argument that this evidence should be excluded because of this Court’s order
19 narrowing the issues makes no sense because this Court is still considering the claim of
20 the tabulation issues on Election Day, and how those issues disenfranchised between at
21 least 15,603 -- 29,257 Republican voters. The egregious wait times places on voters on
22 Election Day is highly relevant to this claim.
23
24
25
26

BACKGROUND

The Maricopa County Elections Department Post-Election Report demonstrated many problems for voters in the conduct of the November 2022 General Election at Maricopa County's 223 polling centers that on election day were visited by 540,000 voters. According to a post-election report, 49 voting centers "had a confirmed printer issue" and in 62 centers the longest reported wait-time was 31 minutes to over an hour. The county reported that seven locations experienced a wait time between 80 (one hour and 20 minutes) and 115 minutes (one hour and 55 minutes). The county found it necessary to issue 6,915 provisional ballots in November 2022.

The County admits that poll workers began reporting problems around 6:20 am. One of the problems was caused by "ballot-on-demand printers" which had to be used at all "Vote Anywhere Vote Centers" because there were over 12,000 "ballot styles" used in Maricopa County for the 2022 General Election. The County admitted that "the Oki B432 printer experienced an issue affecting the ability of the on-site tabulators to accept the ballot," causing 16,724 ballots to be deposited in a ballot box termed "Door 3" to be later counted at "Central Count." That problem it is claimed was with the fuser causing timing marks to be printed too lightly. The county states 71 sites were "impacted" by this problem — 31 percent of the 223 Vote Centers on election day.

Additionally, nearly 1,600 of the 16,724 Door 3 ballots had a problem with the way in which ballots were marked or the presence of stray marks. It was obviously essential that the Door 3 ballots would be kept separated from those already tallied, and the county reports only

1 with a divider within a box: “Door 3 ballots are segregated from the ballots read by the tabulator
2 by a divider within the ballot box.”
3

4 **PLAINTIFF’S DECLARATIONS AND AFFIDAVITS**

5 To establish its claims about the prevalent nature of the problems associated with the
6 conduct of the election in Maricopa County, Plaintiff’s Complaint was supported by the
7 Declaration of Mark Sonnenklar and the Declaration of Kurt Olsen to which were appended a
8 total of 223 affidavits or declarations which demonstrate that Maricopa County experienced
9 other problems, consistent with the problems already admitted in that report, at far more vote
10 centers than the County admitted in the Elections Center Post-election report.
11

12 Declarant Sonnenklar had served as a roving attorney on behalf of the Republican
13 National Committee’s Election Integrity program in Arizona. As such he “visited ten different
14 vote centers in Maricopa County [and] collected and reviewed witness declarations and
15 affidavits from numerous voters, observers, roving attorneys, and poll workers who participated
16 in the November 8, 2022 Maricopa County general election. *See* Sonnenklar Declaration at 1-
17 2.
18
19

20 To the Sonnenklar Declaration were appended 220 declarations or affidavits
21 demonstrating 132 centers reported Printers/Tabulators Breakdowns; 34 vote centers with
22 Printer/Tabulators Breakdowns after 3:00 PM on election day; 16 vote centers with reported
23 commingling of untabulated Box 3 ballots with tabulated ballots; 64 vote centers with reported
24 long lines; 24 election centers with reported long lines on election day after 3:00 PM; and 16
25 vote centers with reported voters leaving the vote centers without voting. *See* Sonnenklar
26

1 Declaration at 2; Attachments A-1 to A-220. To the Sonnekler Declaration, was appended as
2 Exhibit I a summary chart of those witness declarations, termed the Maricopa County vote center
3 issues map.
4

5 Declarant Sonnenklar will be present at trial to testify. This Motion in Limine seeks the
6 admission into evidence of the above-specified declarations and affidavits appended to the
7 Sonnekler and Olsen declarations under Arizona Rule of Evidence: Rule 803(1) (Present Sense
8 Impression), Rule 803(8) (Public Records) and 807 (Residual Exception). Additionally,
9 Plaintiffs seek the admission into evidence if the summary chart appearing as Sonnenklar
10 Declaration Exhibit I under Arizona Rule of Evidence 1006 (Summaries to Prove Content), and
11 another summary chart entitled Selected Wait Times derived from the same declarations
12 attached hereto as Exhibit A.
13
14

15 **STATUTORY CONSTRAINTS ON COURT'S ABILITY TO HEAR TESTIMONY**

16 As an additional reason to admit the specified declarations and affidavits into evidence,
17 plaintiffs suggest that no other approach is feasible under Arizona election law. This contest
18 under Arizona Code section 16-672 is based on three of the grounds stated in section 16-672A:
19 1. misconduct of election boards; 2. illegal votes; and 5. erroneous count. Under section 16-
20 676A, "the court shall set a time for the hearing of the context, not later than ten days after the
21 date on which the statement of contest was filed. Under section 16-676B, "The court shall
22 continue in session to hear and determine all issues arising in contested elections. After hearing
23 the proofs and allegations of the parties, and within five days after the submission thereof, the
24 court shall file its findings and immediately thereafter shall pronounce judgment, either
25
26

1 confirming or annulling and setting aside the election.” Under section 16-676C, “If in an election
2 contest it appears that a person other than the contestee has the highest number of legal votes,
3 the court shall declare that person elected and that the certificate of election of the person whose
4 office is contested is of no further legal force or effect.”

5
6 The Court has acted expeditiously under these narrow time constraints, setting aside two
7 days for a trial to hear the testimony of witnesses for both plaintiff and defendant. Obviously, it
8 will be impossible for the Court during those two days of trial to hear from each persons
9 submitting affidavits and declarations, but the Arizona Rules of Evidence authorize the Court to
10 admit those affidavits and declarations into evidence as exceptions to the hearsay rule on the
11 bases.
12

13 ARIZONA RULE OF EVIDENCE 803

14
15 Of the 220 Affidavits and Declarations appended to the Sonnenklar, 86 were originally
16 submitted to the Office of the Attorney General of Arizona. As part of its effort to monitor the
17 conduct of the election, including to facilitate monitoring of election problems and respond in
18 real time, the Arizona Attorney General’s Election Integrity Unit created and publicized a portal
19 at which complaints could be submitted, termed “Election Complaint Form.” The complainant
20 was asked to “State, in your own words, what exactly transpired” giving details of what was
21 observed. These statements were submitted under the following oath:
22

23 **I declare under penalty of perjury** that the facts and statements contained in this
24 declaration, including any attached materials, are true, correct, and based upon my
25 personal knowledge. I understand that this declaration and any supporting
26 materials are **public records** and may be disclosed as required by law. I
understand that, depending on the nature of the allegation, my complaint may be

1 referred to another state or local agency for enforcement. By choosing to submit
2 this form electronically, I certify and agree that by entering my name in the space
3 below, I bind and legally obligate myself to the same extent as I would by signing
my name on a printed paper version of this form. [Emphasis added.]

4 **Rule 803(8).** Thus, the declarations that were submitted to the Arizona Attorney
5 General's office, which have become incorporated into its post-election report, are public records
6 under Rule 803(8). Under subsection (A)(iii), "in a civil case" they are "factual findings from a
7 legally authorized investigation." Under subsection (B), the only question for the Court would
8 be whether at trial the defendant can demonstrate "that the source of information or other
9 circumstances indicate a lack of trustworthiness," which would seem highly unlikely, as they
10 were submitted under penalty of perjury, and are consistent with the admissions contained in the
11 post-election report of Maricopa County.
12

14 **Rule 803(1).** Additionally, at least those declarations which were submitted to the
15 Attorney General's office on election day reflect "present sense impressions" under Rule 803(1):
16 "A statement describing or explaining an event or condition made while or immediately after the
17 declarant perceived it." Thus, the present sense impression provides an exception to the hearsay
18 rule for a statement made while a declarant not just when observing an event but also
19 "immediately after." In this case, the declaration submitted to the Attorney General's officer
20 were made often the day of the election while the events were fresh in the observation of the
21 declarant; were short and direct, briefly describing the errors or flaws in what was observed;
22 were made under penalty of perjury; and even have timestamps evidencing how recently the
23 statements were submitted to the AG's office. For example, one declaration was submitted at
24
25
26

1 11:35 A.M. on election day, within a minimal amount of time after the declarant was at the
2 polling place. *See* Exhibit A-59, Declaration of Sharon Elzinga. Although present sense
3 impressions need not be in writing, or under oath, all the complaints submitted here were both
4 in writing and submitted under penalty of perjury and generally consistent with prior admissions
5 of Maricopa County.
6

7 **ARIZONA RULE OF EVIDENCE 807**
8

9 In addition to the two subsections of Rule 803, all declarations are admissible under the
10 Residual Exception which applies to statements. Under that rule:

- 11 (a)(1) the statement is supported by sufficient guarantees of trustworthiness – after
12 considering the totality of circumstances under which it was made and evidence,
13 if any, corroborating the statement; and
14 (2) it is more probative on the point for which it is offered than any other evidence
15 that the proponent can obtain through reasonable efforts.

16 Here, the declarations and affidavits are corroborated in three ways. First, they were
17 submitted under oath, under penalty of perjury, even though the rule would allow statements not
18 made under oath to be admitted if they meet the other requirements. Second, they are consistent
19 with each other by demonstrating similar problems at different election voting centers. Third,
20 they are consistent with election day irregularities already admitted to by Maricopa County, and
21 many are redundant of vote centers from independent declarants providing consistent testimony.
22 All three of these circumstances demonstrate trustworthiness. There certainly is no reason to
23 believe that these Arizonians were submitting false information under oath.
24
25
26

1 The filing of the Motion meets the requirement in Arizona Rule of Evidence Rule 807(b)
2 that notice be given of an intent to offer the statement, providing both the substance of the
3 statement and the declarant's name, and that notice be filed in court.
4

5 While no Arizona authorities have been identified, there are federal cases applying the
6 comparable federal rule. In *FTC v. Kitco of Nevada, Inc.*, 612 F. Supp. 1282 (D. Minn. 1985),
7 the district court granted the FTC's motion in limine requesting that consumer affidavits be
8 admitted into evidence at trial to demonstrate the total financial injury suffered by various
9 victims of a financial fraud. The Court explained: "unless the affidavits are admitted into
10 evidence, there will be only limited proof of total injury suffered.... Accordingly, the interests
11 of justice are best served by admitting the 15 consumer affidavits into evidence." *Id.* at 1295.
12 Also, affidavits were admitted to demonstrate recoverable legal fees in *Keyes v. School District*,
13 439 F. Supp. 393 (D. Colo. 1977). In neither case were the statements made under oath.
14
15

16 Not only written affidavits by bank cardholders, but also oral statements made by such
17 cardholders to banks, as to fraud that had been observed in the use of their cards, was admitted
18 under the residual exception. In *United States v. Ismoila*, 100 F.3d 380 (5th Cir. 1996), the Fifth
19 Circuit sanctioned the district court's admission of both statements. The court concluded that
20 the statements were "sufficiently material, probative, and in the interests of justice." *Id.* at 393.
21

22 ARIZONA RULE OF EVIDENCE 1006

23 Under Arizona Rule of Evidence 1006:

24
25 The proponent may use a summary chart ... to prove the content of voluminous
26 writings ... that cannot be conveniently examined in court. The proponent must
make the originals or duplicates available for examination or copying or both by

1 other parties ast a reasonable time and place. And the court may order the
2 proponent to produce them in court.

3 By having appended this summary chart as Exhibit A to the Sonnenklar Declaration, and
4 providing all of the underlying affidavits and declarations as appendices to the Sonnenklar and
5 Olsen Declarations, Plaintiff has met the procedural requirements of this rule.
6

7 To demonstrate the widespread nature of election problems, Plaintiffs have offered the
8 two summary charts referenced above, demonstrating at exactly which election centers problems
9 occurred, linking the problem back to the declaration or affidavit.

10 Use of such charts was authorized in an Illinois vote fraud case. In *United States v.*
11 *Howard*, 774 F.2d 838 (7th Cir. 1985), “a chart that summarized the government’s evidence
12 concerning the forged ballot applications ... listed in separate columns” relevant information to
13 the charges. The Seventh Circuit found no abuse in admitting the chart.
14

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

1 CONCLUSION

2 For the foregoing reasons, Plaintiff respectfully requests the court to admit into evidence
3 the specified declarations and affidavits appended to the Sonnenklar Declaration appended to
4 the complaint, and the summary chart appended as Exhibit I to the Sonnenklar Declaration, and
5 the summary chart attached hereto as Exhibit A.
6

7 DATED this 21st day of December 2022.
8

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24
25
26

EXHIBIT A

SELECTED WAIT TIMES

Declarant's Name	Vote Center	Paragraph Number (if applicable)	Comment regarding wait time/line
Ariane Buser (A-29)	Cave Creek Town Hall	¶ 8 & 9	90-minute wait
Gary Lasham (A-100)	Dove of the Desert United Methodist	¶ 7	120-minute wait
Earl Shafer (A-181)	First United Methodist Church of Gilbert	Page 3	120-minute wait
Mary Ziola (A-219)	Happy Trails Resort	¶ 7	120-minute wait
Claire Morgan (A-134)	Mesquite Groves Aquatic Center	No ¶ numbers	120-minute wait
Peggy Weiman (A-206)	Outlets at Anthem	¶ 7	2-3 hour, 350-400 people in line
Roie Bar (A-220)	Radiant Church Sun City	¶ 13	120-minute wait for most of the day
Erinn Tatom (A-195)	Sunland Village East	¶ 6	90-minute wait
Jeffrey W. Crockett (A-44)	ASU Sun Devil Fitness Center	¶ 26	More than 200 people; at least a two-hour wait
Jeffrey W. Crockett (A-44)	Avondale City Hall	¶ 14	97 people in line
Duane Schooley (A-178)	Buckeye City Hall	¶ 6(a) & (b)	35-75 people in line
Kathryn Baillie (A-11)	Cactus High School	¶ 25	200 people in line
Michael Brenner (A-25)	Compass Church	¶ 10	60+ minutes wait for most of day
Mark Sonnenklar	Copper Canyon School	¶ 34	100 people in line
Tabatha LaVoie (A-101)	El Dorado Community Center	¶ 28	At times, hour long wait
Kristine Moss (A-136)	First United Methodist Church of Gilbert	¶ 29	80 people in line
Keith Evanson (A-60)	First United Methodist Church of Gilbert	¶ 7 & 8(a)	120 people in line

Mark Sonnenklar	Fountain Hills Community Center	¶ 10	150 people in line
Kevin Beckwith (A-15)	Glendale Community College –North	¶ 14	100-120 people in line
Aaron Ludwig (A-115)	Happy Trails Resort	¶ 27	200 people in line
Mary Ziola (A-219)	Happy Trails Resort	¶ 7	2-hour wait
Tabatha LaVoie (A-101)	Indian Bend Wash Visitor Center	¶ 35	1.25 hour wait
Kathryn Baillie (A-11)	Journey Church	¶ 35	“very long” wait
Tabatha LaVoie (A-101)	Messinger Mortuary	¶ 31	60 people in line
Aaron Ludwig (A-115)	Mountain Vista Club/Vistancia	¶ 22	100-120 people in line
Aaron Ludwig (A-115)	Radiant Church Sun City	¶ 30	100-120 people in line
Christian Damon (A-46)	San Tan Village	¶ 14	“a long line of voters”
Aaron Ludwig (A-115)	Sheriffs Posse of Sun City West	¶ 16	80-100 people in line
Aaron Ludwig (A-115)	Surprise City Hall	¶ 10	200 people in line
Kristine Moss (A-136)	Tumbleweed Recreation Center	¶ 21	Between 250-500 people in line
Mark Sonnenklar	Venue 8600	¶ 32	“line extending outside the building”
Mark Sonnenklar	Via Linda Senior Center	¶ 21	150 people in line
Kathryn Baillie (A-11)	Worship & Word Church	¶ 9, 14 & 16	80-100 people in line
Ken Mettler (A-131)	Worship & Word Church	¶ 5	100-125 people in line and 1.0-1.5 hour wait
Inspector Harold Darcangelo (A-47)	Church of Jesus Christ of LDS—Southern	¶ 1	120-minute wait, 275 people in line
Clerk Debbie Gillespie (A-67)	Desert Hills Community Church	¶ 3	120-minute wait

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

- - -

KARI LAKE,

Contestant/Plaintiff,

CV2022-095403

- vs -

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.

December 22, 2022

Courtroom 206, Southeast Facility
Mesa, Arizona

BEFORE: THE HONORABLE PETER A. THOMPSON, J.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BENCH TRIAL - DAY 2

Reported by:

Robin G. Lawlor, RMR, CRR, FCRR
Official Court Reporter No. 50851

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- - -

I N D E X

SUMMARY OF PROCEEDINGSPAGE

Closing Arguments

By Mr. Olsen	250, 275
By Ms. Khanna	260
By Mr. Liddy	272

WITNESSPAGE

Richard Daniel Baris

By Mr. Olsen	21, 105
By Ms. Madduri	42

Dr. Kenneth Mayer

By Ms. Madduri	112
By Mr. Olsen	135

Reynaldo Valenzuela

By Ms. Hartman-Tellez	149, 169
By Mr. Blehm	162

Robert Scott Jarrett

By Ms. Craiger	170, 216
By Mr. Olsen	206

Ryan Macias

By Ms. Dul	221, 246
By Mr. Blehm	243

- - -

P R O C E E D I N G S

(Proceedings begin, 8:30 a.m.)

THE COURT: This is CV2022-095403. This is Lake v. Hobbs, et al., continuation of election contest hearing.

I'll take appearances at the beginning of the day, please, beginning with Plaintiff, if you please.

MR. OLSEN: Good morning, Your Honor. Kurt Olsen for the Plaintiff.

THE COURT: Good morning. Mr. Blehm?

MR. BLEHM: Good morning, Your Honor. Bryan Blehm on behalf of Plaintiff.

THE COURT: Thank you.

MS. KHANNA: Good morning, Your Honor. Abha Khanna on behalf of Governor-Elect Hobbs, along with my colleague Lali Madduri.

THE COURT: Good morning, Ms. Madduri.

MR. LIDDY: Good morning, Your Honor. Thomas Liddy on behalf of Maricopa County Recorder Stephen Richer and Maricopa County Board of Supervisors. And in the courtroom with us, my colleagues, Emily Craiger from The Burgess Law Group, Karen Hartman-Tellez.

THE COURT: Thank you much. Good morning,

1 Mr. Liddy.

2 MR. GOANA: Good morning, Your Honor. Andy
3 Goana with Coppersmith Brockelman on behalf of Secretary
4 Hobbs in her official capacity.

5 Bo Dul will also be joining us shortly.
6 She's down the hall in another hearing in another
7 election contest, but she will be joining us shortly.

8 THE COURT: Good morning, Mr. Gonna. Very
9 well.

08:32:39 10 I apologize, got a momentarily technical
11 issue with Teams just to make sure everything is
12 functioning. (Pause.)

13 Very good, thank you. All right. Yesterday
14 when we adjourned, I had asked counsel to meet together
15 to go over the exhibits so that we can have the right
16 exhibit numbers delineated for the 807 ruling that I
17 made yesterday.

18 Have counsel done that?

19 MR. OLSEN: Yes, Your Honor.

08:33:52 20 THE COURT: Okay. Why don't I have you be
21 the spokesman for that to give me the numbers, whoever,
22 Mr. Blehm or Mr. Olsen, and then I want Defendants to
23 confirm that this is correct, okay.

24 So, Mr. Olsen, will you read me the list,
25 please, the numbers?

1 MR. OLSEN: So yes, Your Honor. With
2 respect to the 807 exhibits, 53, 54, and 76, the parties
3 agree that they are admitted. We have a disagreement as
4 to Exhibit 52, whether that should be admitted.

5 THE COURT: Give me a second to pull up 52.
6 (Pause.)

7 Okay. What you're referring to is the
8 affidavit of Mr. Sonnenklar?

9 MR. OLSEN: Yes, Your Honor.

08:35:27 10 THE COURT: What's the issue?

11 MR. OLSEN: Your Honor, this was the summary
12 memo that Mr. Sonnenklar did that he testified briefly
13 about in working both his own personal observations and
14 with the other roving observers, which submitted sworn
15 declarations. It's more -- it's a summary
16 encapsulation; and we believe that, you know, as we said
17 before with respect to the other exhibits, that that
18 should also be admitted.

19 THE COURT: Have you admitted -- within the
08:35:58 20 53, 54 and 76, obviously, those encapsulate a number of
21 affidavits together. Included in 53, 54 and 76 are the
22 affidavits of -- no.

23 MR. OLSEN: My apologies.

24 THE COURT: You know, I appreciate you doing
25 that because it reminds me of being soft spoken and I

1 need to speak up. Don't apologize for that, Mr. Olsen.

2 I want to know if 53, 54 and 76 contain the
3 affidavits of the other attorney poll watchers that are
4 referred to in Mr. Sonnenklar's affidavit.

5 MR. OLSEN: Yes, Your Honor.

6 THE COURT: Very well then. My intent was
7 to admit them and not Mr. Sonnenklar's statement or
8 report, the reason being he testified yesterday subject
9 to cross-examination. This would be cumulative, and I
10 believe I gave you the option of having his report at
11 the time or having him testify, and with his testimony
12 also admitting the affidavits of the other court
13 observers under 807. And I think we -- I understood
14 that you elected to proceed with the supporting
15 affidavits and Mr. Sonnenklar's testimony.

16 MR. OLSEN: With that understanding, Your
17 Honor, we -- we withdraw.

18 THE COURT: Okay. All right.

19 Before you even get going on your position,
20 let me just tell you again, I am noting for the record
21 the Defendants' continuing objection to the admission of
22 these affidavits that I've entered under 807, based upon
23 the stated written position of each of the Defendants
24 under the 807 notice and its response; and as Mr. Goana
25 noted yesterday in court, the continuing objection to

1 the questioning based upon those affidavits.

2 Is there anything further that you want to
3 add as a matter of record, Ms. Khanna?

4 MS. KHANNA: No. Thank you, Your Honor.
5 Subject to that continuing objection, I think we agree
6 that 53, 54, 76 would be in, and 52 is out.

7 MR. LIDDY: 54 that contains the roving
8 objection is out.

9 MS. KHANNA: Sorry. Based upon what Your
08:38:22 10 Honor just said, apparently 54 -- I think Your Honor
11 just ruled only that 52, which is Mr. Sonnenklar's
12 declaration, should be excluded, but also 54 which is
13 the roving report.

14 THE COURT: Let me look at it.

15 MS. KHANNA: I don't know if Your Honor
16 intended for that to come in or not. Again, subject to
17 the same objections that we have written about, we have
18 no real dispute about 53, 54 and 76.

19 THE COURT: I'm pulling up Exhibit 54, I see
08:39:17 20 that to be the summary listing A1 through A220 and the
21 affidavits that support that, and that's precisely what
22 I was having admitted.

23 MS. KHANNA: Yes, Your Honor, and that's
24 fine. That's fine by Defendants.

25 THE COURT: Very well. Then Exhibits 53, 54

1 and 76 are admitted over the Defendants' objection, as
2 I've stated on the record.

3 Have I got it correct?

4 MR. OLSEN: Yes, Your Honor.

5 MS. KHANNA: Yes, Your Honor.

6 THE COURT: Okay. With that matter of
7 housekeeping out of the way, I think we're ready to
8 proceed. Mr. Blehm?

9 MR. BLEHM: Your Honor, with leave of Court,
08:40:00 10 I would ask that I just take a couple of minutes of your
11 time this morning to address an issue yesterday, and I'm
12 going to ask you, Your Honor, that you not take this out
13 of our limited time. And one of the reasons for my
14 request, Your Honor is, A, to clarify the record before
15 this Court to get an exhibit admitted that I believe was
16 wrongfully objected to, and to ask for some of our time
17 spent fighting objections to that exhibit, Your Honor;
18 and there were certain representations made in the court
19 yesterday. And, Your Honor, if I may --

08:40:43 20 THE COURT: Please.

21 MR. BLEHM: -- may I use the ELMO, please?
22 And this is with respect to Ms. Honey's exhibit, the
23 voicemail.

24 THE COURT: Got it.

25 MR. BLEHM: I'm putting something on the

1 ELMO.

2 THE COURT: What number was it?

3 MR. BLEHM: Excuse me, Your Honor?

4 THE COURT: What number is it? You have a
5 placeholder, is it 74?

6 MR. BLEHM: I believe it was somewhere in
7 that area, Your Honor, but --

8 THE COURT: Anyway, I just want to -- it's
9 -- I've got that bent. I need to focus on what exhibit.

08:41:21 10 So actually you had a placeholder for Number 74, and I
11 presume you're going to explain to me a little bit more
12 about that process.

13 MR. BLEHM: Yes, Your Honor.

14 THE COURT: Go ahead. Am I right about it's
15 74?

16 MR. OLSEN: Yes.

17 MR. BLEHM: Yes, Your Honor.

18 THE COURT: Thank you. Go ahead. I'm
19 sorry, Mr. Blehm.

08:41:37 20 MR. BLEHM: Now, certain avowals were made
21 to this Court by defense counsel yesterday --

22 THE COURT: Yes.

23 MR. BLEHM: -- they avowed yesterday.

24 THE COURT: Wait.

25 MR. BLEHM: That nobody by the name of Betty

1 worked in the Department of Elections, and what I've
2 placed on the ELMO, Your Honor, is a copy of a business
3 card for Betty Galanter.

4 Betty Galanter is not just some low-level
5 employee --

6 THE COURT: Right, got it.

7 MR. BLEHM: -- of the Elections Department,
8 Your Honor. She's the Voter Outreach Manager, the Voter
9 Outreach Manager, Your Honor.

08:42:18 10 THE COURT: Wait. If --

11 MR. BLEHM: This business -- I'm explaining
12 the context of this business card. I made
13 representations to this Court, Your Honor, yesterday,
14 and when my client and I spoke -- not my client, my
15 witness, I'm sorry -- my witness and I spoke
16 yesterday --

17 THE COURT: Let me -- I'm sorry to
18 interrupt, but to save you some time, I thought
19 yesterday I ruled that you could play it in court and
08:42:48 20 then I would address exactly what you're talking about
21 if the exhibit --

22 MR. BLEHM: I want to clarify, Your Honor,
23 that it was admitted because I don't believe that it was
24 admitted.

25 THE COURT: Well, we admitted. It's got to

1 be in some format that I can put it into the record, and
2 you told me that you tried, and after your best efforts,
3 you could not upload it into the Clerk of Court system.
4 I accepted that.

5 So how would you have me admit it?

6 MR. BLEHM: May I have a CD ROM brought down
7 to the court?

8 THE COURT: I'm going to be very upfront
9 with you about my hesitation and the look on my face.

08:43:29 10 The County has spent millions of dollars on
11 its computer system.

12 MR. BLEHM: I understand, Your Honor.

13 THE COURT: I do not want to be the one to
14 go to the presiding judge and explain why I put
15 something into the County system.

16 MR. BLEHM: Understood, Your Honor. With
17 that, Your Honor, I can go to Costco or some store and
18 buy a standalone tape player. I can record that audio
19 onto that and we can admit the entire tape player as an
08:44:02 20 exhibit.

21 THE COURT: Wait. I don't need the plug for
22 Costco either. Hold on just a second. (Pause.)

23 Okay. I've got a resolution for you.

24 Here's the way it works, according to the Clerk's

25 office. You can do -- I don't care where you buy your

1 player. You can play the recording in open court to
2 mark it and have it part of the record. You're going to
3 have to, I'm told, submit it as a physical exhibit
4 that's actually played; in other words, if you have --
5 have the recording, and I'm a little hesitant here
6 because the Clerk of the Court is a separate entity from
7 me, and so I'm trying to meld these two.

8 As long as there's something that shows that
9 it's -- if you -- you're an officer of the court. If
08:45:23 10 you give me the package that shows this is where this
11 came from; in other words, I bought a clean, new thumb
12 drive, put -- and you're avowing to me I downloaded this
13 from some type of media that has viral, you know,
14 antivirus software protection on it --

15 MR. BLEHM: Yes, Your Honor.

16 THE COURT: -- I will take that as the
17 physical exhibit.

18 MR. BLEHM: Yes, Your Honor.

19 THE COURT: I won't let you plug it into the
08:45:50 20 court's system.

21 MR. BLEHM: Understood, Your Honor.

22 THE COURT: You take your Costco player and
23 plug it in and you bear the risk of what happens to your
24 Costco player, and you can play it in court, okay.

25 MR. BLEHM: And with that, Your Honor, I

1 would say also that it was played on the record
2 yesterday or it was played in court yesterday. I'm fine
3 with that, as long as I can get the actual audio
4 admitted as exhibit, and I will have our technical
5 people do that today.

6 THE COURT: I just ruled. I just told you
7 if you get me that, I will take it now.

8 MR. BLEHM: I thought you said play it again
9 in court, Your Honor.

08:46:29 10 THE COURT: You did it. But here's the
11 thing: Before that physical exhibit gets accepted, the
12 Defendants have a right to hear it. I'm not casting
13 aspersions on anybody, but if you take what you're going
14 to give the clerk, plug it in, play it, and they say,
15 yeah, that's exactly what was played in court, then
16 we've got no problems with foundation. Then that will
17 be -- I know -- go ahead -- I know you don't do
18 placeholders. So what number is this?

19 COURTROOM CLERK: It would be Exhibit 120.

08:47:07 20 THE COURT: We don't do placeholders, so it
21 will be Exhibit 120. So, for the record, it's
22 Exhibit 120 we've been discussing, not 74.

23 MR. BLEHM: Exhibit 120.

24 THE COURT: 120.

25 MR. BLEHM: And I will make that happen

1 today, Your Honor.

2 THE COURT: It's your responsibility to make
3 sure it happens; you know, I anticipate you're going to
4 rest your case today.

5 MR. BLEHM: Yes, Your Honor.

6 THE COURT: But that's going to be
7 contingent upon making sure that you've got all the
8 exhibits in. So for this one exhibit, I will give you
9 until we're actually, we adjourn the hearing beyond when
10 you rest, because I know you've got -- you have to jump
11 through these hoops that I just told you, okay? But you
12 have responsibility to make sure this happens in case I
13 forget, in case something else happens, okay.

14 MR. BLEHM: This will happen, Your Honor.
15 And the second question I have is we spent a lot of time
16 discussing Betty yesterday.

17 THE COURT: Okay.

18 MR. BLEHM: And this exhibit, this specific
19 exhibit, and this is an e-mail from me, Your Honor. I
20 avow this is an e-mail from me.

21 THE COURT: I'll take your word for that.
22 Just tell me.

23 MR. BLEHM: This is an e-mail from me to, I
24 believe, all of the defense counsel sitting up here.

25 THE COURT: Um-hum.

1 MR. BLEHM: In which I, again, on behalf of
2 both my client who submitted the Public Records Act
3 request and my witness who was on the stand yesterday
4 talking about those documents that she needed that the
5 County will not produce, this e-mail, Your Honor,
6 specifically talks about Betty. It says "Betty
7 Galanter."

8 THE COURT: How much time are you asking
9 for?

08:48:53 10 MR. BLEHM: I'm asking for at least
11 15 minutes, Your Honor, that were spent debating about
12 this issue. And, you know with leave of Court, I would
13 also like to move to admit this e-mail as an exhibit.
14 This e-mail is highly relevant, Your Honor, because it
15 does discuss the chain-of-custody documents that are --
16 that were discussed yesterday, and those very documents,
17 Your Honor, that Maricopa County says they have, but
18 will not give to anybody or have not given to anybody.

08:49:36 19 THE COURT: Now we're beyond the scope of
20 the exhibit that you're talking about. If you're
21 talking about you want time back focused on the
22 discussion we had about chain of custody and how to do
23 it, without arguing, I think we have -- we have some
24 additional time. I've made time. This time we're doing
25 right now, this is time that I made by making you come

1 in earlier, okay? I didn't take this into account.

2 So this is on me, okay. So I have no
3 problem giving you 15 minutes.

4 MR. BLEHM: Thank you, Your Honor.

5 THE COURT: Okay. And I'm not -- but I'm
6 not going to admit the e-mail and give you all of that.
7 I'm giving you the 15 minutes because I think the e-mail
8 goes well beyond this, and I think I'm going to invest
9 more than 15 minutes of my time straightening out what's
08:50:25 10 relevant and what's not relevant. So I'm going to give
11 you the 15 minutes and not go into that.

12 MR. BLEHM: Much appreciated, Your Honor.

13 THE COURT: Defendants, if you want to make
14 a record?

15 MR. LIDDY: Your Honor, you saved me and you
16 saved the court some time because I'm not going to argue
17 for the 9 minutes and 22 seconds that should be
18 allocated, so I'm not even going to mention that. But
19 what I will mention, and we can check the record, is
08:50:45 20 that the question was asked about a Betty who works in
21 the Maricopa County Public Records Department, and there
22 is no Betty who works at the Maricopa County Public
23 Records Department. That's the avowal that I made.
24 That goes directly to my integrity, Your Honor, so I
25 have to put that on the record.

1 And, secondly, avowals were made by counsel
2 that his client knew Betty personally and then he
3 changed and said, no, his witness knew Betty personally,
4 and then she testified that no, she didn't.

5 I just want that on the record, Your Honor.
6 Thank you.

7 THE COURT: Thank you. Let me just explain
8 something to you. I listened carefully to that
9 testimony and I understood that -- Mr. Blehm is
10 distracted -- some of the things Mr. Blehm told me
11 weren't true. Some of the things Mr. Liddy told me
12 weren't, you know, exactly what Mr. -- what Mr. Blehm
13 said. I'm not saying you didn't say -- what you said
14 isn't true. I'm saying that in terms of the
15 representations that went back and forth, I didn't take
16 this as being -- there was trying to be instructive to
17 me to have an idea or focus of what the exhibit would
18 actually say. I didn't make my rulings based on your
19 reputation, Mr. Liddy, nor Mr. Blehm and his
20 representations. I listened to the evidence. And if
21 during the testimony Mr. Blehm realized that some of the
22 things he had said were not in line with what the
23 witness said, and so he may not have come out on the
24 record, but I saw it, and he acknowledged by body
25 language.

1 Let me -- let me just digress just a second
2 here. I've tried to be respectful, fair and impartial
3 to both sides throughout all of this, and I have the
4 highest regard for the attorneys involved in the case on
5 both sides and the presentation of the evidence, and I
6 feel it's been very professional and it's been very well
7 done. So I just encourage you -- I know this is hotly
8 contested, and it hasn't -- well, I'll leave it at that.
9 I think I rely on your professionalism and dignity, and
08:52:57 10 I don't take things to be personal attacks. I've
11 already given you my view of each of you, all right?

12 So let's leave this and proceed. I think
13 you got 15 minutes back, Mr. Blehm. I didn't go into --

14 MR. BLEHM: Thank you.

15 THE COURT: -- anything further. I think
16 that should cover everything, and --

17 MR. LIDDY: I just want to be clear, Your
18 Honor. Twice in court it was played, the tape. A woman
19 named Betty who works for Maricopa County said we'll get
08:53:31 20 the documents to you when we get them --

21 THE COURT: Wait. Wait. Wait. I don't
22 want you to rehash the testimony.

23 MR. LIDDY: Okay.

24 THE COURT: Fair enough. Because I've tried
25 to take very good notes and I've paid attention.

1 MR. LIDDY: Thank you, Your Honor.

2 THE COURT: So, thank you. Okay.

3 Plaintiff, do you have a witness that you'd
4 like to call?

5 MR. OLSEN: Yes, Your Honor. We call Rich
6 Baris.

7 THE COURT: Mr. Baris, if you'll stand in
8 front of my clerk, raise your right arm, she'll swear
9 you in.

10 RICHARD D. BARIS,
11 called as a witness, having been duly sworn, testified
12 as follows:

13 THE COURT: Thank you, Mr. Baris. You can
14 have a seat at the witness stand.

15 All right. You may begin when you're ready,
16 Mr. Olsen.

17 DIRECT EXAMINATION

18 BY MR. OLSEN:

08:54:29

19 Q. Good morning, Mr. Baris. Would you please state
20 your full name for the record?

21 A. Good morning, Mr. Olsen. Richard D. Baris.
22 Daniel.

23 Q. Where do you work currently?

24 A. For about over six years I'm the director of Big
25 Data Poll. Before that, I worked in election

1 forecasting, modeled the election forecast model for
2 People's Pundit Daily. I did that from 2014 until 2018.

3 Q. Can you briefly go through your qualifications
4 and experience in conducting exit polling?

5 A. Yeah.

6 Q. And describe what exit polling is?

7 A. Yeah, I studied political science; but for, you
8 know, since 2014, I've been conducting exit polling and
9 studying what is -- no secret that the industry has had
10 problems, so I largely focused on response biases, and
11 the -- the exit poll that we conducted in Arizona, for
12 instance, is modeled very much off of the vote cast,
13 which is done by the Associated Press now.

14 Q. Okay. How long have you been doing exit polling?

15 A. Exit polling, particularly, for about a little
16 over six years.

17 Q. Okay. And did you always do that with respect to
18 the company called the People's Pundit?

19 A. We do pre-election polling as well. We do what
20 is called -- what we call electorate mapping. We
21 forecast turnout models. We come up with different
22 ranges of modeling, and we also have a decision desk for
23 election night where we set thresholds for candidates,
24 whether they are going to win or lose an election, for
25 instance.

1 Q. Okay. Do you do any type of a survey work for
2 other companies outside of exit polling in elections?

3 A. Yeah, absolutely. We conduct voir dire research
4 for clients for legal firms to determine juries, the
5 profiles of jurors for that may be favorable or
6 unfavorable to a particular client. We do market
7 research. We do branding. It's a wide scope, but
8 there's no doubt, I would say, the vast majority of our
9 work is in politics.

08:56:34 10 Q. Okay.

11 A. And we conducted media polling as well, just for
12 the record.

13 Q. What type of methodology do you employ in
14 conducting an exit poll for an election?

15 A. So the methodology that we employ now because
16 exit polling has changed over the years is the
17 methodology that is now used by the Associated Press,
18 which has broken away from traditional exit polling in
19 recent years, and it will be the future.

08:57:05 20 Q. Okay. What is the difference between a turnout
21 model and exit polling?

22 A. So turnout modeling -- and that's a great
23 question -- turnout modeling, we only have certain
24 variables that we could look out with turnout modeling;
25 for instance, historical turnout, population increases,

1 but that is limited. So the difference between exit
2 polling and just, you know, turnout modeling, in
3 general, is that we're able to talk to people to see
4 whether or not there's something that would have
5 changed.

6 For instance, in regular turnout modeling data
7 looked at in the Maricopa County 2022 Election Plan,
8 they gave two different variants. There's always
9 variances to models, but they gave two different plans.
08:57:49 10 If they would have used those plans in 2018, they likely
11 would have understated turnout, because there would have
12 been no historical basis for turnouts to be as high as
13 it was in 2018 Midterm Election.

14 Q. When you say they give two different, what are
15 you referring to?

16 A. So if you look at, I believe, page 11 in the
17 election -- 2022 Maricopa Election Plan, you'll see that
18 they are providing two different turnout models. One is
19 a lower turnout model, the other is a higher turnout
08:58:13 20 model; and they are using various variables that they
21 are putting into this, turnout rates. They are
22 averaging certain cycles over the last several decades,
23 but again, that -- I applaud them for that work. They
24 did a good job, but it's limited because the turnout was
25 very, very low in some of those elections, so you would

1 never see a high turnout election coming if you didn't
2 have long-term interviews with voters on the ground.

3 Q. For the record, I believe the -- you're referring
4 to Exhibit 2?

5 A. It is Exhibit 2, exactly, yes.

6 Q. That's Defendants' Exhibit 2.

7 What type -- what are the factors that you take
8 into account with respect to turnout modeling?

08:59:02 9 A. Maricopa is a great example of this, it really
10 is, because it's an enormous amount of population
11 growth. And when we look at voter records we, of
12 course, ask them their vote history. Did you vote in
13 2020? Did you vote in 2018? But that would be verified
14 against the voter file, and a lot of new movers that
15 come to Maricopa County have robust vote records. So a
16 pollster may not know them as a long-term voter in a
17 state unless they check those records, and maybe when
18 they move from New York, as so many have done, or
19 California, or Illinois. And when we look at those
08:59:32 20 records we'll see that they, in fact, are
21 high-propensity voters.

22 So these are voters that a lot of people can miss
23 on what are called voter screens, what you're referring
24 to. We screen these voters, and for an exit poll we
25 would have called them first and we would have asked

1 them to participate in that exit poll, and we would have
2 checked their vote history, whether or not they are
3 high-propensity voters or not. We would put them
4 through traditional screens, and if they agreed to take
5 the exit poll, we would tell them to re-interview and
6 take it. And we would contact them and complete the
7 questionnaire as they cast their vote, which I think is
8 very important in this case.

09:00:07 9 THE COURT: Hold on, Mr. Olsen. Before
10 there's a next question, you talk fast.

11 THE WITNESS: I'm sorry, Your Honor. I do,
12 I know. I'll slow it down.

13 THE COURT: I talk softly, no one is
14 perfect. All I'm pointing this out for is for the
15 benefit of my court reporter, she has to take this down.
16 And so if you wait -- wait for the question to be
17 completely asked and then I will make whoever asks you
18 the next question wait until you've answered so you're
19 not rushed, you'll get to say what you need to say, but
09:00:38 20 just for her sake --

21 THE WITNESS: Understood, Your Honor.

22 THE COURT: -- say it slower. Thank you.

23 BY MR. OLSEN:

24 Q. So when you conduct an exit poll, are you saying
25 that you identify, prior to the election, participants

1 and voters who you think are going to go out and vote
2 and, therefore, fill out the exit poll questionnaire?

3 A. Yes, that's correct.

4 Q. And in identifying those voters, do you review
5 their voter history?

6 A. Yes, we do.

7 Q. And do you interview those voters or survey them?

8 A. Yes, we do. And we'll also check to see --
9 sometimes people just don't tell the truth -- so we will
09:01:16 10 check those voter records what they are self-reporting
11 to us against what is on their voter file.

12 Q. And were you hired by the Plaintiff prior to the
13 election?

14 A. In fact, we were not hired by the Plaintiff to
15 conduct this exit poll.

16 Q. Okay. So you created this exit poll based on a
17 turnout model that included going through and
18 identifying voters through their voter history and other
19 factors?

09:01:52 20 A. Yes, that's correct. Absolutely -- well, let me
21 just leave it there for now.

22 Q. Okay. And you created a turnout model prior to
23 the election, correct?

24 A. Yes.

25 Q. And then in terms of the exit polling, those

1 voters who agree to participate, and they were part of
2 your turnout model, would fill out a questionnaire?

3 A. Yes.

4 Q. And what kinds of questions would that
5 questionnaire ask?

6 A. So -- and some of them did this over a duration
7 of time. So an interview may not be complete
8 immediately. There are different ways in Maricopa
9 County, in Arizona, as there are in many states to vote.
09:02:34 10 So we will identify after screening them and qualifying
11 them as a likely voter. We will identify what method
12 they intend to vote by. Do they intend to cast a vote
13 by mail and mail it in early? Do they intend to drop it
14 off at a drop box, do they intend to vote in person?
15 And at that point, if they are in-person voters, or if
16 they have not cast that ballot or mailed it in, and they
17 intend to drop it in the drop box, they are told not to;
18 and they won't finish the questionnaire until or finish
19 their interview -- there are different ways they can
09:03:08 20 take it -- until they actually cast that vote.

21 Q. And in terms of the number of participants in
22 this exit poll that you created for the 2022 General
23 Election, was that for Arizona or for Maricopa County,
24 or was it national?

25 A. It was for Arizona, although we did other states

1 -- we polled other states as well, but it was for
2 Arizona. With Maricopa being such a large share of the
3 vote in Arizona, it made up a substantial portion of the
4 sample, so roughly a little over 1,300 people we spoke
5 to statewide in Arizona, and about 813 of them were
6 residents and voters in Maricopa County.

7 Q. And did you perform an analysis to determine
8 whether or not that was a statistically reliable sample?

9 A. Sure. So we can actually see the share of the
09:03:56 10 voting population that is -- that comes from Maricopa
11 County. It doesn't mean it will make up that share of
12 the vote on, you know, when all the votes are counted
13 and all is said and done, but it's a great place to
14 start. And as -- as a modeler, as a pollster, anybody
15 who does this, we have to set ranges for where we think
16 these numbers are going to fall.

17 Q. Was the sample that you chose and obtained
18 participation from in your exit polling statistically
19 significant in your opinion?

09:04:30 20 A. Yes.

21 Q. And what do you base that opinion on?

22 A. Well, we calculate sampling errors, of course,
23 like everybody else. We have at Big Data Poll, we have
24 certain minimum standards and minimum population. They
25 are sample sizes. And I could go into the principles of

1 random sample, but ultimately the more -- it would be
2 ideal if you could speak to the entire population, if
3 you're polling an entire population, but it's not
4 possible. So the larger sample you speak to of the
5 target population, the lower the sampling error is going
6 to be. So anything -- every pollster is different, but
7 we have minimum sample sizes that we employ by state, by
8 population, whatever it may be, and it is statistically
9 significant.

09:05:13 10 Q. How would you characterize your methodology and
11 the statistical reliability of the turnout model and the
12 exit poll that you conducted in Arizona for the 2022
13 General Election?

14 A. We used the same methodology for the exit poll
15 that we conducted in Arizona that we have used for six
16 years, even before the Associated Press moved to this
17 methodology. In over six years since we began releasing
18 public polling on a steady basis in 2016, we have not
19 inaccurately predicted the winner, outside of a sampling
09:05:51 20 error, in a single poll, not one. So everybody gets it
21 wrong sometimes, but I'm very proud of the record that
22 we've amassed at Big Data Poll. Everybody gets it
23 wrong; but did you get it wrong outside the sampling
24 area routinely, then there's a problem with your
25 methodology. So everyone is constantly refining what

1 they are doing and the world changes. So the ways that
2 you can contact voters are always going to change with
3 it, but we feel we've done a good job evolving.

4 Q. You said that you have never inaccurately
5 predicted within this --

6 A. Not outside of the sampling error. So, for
7 instance, you could predict the winner of a presidential
8 election is going to be Candidate A by a point, maybe he
9 loses by two points or a point and a half; but you're
10 sampling error is 3.5 percent, so you're within the
11 sampling error at that point

12 Q. During the 2022 General Election in Arizona, did
13 you make any changes to your exit-poll questions?

14 A. We did on the day of election.

15 Q. And what change was that?

16 A. And just to for the record, the reason we added
17 this question is because of the interactions we had
18 during the conducting the exit poll. Shortly after --

19 Q. Interactions with who?

20 A. Voters, people, participants of the exit poll.
21 Shortly after polls opened on Election Day, several of
22 the participants, who had previously agreed to take the
23 exit poll, but indicated that they would vote on
24 Election Day, were trying to vote before work; and when
25 they went to go cast their ballot, the lines were long.

1 So some of them would tell us we'll come back after work
2 and we'll see if we can do it. Some others, you know,
3 complained, you know, that they couldn't wait on line,
4 so they had to go pick up a kid, you know, life really.
5 So we, in fact, added a question that was not designed
6 to see how many voters may have been suppressed. In
7 fact, it was designed to try to point people to a
8 direction, to a polling station where they could vote.
9 So we added a question that basically said, did you have
10 any issues or run into any complications while
11 attempting to vote, such as tabulators rejecting ballots
12 or running out of paper when -- at the polling station?

13 And we took this from issues that voters were
14 telling us, we didn't make this up, we took this from
15 issues that we heard directly from them.

16 Q. And was this change in terms of the questions, to
17 add this question, was that done in connection with any
18 anticipated litigation?

19 A. No.

20 Q. That might arise out of this election?

21 A. No. The goal was attempt to tell the
22 participants where they could go vote, and we were
23 taking lists of polling places. Those who were able to
24 successfully cast a ballot, where were they able to do
25 so.

1 Q. Okay. Now, you did a report for use in this
2 election challenge, correct?

3 A. We did.

4 Q. And what was your conclusion as to the number of
5 likely voters that were suppressed from turnout as a
6 result of the chaos on Election Day?

7 A. Well, like anything else, I try to set a range,
8 because we have sampling errors and we have variances,
9 so I have to feel comfortable with the estimates that
09:09:09 10 we're looking at, and we put -- I put a couple of things
11 into this.

12 First, I'm looking to see whether or not there's
13 still a substantial amount of voters out there that
14 historically we could say -- we could support with
15 historical data that they could have turned out,
16 meaning, would this be out of the range of normal if we
17 were missing such a large chunk of voters, or can we --
18 can we look at the numbers and have expected it? The
19 bottom line here is that those who said they would cast
09:09:40 20 their vote by mail, or drop their ballot off my mail,
21 completed their questionnaire at a 93-percent rate.
22 There are always going to be people who tell you that
23 they are going -- they are going to participate in your
24 poll but then don't, especially in exit polls. The rate
25 for Election Day voters was only 72 percent, so that

1 doesn't -- I can tell you that has never happened to me
2 before, ever.

3 Q. And why is that significant?

4 A. It's significant because, you know, looking at,
5 you know, we can go through it a lot more in-depth, but
6 looking at all the totality of it, there's no
7 explanation for why these voters simply did not come
8 back; they didn't cast their ballot. There's always
9 going to be a difference, but the difference is almost
09:10:20 10 20 points, it's roughly 20 percentage points. It's a
11 significant finding, and I can only -- look, in my
12 professional opinion, I've done many, many of these exit
13 polls, these people didn't complete this questionnaire
14 because they didn't vote. They didn't get to vote, and
15 I don't know why anybody who agree to participate in an
16 exit poll and then not, you know, show up and in such --
17 why would they not vote and then complete the interview?
18 This just doesn't happen.

19 Q. What was the range of voters lost on Election
09:10:56 20 Day?

21 A. So if we look at that 20 percent, admittedly very
22 large. Could we have expected the Election Day
23 electorate, itself, roughly 250,000 Election Day voters,
24 could we have expected that to expand by another
25 20 percent? That's, you know, that's a lot, but there

1 are means. Could we expect it to expand by 10 percent?
2 Could turnout for Election Day have been 10 percent
3 higher? 15 percent higher? Look at the number of votes
4 that would mean, 10 percent would be 25,000 votes. Did
5 that fall within our modeling? Sure, it fell within the
6 modeling of the 2020 Election Plan [sic] for Maricopa
7 County.

8 What about 15 percent? If turnout increased on
9 Election Day by 15 percent, we'd be looking at almost
09:11:38 10 40,000 votes roughly, something like that. Absolutely
11 could have.

12 Q. You're talking a little fast.

13 A. Sorry.

14 Q. So what was the expected range that you
15 determined of voters who were disenfranchised as a
16 result of the Election Day chaos?

17 A. Between 25,000 to 40,000; and, again, there is
18 always going to be some variance there.

19 Q. Okay. And what of the 25 to 40,000, what was the
09:12:07 20 net effect on Republican voters?

21 A. This is important, and you can only understand
22 that by understanding the difference in vote preference
23 by vote method. If you showed up on Election Day, you
24 were far more likely to be a straight-ticket Republican
25 than if you cast in a ballot by mail. The same is also

1 true if you were, for instance, a Democratic voter. If
2 you voted on Election Day, you were far more likely to
3 cross over and vote for another party, and the same is
4 true of Republicans. If they voted by mail, they were
5 far more likely to vote, for instance, for the
6 Democratic candidate, Katie Hobbs.

7 So you have to understand that when you're
8 looking at it, it's not as significant of a number for
9 disenfranchised voters as you may think. So the
09:12:56 10 Election Day margin for Ms. Lake was huge in the areas
11 where we saw these depressions, and by huge, it was not
12 uncommon for her to win 75-76 percent of the vote there.
13 It's because she was also winning large numbers of
14 crossover voters.

15 So, you know, when we're looking at who may have
16 been disenfranchised, the mail-in vote is in, we can
17 only be talking about Election Day voters at this point.
18 So one -- one more -- we call them dumps -- but one more
19 batch of tabulated votes in Maricopa County really could
09:13:32 20 have done it.

21 Q. Well, do you recall the range that you concluded
22 in your report as to the number of Republican voters
23 that were suppressed from coming out on Election Day as
24 a result of the chaos?

25 A. Well, it's -- again, I really want to caution

1 anybody for thinking about this just as Republicans
2 because the vote share is so large. Republicans were
3 absolutely disproportionately impacted by this, and were
4 we're talking about a net advantage that absolutely puts
5 the margin in doubt.

6 So we're looking, if it was 25 to roughly 40,000
7 votes, Mr. Olsen, the margin that we saw in these areas
8 puts this election within a few votes either way. It
9 really does.

09:14:21 10 Q. Would it refresh your recollection if we brought
11 your report to know the number of voters, Republican
12 voters, that you determined were suppressed as a result
13 of the election?

14 A. Percentages we could absolutely --

15 Q. No, sir. I'm asking, you came up in your report
16 with an expected range of suppressed Republican voters.
17 Do you recall that range?

18 A. Well, the range, yes. The range was a low of
19 25,000 to a high of 40,000, yes.

09:14:47 20 Q. Was that overall voters or Republican voters?

21 A. That's just -- that's overall votes that would
22 have netted -- what I did in the report, Mr. Olsen, was
23 explain how the net change in the vote would have been
24 impacted.

25 Q. What was that figure?

1 A. Well, that figure was between 2,000 -- it would
2 have ranged between 2,000, a hold for the current
3 leader, to roughly 4,000 for Ms. Lake.

4 Q. Do you recall a range of 15,000 to 29,000 in your
5 report?

6 A. Well, yes, yes. That's --

7 MS. MADDURI: Objection, Your Honor.
8 Objection to that question.

9 THE WITNESS: I understand, though, what
09:15:28 10 he's saying. Sure.

11 MS. MADDURI: Counsel is leading the witness
12 in testimony.

13 THE COURT: It is leading. If you would
14 like to have him refresh his recollection, that would be
15 fine with the report, but I don't want to -- it's not in
16 evidence, put it that way.

17 MR. OLSEN: Yes, Your Honor.

18 THE COURT: Which exhibit is it, Mr. Olsen?

19 MR. OLSEN: It's Exhibit 48, Your Honor.

09:16:27 20 MS. MADDURI: Your Honor, I think counsel
21 wants to use that to refresh the witness's recollection,
22 but the witness hasn't actually said he needs that, or
23 said that he doesn't know something.

24 THE COURT: I think there was a previous
25 question where he asked about the actual numbers, and

1 that's why I was drawing that off of. So if she wants
2 you to ask him the question if it would refresh his
3 recollection or not before he's allowed to refer to his
4 report --

5 MS. MADDURI: Sorry, let me clarify what I'm
6 saying. He actually testified to the numbers, so he
7 doesn't need his recollection reflected -- refreshed.

8 MR. OLSEN: I think I'm entitled to ask the
9 question, Your Honor.

09:17:01 10 THE COURT: You may.

11 BY MR. OLSEN:

12 Q. Would it refresh your recollection in terms of
13 some of these numbers to look at your report?

14 A. No, I think this is a matter of nomenclature.
15 We're talking in different terms, where you're saying
16 Republican votes, and I'm referring to it as the net
17 change. So I'm not thinking about this as the
18 registered -- the registration of that voter, I'm
19 thinking about how it would impact the margin of the
20 governor's race. So the net gain for the Republican
21 candidate, what would the net gain, would be the margin
22 -- is the number that you're referring to. So, yes, it
23 would be significant enough to change the leader of the
24 race, it would.

09:17:24

25 Q. And you're basing that on the net difference

1 between the candidates of 17,000 --

2 A. Yes.

3 Q. -- plus votes?

4 A. That's correct, yes.

5 Q. So in your opinion, the suppression of Republican
6 voters that you saw on Election Day, based on your exit
7 polling and survey, exceeded, or would have exceeded,
8 the margin between the two candidates of 17,000 plus
9 votes?

09:18:04 10 THE COURT: Wait just a second. When the
11 lawyers stand up, it usually means there's an objection
12 coming.

13 THE WITNESS: Yes, Your Honor.

14 MS. MADHURI: Objection, Your Honor.

15 Counsel, again, is leading the witness and
16 mischaracterized his testimony about voter suppression.

17 THE COURT: Okay. Let's stick with leading,
18 it was leading. You can ask him for his opinion.

19 BY MR. OLSEN:

09:18:28 20 Q. Mr. Baris, what is your opinion with respect to
21 the effect of the voter suppression as a result of
22 Election Day chaos, based on your survey exit polling
23 and experience, in connection with this race where the
24 margin between the two candidates is a little over
25 17,000 votes?

1 A. Mr. Olsen, in my professional opinion, and some
2 of this is not opinion, we know the vote totals in these
3 areas that we're talking about; we know what the margins
4 were. In my opinion, in my professional opinion, this
5 did have an impact -- it definitely impacted the
6 outcome. The only question for me is whether it had the
7 potential to change the result. And in my opinion, in
8 my professional opinion, I believe it did have the -- it
9 did have that. It was substantial enough to change the
10 leader board, it was.

09:19:18

11 Q. When you say change the leader board, do you mean
12 that the --

13 A. That Ms. Lake would be ahead right now. Ms. Lake
14 would be ahead.

15 THE COURT: Wait. Another rule. One person
16 talks at a time, because she can only take down one
17 person at a time, so I cut into your answer and broke my
18 own rule to try to get you not speak at the same time.

19 THE WITNESS: It's okay, Your Honor.

09:19:42

20 THE COURT: So, Mr. Baris, can you repeat
21 your answer so my court reporter can get it clearly?

22 THE WITNESS: In my professional opinion,
23 the amount of Election Day voters that we're talking
24 about here, with the margin, would have changed the
25 outcome of the race, and the number is substantial

1 enough to have changed who the overall winner was in
2 this race.

3 BY MR. OLSEN:

4 Q. And are you saying that Plaintiff Kari Lake would
5 have won this race but for the Election Day chaos?

6 A. I have no doubt. I believe it that strongly.
7 It's my opinion that strongly, yes.

8 MR. OLSEN: Thank you, Mr. Baris.

9 THE COURT: Are you done with questioning?

09:20:30 10 MR. OLSEN: Yes, Your Honor.

11 THE COURT: Thank you. Cross-examination,
12 please?

13 CROSS-EXAMINATION

14 BY MS. MADDURI:

15 Q. Good morning, Mr. Baris. Thank you for being
16 here.

17 A. Good morning. Thank you.

18 Q. My name is Lali Madduri and I represent
19 Governor-Elect Hobbs, and I'm going to ask you a few
09:21:13 20 questions.

21 Just, first, have you ever testified in federal
22 or state court before?

23 A. No, but I have been consulted by lawyers about
24 election processes and laws, and...

25 Q. Have you in an academic study -- academic

1 setting, ever studied polling?

2 A. In an academic study?

3 Q. Academic setting?

4 A. Academic setting? You know, it's funny, the
5 professor who got me into this said be aware of
6 presidents and pollsters who have Ph.D.'s, they don't
7 make good ones of either, so no.

8 Q. Have you ever studied long lines in the context
9 of elections?

09:21:59 10 A. I'm not sure --

11 Q. In academic setting?

12 A. That's not my purview, and I'm not sure that has
13 any bearing here.

14 Q. Have you ever studied the effect of long lines on
15 turnout?

16 A. No.

17 Q. Have you ever studied the various factors that
18 can affect Election Day, or any kind of turnout?

19 A. Of course.

09:22:22 20 Q. In what setting, but not in academic setting?

21 A. Well, I'll say it again, I make my living in the
22 real world. There's a difference between practice and
23 theory, ma'am. There is.

24 Q. So no, you've never studied --

25 A. No.

1 Q. -- the effect of --

2 A. No.

3 Q. Have you ever published any peer-reviewed
4 academic articles?

5 A. No, but I've appeared in numerous outlets after
6 elections. You know, I've been -- I've written
7 commentary articles for various news organizations. No,
8 it's not academic; but again, in my industry, academia
9 means nothing, accuracy matters. People come to me when
09:23:03 10 they want the truth and accurate information. They
11 don't care about theory.

12 Q. So no, you've never published --

13 A. No.

14 Q. -- any kind of academic --

15 A. No, I haven't.

16 Q. -- peer-reviewed article?

17 A. That's correct, yes.

18 Q. Are you familiar with the *New York Times*?

19 A. Yes.

09:23:23 20 Q. Are you familiar with FiveThirtyEight?

21 A. Unfortunately, yes.

22 Q. Are you aware that FiveThirtyEight aggregates
23 more than 450 different polls for its analyses?

24 A. I'm a long-standing critic of FiveThirtyEight.
25 Yes, I'm very aware of that, our adversarial

1 relationship.

2 Q. So you're aware --

3 A. I'm a competitor to FiveThirtyEight. I risk --

4 MS. MADDURI: I'm sorry. I just want to
5 remind you about what the Judge said about -- because we
6 can't talk over each other because our court reporter is
7 taking everything down.

8 THE WITNESS: I got you. Sorry about that.

9 MS. MADDURI: So I'll make sure not to speak
09:23:56 10 over you if you can do the same.

11 THE COURT: Stop. Please, just calm down,
12 because even when you're both trying to correct this,
13 you're talking over each other, okay? So take a deep
14 breath. What I'll do is I will give you the chance to
15 answer the question once she's finished, but don't
16 answer the question until you've actually heard it, even
17 if you think you know where it's going. On the other
18 hand, let him answer before you ask the next question,
19 and we'll be just fine, okay?

09:24:26 20 So I apologize for the testy nature of what
21 I'm telling you, but I'm looking down at my court
22 reporter and she has to take this down, and it's a mess,
23 and that's not a technical-legal term. Just one person
24 talking at a time. Thank you.

25 MS. MADDURI: Thank you, Your Honor.

1 BY MS. MADDURI:

2 Q. So, Mr. Baris, are you aware that FiveThirtyEight
3 aggregates more than 450 polls for its analyses?

4 A. Yes.

5 Q. Your polling organization, Big Data Poll, is
6 excluded from 538's aggregated polls; is that right?

7 A. That is true, yes.

8 Q. And Big Data Poll received a grade of F as in a
9 failing grade from FiveThirtyEight; is that right?

09:25:11 10 A. It is. And can I just elab?

11 THE COURT: There will be more examination
12 after she's done.

13 MR. OLSEN: Briefly.

14 BY MS. MADDURI:

15 Q. And it sounds like you're aware that
16 FiveThirtyEight currently ranks about 500 different
17 pollsters; is that right?

18 A. You know, honestly, ma'am, I don't know how many
19 they rank. I don't pay much attention to them.

09:25:38 20 Q. Any reason to disagree that it's about 500?

21 A. No, I'll take your word for it.

22 Q. Okay. And are you aware that just 11 of those
23 polling organizations have received an F grade?

24 A. No.

25 Q. Are you aware that F grades are given to

1 pollsters if their methodology is unreliable, their
2 methods are not transparent, or their results are
3 inaccurate?

4 A. No. But, again, I would just argue that you're
5 acting as if they are an authority on polling; they are
6 not.

7 Q. Are you familiar with RealClearPolitics?

8 A. Yes. Yes, I am.

9 Q. And are you aware that it's been described as a
09:26:20 10 right-leaning media outlet?

11 A. No, they are not right-leaning.

12 Q. Are you aware that they also aggregate polls?

13 A. Yes.

14 Q. And Big Data Polls are also not included in
15 RealClearPolitics's aggregation; is that right?

16 A. They just, at their request, asked for our stuff
17 for submission. So they go through a review process, we
18 just gave it to them. I've had -- stay tuned. I don't
19 know what to tell you. We've been under the radar for a
09:26:48 20 while and I suspect that will change. They just --

21 RealClearPolitics just announced something called, the
22 polling accountability initiative, because polling has
23 been so horrible; and outlets like the one you're
24 describing, ma'am, FiveThirtyEight, have used them for
25 narratives and were losing public trust. So RCP just

1 began this initiative and starting to rank pollsters. I
2 gave them our stuff for their review and I expect we'll
3 end up in the top three, like we are in Election Recon
4 right behind the IBD/TIPP poll. And unlike them, we
5 poll states as well, not just national, so it's actually
6 harder to get a higher grade if you're polling both
7 states and national polling. National polling is
8 easier; state polling is more complicated.

09:27:33 9 MS. MADDURI: Your Honor, I would like to
10 move to strike that testimony as nonresponsive to the
11 question that I asked.

12 THE COURT: I'm not going to strike it, but
13 go ahead and ask further questions, if you want to
14 clarify.

15 BY MS. MADDURI:

16 Q. Okay. So I understand the explanation you just
17 gave, but is it correct that you have not previously
18 been part of the aggregations --

19 A. That's correct -- sorry, Your Honor.

09:27:57 20 Q. Is Big Data Poll a member of the National Council
21 on Public Polls?

22 A. No, but we do follow the transparency initiative
23 that they laid out.

24 Q. And you're not -- it's also not a member of the
25 Association of Public Opinion Researchers?

1 A. Same -- same answer, and just for the -- just for
2 the sake -- it's only, you know, a lot of pollsters,
3 probably 70 percent of them, are not. Nobody wants to
4 pay dues. That's not the point of polling and to be
5 part of the clique.

6 Q. And you're also not a part of the Roper Center?

7 A. No, I've never contacted them.

8 Q. Okay. I'd like to discuss now the poll that you
9 conducted in this -- for this election --

09:28:37 10 A. Sure.

11 Q. -- that you just discussed with your counsel.

12 Just to clarify, how was the poll conducted? Was
13 it phone? Written? Text? What was the medium that it
14 was conducted under?

15 A. You could consider it mixed mode, ma'am, because
16 there are different rates that different voters respond
17 to different modes of collection.

18 So, for instance, college-educated voter, in
19 their middle age, would be happy to stay on the phone
09:29:04 20 with you and conduct a live interview for 20 minutes or
21 so, but a steelworker in Pittsburgh, or a -- for
22 instance, a working-class Hispanic in Maricopa County
23 does not want to do that, so you have to give them
24 different ranges to do it. We do live caller. We do
25 peer-to-peer in this context, again, very much like the

1 Associated Press. They can fill out a questionnaire
2 online if they want, but they are contacted live in all
3 instances.

4 Q. Okay. So some of the interviews were conducted
5 by phone and some were conducted by some kind of written
6 online submission; is that right?

7 A. Well, that is correct, they would be contacted
8 live and then get texted a link, it's called
9 peer-to-peer texting, if they chose to opt in that way.

09:29:42 10 For anonymity, they could conduct it like that, yes.

11 Q. And the poll was conducted between November 1st
12 and November 8th; is that right?

13 A. That's correct.

14 Q. How many of those polled reported voting on
15 Election Day?

16 A. Overall, there were about, at the end of the day,
17 about 160-something filled out, if I remember correctly.
18 I honestly needed that in front of me because, you know,
19 I conduct a lot of polls, ma'am, honestly. But it was
09:30:16 20 shy of what was expected, which was in the range of
21 about 250 to 300, and you're referring only to Maricopa
22 County or the entire state, because there was a
23 state-level poll?

24 Q. The 160 estimate you gave, what was that for?

25 A. That -- Maricopa County. And we do, just to

1 elab, we do believe in oversampling. Again, the larger
2 the sample, the smaller you can reduce error rates
3 for --

4 Q. Of those who responded from Maricopa who voted on
5 Election Day, were there respondents from all of the
6 congressional districts that Maricopa covers?

7 A. That's a great question. Yes.

8 Q. To make sure I understand correctly, the poll --
9 people who filled out the poll were all people who
10 self-reported as having voted; is that right?
09:31:23

11 A. Yes. We would not be -- that is correct. We
12 would not be able to verify that until in this case the
13 County or Secretary of State's office, we do use vendors
14 that often give us that information faster. That's
15 correct.

16 Q. So I think you answered this, but then you didn't
17 do anything to verify whether they have voted or not?

18 A. At this point, there is -- there is just the
19 tools there are not at our disposal. I mean, that's --
20 there's no way at this point to confirm whether --
21 Election Day records are typically the last ones to
22 come. But if I may, while it's true we didn't talk to
23 people after the fact, it really very much is like a way
24 an astronomer observes a planet when they can't see it.
25 It dims the light of the planet as it passes it.
09:31:58

1 There's -- it's the same principle. I can observe them
2 by their absence.

3 Q. Okay. So let's talk about the questions that you
4 asked. So I think the key question that's at play here,
5 you asked Election Day self-reported voters, "Did you
6 have any issues or complications when trying to vote in
7 person, such as tabulators rejecting the ballot or
8 voting locations running out of ballots"; is that right?

9 A. That's correct, ma'am.

09:32:56 10 Q. And based on how many voters said yes to that
11 question, you drew the conclusion that to a reasonable
12 degree of mathematical certainty that turnout depression
13 occurred on Election Day; is that right?

14 A. Well, it's not -- the conclusion is not derived
15 from the answers to that question. In fact, the -- the
16 percentage of areas affected, polling stations affected,
17 is where we -- we can draw that conclusion from using
18 that question; but the conclusion is of how many or what
19 is the range of the group of voters that were depressed
09:33:37 20 or comes from the modeling itself that we went over, but
21 also the absence of their completion. And this is --
22 while we can't check their vote record now, these are
23 people that do have vote histories. So if I see a woman
24 who has voted in every election since 1980, and for some
25 reason she didn't show up this time when she told us I

1 am certain to vote and I am going to vote on Election
2 Day, there is no reason not to believe her.

3 Q. So the conclusion you draw about how many voters,
4 to use your words, were either suppressed or
5 disenfranchised, that is based on who failed to complete
6 your survey --

7 A. Not only that --

8 Q. -- is that correct?

9 A. No, it's not. That's not only -- it's a number
09:34:27 10 of factors. We have historic data here, we have voting
11 records of the past. There's a lot that goes into it,
12 there is.

13 Q. I understand -- sorry -- I understand that. But
14 the actual number, sort of, that you're saying that
15 didn't turnout or were suppressed, that is based on how
16 many people didn't complete the survey?

17 A. In part. The exit poll would have projected a
18 higher number. The exit poll would have projected over
19 50,000, if I took just the word of the people who told
09:34:58 20 us they were going to vote but then did not show up. I
21 thought that, honestly, that was a little bit hard to
22 support, you know, with historical data, so I'm using a
23 mean, and that's what anybody else would do when you're
24 -- when you're trying to project. It's what Mr. Jarrett
25 did when his team put together these models you saw

1 yesterday in court, Model 1, Model 2, he's using means.
2 So he's using the averages. It says right on page 11,
3 using the averages of historical turnout. That's what
4 we do.

5 Q. In your projection about how many people would
6 vote, was that based on any sort of interview with a
7 person?

8 A. Yes, later in part, absolutely. So --

9 Q. I think I asked my question. Let me just make
09:35:48 10 sure --

11 A. Okay.

12 Q. -- we're speaking about the same thing.

13 Your projection about how many people would vote
14 on Election Day, that is based on how many people told
15 you they would complete your poll, correct?

16 A. On Election Day specifically you're referring to?

17 Q. Or at all?

18 A. No, no. I actually -- again, I applaud the work
19 I saw in the Election Plan in Maricopa County, it just
09:36:14 20 has limitations, so we would add those interviews as a
21 variable.

22 Again, I use 2018 as a great example. If you
23 only used historical data, then you would never have saw
24 over 64-percent turnout in Maricopa County coming,
25 because you haven't seen an example like that in

1 decades.

2 So the reason, for instance, a pre-election
3 pollster would be able to accurately project the outcome
4 of that election is by talking to these voters and, at
5 some point, you have to believe them. And you have to,
6 of course, verify and make sure that their vote history
7 checks out. But if you're a pollster and you're
8 interviewing them, you actually are a little bit -- you
9 have the advantage. You're able to catch on to new
10 movers, for instance, whereas if you're just looking at
11 historic turnout model, you're going to miss it. You're
12 going to fall shy.

13 Q. Okay. And the people who actually responded to
14 your poll, they all reported voting, right?

15 A. Who actually responded, that's correct, yes.

16 Q. Let's dig into that question just a little bit
17 more. So for voters who -- so you discussed with your
18 counsel that you added a question to your poll on
19 Election Day, right?

20 A. Yes.

21 Q. Okay. So that question, which we've already gone
22 over, about sort of facing issues with any issues
23 specifically referencing tabulators, there's no similar
24 question that was asked to anybody who completed your
25 poll before Election Day, right?

1 A. Yes, that's true.

2 Q. Okay. Great.

3 A. And there's a reason for that.

4 Q. That's fine, so yes.

5 So if early voters had faced issues, there was no
6 question in your poll that would have captured that
7 response?

8 A. If early voters had faced issues, we would have
9 added the question. That's what I'm trying to
10 distinguish here.

09:38:23

11 Q. I understand. So they were not asked the
12 question?

13 A. They were not, that's true, and they were not
14 alerting us of any issues either.

15 Q. Did you ask Election Day voters outside of
16 Maricopa if they had issues on Election Day?

17 A. Yes.

18 Q. Okay. It's not really an accepted practice in
19 the political polling industry to change or add
20 questions partway through a poll, is it?

09:38:43

21 A. Yes, it is. In a tracking poll, you can change a
22 question every day. There's nothing wrong with adding a
23 question on -- if you feel that there's a subgroup
24 within the poll that is being uniquely impacted by it,
25 then, sure. Sure, you can.

1 Q. Part of the question had a premise in it. One of
2 the issues you give as an example that a voter could
3 face was a voting location running out of ballots,
4 correct?

5 A. Yes.

6 Q. You're aware that Maricopa prints ballots
7 on-demand, correct?

8 A. Yes, but Pinal County had an issue in the
9 Primary, so we were simply reflecting what -- what
09:39:29 10 participants of the poll were telling us they have had
11 in the past. That's -- and again, the entire poll was
12 conducted state -- that was even asked of other voters
13 statewide. And it's worth noting that only Maricopa
14 voters, only participants in the poll who -- who vote
15 and reside in Maricopa County responded that they had
16 issues. There were no other voters outside in the state
17 who said, yes, I ran into a problem.

18 Q. Okay. Your poll can't tell us how many voters
19 encountered an issue with a tabulator in Maricopa,
09:40:00 20 correct?

21 A. Election Day voters about -- it was about
22 32.7 percent did say they had an issue, yes.

23 Q. They said they had an issue?

24 A. Yes.

25 Q. Okay. But your analysis can't tell us how many

1 voters encountered an issue with a tabulator, correct?

2 A. That's true. We didn't give them the option to
3 -- that's true, absolutely.

4 Q. And it can't tell us how many voters of a
5 specific party encountered an issue with a tabulator,
6 correct?

7 A. Specifically with a tabulator?

8 Q. That's right.

9 A. No, but we can give the share of each party that
09:40:32 10 had issues.

11 Q. That had some issue --

12 A. Yes.

13 Q. -- on Election Day?

14 A. You are correct, yes.

15 Q. And no voter in your poll was asked whether they
16 waited in the line on Election Day?

17 A. No.

18 Q. So your analysis can't tell us about how many
19 voters encountered a line when they went to vote?

09:40:48 20 A. No, I think that's fair.

21 Q. And you can't tell us anything about where lines
22 occurred in Maricopa?

23 A. Well, not lines specifically, just issues being
24 able to cast a ballot, yes.

25 Q. Okay. It also can't tell us how long those lines

1 were, should a voter --

2 A. No, ma'am.

3 Q. -- encountered a line?

4 A. No.

5 Q. It also can't tell us whether a voter decided not
6 to vote because they encountered a line?

7 A. That specific question, no. The only way we can,
8 again, infer that is by the absence of their
9 participation and them being the only ones to have an
10 absence of participation.

11 So there's always going to be a percentage of
12 voters who tell you they are going to do your exit poll
13 and then don't do it. Those who voted by mail were
14 significantly less likely to not complete the
15 questionnaire, and they are instructed to complete it at
16 the time they cast their vote. Ninety-three percent
17 did, if they did not vote by election; 72 percent did if
18 they voted on Election.

19 Q. And you can't tell us anything about whether long
20 lines occurred in more Republican areas of Maricopa or
21 more Democratic areas of Maricopa, correct?

22 A. I can't. I can only speak to general, like the
23 question was worded, general issues, did you encounter
24 issues, yes.

25 Q. So, again, the question was, you had asked was:

1 "Did you have any issues or complications when trying to
2 vote in person," right?

3 A. Yes.

4 Q. Okay. So this question doesn't allow us to
5 distinguish between voters who encountered a significant
6 issue versus a voter who had some kind of trivial issue,
7 right?

8 A. Well, because of the sample size, we can
9 technically do that by just the amount of -- the amount
09:42:49 10 of signals is what we would call it, so are there areas
11 that are consistently showing up as problematic areas?
12 But because it's sample size, we can only look by
13 congressional district. I would not be able to look at
14 vote centers specifically.

15 Q. I understand that. We can talk about your
16 congressional district analysis; but I just want to
17 clarify, the question doesn't allow us to distinguish
18 between the type of issue that a voter faced?

19 A. That's true. You're correct about that.

09:43:15 20 Q. And voters who encountered a problem with
21 something other than tabulators could have also reported
22 experiencing an issue, correct?

23 A. Yes.

24 Q. So, for example, if somebody had an issue with
25 their photo ID -- their voter ID, I said photo -- that

1 could have been reported as an issue in your poll?

2 A. That is -- yes, and that's fair. I just want to
3 make the point, though, that we decided what to ask
4 people based on what was being relayed to us. So there
5 were people who were attempting to contact us and
6 couldn't tell us, you know, basically, I'm sorry. I
7 know I said I would take your survey, but I had an
8 issue, the line is too long.

9 I mean, they were tell us these things; it's just
09:44:01 10 at the time, you know, we did not design the poll
11 thinking this -- we'd be here today, you know, that's
12 just a fact.

13 Q. Yeah, I understand. I heard you explain that to
14 your counsel, I understand that.

15 But for your poll, if somebody had gone to a
16 Maricopa voter, went to a voting location that wasn't in
17 Maricopa, and they found out they couldn't vote there,
18 they could have reported that as an issue or
19 complication when trying to vote in person, correct?

09:44:29 20 A. I just want to make sure I'm understanding you.
21 So you're saying whether or not a voter who lives in
22 Maricopa, who can vote anywhere in the county, went to
23 neighboring -- a neighboring county and voted, is that
24 what you mean?

25 Q. It's just a hypothetical. So that voter had they

1 done that --

2 A. I suppose it's possible, but we're talking about
3 such large numbers. It shows that there was something
4 systemic going on. We're not talking about -- a whole
5 third of those that reported on Election Day that they
6 had some complication, that's not going to be a
7 culmination of a ton of different issues. It's very
8 unlikely, highly unlikely. It means it indicates there
9 was something systemic going on.

09:45:14 10 Q. But a voter who showed up and had to vote
11 provisionally, say, because their identity couldn't be
12 identified, that person could report that they had an
13 issue or complication when voting, right?

14 A. No, no, they would have voted. If they cast a
15 ballot, provisional or not, they would have continued --
16 completed -- been instructed to complete the survey.

17 Q. I think maybe my question didn't come across, but
18 the question I was trying to ask you is a person who
19 went to a voting center, expected to vote, and then
09:45:39 20 found out that they could only vote provisionally, they
21 might report that as an issue or complication?

22 A. Yes. Yes, ma'am, yes. Now that I understand
23 your question better, yes.

24 Q. Thank you. Apologize for the lack of clarity
25 there.

1 So just a couple more of these hypos. So a
2 voter who had to, say, spoil their ballot and then vote
3 a new ballot, they could have reported that as an issue
4 or complication when voting on Election Day, right?

5 A. I think that's unlikely. I have -- we did
6 actually speak to several people who asked us whether
7 they were looking for instruction, they got a ballot in
8 the mail, and then they wanted to vote on Election Day.
9 So they told us they went down to the polling station,
10 their mail ballot -- they were told their mail ballot
11 would be spoiled, but they wanted -- and I know this
12 just has to do with how voters are feeling right now,
13 but they wanted an Election Day ballot and they wanted
14 it to go through the tabulator and count it that day.
15 There was just a group of people who were diehard about
16 this.

17 So if they received an absentee ballot, they were
18 telling us that they were instructed it would be
19 spoiled, and then we told them complete the survey, you
20 voted, and it will be counted.

21 Q. Right. And I'll just clarify the question again.
22 The question is just if a person, a voter, like you
23 said, a frustrated voter, who had that experience, who
24 actually voted, they might have still reported in your
25 poll that they had a complication or issue when they

1 went to vote?

2 A. I honestly don't think that's likely. I don't.
3 We interact with them, we do. So, I mean, we're
4 constantly, you know, if they have an issue or
5 something, our agents are telling them, no, that's --
6 no, that's not. You are able to cast a vote, you know,
7 and that's it. I think it's unlikely. Is it possible?
8 Sure, I guess; but if somebody didn't say anything out
9 loud to us, but we are constantly interacting with them.
09:47:29 10 We're very hands-on. We try to be. We really do.

11 But, again, we've done so many of these -- I
12 really have to point out -- we've done so many of these
13 and these issues are not new, a lot of these issues
14 you're bringing up, so it doesn't explain why out of
15 nowhere we're seeing such huge, positive responses. We
16 would see this elsewhere.

17 Q. Okay. I'm just going to clarify, we're on a very
18 limited clock --

19 A. I understand.

09:47:56 20 Q. -- so if you can just answer my question and your
21 counsel will have an opportunity to ask you any
22 clarifying questions and elicit more testimony.

23 A. I'll do my best.

24 Q. Thank you. I appreciate that.

25 So kind of wrap this up here, so your poll

1 doesn't give us any specific numbers about how many
2 voters had issues that related to tabulators?

3 A. That's correct.

4 Q. Correct?

5 A. That's correct.

6 Q. And it doesn't give us any information about what
7 number of voters had issues that related to long lines,
8 correct?

9 A. That's true, correct.

09:48:38 10 Q. I think in our conversation and also with your
11 conversation with counsel, you mentioned sort of a
12 geographical analysis that you did about where
13 respondents of your poll reported encountering issues --

14 A. Yes.

15 Q. -- is that right? Okay. So I would like to ask
16 you a little bit about that now.

17 A. Sure.

18 Q. You did that analysis by looking at the different
19 congressional districts in Maricopa; is that right?

09:49:02 20 A. Yes, 2022, by the way, yeah.

21 Q. Right. All of my questions, just to be clear,
22 pertain to the 2022 General Election.

23 A. Redistricting, I just want to be --

24 Q. I understand what you're saying. The districts
25 change between 2020 and 2022, and you used the districts

1 as they were in 2022?

2 A. Yes.

3 Q. Okay. How did you determine where a poll
4 respondent resided? How did you determine which
5 congressional district they voted in?

6 A. So we do know over -- it's a little scary, but
7 you know a lot about a voter from the voter file, so we
8 do try, even using if they are on a cell phone using a
9 longitude/latitude to verify where they are claiming to
10 vote is -- is honest. So we do ask them what
11 congressional district they live in and vote in, and
12 then we do verify that through the voter file. We even
13 give them a map if they have -- if they are taking a
14 survey through a certain mode where they can view, they
15 can even see the map of their own address.

16 Q. So to clarify, was it a question in your poll,
17 did you ask the voter where did you vote?

18 A. No, just in which congressional district do you
19 live in and vote in and reside.

20 Q. So the question was, which congressional district
21 do you reside in?

22 A. Both. They get both is what I'm saying. Did you
23 live in -- and Maricopa is a little bit different
24 because you can vote anywhere. You can go up the street
25 and outside of Mr. Biggs's district and end up in Mr.

1 Stanton's district, so they get both questions. And we
2 have the added benefit, if they are taking that question
3 on a cell phone, we can track them with their longitude
4 and latitude. Software is crazy these days.

5 Q. Okay. And I think your general testimony was,
6 and please clarify if I'm mischaracterizing, but
7 something along the lines that congressional districts
8 that ultimately elected either Republican or Democratic
9 candidate, that's the basis for which you said this is
09:51:19 10 a, you know, a Democratic area or a Republican area; is
11 that right?

12 A. That's part of it, I would say. We did show
13 whether or not it was both prior to the election
14 represented by either a Republican or a Democratic,
15 whether that congressional district changed hands, but
16 also, as well, judging by -- again, it's hard to really
17 look when you're looking at samples this -- this size.
18 It's hard to look by senders, so they are all parts of
19 congressional districts you know support more Democratic
09:51:53 20 candidates than Republican candidates, and vice versa,
21 but that is part of it. Yeah, we try to provide both.

22 Q. Congressional District 9 is one of the districts
23 that's in Maricopa, right?

24 A. One, 5 -- Schweikert, Stanton. Yeah, ultimately
25 what we had I believe was five congressional districts

1 in total, I believe, to wrap through; but I'd have to
2 look and make sure. They are a small sample. Sometimes
3 you'll get a couple from, you know, a corner from one
4 district, yeah.

5 Q. Are you aware of how many congressional districts
6 are in Maricopa?

7 A. There are five congressional districts that wrap
8 through Maricopa County.

9 Q. Would it surprise you to learn that there are
09:52:41 10 eight?

11 A. Well, no, it wouldn't. Sorry. But there were
12 five that participants that took the poll, there are
13 five in the report.

14 Q. I see, so there are three of the eight --

15 A. Yes, that's what I meant by a few -- sorry.
16 Sorry.

17 Q. So does that mean that in your poll respondents
18 only came from five of the three districts, or sorry,
19 five of the eight districts?

09:53:10 20 A. There were some more than others, and they are on
21 the table, but they are so statistically insignificant,
22 I really can't draw any conclusions from them, and they
23 are in the report.

24 Q. Okay. So there were three districts -- three
25 congressional districts in Maricopa where you didn't

1 have enough of a response to be able --

2 A. That's correct.

3 Q. -- to report what the issues, how frequent the
4 issues were in those congressional districts?

5 A. That's correct. We're talking about 0.2 percent,
6 zero point -- you know, it was very small.

7 Q. And one of those congressional districts, I
8 remember from your report, is Congressional District 9.
9 Does that -- any reason to disagree with me?

09:53:49 10 A. Yeah. I'm not sure -- I mean, I have to have it
11 in front of me to make sure I know exactly which one,
12 eight -- I know the percentage for eight, first -- to
13 feel comfortable if you're about to ask me about
14 percentages, I'd need to, you know, honestly refer to...
15 one -- go ahead.

16 Q. So you analyzed for each congressional district
17 what percentage of the people who reported problems or
18 complications resided in a specific district; is that
19 right?

09:54:39 20 A. Yes. So if memory serves, about 30 percent of
21 the people who said they had encountered issues came
22 from the 1st Congressional District, what is now the 1st
23 Congressional District; and the 8th Congressional
24 District, if I remember correctly, was about 14 percent,
25 I believe, there's the 5th as well. I mean, again, I'd

1 have to have it, you know, right in front of me but --
2 go ahead. I thought you were going to ask me something.

3 Q. Sorry. So you just reported some percentages,
4 and it's fine if they are exact or not, I'm not asking
5 you to -- it's not a memory test to report what the
6 percentages were.

7 What I wanted to know about is when you reported
8 that percentage, I think you just said around 14 percent
9 for CD8, did you consider how much of the voter
09:55:32 10 population resides in CD8?

11 A. Sure, and that's why we chose to show it as a --
12 it is, first of all, that waiting, if it was necessary,
13 would have taken care of that as a share of the overall
14 population in Maricopa, so it doesn't -- it's not --
15 because each district is representative, as far as how
16 many came from that -- that district in the overall
17 sample. Basically, it's the principle of randomization.
18 It wouldn't matter if there were 30 percent more in
19 David Schweikert's district versus a much less populated
09:56:09 20 district like Andy Biggs's district, or more populated
21 like former-Congressman Stanton's district. It wouldn't
22 matter. There still -- they still have the same
23 probability of being -- of being asked the question, so
24 they are basically going to -- we have to look at this
25 by -- by vote by party and -- and, you know, I don't

1 want to get ahead of myself, but they still have the
2 same probability. So it doesn't really matter that the
3 one district is smaller than the other, it doesn't.

4 Q. Let me back up and make sure I understood then.
5 So the congressional districts that you excluded from
6 this analysis, I think we determined it was three of the
7 eight, does that mean that there weren't sufficient
8 voters from those three districts who reported having
9 problems, and that's why they are not included?

09:56:58 10 A. No. The size was so small, that's why they
11 weren't included.

12 Q. The sample size from that district?

13 A. Maybe I'm misunderstanding you, but, yeah. Yes,
14 the sample size.

15 Q. Okay. So for an excluded district, you didn't
16 have a large enough sample size to say whether or not
17 voters have problems in that district?

18 A. That's right. That's right.

19 Q. So for the three of eight, there wasn't enough
09:57:23 20 voters to determine whether there were problems in that
21 district?

22 A. That's fair to say.

23 Q. Okay. So moving on, you discussed some
24 calculations with your counsel and you provided some
25 calculations in your report about what could have

1 happened had turnout been different than what it was; is
2 that right?

3 A. Yes.

4 Q. Okay. And specifically you, in your report, did
5 these calculations based on if turnout had been
6 2.5 percent higher for all voters?

7 A. Not turnout, because that might confuse turnout
8 rates. But if the total -- if the total vote was just
9 2 percent higher, not a turnout rate, if the total vote
09:58:23 10 was 2 percent higher, or 2 and a half percent higher,
11 what would that be?

12 Q. I understand.

13 A. Would that fall within the range of the share the
14 Election Day vote was projected to make out.

15 Q. I understand. So you're saying had 2.5 percent
16 more voters voted, what would have happened?

17 A. Yes, total vote.

18 Q. And specifically you're looking at what would
19 have happened if those 2.5 percent of voters had voted
09:58:47 20 on Election Day --

21 A. Right.

22 Q. -- correct?

23 A. Correct. Because we have all the ballots from
24 early votes and could only have been from Election Day
25 voters, the only population.

1 Q. You don't have any evidence specifically, other
2 than your projection, that 2.5 percent of total voters
3 stayed home on Election Day, correct?

4 A. Yeah, and just to be clear, I'm -- I'm trying in
5 that report just to show whether or not we needed some
6 historically ridiculously high significant number to
7 show up; but I was looking at that two and a half, and
8 just -- I think it's probably the least significant
9 number to look at. It's whether or not they could
10 historically; and from what people told us, whether or
11 not Election Day vote could have increased as a share of
12 the overall electorate by what it would have needed to
13 in order for it to change the outcome.

14 Q. Okay. And other than your projection, you don't
15 have any evidence that 2.5 percent of total voters
16 stayed home on Election Day?

17 A. Not just the projection, you know.

18 Q. Everything that goes into your projection?

19 A. Including what people told us in their vote
20 history, and yeah.

21 Q. So -- but it's your projection, right?

22 A. Well, sure. Sure.

23 Q. And you're not offering any opinion that
24 2.5 percent of total voters stayed home on Election Day
25 because of tabulator issues, correct?

1 A. Well, my opinion is that's, you know, it's when
2 you look at Joe voter -- you know, for politicians, it
3 might be a little hard to understand how, you know, how
4 average people would react if they were listening to
5 their friends, or they saw on social media, they saw
6 news reports if there were widespread issues and that
7 deterred people from voting, or if there were long lines
8 people couldn't wait in. It's easy to see how people
9 walk away. Not everyone is so, you know, intense about
10 politics that life can't be put aside. Life gets in the
11 way.

12 Q. So is that a no, you're not offering an opinion
13 that 2.5 percent of total voters stayed home on Election
14 Day because of tabulator issues?

15 A. Maybe not -- you know, no, no. Let me clear that
16 up.

17 Q. You said no, I understand.

18 A. No, no. It's no, because I'm trying to explain
19 that it is my opinion that the problems that people
20 heard about and the issues they experienced, and that is
21 2.5 percent, not that much, 40,000 -- that is my
22 opinion, absolutely, from what people told us. And the
23 amount, the percent that was missing from the poll,
24 again, at all the exit polls we have ever conducted, you
25 don't see missing participants like this without

1 something happening, some other variable getting thrown
2 into the equation.

3 Q. You're not offering an opinion that any specific
4 percentage of voters stayed home as a result of
5 tabulator issues on Election Day, are you?

6 A. A range, yes. I gave a range. I mean, I can't
7 give -- nobody can give a specific number. I can only
8 give you, you know, an idea of whether or not it's --
9 it's mathematically or not -- just whether or not the
10 range that is reasonable, you know, we can conclude with
11 it's a degree of mathematical certainty that this
12 affected this chunk of voters. Is that enough to have
13 changed the outcome? And I am offering the opinion that
14 that range is enough to put the outcome in doubt.

15 Q. So you're offering a range, not a specific
16 number, correct?

17 A. That's correct, you can -- if that -- yes.

18 Q. Okay. Let's talk about some of the math that you
19 did, and you'll have to bear with me, sir.

20 A. That's all right.

21 Q. I'm notoriously bad at math. Okay. So you do a
22 calculation based on what would have happened if 2.5
23 percent more voters turned out, 2.5 percent additional
24 voters, not as a proportion of turnout as we talked
25 about.

1 A. That's correct.

2 Q. And you give a projection of what would have
3 happened in the election had those people turned out and
4 voted on Election Day, right?

5 A. Yes, it would only be Election Day voters.

6 Q. Okay. And that calculation that you do, you
7 said, 2.5 percent is about 39,000 more voters.

8 Does that sound right?

9 A. Well, I know -- yes, it does, but the 2.5 percent
10 is -- I -- you really shouldn't focus on that. The --
11 the point is the range of the share of Election Day --
12 how many voters would have needed to turn out. How many
13 more voters to push the share, the overall share of the
14 Election Day voter, you know, as opposed to those who
15 dropped off in a box, those who voted by mail, to push
16 it within a certain -- basically, I'm looking for the
17 low of my range. So we estimated it would be over --
18 over one-fifth, could be a quarter of the vote, was
19 Election Day vote as, by the way, model -- Model 1 does
20 on -- in the 2022 Maricopa plan. It could have been
21 that high, which would have pushed Election Day voters
22 from 250 roughly to over 300, much closer to 300.

23 I'm looking for the bottom of that range, which
24 is roughly 20 -- 20 to 22 percent.

25 Q. I understand that you're looking at a range. I'm

1 actually -- I understand your opinion. I'm not asking
2 you about that. I just want to talk to you about the
3 actual calculation that you did.

4 A. Okay.

5 Q. So the number that you use was 2.5 percent and
6 you -- that was about 39,000 more votes on Election Day.

7 Does that sound right to you?

8 A. Roughly, yeah.

9 Q. Okay. As of Election Day, there were 2.5 million
10:04:20 10 registered voters in Maricopa.

11 Does that sound right?

12 A. Yes.

13 Q. Of those, 1.3 million had already voted before
14 Election Day, right?

15 A. That's true.

16 Q. Those are all those early votes that were already
17 cast?

18 A. Leaving about 900, a little less than 900,000
19 voters who would have been eligible to vote, that's
10:04:38 20 true.

21 Q. You're going to fix my math if this is wrong, but
22 2.4 minus 1.3, I think, is about 1.1 million voters?

23 A. Say that again?

24 Q. You said there were 2.4 million total registered
25 voters in Maricopa --

1 A. Oh, yes, but we have to remove the Election Day
2 votes that -- go ahead. Go ahead.

3 Q. I understand what you're saying.

4 A. Yes.

5 Q. Let's just take it step by step so we're on the
6 same page.

7 So of those 2.4 million, 1.3 million had already
8 voted by Election Day. That's those early voters,
9 non-Election Day voters, correct?

10:05:09 10 A. There was more than that, though, if you count
11 those who drop by drop box and voted in person early,
12 right.

13 Q. Sure, that whole number. So that would have left
14 about 1.1 million voters who could have voted on
15 Election Day?

16 A. Sure. Sure.

17 Q. And we know that 250,000 of those voters did vote
18 on Election Day?

19 A. But nobody has a perfect voter file, so you can't
10:05:34 20 get to the 100 percent turnout. So the difference
21 between your 1.1 and where I'm going with, it's less, is
22 that there are just -- there are voters who just are not
23 going to show. They are not high-propensity voters. I
24 can't justify that they could have showed up. They
25 don't have the vote history to show up.

1 Q. I understand. I'm not asking you about that.

2 A. Okay.

3 Q. So, and I think you said a 900,000 number, is
4 that what you mentioned just now?

5 A. Just now? No.

6 Q. Okay. So -- so, 250,000 people voted on Election
7 Day. Does that sound right, in Maricopa?

8 A. Roughly, yeah.

9 Q. Okay. In taking out the number of people who had
10:06:19 10 already voted before Election Day, so adding that group
11 up with the people who actually did turn out on Election
12 Day, that leaves about 900,000 voters in Maricopa who
13 ultimately didn't vote in the election.

14 Does that sound right?

15 A. Yeah, that's ballpark, yeah.

16 Q. Okay. Now, 2.5 percent of those voters, that's
17 not 39,000, right?

18 A. No.

19 Q. That's about 22,000?

10:06:45 20 A. Yeah, I mean, I'll take your word for it.

21 Q. I used a calculator.

22 A. Yeah.

23 Q. So it was a ballpark of 22,000 votes --

24 A. Yeah.

25 Q. -- using your 2.5 percent?

1 A. Yeah.

2 Q. Okay. And you say that the vote splits on
3 Election Day, you give a range, but you say about
4 70 percent vote for Ms. Lake and about 30 percent voted
5 for Governor-Elect Hobbs is one of the ranges that you
6 use; is that right?

7 A. It's not --

8 Q. I'm sorry, not a range. It's a specific number.

9 A. Yes, there are specific numbers. I was being
10 actually conservative with those numbers.

11 Q. Yes.

12 A. The first, you know tabulated batch from
13 Maricopa was a much higher margin; and just to be clear
14 on the math before, did 2.5 percent of what is -- had
15 been voted already, just to show whether it was
16 plausible. It's not a matter of what's left. We know
17 what's left out there as far as who is still eligible to
18 vote, so I'm not using -- I wasn't using that 2.5
19 percent as that -- you know, as -- I see what you were
20 saying, but that's not the relevant math. The relevant
21 math is whether or not there's enough voters to push the
22 overall share of the Election Day vote. The 2.5 percent
23 you're focusing on a lot. That's not the point of the
24 number. I didn't pull 2.5 percent out of the air. I
25 was trying to show how small of the vote that had been

1 cast would have need to have been changed. It's not --
2 the relevant number is the percentage of people who did
3 not participate and whether or not there still would
4 have been enough eligible voters out there that could
5 have pushed the share of the Election Day vote higher,
6 and then that would have changed the outcome because of
7 the margin. And I didn't pull 70 percent out of thin
8 area, that is the vote total. That's -- that's -- she
9 -- she had won among the group of voters we're talking
10 about in question.

10:08:43

11 Q. Okay. But taking your number -- just this is the
12 number you reported and that's the reason I'm using it.
13 I understand that you're saying that there could have
14 been a range, but the number you used was 2.5 percent.
15 So I want to make sure we're understanding what that
16 2.5 percent actually means, so that's --

17 A. I understand that. I understand.

18 Q. Okay. So taking your number, the 2.5 percent, of
19 the voters who could have been left to vote on Election
20 Day, that's actually about 22,000, not 39,000?

10:09:11

21 A. I'm talking about the entire election with that,
22 too. And you're -- again, the math is still the math.
23 There was still number of the -- what the exit poll
24 indicated to us was that it could have been 20 percent
25 of that 250 that did not show up because of a lack of

1 completion of that questionnaire, and because of the
2 issues they reported.

3 Again, would there -- if that's the case, would
4 there be 50,000 votes remaining, you know, from those
5 already voted early versus those who voted by Election
6 Day, and there would have. There would have been
7 800-plus thousand, and to speculate that they would have
8 voted, they could have voted by mail. I mean, the mail
9 was done; it's in. There's nothing else to talk about.

10:09:58 10 We're talking about Election Day. Is there enough? And
11 I'm using that as a -- that 2.5 percent of the total
12 vote just to see whether or not it would fall anywhere
13 near that range, and it would.

14 Q. So you gave some projections, had 39,000 people
15 more -- 39,000 more people voted on Election Day, right?

16 A. Yes.

17 Q. 39,000 people out of the 250,000 people who did
18 vote on Election Day, that's about a 16 percent --

19 A. It is.

10:10:23 20 Q. Okay.

21 A. Yes.

22 Q. So your hypothetical, the number you chose, what
23 you're evaluating is what could have happened in theory
24 if almost 16 percent more voters had turned out on
25 Election Day; is that right?

1 A. Yeah, that's fair to say. I mean, it could have
2 because of the margins, and they did vary. For
3 instance, in some of the door -- Drawer 3, she won
4 80 percent of those votes, it wasn't 70. I was being
5 conservative with that 70 percent. The truth is in the
6 areas that we're talking about that are likely, if you
7 want to call them suppressed, I don't know what term you
8 want to use, but those voters who didn't show because of
9 those lines, in some of those areas it was higher. I
10 was being conservative with 70 percent. Ms. Lake was
11 winning 76 percent-plus of some of these areas, so it
12 didn't need to be -- it didn't -- it might not needed to
13 even increase by 15 percent, or 16. Almost 15.7, maybe
14 something like that.

15 Q. I defer to your math over mine. Around
16 16 percent?

17 A. Yes.

18 Q. Okay. So it's actually sort of what you just
19 talked about, it's actually a little bit different what
20 I was trying to ask you about. Let me rephrase what I
21 was trying to ask.

22 A. Sure.

23 Q. You have this 39,000 number of 250,000 voters,
24 that's about -- that's just a raw number, about
25 16 percent of that total that actually turned out on

1 Election Day, right?

2 A. Sure.

3 Q. Okay. So your 2.5 percent selection, that
4 example that you give, what that is really saying is
5 what would have happened if 16 percent more voters had
6 turned out on Election Day, right?

7 A. It is, but that's not unusual in what we do; it's
8 not. It happens.

9 Q. And so the math the way you've done it, that
10 basically assumes that one out of every six voters who
11 is going to vote on Election Day didn't vote, right?

10:12:06

12 A. I guess that's fair. A little less, actually;
13 but, you know, the -- the truth is who are -- you know,
14 we absolutely can anticipate that that could have
15 happened. It's not that many votes; it's not. And if
16 you look -- another thing here is that maybe a little
17 bit uncomfortable is how much those numbers would have
18 made the Election Day vote as a share of the overall
19 electorate; but then when I look at new registrations
20 and who was voting, who is registering to vote via what
21 is, essentially, Arizona, Maricopa permanent absentee
22 ballot there, 25 percent are not registering to vote by
23 mail. So it seems to me, you know, ten years ago
24 Arizona was 80-plus percent all male. It seems to me
25 that the Election Day vote is getting more and more the

10:12:48

1 electorate as the time goes on. And I think that
2 probably, you know, the parties, like I said, they
3 employ strategies to get voters to vote different ways.
4 I think it would be folly. American people are
5 unpredicted, and I think it would be folly if that's
6 what the data tells us they were going to do would be
7 folly or pretend like we know better.

8 Q. In your direct testimony, you used the term
9 "disenfranchised." What did you mean by that term?

10:14:09 10 A. I think if governments can't do everything in
11 their power, there are always problems on Election Day.
12 There's always going to be something that turns up.

13 But if this was normal, then I would see this in
14 every exit poll I do. This was not normal. This is the
15 first time this has ever happened to me, the first time.
16 So I can only assume these people -- when you hear the
17 frustrations in their voice like we did, there's no --
18 there's no other word for it.

19 Q. Okay. So by disenfranchised, you mean the people
10:14:45 20 who chose not to vote?

21 A. I would argue they didn't choose not to vote.
22 Again, they may have chose not to vote early, but that's
23 their right. They chose to vote on Election Day and
24 they were not provided ample opportunity to do so. This
25 one gentleman is going to stick in my head forever. He

1 showed up, it was 7:13 in the morning, and he said, you
2 know, I'll vote after work if I can. I don't know if he
3 did or not, and then to be fair, but he didn't take the
4 exit poll.

5 Q. And I think just one last question for you: You
6 have no knowledge that anyone from Maricopa County, or
7 otherwise, intentionally tampered with the printers or
8 tabulators, correct?

9 A. Not my purview, ma'am, no, correct. Although I
10 will say this, when you look at it --

11 Q. I'm sorry. You said --

12 A. No. No, you're right.

13 MS. MADDURI: Thank you for your time, Mr.
14 Baris. You might have a little more time to go. Oh,
15 I'm sorry.

16 - - -

17 BY MR. LIDDY:

18 Q. Good morning, Mr. Baris.

19 A. Good morning.

10:15:55 20 Q. How long have you been working in the polling
21 industry?

22 A. Altogether about eight years.

23 Q. Did you start eight years ago or --

24 A. On my own, six.

25 Q. Six. Did you start eight years ago or was there

1 a gap?

2 A. I don't understand what you mean.

3 Q. So the last eight years of your professional life
4 you've been working in the polling industry; is that
5 correct?

6 A. From 2014 on, polling and elections, correct.

7 Q. How familiar are you with the challenges to the
8 polling industry, technical and otherwise, that precede
9 2014?

10:16:31 10 A. Only from research, sir.

11 Q. And you testified earlier that even the
12 Associated Press has broken away from traditional
13 polling practices; is that correct?

14 A. That's correct. Traditional exit polling
15 practices, yes.

16 Q. That was your testimony, okay. Are you aware
17 that they have also broken away from traditional polling
18 practices from pre-election?

19 A. From pre-Election Day polling, yes, yes.

10:17:03 20 Q. Do you know why?

21 A. They moved to different panel response biases,
22 various, I imagine, like everybody else.

23 Q. But you're familiar with the technical issues
24 with the changing behavior of the American people with
25 regard to cell phones rather than landlines?

1 A. Oh, yes.

2 Q. Working people out of the home, people answering
3 in the home, random digit dialing no longer used?

4 A. That's correct.

5 Q. Okay. So because of those changes, polling,
6 specifically in the last 25 years, has been notoriously
7 flawed, correct?

8 A. Not all of it.

9 Q. Some of it?

10:17:39 10 A. Most of it.

11 Q. Most of it?

12 A. Yes.

13 Q. Now, as a pollster, you're familiar with the term
14 "random sample"?

15 A. Yes.

16 Q. And my understanding from your report is that you
17 sampled or attempted to sample 813 voters in the State
18 of Arizona?

19 A. No, 813 just in Maricopa.

10:18:07 20 Q. 813 just in Maricopa?

21 A. It was a statewide survey. That was what
22 represented Maricopa.

23 Q. And how many voters in Maricopa?

24 A. About 813, yes -- about 813 that qualified and
25 participated.

1 Q. I'm sorry. I wasn't clear on my question. How
2 many registered voters are there in Maricopa County?

3 A. There are about 2.4 and change, almost two and a
4 half, I would say.

5 Q. And would you say 813 is a sample size that would
6 give you a significant amount of confidence in the
7 outcome of that?

8 A. You know, I do. And the reason I would say that
9 is because we're looking at certain subgroups of the
10:18:47 10 population. It is a midterm, so admittedly not
11 everybody is going to come out and vote. There are
12 people who have vote histories that support that.
13 That's part of projecting this -- the projections we use
14 for turnout is -- goes into the sampling errors, the
15 calculations we do for sampling errors. But 813, there
16 are polls out there right now from before the election
17 that did 800, maybe even less, for the State of Arizona,
18 not just Maricopa.

19 Q. What confidence level did you attribute to your
10:19:20 20 813 sample size?

21 A. About 3.5 percent.

22 Q. Plus or minus?

23 A. Plus or minus.

24 Q. And you said there were 2.4 million voters in
25 Arizona?

1 A. Yes.

2 Q. Maricopa County?

3 A. But there's not going to be 2.4 projected, you
4 know, to turn out.

5 Q. What steps did you take in order to ensure that
6 those 813 were selected randomly?

7 A. That's a great question. We use a vendor, a
8 national voter file database. In this case, it is
9 national, but we obviously just stuck to Arizona, and
10 they draw random sample off of the voter file, and from
11 there when we contact them, it is randomly selected.

12 Q. So my understanding from your testimony that you
13 did not select the random sample; is that correct?

14 A. Well, of course I did. I mean --

15 Q. You just testified that a vendor did it; is that
16 correct?

17 A. No, the vendor is the --

18 MR. OLSEN: Your Honor, I would ask --

19 THE WITNESS: -- data source. It is

20 randomly selected.

21 MR. OLSEN: Your Honor, may I object? I
22 would just ask that counsel allow the witness to finish
23 responding before he interrupts him?

24 THE COURT: Here's the way it has to work,
25 okay? Your attorneys on the other side are going to

1 have the chance to ask other questions. So, like I said
2 before, wait until the question is completely asked, and
3 there may be an objection. So if you see somebody stand
4 up, it's a clue that an objection is coming. Give me a
5 chance to rule on it before you answer.

6 THE WITNESS: Yes, Your Honor.

7 THE COURT: Then I'm going to let, Mr.
8 Liddy, give him a chance to answer before you ask the
9 next question. But when you -- if you're asked a
10 question and you can answer it yes or no, you should
11 answer it yes or no and move on. And then another
12 question later will maybe clarify further the answer,
13 okay?

14 So, next question.

15 BY MR. LIDDY:

16 Q. Mr. Baris, I apologize if I misunderstood your
17 response. I now understand your response to be that
18 you've got the universe of registered voters from a
19 vendor, but it was you, yourself, that did the random
20 sampling?

21 A. Software does the random sampling for everybody,
22 Counselor, everybody.

23 Q. For everybody?

24 A. All the pollsters -- let me rephrase that. All
25 the pollsters I know rely on software to draw random

1 samples from the database. I'm not sure --

2 Q. Now, when you collect a random sampling, you're
3 going to assume that some of those people that were
4 randomly sampled are not going to participate in a poll,
5 correct?

6 A. Absolutely.

7 Q. So in your original universe it exceeded 813?

8 A. Yes, of course. Yes, if I understand you
9 correctly, yes.

10:22:13 10 Q. And then you assume that those who decline to
11 participate in your poll and that those who -- well, I
12 mean, I don't want to ask a compound question. You'll
13 assume that those who you invited to participate in your
14 poll but chose not to, their behavior would be the same
15 as those who did choose to participate in your poll,
16 correct?

17 A. Not always, and that's why we're big proponents
18 of larger samples because, you know, people are
19 different. And, for instance, in a more educated voter
10:22:45 20 of the same party would be much more likely to
21 participate than somebody who is non-college educated,
22 even though it's the same party and they may appear to
23 be the same kind of voter.

24 Q. So that's a no?

25 A. Yes, that's a no, I would imagine, yes.

1 Q. So when you get responses, you're not assuming
2 that people who did not respond are going to behave in
3 the same manner as those who did respond, is that your
4 testimony?

5 A. No, that's mischaracterized. Obviously it's
6 principles of random sampling that you assume everybody
7 has the same chance and that they will, but we believe
8 in larger samples to reduce that error. That's, maybe,
9 I wasn't saying that correctly, but that's --

10:23:26 10 Q. What I'm trying to get at, Mr. Baris, is, which
11 is it? Do you make an assumption that those who don't
12 participate in your poll will behave in the same manner
13 as those who do, or do you not make that assumption?

14 A. We make the assumption that those who do
15 participate will -- will mirror the behaviors of those
16 who don't, yes.

17 Q. And particularly you were interested in tracking
18 the behavior of people by voter registration; is that
19 correct?

10:23:51 20 A. Not only, no.

21 Q. But it's correct that you were interested in
22 tracking the behavior of people by voter registration?

23 A. In -- for this poll alone, are you -- I just want
24 to make sure I'm understanding your question. For this
25 poll alone, you're asking if I'm interested in tracking

1 the behavior of registered voters?

2 Q. Yes, for the issues before this Court. Your poll
3 -- yeah, that's right.

4 A. Yes, at the most simple basic, yes. Yes.

5 Q. I think you've testified that in addition to
6 party registration there are many different variables
7 that can impact the behavior of a voter, correct?

8 A. Correct.

9 Q. Did you test for those in this poll?

10:24:42 10 A. Give me an example.

11 Q. Well, let's say that in a previous election there
12 was a candidate for statewide office who was registered
13 a Republican prior to 2022; and then in 2022, there was
14 a candidate for statewide office, who upon winning the
15 Primary, feigned to have a dagger and slaughter the
16 supporters of that other Republican; could that be
17 broadcast throughout the state, affect the voting
18 patterns of other people that are registered as
19 Republicans that you would anticipate and, in fact, did
10:25:27 20 vote in 2022?

21 THE WITNESS: I've got to be honest, I mean,
22 Your Honor, I don't know if I could -- that's such an
23 over-the-top example. I don't know if I could be --
24 make a serious response to that.

25 THE COURT: Well, you can ask to have a

1 question rephrased, if you -- if you wish. If you don't
2 understand the question, don't guess. Please say that
3 you can't.

4 THE WITNESS: Can we get a -- yeah. There
5 are events that do -- that do change voting behavior,
6 absolutely, if I understand that correctly.

7 BY MR. LIDDY:

8 Q. And are you aware that, as you characterize it,
9 over-the-top example actually happened; it's not a
10 hypothetical?

11 A. No, I'm not.

12 Q. Okay. And so, therefore, you did not test for
13 that in your survey the results of which are here in
14 this court?

15 A. Yeah, but if you're suggesting it impacted one
16 group of voters over the other, I can absolutely point
17 to ten counter examples where our main problem is not a
18 response bias that would act in the direction that would
19 change the behavior of a voter in the course you're
20 suggesting. I could point to ten others that would

21 suggest that I have to do my job a lot harder and dig a
22 lot deeper because voters are so terrified to even talk
23 to people and give their opinions anymore, so I mean --

24 Q. So it's your professional opinion that registered
25 Republicans in Maricopa County that have a history of

1 voting in every election and have for Senator John
2 McCain every time he was elected and when he ran for
3 President would not have a negative reaction to another
4 Republican running statewide who feigns to slaughter the
5 McCain supports?

6 A. You know what, that's all going to come up in --
7 in the margins for candidates, you know. And if they
8 tell me they are going to vote, your example is
9 irrelevant, because if you're telling me they are going
10 to vote and they have vote history, they are not going
11 to lie to a pollster. They'll just simply tell me, I'm
12 not going to vote.

13 Q. So your opinion is that my example is not going
14 to matter. Is that because every registered Republican
15 is going to vote the same way in every election,
16 regardless of whether the difference of the Republican
17 candidate running for statewide office?

18 A. Well, first, let me just clarify. I'm not saying
19 your example doesn't matter. I'm saying, I'd catch your
20 example, I'd catch those voters. The vast majority of
21 them, I'm going to catch them. So I'm not going to miss
22 them. They are going to say, no, I'm not voting for
23 this Candidate A because whatever, click, and that's it;
24 or I'm not going to vote because of it. They'll tell us
25 that.

1 But what was the second part of your question
2 again, or the follow-up?

3 Q. I'll accept your answer.

4 Your general conclusion is that fewer Republicans
5 voted on Election Day than otherwise would have but for
6 the problems of the printers and perceived problems of
7 the tabulators; is that correct?

8 A. I would just say -- I would say general issues
9 that led to long wait lines, that's what we heard from
10 the voters. I can't nail down one, that's not my -- you
11 know, that's not my purview.

12 Q. I believe you testified that your research is
13 based upon your study of the behavior of these
14 registered voters in previous elections in Maricopa
15 County?

16 A. Yes, it's fair to say.

17 Q. And did you track as a variable in your survey
18 the wait lines of other midterms elections, such as 2018
19 to 2014?

10:29:04 20 A. Sure.

21 Q. 2012?

22 A. Sure, and compared them to presidential-election
23 turnouts as well.

24 Q. What was the wait time that you looked at in
25 2012?

1 A. I thought when you said weight, I thought how
2 much how much weight is given to turnout for different
3 -- when you're modeling. Wait lines, you're being
4 specific to wait times.

5 Q. That's correct.

6 A. No, I did not study the impact of wait lines in
7 prior elections, I'll say that.

8 Q. So it's difficult for you to examine your own
9 data from 2022 with regard to registered Republicans
10 voting on Election Day and 2022 General Election because
11 of wait times based on previous behavior for Republicans
12 who voted on Election Day when you did not look at the
13 wait times in those previous elections?

14 A. Actually, in truth, I did look at some wait lines
15 in the presidential election in '18. I didn't look at,
16 you know, in great depth, but I do understand that the
17 wait lines in some areas, reported wait lines, were
18 actually longer in 2020; but I think we have to be clear
19 here that your wait-time estimate is not the estimate
20 for people who are waiting on line. You're looking at
21 site check to the time they get a ballot. You're not
22 looking at estimates of people who are wrapped around
23 the corner in a shopping center, you know, a mile long.
24 The County wait estimate is not the true estimate, and
25 the three-minute estimate is greatly exaggerated by

1 adding Election Day drop-off ballots into that equation.

2 Q. Thank you. So is it your testimony that you did
3 not account for the wait times in the midterm elections
4 of 2012, '14 and '18?

5 A. We -- I would just say anything beyond a
6 four-cycle rolling, four-cycle average, which is what we
7 do, I would not have looked at, no. If I may, there's a
8 reason for that --

9 Q. No, it's okay. You already answered the
10 question. I have another one.

10:30:54

11 Is it your understanding that Republican vote on
12 '22 was low?

13 A. Republican vote in '22 was low? No, it was high.

14 Q. In Maricopa County?

15 A. It was still high. It was. Turnout was very
16 strong for Republicans in Maricopa.

17 Q. And to what do you attribute your opinion that it
18 was very strong?

19 A. The turnout rates versus the Democratic Party,
10:31:16 20 for instance, Republicans absolutely outvoted Democrats
21 as a turnout, 80-plus probably -- I haven't looked at
22 the latest because the numbers have changed -- but
23 probably I wouldn't be surprised to hear if it was
24 mid-80s while Democrats were much lower.

25 Q. Mid-70s?

1 A. Mid-70s, okay.

2 Q. Democrats very, very high?

3 A. 60 some.

4 Q. 69.9, would you be surprised to hear that?

5 A. No.

6 Q. Now, you've said that you base your opinions, in
7 part, on the previous voting behavior of the subjects of
8 your survey, correct?

9 A. Correct.

10:31:50 10 Q. And I believe your early testimony was that you
11 have perceived a difference in voting behavior of people
12 who vote from the Early Voting List who vote by mail and
13 people who vote Election Day; is that correct?

14 A. That's correct.

15 Q. And you base that on examining the voting
16 behavior in previous election cycles?

17 A. It's starting now to become a trend, but I base
18 it on the actual vote totals that we're seeing come in;
19 and that's part also on Election Day we do get real-time
10:32:25 20 results at my company, so I can actually see as Maricopa
21 tabulates what those election results are. So when I'm
22 -- and then, you know, I'm going to compare that on the
23 work on the exit poll to see how accurate we were.

24 So, for instance, in Maricopa or statewide, what
25 was Ms. Hobbs's margin when all of the early, early vote

1 was reported, and we'll go and we'll see how close we
2 are on the exit poll, for instance.

3 Q. So you've based your opinion, in part, on the
4 previous voting behavior of people who voted early in
5 Maricopa as opposed to people who vote on Election Day;
6 is that correct?

7 A. That's correct. And --

8 Q. And that's the answer. And did you account for a
9 political party or a political campaign urging voters,
10 who already are on the Permanent Early Voting List and
11 have their ballots to not turn them in and vote on
12 Election Day?

13 A. I did.

14 Q. You did?

15 A. We definitely looked at that.

16 Q. And did you make the assumption that the behavior
17 of voters on the Permanent Early Voting List, who have a
18 history of voting early, were going to change their
19 behavior in 2022 because now they are going to vote on
20 Election Day?

21 A. A great deal of them told us that, yes.

22 Q. So then your assumption that people's behavior
23 tends to be the same whether they vote early, two or
24 three or four cycles back versus one year is not valid,
25 correct?

1 A. No, I think you're misinterpreting. I mean, if
2 they are going to vote at all, they are going to vote
3 based on prior behavior. How they vote by method
4 changes a great deal as time goes on. I would say from
5 2020 on, we're really experiencing a very drastic change
6 in how people, certain groups, are deciding to vote.

7 Q. I think you testified that in Arizona or
8 Maricopa, I don't think you were clear, but according to
9 your results, that vote by mail is getting less and less
10 and less popular?

11 A. It -- well, I don't know if we can call that a
12 trend yet, but it does appear from the last two cycles
13 that it will be -- yes, that's true, just to be --

14 Q. Would it surprise you?

15 A. Not with everybody, but --

16 Q. Would it surprise you that early voting
17 popularity has exploded in Arizona?

18 A. I don't know what you're basing that on.

19 Q. Data, early voters?

20 A. Yeah, I -- I, you know, would, because the people
21 who registered in the last two years are newly
22 registered voters in Maricopa County are registering to
23 vote less as early vote than had in the past, you know.
24 If you were -- 2014, for instance, 80 percent of the
25 vote, 85 percent, it wouldn't surprise me if Election

1 Day vote was only 10 or 12 percent. Now those new
2 voters, 25 percent of them are choosing not to register
3 as early voters.

4 Q. So it would surprise you that the percentage of
5 early voters registered -- that the people that register
6 for early vote went from 75 percent to 77 percent?

7 A. Well, you know what, that could happen, and then
8 like I said, it's still that they are not changing their
9 status, you know. And when we talk to them, they are,
10 as you said before, and you were right, there are people
11 who are and we can see them on the voter file, they are
12 on the absentee ballot list; but then they tell us, I'm
13 still going to bring my vote on Election Day, I'm going
14 to bring my ballot. So I think we're just in a process,
15 and maybe it hasn't caught up yet.

16 Q. And you're aware that 84 -- are you aware that
17 84 percent of the vote in General Election 2022 was
18 early voting?

19 A. Yes, combined, yes. 16 percent Election Day.

20 MR. LIDDY: Thank you. No further
21 questions, Your Honor.

22 THE COURT: That's all the
23 cross-examination? Okay. We desperately need the
24 morning break. We're 35 minutes or 40 minutes past it,
25 so we'll take a 15-minute recess. We will come back at

1 five minutes to 11:00.

2 (Recess taken, 10:36 a.m.)

3 (Proceedings resume, 10:56 a.m.)

4 THE COURT: We are back on the record in
5 CV2022-095403, Lake v. Hobbs, et al. Present for the
6 record are the parties or their representatives and
7 their respective counsel. Apparently absent is my
8 assistant. Got it. All right. I know how to hit the
9 record button.

10:57:12 10 For the record again, this is CV2022-095403,
11 Lake v. Hobbs, et al. Present for the record are the
12 parties or their representatives and their respective
13 counsel.

14 I've been informed you've addressed the
15 issue with the exhibit, Mr. Blehm.

16 MR. BLEHM: Yes, Your Honor, we have.

17 THE COURT: I'm led to understand that it's
18 Exhibit 120 that will be marked, that you've complied
19 with my request to have an outside clean thumb drive
10:57:41 20 provided that the recording has been downloaded to the
21 clean thumb drive that has been played for the defense.

22 Am I correct?

23 MR. BLEHM: You are correct, Your Honor.

24 THE COURT: And you wish to offer that as
25 Exhibit 20 [sic] to be admitted into the record,

1 correct?

2 MR. BLEHM: I wish to offer Exhibit 120 to
3 be admitted into the record.

4 THE COURT: Any objection from the defense?

5 MR. GOANA: Your Honor, beyond the standing
6 objection with respect to the 807 issue, I would also
7 note foundation and relevance objections. The witness
8 who purportedly received the voicemail never testified
9 about what document is referred to in there and laid no
10 foundation for its admission.

10:58:15

11 THE COURT: Okay I'll give that the
12 relevance that it's entitled to, but I'm going to admit
13 it over objection.

14 MR. BLEHM: Thank you, Your Honor.

15 THE COURT: All right. Exhibit 120 is
16 admitted.

17 All right. I believe where we left off was
18 the redirect.

19 MR. OLSEN: Your Honor, I have a few brief
20 questions.

10:58:37

21 THE COURT: Thank you, Mr. Olsen.

22 REDIRECT EXAMINATION

23 BY MR. OLSEN:

24 Q. Mr. Baris, has your polling company ever been
25 ranked by any professional organizations?

1 A. Yes.

2 Q. And which professional organizations ranked your
3 company?

4 A. Well, it's my understanding it's being ranked by
5 RealClearPolitics right now. The only other bipartisan
6 group, I would say, that has looked at our work
7 thoroughly and ranked it as Election Recon. They are a
8 forecast website.

9 Q. And what was your ranking by Election Recon?

10:59:11 10 A. Big Data Poll is number 2.

11 Q. So your company is ranked number 2?

12 A. Yes.

13 Q. Out of how many?

14 A. They look at a lot of polls, only published the
15 top ten. You have to have four cycles of polling
16 history to be ranked by them, so a good deal. I would
17 say it's probably in the neighborhood of 200-plus.

18 Q. So out of 200-plus polling organizations, you
19 were ranked by Election Recon as number 2?

10:59:34 20 A. Yes.

21 Q. And is that based, at least in part, on the
22 accuracy of your polling results?

23 A. It's, yes, how much of a bias you may have to one
24 party candidate over the other and your accuracy rate.

25 Q. In your cross-examination, counsel asked you a

1 number of questions about hypothetical issues that might
2 have arose on Election Day that could have affected
3 turnout. Based on your conversations with the
4 participants in your survey, do you have an opinion as
5 to -- or as to what the primary issues that those
6 participants were telling you about?

7 A. Absolutely.

8 Q. And what is that?

9 MS. MADDURI: Objection, Your Honor. And it
11:00:24 10 calls for speculation and mischaracterizes the prior
11 testimony and discussion.

12 THE COURT: Okay. We could cure the second
13 half of the objection by simply asking -- asking a
14 straight question and not basing it upon any statement
15 of prior testimony or answers, and I would -- the
16 question I think that you were posing, I just want to
17 make sure that it's directed to the basis for his
18 statements related to the opinion relating to the
19 reasons for not showing up.

11:01:09 20 MR. OLSEN: I'll rephrase the question, Your
21 Honor.

22 THE COURT: You understand what I'm saying?

23 MR. OLSEN: I think I do.

24 THE COURT: If you don't, I think we'll hear
25 about it in just a second. So please re-ask the

1 question, sir.

2 BY MR. OLSEN:

3 Q. You were asked by counsel for the Defendants a
4 number of hypotheticals that might have affected turnout
5 on Election Day. You spoke with the number of
6 participants --

7 MR. LIDDY: I'm sorry. Objection, Your
8 Honor.

9 MR. OLSEN: Can I finish my question maybe?

11:01:36 10 MR. LIDDY: He's repeating exactly what he
11 did before and he's characterizing my questions
12 hypothetical when it was not, and the Court specifically
13 asked him just pose the question without referring to my
14 previous question.

15 MR. OLSEN: Your Honor, I'm actually not
16 referring to his examination. I'm referring to your
17 co-counsel, and she actually used the word
18 "hypothetical."

19 THE COURT: I'll overrule it. Let you
11:02:02 20 re-ask the question along the lines that you're asking.
21 Just restate the question, Mr. Olsen.

22 MR. OLSEN: Yes, Your Honor.

23 BY MR. OLSEN:

24 Q. Mr. Baris, you were asked a number of questions
25 by counsel for the Defendants as what possibly could

1 have caused voter concerns on Election Day.

2 Do you recall that?

3 A. Yes.

4 Q. In your conversations with those voters, what do
5 you believe was the main concern expressed by those
6 voters?

7 A. Long wait times and ballots not reading properly,
8 generally, is what they expressed.

9 Q. You were also asked by Mr. Liddy about certain
11:02:40 10 events, I think he used the word if somebody talked
11 about a knife and some kind of gory details as possibly
12 affecting voters?

13 A. Yeah, I recall.

14 Q. And if I told you that any comments like that
15 were made several months before the election, would any
16 impact, any comments such as that, be included in your
17 -- your data?

18 A. Yes. As I said before, Mr. Olsen, people would
19 tell us they're simply are not voting, or they are
11:03:11 20 voting for somebody else. It would have been included.
21 It's after the fact.

22 Q. So I believe you said that you have never
23 experienced a drop-off rate on exit polling that you
24 experienced in November 2022 before?

25 A. That's correct.

1 Q. And what was that drop-off rate again?

2 A. The drop-off rate is normally anywhere between 5
3 to 8 percent. So for mail-in balloting, those who chose
4 to vote by mail, the drop-off to -- 93-percent
5 completion rate, meaning of those who said, yes, I will
6 take your exit poll, 93 percent did, in fact, complete
7 the exit poll. It was 72 percent for Election Day
8 voters, which we don't see the differences like that.
9 They are not that stark, never have.

11:03:53 10 Q. So that was approximately 19 percent drop-off
11 rate in comparison?

12 A. Approximately, yes.

13 Q. Out of how many polls have you conducted, in your
14 experience?

15 A. Over six years, I think it's fair to say
16 hundreds.

17 Q. Have you ever seen that much of a drop-off rate
18 in the several hundred polls that you've conducted in
19 your six years?

11:04:15 20 A. No, I have not.

21 Q. Have you ever experienced anything even remotely
22 close to that drop-off rate?

23 A. Not in an exit poll, no.

24 MR. OLSEN: Thank you, Mr. Baris. Your
25 Honor, we have no further questions.

1 THE COURT: May we excuse the witness?

2 MS. MADDURI: Yes, Your Honor.

3 THE COURT: Mr. Baris, you're free to go,
4 sir.

5 THE WITNESS: Thank you, Your Honor.

6 (Witness excused.)

7 THE COURT: Counsel, we attended to all the
8 exhibits that the Plaintiff intended to offer?

9 MR. OLSEN: Yes, Your Honor.

11:05:07 10 THE COURT: Okay. Do you have any further
11 witnesses or testimony?

12 MR. OLSEN: No, Your Honor.

13 THE COURT: So the Plaintiff rests?

14 MR. OLSEN: Yes, Your Honor.

15 THE COURT: Thank you.

16 Defense?

17 MS. MADDURI: Thank you, Your Honor. We'll
18 call our first witness who is Kenneth Mayer, and he'll
19 be joining us by the Teams link.

11:06:07 20 THE COURT: Very well. Mr. Mayer, can you
21 hear me?

22 THE WITNESS: I can, Your Honor.

23 THE COURT: I'm going to have you sworn in,
24 sir. If you'll raise your right hand, my clerk is going
25 to swear you in.

1 DR. KENNETH MAYER,
2 called as a witness, having been duly sworn, virtually
3 testified as follows:

4 THE COURT: Very well. Ms. Madduri, you may
5 proceed when you're ready to proceed.

6 MS. MADDURI: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MS. MADDURI:

9 Q. Good morning, Dr. Mayer, and thank you for being
10 here. I would just like to begin by discussing your
11 background.

12 So, first, will you please briefly describe your
13 education?

14 A. I have a Ph.D. in political science from Yale
15 University that I received in 1988 in political science.
16 I received a Bachelor's in Political Science with a
17 minor in applied mathematics from UC San Diego in 1982.

18 Q. Next, will you describe what position you
19 currently hold?

11:06:32 20 A. I'm currently a professor of political science at
21 the University of Wisconsin Madison and affiliate
22 faculty of the La Follette School of Public Affairs,
23 also at UW Madison.

24 Q. Now, can you briefly describe had some of your
25 scholarly work and the publications in which it appears?

1 A. Most of my recent scholarly work has been in the
2 area of election administration, everything from voter
3 turnout to wait time and non-voting, voting rights,
4 redistricting and also academic studies of the
5 presidency.

6 Q. Can you -- I know you just described a number of
7 different areas of research, can you focus a little bit
8 on some of your work as it relates to polling and tell
9 us a little bit about your background there?

11:08:02 10 A. I have actually done various polls since my
11 earliest days at Wisconsin. I was hired as a pollster
12 in the early 1990s. I have done work in the last 15
13 years, surveys of state election officials. I'm on the
14 board of a steering committee of a unit here at UW
15 called the Election Research Center, and we've done a
16 number of polls around the midwestern states in 2016 and
17 2020. I've also done surveys of non-voters, so I've
18 been involved with the design and execution of surveys
19 and polls over the last 30 years.

11:08:53 20 Q. And another sort of relevant to this case area
21 that I would like you to describe some of your
22 background in, specifically, can you describe some of
23 the work that you have done relating to polling place
24 lines?

25 A. I was part of a national research group that did

1 a study of polling place wait times and lines in 2016,
2 and am currently involved with some advice or consulting
3 with a local municipality about optimizing their
4 allocation of polling place resources to reduce wait
5 times.

6 Q. And have you previously testified as an expert in
7 legal cases?

8 A. Yes, many times.

9 Q. Have courts relied on your expertise and
10 opinions?
11:09:49

11 A. Yes, they have.

12 Q. Has a court ever rejected your testimony?

13 A. As being excluded as a nonwitness, or not an
14 expert witness? No.

15 Q. Have you served as an expert witness for both
16 plaintiffs and defendants in the cases that you've been
17 involved in?

18 A. Yes.

19 Q. And have you worked on behalf of both Republicans
20 and Democrats?
11:10:14

21 A. Yes.

22 Q. Now, turning to this case and your work in
23 connection in this case, as it relates to printing and
24 tabulator issues, what were you asked to do?

25 A. I was asked to evaluate claims that -- issues at

1 voting centers caused long wait times or had resulted in
2 voters, basically, walking off or not being able to
3 vote. My analysis was focused on the available data.

4 Q. Did you review the Complaint that was filed in
5 this case?

6 A. Yes, I did.

7 Q. What about any of the attachments to that
8 Complaint?

9 A. I reviewed the attachments with respect to a
10 number of the affidavits or declarations that -- that
11 voters had filed, and I also reviewed the report of Mr.
12 Baris.

13 Q. Have you watched any of the testimony that's been
14 given in this case yesterday and today?

15 A. Yes.

16 Q. Have you watched all of it?

17 A. Yes.

18 Q. So as it relates to the question that you
19 analyzed, what is sort of your high-level opinion?

11:11:44 20 A. My high-level opinion is that all of the claims
21 that were made in the Complaint about the effects of
22 voter wait times, the claims of disenfranchisement,
23 claims of a disproportionate effect on Republicans and
24 Lake voters that they are all based on pure speculation,
25 that there's simply no data to support any of those

1 claims and actually quite a bit of data that suggests
2 that those things actually did not happen.

3 Q. Okay. Let's discuss sort of the specifics of
4 what you based your opinion on.

5 Are you familiar with reconciliation and
6 provisional vote data?

7 A. Yes.

8 Q. Just generally, what is that?

9 A. So in this context reconciliation data typically
10 refers to comparing data on a number of voters who check
11 in at a polling place and the number of ballots that are
12 cast, provisional vote data. There are a number of
13 circumstances in which people will present at a polling
14 place, and for one reason or another, there are
15 questions about their eligibility. And rather than turn
16 them away after the Help America Vote Act in 2002,
17 polling places were required to let them vote
18 provisionally. They cast a ballot, and then after
19 Election Day, election officials try to figure out
20 whether or not they were eligible, and if they find out
21 they -- conclude those voters are eligible, the ballots
22 are counted; otherwise they are rejected.

23 Q. And what about reconciliation data? What is
24 that?

25 A. Well, that's the comparison of check-ins and

1 ballots, which will provide information. If there are
2 people who check in at a polling place, when they check
3 in, they show their ID, they identify themselves; and
4 the number of ballots that are cast and those numbers
5 should line up or be close.

6 Q. And did you examine reconciliation and
7 provisional vote data in this case?

8 A. I examined the summary data reported by Maricopa
9 County.

11:14:05 10 Q. And what did that data show?

11 A. It showed that there were, I think, the numbers
12 are -- there were 170 voter difference between the
13 number of people who checked in and the number of people
14 who cast a ballot, and we don't have information about
15 why they were not or they did not cast a ballot, either
16 a ballot that wasn't counted or a potential walk-off.
17 So that gives us an idea of the number of people who,
18 for example, might have presented in the polling place
19 and because of trouble with the ballot or trouble with
11:14:44 20 the tabulator simply left without putting their ballot
21 into Door 3. I also looked at the provisional vote
22 data, the summary data produced by the County, which
23 shows the number of provisional ballots that were cast
24 in the county.

25 Q. And what about -- did you look at any data about

1 voters who, perhaps, checked in at one voting location
2 but then didn't ultimately vote there and voted
3 somewhere else?

4 A. Yes. So there is a process that voters would
5 check in at a voting center, and for one reason or
6 another, have trouble turning in their ballot or the
7 there was a tabulator issue, they didn't want to use the
8 Door 3. They had the opportunity to actually check out
9 of a vote station and go to a vote center and go to
10 another vote center. And it would also show up that if
11 someone checked in at a vote center and for whatever
12 reason didn't submit a ballot that was tabulated and
13 they actually left the vote center without checking out
14 and went to another vote center, that's also something
15 that will show up in the data, because then they'll --
16 they'll be in the registration system twice. Once where
17 they checked in initially, and once where they checked
18 in a second time.

19 And there were kind of -- I'll have to look at
20 the County report, I think there were -- there were 84
21 people, 94 people who checked out and then checked back
22 in and voted. There were another 120 or so people who
23 checked in and then left without checking out and then
24 cast a ballot at a second vote center. And I think all
25 but 13 of those ballots -- all but 13 of those voters

1 were able to successfully cast a ballot that was
2 counted.

3 Q. Okay. So in your opinion, is there any reason to
4 believe that large numbers of voters abandoned their
5 efforts to vote after encountering difficulties with
6 tabulators?

7 A. Not only is there no evidence that that happens,
8 the evidence that exists suggests strongly that that did
9 not happen.

11:17:17 10 Q. I think you mentioned this already, but the
11 voters who, perhaps, did encounter an issue with a
12 tabulator, did they have another option of how to -- how
13 to submit their ballot for counting?

14 A. Yes. They could have submitted them into what
15 Arizona calls Door Number 3, which is just a storage
16 area within the tabulator that the voter submits their
17 ballots, and then it is later either tabulated at a
18 tabulator at a central location, or if it's not readable
19 or there's an issue with the pens or the ambiguity of
11:18:01 20 the mark, it's duplicated and then tabulated. So there
21 was -- there was a fail-safe option for voters who could
22 not get their ballot to be read by a tabulator at a vote
23 center.

24 Q. In your experience with election administration
25 and your work, are there -- are things like tabulator

1 malfunctions something that can happen in elections?

2 A. Yes, it happens. I want to make sure, it is --
3 it is one of the most common issues that arises in the
4 work on Election Day operations that I have studied.

5 Q. And is it possible for issues with tabulators to
6 occur even when election officials follow best
7 practices?

8 A. Yes. It can happen for reasons that are not
9 anticipatable. It can be just sort of machine
10 breakdowns are the sorts of things that are hard to --
11 hard to predict.

12 Q. When tabulators do break down, is that a reason
13 to suspect that integrity of the election results are
14 somehow compromised?

15 A. No, it's not.

16 Q. Are you familiar with the cyber security and
17 infrastructure security agency?

18 A. Yes, I am.

19 Q. What is that?

11:19:31 20 A. It is a unit within the Department of Homeland
21 Security that was created to address critical
22 infrastructure problems and cyber security problems, and
23 I believe it was in 2017 when election infrastructure
24 was declared a critical infrastructure, it became part
25 of the purview of that unit within DHS.

1 Q. Has that agency put out any information or
2 guidance on, sort of, how to think about tabulator
3 malfunctioning and whether that has any effect on
4 election integrity?

5 A. Yes, they have. They put out information that
6 provides their conclusion that when you have a paper
7 ballot, that's a physical record, and that's universally
8 agreed to be the best way to secure the integrity of
9 elections because you have a physical representation of
10 the vote; and they put out information to combat
11 misinformation that says that the fact that there's a
12 paper ballot means that tabulator malfunctions actually
13 don't undermine the integrity of elections, because even
14 if one tabulator is not able to count a ballot, the
15 ballot is still there, it can be counted. So and in the
16 view of CISA, a tabulator problem does not compromise
17 the integrity of an election when you have a paper
18 ballot.

19 Q. Okay. So to kind of wrap up this part of what
20 we've been discussing, did you find any evidence that
21 large numbers or any specific number of voters were
22 disenfranchised because of the tabulator issues that
23 occurred in Maricopa County?

24 A. No, and I'll restate this as about what I said
25 earlier. Not only is there no evidence that that

1 occurred, the evidence that we have and things that we
2 can directly observe suggest conclusively that that did
3 not happen.

4 Q. Okay. Let's next discuss the lines in voting
5 centers in Maricopa County. What does the data show
6 about wait times in the 2022 General Election in
7 Maricopa?

8 A. Working with the data that the County produced,
9 it does indicate that there were long wait times
10 sometimes exceeding an hour and a half, two hours, at
11 some vote centers.

12 Q. Do you recall roughly how many vote centers had
13 that sort of a wait time?

14 A. I would have to look at the report. I think it
15 may have been 7 percent, so -- but I'm -- I don't recall
16 specifically sitting here.

17 Q. Okay. Can we pull up what's been marked as
18 Defendants' Exhibit 2? I'm sorry, Exhibit 1. And we
19 can turn to page 8 and we can focus in on the paragraph
20 that starts in 2022.

21 Dr. Mayer, looking at this, does this refresh
22 your recollection about, sort of, the specific numbers
23 about purported wait times in Maricopa?

24 A. Yes. So the 7 percent reflects the percentage of
25 vote centers that had maximum wait times of over an

1 hour, and that nearly three-quarters or 72 percent
2 reported a maximum wait time of 30 minutes or less.

3 Q. What's your understanding of how Maricopa County
4 measured the vote times?

5 A. My recollection is that the process was described
6 in the 2022 Election Plan that they were monitoring the
7 number of voters who were checking in over time at vote
8 centers and then were actually counting the number of
9 people waiting in line at regular intervals. I think it
10 was 15 minutes.

11:24:00

11 Q. Have you heard testimony today or yesterday that
12 the vote times reported by Maricopa were inaccurate?

13 A. Yes.

14 Q. And what's your understanding of the kind of
15 evidence that forms the basis for that testimony?

16 A. So my understanding is that some of the evidence
17 comes from declarations or affidavits that were
18 submitted by people who were in vote centers and also
19 the testimony of Mr. Sonnenklar yesterday afternoon when
20 he testified that he observed, and other people who told
21 them that they observed, long wait times at more vote
22 centers than what the County data reported.

11:24:43

23 Q. And based on your experience, how does that kind
24 of sort of self-reporting or one-off statements, how
25 does that compare to the type of systematic monitoring

1 that you described that Maricopa did?

2 A. Well, one of the things that we know on this
3 research that I've been involved with is that estimating
4 or calculating voter wait times is not a completely
5 straightforward process. You can't just look at a line
6 by itself and estimate the line or the wait time from
7 looking at a line. You have to go through a systematic
8 process of looking at -- at the throughput or the number
9 of people that, in this case a vote center, can process
10 in a given amount of time, and you have to do it
11 regularly.

12 In the research that I was involved with in 2016,
13 we had people observing polling places at precincts and
14 locations all over the country, and we trained the
15 observers that the way that you estimate the vote time
16 and processing time is that you have to systematically
17 pick every fourth, every eighth, some regular number of
18 voters. You have to count the number of people waiting
19 in line. You have to time it with a stopwatch or a
20 digital timer on a phone or a watch. It's not something
21 that you can -- that you can estimate by just kind of
22 eyeballing it. It needs to be systematic. And my
23 conclusion from comparing the way that the County
24 estimated vote times in those self-reports, that my
25 conclusion is that the -- the County method is likely to

1 have been more reliable than the self-reports.

2 Q. Are there any issues with self-reporting
3 specifically that can affect how reliable those sorts of
4 estimates are?

5 A. Yes, there's actually a long literature, not just
6 on line length and wait time for elections, but this is
7 something businesses are -- are concerned about. One of
8 the things that research shows is that even someone's
9 perception of how long they have been waiting in line is
10 frequently not accurate, and it can be -- it can be
11 affected by their frustration and expectations.

12 Someone may feel or report that they have been
13 waiting in line longer than they actually have when it
14 conflicts with their -- what they think ought to have
15 happened. So there are a lot of ways in which
16 non-systematic or impressionistic reports of wait times
17 can be less accurate than systematic evaluation or
18 estimation, or calculation of wait times.

19 Q. And you mentioned that you reviewed some of the
20 declarations that were submitted in this alongside the
21 Complaint. Was there any evidence in those complaints
22 of sort of this unreliability or variation from the
23 self-reporting that you saw?

24 A. One of the things that I noticed in those reports
25 is that there were -- there were very, very wide

11:29:00

1 variation in reports of the number of people who were
2 waiting in line and how that correlated with wait times.
3 There were some reports that said that the -- someone at
4 the vote center counted the line of 35 to 100 people
5 with a wait time of an hour, hour and a half. Other
6 reports that a line was 500-people long with an hour
7 wait time. People were giving ranges of line lengths
8 from 250 to 500, 35 to 100, 100 and 250; there's lots of
9 variation. And again, you can count the number of
10 people in line, but it actually is -- it's more
11 difficult to do that when you're just kind of estimating
12 it. So there was wide variation in the reports of line
13 length and wide variation in how line length was -- the
14 claims that a particular line length led to a particular
15 wait time.

16 Q. Thank you. So now I'd like to move on to Mr.
17 Baris and the testimony that was given this morning and
18 the report that you reviewed.

11:29:44

19 Let's start with the conclusion or the opinion
20 that the tabulator issues at vote centers
21 disenfranchised enough voters to affect the outcome of
22 the election.

23 Do you agree with that conclusion?

24 A. No, absolutely not. There's -- there's
25 absolutely no evidence to support that conclusion.

1 Q. Okay. We can, we can sort of break it down and
2 go through each piece of it. So let's start with the
3 poll that Mr. Baris conducted and that he described this
4 morning.

5 In your opinion, does that exit poll support Mr.
6 Baris's conclusion?

7 A. Not at all.

8 Q. What are some of the issues that you found with
9 that poll?

11:30:26 10 A. So as I listened to Mr. Baris's testimony, the --
11 virtually the entirety of his conclusion rests on the
12 inference that because people in his exit poll, because
13 people who said they were going to vote didn't respond
14 to his poll, that he is making the assumption that every
15 one of those people, who didn't respond to his poll,
16 tried to vote or didn't vote because they were
17 disenfranchised; that he's essentially taking that
18 nonresponse rate and he's assuming that every person in
19 his poll, who didn't actually respond to his poll,
11:31:13 20 didn't vote because of tabulator problems. And there
21 are about five logical leaps that you have to go through
22 to get from that premise to the conclusion, and there's
23 just no evidence to support that contention. It's just
24 a series of assumptions and speculation.

25 Q. Can you give some examples of other reasons that

1 somebody might not have ended up responding to that
2 poll?

3 A. One of the reasons is that people often say they
4 are going to vote when they are not going to vote --
5 when they don't vote. There's research from 20 years
6 ago that shows that when you validate vote records and,
7 again, when you are doing an exit poll or you're
8 connecting with the voter or registrant because of being
9 able to identify in a voter file, you know who they are,
10 and you can follow up and see if they actually voted.
11 And there's research from, sort of, the early 2000s that
12 show that sometimes 25, 30 percent of people who say
13 they are going to vote actually don't vote. So that's
14 one possibility is that the people who said that they
15 were going to vote didn't vote, so that's one
16 possibility.

17 Another is that the people who fall under that
18 category say that they are going to vote and then don't
19 vote, there are all kinds of reasons why the effects
20 might be different for different types of voters. You
21 might have someone who votes absentee more likely to
22 respond positively to vote as opposed to someone who is
23 telling you what they might do two or three weeks in the
24 future. There could be a proximity effect where someone
25 who was just asked to participate in a poll and agree to

1 it, and they complete the poll in a couple of days or a
2 week they might be more likely to eventually respond to
3 the poll and participate when they just voted, as
4 opposed to if they are going to vote on Election Day and
5 that act might be two or three days, a week, two weeks,
6 three weeks, in the future.

7 So there are all kinds of reasons why someone
8 might say that they are a likely voter and then not
9 vote, or say they are going to participate in the poll
10 and agree to participate in a poll, and wind up not
11 participating.

12 Q. Based on your experience, if a poll had an
13 unexpected nonresponse rate, what would that tell you
14 about the poll?

15 A. Well, the first thing that I would think of, if I
16 had that kind of differential nonresponse rate, is I
17 would -- I would worry that there was something wrong
18 with the poll, there was something -- something about
19 the sample, something about the selection criteria,
20 something about who was more likely to respond, whether
21 it's demographics or age, or even partisanship.

22 I think it's worth noting that Mr. Baris has
23 actually presented no data to support any of his
24 contentions, neither in his testimony or his report.
25 There are no marginals, there are no demographics that

1 break down the people who responded or didn't respond.
2 There are all kinds of reasons why that -- that might
3 happen.

4 And again, having gone through this process
5 myself, my -- my initial reaction would be there's
6 something going on with my sample. There's something
7 going on with that screen that's not picking up the
8 thing that I'm trying to measure.

9 Q. In your view, I mean, you heard Mr. Baris's
10 testimony and he said that the people who ultimately
11 responded to the poll, those are the people who voted.
12 Is that your understanding? Or at least self-reported
13 voting, I should say.

14 A. That's my understanding. These are people who
15 said that they voted.

16 Q. What's your opinion on drawing conclusions about
17 non-voters based on polls of voters?

18 A. My conclusion is that you shouldn't do it. When
19 -- there are polls -- there are surveys, large-scale
20 surveys, some of them are done by the Census Bureau,
21 some of them are done by academic centers that actually
22 go into the details of who voted and who didn't vote,
23 and those polls actually have a battery of items for
24 people who say that it didn't vote about why they didn't
25 vote. And the one that I referred to is called the

1 Survey on the Performance of American Elections. It
2 actually has a 13-item battery that goes into why people
3 didn't vote, that they weren't interested, they weren't
4 registered, the lines were too long, it was raining,
5 they had lacked transportation. There were all kinds of
6 reasons, but I -- I -- I don't think, in my view, it's
7 decidedly improper or wrong to make inferences about why
8 people didn't vote by asking questions of people who did
9 vote.

11:37:00 10 Q. Let's shift gears a little bit and talk about
11 some of the specific calculations that Mr. Baris did.

12 Mr. Baris gave some testimony about what would
13 happen if overall turnout had been 2.5 percent higher or
14 some range, some, I guess, undefined range higher. In
15 your opinion, is there any reasonable basis for Mr.
16 Baris's selection of 2.5 percent or any range?

17 A. Well, I mean, if going by what Mr. Baris said in
18 his report is that he picked 2.5 percent, because that
19 is the number that would generate in his view

11:37:46 20 uncertainty about the outcome. There's -- there's just
21 no -- no basis for that. He's -- he's picking that
22 number out of the air. There just is zero basis for
23 speculating what turnout might have been. And, you
24 know, he's presenting this as a what-if, but it's not
25 just a what-if. He's presenting this as a possible

1 scenario to shed doubt on the outcome, and there's just
2 no basis for -- for that number. And there's also a
3 little bit of sleight of hand that he did in doing the
4 calculation because the 2.5 percent he thinks, well,
5 what if 2.5 percent of voters, you know, turnout overall
6 increased by 2.5 percent? Well, he's assuming that
7 every one of those 2.5 percents would vote like an
8 Election Day voter, and there's just no basis for that.
9 If he wants to say that turnout would go up by
10 2.5 percent, well, fine. But those voters, most of them
11 will vote early or absentee. Some of them will vote on
12 Election Day. You want to speculate the turnout goes up
13 by 2.5 or 5 percent or 10 percent, you would have to
14 assume that those voters would vote like the ones who
15 have already voted.

16 So, you know, not only is there no basis for
17 2.5-percent figure, he's doing his math incorrectly
18 about how he thinks those people would vote.

19 Q. So now -- so kind of putting aside the kind of
20 fundamental flaws that you just described with Mr.
21 Baris's process, can you talk a little bit about the
22 actual calculation he did using that 2.5 percent, and
23 any issues that you see with that calculation?

24 A. Sure, that he -- he speculated. So this is all
25 just a -- a counterfactual that he's making up. In

1 asking what would happen if 2.5 percent more people
2 voted, he's applying that 2.5 percent to the total
3 number of people who voted in Maricopa County, so he's
4 counting Election Day voters, early voters, people who
5 dropped off -- the total number of voters, when what you
6 would have to do, if you were thinking about what a
7 2.5-percent Election Day turnout difference would make,
8 you would have to think about who hasn't voted; taking
9 the population, registered voters minus the people who
10 voted absentee or early, minus the people who voted
11 early on Election Day, minus the people who dropped off
12 their ballots on Election Day, minus the people who
13 voted provisionally, and that gets you down to about
14 900,000 voters. And so if he wants to speculate about
15 what a 2.5-percent turnout increase might be, that's the
16 population that you would have to look at.

17 So, again, that's not 39,000, which is his
18 top-level result, that's about 21,000 and change.

19 Q. So total Election Day turnout was about 250,000
20 people. Had there been 39,000 more voters, what sort of
21 increase in Election Day turnout are we talking about
22 there?

23 A. That would be about a 16-percent increase in
24 Election Day turnout.

25 Q. Just briefly, Mr. Baris I think used terms like a

1 reasonable degree of mathematical certainty or other
2 phrases like that. What's your -- what are your
3 thoughts on those sorts of qualifications or modifiers,
4 I guess?

5 A. Well, reasonable degree of mathematical certainty
6 is actually a term that has no meaning. It's not
7 something that is used in academic work. It's something
8 that the National Institutes of Standards and
9 Technology, the federal agency, says you shouldn't use
10 because it doesn't convey any actual meaning. And I
11 think what Mr. Baris is doing is he's relying on jargon
12 to give a veneer of scientific precision to his
13 calculations, again, that there's no basis for.

14 So it's a phrase that doesn't have any real
15 meaning.

16 Q. And getting close to the end here. Are you
17 familiar with Big Data Poll?

18 A. I have not heard of them before my work on this
19 case.

20 Q. Through your work on this case, what's your
21 general impression of how they are regarded in the
22 polling community?

23 A. Well, again, FiveThirtyEight gives them a failing
24 grade and excludes them. And again, they -- they do
25 that because of either lack of transparency about

1 methods, inaccurate methods or accuracy. So based on
2 that and the evaluation of the pollsters who are in that
3 group, about 490 pollsters. Based on that, my
4 conclusion is that they are not well regarded by the
5 professional polling community.

6 Q. Okay. And I think last question for you from me,
7 you've already said that you watched all the testimony
8 given at this trial. Based on everything that you have
9 seen and heard, in your opinion, is there any reason to
10 believe that the tabulator issue on Election Day in
11 Maricopa County prevented or discouraged enough voters
12 sufficient to change the outcome of the election?

13 A. No. And again, not only is there no reason to
14 think that that happened, available data suggests
15 conclusively that that did not happen.

16 MS. MADDURI: Thank you, Dr. Mayer. That's
17 all from me, and now the Plaintiff's counsel will
18 probably ask you some questions.

19 THE COURT: Cross-examine, Mr. Olsen?

20 MR. OLSEN: Yes, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. OLSEN:

23 Q. Mr. Mayer, I have up on the screen your report
24 which is Defendants' Exhibit Number 1, I believe?

25 A. So, counsel, I can't see you.

1 THE COURT: Can you see the exhibit, Mr.
2 Mayer?

3 THE WITNESS: Dr. Mayer, please.

4 THE COURT: I'm sorry. I apologize, Dr.
5 Mayer. Can you see the exhibit, sir?

6 THE WITNESS: No, Your Honor, I can't.

7 THE COURT: Okay.

8 THE WITNESS: I can see it now.

9 MR. OLSEN: Good.

11:45:38 10 BY MR. OLSEN:

11 Q. All right. Mr. Mayer let me read you the first
12 paragraph of your report. You state -- and you drafted
13 this report before you -- before the Court sustained the
14 claim, certain claims in this Complaint, correct?

15 A. I'm sorry. I don't understand the question.

16 Q. What date did you draft this report?

17 A. I believe I submitted this report on Monday the
18 19th.

19 Q. Did you know that the Court had sustained certain
11:46:12 20 claims made in Plaintiff's Complaint before you
21 submitted this report?

22 A. No.

23 Q. Okay. So in your report you state in the third
24 paragraph, "The allegations are reminiscent of false
25 claims made about the 2020 Election in which Former

1 President Donald Trump and his supporters made absurd
2 arguments about election fraud in multiple states
3 including Arizona. As was repeatedly found by federal
4 and state courts all over the country, those claims were
5 based on completely unreliable data and evidence, and
6 contorted basic facts about election administration into
7 fanciful conspiracy theories."

8 Do you see that, sir?

9 A. I actually can't see that in --

11:47:04 10 Q. Do you recall making -- do you recall making that
11 statement in your report?

12 A. Yes.

13 Q. Okay. So as I said earlier, the Court found that
14 two of Plaintiff's claims were sufficiently meritorious
15 to allow them to proceed to this trial.

16 Is it still your contention that these two claims
17 are absurd, fanciful conspiracy theories?

18 A. My contention is that the claims that the
19 tabulator problems disenfranchised enough voters to cast
11:47:37 20 the election into doubt are incorrect.

21 Q. Well, you made a number of assumptions or
22 arguments in your report such as on signature
23 verification as well, didn't you?

24 A. Yes.

25 Q. Okay. Are you a signature verification expert?

1 A. No, my conclusions were based on data on
2 signature rejection rates.

3 Q. Did you ever review the 6,000 examples of
4 mismatched signatures that Plaintiffs put forward to the
5 Court --

6 MS. MADDURI: Objection, Your Honor.

7 MR. OLSEN: -- attached as an exhibit to
8 their Complaint?

9 MS. MADDURI: This is all relating to claims
10 that have been since dismissed from the case, and were
11 not part of the direct examination or anything that Mr.
12 Mayer has testified to testified.

13 THE COURT: Okay. Scope of cross isn't
14 going to apply. Relevance?

15 MR. OLSEN: Your Honor, he submitted this
16 report. He is making a number of -- of arguments and
17 opinions on issues, and this goes to his bias. So he is
18 castigating all of Plaintiff's claims, calling them
19 absurd, calling them of conspiracy theories. And he, in
20 fact, has no basis to make any of those arguments, and
21 that's what this shows.

22 THE COURT: Okay. Hold on. The report
23 isn't in evidence. Nobody has offered it into evidence,
24 and frankly, it's not coming into evidence, as none of
25 your experts' claims or reports are in evidence. So

1 you're the one that's -- the door wasn't opened for, so
2 to speak, as to those issues. You're addressing
3 credibility.

4 MR. OLSEN: Yes, Your Honor.

5 THE COURT: By going into the counts that
6 were dismissed. So... I can give you some leeway in
7 terms of addressing his opinions as they relate to a
8 baseline for who he is and where he draws his experience
9 from for rendering opinions, but not -- we're not
10 getting into the weeds related to the minor details of
11 why certain claims were dismissed or not. Fair enough?

12 MR. OLSEN: Yes, Your Honor.

13 MS. MADDURI: Thank you, Your Honor.

14 BY MR. OLSEN:

15 Q. Mr. Mayer, you claim to be an expert in a number
16 of things. I'm curious, as an expert, is it important
17 to rely on relevant data before you render an opinion?

18 A. Yes.

19 Q. Okay. And in terms of signature verification,
20 Plaintiff submitted over 5,000 examples of mismatched
21 signatures. Did you review any of that data before you
22 criticized Plaintiff's claims regarding signature
23 verification?

24 A. My claim was based on the data on signature
25 matching rejection rates in Arizona and in jurisdictions

1 around the country that engage in signature matching.

2 Q. So you didn't -- so the answer is no, you did not
3 review that data, correct?

4 A. That's correct.

5 Q. Did you review any of the sworn testimony of the
6 actual signature reviewers who were reviewing signatures
7 for Maricopa County in the 2022 General Election?

8 MR. LIDDY: Objection, Your Honor.

9 THE WITNESS: Yes.

11:51:04 10 MR. LIDDY: Relevance. The data he's
11 referring to is from the 2020 Election, which is not
12 before this Court.

13 MR. OLSEN: No, Your Honor. I'm referring
14 to the sworn testimony of signature verifiers for the
15 2022 General Election, and I've moved on from the 5,000
16 examples.

17 THE COURT: I'm puzzled. I have this look
18 on my face because I've read the affidavits, and I must
19 have missed those thousands of signatures.

11:51:39 20 MR. OLSEN: The declarations that we
21 submitted, the three from the signature verifiers,
22 testified under oath as to rejection rates that they
23 were performing for 2022 signature verification.

24 THE COURT: Okay. Granted, now with that
25 explanation, I understand what you're asking; but that

1 wasn't what you asked.

2 MR. OLSEN: I'll rephrase.

3 THE COURT: In all respect, I think if you
4 were talking about did he review the affidavits of
5 people who reviewed signatures in the 2022 Election, you
6 can proceed. Thank you, sir.

7 BY MR. OLSEN:

8 Q. Mr. Mayer, did you review the declarations of the
9 three signature verifiers for the 2022 process in
10 Maricopa County?

11 A. I believe I did.

12 Q. Okay. And do you recall those -- those witnesses
13 testifying to rejection rates that they were performing
14 and observed between 20 and, say, 40 percent?

15 A. That's what I recall.

16 Q. Okay. Do you think they are lying about that?

17 A. My conclusion was based on those rejection rates
18 were hundreds of times higher than the actual rejection
19 rates in Maricopa County, Arizona, and jurisdictions
20 around the country that use signature verification. I'm
21 not making a claim about whether or not they are telling
22 the truth or lying. I'm saying that those reported
23 signature verification rates are wildly higher than
24 rates that have -- that have occurred historically in
25 jurisdictions around the country.

1 Q. Okay. But you've never personally inspected
2 signatures in Maricopa County?

3 A. That's correct.

4 Q. Are you an expert in anything related to cyber?

5 A. I'm not offering an conclusion about anything
6 related to cyber security other than the sources that I
7 cite in my report.

8 Q. Okay. Did you examine any of the ballots that
9 were used in the 2022 Election?

11:53:57 10 A. No.

11 Q. Okay. Are you aware that Plaintiff's cyber
12 expert examined ballots used in the 2022 Election?

13 A. That's what he testified to.

14 Q. So you are aware of it?

15 A. Yes.

16 Q. Were you in Maricopa County on Election Day?

17 A. No.

18 Q. So you didn't observe any of the events that
19 occurred on Election Day?

11:54:44 20 A. That's correct.

21 Q. You gave some testimony on the reported wait
22 times of Maricopa County.

23 Do you recall that?

24 A. Yes.

25 Q. What did you do to verify the accuracy of

1 Maricopa County's data?

2 A. I relied on the data that was reported by the
3 County.

4 Q. So you did nothing to verify the accuracy of that
5 data, correct?

6 A. That's correct.

7 Q. Is it fair to say that there -- that wait lines
8 at various vote centers could vary in the rate of
9 movement?

11:55:28 10 A. I'm sorry. Can you ask that again?

11 Q. So you can have varying rates of movement within
12 wait lines at different vote centers locations, correct?

13 A. I'm not quite sure I understand what you mean by
14 rates of movement.

15 Q. Well, the length of time it takes to get through
16 the line.

17 A. So that can vary, yes.

18 Q. Okay. And that can vary for many reasons,
19 correct?

11:55:59 20 A. That's correct.

21 Q. So, for example, if tabulators at one center were
22 down 80 percent of the time compared to another center
23 where the tabulators were down maybe 10 percent of the
24 time, that could cause the wait lines -- wait times to
25 vary, correct?

1 A. That's correct.

2 Q. And so a variance in wait times wouldn't
3 necessarily just be because of some supposed issues with
4 self-reporting, correct?

5 A. It's possible, yes.

6 Q. You had some -- you had some questions about the
7 2.5 percent that Mr. Baris referred to in terms of the
8 projected increase in overall turnout.

9 Do you recall that?

11:56:52 10 A. Well, it wasn't a projected increase, it was a
11 hypothetical increase, but yes.

12 Q. Are you aware that the County in their 2022
13 General Election Plan made two forecasting models for
14 turnout on Election Day?

15 A. Yes.

16 Q. Okay. And are you aware that the one model
17 projected around, I think, 290,000 as the turnout on
18 Election Day?

19 A. Yes.

11:57:17 20 Q. And are you aware that the other model projected
21 somewhere around, I think, 250,000 on Election Day?

22 A. Yes.

23 Q. What's the -- that's about roughly a 40,000 voter
24 difference, correct?

25 A. That's correct.

1 Q. 290 minus 250? What's the percentage on the
2 overall turnout of that 40,000 delta, approximately?

3 A. So you're asking what's 40,000 divided by total
4 turnout in Maricopa County?

5 Q. Yes, for 2022.

6 A. I -- I -- I try and do the math in my head. It
7 looks like it's about 3 percent maybe, a little bit less
8 than 3 percent.

9 Q. Okay. So Maricopa's own projections showed a
11:58:17 10 delta of approximately 40,000 voters as having about
11 2.5, 3-percent impact on overall turnout, correct?

12 A. Well, you're talking about two probabilistic
13 forecasts; but, yes, the difference is about 40,000
14 between those two forecasts.

15 Q. You testified that it's speculative --
16 speculative to think that Republicans would be
17 disproportionately affected by increased wait times and
18 what -- even Supervisor Gates referred to as chaos on
19 Election Day. Is that your testimony?

11:59:03 20 A. I'm not sure that that was my testimony. I don't
21 -- I don't think I said that when I was testifying.

22 Q. Well, did you testify that it was speculative
23 that Republican turnout on Election Day would be
24 affected disproportionately by issues arising on
25 Election Day?

1 A. With respect to turnout, yes. That's
2 speculative.

3 Q. Okay. Would you agree that Republicans' turnout
4 on Election Day for the 2022 General Election in
5 Maricopa at, at least, a three-to-one ratio compared to
6 Democrats?

7 A. Well, I would -- I would phrase it differently
8 that of those who turn out on Election Day, those are
9 more likely to be Republicans. I'm not sure if the
10 breakdown in their vote was three-to-one, but...

12:00:06

11 Q. So you don't know what the ratio is?

12 A. Well, you could look at it with the -- what the
13 vote actually was.

14 Q. Um-hum. Do you know what the vote actually was,
15 the ratio, between Republicans and Democrats on Election
16 Day?

17 A. Specifically with regard to Election Day turnout,
18 I think it was in the range 70 percent, but I'm not
19 certain what the precise figure is.

12:00:36

20 Q. So 70 percent favoring Republicans to Democrats?

21 A. Well, in terms of the vote.

22 Q. You gave some testimony about the reconciliation
23 procedure for check-in versus voting. Do you recall
24 that?

25 A. Yes.

1 Q. Would that data include voters who simply looked
2 on TV and saw a long line or heard reports on social
3 media about long lines and decided not to go and vote,
4 or would it include that data?

5 A. It would not include -- it would not include
6 that.

7 MR. OLSEN: Thank you. I have no further
8 questions.

9 THE COURT: Redirect?

12:01:36 10 MS. MADDURI: No redirect, Your Honor.

11 THE COURT: Okay. Could we excuse the
12 witness then?

13 MS. MADDURI: Yes, Your Honor.

14 THE COURT: Thank you.

15 Thank you, Dr. Mayer, that will conclude
16 your participation. You're excused, sir.

17 THE WITNESS: Thank you, Your Honor.

18 (Witness excused.)

19 THE COURT: Okay. All right. We'll take
12:02:00 20 the noon recess until 1 o'clock. We'll resume at that
21 time.

22 (Recess taken, 12:02 p.m.)

23 (Proceedings resume, 1:01 p.m.)

24 THE COURT: All right. This is
25 CV2022-095403. This is Lake v. Hobbs, et al. Present,

1 for the record, are the parties or their representatives
2 and their respective counsel. I believe we are
3 proceeding with the presentation of Defendants' case.
4 Your next witness would be?

5 MS. HARTMAN-TELLEZ: Your Honor, our next
6 witness is Rey Valenzuela.

7 THE COURT: Thank you.

8 MR. LIDDY: Your Honor, as we get started,
9 can we get a time check? I've got our calculation, but
10 I just want to know where we are.

11 THE COURT: Tell me what you've got.

12 MR. LIDDY: I have 25 minutes remaining for
13 Plaintiffs, 2 hours 24 minutes remaining for Defendants
14 combined.

15 THE COURT: Okay. Where does that stack up
16 with your count?

17 MR. OLSEN: Your Honor, we have 33 minutes
18 remaining.

19 THE COURT: Okay.

20 MR. OLSEN: This may be how we're
21 calculating objections.

22 MR. LIDDY: We don't want to dispute,
23 whatever the Court wants to do.

24 THE COURT: Thirty-three minutes is fine.
25 Okay. Mr. Valenzuela, if you'll step over here, raise

1 your right hand to be sworn.

2 REYNALDO VALENZUELA,
3 called as a witness, having been duly sworn, testified
4 as follows:

5 THE COURT: Please proceed as soon as you're
6 ready.

7 DIRECT EXAMINATION

8 BY MS. HARTMAN-TELLEZ:

9 Q. Good afternoon, Mr. Valenzuela. Can you please
10 state your name for the record?

11 A. Reynaldo Valenzuela.

12 Q. Can you describe your current employment, please?

13 A. I am the Co-Elections Director of Maricopa County
14 Elections Department overseeing early voting and
15 election services.

16 Q. Did you have other positions with the Maricopa
17 County Elections Department before you became the
18 Co-Election Director?

19 A. Approximately six years ago, I was the Elections
13:03:34 20 Director before we the department had gone through --
21 rearranged, and I also worked as Assistant Director For
22 Early Voting in other positions for the last 32 years
23 with Maricopa County Elections.

24 Q. In your role as Co-Elections Director, what are
25 your responsibilities briefly?

1 A. Overseeing primarily the early voting process,
2 all of its departments, as far as special election
3 boards, mail-out bailing, and so on, and also candidate
4 filing campaign finance.

5 Q. Do you hold any professional certifications?

6 A. Yes, I'm a CERA-certified Certified Election
7 Registration Administrator through Elections Center and
8 Auburn University, held that certification for 16 years
9 and renew every four years. I'm also a Certified
13:04:18 10 Election Officer through the Arizona Secretary of State,
11 and I've held that certification for 30 years, and it's
12 renewed every two years.

13 Q. Does Maricopa County's process for receiving and
14 processing early ballot packets come within your
15 responsibilities?

16 A. It is under my purview.

17 Q. And you may note that I just said early ballot
18 packets. Can you explain why you call them packets and
19 not ballots?

13:04:47 20 A. Absolutely. So in our department, the Early
21 Voting Department, we actually -- that is our preferred
22 term because I know a lot of folks, as far as lay folks,
23 would say that ballot was inserted in the drop box, that
24 ballot. And, in fact, it's not the ballot, it's the
25 packet that has to undergo scrutiny, verification and

1 validation. So our department, the Early Voting
2 Department, calls them packets because that's exactly
3 what they are until they undergo that verification
4 process to become a ballot that could be tabulated.

5 Q. So at the front end, how does a voter get an
6 early ballot in the mail?

7 A. So there's multiple ways a voter can get,
8 obviously, they can get it by requesting it by mail.
9 They can get it early in person. They can also get it
10 Election Day, and there is that process, again, by which
11 we -- the mail process is probably the predominant
12 process that most get early ballots.

13 Q. And when a voter receives a ballot by mail, how
14 do you know that that's going to a registered voter?

15 A. Well, early voting is reliant on the voter
16 registration. Voter registration is a vetted process
17 where the registered voter is verified through multiple
18 statewide database that says that we check it against
19 motor vehicles, we check it against INS, we check it
20 against SSN, vital statistics, all those things to come
21 back. Once that voter is put on the registration roles,
22 we verify their address through sending them a
23 return-service-requested registration card.

24 But why I mention that is because then that
25 vetted voter is put in eligible for early ballot, which

1 is then created utilizing that record, and a specific,
2 unique Piece ID that is created for every election for
3 that particular voter for that early ballot pack.

4 Q. And does that Piece ID appear on the affidavit
5 envelope in which a person would return an early ballot
6 to the County?

7 A. It does.

8 Q. What are the different ways that the County gets
9 early ballots from voters?

13:06:49 10 A. So...

11 Q. Ballot packets?

12 A. Ballot packets, yes. So the ballot packet,
13 itself, can be dropped off at one of our drop box
14 locations, whether it's standalone drop box, which we
15 have two. One here in Mesa, one in our MCTEC facility.
16 Can drop it off on Election Day or in person at any time
17 during the early voting in-person period, or can return
18 it by mail.

19 THE COURT: Before you ask the next
13:07:11 20 question, I just noticed you speak quickly, Mr.
21 Valenzuela. That may be a little bit difficult for the
22 court reporter to follow. If you could just slow down
23 slightly, sir.

24 THE WITNESS: Yes, sir.

25 BY MS. HARTMAN-TELLEZ:

1 Q. Mr. Valenzuela, you just mentioned one of the
2 ways that voters can return early ballot packets is by
3 delivering them to vote centers or drop boxes. If they
4 -- how do those ballots that have been delivered to a
5 drop box or vote center during early voting, how do
6 those -- how does the County get those back to the
7 central count facility?

8 A. So we do have a courier process by which we
9 assign two individuals of bipartisan, differing parties,
10 a Dem and a Rep, specifically. And those individuals
11 will visit the site, whether it be a standalone drop
12 box, a city clerk that is assigned to be a drop box
13 only, and/or an early voting in-person site. And those
14 couriers would present themselves, they would -- those
15 bipartisan couriers to the clerk, city town clerk, or
16 the inspector at the polling place or vote center, and
17 that -- they would begin that process of emptying that
18 sealed blue box that is present for collection of that
19 -- of those ballots or packets.

20 Q. Okay. And you said -- when you say emptying
21 those boxes, that's emptying them at the site, the early
22 voting site, or at the drop box?

23 A. That is correct. So they would -- they would --
24 if they have a process by which, and I can delineate it
25 as short as possible, or -- but it is a secure process

1 where they are filling out logs, a ballot, Early Voting
2 Ballot Transfer Receipt that is documenting seals,
3 documenting the transfer of those into a secured cage
4 that is sealed and brought back to our MCTEC facility.

5 MS. HARTMAN-TELLEZ: And if we could bring
6 up Exhibit 20.

7 BY MS. HARTMAN-TELLEZ:

8 Q. It seems like you may have anticipated my
9 question. Is this document what you've just described
10 as the Early Voting Transport Statement?

11 A. It is.

12 Q. And do these statements contain information about
13 how many ballot packets the County received from the
14 vote center or drop box?

15 A. It does, but it is an after receipt at MCTEC; but
16 it does, indeed, have that in the Transport Receipt
17 Section.

18 Q. Towards the bottom of that document?

19 A. Correct.

20 Q. Where it says, Count of Ballots in Transport Bin?

21 A. Correct.

22 MS. HARTMAN-TELLEZ: At this time, Your
23 Honor, I would move to admit Exhibit 20.

24 THE COURT: Any objection?

25 MR. BLEHM: No objection, Your Honor.

1 THE COURT: 20 is admitted.

2 BY MS. HARTMAN-TELLEZ:

3 Q. So I think we've gotten to the point where
4 ballots, early ballots, come back to central count
5 facility at the County. Where do they go next?

6 A. So they go -- this top part of the receipt, and
7 actually very clear is at location is where they are,
8 basically, just transferring those packets into a secure
9 bin, sealing that, come to our MCTEC facility. Then we
10 have two representatives, auditor boards, that are,
11 again, made up of differing parties, a Dem and a Rep,
12 that will take that and open that box and confirm and
13 document on this bottom section, this Transport Receipt,
14 all the seals that were removed, brought back to from
15 the original blue box, the new seals, or the red-box
16 seals, and also the new seals put on the box that we
17 just left.

18 It also will begin a process -- because they are
19 a smaller quantity, we do have a counting machine that
20 we can run those packets through, and we will then
21 process those, and not shown here, but is an audit slip
22 that we document how many of each packet we have
23 received. There are three different types of packets:
24 an in-person counter packet, which is a white envelope;
25 a mail ballot, which an individual we mailed it and they

1 opted to deliver it, so it's a green envelope; and then
2 we have voters that may have cast a provisional ballot.
3 So there are three envelopes. They will take those
4 bins, they will count those. They will document on
5 there, count a balance and transform bin, and they will
6 ready them to then be co-mingled with several other
7 boxes brought in, and seal that for transport to the --
8 for an inbound scan process at Runbeck.

13:11:57 9 Q. And just briefly you just mentioned the different
10 colors of envelopes. On this form next to the line
11 where it says Count of Ballots where it says 107G/31W,
12 what does that mean?

13 A. That would mean the 107 green affidavits, which
14 would indicate mail ballots returned, and 31 white,
15 which would mean in-person early voters that still --
16 because there is to tabulator there -- still follow the
17 envelope process or packet.

18 Q. Okay. So you've also mentioned receiving ballots
19 by mail. How does the County take possession of ballots
13:12:31 20 that are mailed back?

21 A. So the County has with the United States Postal
22 Service an arrangement that they do not deliver to us,
23 we actually must physically be present at their main
24 processing distribution center and have access, list of
25 individuals from our offices that would be eligible for

1 that secure facility entry. And so we pick those up
2 again with two individuals, a differing party, and they
3 have those individuals' names on file, and they must
4 show badges, and we collect those directly from the
5 United States Postal Service.

6 Q. And when the County employees at -- pick up the
7 ballots from the United States Postal Service, how are
8 they packaged?

9 A. So like all mail that goes to that distribution,
10 millions of pieces that go through, including mail
11 packets, they are trayed and sleeved and caged. So when
12 we come, there's a postal receipt that is an estimate of
13 tray counts and totals within that tray, and so they are
14 delivered to us at the dock in those cages, trayed. And
15 approximately 30 trays per cage, so we have two cages,
16 we could have 60 trays with X amount of packets within
17 them.

18 Q. And what do the County employees -- where do they
19 go next with those ballots when they leave the United
20 States Postal Service facility on 48th and Washington?

21 A. So those two couriers, or pickup individuals,
22 will go straight to Runbeck with that particular day's
23 mail, whether it's several trays or several cages,
24 depending on, you know, the turnout on that given day,
25 and we then check in and transfer that. We complete a

1 delivery receipt with Runbeck with -- and transfer that
2 -- those cages into their custody with our County
3 Protective Services there onsite, but they are taken to
4 Runbeck and transferred custody with chain-of-custody
5 documentation.

6 Q. So in this -- at this point in the early ballot
7 process, what services is Runbeck providing to the
8 County when you drop those ballots off, ballot packets?

13:14:47 9 A. So those packets, themselves, they undergo what
10 is called an inbound scan, and what that inbound scan's
11 purpose is, three things, is to: One, take an image of
12 that packet so that we have an actual image to utilize
13 for signature verification instead of farming those
14 physical packets around for signature review. So image
15 of the packet, number 1; two, they do a count, an actual
16 detailed count of those packets in that cage to report
17 back; and three, they are -- they're also identifying
18 and validating that it is an actual packet that we
19 created utilizing that Piece ID. That unique Piece ID
13:15:26 20 tied to that voter that is specific to that election and
21 created by us, and in our system for the voter.

22 Q. Thank you. And let me step back for a moment.
23 Well, I think I needed to go one step back in the
24 process to cover something else.

25 Can you bring up Exhibit 82, please? So I think

1 you mentioned that the ballots from the postal service
2 come sleeved and trayed and in cages.

3 Do you recognize this document that's up on the
4 screen right now?

5 A. I do.

6 Q. And can you tell us what that is?

13:16:14 7 A. It is, as I mentioned, the process is called
8 inbound scan. It's -- this is our Maricopa County
9 inbound receipt of delivery document that when we show
10 up at Runbeck that we are, basically, transferring that
11 custody, but also it's the results of that scan or the
12 results of that estimate. Example is showing here, 84
13 trays at 600 per -- or 400 per tray, and so on, then it
14 tells you the quantity, estimated quantity based on that
15 -- that receipt, in addition to we may have regular
16 MOBs, which is a mail-out ballot, that we're bringing
17 because we've adjudicated or we cured one, and so on.

18 So for this particular day, we had one tray of
19 599 regular MOBs and one tray of 13 what we call need
13:16:55 20 packets, and that's a disposition that should we have
21 reviewed it and we can't make an absolute final
22 determination, we need the packet -- very simple, we are
23 very creative -- need the packet back so we can have the
24 physical packet to do follow-up with the voter or on the
25 packet itself.

1 Q. So we've mentioned that there are estimates when
2 you receive the ballots from the USPS. Do you get an
3 exact count of the ballots, the USPS ballots, that are
4 delivered to Runbeck when they scan them?

5 A. Exactly. That is exactly the process, because it
6 could be upwards of ten, hundreds of thousands, that we
7 can't count them at the dock, so we accept the tray
8 count, the estimated weight count, as the post office
9 provides to all vendors that pick up, and we take it to
10 that next detail inbound scan count to get the exact
11 amount.

12 Q. Let's briefly talk about signature verification.
13 I don't want to get into the details of the process, but
14 why does the Recorder do signature verification of Early
15 Ballot Affidavit envelopes?

16 A. It is part of the process by which to prove
17 identity. So, obviously, Arizona has a proof of
18 identity. You go in person, you would provide photo ID.
19 For a mail ballot, we don't request that you send your
20 driver's license in, so that proof of identification is
21 done through the signature verification on signature
22 exemplars on file, vetted signature exemplars,
23 registration form, multiple registration forms, that you
24 may have on file. Also, past signature rosters. Maybe
25 you're not an early voter, but you voted in person, we

1 have all of those signature rosters and signatures, in
2 addition to past EV affidavit, vetted EV affidavit
3 signatures.

4 As an example, I, myself, when we train, I have
5 close to 32 different exemplars from all the times I
6 voted and/or registration forms.

7 Q. And just for the sake of clarity on the record,
8 when you say EV affidavit, what does that mean?

9 A. EV affidavit is the packet that we speak of. It
10 is the packet that has the attestation, and it has that
11 I am who I am, and it has our unique Piece ID printed
12 and the voter's information.

13 Q. And EV stands for?

14 A. Early voting.

15 Q. And it's what the general public commonly knows
16 as the envelope?

17 A. The green envelope, if they get it by mail.

18 Q. Does every early ballot that the County
19 eventually tabulates go through the signature
20 verification process?

21 A. One hundred percent. They cannot make it to the
22 next phase. There's multiple bipartisan phases in
23 between. They can't make it to the processing phase
24 made up of bipartisan boards who are auditing that tray
25 report that says, we made these good; we made these bad;

1 we made these need packet, whatever it may be, but the
2 basics to get to tabulation must be signature verified.

3 MS. HARTMAN-TELLEZ: And I have a piece of
4 housekeeping I think I did not attempt to -- I did not
5 ask to move the admission of Exhibit 82, Your Honor. I
6 would at this time move admission of that exhibit.

7 MR. BLEHM: No objection, Your Honor.

8 THE COURT: 82 is admitted.

9 BY MS. HARTMAN-TELLEZ:

13:20:21 10 Q. Has the County ever authorized Runbeck to allow
11 its employees to deliver their own early ballot packets
12 directly to Runbeck?

13 A. No.

14 Q. And are you aware of Runbeck allowing its
15 employees to do so in the past?

16 A. No.

17 MS. HARTMAN-TELLEZ: I have no further
18 questions for this witness. There may be some
19 cross-examination.

13:20:57 20 THE COURT: I was asking you who it would
21 be. You've answered my question. Mr. Blehm, cross.

22 MR. BLEHM: I'm sorry, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. BLEHM:

25 Q. Mr. Valenzuela, isn't it that true that no

1 Maricopa County employees operate Runbeck equipment?

2 A. Correct.

3 Q. Okay. So isn't it true then that you farm out
4 the counting of ballots to Runbeck on Election Day?

5 A. We do not.

6 Q. You do not?

7 A. We do not count ballots, counting ballot -- count
8 packets.

9 Q. I think you just said you accept the mail, the
10 U.S. Postal Service's weight receipt?
13:21:31

11 A. We accept -- we don't utilize that for a final
12 count.

13 Q. You rely on Runbeck to run these through their
14 machine and give you a count; isn't that correct?

15 A. That is correct, of the packets.

16 Q. Okay. And the County does not run or operate
17 Runbeck?

18 A. It is a certified vendor that we contract with.

19 Q. Okay. And Exhibit 80, that's just an inbound
20 receipt of estimates; is that correct?
13:21:57

21 A. I'm sorry, you had turned.

22 Q. The inbound receipt of estimates, that's just an
23 estimate, correct, Exhibit 80?

24 A. For the USPS packets.

25 Q. Who created Exhibit 80?

1 THE COURT: Hold on.

2 MS. HARTMAN-TELLEZ: Objection. I think Mr.
3 Blehm has -- is citing the wrong exhibit number.

4 MR. BLEHM: Oh, I'm sorry. The inbound
5 receipt, the last one that was received.

6 MS. HARTMAN-TELLEZ: 82.

7 THE COURT: 82.

8 BY MR. BLEHM:

9 Q. 82, who created that document?

13:22:25 10 A. The format of the document?

11 Q. Who made the document? Who signs the document?

12 A. Signs the document it's shared between Runbeck
13 and a County employee, that courier.

14 Q. It shows, does it not, that you are turning over
15 ballots to Runbeck, correct?

16 A. We are turning packets over.

17 Q. Packets. You have no idea exactly how many
18 you're turning over, correct?

19 A. We don't. We have an estimate, but we don't --
13:22:49 20 we rely on that count, the certified vendor, to do
21 that --

22 Q. Why do we use -- why do we use chain-of-custody
23 documents that show the details of how many ballots we
24 have?

25 MS. HARTMAN-TELLEZ: Objection.

1 BY MR. BLEHM:

2 Q. When you count ballots, you put them on a
3 chain-of-custody form, is that correct, during the EVBTS
4 process?

5 MS. HARTMAN-TELLEZ: Objection. He's
6 calling for speculation. Lack of foundation.

7 MR. BLEHM: Speculation?

8 THE COURT: Hold on. Let me rule.

9 MR. BLEHM: I was just going to ask a
10 different question, Your Honor.

11 THE COURT: Okay. Withdrawn?

12 BY MR. BLEHM:

13 Q. EVBTS documents that you just testified about and
14 we just admitted into evidence, those contain counts, do
15 they not --

16 A. They do.

17 Q. -- of the number of ballots that were brought
18 back?

19 A. Some --

13:23:32 20 Q. Why do we do that?

21 A. Of the number of ballots are delivered and number
22 estimated, in some cases.

23 Q. Why do we do that?

24 A. Why do we provide that?

25 Q. Yes.

1 A. So that we have a basis to reconcile to some
2 agree.

3 Q. Isn't it so we know exactly how many ballots were
4 injected into the system at each point in the process?

5 A. It is not, because we don't have that at the post
6 office level.

7 Q. As you've sat here, you just testified --

8 THE COURT: Hold on. Wait a second. Just a
9 second. Let him finish answering. We only have one
10 person speaking at a time, please. Okay. For the sake
11 of my court reporter, okay? The record will look -- if
12 you've ever read a transcript it has a bunch of dashes
13 when people talk over themselves or each other. So,
14 please. Thank you.

15 BY MR. BLEHM:

16 Q. Mr. Valenzuela, you had absolutely no idea that
17 Runbeck employees were allowed to inject ballots into
18 the system; isn't that correct?

19 A. I do not. I did not.

13:24:37 20 Q. You had no idea. And isn't it true that you had
21 no idea because you do not keep adequate documentation
22 with regards to the number of ballots you receive on
23 Election Day and give to Runbeck, yes or no. It's a
24 simple question.

25 MS. HARTMAN-TELLEZ: Objection, Your Honor.

1 THE COURT: Objection to what?

2 MS. HARTMAN-TELLEZ: Foundation. Mr.
3 Valenzuela has not testified to -- regarding Election
4 Day.

5 THE COURT: If he's able to answer the
6 question, I'm going to let him answer. If he doesn't
7 understand it, I'll have Mr. Blehm rephrase it. If you
8 can answer the question, sir, do so; if you cannot, tell
9 us.

13:25:13 10 THE WITNESS: Repeat, if you will.

11 BY MR. BLEHM:

12 Q. So you have no idea how many Election Day ballots
13 are transported to Runbeck because you do not document
14 exactly how many ballots are transported to Runbeck;
15 isn't that correct?

16 A. For the United States Postal Service pickup, we
17 do not receive a finite number, so we do not know that
18 number when we deliver to Runbeck.

19 Q. Drop box ballots, does the same apply?

13:25:35 20 A. It does not. We do know that because it is small
21 quantity where we have a counter that we can count 100
22 ballots, 1,000 ballots, but not 290 through this
23 counter.

24 Q. Do you know the exact number?

25 A. Exact number of --

1 Q. Ballots, ballot packets, drop box ballot packets?

2 A. We do -- we do, part of our audit review is we do
3 count the drop box ballot packets because they are
4 outside of the purview, whereas a federal post office,
5 they don't leave chain of custody from the federal post
6 office once we pick them up; but the ballot boxes, we do
7 make that count.

8 Q. On Election Day?

9 A. On Election Day, no, because we're not doing drop
10 box courier process at that time. It's a different
11 process for Election Day.

12 MR. BLEHM: Thank you, Your Honor. Hold on.

13 BY MR. BLEHM:

14 Q. Would you, by chance, happen to know how many
15 exact ballots were Door 3 ballots? Was it 17,000?

16 A. I wouldn't speak exactly to it. That would be
17 under the purview --

18 Q. Do you know how many thousands of duplicated
19 ballots there were?

13:26:49 20 A. I don't have that number to speak definitively.

21 Q. Do you know how many spoiled ballots there were?

22 A. I do not.

23 Q. Okay. Do you know how many ballots were rejected
24 and not put in Door 3, spoiled, duplicated or otherwise?

25 A. I have an estimate, but that's not under my

1 purview as Early Voting.

2 Q. What's your estimate?

3 A. For the --

4 Q. Okay. My question again, very quickly, Mr.
5 Valenzuela, how many ballots rejected and not put in
6 Door 3, spoiled or duplicated?

7 A. That I don't know. I just know of the 17,000
8 number, which is a total of unread, but not broken down.

9 MR. BLEHM: Thank you, Your Honor. No
10 further questions.

11 THE COURT: Thank you. Redirect?

12 MS. HARTMAN-TELLEZ: Briefly, Your Honor.

13 REDIRECT EXAMINATION

14 BY MS. HARTMAN-TELLEZ:

15 Q. Mr. Valenzuela, are Election Day operations and
16 tabulation under your responsibility?

17 A. They are not.

18 Q. And whose responsibility is over those two items?

19 A. My Co-Director of Elections, Mr. Scott Jarrett.

13:28:01 20 MS. HARTMAN-TELLEZ: Thank you. I have no
21 further questions.

22 THE COURT: Okay. May the witness be
23 excused?

24 MR. BLEHM: Yes, Your Honor.

25 MS. HARTMAN-TELLEZ: Yes, Your Honor.

1 THE COURT: Thank you, Mr. Valenzuela.

2 You're excused, sir.

3 (Witness excused.)

4 THE COURT: County's next witness, please.

5 MS. HARTMAN-TELLEZ: Your Honor, we call

6 Scott Jarrett.

7 THE COURT: Go ahead and take the stand.

8 (Witness previously sworn.)

9 THE COURT: Mr. Jarrett, you remain under

13:28:49 10 oath from your previous appearance. Do you understand

11 that, sir?

12 THE WITNESS: Yes, I do, Your Honor.

13 THE COURT: Thank you. You may proceed,

14 Counsel.

15 DIRECT EXAMINATION

16 BY MS. CRAIGER:

17 Q. Good afternoon, Mr. Jarrett. Could you please
18 state your name?

19 A. Yeah, Robert Scott Jarrett.

13:29:01 20 Q. And where do you currently work, Mr. Jarrett?

21 A. I work for the Maricopa County Elections
22 Department.

23 Q. What is your current position?

24 A. So I am the Co-Director of the Elections

25 Department. I oversee in-person voting and tabulation

1 operations.

2 Q. How long have you held this position?

3 A. I was appointed by the Board of Supervisors in
4 2019.

5 Q. And could you just briefly describe your job
6 duties in that position?

7 A. Yes. So I oversee all in-person voting
8 operations, so that includes early in-person voting that
9 I report up to the Maricopa County Recorder for, that
10 does include drop boxes.

11 I also then oversee in-person voting on Election
12 Day, as well as -- so that will be all the recruiting
13 and training of poll workers, recruiting of temporary
14 staff that work at MCTEC or the Maricopa County
15 Elections and Tabulations Center; and then I would also
16 oversee warehouse operations then all tabulation
17 functions, including at the central count facility as
18 well as at the voting locations.

19 Q. And what's your educational background?

20 A. So I have a Bachelor's Degree in Accounting from
21 the Arizona State University.

22 Q. What did you do before you were the Co-Elections
23 Director?

24 A. So I was an internal auditor with Maricopa County
25 and then also had some time with the Maricopa County

1 Community College District auditing performance,
2 auditing risk management, risk mitigation, as well as
3 compliance audits.

4 Q. So we're just going to generally discuss how
5 elections are conducted in Maricopa County on Election
6 Day.

7 To start, what was the total voter turnout in
8 Maricopa County for the 2022 General Election?

9 A. So voter turnout was 64 percent or 1,562,000
10 voters, or approximately there.

11 Q. And how did that compare to previous midterm
12 elections?

13 A. So it was one of the higher percentages. If you
14 go back for several decades, all the way back to the
15 '70s, it was actually the second highest as far as voter
16 turnout; 2018 only exceeded it by a small percentage.
17 And then even more recently, the three -- the average of
18 the three midterm elections was about 54 percent, so
19 that would be 2018, 2014, and then 2010. So turnout in
20 2022 was about 10 percentage points higher.

21 Q. So we've talked about vote centers. Just briefly
22 explain how the vote center model works?

23 A. Yes. So a vote center model works is it allows a
24 voter to vote at any location that Maricopa County is
25 offering. We offer 223 vote centers in the 2022 August

1 -- or, sorry -- November General Election. That was an
2 increase over the August Primary, which we had 200 --
3 210, so -- and it was also an increase over 2020, which
4 we had 175 vote centers.

5 So we're able to offer that option through our
6 site book check-in station. So that will confirm if a
7 voter is registered, confirm that they have not voted
8 previously, and then it will allow us, in conjunction
9 with our ballot on-demand technology, our printers, to
10 print that specific ballot for that voter. Maricopa
11 County had over 12,000 different ballot styles, so we
12 cannot offer a vote center model without that ballot
13 on-demand technology.

14 Q. So, thank you. How does the Elections
15 Department -- well, actually, what's the average
16 distance between vote centers? What was the average
17 distance in the 2022 general?

18 A. So we perform that calculation actually based off
19 the August Primary where we had 210 vote centers, and
20 that average distance was just under two miles per vote
21 center, 1.98. We did add then those 13 additional vote
22 centers for the General Election, so that actually
23 distance would be smaller, but I don't have that
24 specific calculation.

25 Q. Okay. So on Election Day when people are voting,

1 and at times waiting in line to vote at certain vote
2 centers, how does the Elections Department communicate
3 with the public about the wait times that are at the
4 various vote centers?

5 A. So when we're tracking this information through
6 our site books, our poll workers are going, gathering
7 the number of voters in line, and they will go count all
8 the way until the end of those lines. They report that
9 back to us through that site book. Then we post that
10 information onto our website that is updated about every
11 15 minutes from every one of our voting locations, so
12 voters will know when they are attempting or driving to
13 a voting location, what is that wait time at that
14 location. We advertise that through -- we have many
15 different press conferences leading up to the election
16 informing voters to use that website. All in-person
17 voters are also provided a sample ballot, and on that
18 sample ballot, it directs voters. It provides their
19 closest location, but also they could go to locations at
20 maricopa.vote website to identify what are all their
21 voting options, and in-person voting locations.

22 Q. So based on Maricopa County's calculations, which
23 -- well, let's start with you heard Dr. Mayer's
24 testimony earlier today regarding his analysis of wait
25 times; is that right?

1 A. That's correct.

2 Q. And did you agree with his description of the way
3 that Maricopa County makes that calculation?

4 A. So we make our calculation based off of how many
5 voters are in line and how quickly they are able to
6 check in to those voting locations, so that is how long
7 it's taking them, from the end of the line, to be able
8 to check in to then receive their ballot; and that's
9 based off historical knowledge, as well as the
10 throughput, how many voters are getting through and
11 checking in at a site book.

12 Q. And I think you heard -- or I recall Dr. Mayer
13 testifying about people's perceptions sometimes being
14 incorrect about the length of time. What are some of
15 the things that you've observed or experienced impacting
16 that perception or misperception, perhaps?

17 A. Yeah, I think when someone is making an estimate
18 about how long they've waited in line, they may be
19 making that off of when they arrived. They parked at
20 the voting location, right, whether they've then stood
21 in line, right, to be checked in at the voting location,
22 how long it took them to get their ballot, but also then
23 how long it would take them to actually vote their
24 ballot. And that can vary greatly, right? So some
25 voters we had in Maricopa County, one of the longest

1 ballots ever, on average over 85 contests. So some
2 voters come in very, very prepared, right? They may
3 even bring a sample ballot with them, and that can help
4 them expedite and fill out that ballot much more
5 quickly. Some voters may come in and they'll see the
6 contest and they only want to vote a few, so that might
7 only take them a minute, or fewer, to even complete that
8 ballot. But then some voters, and this is in -- we
9 allow this, we encourage voters to be able to do this,
10 we want them to be informed. So they will go get a
11 publicity pamphlet and they may investigate and read all
12 the different information about each individual contest
13 and then make their decisions in that voting booth. For
14 example, one day in early voting, we had a voter show
15 up, our voting location closed at 5:00, they showed up
16 at about shortly before 4:00 p.m., and that voter didn't
17 end up leaving the voting booth until close to 7:00 p.m.

18 So they did not wait in any line to check in,
19 they did not wait in any line to get their ballot
20 printed out on ballot on-demand printer, but they spent
21 several hours in the voting booth completing their
22 ballot then put that into an affidavit envelope to be
23 returned to the Elections Department. So when voters
24 calculate the time that they spent voting, it's all
25 based on some of their choices, their own choices that

1 they make, and how long they are going to complete their
2 ballot, or whether they are going to put their ballot
3 into a tabulator or drop it into Door Number 3, a secure
4 ballot box.

5 Q. So based on the County's analysis, what were the
6 longest wait times on Election Day?

7 A. So we had at about 16 locations wait times
8 approaching about two hours or between 90 minutes and
9 two hours, and that was not for the entire day, that was
10 intermittent; some of those were towards the end of the
11 day. But in every one of those instances, we have
12 locations that were close by where a voter could be able
13 to choose a different option to be able to drive to, and
14 some of those cases it was less than one minute wait
15 times.

16 Q. And just to reiterate earlier, that's all
17 communicated and publicly available to the public on the
18 County's websites?

19 A. That's correct. They could sort on our website
20 not only by entering in their address, they can sort by
21 wait times as well. And we had more than 85 percent of
22 our voting locations on Election Day never had a wait
23 time in excess of 45 minutes, and it was, I believe, it
24 was over 160 locations, never had a wait time over
25 30 minutes.

1 Q. So this -- this information that you just
2 provided, was this part of the analysis that was
3 provided in the report to the Attorney General that was
4 discussed yesterday?

5 A. Yes, that's correct. So I drafted that report.
6 It was based off of all the information that we had, the
7 data that we had in the Maricopa County Elections
8 Department, so every aspect of that. And regarding wait
9 times, it's based off that very systematic approach in
10 how we train voters, or how we train our poll workers to
11 enter that data, based on the number of voters in line.

12 Q. So is it your belief that the information in that
13 report was accurate and correct?

14 A. That's correct, I believe that it was accurate.
15 And what I communicated to the Attorney General through
16 that report, was done with integrity and was accurate.

17 Q. Okay. So let's move on to actually Election Day.
18 And you talked about the ballot on-demand printers and
19 you discussed that more than 12,000 ballot styles
20 Maricopa County has, and that's why those ballot
21 on-demand printers are required, right?

22 A. That's correct.

23 Q. Okay. On Election Day in 2022, were there issues
24 with some of the County's ballot on-demand printers?

25 A. Yes, there were some issues with some of our

1 printers.

2 Q. And can you describe what those issues were?

3 A. So we are in the middle of our root cause
4 analysis still on this, but we have identified a few
5 items that contributed to the printer issues. The first
6 was our -- what we would have our smaller printers, or
7 OKI printer, and that was we had -- it was not printing
8 ballot timing marks on the back of the timing mark dark
9 enough, or some of them were speckled, and that was due
10 to what we identified was the printer settings or the
11 heat settings on the fuser, and we needed to adjust
12 those printer settings to all be consistent at the
13 highest heat setting.

14 Now, we had used these heat settings for prior
15 elections in 2020 as well as the August 2022 Primary,
16 the exact same heat settings. We had gone through
17 stress testing and identified that this was not an issue
18 or was not identified through that testing; but on
19 Election Day, we identified that due to the variants and
20 the number of ballots being printed through, as well as
21 the affidavit envelope, as well as the control slip, we
22 needed to change those heat settings to be consistent
23 for all three types of items being printed from those
24 printers to be at the highest heat setting or the heavy
25 heat setting.

1 A few of the other items that we've
2 identified, though, as far as our ballot on-demand
3 printers, we did identify three different locations that
4 had a fit-to-paper setting that was adjusted on Election
5 Day. So those were at our Journey Church in a north
6 Glendale/Peoria area, that had about 200 or a little
7 over 200 ballots had that setting on it out of about
8 1,500 ballots voted at that voting location. That would
9 be the same with our Gateway Fellowship church, which is
10 an east Mesa voting location. That had about 900
11 ballots out of just shy of 2,000 ballots voted at the
12 voting location. And then we had LDS church, Lakeshore,
13 in the heart of Tempe, that had about 60 ballots out of
14 1,500.

15 So just shy of 1,300 ballots, and that was
16 due to our temporary technicians, when they were trying
17 to identify solutions on Election Day, adjusting a
18 setting -- now this was not direction that we provided
19 from the Maricopa County Elections Department -- but
20 adjusting that setting to a fit-to-paper setting, and
21 that was -- that was one of the vote centers that was
22 reviewed in the inspection by -- by the Plaintiffs in
23 this trial on Monday.

24 Q. So that --

25 A. Or was that Tuesday? I forget the day. I've

1 been working every day through the weekend.

2 Q. So -- so if I'm understanding you, on Election
3 Day, when there was troubleshooting trying to identify
4 this ballot on-demand printer issue, one of the T Techs,
5 or some of the T Techs, adjusted that setting and that
6 impacted some of the ballots that were cast at that --
7 at those three locations; is that right?

8 A. That's correct, and that was a -- not a 19-inch
9 ballot, right? When that happens, it's a 20-inch
10 ballot, a definition of a 20-inch ballot that's loaded
11 on the laptop from -- that is connected to the ballot
12 on-demand printer that gets printed onto then a 20-inch
13 piece of paper; but because of the fit-to-paper setting,
14 that actually shrinks the size of that ballot. And then
15 that ballot would not be tabulated onsite at the voting
16 location and also cannot be -- tabulated onsite at
17 central count.

18 Q. So if it couldn't be tabulated at the voting
19 location and at central count through the regular
20 tabulators, what happened to those ballots?

21 A. So those ballots came back to the central count
22 facility, and then we had hired duplication boards, a
23 bipartisan team, Republicans and Democrats, to duplicate
24 that ballot. So they first affix a marrying number to
25 that ballot, so that would then be able to identify that

1 ballot back to then the ballot that gets duplicated
2 onsite at the Elections Department so it can marry those
3 two up, and all the votes get -- get transferred to the
4 duplicated ballot that gets counted and tabulated.

5 Q. So ultimately all of those ballots were
6 tabulated?

7 A. That's correct.

8 Q. So just to sort of close the loop on this, there
9 were heat settings that had been identified so far in
10 your investigation; there were the T Techs who had
11 changed the fit-to-page setting, and that impacted some
12 of the ballots that were printed on Election Day. Were
13 there any other issues that you discovered at this point
14 that impacted the ability for some tabulators at vote
15 centers to be able to read ballots that were cast on
16 Election Day?

17 A. So there's a few other instances that we've
18 identified. One is the use of a very thin writing
19 utensil, such as a ballpoint pen, and then voters using
20 checkmarks or X's, and that is because our
21 precinct-based tabulators, or vote center tabulators
22 that are onsite, they cannot read an ambiguous mark,
23 right?

24 So if a voter has ambiguous mark on their ballot,
25 the tabulator alerts the voter there is an ambiguous

1 mark, right? And then that voter is given the option to
2 either spoil that ballot and vote a new ballot, or to
3 put that ballot into the secure Door Number 3, the drop
4 box, so then that can then be returned to the Elections
5 Department and duplicated. So we did identify about
6 10 percent of those Door Number 3 ballots were the cause
7 of having an ambiguous mark on the ballot.

8 We also did identify in our Door Number 3 as well
9 some early ballots that were inserted into that, so that
10 was an indication that a voter took the early ballot out
11 of the affidavit envelope, attempted to insert those
12 into the vote center tabulator, which is not unusual.
13 That happens every election. We also identified a few
14 provisional ballots as well. So that's when a voter
15 would be issued a provisional ballot onsite, they take
16 it out of the envelope and then attempt to insert that
17 into the tabulator as well.

18 So our poll workers are trained not to look at
19 the voter's ballot to see how they voted, but they work
20 with the voter to identify, okay, this ballot is not
21 reading, and then if they were issued a provisional, ask
22 them where's your affidavit envelope, you need to insert
23 that into the affidavit envelope. But at that point in
24 time it becomes the voter's choice. Do they want to
25 insert it back into the affidavit envelope, do they want

1 to drop it into Door Number 3?

2 Q. And to be clear, can the onsite -- I think you've
3 testified to this, but just to be clear, can the onsite
4 tabulators read early ballots?

5 A. They cannot read early ballots or provisional
6 ballots, they are specifically programmed not to read
7 those ballots as a control measure to prevent double
8 voting.

9 Q. So we've talked now about the issue that arose.
10 I want to talk a little bit about, sort of, the timing
11 of when you learned that this was happening and the
12 process that the County took to try and identify a
13 resolution that you said was identified. At about what
14 point in the day did you determine -- did you learn that
15 there were some issues with tabulation?

16 A. We received our first call from our first vote
17 centers starting about 6:20 to 6:30. And that point in
18 time, we once we started receiving those calls, we
19 alerted the poll workers to follow their training, which
20 was to -- a couple options -- one was to have those
21 voters and give them the option to drop their ballot
22 into that secure Door Number 3, or drop box, a practice
23 that we've used in Maricopa County since the '90s,
24 right, ever since we first introduced onsite tabulators
25 at those voting locations.

1 Again, voters being able to put their ballots in
2 that secured drop box at -- there's 15 counties in
3 Maricopa County -- eight of them, so if you go to the
4 five largest counts in Arizona, Pima County, slightly
5 Democratic leaning; you look at Pinal County, the third
6 largest, slightly Republican leaning; you look at
7 Yavapai County, again slightly Republican leaning; and
8 Mohave County, all of those don't offer onsite
9 tabulation. They only offer a secure ballot drop box.

13:48:43

10 So we alerted our voters to be able -- or our
11 poll workers, remind voters that they had that option to
12 drop off their ballot in that secure ballot drop box.
13 We also reminded them that they can have those voters
14 spoil that ballot, check in again, get a new ballot.
15 And then we had also implemented a cleaning procedure
16 for this election for our troubleshooters, and so we had
17 some of our troubleshooters start cleaning those
18 precinct-based tabulators, so that was right away at
19 about 6:20 to 6:30 point.

13:49:12

20 We also deployed T Techs, or technicians, out
21 into the field. We had over 90 of them deployed on
22 Election Day, and they started investigating and
23 troubleshooting the issue. So that took us about a
24 couple hours to rule out that it was not a tabulator
25 issue. So at that point in time, those first couple

1 hours, we were -- was it a tabulator issue? Was it a
2 printer issue? We started getting reports back by about
3 8:30 that it was the timing marks on the ballots
4 themselves, that they were not printed dark enough. So
5 at that point in time, we needed to determine why that
6 was, because all of our stress testing at that point in
7 time had never identified this as being an issue.

8 So once we went through and were investigating
9 that, we were working with our print vendor. They had
10 members out in the field deployed as well. We also had
11 members from our tabulation company out in the field
12 investigating as well.

13 So by about 10:15, we identified the solution, or
14 a potential solution, and that was to change those heat
15 settings. At that point in time, we need to replicate
16 it. So then it took us about another hour at several
17 different sites to replicate that that would be the
18 solution on Election Day. Once we had identified that
19 solution between then, I think it was around 11:30 all
20 the way through 7:00 p.m., which that's the time that's
21 referenced in the Attorney General's report, the
22 7:00 p.m. timeline, we were making -- and going out and
23 changing those heat settings on those tabulators.

24 Q. So just to take a step back. Some of the vote
25 centers at Maricopa County are also early voting

1 locations; is that right?

2 A. That's correct. We use a phased-in opening
3 approach for our vote centers.

4 Q. So why is it that this issue with the ballot
5 on-demand printers wouldn't have been discovered through
6 the early voting process?

7 A. Well, because we didn't have any onsite
8 tabulators at any of our early voting locations. So all
9 of the timing -- the timing marks that were printed, so
10 the lighter timing marks, all of those were able to
11 actually be read through our central count tabulation
12 equipment. So during early voting, a voter puts in
13 their ballot into an affidavit envelope and brings it
14 back to central count. Those get then run through our
15 central count tabulation equipment. So those were
16 running fine, we had no issues.

17 So only ones, actually, that weren't running
18 through our central count or our tabulator were the ones
19 that were the fit-to-page setting for those printers,
20 and none of those were occurring during early voting as
21 well.

22 Q. So, Mr. Jarrett, do you have any reason to
23 believe that the issues that occurred on Election Day
24 was some ballot on-demand prints was caused by
25 intentional misconduct?

1 A. I have no knowledge or no reason to believe that.

2 Q. Okay. We're going to switch gears a little and
3 talk about chain-of-custody documents.

4 So you heard Mr. Valenzuela talking about the
5 Early Ballot Transport Statements. You're familiar with
6 those documents, correct?

7 A. That's correct, because I oversee the in-person
8 voting operations.

9 Q. And what are -- just to reiterate, what are those
10 documents used for?
13:52:26

11 A. So those are used by our bipartisan courier teams
12 to go out to vote centers and drop boxes used during
13 early voting, the early voting period all the way up
14 until the day before Election Day, to retrieve early
15 ballots that are in that affidavit envelope, and to
16 document how they are transferred from those vote
17 centers back to the central count tabulation center. So
18 documents all the tamper-evident seals, who those
19 individuals were, as well as once they get back to the
13:52:58 20 central count facility the count of the number of early
21 ballots that were transported.

22 Q. So then that gets us to the day before Election
23 Day, right? Let's talk about Election Day and the
24 chain-of-custody documents that are used on Election
25 Day. Can we put Plaintiff's Exhibit 85, please?

1 So I believe, Your Honor, that this has
2 already been admitted into evidence.

3 THE COURT: I believe you're correct, right?

4 82 --

5 MS. CRAIGER: Okay. So, thank you, Your
6 Honor. I'll take some -- a minute to establish the
7 foundation for this document.

8 BY MS. CRAIGER:

9 Q. Mr. Jarrett, do you recognize this document?

13:53:43 10 A. Yes, this is an example of one of our precinct
11 ballot reports that are completed -- well, first, the
12 seal numbers that are here are actually during our logic
13 and accuracy tests. When we're scanning those in, those
14 seal numbers are for the tabulators that are onsite at
15 every voting location. So some of this information is
16 populated by the Elections Department. Pre to it
17 occurring on Election Day, we deliver all of these
18 precinct ballot reports to our inspectors, so those are
19 the supervisors at every voting location, and then the
20 inspectors, along with their fellow poll workers, will
21 complete these documents onsite at the voting location.
22 Some of those tasks are done during the opening
23 procedures; some of those tasks are done during the
24 closing procedures.

13:54:15

25 Q. So let's walk through section by section what's

1 on here. So you talked the purpose of this is for the
2 inspector and some of the poll workers on Election Day
3 to -- to document what's -- what's occurred at that
4 location. So what is the first section that's
5 identified as opening polls? What information is
6 provided in that section?

7 A. Well, so I will say there is a name of the
8 facility that was just higher up on the voting location.
9 So each one of our facilities has this report, so it
10 identifies the location of the facility. The next
11 section talks about the tabulators and our accessible
12 voting device. So this is to document that each door or
13 port on that tabulator has a seal number affixed, right?
14 Those seals were affixed by the Elections Department
15 employees prior to or during the logic and accuracy
16 test, and those are what the poll workers use to verify
17 that those tabulators have not been tampered with
18 between the time that the Elections Department affixed
19 those seals and when the poll workers are opening up the
20 voting location and opening the polls on Election Day.

21 You also have information related to the
22 accessible voting device. You have a lifetime counter
23 that is -- that is being added to the -- the right there
24 beginning lifetime counter under the accessible voting
25 device. And then if there were any beginning total

1 ballots printed, the accessible voting device is not
2 widely used at all of our different voting locations.
3 So it's not unusual for them not to have a ballot count
4 on that next line, the Beginning Total Ballots Printed.

5 Q. Okay. And I think you said that the inspectors
6 and the poll workers are completing these documents.
7 What, just briefly, kind of training do the inspectors
8 get prior to having that role at the vote centers on
9 Election Day?

13:56:37 10 A. So we go into in-depth in-person training on this
11 form for all of our poll workers on how to complete
12 this, not only our inspectors; but it's covered through
13 a PowerPoint presentation that goes through what is
14 their responsibilities. We also provide a training
15 manual that details exactly how this form should be
16 completed, and then there's different checklists in our
17 training manual for assignments on what the different
18 poll workers and the roles of the poll workers play in
19 completely this form.

13:57:07 20 Q. So there's two tabulators at every location,
21 correct?

22 A. That's correct. We had two tabulators at every
23 location, except for one, which is our DACA village
24 location, which is actually to get there, we have to go
25 through Pinal County and it serves the Tohono O'odham

1 Nation.

2 Q. So --

3 A. Every other vote center had two tabulators.

4 Q. Thank you. So if we could scroll down a little
5 further on the document.

6 So let's talk about the closing poll section in
7 the middle. What information is provided in that
8 section and when is that -- well, let's start with what
9 information is provided?

13:57:48 10 A. So at the end of the night after the polls have
11 closed, all voters have finished voting and left the
12 voting location, the poll workers start their closing
13 operations, and then they start getting and compiling
14 some information. Some of that information comes from
15 the tabulators themselves, so that's what we see, the
16 ballot count on tabulator screen. So there's the two
17 different tabulators, so then they'll log how many
18 ballots were counted on each tabulator. They'll then
19 check off as they are performing some specific tasks,
13:58:18 20 whether they removed the memory cards, so those memory
21 cards are what are going to be read in on election night
22 to report results. So they are going to be removing
23 those, they are going to be taking off the
24 tamper-evidence seal. Actually they are going to be
25 affixing that tamper-evidence seal to the back of this

1 form, and then they are going to then take those memory
2 cards, put them into what we call a bubble pack that's
3 going to be in a container, so that those memory cards
4 can be securely and safely transported back from the
5 voting locations.

6 After both memory cards from the two different
7 tabulators onsite are in those -- those bubble packs,
8 those are then affixed with a tamper-evidence seal as
9 well, which is logged here in this information.

13:58:59 10 Q. And that I believe is the second or the next page
11 of this exhibit under seals. Is that what you're
12 describing?

13 A. That's correct. So they tape the actual seal
14 itself, and then they'll affix it to the back of the
15 form.

16 Q. So let's then move down to the bottom section.
17 It says, security seals. What information is being
18 provided in that section?

19 A. So here is where we're documenting the chain of
13:59:30 20 custody of items being returned back from the voting
21 location. So if they have a black bag, so those black
22 canvas bags, those are what the poll workers use to
23 return the voted ballots, so those live loose ballots
24 that are not in an affidavit envelope so they'll put
25 those in a black canvas bag, then they'll affix a

1 tamper-evidence seal to those bags, and then they'll log
2 that information here.

3 Now, every voting location has two black bags
4 that we issue to it. Sometimes the voters will only use
5 one of the precinct-based tabulators, so they only take
6 out the ballots from one of those locations, put it into
7 that black canvas bag, so there will only be one seal
8 that's logged, they are logging here.

9 The other information here is a red box, our red
14:00:16 10 box seal, so those are the forms that are being returned
11 to us from the voting location. So it's a secure
12 container that is able -- has a closing lid, and then
13 they'll be able to affix tamper-evident seals to those,
14 and then log that information here on this form. And
15 then those blue box seals, those are the transport
16 containers that we're delivering the early ballots that
17 are in those affidavit envelopes back to the elections
18 department. So it's very clear, they are not loose
19 ballots at this point in time. They are in a sealed
14:00:46 20 green affidavit envelope with a unique Piece ID on that
21 affidavit envelope. Those go into these blue bins and
22 they got logged -- the seals on those get logged onto
23 this form, and this is what documents the secure
24 transport from the voting location from the poll workers
25 to the Elections Department.

1 Q. So before we talk about how all of this
2 information and all of these items make their way back
3 to MCTEC, Scott, in your position, are you familiar with
4 the Elections Procedures Manual?

5 A. Yes, I am.

6 Q. And in talking about this section on the blue box
7 seals and the process that you just described for
8 putting those green affidavit envelopes that were
9 collected on Election Day into those boxes and sealing
10 them, is that consistent with the requirements of the
11 Elections Procedures Manual?

12 A. Yes, it is. Chapter 9, subsection 8, subpart
13 B -- I believe it's on page 192 -- it describes that at
14 the end during -- that's closing procedures for our
15 elections -- elections boards at our voting locations.
16 So they will -- it provides for them to be able to put
17 those -- those early ballot affidavit envelopes with the
18 ballots sealed inside into a secured container. It does
19 not require that we count those at the voting location.

14:02:10 20 It just requires that we put those into a secure
21 container -- container, affix that with tamper-evident
22 seals, and return it back to the Elections Department.

23 MS. CRAIGER: Your Honor, before we move to
24 that, I would like to move Plaintiff's Exhibit 85 into
25 evidence?

1 THE COURT: Any objection?

2 MR. BLEHM: No objection, Your Honor.

3 MR. OLSEN: No objection, Your Honor.

4 THE COURT: All right. 85 is admitted.

5 BY MS. CRAIGER:

6 Q. If we can go to -- it's page 192 that Mr. Jarrett
7 just referenced.

8 Mr. Jarrett, is this the section that you were
9 referring to?

14:03:06 10 A. That's correct -- correct, on that subpart B,
11 Election Board Close-Out Duties, and if you go -- so you
12 can see that on the left page 192, on the right
13 page 193, it's actually that bullet G, the number of
14 early ballots received by the voting location. So it
15 asks that -- we document that on the -- what we call our
16 Precinct Ballot Report, unless the ballots are
17 transported in a secure sealed transport container to
18 the central counting place.

19 Q. And that's the practice of Maricopa County?

14:03:33 20 A. That's correct.

21 Q. So once the form is completed, what happens next
22 with the items that are documented on there and the
23 forms?

24 A. So those secure containers will then be
25 transported one of two ways. One will be by the poll

1 workers directly to MCTEC, our central counting
2 facility, if it's one of the locations that's close by,
3 the central counting facility. So most of those are
4 within central Phoenix.

5 If it is a more remote location, then we set up a
6 receiving site that has sheriff deputies onsite, we have
7 bipartisan teams, we have truck drivers at those voting
8 locations, so -- and then those would be receiving sites
9 where the poll workers then will deliver all the items,
10 including the ballots, those loose ballots, that are in
11 a black canvas bag that are sealed, the memory cards,
12 the red transport containers and the blue transport
13 containers.

14 Once they arrive onsite, we have bipartisan teams
15 filling out chain-of-custody documents receiving all
16 those items, so documenting them coming into that
17 receiving site. We're also then for the first time now
18 scanning those items, so all those tamper-evident seals
19 have a little barcode can be scanned, so we're scanning
20 all those items that are coming in from the voting
21 location to the receiving site.

22 They get loaded up, so all of the different
23 receiving sites that are close by, so if we have one,
24 like, at Surprise City Hall, all the voting locations
25 that are close by to Surprise City Hall drive there,

1 deliver their items. Those will then be escorted from
2 two different patrol deputies from the Maricopa County
3 Sheriff's Office, those trucks, all the way back to
4 MCTEC.

5 Once they arrive back at MCTEC, we're then
6 scanning in all of those seals again, documenting that
7 transfer of chain of custody from the truck drivers to
8 MCTEC.

9 Then once all those seals are scanned, then for
10 those early ballots that are in those blue transport
11 containers, we send them through our bipartisan teams,
12 which we call our blue line. So that's where those --
13 those seals will finally be broken, once they get to the
14 Elections Department, and then we will begin sorting
15 them. So what will be in there are green affidavit
16 envelopes, so those would be any of the early ballot
17 drop-offs. There could be some of those white
18 envelopes, those counter ballots that were still there
19 from the night before so on that Monday, during
20 emergency voting, if voters had participated, or there
21 could be provisional ballots in all of those.

22 So that blue line team is now sorting those into
23 different mail trails -- trays by ballot type. So, and
24 then, those will then be going into secure cages, and in
25 those secure cages, we're able to estimate and provide

1 an estimate of the number of ballots that are in each of
2 those trays as well as those -- those secure cages. We
3 then have a bipartisan team then in a truck deliver
4 those to Runbeck on election night.

5 We also employ a two-member team at Runbeck. So
6 when we are delivering that first ballot, those first
7 ballots, those early ballots, again, in a green
8 affidavit envelope, there's a team onsite at Runbeck.
9 One of them is a permanent employee. That permanent
10 employee has a County-issued cell phone so they can take
11 pictures of forms that are being scanned through and
12 counts and numbers documenting the exact numbers that
13 are being scanned in by Runbeck.

14 We also had a temporary staff member that was
15 appointed by the County chairman for the -- for the
16 Republican party that was also onsite during this whole
17 process. Those members are signing those Inbound Scan
18 Receipt Forms, so as they are going through and being
19 counted by those high-capacity scanners counting those
20 green affidavit envelopes on election night, all the way
21 through until the next day, which was not completed
22 until actually 5:00 p.m., or just shortly after
23 5:00 p.m., they were scanning each one of those, and
24 they would be able to scan them by ballot types. So
25 here's the number of green affidavits that were in spec,

1 right? So some of them are underweight, so we're even
2 documenting how many of those ballots were underweight.
3 How many of those ballots were overweight, how many of
4 those ballots actually didn't have a valid ID number.
5 Those are a voter returning to us in a green affidavit
6 envelope. There may be primary ballot or their 2020
7 ballot, and so we're documenting all of those. So once
8 they are scanned in, we have a one-for-one tracking for
9 every one of those affidavit envelopes, but we also have
10 a total count, and we had a total count of 291,890 early
11 ballots scanned in and the Elections Department with our
12 vendor -- best-in-class vendor, Runbeck, certified
13 vendor -- was performing those counts under the direct
14 supervision and observation of Maricopa County
15 employees, and we signed every single one of those
16 inbound scanned forms as they were coming in. They
17 documented the start time of the scan; they documented
18 the end time of the scan. That's how we maintained
19 chain of custody for every one of those early ballots
20 all the way through the process until we transferred it
21 over to Runbeck; and then we had a one-for-one, that
22 Piece ID on every affidavit envelope, so we would know
23 if a ballot was inserted or rejected or lost in any one
24 part of that process, we would know it.

25 Q. Thank you, Scott.

1 So I just want to be clear on the number. So
2 this 291,890 are the number of ballot or, I mean, early
3 ballot packets that came in on election night; is that
4 right?

5 A. That's correct.

6 Q. So earlier Mr. Valenzuela talked about the need
7 to use the high-speed scanners at Runbeck to be able to
8 process a number that high; is that correct?

9 A. That's correct, and that's why we had a team,
14:09:43 10 right, following that chain of custody all the way
11 through the process until we got to Runbeck, and then
12 even after Runbeck, we had teams hired by Maricopa
13 County to maintain that custody until it was transferred
14 and we had an actual count of those ballots.

15 Q. So could we pull up Defendants' Exhibit 33,
16 please?

17 So this is a little challenging to read, Scott,
18 but do you recognize this document?

19 A. Yes, I do.

14:10:15 20 Q. And is this the inbound receipt of delivery forms
21 that you were talking about?

22 A. That's correct. So that is a Runbeck, it's a
23 three-part form that's completed, and then you can see
24 and not in the best image quality, but you can see right
25 under where you can see the grid or the boxes, there's

1 some staff member's signatures that are being signed
2 right there, and those are the Maricopa County
3 employees.

4 MS. CRAIGER: Sorry. Just a little
5 housekeeping, Your Honor, did we admit Exhibit
6 Number 85? Plaintiff's Exhibit 85, I believe?

7 THE COURT: Today, yes, it was.

8 BY MS. CRAIGER:

9 Q. Okay. Sorry, Scott.

14:11:11 10 So, I'm sorry, so we started -- these are the
11 ones that are used on election night I believe you just
12 said?

13 A. That's correct.

14 Q. Okay. So let's talk about the information that's
15 documented on here starting at the top.

16 A. So it will be identifying the date and the
17 operator at Runbeck that's running their equipment,
18 right, and then we have an election number that's
19 assigned for every election, so that's documented at the
14:11:37 20 very top of this.

21 The next items are going to be the batch ID
22 that's assigned by Runbeck and that's being scanned
23 through their inbound scanning equipment, and then the
24 next pieces of information start counting the number of
25 green affidavit envelopes that are being scanned in

1 through their equipment. So the inbound scan here
2 showing there's 9,940 inbound scanned green affidavit
3 envelopes. Also will then show the number of
4 provisionals, and here I can't read it on -- on this
5 equipment because the image quality. It will also show
6 the number of early ballot affidavit envelopes that are
7 overweight, so that could be that the voter kept the
8 instructions in that green affidavit envelope. It will
9 show then the number of green affidavit envelopes that
10 are underweight, so maybe that's an empty affidavit
11 envelope, or maybe the ballot is damaged inside, is not
12 a complete ballot. It will also show then the number of
13 ballots that didn't have or had an invalid ID, so those
14 are potentially the green affidavit envelopes that are
15 from the primary election, right? Or then if it's
16 unreadable, so there are some times where there's a
17 damaged green affidavit envelope or that affidavit
18 envelope can't be read, so we're taking that image and
19 those will go through special handling, be turned over
20 to the Recorder's Office in the early voting team to
21 document that transfer of the custody.

22 Q. And I think you testified before that at all
23 times of this process from when these are taken out of
24 the blue bins, placed into the trays, into the cages,
25 transported to Runbeck, that is all done under the

1 observation of Maricopa County permanent employees; is
2 that right?

3 A. That's correct.

4 Q. Okay. And so if you look at this document again,
5 and it's hard to see it on here, but where do you see
6 that the County employees have signed off and verified
7 the information on here?

8 A. So it's that -- those signatures just below that
9 grid, and you can see two different signatures. One of
10 those is one of our permanent employees, and one of
11 those was then that temporary employees; and by the way,
12 it was a Democrat and a Republican there so that we had
13 that bipartisan representation as well.

14 And then our permanent employee with their
15 County-issued cell phone after each one of these were
16 scanned in, they would take a -- they take a picture of
17 that, and then they send that via e-mail to me, Mr.
18 Valenzuela, and a few of the other election directors,
19 or assistant election directors within so we had then an
20 accounting for these via image as well.

21 Q. And just to be clear, the temporary employee that
22 you were referred to as appointed by --

23 A. The County Republican Chair for the Maricopa
24 County Republican Party.

25 Q. Thank you. And then once this process is

1 completed, then these go -- am I correct that these go
2 through then the signature verification process like Mr.
3 Valenzuela described in his testimony; is that right?

4 A. That's correct. So these ballots would then be
5 secured and stored in an vault. Right under them we
6 have security guard onsite, a Maricopa County employee
7 security guard onsite for 24 hours a day. And then once
8 they are completed with the signature verification
9 process, then they won't be transferred back to the
10 County until that's completed, and all of those are
11 documented through those forms that Rey, or Mr.
12 Valenzuela, went through.

13 MS. CRAIGER: Your Honor, I would like to
14 move Defendants' Exhibit 33 into evidence, please.

15 THE COURT: Any objection?

16 MR. OLSEN: No, Your Honor.

17 THE COURT: 33 is admitted.

18 BY MR. CRAIGER:

19 Q. All right. One last point, Scott. During the
20 course of this process we've heard suggestions of the
21 275,000-plus estimate that was made after voting was
22 completed on Election Day. Can you explain how that
23 number -- how that estimate gets made on election night?

24 A. So those were based off -- all those green
25 affidavit envelopes coming back through those blue

1 transfer bins that we broke the tamper-evident seals on
2 inserting -- taking those out and organizing them into
3 those mail trays. So at that point, it's just an
4 estimate. And so then Mr. Recorder Richer, he made an
5 estimate early in the day following Election Day, on
6 11/9, the day after. We had not finished our
7 scanning-in process. That wasn't completed until much
8 later in the evening, just shortly after 5:00 p.m. when
9 we had that full accounting for all those 290,000 early
10 ballots. So that estimate was released earlier in the
11 day to just give an indication of there was going to be
12 275,000-plus early ballots that still needed to be
13 counted.

14 MS. CRAIGER: Thank you, Scott. One moment.
15 All right. Thank you, Your Honor.

16 THE COURT: Okay. Cross?

17 MR. OLSEN: Yes, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. OLSEN:

14:16:26 20 Q. Mr. Jarrett, do you recall your testimony
21 yesterday?

22 A. Yes, I do.

23 Q. And yesterday you testified that a 19-inch ballot
24 image being imprinted on a 20-inch ballot did not happen
25 in the 2022 General Election.

1 Do you recall that?

2 A. Yes, I recall that there was not a 19-ballot
3 definition in the 2022 General Election.

4 Q. But that wasn't my question, sir. I asked you
5 specifically about a 19-inch ballot image being
6 imprinted on a 20-inch piece of paper.

7 So are you changing your testimony now with
8 respect to that?

9 A. No, I'm not. I don't know the exact measurements
10 of a fit to -- fit-to-paper printing. I know that it
11 just creates a slightly smaller image of a 20-inch image
12 on a 20-inch paper ballot

13 Q. Slightly smaller image. How come you didn't
14 mention that yesterday?

15 A. I wasn't asked about that.

16 Q. Well, I was asking you is 19 inches smaller than
17 20 inches? It is, isn't it? Sure.

18 A. Yes.

19 Q. So when I said, you know, asked you questions
14:18:14 20 about a 19-inch ballot image being imprinted on a
21 20-inch piece of paper, and you denied that that
22 happened in the 2022 General Election, did you not think
23 it would be relevant to say, hey, by the way, you know,
24 there was this fit-to-print image issue that we
25 discovered?

1 MS. CRAIGER: Your Honor, I object. Counsel
2 is misstating Mr. Jarrett's testimony from yesterday.

3 THE COURT: Okay. Once again, if he's able
4 to understand the question and answer it, he can do so.
5 If you don't understand or need it rephrased, you can do
6 that as well, Mr. Jarrett. If you're able to answer,
7 please do so.

8 THE WITNESS: What I recall from yesterday's
9 questioning was that there was a 19-inch definition,
10 which that did not occur, ballot definition.

14:18:58

11 BY MR. OLSEN:

12 Q. So if your testimony reflects my question or --
13 strike that -- if the back and forth between our
14 question and answer shows me asking you specifically
15 about a 19-inch ballot image being printed on a 20-inch
16 piece of paper, you are now saying that you interpreted
17 that as a ballot definition issue?

18 A. Yes, that's correct.

14:19:36

19 Q. And you wouldn't think it would be relevant, even
20 in that circumstance to say, hey, we learned about this
21 fit-to-print issue? Did you know about the -- when did
22 you learn about this fit-to-print issue?

23 A. When we started doing the audit reconciliation of
24 those Door 3 ballots, we identified some of those
25 ballots had then a fit-to-paper issue.

1 Q. And when was that?

2 A. I don't remember the exact dates, but a few days
3 after Election Day.

4 Q. And who told you about that?

5 A. Our ballot tabulation team and our -- our audit
6 review team that was then doing -- doing the inspection
7 of the Door 3 ballots.

8 Q. So, and I believe your testimony was that you
9 discovered this only in three vote center locations,
10 correct?

11 A. That's correct.

12 Q. So did you look at the other locations to see if
13 this so-called fit-to-print issue arose at other
14 locations?

15 A. We looked at all the Door 3 misread ballots that
16 were in the secured Door 3, and we didn't identify any
17 of those that a fit-to-paper issue.

18 Q. Fit-to-paper issue.

19 So if evidence showed up that there was a 19-inch
20 ballot imprinted on a 20-inch piece of paper out of the
21 Anthem location, that's not one of the locations that
22 you identified, is it?

23 A. I did not identify that at -- from Anthem.

24 Q. When did this so-called adjustment to the printer
25 settings happen on Election Day that gave rise to this

1 fit-to-print issue?

2 A. I don't have the specific time, but it was during
3 the course of Election Day.

4 Q. And was this fit-to-print issue, how did those
5 settings get changed? Was it at the direction of
6 somebody from Maricopa or just somebody on their own
7 doing it?

8 A. It was not at the direction of anyone from
9 Maricopa County.

14:21:51 10 Q. So was the change in the settings in response to
11 tabulator issues?

12 A. So we believe at least at one of the sites one of
13 the technicians was attempting to troubleshoot and then
14 made that change.

15 Q. So if other sites, if the tabulator issues arose
16 immediately before any technician made any changes to
17 the print settings, then your theory of a fit-to-print
18 issue would not be correct, yes?

19 A. No, I disagree.

14:22:22 20 Q. So when would the changes to the printer settings
21 have been made?

22 A. So the reason I know it didn't occur prior is
23 because during our test prints prior to Election Day
24 there was no identified fit to paper setting issue.

25 Q. And when was that?

1 A. We do that during -- when we're setting up each
2 voting location, we run test prints on all of the
3 printers.

4 Q. And how would you know that it didn't arise?

5 A. It was never reported back through our chain of
6 custody from the technicians to -- up to me, which they
7 would have reported that to me.

8 Q. Why do you think they would have reported it to
9 you?

14:22:59 10 A. Because I meet with the team routinely and
11 throughout the day, and I've even asked them
12 subsequently, and they have said that they never
13 identified it during any of the setups.

14 Q. So did you have a meeting with all these
15 technicians and ask them this question?

16 A. I had a meeting with our command center teams.

17 Q. Were all the technicians asked about this
18 fit-to-print issue?

19 A. I don't know if all the technicians were.

14:23:25 20 Q. Is there any documentation of any inquiry about
21 this fit-to-print issue?

22 A. I don't know if there's any documentation.

23 Q. So you said you performed a root cause analysis
24 to determine the -- how these problems arose on Election
25 Day?

1 A. We're in the process of performing a root cause
2 analysis.

3 Q. And as part of that root cause analysis, you
4 determined that there was this fit-to-print issue at
5 three locations, correct?

6 A. That's correct.

7 Q. Is there any documentation preceding yesterday's
8 testimony that identifies this issue?

9 A. As part of -- yes, there is some documentation.

14:24:06 10 Q. What documentation?

11 A. So some of our audit reconciliation forms that
12 identified the three locations.

13 Q. And what do those audit reconciliation forms
14 show?

15 A. They show the number of check-ins from voting
16 locations. They show the number of Door 3 ballots and
17 then notes based off our audit reconciliation.

18 Q. Does it say fit-to-print issue was the cause, or
19 words to that effect on those forms?

14:24:33 20 A. It actually is using the term shrink-to-fit, not
21 fit-to-shrink.

22 Q. Shrink-to-fit, shrink-to-fit. And was that
23 determined to be the cause, or is that a -- was that an
24 assumption as a possibility?

25 A. It was determined to be the cause for those three

1 locations, for the ones wouldn't be read at the voting
2 location and then be read at central count.

3 Q. And, again, you did not mention this in your
4 testimony yesterday, did you?

5 A. I did not.

6 Q. Did you publish anywhere that there was this
7 shrink-to-fit issue after the election?

8 A. I believe not.

9 Q. So you didn't tell the public, hey, we've
10 discovered -- I mean, you're performing your root cause
11 analysis and you find out that there was this
12 shrink-to-fit issue that gave rise to problems in the
13 tabulators, and you did not inform the public about
14 this?

15 A. We're still in the process of our root cause
16 analysis.

17 Q. With respect to the chain-of-custody issues that
18 you testified to, does Maricopa County know the exact
19 number of ballots that come in -- Election Day ballots,
20 not early vote ballots -- do they know the number of
21 ballots that come in to MCTEC on Election Day, the exact
22 number?

23 A. Through our memory cards or what are read in from
24 that memory cards we have an accounting for what gets
25 reported.

1 Q. And how this memory card is generated with the
2 ballots, where do the numbers come from on them?

3 A. From our vote center tabulators, those onsite
4 tabulators. So every ballot that gets read into a vote
5 -- a vote center tabulators get logged, and then those
6 results are read on to that memory card.

7 Q. Before they are sent to the tabulator, aren't the
8 ballots sent up to Runbeck for scanning and processing?

9 A. Are you referring to Election Day ballots?

14:26:38 10 Q. Yes.

11 A. The ones that are tabulated onsite, no.

12 Q. No, not tabulated onsite, that are -- aren't they
13 ballots envelopes delivered to Runbeck for scanning and
14 processing then sent back to MCTEC?

15 A. I'm sorry. When you say Election Day ballots,
16 you didn't say the early ballots that were dropped off
17 on Election Day, so I misunderstood.

18 So can you repeat your question?

19 Q. The Election Day ballots, does Maricopa County
14:27:05 20 maintain an exact count of them before they are shipped
21 to Runbeck?

22 A. So you're referring to, again, the early ballots
23 that are dropped off on Election Day, are those the
24 ballots that you're referring to?

25 Q. No. I'm referring to the ballots that come in on

1 Election Day that are dropped off?

2 A. I don't understand your question, because the
3 Election Day ballots, we refer to those as the ballots
4 that are tabulated onsite. So I'm asking you, the ones
5 that go to Runbeck are the early ballots that are in
6 affidavit envelopes that get transferred at Runbeck, so
7 that's what I'm asking you. Are those the ballots that
8 your referring to?

9 Q. What about the ballots that are dropped off in
10 drop boxes on Election Day?

11 A. Yes. So those are the early ballots in the green
12 affidavit envelopes. Those go to Runbeck to be counted
13 by our -- and then we have a team onsite when that
14 accounting happens.

15 Q. So Maricopa does not maintain an exact count of
16 those ballots prior to them being transferred to
17 Runbeck?

18 A. That's not true.

19 Q. You do?

14:28:04 20 A. Because we have employees onsite that entire
21 time.

22 Q. Onsite where?

23 A. At Runbeck.

24 Q. So why would somebody from MCTEC -- strike that.

25 Is it your testimony that the printer set changes

1 that gave rise to this so-called shrink-to-fit issue,
2 was that done on Election Day?

3 A. That's correct.

4 MR. OLSEN: Thank you. I have no further
5 questions.

6 MS. CRAIGER: Thank you, Your Honor. I just
7 have a couple questions.

8 REDIRECT EXAMINATION

9 BY MS. CRAIGER:

14:28:56 10 Q. Scott, to be clear, the question you were asked
11 yesterday was whether or not there was an 19-inch
12 definition in the Election Management System; is that
13 correct?

14 A. That's correct.

15 MR. OLSEN: Objection, Your Honor. The
16 record will speak for itself in terms of what question
17 he was asked and whether there was -- it was asked with
18 the question of a definition.

19 THE COURT: Fair. Overruled. I'll let him
14:29:18 20 answer and you can both argue. Go ahead.

21 BY MS. CRAIGER:

22 Q. Scott, was that your understanding of the
23 question that was being asked of you?

24 A. Yes, that was my understanding.

25 Q. And that was true yesterday and that's true

1 today; is that right?

2 A. That's correct.

3 Q. There were no 19-inch definitions in the Election
4 Management System?

5 A. That's correct.

6 Q. So this fit-to-print issue that we're talking
7 about, has this ever happened before in any previous
8 elections?

9 A. Yes, it has.

14:29:45 10 Q. When did it happen before?

11 A. So it happened in August 2020 Primary Election,
12 the November 2020 General Election, and the August 2022
13 Primary Election.

14 Q. So is it safe to say that this, you know, falls
15 into the category of, you know, an Election Day hiccup
16 and it's related to a human error on that day trying to
17 resolve a problem related to the printers; is that
18 right?

19 A. That's correct.

14:30:14 20 Q. Okay. And you testified before the total number
21 of ballots that were impacted by this shrink-to-print --
22 fit -- I'm sorry -- fit-to-print issue. What was that
23 total number?

24 A. That was just -- I don't have that exact count,
25 it was just under 1,300.

1 Q. Okay. And I believe you testified before, but
2 what's the process then for once those are identified so
3 that those ballots can get tabulated?

4 A. So then those would go to a bipartisan
5 duplication board, and then they together would make
6 determinations to -- on voter intent for each contest on
7 the ballot. Those would then get duplicated, that
8 ballot would be printed and that ballot would then be
9 run through a central count tabulator to be counted and
10 then reported.

11 Q. And the bipartisan adjudication board process, is
12 that observed?

13 A. That is by political parties.

14 Q. Okay. And you testified that there were a few --
15 thus far in the root cause analysis, there had been a
16 few different issues that have been identified that
17 caused some ballots to be placed into Door 3; is that
18 right?

19 A. That's correct.

20 Q. Okay. And have you -- is the root cause analysis
21 completed?

22 A. No, it's not.

23 Q. Have you presented it publicly to the Board of
24 Supervisors yet?

25 A. We have not.

1 MS. CRAIGER: I have no further questions,
2 Your Honor.

3 THE COURT: All right. May the witness be
4 excused?

5 MR. OLSEN: Yes, Your Honor.

6 MS. CRAIGER: Yes, Your Honor.

7 THE COURT: Thank you, Mr. Jarrett. You're
8 excused, sir.

9 (Witness excused.)

14:31:46 10 THE COURT: Okay. County have another
11 witness? Does defense?

12 MS. DUL: Bo Dul on behalf of the Secretary
13 of State. With Your Honor's permission, I would like to
14 call Ryan Macias and put him on from counsel table.
15 He'll be appearing remotely so that he can see me while
16 I'm examining him.

17 MR. BLEHM: From counsel table?

18 THE COURT: She's going to sit there rather
19 than be at the podium.

14:32:12 20 MR. BLEHM: Oh, yeah. That's fine.

21 THE COURT: Not a problem. So you're
22 calling Mr. Macias?

23 MS. DUL: Yeah, I believe he's in the
24 waiting room, Your Honor.

25 MR. BLEHM: Your Honor, I just want to point

1 out before we get going on another witness, it's about
2 time for we 50-year-olds' afternoon break.

3 THE COURT: Thank you, Mr. Blehm. Whether
4 I'm in good shape or not on time, we'll take the
5 15 minutes right now. Thank you. So we'll come back
6 here at 10 'til.

7 (Recess taken, 2:32 p.m.)

8 (Proceedings resume, 2:48 p.m.)

9 THE COURT: Go ahead. All right. This is
10 CV2020-095403. This is Lake v. Hobbs, et al. We are
11 continuing on the record and we have the parties and
12 their representatives present and their respective
13 counsel. I believe the Defendants were calling Mr.
14 Macias as a witness.

15 Mr. Macias, can you raise your right hand to
16 be sworn in, sir?

17 RYAN MACIAS,
18 called as a witness, having been duly sworn, virtually
19 testified as follows:

14:49:54 20 THE COURT: Thank you. Go ahead, proceed.

21 MS. DUL: Your Honor, before we get started,
22 I want to let Your Honor know for planning purposes that
23 this will be the defense's last witness.

24 THE COURT: Thank you.

25 DIRECT EXAMINATION

1 BY MS. DUL:

2 Q. Good afternoon, Mr. Macias. Please state your
3 full name for the record.

4 A. Ryan Macias.

5 Q. Thank you for being here, Mr. Macias. Will you
6 please describe your current work and profession?

14:50:30

7 A. Yes. I am a subject matter expert consultant in
8 election technology, election infrastructure, elections
9 administration, as well as voting systems and other
10 areas of critical infrastructure. I have worked in the
11 healthcare field, the space sector, information and
12 communication technologies and other areas of critical
13 infrastructure as well.

14 Q. To whom do you provide your election technology
15 and security consulting services?

14:51:10

16 A. Yes, my typical clients are government entities
17 what we call federal, state, local territorial and
18 tribal government entities, and I have also done work,
19 like I said, outside with federally funded research and
20 development centers. So these are entities that are
21 funded through the federal government but are
22 organizations outside.

23 Q. And how many states across the U.S. have you
24 worked with on election matters?

25 A. Yes. So in my career, I have worked with almost

1 every state across the nation. This year alone, I was
2 present in 19 -- approximately 19 different dates and
3 worked with thousands of local election jurisdictions
4 across the United States.

5 MR. BLEHM: Your Honor, may I interject
6 really quickly? It would appear to me that Mr. Macias
7 is reading from something that we're not privy to. He
8 keeps looking to the side as if he's reading something,
9 Your Honor, and if he is, we would like to know what it
10 is.

11 THE COURT: Mr. Macias, when you testify,
12 you need to testify from your own --

13 THE WITNESS: Yes.

14 THE COURT: -- not referring to something.
15 If you need to refer to something, you can tell us you
16 need to and then look. Are you looking at something?

17 THE WITNESS: Yeah. No, I apologize if I
18 am, there is a little bit of a glare from the right-hand
19 side with a light, but I am not reading anything.

20 THE COURT: Very well. Thank you, sir.
21 Please proceed, Ms. Dul.

22 MS. DUL: Thank you, Your Honor.

23 BY MS. DUL:

24 Q. Mr. Macias, can you tell us any other examples of
25 entities that you've provided election technology and

1 security consulting services to?

2 A. Yes. As I had mentioned, I worked for Idaho
3 National Laboratories, which is a federally funded
4 research and development center. Specifically, I worked
5 on their Cyber Core Integration Center, where I
6 conducted or developed, excuse me, the methodology and
7 process for the critical product evaluation, or CPE,
8 which is an ethical hacking in a laboratory environment
9 of critical infrastructure products and technologies,
10 including election technologies. And so I worked with
11 them from 2019 to 2020, and developed the methodology
12 and implementation of the critical product evaluation.

13 Q. Are there other examples of election technology
14 or security assignments you've done on behalf of
15 government entities that you haven't already shared?

16 A. Well, I worked both for the -- as a consultant to
17 an entity that was funded by the Department of State to
18 do cyber security and risk assessments on election
19 infrastructure abroad, as well as I have acted as a
20 subject matter expert consultant to the Cyber Security
21 and Infrastructure Security Agency, and -- and that's
22 the majority of my work outside of either federal or
23 state government.

24 Q. Do you do any work on behalf of election
25 technology vendors such as Dominion, ES&S, Unisyn or

1 Runbeck?

2 A. No, I have never worked directly for and have no
3 financial interest in any election technology provider
4 including those that you have mentioned. However, in
5 some of the roles that I have worked including those
6 federally funded roles, I have provided services,
7 trainings, resources to those entities on behalf of a
8 federally funded client.

9 Q. Have you ever been on the payroll of or paid --

14:55:03

10 MR. BLEHM: Your Honor, sorry. It's clear
11 he's reading something, Your Honor. When he's asked a
12 question, he's looking directly into the camera. When
13 he is answering that question, he will look down into --
14 he will look to the right. All we've got to do is watch
15 his eyes, Your Honor. It's clear, it's there. And so,
16 again, if Mr. Macias is reading from materials, Your
17 Honor, that we don't have, we're not privy to, we would
18 like to know about it.

19 THE COURT: Mr. Macias, are you reading
20 material?

14:55:31

21 THE WITNESS: I am not reading material. I
22 have the Teams up on full screen in front of me.

23 THE COURT: Okay. That's a minute and a
24 half you've used for the two questions, so... thank you.
25 You can continue.

1 MS. DUL: Thank you, Your Honor.

2 BY MS. DUL:

3 Q. Mr. Macias, I was asking have you ever been on
4 the payroll of or paid by an election technology
5 provider?

6 A. No.

7 Q. Have you been engaged as an expert election
8 technology and security consultant by state and local
9 officials of different political parties?

14:56:07 10 A. Yes, I have. As a matter of fact, I am currently
11 under contract for both state and local governments,
12 from both major political parties, and I have conducted
13 work on behalf of both Republicans, Democrats, and
14 non-partisan elections officials, including immense
15 amount of work for Republican secretaries of state, such
16 as Idaho and Arkansas, and Democrat secretaries of
17 state, such as Pennsylvania and right here in Arizona.

18 Q. And how long have you been working in this field,
19 Mr. Macias?

14:56:46 20 A. I've been working in this field for over 17
21 years, with 13 of those years working directly within
22 federal or state government.

23 Q. Can you describe any election administration
24 technology, election security-related roles you've had
25 with the federal government?

1 A. Yeah, with the federal government, from 2016 to
2 2019, I worked directly for the United States Elections
3 Assistance Commission. This is the entity that was
4 stood up by the Help America Vote Act of 2002. And in
5 that capacity, my last role was Acting Director of the
6 Voting System Testing and Certification Program. This
7 is one of the roles of the United States Elections
8 Assistance Commission is to provide for a testing and
9 certification program. It is the only federal testing
10 and certification program.

11 Another role is to develop the voluntary voting
12 system guidelines or the standards by which the voting
13 systems are tested.

14 A third role is to accredit the voting system
15 testing laboratories. These are the laboratories in
16 which the EAC utilizes to conduct the testing for voting
17 systems against those voluntary voting systems
18 standards. And so I oversaw that process as the Acting
19 Director of the Voting System Testing and Certification
20 Program. And prior to that, and in that role as well, I
21 performed all of the duties that I just described to
22 you.

23 Q. Great. Can you describe any election
24 administration technology or security related roles that
25 you've had in state government?

1 A. Yeah. For over ten years, I worked for the
2 California Secretary of State, specifically for the
3 Office of Voting Systems Technology Assessment. In that
4 role at OVSTA, as we called it, California has the most
5 robust security testing for all election technologies.
6 This is not just voting systems, but also for ballot
7 printing companies, ballot printing facilities, ballot
8 on-demand systems, and other types of election
9 technology. Also in that role, I was appointed by then
10 Secretary of State Alex Padilla to be the California
11 representative to the United States Elections Assistance
12 Commissions Standards Board, which is a federal advisory
13 -- excuse me -- Federal Advisory Committee Act or FACA
14 board, established by Help America Vote Act as well.

15 Q. Have you done elections-specific work in Arizona?

16 A. Yes, I've done a lot of work here in Arizona,
17 including providing an advisory role on the Voting
18 System Testing and Certification Program, along with
19 their Election Equipment Advisory Board. I have also,
20 in 2021, I was named by Secretary Hobbs to be one of her
21 expert observers for the State Senate review of Maricopa
22 County's voting technology, as well as the ballots,
23 which confirmed the results of the 2020 election in
24 Maricopa County as tabulated by the Dominion Democracy
25 Suite 5.5B voting system.

1 I have also conducted logic and accuracy testing.
2 I was hired to perform logic and accuracy testing for
3 the 2022 Election cycle where I performed and worked
4 with the state in developing the methodology for
5 performing those tasks on the logic and accuracy in 13
6 of the 15 counties in Arizona for the August Primary
7 Election.

8 Q. Before testifying today, Mr. Macias, did you
9 provide a current copy of your résumé or your CV to me?

15:01:14 10 A. Yes, I did.

11 Q. Can we pull up Exhibit 17? Can you see the
12 exhibit, Mr. Macias?

13 A. I cannot. Yes, I can now.

14 Q. Can you take a minute to look at it and then let
15 me know if this is a true and correct copy of your CV
16 that was provided to me?

17 A. Yes, it's hard to read, but it does look like the
18 copy I provided to you.

19 Q. You prepared this document, correct?

15:02:06 20 A. That is correct.

21 Q. And does it include your experience and expertise
22 relating to election administration, election
23 technology, and election security that you just
24 testified about?

25 A. That is correct.

1 Q. And does it also include a listing of the legal
2 cases in which you've testified as an expert on these
3 issues?

4 A. That is correct.

5 Q. And courts have relied on you as an expert
6 witness on election procedures, election technology and
7 election security?

8 A. That is correct.

9 MS. DUL: Your Honor, I'd like to move
10 Exhibit 17 into evidence.

11 MR. BLEHM: No objection, Your Honor.

12 THE COURT: No objection?

13 MR. BLEHM: No objection, Your Honor.

14 THE COURT: Okay. 17 is admitted.

15 MS. DUL: Thank you.

16 BY MS. DUL:

17 Q. Mr. Macias, what experience, if any, do you have
18 with the Election Management System that Maricopa County
19 uses?

15:03:01 20 A. Yes. So, as I previously stated, I actually have
21 a lot of experience not just with the Election
22 Management System, which is one component of the
23 Dominion Democracy Suite 5.5B voting system, but I have
24 experience in the entire system testing the Dominion
25 Democracy Suite 5.5B.

1 In fact, I have tested and/or overseen the
2 testing of six versions of the Democracy Suite voting
3 system, which are either predecessors to the Dominion
4 Democracy Suite 5.5B voting system, and/or a derivative
5 thereof.

6 Q. Based on your experience with voting systems,
7 including the EMS, the Election Management System, which
8 I'll refer to as the EMS, can you please describe to the
9 Court the functions of Maricopa County's EMS in
10 producing a ballot?

15:04:08

11 A. Yes. So the Election Management System,
12 specifically, Election Event Designer, EED, which is an
13 application of the Election Management System, does --
14 we call it generates ballot definitions and creates
15 ballot styles. A ballot style is a unique list of
16 candidates and contests for a given voter -- voter based
17 on the jurisdictions in which they live. So myself, if
18 I lived in a city with a county, I'm going to have a
19 list of candidates and contests. A friend of mine who
20 may live in the same county but in a different city may
21 have a different mayor and, therefore, they would have a
22 different ballot style. These ballot styles are
23 rendered or generated into what we call a ballot
24 definition file. These ballot definition files are used
25 to program the voting system, but they are also used to

15:04:51

1 generate what we call a ballot PDF, or a PDF file that
2 contains all of the ballot styles within the election
3 definition. These ballot PDFs are then utilized to
4 print the ballots, both early ballots and Election Day
5 ballots. The ballot definition files are sent to the
6 printers to be printed on commercial print presses, as
7 well as uploaded onto the ballot on-demand printers to
8 print early and in-person -- in-person, early and
9 Election Day ballots as well.

15:05:53 10 So, again, as it pertains to ballot printing, the
11 EMS solely generates a set of files to be used either on
12 other portions of the voting system or on other election
13 technologies, such as a ballot on-demand technology.

14 Q. That's a good transition, so I'll shift from the
15 EMS to the ballot on-demand printers. What experience,
16 if any, do you have with Maricopa's ballot on-demand
17 printing technology?

18 A. Yeah, so Maricopa County uses what is called
19 Sentio ballot on-demand system. As I had previously
15:06:30 20 stated when I worked for the State of California,
21 California was the first in the nation to certify ballot
22 on-demand printers, one of which was -- that I had
23 tested and overseen the certification of was the Sentio
24 ballot on-demand technology. I have also worked with,
25 tested and or certified or overseen the certification of

1 all three major providers of ballot on-demand
2 technology.

3 Q. And, Mr. Macias, just to clarify, when you say
4 that you worked on certifying the ballot on-demand
5 printer in California, that's under California state law
6 requirement, not federal law requirements, or Arizona
7 law requirement, correct?

8 A. That is correct, yeah. So as I had stated, this
9 was in my role as a California entity. I was certifying
10 on behalf of and for use in the State of California.

15:07:21

11 Q. Okay. Can you tell us what comprises a ballot
12 on-demand system?

13 A. Yes. So generally a ballot on-demand system is a
14 standalone system, again, not part of the EMS, not part
15 of the voting system. It is a standalone computer that
16 is running an application, the ballot on-demand
17 application or software, and is attached to a printer,
18 and it's just those three components.

19 Q. And can you explain how Maricopa County's ballot
20 on-demand system interacts with the EMS?

15:07:58

21 A. Yes. As mentioned, the Sentio system as used in
22 Maricopa County is a standalone system. It does not
23 directly, in any way, interact with the voting system or
24 the Election Management System. The ballot on-demand
25 laptop and printer are sent out to in-person voting

1 locations, and on those laptops are those ballot
2 definition files, as I have talked about, or the ballot
3 PDFs. And so the only interaction is the upload of a
4 document onto that computer. It would be very similar
5 to me providing you with a copy of my CV, as we had
6 talked about earlier, and then you putting it onto your
7 computer.

8 Q. Okay. So if the ballot PDF file contained an
9 image with a 19-inch ballot in it, what would you expect
10 to see when this ballot is printed in a different
11 location?

12 A. So if the ballot definition file had contained a
13 19-inch ballot in it, so this is the ballot definition
14 file created at the EMS, then I would anticipate to see
15 that ballot style, or ballot styles, that have a 19-inch
16 ballot in it, to be printed on a 19 -- to be printed at
17 scale of 19 inches, regardless of where they were
18 printed. So for early ballots that were printed by the
19 vendor, you would see a 19-inch ballot. If it was
20 printed on-demand, you would see a 19-inch ballot, or
21 wherever this would be printed, because the file,
22 itself, was a 19-inch ballot. You would see it across
23 the board in every location.

24 Q. Did you listen to the testimony from Plaintiff's
25 witness, Mr. Clay Parikh yesterday and review -- just

1 did you listen to the testimony, Mr. Macias?

2 A. Yes, I did.

3 Q. Mr. Parikh testified that ballots he inspected
4 contained 19-inch ballot images that were printed on
5 20-inch ballot paper, and that the only way this would
6 have -- could have happened was through data
7 manipulation or some sort of other action in the
8 Election Management System. Based on your expertise and
9 with voting systems and with ballot and demand systems,
10 does that sound accurate to you?

15:10:27

11 THE COURT: Hold on, Mr. Macias, before you
12 answer that. You can't see the full courtroom, Mr.
13 Olsen?

14 MR. OLSEN: Yes, Your Honor. I object
15 because that mischaracterizes Mr. Parikh's testimony.
16 He specifically said there were two --

17 THE COURT: Wait. I don't need you to
18 repeat that. I'm going to sustain that what you're
19 asking for, Ms. Dul, is you can ask him a hypothetical;
20 but if you're going to state the testimony precisely
21 that you want him to use as a factor in consideration,
22 based on somebody else's testimony, I'd rather have you
23 state it as just a hypothetical. Ask him to assume
24 certain things, and then he can offer his opinion.

15:10:52

25 MS. DUL: Thank you, Your Honor. I can do

1 that.

2 THE COURT: Thank you.

3 BY MS. DUL:

4 Q. Mr. Macias, if a 19-inch ballot image were
5 somehow printed on 20-inch ballot paper, would you,
6 based on your expertise and your experience with voting
7 systems and ballot on-demand systems, would you conclude
8 that the only way this can happen is through data
9 manipulation or some other interference with the
10 Election Management System?

15:11:36

11 A. No. As a matter of fact, as I had stated, you
12 know, based on what I have heard in the testimony, or on
13 my expertise is, if that were the case, we would have
14 seen or Maricopa County would have seen every ballot of
15 that ballot style or styles printed on a 19-inch ballot,
16 because again, the ballot PDF file would have contained
17 that image with a 19-inch ballot on it.

18 An analogy would be if I created a document with
19 a typographical error on it and I provided that to you,
20 and then you and five other people printed out that
21 document, that typographical error would be on all five
22 printouts. And so it could -- if it happened on the
23 EMS, then we would have seen this at full scale.

15:12:23

24 Q. So based on your expertise and assuming that some
25 ballots were printed with a shrunken image or a 19-inch

1 image on 20-inch ballot paper, what are possible reasons
2 why this could occur, based on your experience and
3 expertise?

4 A. Yes. So, specifically, for a 19-inch ballot
5 image being printed on a 20-inch piece of paper, there's
6 a few different scenarios in which that could have
7 happened. One of which is, as I was listening to Mr.
8 Jarrett's testimony a little while ago, with the
9 shrink-to-fit, this could have shrunken it down to a
10 smaller scale. I don't know necessarily whether or not
11 that would be down to a 19-inch scale, but it could have
12 shrunken it down to a smaller scale on 20-inch paper.

13 In terms of 19-inch scale specifically, it can be
14 through settings in the ballot on-demand application.
15 It could be on the operating system, for instance,
16 Windows, on the ballot on-demand laptop. It could also
17 be that this was completely unintentional, because as
18 Mr. Jarrett had testified yesterday, in the August
19 Primary, they used a 19-inch ballot. If one of the
20 ballot on-demand printers or a subset of ballot
21 on-demand printers had unintentionally not been upgraded
22 or updated to say that the paper size was a 20-inch
23 ballot and, therefore, it remained at a 19-inch ballot
24 scale, the system would have thought that it needed to
25 print on a 19-inch piece of paper. So that is another

1 opportunity whereby this could have occurred.

2 Q. And did you hear Mr. Jarrett's testimony just now
3 today about another possible explanation for this issue?

4 A. I did.

5 Q. And does that sound, based on your experience, is
6 that also a reasonable or possible explanation?

7 A. Yes, that is a reasonable and possible situation
8 that was the shrink-to-fit one that I was referring to.

9 Q. Thank you. And based on your experience and
10 expertise and your familiarity with Maricopa County's
11 processes, are you aware of or can you tell us what
12 would happen to a ballot that a tabulator cannot scan
13 because of an either print-to-fit issue or a faintly
14 printed timing mark, what would happen to those ballots?

15 A. Yes, so those ballots, first and foremost, would
16 be counted. They would ultimately be counted because as
17 elections are resilient, we have processes in place to
18 be able to ensure that every voter's ballot is
19 counted and cast as intended. And so the Elections
20 Procedures Manual has a process that allows for a ballot
21 that cannot be scanned, whether this is because of a
22 shrink-to-fit issue, a torn ballot, or another issue
23 where a timing mark cannot be read or the scanner cannot
24 read the ballot. To set up a ballot duplication board,
25 the ballot duplication board would thereby mark another

1 ballot with the voters' votes as intended, and then scan
2 and tabulate that alternate ballot.

3 Q. Thank you. If -- based on your experience and
4 expertise, do you believe that the Election Day printer
5 issues that occurred in Maricopa County during the
6 November 8, 2022, General Election could not be
7 accidental or inadvertent?

8 A. Absolutely not. As a matter of fact, you know,
9 I've seen issues like this occur in elections.

15:17:01 10 Elections have issues that happen, but they are
11 naturally resilient, and elections officials are risk
12 managers, are naturally risk managers, so they have
13 processes in place to ensure that every valid voter's
14 vote is counted and cast accurately. And so in
15 situations whereby I have seen things like this, it is
16 typically created by a machine malfunction; and this
17 would be, basically, just the equipment breaking down,
18 just as your car breaks down, or any piece of equipment
19 can break down, it is because of human error, a human
15:17:46 20 made a mistake such as switching a setting when they
21 should not have, and/or just being, you know, tired at
22 the end of the day and miscounting something, or by
23 something that is outside the purview of the election
24 official, like weather issues, humidity issues and other
25 things that can occur. And so although it is rare that

1 something like this occurs, in all of the instances that
2 I am aware of, they were accidental or unintentional.

3 Q. Okay. Thank you, Mr. Macias. We're going to
4 move on from the ballot on-demand printer discussion and
5 talk a little bit about chain-of-custody issues.

6 Do you have any experience with ballot
7 chain-of-custody and security procedures?

8 A. Yes, I do.

9 Q. Can you tell us a little bit about your
10 experience with ballot chain-of-custody procedures?

11 A. Yeah, in my role as a consultant to the federal
12 government, I have developed and worked on and developed
13 products and performed trainings on secure practices in
14 election infrastructure, and these include practices
15 such as ballot chain of custody, ballot reconciliation,
16 as well as auditing those processes as well.
17 Furthermore, when I was in the Secretary of State of
18 California in the role -- in OVSTA, I was the technical
19 lead and what was called Senate Bill 450, and this was
20 the implementation of ballot drop boxes in vote centers;
21 and one of the things that we did was implement the
22 security process for transporting ballots from a ballot
23 drop box to a central tabulation location, and all of
24 the security around that. So I have worked with
25 chain-of-custody and ballot reconciliation.

1 Q. Thank you. Do you recall hearing testimony
2 yesterday, including from Maricopa County Recorder
3 Stephen Richer, about the fact that the number of early
4 ballots dropped off at vote centers on Election Day are
5 not counted at the vote center, but rather they are
6 transported to MCTEC, the central count facility, in a
7 secure sealed and tamper-evidence container?

8 A. Yes, I do.

9 Q. And do you have any kind of -- do you have
10 concerns that this practice, based on your experience
11 and expertise, raises chain-of-custody concerns or
12 violates chain-of-custody requirements?

13 A. No. As a matter of fact, if you were to look at
14 kind of industry standards in the election
15 infrastructure community and across jurisdictions, one
16 of the ways to ensure chain of custody is to put into
17 place both protective and detective measures on the
18 ballot box themselves. And so a protective measure
19 would be to lock the ballot box; a detective measure
20 would be to implement some sort of tamper evidence,
21 whether that be a seal, a tamper-evident lock, a
22 tamper-evident tape, place it in a banker's bag or
23 something that would detect if something had gone awry;
24 and to ensure that the protective and detective measures
25 of that transport case itself and all of the contents

1 within are transferred from one location to another.
2 Then when it is received at a central location, then you
3 would, again, validate those protective and detective
4 measures, then you would open up the ballot box and do
5 your count at that time, ensuring that everything
6 contained within those transport boxes was protected and
7 you can validate that through the detective measures.

8 So this is not only a process for early and
9 in-person vote ballots. As a matter of fact, many
10 jurisdictions who do all central count for Election Day
11 voting where they do not do tabulation in precinct, so
12 they don't have a precinct tabulator that the voter
13 places their ballot in, rather the voter places their
14 ballot in a ballot box, they also utilize these types of
15 chain-of-custody practices as well.

16 Q. So based on your 17 years of experience and
17 expertise with election administration and election
18 security, do you see any security or chain-of-custody
19 problems with the practice of not counting the number of
20 early ballots at the vote center?

21 A. I do not.

22 Q. And based on your experience and expertise, are
23 you aware of any jurisdictions where solely because a
24 chain-of-custody form on a batch of ballots is not
25 completely filled out or missing, for that reason alone

1 that all ballots in that batch must be invalidated?

2 A. No. As a matter of fact, that would be
3 disenfranchising of voters, because these are voters who
4 have the eligibility and they have been authorized to
5 submit a ballot packet. They have received a ballot
6 packet. They have taken the time and the effort to go
7 through the process and do everything that they, the
8 voter, needs to do. They crossed their T's, they dotted
9 their I's, and so to go and throw out their ballots
10 because of an administrative paperwork error that was
11 most likely unintentional by a poll worker or election
12 worker who has already worked a 16-hour day would, in
13 essence, be telling that voter that something that is
14 outside of their control, even though they have done
15 everything that is necessary to register, to be
16 authenticated and to cast their ballot, is now going to
17 be thrown out because of an administrative paperwork
18 error.

19 MS. DUL: Thank you, Mr. Macias. No further
20 questions, Your Honor.

21 THE COURT: Cross-exam.

22 MR. BLEHM: Yes, Your Honor.

23 THE COURT: Either way, you can sit there or
24 you can come up to the podium.

25 MR. BLEHM: Thank you, Your Honor. First of

1 all, I apologize for not standing. I think my brain is
2 falling asleep.

3 THE COURT: Mr. Blehm, you don't apologize
4 for that.

5 MR. BLEHM: All right. I have -- can I use
6 the ELMO, please?

7 CROSS-EXAMINATION

8 BY MR. BLEHM:

9 Q. Good afternoon, Mr. Macias.

15:24:30 10 A. How you doing?

11 Q. I just placed a document on the ELMO, I believe
12 it's titled Mitigating Risk Chain of Custody written
13 January 5, 2022, and I believe it's got your name on it.

14 Did you prepare this or have someone prepare it
15 at your request, and I will -- I will attest to you, Mr.
16 Macias, this document I believe was downloaded off of
17 your website with absolutely no changes.

18 Does this appear to be your PowerPoint
19 presentation?

15:25:02 20 A. I have provided a PowerPoint presentation with
21 that title, yes.

22 Q. I'm turning now to page 3 under Highlights
23 Impacts and Risks From a Broken Chain of Custody, did I
24 read that correctly?

25 A. Yes, I'm sorry -- thank you for zooming in. Yup.

1 Q. Okay. Point 1 says, "The integrity of the
2 system's data will be deemed untrustworthy."

3 Did I read that correctly?

4 A. Yes.

5 Q. Point 2. "A court of law can render the system
6 and data inadmissible."

7 Did I read that correctly?

8 A. That's correct.

9 Q. Point 3, "Inability to definitively determine if
10 an actor has manipulated your system or data."

11 Did I read that correctly?

12 A. That's correct.

13 Q. Thank you very much. Now, really quickly, do
14 administrative errors, Mr. Macias, generally impact
15 298,000 ballots? Yes or no?

16 A. I'm sorry. I'm having a hard time hearing.

17 Q. Do administrative errors generally impact 298,000
18 ballots?

19 A. I don't know what you mean by impact.

15:26:18 20 Q. You said general administrative errors shouldn't
21 allow ballots to be thrown out, okay. If chain of
22 custody is not valid for 298,000 ballots, is that a
23 simple administrative error, yes or no?

24 MS. DUL: Objection, Your Honor.

25 Foundation. Calls for speculation.

1 THE COURT: He's asking hypothetical.

2 MR. BLEHM: It's a simple question.

3 THE COURT: No, nothing is a simple
4 question. You're asking a hypothetical.

5 MR. BLEHM: Yes, Your Honor.

6 THE COURT: Mr. Macias, if you understand
7 the question, sir, and you can answer it, please answer
8 it. If you don't understand, we can have it rephrased,
9 sir.

15:26:51 10 THE WITNESS: Can I get it rephrased,
11 please?

12 BY MR. BLEHM:

13 Q. All right. If 298,000 ballots did not have valid
14 chain of custody, would that be a simple administrative
15 error?

16 A. Missing a piece of information on a piece of
17 paper would not invalidate the chain of custody if the
18 protective and detective measures were still in place.

19 Q. Can you say yes or no to that question? Yes or
15:27:25 20 no. Do administrative errors routinely impact 298,000
21 ballots delivered at different times throughout the day
22 to different locations?

23 MS. DUL: Objection, Your Honor. Objection.
24 Foundation.

25 MR. BLEHM: I'll just -- I'll withdraw that.

1 I want to save some of our time. I've just got one
2 question to ask.

3 THE COURT: Go ahead.

4 BY MR. BLEHM:

5 Q. Mr. Macias, did I hear you testify when you were
6 talking about your background and experience that you
7 were hired by Katie Hobbs and the Secretary of State's
8 Office to do Arizona's logic and accuracy testing for
9 the 2022 Election?

15:28:03 10 A. If I used the word "hired," then I misstated and
11 I would like to correct the record. I was retained to
12 be an expert observer, and I did that at no cost and was
13 not hired to do so. I did it on a pro bono basis.

14 MR. BLEHM: Thank you.

15 THE COURT: That's it?

16 MR. BLEHM: I'm done.

17 THE COURT: Thank you. Redirect?

18 MS. DUL: Just one question.

19 REDIRECT EXAMINATION

15:28:28 20 BY MS. DUL:

21 Q. Mr. Macias, going back to the PowerPoint
22 presentation that Mr. Blehm showed to you, can we pull
23 that -- or I'll put it on the ELMO.

24 Can you see that, Mr. Macias?

25 A. I can.

1 Q. Mr. Blehm read to you that bottom bullet that
2 says, "highlights, impacts and risks from a broken chain
3 of custody, the integrity of the system and its data
4 will be deemed untrustworthy," and then the below two
5 bullets. Is that about ballots?

6 A. So this is general chain of custody of critical
7 infrastructure systems, and again, this is about the
8 integrity of the system and its data. And so typically
9 when we're talking about the system, it can be a manual
10 process, but it can also be a technology; but it is not
11 specific to ballots in this situation. Again, the
12 docket -- it is coming from a document that is general
13 for critical infrastructure systems.

14 Q. And would you consider a missing date or -- on a
15 chain-of-custody form, a missing signature from one of
16 the three board members that transported the -- the
17 container, the secure container, or even a missing form
18 in one step of the process a total break in the chain of
19 custody?

20 A. No. As I had mentioned, that would be an
21 administrative error, and the chain of custody can still
22 be maintained through the protective and detective
23 measures that are implemented.

24 MS. DUL: Thank you, Mr. Macias. No further
25 questions, Your Honor.

1 THE COURT: May the witness be excused?

2 MS. DUL: Yes.

3 MR. BLEHM: Yes, Your Honor.

4 THE COURT: Mr. Macias, thank you, sir.
5 You're excused.

6 THE WITNESS: Thank you.

7 (Witness excused.)

8 THE COURT: I believe you told me that was
9 your last witness.

15:30:33 10 MS. DUL: Yes, Your Honor.

11 THE COURT: Is that true with all
12 Defendants?

13 MS. KHANNA: Yes, Your Honor.

14 THE COURT: Defendants rest? Are there any
15 exhibits that you're missing that you need before I have
16 you rest?

17 MS. KHANNA: No, Your Honor, thank you.

18 THE COURT: Okay. So Defendants have
19 rested.

15:30:50 20 MS. KHANNA: Yes, Your Honor.

21 THE COURT: Anything further?

22 MR. BLEHM: We just have one point of
23 clarification, Your Honor, because based upon our
24 counts, they are out of time approximately three minutes
25 ago, Your Honor.

1 THE COURT: I'd have to add up the last bit
2 here. So you're just pointing it out for my
3 edification? I'm -- do you want me to add it up?

4 MS. KHANNA: Your Honor, we're happy to
5 provide our estimates as well, if that would be helpful
6 to the Court.

7 THE COURT: I don't want to waste a bunch of
8 time, three minutes, and I think I've tried to give you
9 all as much --

15:31:41 10 MR. BLEHM: I understand, Your Honor, and I
11 don't want to waste this Court's time.

12 THE COURT: I appreciate that, so are we --
13 so that concludes all the presentation of evidence and
14 testimony. And we're ready to go to closing; is that
15 right?

16 MR. BLEHM: That would be correct, Your
17 Honor.

18 THE COURT: Okay. I'm sorry. Do you have
19 something?

15:31:59 20 MS. KHANNA: I wasn't sure what Your Honor
21 was thinking. I would just ask for five minutes for a
22 break to prepare for closing.

23 THE COURT: We can -- well, five minutes is
24 not preparing for closing. What you're really referring
25 to is a biological break, right? And I am not opposed

1 to that for either side.

2 MR. BLEHM: We were going to stipulate to
3 that is correct, Your Honor.

4 THE COURT: Thank you, Mr. Blehm. Okay.
5 Why don't we come back then at 20 until, okay, and we'll
6 resume with closing. It will be 15, 20 and five,
7 correct?

8 MR. OLSEN: Yes, Your Honor.

9 THE COURT: All right. Thank you.

15:32:37 10 (Recess taken, 3:32 p.m.)

11 (Proceedings resume, 3:40 p.m.)

12 THE COURT: All right. This is
13 CV2022-095403, Lake v. Hobbs, et al. Present for the
14 record are the parties and their representatives and
15 their respective counsel.

16 Ready to proceed with closing arguments,
17 Plaintiff?

18 MR. OLSEN: Yes, Your Honor.

19 THE COURT: Defense?

15:40:58 20 MS. KHANNA: Yes, Your Honor.

21 MR. LIDDY: Yes, Your Honor.

22 THE COURT: Very well. Mr. Olsen, we'll
23 hear from you first, sir.

24 CLOSING ARGUMENTS

25 MR. OLSEN: Thank you, Your Honor. Your

1 Honor has heard two days of testimony, sworn testimony.
2 Some of it doesn't make sense, some of it does. The law
3 in Arizona is that an election challenger must forward
4 evidence sufficient to show that the outcome is wrong,
5 or at least uncertain, and that is the seminal case of
6 *Findley v. Sorenson*. Plaintiffs have met that standard.
7 There's just a little over 17,000 votes out of nearly
8 1.6 million that separate the candidates. That's less
9 than .06 percent.

15:41:46 10 The two issues that Your Honor directed
11 Plaintiff to support that was intentional conduct with
12 the tabulators in terms of the malfunctions, the
13 rejections that occurred on Election Day, and also the
14 chain-of-custody issue. We've done that, Your Honor.
15 We heard some startling testimony. I had to kind of
16 regroup here from what my prepared closing remarks, and
17 that startling testimony from Mr. Jarrett today, it just
18 doesn't make sense, and I'll say why, and this is in
19 terms of whether when we showed through the inspection
15:42:31 20 of ballots, random selection of ballots, from six -- six
21 voting centers -- not three -- six. Mr. Parikh found
22 evidence, ballots that had 19-inch images imprinted on
23 them on 20-inch sized paper. He found that in all six
24 vote centers that were randomly selected.

25 Mr. Jarrett yesterday testified under oath

1 when he was asked that could it happen or did it happen
2 that in 19-inch image was imprinted on a 20-inch piece
3 of paper and he testified no. And not only that, his
4 counsel, Mr. Liddy, went with the shrink-to-fit excuse.
5 And he never said, oh, yeah, that's what happened; we've
6 known about this since shortly after the election and
7 we're doing a root cause analysis. None of this -- it
8 doesn't make sense. Another thing that doesn't make
9 sense, they are doing a root cause analysis now, yet he
10 says that, wow, this has happened in three prior
11 elections. Why are you doing a root cause analysis on
12 this if this same event, this shrink-to-fit issue, arose
13 in three prior elections?

14 The other thing that doesn't make sense
15 about this shrink-to-fit excuse is that it's illegal
16 under Arizona law to modify a ballot after it's been
17 set. You just can't do that, and they are saying that
18 it happened not only in this election but in three prior
19 elections? It just doesn't make sense, Your Honor.

20 The other thing that doesn't make sense is
21 that somehow, and you heard Mr. Macias, he kind of
22 equivocated on this shrink-to-fit argument about whether
23 you could get it to exactly 19 inches. So all of a
24 sudden there are supposedly techs that are running
25 around making modifications on Election Day, which by

1 the way, has happened in three prior elections, and they
2 are all getting it to exactly 19 inches for
3 shrink-to-fit. Random techs just kind of doing things
4 on their own. This doesn't make sense, Your Honor. And
5 I'm actually troubled to even be talking about this.

6 The idea that when I questioned Mr. Jarrett
7 about this issue, and he said unequivocally, it could
8 not happen, and his counsel then trying to clean this up
9 said, well, what about, you know, shrink-to-fit, that he
10 didn't immediately say, yeah, that was it when he
11 supposedly had known about it since shortly after the
12 election. It doesn't make sense, Your Honor.

13 The same thing with respect to the
14 conflicting testimony regarding whether it's chaos or
15 massive disruption that occurred on Election Day with,
16 you know, 200 plus declarants. You have Mr. Baris, who
17 is doing exit polls and talking to people on Election
18 Day; news reports; you have other witnesses who, Mr.
19 Sonnenklar, who testified that they visited -- he and
20 his fellow roving observers went to 115 vote centers,
21 the same thing. So you have independent sources talking
22 about massive chaos at well over 50-plus percent, about
23 59 percent, by the County's own admission, it would be
24 30, or about a third, 70 vote centers; or as counsel has
25 been or their witnesses have been saying up here, yeah,

1 these were just kind of minor technical difficulties
2 that you expect in every election. It's not even close.
3 I mean, there's -- it's, like, two ships passing in the
4 night.

5 The fact that they would downplay what
6 happened on Election Day that everybody knows, I think
7 the word that came out -- I read a couple months ago was
8 gaslighting, and that's like telling you to your face
9 what you know is not true and what they know you know is
10 not true, but they are going to tell you anyway. This
11 -- the disconnect here is very troubling. We put on
12 sworn testimony, either on the stand or through sworn
13 declarations, people who put their name and made it
14 public in a time in our country when to put yourself out
15 as they did is not exactly something that doesn't carry
16 risk, and I'm sure you've heard about cancel culture and
17 everything else. There were hundreds of people who came
18 forward to tell the truth about what happened on
19 Election Day. And even Supervisor Gates, you know,
20 early on in the election when he was giving a press
21 conference characterized it as chaos, and then on
22 November 28th, they have an update. And it's, like,
23 yeah, I think the election was run pretty well. It's
24 like the story just kind of shifted. This just doesn't
25 happen, Your Honor. We have independent sources that

15:47:02

15:47:44

1 say Election Day was chaotic and was a mess, and it
2 absolutely disenfranchised voters, there were long lines
3 everywhere; and we put forward specific compelling
4 evidence that of quantifiable shifts in votes through
5 Mr. Baris, a range of 15,000 to 29,000 votes, Republican
6 votes, and he said that was a conservative estimate.
7 The Defendants put up this expert from the University of
8 Wisconsin, and his bias, for one thing, was completely
9 obvious; but he had to admit that the County, which
10 bases its whole election plan on modeling turnout --
11 they had a high model of 290,000 projected for 2022 with
12 a low model of 250,000. And as you heard testimony,
13 that low model was -- was performed prior to the
14 election, as it must, and did not account for any kind
15 of Election Day chaos. So that was a perfect election
16 just with a little bit lower turnout in a time when
17 everybody knew Republican turnout on Election Day,
18 because even as counsel repeatedly said, you know,
19 Republican leaders were telling people to not vote by
20 mail and to come out on Election Day. And guess what?
21 They did, and then just so happened that pandemonium
22 ensued. And whether you believe it's a shrink-to-fit
23 allegation at three vote centers when we know, we have
24 direct evidence, that it's in all six -- six of the six
25 that Mr. Parikh inspected had that same 19-inch ballot

1 image imprinted on a 20-inch piece of paper.

2 There's no doubt that that caused mayhem.
3 There's no doubt that it caused long lines. You have
4 this professor from University of Wisconsin who comes
5 out and says, well, I looked at the wait-time data from
6 Maricopa County and, you know, it says that the wait
7 lines weren't that bad. Well, we have sworn testimony
8 and charged in the record that shows they are far more,
9 and Maricopa County has -- has repeatedly downplayed and
10 said that, you know, a pretty well-run election, Your
11 Honor. It doesn't make sense. You don't get this kind
12 of disconnect -- I've never seen anything like this.

13 All the witnesses, people who come up
14 testifying on behalf of Plaintiffs who have nothing to
15 gain. They have nothing to gain by coming forward to
16 testify about this. And then you have the Defendants'
17 witnesses come up and tell a completely different story.
18 Like I said, it's like two different worlds.

19 On chain of custody, Mr. Richer admitted
20 they estimated the amount of ballots that come in to
21 MCTEC, that they don't know the count. Well, A.R.S.
22 16-621(e) says you will maintain chain of custody every
23 step of the way, and the form that is filled out, that
24 EVBT form has a number for the ballots, the number of
25 ballots in the drop boxes. They know the precise

1 number. But now the excuse has shifted, well, yeah, we
2 don't count them at MCTEC. When they go to Runbeck, we
3 have employees there, even though they are dropping them
4 off at MCTEC. And as Leslie White in her declaration
5 testified to, the trucks were coming in, they are
6 cutting seals, they are throwing these ballots and
7 taking them out of the bins and throwing them in trays,
8 and nobody is counting the ballots. Nobody is taking
9 the form that's with them and counting the ballots.

15:51:55 10 Now, having heard this testimony, they have come up and
11 said -- Mr. Jarrett came up today and said, well, when
12 they are shipped up to Runbeck to be processed, because
13 they are still in the envelopes and scanning the
14 envelopes, well, yeah, we count them up there.

15 Well, that makes no sense. They have taken
16 those ballots out of the bins and delivered them to
17 MCTEC on election night, and we're talking about ballots
18 that are delivered on Election Day. They take them out.
19 When the trucks get up to the ramp, they take them out
15:52:26 20 of the bins, they break the seals. They are supposed to
21 count them. If you don't have a count from MCTEC when
22 those ballots are being transported to Runbeck, how do
23 you know whether that -- that count is secure? They
24 didn't follow the law. And by the way, we have a
25 manifestation which is still unexplained.

1 On November 9th, the reported count is
2 25,000 ballots less, which is beyond the margin here,
3 than on November 10th. So the day after the election,
4 they don't -- they put out what the count is and then
5 magically 25,000 ballots appear on November 10th, and
6 well, hey, that's the race. It doesn't make sense.
7 This is just flat wrong what is going on here.

8 The law is there for a reason. The law is
9 there to protect the integrity of the vote. And there's
10 a quote from a Wisconsin Supreme Court decision that
11 came out in July 2022 that I just want to read, Your
12 Honor, and this was just about drop boxes. And so the
13 issue here in Wisconsin was whether or not the Wisconsin
14 Election Commission which said, hey, we're going to go
15 with unmanned drop boxes, and the statute said, no
16 unmanned drop boxes, but they did it anyway. So it went
17 up to the Supreme Court, the Wisconsin Supreme Court,
18 and here's what the Wisconsin Supreme Court stated. And
19 I'll just, you know, drop boxes are not that sexy, and
20 chain of custody is not -- but these are incredibly
21 important issues to ensure the integrity of the vote.

22 This is about trust. This is the people are
23 watching this. This whole thing is being televised, and
24 they are hearing two different stories, and this is --
25 this is what the Wisconsin, three justice on the

1 Wisconsin Supreme Court stated in this opinion; and the
2 opinion is *Tiegen v. Wisconsin's Election Commission*,
3 "The right to vote presupposes the rule of law governs
4 elections. If elections are conducted outside the law,
5 the people have not conferred their consent on the
6 government. Such elections are unlawful and the results
7 are illegitimate."

8 And they have a quote from John Adams that
9 follows: "If an election can be procured by a party
10 through artifice or corruption, the government may be
11 the choice of a party for its own end, not of the nation
12 for the national good."

13 The testimony that this Court heard today
14 from the Plaintiff's side was compelling, it was
15 truthful and it made sense. The testimony that Your
16 Honor respectfully heard today from the Defendants
17 doesn't make sense. What Mr. Jarrett did on that stand
18 today doesn't fit, it doesn't make sense. Three voting
19 centers we found this shrink-to-fit. Mr. Parikh, I
20 inspected six vote centers. A well-run election?
21 Pandemonium, chaos. From different sources. Everything
22 corroborates, Your Honor, what we -- what the evidence
23 that we have put forth is corroborative with respect to
24 the violations of law, the intentional misconduct with
25 respect to the malfunctions in the tabulators, and to

1 the violations of the chain-of-custody rules.

2 This is about trust, Your Honor. It's about
3 restoring people's trust. There's not a person that's
4 watching this thing that isn't shaking their head right
5 now. And with that, Your Honor, I'll sit back.

6 THE COURT: How did the Defendants want to
7 break up their time?

8 MS. KHANNA: Your Honor, I'm going to try to
9 keep mine at about 15 to 17 minutes, and leave the
10 remainder of time for Mr. Liddy.

11 THE COURT: You all right with that, Mr.
12 Liddy?

13 MR. LIDDY: Their contest, Your Honor.

14 THE COURT: Very well.

15 MS. KHANNA: Thank you, Your Honor. Just
16 three days ago, Kari Lake's lawyer stood in this room
17 and made a promise. Having filled 70 pages of a
18 Complaint with grandiose tales of electoral malfeasance,
19 they asked the Court to give them a chance to prove
20 their case at trial.

21 Underpinning that argument was the implied
22 promise that they would come to court to trial with
23 something, with anything, to justify Ms. Lake's decision
24 to call on a court of law to give her a victory that the
25 voters of Arizona had denied her.

1 Kari Lake asked this Court to give her the
2 opportunity to make good on that promise, and the Court
3 did just that. It gave her the opportunity to move
4 beyond mere allegations and speculations and accusations
5 and bring to light the factual bases for her claims and
6 the actual evidence to prove them. This Court not only
7 provided a forum for her to establish her claims, but
8 also set up a clear roadmap for how to do it in its
9 order from earlier this week.

15:57:53 10 Kari Lake and her lawyers knew what they had
11 to do at this trial, and three days ago, they knew the
12 hand that they had to play. They knew the evidence they
13 had, and they knew the evidence they didn't. This was
14 their big moment to show their hand, but the only thing
15 that has come to light over the last day and a half,
16 everyone waiting with bated breath to see the big reveal
17 behind these claims is that they never had the evidence
18 to back them up.

19 I would like to walk briefly through what
15:58:22 20 Ms. Lake needed to do to prevail on her claims and what
21 she actually proved at this trial.

22 As to Count 2 on pages 6 to 7 of its order
23 from earlier this week, the Court ruled that Plaintiff
24 must show at trial that the BOD printer malfunctions
25 were intentional and directed to affect the results of

1 the election, and that such actions did actually affect
2 the outcome. Plaintiff established none of this.

3 Plaintiff's star witness was Clay Parikh, a
4 purported cyber security expert. Mr. Parikh drafted a
5 report in preparation of this case in which he cited
6 everything from Twitter posts to unsigned declarations,
7 to provide a host of theories about all the things that
8 could possibly have gone wrong on Election Day. Nothing
9 in the report or any of its exhibits was offered into
10 the record, and instead, by the time he took the stand
11 yesterday, he was sure he had smoked out the problem.

12 According to Mr. Parikh, in some vote
13 centers, there are 19-inch ballot images printed on
14 20-inch paper, which is what caused the tabulation
15 issues at Election Day. Mr. Parikh also testified that
16 the only possible explanation for those Election Day
17 errors is intentional interference in the system. It
18 simply could not have happened by accident. There are
19 more than a few flaws with Mr. Parikh's analysis, Your
20 Honor, but for the sake of expediency, I'll focus here
21 only on three.

22 First, despite Mr. Parikh's newfound
23 certainty, there is reason to doubt that the 19-inch,
24 20-inch discrepancy was the root cause of all of the
25 printer issues. Plaintiff's own witness, Bradley

1 Bettencourt, a T Tech on Election Day, testified that
2 restarting the printer and shaking the cartridge helped
3 the printer problem significantly at some locations,
4 neither of which would have shifted paper margins.

5 Second, even if Mr. Parikh had put his
6 finger on the tech issue that happened on Election Day,
7 the mere identification of the cause does not indicate
8 that it was the result of an intent to alter the
9 election. To the contrary, the testimony from
10 Plaintiff's own witness, Mr. Bettencourt, indicated that
11 the County had deployed employees to fix the problem and
12 in many instances was -- were successful.

13 Mr. Jarrett, one of the co-directors of the
14 elections, testified based on his office's investigation
15 that the printer settings were likely adjusted by T
16 Techs who were trying to fix the printer problems. They
17 did not create 19-inch ballots in the system, but rather
18 they caused ballots to be printed with a fit-to-paper
19 setting in some locations.

20 And Mr. -- as Mr. Macias just testified, in
21 his experience, these kinds of widespread tech failures
22 or tech issues are usually the result of equipment
23 failures, or some other administrative error, beyond the
24 purview of election officials, and are specifically
25 accounted for in the many layers of redundancies within

1 the system to assure the security of the election.

2 Neither Mr. Parikh nor anyone else has
3 provided any evidentiary basis to call into question the
4 good faith of Maricopa County election officials, which
5 is presumed in this election contest.

6 Third, even if Mr. Parikh had uncovered some
7 malicious intent to alter the ballot margins, he failed
8 to demonstrate this had any actual impact on the outcome
9 of the election. To the contrary, he admitted that any
10 ballot that was not able to be read by a tabulator would
11 have been duplicated and that those duplicates would
12 have been counted.

13 Mr. Jarrett testified that if the three
14 locations identified with issues of shrunken images on
15 ballots, the total number of affected ballots was less
16 than 1,300, a far cry from the outcome determinative
17 number. And these ballots were located, went to a
18 bipartisan adjudication board process, duplicated and
19 ultimately successfully tabulated.

20 Plaintiff also called Mr. Sonnenklar, a
21 roving attorney from the RNC. Mr. Sonnenklar testified
22 about his observations on Election Day, long lines and
23 frustrated voters who didn't want to put their ballots
24 in Door 3. Mr. Sonnenklar offered his opinion that
25 there had been some wrongdoing and that Kari Lake should

1 have won, but the only evidence he could point to in
2 support was, quote, common sense. And when asked if he
3 had any personal knowledge of either claim, he admitted
4 he did not.

5 Plaintiff's final witness on Count 2 is Mr.
6 Baris this morning. He was the one person who might be
7 able to say whether this purported misconduct actually
8 affected the outcome of the election. But this
9 morning's testimony from Mr. Baris and Dr. Mayer lays
10 bare the numerous reasons why Mr. Baris's analysis lacks
11 any merit. Mr. Baris's outfit, Big Data Polls, has been
12 thoroughly discredited. He only polled people who said
13 they actually voted, yet drew conclusions about people
14 who didn't vote. His conclusions were based not
15 actually on the responses to his poll, but on his
16 assumptions of all of the people who chose not to
17 respond to his poll. According to Mr. Baris, quote, I
18 can observe them by their absence.

19 Even if there were any conceivably
20 scientific basis for this polling method, you don't have
21 to be a mathematician to detect the fundamental flaws in
22 his math. He opines if there had been 2.5 percent more
23 voters, and all those voters voted on Election Day, then
24 some of those voters would have voted for Kari Lake, and
25 then Kari Lake would have won the election.

1 Mr. Baris plucked this figure out of thin
2 air. He admitted neither his forecast nor his poll
3 provide evidence that 2.5 percent, or any other specific
4 number of voters, stayed home as a result of tabulation
5 issues or anything else. Even putting aside that fact,
6 Mr. Baris pulled a sleight of hand with his
7 calculations. He assumed that all 2.5 percent of those
8 voters would have the same voting patterns as Election
9 Day voters, even though the vast majority of Maricopa
10 voters voted early and had different voting patterns.

16:04:42

11 He also admitted by Election Day,
12 1.3 million Maricopa voters had already cast their
13 ballots. So for Kari Lake to come close to closing that
14 17,000 vote deficit, she didn't need 2.5 percent more
15 voters to vote on Election Day, she needed at least
16 16 percent more voters. In other words, Mr. Baris
17 admitted that for his speculations to come close to
18 changing the election, one out of every six voters who
19 planned to vote on Election Day would have had to stay
20 home as a result of tabulator issues. Mr. Baris
21 admitted that his poll provided no information about the
22 number of voters that encountered a tabulator issue, or
23 even the number of voters who encountered a line.

16:05:19

24 Dr. Mayer, a respected expert who studies
25 election administration for a living, whose testimony

1 courts consistently rely upon, summed it up. Mr. Baris
2 provided no evidence that any number of voters were
3 disenfranchised by malfunctioning tabulators. In the
4 end, not only is Mr. Baris's testimony not credible and
5 nonsensical, it fails even on its own terms.

6 That is the sum total of the evidence on
7 Count 2, Your Honor. And what did it prove? A printer
8 issue happened. It's unclear what that issue was and if
9 it was the same issue everywhere, and some voters were
10 upset about it. That's it. No evidence of any person
11 with any intent to do anything, let alone malicious
12 intent to affect the election. No evidence that anyone
13 didn't vote as a result, let alone that they were
14 deprived of the right to vote. And not only did
15 Plaintiff provide no evidence whatsoever that any errors
16 actually affected the outcome of the election,
17 Defendants provided affirmative evidence to the
18 contrary.

19 As to Count 4, this Court wrote on pages 8
20 to 9 of its order that Plaintiff must establish that a
21 person under the control of Maricopa County committed
22 misconduct in violation of state law that affected the
23 outcome of the election. Here Plaintiff's star witness
24 on chain of custody was Heather Honey. Ms. Honey is an
25 interested bystander to Arizona election administration.

1 She conceded that she has never taken the election
2 officer certification course. She's never worked as an
3 election official. She's never worked as a poll worker.
4 She's never worked as a poll observer. According to Ms.
5 Honey, she has only, sort of, ever been to the MCTEC
6 facility and has no personal information whatever about
7 what happened at Runbeck or MCTEC on Election Day this
8 year. Ms. Honey's testimony consisted of her personal
9 understanding of Arizona law and the EPM, which this
10 Court has no reason to credit, and her retelling of
11 information that a Runbeck employee and a MCTEC observer
12 told her after the fact.

13 Now, one might wonder why Plaintiff chose to
14 call Ms. Honey instead of the actual witnesses to the
15 events she testified about, both of whom were on
16 Plaintiff's witness list, and neither of whom they
17 called. It may be because in their own -- in those
18 declarations provided by Ms. Honey, these witnesses
19 acknowledge the limitations of their own personal
20 knowledge. According to the MCTEC observer, Leslie
21 Marie, she did not have a clear view of the activities
22 on the truck or on the dock, and thus would not have
23 seen any scanning or chain-of-custody documentation that
24 occurred in those areas.

25 And the Runbeck employee, Denise Marie,

1 admitted that she saw about 50 ballots given to the
2 sorting department by employees and that she left an
3 hour before mail ballots even arrived at Runbeck.

4 But even if the Court were to assume the
5 credibility of Ms. Honey's testimony, all it establishes
6 is that she hoped to see certain chain-of-custody
7 documentation that she did not receive from the County.
8 Based on Ms. Honey's testimony and the voicemail that
9 Mr. Blehm seems to think has broken this case wide open,
10 it appears that Plaintiff's new theory is that Maricopa
11 County has failed to comply with a PRR request in a
12 timely fashion. Needless to say, that claim is not
13 currently before this Court, nor is it any basis for
14 overturning an election.

15 Plaintiff's chain-of-custody claims seems to
16 hinge on this notion that perhaps some number of ballots
17 were injected into the batches at Runbeck. Denise
18 Marie's declaration states her belief that she knew of
19 approximately 50 ballots dropped off by Runbeck
20 employees on behalf of their family members. Ms. Honey
21 and Plaintiff's counsel from there opine that for all we
22 know, there could have been 50, 500, 50,000, 500,000
23 ballots injected at Runbeck. There are at least two
24 fatal flaws in Plaintiff's logic here.

25 First of all, Plaintiff's burden is to

1 demonstrate that an actual number of votes were
2 improperly counted and affected the outcome of the
3 election, but Ms. Honey's testimony confirmed that any
4 estimate of how many ballots are at issue in this
5 chain-of-custody claim, quote, would be nothing but pure
6 speculation. In short, Ms. Honey conceded that
7 Plaintiff could not meet her burden on this claim.

8 Second of all, even if there were 50, 500,
9 500,000 ballots somehow injected into the process,
10 Plaintiff has not established that a single one of those
11 ballots was invalid or shouldn't have been counted, nor
12 could they. Every ballot received by Maricopa County is
13 processed, checked against the voter registration record
14 to make sure the person hasn't already voted, and then
15 verified by a multilevel signature review process. Even
16 if this Court were to indulge Plaintiff's
17 chain-of-custody speculations, there is no evidence or
18 even reason to believe that it had any effect on the
19 number of votes lawfully counted, let alone on the
20 outcome of an election that Katie Hobbs won by over
21 17,000 votes.

22 The claims Plaintiff has advanced in this
23 election, Your Honor, in this election contest, raise
24 serious allegations intended to bring with them very
25 serious consequences. But Plaintiff's approach to this

1 litigation has been anything but serious. Instead,
2 Plaintiff's record consists of hearsay upon hearsay upon
3 hearsay, rank speculation, and a good dose of theatrics.
4 In short, the trial record in this case reveals that
5 there was never a case to begin with.

6 On Monday in arguing the motion to dismiss,
7 I told the Court that this was all just an elaborate
8 story Plaintiff was trying to tell, looking for the
9 exciting plot twist. In allowing this contest to
10 proceed to trial, this Court gave Ms. Lake a chance to
11 tell her story, and not just spin yarns, but the chance
12 to actually point to evidence to stitch together a
13 coherent narrative. What we got instead was just loose
14 threads and gaping plot holes. We know now that her
15 story was a work of fiction, and what we are left with
16 today are the facts, and those facts are as follows:

17 Kari Lake lost this election and must lose
18 this election contest. The reason she lost is not
19 because of a printer error, not because of missing
20 paperwork, not because the election was rigged against
21 her, and certainly not for lack of a full opportunity to
22 prove her claims in a court of law. Kari Lake lost the
23 election, because at the end of the day, she received
24 fewer votes than Katie Hobbs. Katie Hobbs is the next
25 governor. The people of Arizona said so. It is time to

1 put this contest and these spurious claims to bed.

2 Thank you, Your Honor.

3 THE COURT: Okay. By my count, you got five
4 minutes.

5 MR. LIDDY: Thank you, Your Honor. Most of
6 this is just theatrics anyway, I'll just cut that out.

7 THE COURT: Much appreciated.

8 MR. LIDDY: Your Honor, I want to first
9 touch on a couple things that we just heard from counsel
10 for Kari Lake. Cancel culture, I don't think that means
11 what you think it means. Bias. Their star witness,
12 Parikh, gives freebies to the prince to Stop the Steal.
13 That's the pillow guy. That's bias, and we trust this
14 Court will be able to recognize true bias, perceived
15 bias, and weigh and rule accordingly.

16 Candidates are allowed to say anything they
17 want out in the town common, and they'll be held
18 responsible by the voters; not true with lawyers who
19 come into courtrooms in the State of Arizona. There's
20 an obligation. Every lawyer is obligated to interview
21 his or her clients, his or her witnesses, and make sure
22 they know what they are going to say, and if it's not
23 true, can't present it to the Court. It's an ethical
24 violation. And if what exists for their testimony is
25 not enough to meet the burden, the case should not be

1 brought. And so, Your Honor, once you rule, we will be
2 back seeking A.R.S. 12-349 sanctions and Rule 11
3 sanctions.

4 Maricopa County takes responsibility for the
5 errors that occur in every election, and in this
6 particular election, November 8, 2022, there were a
7 significant number of printer errors, a minority by far,
8 but significant, and those did cause real inconvenience
9 and heartache for a lot of people. Maricopa County
10 acknowledges that. Those were Election Day operations
11 that are on the Board of Supervisors, not the Recorder.
12 But those errors or those mishaps by machines, if you
13 will, the effect that had on an Election Day voter has
14 compounded, Your Honor, not by intentional misconduct by
15 any employee or anybody under the control of Maricopa
16 County, but by months and months and months of
17 communication from the current leadership of the
18 Republican party of Arizona and the communications
19 specialist of the Kari Lake for Governor Campaign that
20 said do not vote early, even if you were on the pebble
21 and you got an early ballot, don't mail it. Don't drop
22 it off at the drop box. *2000 Mules*. Bring in your car,
23 maybe. Go on Election Day and vote on person, and Lord
24 forbid, don't ever put your ballot in the drop box, in
25 the ballot box or Drawer Number 3, because there's

1 something very scary about drawer number 3, which is
2 nothing but a ballot box. It's what people all over the
3 world do with their ballots, vote it, stick it in the
4 ballot box; but people were terrorized by that on
5 Election Day. That's not on Maricopa County, that's on
6 the Kari Lake for Governor Campaign. That's on the Dr.
7 Kelli Ward-led Republican Party communications
8 apparatus.

9 So we did not see in two days of testimony
10 in all those affidavits that came in evidence of a
11 botched election. We saw evidence of a botched
12 campaign, political malpractice.

13 Who goes out and tells their voters don't
14 vote on day 1 of early voting, day 2, day 3, all the way
15 up to day 26 of the voting? That's political
16 malpractice. You reap what you sow.

17 Your Honor, the burden has not been met.
18 When people come into this courtroom without evidence,
19 there should be a day of reckoning. And this has been
20 happening all over the country, Your Honor, and it's got
21 to stop, and it's got to stop right now. And the place
22 to stop it is right here in your courtroom, Your Honor,
23 right here in Mesa, Arizona. This has got to stop.
24 We've got to get back to respecting elections, because
25 that's all we have, Your Honor. Different religions,

1 different creeds, different ethnicities, different
2 backgrounds. There's only one thing that makes us
3 Americans, and that's we believe in choosing our own
4 election -- our own rulers, our own governors, our own
5 mayors, our own presidents, and we do that through
6 elections. And because of our forefathers' experience,
7 those elections are split up, the 50 different states
8 and all the different counties, and the legislature
9 makes the rules, the counties follow the rules. You
10 carry out the election and you live with the results.
11 If you lose, you live to fight another day. You don't
12 go into court and spew conspiracy theories and spill
13 sour grapes.

14 Thank you, Your Honor.

15 THE COURT: Very well. Mr. Olsen?

16 MR. OLSEN: Yes. Thank you, Your Honor.

17 I've heard summary theories, rank speculation, making up
18 facts. You know what's not rank speculation, or a work
19 of fiction? The fact that there were 19-inch ballot
20 images printed on 20-inch pieces of paper, and nobody
21 talked about that until this trial. And nobody talked
22 about a shrink-to-fit excuse for that until this trial,
23 until Mr. Liddy got up here and asked Mr. Jarrett, and
24 he denied that was the issue. And then he comes back
25 today and says, well, yeah, we've known about that, it

1 happened in three prior elections and we're doing root
2 cause analysis, and we figured this out that this was
3 the issue back in November.

4 The 19 -- that's the -- the 19-inch ballot
5 image printed on 20-inch paper is a fact. They have now
6 admitted it. They just shifted the excuse for the cause
7 of it. They tried to say, well, the T Tech, Mr.
8 Bettencourt, contradicts it. No, he doesn't. Nobody
9 knew what was going on with the printers. They were
10 shaking printers, they were cleaning the tab -- they
11 were doing all kinds of things because these printers
12 weren't working. But we know from the inspection that
13 six out of six randomly selected vote sites by Mr.
14 Parikh had the 19-inch image printed on 20-inch paper,
15 and not three vote locations. The arguments from
16 Defendants' counsel don't make sense.

17 And by the way, if these printers, the
18 configurations had been changed, then this would have
19 occurred uniformly from the time of the change. Every
20 ballot from that point would be changed to this 19-inch
21 configuration that somehow got to 19 inches by their own
22 statement at all three locations by different people
23 making a change on shrink-to-fit, but Mr. Macias was
24 very hesitant to say, well, I don't know how it would
25 get to exactly to 19 inches, but...

1 The fact that they want to blame Republicans
2 for coming out and voting on Election Day, that's
3 atrocious. That's atrocious. It's in our Constitution
4 to vote on Election Day. The County plans for turnout
5 on Election Day. As a matter of fact, they plan for
6 higher turnout with the 290,000 vote projection even
7 before Republican leaders they claim were telling their
8 constituents to come out and vote on Election Day. They
9 planned on it. We're supposed to believe they weren't
10 ready to go? And if they weren't, then that is, again,
11 consistent with our claims.

12 But the fact is, Your Honor, that 19-inch
13 ballot image on ballots from every single six locations
14 that were inspected is a fact. It's a fact. And how
15 arrogant it is to blame Republican, or any voter,
16 Republican, Democrat or otherwise. If they don't trust
17 the system for whatever reason, and they want to cast
18 their vote in the most secure manner possible, which is
19 on Election Day. Earlier when we started out in
20 opening, I said that, you know, the Carter-Baker
21 Commission in 2005 said that mail-in voting is the
22 method of voting that is most vulnerable to fraud. So
23 if a voter, whether they were Republican, Democrat or
24 Independent, wants to see their vote get cast and
25 counted, why is that wrong?

1 Your Honor, the evidence shows that Kari
2 Lake won this race. At a minimum, we have put forth
3 solid evidence that the outcome of this election is
4 uncertain.

5 Mr. Baris's testimony, his modeling, which
6 is actually even more detailed than what the County
7 itself does, and his model is on the high end of what
8 the County predicted, but Mr. Baris actually talked to
9 voters, and as he testified to, they all consistently
10 said this thing was a train wreck. And in terms of the
11 response rate, never before had he seen that with a
12 20-percent drop in response rate out of hundreds of
13 polls. He was not hired for this litigation. This was
14 an observation that he had completely independent, and
15 it didn't make sense absent the issues that occurred on
16 Election Day.

17 Your Honor, we put forward solid evidence,
18 stand behind that evidence. We would come back -- they
19 said, you know, we didn't bring these other witnesses,
20 if we had more time, we'll bring them here tomorrow.
21 I'm not suggesting, but that has no bearing.

22 So I want to thank Your Honor for giving us
23 the opportunity to present this case, for the
24 opportunity for people to see the evidence for
25 themselves and judge. And with that, Your Honor,

1 Plaintiff rests.

2 THE COURT: Thank you.

3 All right. I will take the matter under
4 advisement and issue a ruling forthwith. I need to go
5 over everything and be very thorough, so don't expect
6 this is coming out by 5:00 o'clock. For what it's
7 worth, I'll also say that I appreciate -- I know this is
8 highly contested and emotional issue for both sides, but
9 I want to express my appreciation to counsel for both
10 sides for your professionalism and your ability to
11 present this case in a way that was thought through,
12 meaningful. Thank you.

13 With that, I will take this under
14 advisement. We're adjourned.

15 (Proceedings conclude, 4:24 p.m.)

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C E R T I F I C A T I O N

I, ROBIN G. LAWLOR, Registered Professional Reporter, Registered Merit Reporter, Certified Realtime Reporter, Federal Certified Realtime Reporter, Certified Court Reporter, Certificate No. 50851, in and for the State of Arizona, do hereby certify that the foregoing pages constitute a full, true, and accurate transcript of all proceedings had in the foregoing matter, all done to the best of my skill and ability.

WITNESS my hand this 24th day of December, 2022.

/s/Robin G. Lawlor

Robin G. Lawlor, RMR, CRR, FCRR
Arizona CCR No. 50851

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403

12/24/2022

HONORABLE PETER A. THOMPSON

CLERK OF THE COURT

V. Felix

Deputy

KARI LAKE

BRYAN JAMES BLEHM

v.

KATIE HOBBS, et al.

DAVID ANDREW GAONA

THOMAS PURCELL LIDDY
COURT ADMIN-CIVIL-ARB DESK
DOCKET CV TX
JUDGE THOMPSON

UNDER ADVISEMENT RULING

The Court has considered the evidence presented at the Evidentiary Hearing on December 21-22, 2022, including all exhibits admitted as well as the testimony of witnesses. The Court has read and considered all 220 Affidavits attached to the Verified Petition. The Court has also considered the arguments by counsel. The Court accordingly issues the following findings of fact and conclusions of law:

LEGAL STANDARDS AND BURDEN OF PROOF

Throughout the history of Arizona, the bar to overturn an election on the grounds of misconduct in this State – or Territory – has always been a high one. *See Territory ex rel. Sherman v. Bd. of Supervisors of Mohave Cnty.*, 2 Ariz. 248, 253 (1887) (“It is the object of elections to ascertain a free expression of the will of the voters, and no mere irregularity can be considered, unless it be shown that the result has been affected by such irregularity.”) (citations omitted).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403

12/24/2022

Our Territorial Supreme Court agreed in *Oakes v. Finlay*, 5 Ariz. 390, 398 (1898) that “it is . . . unwise to lay down any rule by which the certainty and accuracy of an election may be jeopardized by the reliance upon any proof affecting such results that is not of the *most clear and conclusive character*.” (citing *Young v. Deming*, 33 P. 818, 820 (Utah 1893)) (emphasis added). The official election returns are prima facie evidence of the votes actually cast by the electorate. See *Hunt v. Campbell*, 19 Ariz. 254, 268 (1917). The burden of proof in an election contest is on the challenger. *Findley v. Sorenson*, 35 Ariz. 265, 271-72 (1929). “The duty of specifying and pointing out the alleged illegal irregularities and insufficiencies is a task that should be undertaken by litigants and their counsel.” *Grounds v. Lawe*, 67 Ariz. 176, 189 (1948).

As for the actions of elections officials themselves, this Court *must* presume the good faith of their official conduct as a matter of law. *Hunt*, 19 Ariz. at 268. “[A]ll reasonable presumptions must favor the validity of an election.” *Moore v. City of Page*, 148 Ariz. 151, 155 (App. 1986). Election challengers must prove the elements of their claim by clear and convincing evidence. Cf. *McClung v. Bennett*, 225 Ariz. 154, 156, ¶ 7 (2010).

The Order granting in part Defendants’ Motions to Dismiss gave Plaintiff two independent claims for seeking their requested relief under A.R.S. § 16-672(A)(1). Plaintiff has only these options because election contests, “are purely statutory and dependent upon statutory provisions for their conduct.” *Fish v. Redeker*, 2 Ariz. App. 602, 605 (1966). Put another way, Plaintiff has no free-standing right to challenge election results based upon what Plaintiff believes – rightly or wrongly – went awry on Election Day. She must, as a matter of law, prove a ground that the legislature has provided as a basis for challenging an election. See *Henderson v. Carter*, 34 Ariz. 528, 534-35 (1928) (“[O]ne who would contest an election assumes the burden of showing that his case falls within the terms of the statute providing for election contests. The remedy may not be extended to include cases not within the language or intent of the legislative act.”); see also *Donaghey v. Att’y Gen.*, 120 Ariz. 93, 95 (1978) (“[F]ailure of a contestant to an election to strictly comply with the statutory requirements is fatal to h[er] right to have the election contested.”).

Plaintiff’s remaining claims are based on the following statutory ground:

“[M]isconduct on the part of election boards or any members thereof in any of the counties of the state, or on the part of any officer making or participating in a canvass for a state election.”

A.R.S. § 16-672(A)(1). This trial was premised on Plaintiff’s theories arising from the second clause, concerning an officer making or participating in a canvass.

The Order permitted two counts to proceed to Trial: 1) the claim that ballot-on-demand (“BOD”) printer malfunctions experienced on Election Day were caused intentionally and that these malfunctions resulted in a changed outcome (Count II); and 2) the claim that Maricopa

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403

12/24/2022

County violated its own election procedures manual (“EPM”) as to chain of custody procedures in such a way as to result in a changed election outcome (Count IV). As outlined in the Order partially granting the Motion to Dismiss, there are four elements to each claim. Plaintiff needed to prove by clear and convincing evidence, each element to be entitled to relief:

- 1) That the alleged misconduct – whether the BOD printer irregularities, or the ostensible failure to abide by county election procedures – was an intentional act. *See Findley*, 35 Ariz. at 269.
- 2) That the misconduct was an intentional act conducted by a person covered by A.R.S. § 16-672(A)(1), that is – an “officer making or participating in a canvass.”
- 3) That the misconduct was intended to change the result of the November 2022 General Election. *See Findley*, 35 Ariz. at 269.
- 4) That the misconduct did, in fact, change the result of that election. *See Grounds*, 67 Ariz. at 189.

It bears mentioning that because of the requested remedy – setting aside the result of the election – the question that is before the Court is of monumental importance to every voter. The margin of victory as reported by the official canvass is 17,117 votes – beyond the scope of a statutorily required recount. A court setting such a margin aside, as far as the Court is able to determine, has never been done in the history of the United States. This challenge also comes after a hotly contested gubernatorial race and an ongoing tumult over election procedures and legitimacy – a far less uncommon occurrence in this country. *See e.g., Hunt, supra*. This Court acknowledges the anger and frustration of voters who were subjected to inconvenience and confusion at voter centers as technical problems arose during the 2022 General Election.

But this Court’s duty is not solely to incline an ear to public outcry. It is to subject Plaintiff’s claims and Defendants’ actions to the light of the courtroom and scrutiny of the law. *See Winsor v. Hunt*, 29 Ariz. 504, 512 (1926) (“It is the boast of American democracy that this is a government of laws, and not of men.”) And so, the Court begins with a review of the evidence.

DISCUSSION

It was Plaintiff’s burden to establish each element by clear and convincing evidence. If Plaintiff herself failed to sustain her burden of proof, the matter is decided. Thus, the Court begins with Plaintiff’s case in chief.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403

12/24/2022

a. Mark Sonnenklar

The Court first considers Mark Sonnenklar, a roving election attorney with the Republican National Committee. Mr. Sonnenklar testified that, on Election Day, he went from polling location to polling location speaking with partisan observers. Mr. Sonnenklar visited eight voter centers on Election Day. He testified of his personal knowledge of 1) the failure of tabulators at multiple locations to accept ballots, 2) his own personal estimate of the rate of failure, 3) the efforts – of varying degrees of efficacy – of Maricopa County T-Techs to fix the tabulators, and 4) the frustration and anger of voters who had to wait in longer lines due to these failures. He testified that the County-provided wait times were not accurate and that a much higher number of voter centers suffered from printer/tabulator failure than was admitted by Maricopa County.

The Court credits the personal observations of Mr. Sonnenklar and does not doubt his knowledge or his veracity. But the Court cannot follow Mr. Sonnenklar to ascribing intentional misconduct to any party. Mr. Sonnenklar said at Trial that it was “common sense” that such widespread failures must have been the result of intentional conduct. But this intuition does not square with Mr. Sonnenklar’s own observations. For one thing, County T-Techs being sent to troubleshoot and fix the issues with tabulators are not consistent with a scheme by a person or persons to alter the result of an election. Mr. Sonnenklar testified to nothing that suggested those tech efforts were anything other than best efforts intended to remedy the problem. Second, as Mr. Sonnenklar himself admitted, he did not personally observe anything that allowed him to support his intuition that someone had engaged in intentional misconduct. Third, Mr. Sonnenklar admitted that he had no technical knowledge which would allow him to infer that these ostensible technical failures were anything but malfunctions rather than malfeasance. Last, Mr. Sonnenklar admitted that he had no personal knowledge of any voter being turned away from the polls as a result of BOD printer failures.

As far as evidence of misconduct is concerned, the Court finds nothing to substantiate Plaintiff’s claim of intentional misconduct as to either claim through Mr. Sonnenklar’s testimony.

b. Heather Honey

The Court next considers Heather Honey, a supply chain auditor and consultant who testified primarily concerning the chain of custody claim. The Court, again, credits Ms. Honey’s observations and personal knowledge of the system of early voting ballots. As relevant to misconduct, her testimony makes two main points: 1) that Maricopa County did not produce (pursuant to a Public Records Act request) Maricopa County Delivery Receipt forms for ballot packets dropped off by voters at drop boxes on Election Day; 2) that an employee of Runbeck Election Services (a county contractor) averred that Runbeck employees were permitted to submit about 50 ballot packets of family and friends into the ballot stream improperly.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403

12/24/2022

Again, the Court does not doubt Ms. Honey's veracity, but her testimony is of limited use in making a finding that intentional misconduct occurred. For one thing, Ms. Honey agreed during cross examination that, while she has not received the Maricopa County Delivery Receipt forms – she knows that these forms do, in fact, exist. While she testified that the public records request has not yet been fulfilled, to the extent there is a claim to be made for insufficient production by Maricopa County in response to a public records request, that claim is not before the Court. Because Plaintiff's expert agreed that the forms which are the basis for this claim were generated, Plaintiff cannot point to their absence writ large as a violation of the EPM.

Next, as to the 50 ballot packets, Ms. Honey admitted that neither she nor her contacts with Runbeck had personal knowledge of any permission given by Maricopa County to Runbeck employees to bring the ballots of family for improper insertion into the ballot packet counting process.

The Court must also consider the Affidavits by Leslie White and Denise Marie on this point. The White Affidavit is less helpful on these points, as Ms. White testifies mainly to the limitations of what she was allowed to see as an observer at the Maricopa County Tabulation and Election Center ("MCTEC"). She expresses worry about the rapid pace of processes at MCTEC, objects to the limited field of her view as an observer but does not point to any violation of the EPM, nor does counsel draw the Court's attention to any EPM violation found in this Affidavit.

As for Ms. Marie's Affidavit, the Court must weigh her averment that family ballots were inserted into the ballot stream in violation of the EPM and chain of custody requirements against the sworn testimony of both Mr. Valenzuela and Mr. Jarrett who testified that Maricopa County employees – who follow the EPM – have eyes on the ballot process during their time at Runbeck. The Court finds the latter more credible given that Ms. Marie does not allege anything about Maricopa County employees' role in this alleged violation, the combined testimony of multiple Maricopa County officials concerning training of employees and lack of authorization for such a violation, and given that the purported authorization for such a practice is hearsay within the affidavit. The Court cannot afford this document much weight.

In his closing, counsel for Plaintiff argues that it "does not make sense" that Maricopa County did not know how many ballots Maricopa County had received on election night. But, at Trial, it was not Maricopa County's burden to establish that its process or procedure was reasonable, or that it had an accurate unofficial count on Election Night. Even if the County did bear that burden, failing to carry it would not be enough to set aside election returns. *See Moore v. City of Page*, 148 Ariz. 151, 165-66 (App. 1986). Particularly where Plaintiff's own witness on this point lacks personal knowledge of the intent of the alleged bad actor, admits that Defendants did in fact generate the documents they were required to, and otherwise affirms the County's

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403

12/24/2022

compliance with election processes, the Court cannot say that Plaintiff proved element one of Count IV by clear and convincing evidence.

c. Clay Parikh

Mr. Parikh has an impressive technical background as a cybersecurity expert for Northrup Grumman. The Court again credits his substantial experience and personal knowledge as far as it goes. His primary contention was that the printer errors he saw reflected in the A.R.S. § 16-677 ballot review he conducted – the printing of a 19-inch ballot on a 20-inch ballot paper – must have been done intentionally, either by overriding the image file that was sent from the laptop to the printer, or from the ballot image definition side. However, if the ballot definitions were changed, it stands to reason that *every* ballot for that particular definition printed on every machine so affected would be printed incorrectly. As Plaintiff's next witness indicates, that was not the case on Election Day. In either event, Mr. Parikh acknowledged that he had no personal knowledge of any intent behind what he believes to be the error.

The Court notes that Mr. Parikh also acknowledged a fact admitted by several of Plaintiff's witnesses: that any ballot that could not be read due to BOD printer or tabulator failure could be submitted for ballot duplication and adjudication through Door 3 on the tabulators. Plaintiff's own expert acknowledged that a ballot that was unable to be read at the vote center could be deposited by a voter, duplicated by a bipartisan board onto a readable ballot, and – in the final analysis – counted. Thus, Plaintiff's expert on this point admitted that the voters who suffered from tabulator rejections *would nevertheless have their votes counted*. This, at a minimum, means that the actual impact element of Count II *could not be proven*. The BOD printer failures did not actually affect the results of the election.

Further, as to the intent elements, the Court must pair its consideration of Mr. Parikh's testimony with that of another witness called by Plaintiff.

d. David Betencourt

Mr. Betencourt was a temporary employee of Maricopa County (a T-Tech) called by Plaintiff to testify as to the technical issues experienced on Election Day. T-Techs, in addition to setting up voter centers, provide technical support on Election Day.

As relevant here, Mr. Betencourt testified that there were, in fact, multiple technical issues experienced on Election Day. He testified that these were solved by means such as: 1) taking out toner and/or ink cartridges and shaking them, 2) cleaning the corona wire, 3) letting the printers warm up, 4) cleaning the tabulators, and 5) adjusting settings on the printer. It is of note that, apart from 5), none of these solutions implicates the ballot in a manner suggesting intent. Mr. Betencourt

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403

12/24/2022

testified that each of these on-site actions were successful to varying degrees, with shaking the toner cartridge being the most effective. It is worth repeating that ballots that could not be read by the tabulator immediately because of printer settings – or anything else – could be deposited in Door 3 of the tabulator and counted later after duplication by a bipartisan adjudication board.

Mr. Betencourt testified that, not only did he lack knowledge of any T-Tech (or anyone else) engaging in intentional misconduct, but further testified that the T-Techs he worked with diligently and expeditiously trouble-shot each problem as they arose, and they did so in a frenetic Election Day environment. Plaintiff's own witness testified before this Court that the BOD printer failures were largely the result of unforeseen mechanical failure.

e. Richard Baris

Mr. Baris testified as the Director of Big Data Poll. He testified that, as a result of the BOD printer failures on Election Day, that a number of voters were disenfranchised, and opined that this change resulted in Plaintiff losing the election. He testified that he knew this because of the decreased response rates to his exit poll for the General Election in Arizona. The Court will, with respect, put aside the ongoing internecine fights among pollsters and political scientists as to methodology and reliability. Indeed, giving all weight and due credit to Mr. Baris, he does not prove element four of Count II – an actual effect on the election.

Further, Mr. Baris admitted at Trial that “nobody can give a specific number” of voters who were put off from voting on Election Day. Thus, even if Plaintiff proved elements 1-3 of Count II by clear and convincing evidence, the truth of this statement alone dooms element 4. No election in Arizona has ever been set aside, no result modified, because of a statistical *estimate*. In the Court's view, it is a quantum leap to go from analogizing cases where malfeasance was precisely quantified such that this Court could provide a remedy, to setting aside a result where the result of alleged malfeasance is itself unknown. In cases where, for instance, a proportionality method has been utilized, it has been to remedy a *known* number of illegal votes cast in *unknown* proportions for the candidates. *See Grounds*, 67 Ariz. at 183-85; *Clay v. Town of Gilbert*, 160 Ariz. 335, 339 (App. 1989). But election contests are decided by votes, not by polling responses, and the Court has found no authority suggesting that exit polling ought to be used in this manner. Given that exit polling is done after a vote has been cast – the weight of authority seems to be contrary to this proposition. *See Babnew v. Linneman*, 154 Ariz. 90, 93 (App. 1987) (citing *Young*, 33 P. at 820)).

Indeed, to the extent that a range of outcomes was suggested by Mr. Baris, he suggested that – with his expected turnout increase on Election Day of 25,000-40,000 votes the outcome could be between a 2,000-vote margin for *Hobbs* to a 4,000-vote margin for Plaintiff. Taking Mr. Baris's claims at face value, this does not nearly approach the degree of precision that would

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403

12/24/2022

provide clear and convincing evidence that the result did change as a result of BOD printer failures. While this Court (in the absence of controlling authority) is reticent to state that statistical evidence is always insufficient as a matter of law to demonstrate a direct effect on the outcome of an election, a statistical analysis that shows that the current winner *had a good chance of winning anyway* is decidedly insufficient. *Cf. Moore*, 148 Ariz. at 159 (suggesting that population data might in some cases be admissible to prove voter disenfranchisement).

Further, Mr. Baris cannot say—and further, there was no evidence at Trial—that these voters were turned away or refused a ballot. These were voters who elected not to vote, whether at a voter center due to long lines or due to media coverage of “chaos” on Election Day, or any number of unknown reasons. None of these constitutes a direct effect permitting the Court’s intervention as outlined in prior cases. Mr. Baris’s testimony does not show by clear and convincing evidence that alleged misconduct surrounding BOD printers influenced the election outcome.

f. Intentional Misconduct Standard

The Court makes the following observations about Plaintiff’s case as a general matter. Every one of Plaintiff’s witnesses – and for that matter, Defendants’ witnesses as well – was asked about any personal knowledge of both intentional misconduct and intentional misconduct directed to impact the 2022 General Election. Every single witness before the Court disclaimed any personal knowledge of such misconduct. The Court cannot accept speculation or conjecture in place of clear and convincing evidence.

The closest Plaintiff came to making an argument for quantifiable changes resulting from misconduct, was Ms. Marie’s Affidavit as discussed by Ms. Honey. Again, she states that Runbeck Election Services employees were permitted to introduce about 50 ballots of family members into the stream. But even this is not sufficient. Such a claim – if the Court accepted the Affidavit at face value – would constitute misconduct but would not come close to clear and convincing evidence that the election outcome was affected. Though again, weighing her Affidavit against other testimony, the Court does not give the Affidavit much weight.

Plaintiff failed to provide enough evidence with which this Court could find for her on either count by clear and convincing evidence. To the extent that certain claims are contradicted by Defendants’ case in chief, it is unnecessary to go into extensive detail, but a few points are worth noting.

As Ray Valenzuela, Co-Director of Elections for the Maricopa County Recorder’s Office testified, no direction or permission was given by Maricopa County to Runbeck to allow its employees to submit ballots in any manner other than authorized to the general public. He, Mr.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403

12/24/2022

Scott Jarrett – also a co-director, and Mr. Stephen Richer – County Recorder, each testified that Maricopa County election workers are trained to follow the EPM and that – to their knowledge – this was done in 2022. As noted above, both Mr. Valenzuela and Mr. Jarrett testified that Maricopa County employees were observing the ballots at each stage in the process. Plaintiff brought forward no evidence sufficient to contradict this testimony.

It bears mentioning that election workers themselves were attested to by both Plaintiff's witnesses and the Defendants' witnesses as being dedicated to performing their role with integrity. Not perfectly, as no system on this earth is perfect, but more than sufficient to comply with the law and conduct a valid election.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Considering all evidence presented, the Court finds as follows:

As to Count II – Illegal BOD Printer/Tabulator Configurations:

- a. The Court DOES NOT find clear and convincing evidence of misconduct in violation of A.R.S. § 16-672(A)(1).
- b. The Court DOES NOT find clear and convincing evidence that such misconduct was committed by “an officer making or participating in a canvass” under A.R.S. § 16-672(A)(1).
- c. The Court DOES NOT find clear and convincing evidence that such misconduct was intended to affect the result of the 2022 General Election.
- d. The Court DOES NOT find clear and convincing evidence that such misconduct did in fact affect the result of the 2022 General Election.

As to Count IV – Chain of Custody Violations:

- a. The Court DOES NOT find clear and convincing evidence of misconduct in violation of A.R.S. § 16-672(A)(1).
- b. The Court DOES NOT find clear and convincing evidence that such misconduct was committed by “an officer making or participating in a canvass” under A.R.S. § 16-672(A)(1).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403

12/24/2022

- c. The Court DOES NOT find clear and convincing evidence that such misconduct was intended to affect the result of the 2022 General Election.
- d. The Court DOES NOT find clear and convincing evidence that such misconduct did in fact affect the result of the 2022 General Election.

Therefore:

IT IS ORDERED: confirming the election of Katie Hobbs as Arizona Governor-Elect pursuant to A.R.S. § 16-676(B).

The Court notes the representations of the County Defendants that a motion for sanctions would be forthcoming and the Court also considers the need of this Court to enter an Order under Rule 54(c), Arizona Rules of Civil Procedure so that an appeal on all issues might be taken in a timely fashion.

Therefore:

IT IS FURTHER ORDERED: that a statement of costs including compensation of inspectors under A.R.S. § 16-677(C) must be filed by 8:00 a.m. Monday, December 26, 2022. Failure to do so by the deadline will be deemed a waiver of those costs.

IT IS FURTHER ORDERED: any motion for sanctions must be filed by 8:00 a.m. Monday, December 26, 2022, and any response by Plaintiff must be filed by 5:00 p.m. Monday, December 26, 2022. The Court will not consider a reply.

After consideration of any sanctions motion, or the failure to file such a motion, and the presentation of costs to be assessed, the Court will enter a signed judgment under Rule 54(c).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403

12/27/2022

HONORABLE PETER A. THOMPSON

CLERK OF THE COURT
V. Felix
Deputy

KARI LAKE

BRYAN JAMES BLEHM

v.

KATIE HOBBS, et al.

DAVID ANDREW GAONA

THOMAS PURCELL LIDDY
COURT ADMIN-CIVIL-ARB DESK
DOCKET CV TX
JUDGE THOMPSON

MINUTE ENTRY

Pending before this Court are Maricopa County Defendants' Motion For Sanctions And Application For Attorney Fees, Arizona Secretary Of State Katie Hobbs' Application For Attorney Fees And Expenses, Governor-Elect Katie Hobbs' Partial Attorney Fee Application, Alexis Danneman's Declaration In Support Of Fee Application and Arizona Secretary Of State Katie Hobbs' Joinder In Maricopa County Defendants' Motion For Sanctions, Plaintiff Kari Lake's Response To Defendants' Motions For Sanctions And Applications For Attorney Fees and Plaintiff Kari Lake's Corrected Response To Defendants' Motions For Sanctions And Application For Attorney Fees. The Court has fully considered the arguments, affidavits and memoranda of law submitted by counsel.

Statutory Authority For Award Of Attorney Fees And Expenses

Defendants each seek an award of their attorney fees and expenses pursuant to Arizona Revised Statutes § 12-349(A)(1) which mandates this Court to make such an award if it finds that Plaintiff has brought this action "without substantial justification". Subpart F of the statute defines "without substantial justification" to mean that "the claim or defense is groundless and is not made in good faith".

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403

12/27/2022

The Court agrees with Defendants' statements that election contests are purely statutory and provide for limited form of relief. *Grounds v Lawe*, 67 Ariz. 176, 186 (1948). Further, that an election contest (1) presumes the good faith of election officials as a matter of law, *Hunt v Campbell*, 19 Ariz. 254, 268 (1917), and (2) draws "all reasonable presumptions [to] favor the validity of an election." *Moore v. City of Page*, 148 Ariz. 151, 155 (App. 1986). As stated in the Court's ruling, an election challenger must establish specific element of A.R.S. § 16-672 by clear and convincing evidence. *Cf McClung v Bennett*, 225 Ariz. 154, 156 (2010).

It is also true that Defendants asked each and every witness at Trial if they had either intentionally committed misconduct or knew anyone who had perpetrated intentional misconduct aimed to influence the outcome of the Election. No witness answered in the affirmative. Nevertheless, it is also true that Defendants alleged in their pleadings, attachments and exhibits and argued at the hearing that the evidence and testimony of the conduct of the Election itself together with statistical analysis would meet the requirements of A.R.S. § 16-672 by clear and convincing evidence. The Court does not doubt Plaintiff's belief in her perception of the evidence. However, the analysis of whether Plaintiff's claims were groundless or made in bad faith is not limited to subjective views.

Although eight of Plaintiff's claims were dismissed as a matter of law, two claims did survive and proceeded to Trial¹. Granting a hearing on those claims was a question of law applied to facts and not a benevolent act. As a result of the hearing required under the law, Plaintiff's allegations that survived dismissal were subject to factual and legal scrutiny and ultimately found by this Court as failing to meet the clear and convincing evidence standard under Arizona Revised Statutes § 16-672.

At the hearing, Plaintiff was not successful in eliciting from any Defendant admissions of intentional malfeasance aimed at altering the Election outcome. However, she did produce testimony of an expert, which ultimately was not accepted by the Court, but who did agree that intentional malfeasance was the root cause of tabulator malfunctions on Election Day. Plaintiff also presented statistical analysis based on 220 Affidavits of voters who did vote but reported frustrations with tabulator malfunctions and the lines on Election Day. Plaintiff also presented expert evidence which attempted to establish a relationship between exit polling results on Election Day and projected Republican voters who did not actually vote. That statistical analysis of polling results also argued a connection between a range of anticipated Republican votes which never materialized and which the witness testified could have influenced the outcome of the Election. That testimony was also not accepted because of faulty underpinnings in fact, unsupported assumptions and foundation.

¹ The arguments that Defendants Richer and Jarret are non-essential parties and should have not been joined under Arizona law were not part of the Motion To Dismiss.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403

12/27/2022

The case law regarding Election Challenges dates back to Territorial days when ballots were counted by hand. There are no cases which rule in or out a statistical analysis as a method for proving elements of an Election Challenge under A.R.S. § 16-672. But, the law makes clear that Plaintiff is required to show a specific number of votes affected which would impact the Election outcome. The Court was not persuaded that, among other failures of proof, statistical analysis with projected ranges of votes based on assumptions as to people who did not vote, met the burden of clear and convincing evidence of a specific number or votes to be subtracted or added to either Plaintiff or Defendant under A.R.S. § 16-672. This ruling is not an exhaustive recitation of the basis for the Court's ruling of December 24, 2022. The Court refers the parties to that ruling for a more detailed basis of the Court's findings of fact and conclusions of law.

There is no doubt that each side believes firmly in its position with great conviction. The fact that Plaintiff failed to meet the burden of clear and convincing evidence required for each element of A.R.S. § 16-672 does not equate to a finding that her claims were, or were not, groundless and presented in bad faith. Any legal decision must be based on the law and facts rather than subjective beliefs or partisan opinions, no matter how strongly held. The Court has heard all the evidence and arguments. The Court has carefully examined and thought through the facts and evidence before it in the motions and at the hearing.

THE COURT FINDS that Plaintiff's claims presented in this litigation were not groundless and brought in bad faith under Arizona Revised Statutes § 12-349(A)(1). Therefore,

IT IS ORDERED denying Defendants' Motions For Attorney Fees And Sanctions.

Assessment of Taxable Costs

A prevailing party in Superior Court is entitled to an award of taxable costs pursuant to Arizona Revised Statutes § 12-332. Those costs include the fees of witnesses. A.R.S. § 12-332(A)(1). Defendant, Secretary of State Katie Hobbs, has presented her request for \$5,900.00 in expert witness fees for Mr. Ryan Macias who was retained as an expert and testified at the hearing. A separate request for expert witness fees in the amount of \$22,451.00 was submitted by Defendant, Katie Hobbs sued in capacity as Governor-Elect. Defendants have not submitted any other itemized costs pursuant to A.R.S. § 12-332(A).

THE COURT FINDS the submitted expert witness fees are appropriate under A.R.S. § 12-332(A)(1).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403

12/27/2022

Defendant Katie Hobbs sued in her capacity as Governor-Elect has also submitted a signed declaration of attorney Abha Khanna in support of an award in the amount of \$4,689.50 for the cost of compensation of Maxwell Schechter, the person designated by them to be present at the inspection of the ballots. Mr. Schechter's compensation is represented by counsel in his signed pleading as \$565.00 per hour for the 8.3 hours involved in the inspection. Although he did not testify at Trial, the choice of Defendants to employ Mr. Schechter was based upon his qualifications and credentials to perform this duty much as Plaintiff's expert Mr. Clay Parikh served as her chosen representative for inspection of the ballots.

THE COURT FINDS the submitted compensation of Defendants' designee for inspection of the ballots pursuant to A.R.S. § 16-677(C) is appropriate. Therefore,

IT IS ORDERED awarding Defendant, Secretary of State Katie Hobbs, \$5,900.00 as taxable costs pursuant to A.R.S. § 12-332(A)(1).

IT IS FURTHER ORDERED awarding Defendant, Governor-Elect Katie Hobbs, \$22,451.00 as taxable costs pursuant to A.R.S. § 12-332(A)(1).

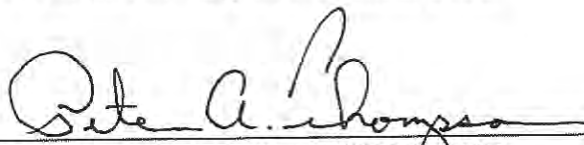
IT IS ALSO ORDERED awarding Defendant, Governor-Elect State Katie Hobbs, \$4,689.50 as compensation of her appointed representative for inspection of ballots pursuant to A.R.S. § 16-677(C).

IT IS ORDERED that the amounts entered with this judgment shall run with an annual interest rate of seven and one half percent (7.5%) per annum until paid in full.

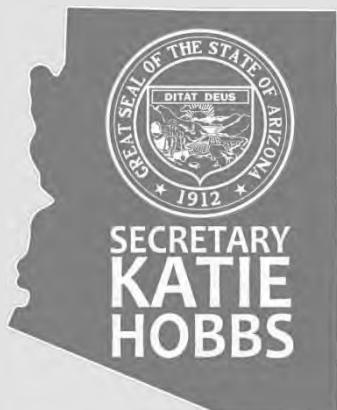
The Court having entered its findings of fact, conclusions of law and orders on December 24, 2022 and all matters concerning this litigation before the Court having been resolved with nothing else pending,

IT IS HEREBY ORDERED confirming the election of Katie Hobbs as Arizona Governor-Elect pursuant to A.R.S. § 16-676(B) and entering final judgment in this matter pursuant to Rule 54(c), Arizona Rules of Civil Procedure.

DATED this 27th day of December 2022.



HONORABLE PETER A. THOMPSON
JUDICIAL OFFICER OF THE SUPERIOR COURT



STATE OF ARIZONA

2019 ELECTIONS PROCEDURES MANUAL

December 2019

www.azsos.gov

1700 W. Washington St. Phoenix, AZ 85007

1-877-THE-VOTE (843-8683)



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must include information about:

- How many UOCAVA ballots were validly requested;
- How many UOCAVA ballots were transmitted in accordance with the 45-day deadline based on valid requests received before that date; and
- How many UOCAVA ballots were transmitted after the 45-day deadline based on valid requests received before that date.

UOCAVA reports must be emailed or electronically submitted to the Secretary of State within one business day of the UOCAVA ballot transmission deadline. The reports shall not include any protected information for voters who have their records sealed pursuant to A.R.S. § 16-153 or who are enrolled in the Address Confidentiality Program.

The Secretary of State must consolidate the county reports and report Arizona's aggregated statistics to the U.S. Department of Justice following each primary and general election for federal office. See <https://www.justice.gov/crt/statutes-enforced-voting-section#uocava>.

H. Deadline to Return Ballots-by-Mail

A ballot-by-mail (with completed affidavit) must be delivered to the County Recorder, the officer in charge of elections, an official ballot drop-off site, or any voting location in the county no later than 7:00 p.m. on Election Day. A.R.S. § 16-547(C); A.R.S. § 16-551(C).

The ballot-by-mail return deadline also applies to UOCAVA ballots, regardless of the method of transmission to the election official, unless the UOCAVA return deadline is extended pursuant to emergency procedures as outlines in Chapter 2, Section I(F).

I. Ballot Drop-Off Locations and Drop-Boxes

Counties or municipalities that establish one or more ballot drop-off locations or drop-boxes shall develop and implement procedures to ensure the security of the drop-off location and/or drop-boxes and shall comply with the following requirements.

1. A ballot drop-off location or drop-box shall be located in a secure location, such as inside or in front of a federal, state, local, or tribal government building. All ballot drop-off locations and drop-boxes shall be approved by the Board of Supervisors (or designee).
 - a. An unstaffed drop-box (*i.e.*, not within the view and monitoring of an employee or designee of the County Recorder or officer in charge of elections) placed outdoors shall be securely fastened in a manner to prevent moving or tampering (for example, securing the drop-box to concrete or an immovable object).
 - b. An unstaffed drop-box placed inside a building shall be secured in a manner that will prevent unauthorized removal.
 - c. While a staffed drop-off location or drop-box (*i.e.*, within the view and monitoring of an employee or designee of the County Recorder or officer in

charge of elections) need not be securely fastened or locked to a permanent fixture, it must be securely located inside a government building and monitored by a properly trained employee or designee of the County Recorder or officer in charge of elections at all times that the location or drop-box is accessible by the public.

2. The County Recorder or officer in charge of elections shall publicly post a listing of designated drop-off locations and drop-boxes on the website of the County Recorder or officer in charge of elections. Where practicable, the County Recorder or officer in charge of elections shall also post a listing of drop-off locations and drop-boxes anywhere that polling places and vote centers are posted.
3. All drop-boxes shall be clearly and visibly marked as an official ballot drop-box and secured by a lock and/or sealable with a tamper-evident seal. Only an election official or designated ballot retriever shall have access to the keys and/or combination of the lock to remove the deposited ballots.
4. All drop-boxes (both staffed and unstaffed) shall have an opening slot that is not large enough to allow deposited ballots to be removed through the opening slot.
5. Ballot drop-off locations and drop-boxes shall be locked and covered or otherwise made unavailable to the public until the 27th day prior to an election to ensure that no ballots or any other materials may be deposited before the early voting period begins. Prior to use on the 27th day before the election, all drop-boxes shall be inspected for damage and to ensure they are empty.
6. All drop-boxes shall be locked and covered or otherwise made unavailable after the polls have closed on Election Day to ensure that no ballots may be dropped off after the close of the polls.
7. The County Recorder or officer in charge of elections shall develop and implement secure ballot retrieval and chain of custody procedures, which shall include the following:
 - a. Voted ballots shall be retrieved from ballot drop-off locations and/or drop-boxes on a pre-established schedule. Ballot retrieval shall be more frequent as Election Day approaches.
 - b. For any election that includes a partisan race, at least two designated ballot retrievers of at least two differing party preferences shall be assigned to retrieve voted ballots from a ballot drop-off location or drop-box. For a nonpartisan election, at least two designated ballot retrievers shall be assigned to retrieve voted ballots from a ballot drop-off location or drop-box.
 - c. Each designated ballot retriever shall wear a badge or similar identification that readily identifies them as a designated ballot retriever and/or employee of the County Recorder or officer in charge of elections.
 - d. Upon arrival at a drop-off location or drop-box, the two designated ballot retrievers shall note, on a retrieval form prescribed by the County Recorder or

officer in charge of elections, the location and/or unique identification number of the location or drop-box and the date and time of arrival.

- e. The designated ballot retrievers shall retrieve the voted ballots by either placing the voted ballots in a secure ballot transfer container, retrieving the secure ballot container from inside the drop-box, or retrieving the staffed drop-box which also serves as a secure ballot container. If the drop-box includes a secure ballot container, the designated ballot retrievers shall place an empty secure ballot container inside the drop-box. The time of departure from the drop-off location or drop-box shall be noted on the retrieval form.
- f. Upon arrival at the office of the County Recorder or officer in charge of elections, central counting place, or other receiving site, the designated ballot retrievers shall note the time of arrival on the retrieval form. The County Recorder or officer in charge of elections (or designee) shall inspect the secure ballot container for evidence of tampering and shall confirm receipt of the retrieved ballots by signing the retrieval form and indicating the date and time of receipt. If there is any evidence of tampering, that fact shall be noted on the retrieval form.
- g. The completed retrieval form shall be attached to the outside of the secure ballot container or otherwise maintained in a manner prescribed by the County Recorder or officer in charge of elections that ensures the form is traceable to its respective secure ballot container.
- h. When the secure ballot container is opened by the County Recorder or officer in charge elections (or designee), the number of ballots inside the container shall be counted and noted on the retrieval form.

Ballots retrieved from a ballot drop-off location or drop-box shall be processed in the same manner as ballots-by-mail personally delivered to the County Recorder or officer in charge of elections, dropped off at a voting location, or received via the United States Postal Service or any other mail delivery service, see Chapter 2, Section VI.

J. Reporting Ballot-by-Mail Requests and Returns

At the request of a state or county political party chairperson before an election, a County Recorder must provide the following information at no cost to the political party:

- A listing of registrants who have requested a ballot-by-mail. This information must be provided daily Monday through Friday, beginning 33 days before the election and through the Friday before the election;
- A listing of registrants who have returned their ballot-by-mail, which must be provided daily in Maricopa and Pima Counties and weekly in all other counties.
 - Daily information in Maricopa and Pima Counties must be provided Monday through Friday, beginning the first Monday after early voting commences and ending the Monday before the election;

listed in A.R.S. § 16-591 as a basis for the challenge.

A.R.S. § 16-552; A.R.S. § 16-594.

VI. PROCESSING AND TABULATING EARLY BALLOTS

The following procedures for processing early ballots shall be followed, unless the Secretary of State has granted a jurisdiction permission to use another method otherwise consistent with applicable law. A jurisdiction wishing to deviate from these instructions must make a request in writing no later than 90 days prior to the election for which the exception is requested.

A. County Recorder Responsibilities

1. Signature Verification

Upon receipt of the return envelope with an early ballot and completed affidavit, a County Recorder or other officer in charge of elections shall compare the signature on the affidavit with the voter's signature in the voter's registration record. In addition to the voter registration form, the County Recorder should also consult additional known signatures from other official election documents in the voter's registration record, such as signature rosters or early ballot/PEVL request forms, in determining whether the signature on the early ballot affidavit was made by the same person who is registered to vote.

- If **satisfied** that the signatures were made by the same person, the County Recorder shall place a distinguishing mark on the unopened affidavit envelope to indicate that the signature is sufficient and safely keep the early ballot and affidavit (unopened in the return envelope) until they are transferred to the officer in charge of elections for further processing and tabulation.
- If **not satisfied** that the signatures were made by the same person the County Recorder shall make a reasonable and meaningful attempt to contact the voter via mail, phone, text message, and/or email, notify the voter of the inconsistent signature, and allow the voter to correct or confirm the signature. The County Recorder shall attempt to contact the voter as soon as practicable using any contact information available in the voter's record and any other source reasonably available to the County Recorder.

Voters must be permitted to correct or confirm an inconsistent signature until 5:00 p.m. on the fifth business day after a primary, general, or special election that includes a federal office or the third business day after any other election. For the purposes of determining the applicable signature cure deadline: (i) the PPE is considered a federal election; and (ii) for counties that operate under a four-day workweek, only days on which the applicable county office is open for business are considered "business days."

If the early ballot affidavit is not signed, the County Recorder shall not count the ballot. The County Recorder shall then make a reasonable and meaningful attempt to contact the voter via

D. Process for Conducting L&A Tests by the Secretary of State

The Secretary of State must conduct an L&A test on accessible voting equipment and optical/digital scan equipment before each federal, statewide, and legislative election.

1. Acquisition of Precinct Information and Voting Equipment

At least eight weeks before a primary election or PPE, the officer in charge of elections must provide the Secretary of State a complete list of precincts and legislative and congressional districts and ensure the Secretary of State possesses the necessary precinct voting equipment to preliminarily verify the county's L&A test results at the Secretary of State's Office. To conduct the pre-test, the Secretary of State may acquire the necessary voting equipment from the county or directly from equipment vendors, if practicable. If multiple counties use the same type of voting equipment, the Secretary of State may preliminarily test multiple counties' ballots on the same piece of voting equipment without acquiring voting equipment from each county.

2. Selection of Precincts and Test Ballots

The Secretary of State must randomly select precincts that will be included in each type of L&A test conducted by the Secretary of State.

The Secretary of State generally selects five to 10 precincts for a small or medium-sized county and 10-20 precincts for a large county. In doing so, the Secretary of State must ensure:

- At least one precinct is selected in each congressional and legislative district; and
- Each federal, statewide, and legislative candidate and each ballot question will receive at least one test vote in the selected precincts.

The Secretary of State must also acquire test ballots from each county. If a county will use preprinted ballots and ballots through a ballot-on-demand printer, the officer in charge of elections must provide ballots generated through both printing methods.

For a primary election or PPE, the officer in charge of elections must provide the Secretary of State the following test ballots from each pre-determined test precinct:

- 50 ballots from each of the two largest political parties entitled to continued representation on the ballot;
- 25 ballots from every other recognized or new political party; and
- Five "federal-only" ballots.

The Secretary of State may request additional test ballots if necessary. The Secretary of State also may account for new political parties or the possibility that not all recognized political parties will participate in a PPE.

In advance of the Secretary of State's L&A test, the officer in charge of elections should conduct a preliminary test of ballots as soon as they are available from the printing vendor to ensure the ballots are correct and meet the requirements for the voting equipment utilized. This may include testing a blank ballot and a fully-voted ballot on every ballot style used in the election.

3. On-Screen/Electronic Tallying of Write-In Votes

If electronic tallying of write-in votes will be utilized as part of the election tabulation system, that functionality shall also be tested during the L&A test to ensure secure and proper functioning and attribution of Write-In Tally Board determinations for the write-in votes tallied. *See Chapter 10, Section II(G)(2) for requirements for electronic tallying of write-in votes.*

4. Errors Discovered During Testing

If any error is detected during L&A testing:

- The cause shall be ascertained and corrected;
- An errorless count shall be made before the voting equipment and programs are approved for use in the election;
- If the election program is found to be the source of the error, a copy of a revised election program shall be filed with the Secretary of State within 48 hours after the revision; and
- If the error was created by voting equipment malfunction, a report shall be filed with the Secretary of State within 48 hours after the correction is made, stating the cause and the corrective action taken.

A.R.S. § 16-449(A).

5. Certification of Voting Equipment

The Secretary of State must certify the voting equipment if the equipment meets the requirements in the L&A testing standards. Voting equipment may not be deployed or used until the Secretary of State has certified that the equipment passed L&A testing.

If the voting equipment does not meet the mandatory requirements from the testing standards, the Secretary of State should work with the officer in charge of elections to determine the cause of the deficiency and whether it can be corrected in a timely manner. If the error can be readily corrected, the voting equipment may be retested until the mandatory requirements have been met; otherwise, the L&A test must be rescheduled for a later time and date.

F. County L&A Testing

The officer in charge of elections must substantially follow the L&A testing procedures applicable to the Secretary of State, except that all of the county's deployable voting equipment must be

tested. The officer in charge of elections also must conduct a post-election L&A test of tabulation equipment. See [Chapter 12, Section II](#).

G. Retention of L&A Programs, Test Ballots, and Database

The tests ballots and database used in L&A testing shall be:

- Secured immediately after the L&A test is run; and
- Retained until the post-election L&A test is ready to be conducted after ballot tabulation for the election.

Programs and test ballots used in L&A testing shall be under the control of the officer in charge of elections. After completion of the post-election L&A test, the databases and test ballots shall be retained with the official returns according to the retention period applicable for that election.

III. SECURITY MEASURES FOR ELECTRONIC VOTING SYSTEMS

All components of the electronic voting system, including any e-pollbooks uploaded with voter registration information, must be secured in accordance with this section. Counties should also conduct periodic election security and cybersecurity assessments and develop and implement appropriate security procedures and best practices in consultation with county (and, where appropriate, federal and state) information technology and security professionals. Counties may establish more stringent and robust security protocols so long as the following minimum requirements are met.

The officer in charge of elections must develop and implement a training plan to ensure that elections staff (and any temporary workers) understand and comply with all security procedures applicable to the electronic voting system.

A person who knowingly modifies the software, hardware, or source code for voting equipment without receiving approval or certification pursuant to [A.R.S. § 16-442](#) is guilty of a class 5 felony. [A.R.S. § 16-1004\(B\)](#).

A. Physical Security of the Electronic Voting System

Hardware components of the electronic voting system:

1. Must be permanently labeled with a unique serial number for tracking and auditing purposes;
2. Must be inventoried before and after an election;
3. Must be stored in a locked, secured location that prevents unauthorized access;
 - Access to the electronic voting system (including voting equipment and the EMS) must be authorized by the officer in charge of elections. Access must be documented with a

- At the moment of closing at 7:00 p.m.

A.R.S. § 16-565(C). The marshal must allow everyone to vote who is physically in line at the moment of closing the polls. The marshal may use any reasonable system to document or keep track of which voters were in line as of 7:00 p.m., for example, by standing in line behind the last person to arrive as of the closing of the polls and telling those who arrive later that the polls are closed. Voters who arrive in line after 7:00 p.m. on Election Day are not permitted to vote. A.R.S. § 16-565(D).

B. Election Board Close-Out Duties

Upon closing the voting location after the last voter has voted on Election Day, the election board should perform close-out duties as assigned by the officer in charge elections, including the following duties as applicable:

1. Using the procedures specified by the officer in charge of elections, the election board must conduct an audit to ensure that the number of voters who signed in on the signature roster or e-pollbook matches the number of ballots cast, including regular and provisional ballots and, if the accessible voting equipment independently tabulates votes, any votes cast on the accessible voting equipment, A.R.S. § 16-602(A).
 - a. If ballots are tabulated at the voting location: a printed statement of tally or summary of all vote totals shall be printed from every tabulation machine, and the number of ballots cast shall be compared to the signature roster and/or e-pollbook list and provided with the Official Ballot Report, A.R.S. § 16-607.
2. The information from this audit must be recorded on an Official Ballot Report form, as provided by the officer in charge of elections, which must include:
 - a. The total number of printed ballots or estimated number of ballot stock received from the officer in charge of elections;
 - b. The number of voters who signed in on the signature roster, poll list, or e-pollbook and are indicated as having been issued regular ballots;
 - c. The number of voters who signed in on the signature roster, poll list, or e-pollbook and are indicated as having been issued provisional and conditional provisional ballots;
 - d. The number of regular ballots cast as determined by the election board's manual count if tabulation is not done at the voting location, or as reflected on the printed summary tape from the tabulation machine if tabulation is done at the voting location;
 - e. The number of provisional and conditional provisional ballots cast;
 - f. The number of unused ballots, spoiled ballots, misread ballots that still need to be tabulated (if tabulation is done at the voting location), and write-in ballots (if applicable);

- g. The number of early ballots received by the voting location (unless ballots are transported in a secure and sealed transport container to the central counting place to be counted there);
 - h. In counties that use accessible voting units that independently tabulate, the number of regular and provisional ballots cast on the unit, and the unit's beginning and ending counts (if applicable);
 - i. The Official Ballot Report must be signed by the inspector and both judges, and if there are any discrepancies in the report, an explanation for the discrepancy should be attached or otherwise provided with the Official Ballot Report. The Audit Board will use this information to conduct their post-election audit (*see Chapter 10, Section II(H)*).
3. Secure the ballot boxes with a numbered seal, A.R.S. § 16-608(A);
4. Remove all memory cards or electronic media from voting equipment and e-pollbooks (if applicable);
 - a. Lock and/or seal any ports or compartments where memory cards or electronic media had been inserted.
5. Power down any voting equipment and prepare the equipment for transport/pick-up;
6. Collect all supplies required to be returned to the elections department;
7. Sign the Certificate of Performance for the signature roster or e-pollbook;
8. Prepare the official returns envelopes/containers and, if applicable, unofficial returns envelopes/containers, including the following items, for transport to the central counting place or other receiving site:
 - a. Official and unofficial returns envelopes/containers shall be plainly marked to identify items to be placed within each envelope/container:
 - The official returns envelope/container shall be securely sealed with a tamper-evident, secure label signed by the inspector and both judges and should include, as applicable:
 - Spoiled ballots, including any spoiled early ballots, A.R.S. § 16-585;
 - One copy of the poll list (if the county uses paper signature rosters); and
 - Affidavits of challenged voters, decisions of election officials, and challenge lists, A.R.S. § 16-594;
 - The unofficial returns envelope/container shall be returned with the official returns envelope/container and shall be made available for inspection by electors for a period of six months following the election. The unofficial returns envelope/container shall include the following, as applicable:
 - A copy of the paper signature roster and poll list (if e-pollbooks are used, the e-pollbook list must be captured (*e.g.*, on memory sticks or electronic media, or exported from the e-pollbooks) and retained);



MARICOPA COUNTY

Elections Department



The Vote Center Model

During the 2022 General Election, Maricopa County offered 223 Vote Anywhere Vote Centers located throughout the county at an average distance of less than 1.8 miles apart. The Vote Center model is a very popular option, with 756,780 voters (over 48%) visiting a Vote Center to cast a ballot in person or drop off an early ballot during the 2022 General Election. On Election Day, over 540,000 voters visited a site, which is more Election Day voters than all prior General Elections since 2008.

Nationally, one of the top complaints made by in-person voters is arriving at a voting location to find out they are at the wrong site. A Vote Center model eliminates this issue for voters. Other universal and frequent voter complaints include long lines, voting provisionally, and arriving at an unexpectedly closed location. In the 2022 General Election, Election Day voters waited in line an average of six minutes. If you include the voters that skipped the line to drop off their early ballots, the wait-time average is below 3 minutes. Maricopa County also provided a large number of in-person voting options beginning 27 days before the election (E27), in which voters experienced an average wait time of less than one minute. See below for the wait-times by voting phase.

- **12 Vote Centers** were open 27-Days before Election Day (Average Wait Time E27 – E12: 0 Minutes)
- **56 Vote Centers** were open 12-Days before Election Day (Average Wait Time E12 – E1: 0 Minutes)
- **128 Vote Centers** were open 1-Day before Election Day (Average Wait Time E1: Less Than 1 Minutes)
- **223 Vote Centers** were open on Election Day (Average Wait Time: 6 Minutes)

While a few¹ 2022 General Election locations encountered 80-115 minute wait-times on Election Day, Maricopa County posted these wait-times on our website (Locations.Maricopa.Vote) informing voters of other nearby options that had shorter wait-times. The Locations.Maricopa.Vote website was highly publicized leading up to and on Election Day. It was also referenced on the sample ballot mailer sent to all voters that had not requested an early ballot. As shown in the table below, the longest wait-time for 85% of Maricopa County Vote Centers ranged between 0 and 45 minutes.

Table 1: Vote Center Wait-Times		
Longest Reported Wait-Time	# of Vote Centers	Comment
0 – 15 Minutes	114 (51%)	23 of 114 had a confirmed printer issue
16 – 30 Minutes	47 (21%)	8 of 47 had a confirmed printer issue
31 – 45 Minutes	28 (13%)	8 of 28 had a confirmed printer issue
46 – 60 Minutes	18 (8%)	4 of 18 had a confirmed printer issue
Over an Hour	16 (7%)	6 of 16 had a confirmed printer issue

¹ Seven Locations experienced a wait time between 80 minutes – 115 minutes. Those locations include Asante Library in Surprise (81 minute avg. during 6pm hour), ASU West (95 minute avg. during 6pm hour), Biltmore Fashion Park (98-minute avg. during 5pm hour), Church of Jesus Christ LDS – Southern (88 Minute avg. during 5pm hour), Desert Hills Community Church (85 minute avg. during 3pm hour) Living Word Bible Church in Ahwatukee (114 minute avg. during 5pm hour), Red Mountain Community College (80 minute avg. during 4pm hour). Each of these locations had one or more nearby Vote Centers within a few miles that had a wait-time ranging from 1 minute to 25 minutes during the period they were experiencing their longest wait-times.



MARICOPA COUNTY

Elections Department



In addition to providing more convenience for voters, the Vote Center model also significantly reduces provisional ballots and adds a layer of redundancy if a voting location becomes inoperable due to power outages or other unforeseen situations. Prior to the Vote Center model, Maricopa County routinely issued tens or hundreds of thousands of provisional ballots during a General Election. In 2022, Maricopa County issued 6,915 provisional ballots on Election Day, a significant reduction from prior years as shown by the table below.

Table 2: Vote Center vs. Precinct Voting Comparison of Provisional Ballots Casts 2014 – 2022		
Year	# Provisionals (% of ED Voters)	# Voting Locations / Model
2022	6,915 (3%)	223 Vote Centers
2020	18,310 (10%)	175 Vote Centers
2018	16,409 (6%)	40 Vote Centers and 457 Precinct Locations
2016	52,173 (13%)	671 Precinct Locations
2014	39,577 (19%)	651 Precinct Locations

With over 12,000 ballot styles used in Maricopa County for the 2022 General Election, the only option for providing a Vote Center model is to print ballots on-demand at the voting location.

Ballot-on-Demand Printers

While our root cause analysis review is still underway, we can confirm that all printers used in the 2022 had updated firmware, were installed with uniform settings, and used the same settings that were used in prior Elections, including in the August 2022 Primary, November 2020 General, and the August 2020 Primary Elections.

Ballot-on-Demand Printer Fleet

In 2021, the County made significant investments to upgrade its ballot-on-demand printer fleet. The County replaced two older printer models, the Oki 9650 and the Lexmark 923 with Lexmark C4150 printers. In 2020, the County retrofitted its Oki B432 printers turning them into a Ballot-on-Demand printer. During the 2022 August Primary and November General Elections, the County used two Ballot-on-Demand printers, the Oki B432 and the Lexmark C4150. These are shown to the right.

Lexmark C4150



Oki B432





MARICOPA COUNTY

Elections Department



2022 General Election Day

Despite stress testing the printers before Election Day, installing the latest firmware, using uniform printer settings, and using the same settings as programmed in prior elections, the Oki B432 printer experienced an issue affecting the ability of the on-site tabulators to accept the ballot. If an on-site tabulator could not read the ballot, the voter was instructed to deposit the ballot into a secure ballot box ("Door 3") to be counted at Maricopa County's central counting facility. These 16,724 Door 3 ballots represent 1% of the total ballots issued to voters during the 2022 General Election

Using the central counting facility to tabulate Election Day ballots is common. So common that every Arizona county either uses it as their only method of counting Election Day ballots or as a backup plan like Maricopa County.

- Counties that place all Election Day ballots in a secure container at the voting location and tabulate those ballots at Central Count: Apache Co., Coconino Co., Gila Co., Mohave Co., Pima Co., Pinal Co., Santa Cruz Co., Yavapai Co.;
- Counties that use Central Count as a back-up plan to tabulate Election Day ballots: Cochise Co., Graham Co., Greenlee Co., La Paz Co., Maricopa Co., Navajo Co., Yuma Co.

On Election Day, our poll workers began reporting issues to our hotline around 6:30 a.m. We immediately began troubleshooting the issue and, consistent with the training, directed poll workers to have voters place their ballots into the secure ballot box below the tabulator (Door 3). The County also met with media outlets and published content on its social media platforms to inform voters of their voting options (Exhibit: #COUNTY ANNOUNCEMENT).

The secure Door 3 option has been a decades-long practice in Maricopa County. Despite this being a legal, secure, and reliable voting option, many high profile and influential individuals instructed voters to not deposit their ballots in Door 3 (Exhibit: #DOOR 3). Consequently, some voters refused to use this viable voting option.

As the morning progressed, County IT staff and technicians from our printer vendor worked in tandem both within our hotline and out in the field to troubleshoot and identify a solution. The techs tested a change to the printer heat settings so that the timing marks printed darker.

Our preliminary root cause analysis shows the issue was not with the ink or toner, instead it was the fuser. The printers have three profiles, one for each item that we print for voters, the ballot, receipt, and envelope. The ballot "media weight" setting was set to heavy, as recommended, and the receipt and envelope were on a lighter setting, as recommended. These settings were exactly the same as in prior elections. The solution implemented on Election Day for the 2022 General Election was to set all three "media weight" settings to heavy.

Once identified, we began guiding poll workers to make this change over the phone and dispatching technicians to make changes at the sites with reported issues. The changes had to be completed onsite at the Vote Center and could not be made remotely. We also asked technicians to proactively make these changes at other sites that had not yet reported an issue. By mid-afternoon, most sites were no longer experiencing the printer issue. See the timeline on the next page.



MARICOPA COUNTY

Elections Department



Table 3: Election Day Response Timeline

Time	Activity
6:20-6:30 am	A few Vote Centers begin informing the hotline that tabulators were not reading ballots. The County reminded poll workers of the Door 3 option.
6:25-9am	County dispatches T-techs, tabulation technicians, and printer technicians into the field to troubleshoot the issue. Techs report back that installed printer settings were the uniform approved settings used in prior elections and stress tested (Fuser Settings: Control Slip Media Weight = Medium; Ballot Media Weight = Heavy; Envelope Media Weight = Medium) - (See Exhibits: # 2022 GE LOAD BALLOT OKI 458, # 2022 GE PREP OKI 458, # 2022 PE PREP OKI 458)
8:30-9am	Technicians begin reporting that some of the impacted sites were experiencing lighter or speckled timing marks printed on the back of the ballot. The County concludes it is not a tabulator issue and continues troubleshooting to find a solution to the printers.
8:30-10:45am	Hotline technicians and printer technicians work in tandem to test potential solutions.
10:14am	Printer technicians identified a potential solution to adjust printer settings. (Fuser Settings: Control Slip Media Weight = Heavy; Ballot Media Weight = Heavy; Envelope Media Weight = Heavy). Confirmed successful print and tabulation at one site.
10:15-11:30am	Begin testing the proposed solution of using the Heavy settings for all media weights at additional sites to verify the solution could be successfully implemented at other Vote Centers.
11:30am	Issued guidance to all technicians in the field to make setting changes to the Oki printers.
11:30am – 7:00pm	Visited 71 impacted sites to make changes to printer settings.

In total, our in-progress analysis has found that we responded to calls and changed the printer settings at 71 vote centers, which represents 31% of the 223 Vote Centers that were open on Election Day.

However, not all the 71 Vote Centers were experiencing a printer issue. During the Elections Department's in-progress review, 43 Vote Centers have been confirmed to have experienced an intermittent printer issue. We have also identified other common in-person voting factors that resulted in ballots being deposited into Door 3.

One of these other factors that resulted in ballots being deposited into Door 3 was the combined use of ballpoint pens and ovals completed with checkmarks. On nearly 1,600 of the 16,724 Door 3 ballots, we have found that the use of a ball point pen in combination with a checkmark or other thin mark on the ballot resulted in an oval not being sufficiently completed. This resulted in an ambiguous mark on the ballot. Ambiguous marks cannot be read by the Vote Center tabulator and result in the voter needing to either spoil and re-vote their ballot or place their ballot into secure Door 3. We found this occurred at over 180 vote centers. There were 19 Vote Centers that had between 20 and 40 ballots with ambiguous marks and this was likely the sole reason why those ballots were not being read by the tabulators at these locations.



MARICOPA COUNTY

Elections Department



The Elections Department has expanded its analysis to include 84 total Vote Centers, of which 21 have been ruled out as having a printer issue (Exhibit: #VOTE CENTER LOG).

When onsite tabulation became Maricopa County's process in the 1990s, Maricopa County recognized that printer and tabulator issues are routine Election Day issues that can occur. To overcome these challenges, Maricopa County implemented a redundant, legal, and secure process for voters to drop their ballots into the secure ballot box (Door 3).

While Maricopa County's printer issue in 2022 impacted more Vote Centers than normal, every voter was afforded the ability to legally and securely cast their ballot.

Election Day Check-out Process

Maricopa County uses a SiteBook (e-Pollbook) to check-in voters at voting locations. This technology allows voters to check-in, prove their identity, print their specific ballot, and to spoil their ballot if they make a mistake and need a new one. Voters commonly ask to spoil their ballots and poll workers are very familiar with the process of issuing them a new ballot. The ability to spoil a ballot using the SiteBook is covered during all in-person training courses and included on pages 115 of the training manual (Exhibit: #PW TRAINING MANUAL).

For the 2022 General Election, the Elections Department added additional SiteBook programming to allow a voter to check-out of a SiteBook and vote at an alternative voting location. This added functionality was implemented as a voter centric precaution if a voter needed to spoil their ballot and return to another, potentially more convenient, Vote Center later in the day.

To ensure poll workers were aware of the check-out procedure, we covered this topic during November 2022 General Election in-person trainings. We also included the check-out procedure (Exhibit: # CHECKOUT PROCEDURE) in every Inspector's packet of materials. The County provided weekly Inspector workshops where the check-out procedure was covered in detail. These weekly Inspector workshops provided in-depth training beyond standard in-person training and provide the Inspectors more hands-on opportunities to troubleshoot issues.

There were a total of 206 voters that checked-in at one location and then voted at a second location. Of these 206 voters, 84 successfully checked-out of the first voting location and checked-in at the second location. Since these 84 voters successfully checked out of their first location, they were issued a standard ballot at the second location. As shown in the chart on the next page, poll workers were aware of this check-out procedure and were able to implement it early in the day on Election Day.



MARICOPA COUNTY

Elections Department



Table 4: Voters that successfully checked-out of their first voting location and were issued a standard ballot at their second location	
Timeframe	Number of Voters that Successfully Checked-out of First Vote Center
6-8am	19 Voters
8-10am	28 Voters
10am-Noon	20 Voters
Noon-2pm	9 Voters
2pm-4pm	5 Voters
After 4pm	3 Voters
Total	84 Total Voters

The remaining 122 voters that voted at two locations on Election Day did not check out at their first location and were issued a provisional ballot at their second location. For these 122 voters, the Elections Department performed a review to confirm if there was a printer issue at the first location and if there was a variance in the number of check-ins as compared to the number of ballots tabulated.

After this review, the Elections Department determined that the provisional ballot should count for 109 of the 122 voters. There were two additional voters that the Elections Department would have counted their ballot, but the voter did not insert the provisional ballot into the provided envelope and then drop their envelope in the onsite early/provisional ballot box. The ballots for the remaining 11 voters were not counted because the Elections Department could not verify that a printing issue occurred at the voter's first location and/or that there was a variance between the number of check-ins and the number of ballots counted at the first voting location.

Secure Ballot Box (Door 3) Reconciliation

As described in the Ballot-on-Demand Printer section above, the Elections Department has used a secure ballot box (Door 3) as a reliable, legal, backup option for decades. In every election, there is a possibility that a tabulator or printer may experience an issue. These issues are not uncommon and can be caused by a variety of reasons including poll workers locking themselves out of the tabulator when they have entered the password too many times, a faulty outlet causing the tabulator to not have sufficient power to operate, or a printer misalignment occurring after replacing ballot paper. If an issue does occur, Door 3 provides voters with the option to drop their ballot into a secure ballot box until the issue can be resolved or for the ballot to be read at Central Count.

We train workers and instruct them that Door 3 ballots are segregated from the ballots read by the tabulator by a divider within the ballot box. When polls close, poll workers complete a Precinct Ballot Report (Exhibit: #PBR) that logs the number of ballots cast at the voting location, the number of misread ballots, and spoiled ballots. Poll workers return Door 3 ballots in a sealed envelope.

During the November 2022 General Election, the Elections Department provided direction to poll workers that they could use one of the two black ballot transport canvass bags that each Vote Center was provided to transport the Door 3 ballots if the quantity exceeded the capacity of the envelope. All ballots transported in



MARICOPA COUNTY

Elections Department



the black canvass bags were sealed inside with the use of tamper evident seals. The seal numbers were logged on the Precinct Ballot Reports.

The following information is documented on the Precinct Ballot Report.

- Tamper Evident Seal Numbers
- Asset Tags
- Beginning Lifetime Tabulator Count balances
- Polls Closing Tabulator Counts on Screen
- Quantity of Misread Ballots, Spoiled Ballots, and Unused Ballot Stock

In addition to the Precinct Ballot Report, each tabulator in use at a Vote Center prints an opening and closing polls tally receipt. The opening tally receipts confirm and document that no votes were on the tabulator when the polls opened. The closing tally receipt confirms and documents the number of ballots and votes tabulated on each tabulator when the poll is closed. Poll workers sign these tally receipts and return them to the Elections Department. These receipts are hundreds of feet long and cannot be easily digitized. Both the Precinct Ballot Reports and the tally receipts are available for in-person review at the Elections Department.

As a decades-long practice and as required by the Elections Procedures Manual (see Chapter 10, Section II, Subsection H), the Elections Department performs an audit of check-ins, ballots received, and information from the Precinct Ballot Reports. If the Elections Department identifies variances, the Election Department is required to investigate and resolve those variances.

Variances between check-ins and ballots received are not uncommon. Some common causes for variances include the following:

- Fled Voter: A voter checks-in, receives a ballot and for some unexplained reason they choose not to vote the ballot (e.g., leave to get glasses, forgot their completed sample ballot at home, encounter a technical issue, and choose not to come back and vote). If this occurs, poll workers are trained to check the voter out of the SiteBook, however, voters do not always inform poll workers when they leave. If a voter does not alert the poll worker so they can be checked out, this will result in a variance.
- Provisional Ballots Inserted into Door 3: A voter is issued a provisional ballot. The voter may prefer not to have that ballot sent back to the Elections Department for research. That voter may attempt to insert their provisional ballot into the Vote Center tabulator. The Vote Center tabulator is programmed not to accept provisional ballots. When this occurs, the poll workers will ask the voter to insert the ballot into the provisional envelope that they received to have it researched and possibly counted by the Elections Department. At this point, it is the choice of the voter to place the ballot in the provisional envelope, spoil the ballot, or insert it into Door # 3. If the voter spoils the ballot or inserts the ballot into Door 3 without the envelope, this will create a variance.
- Early Ballot Voter with an Election Day Check-in: A voter may bring in their Early Ballot to use as a guide for completing their Election Day ballot at a Vote Center. Upon beginning to complete their Election Day ballot, the voter decides to insert their Early Ballot into the tabulator instead of the Election Day ballot. As a control to prevent double voting, our Vote



MARICOPA COUNTY

Elections Department



Center tabulators are designed to reject early ballots. At this point the voter is given the option to complete their Election Day ballot. If the voter chooses not to complete their Election Day ballot and they do not check out of the SiteBook, this will create a variance.

For the 2022 General Election, the Officer in Charge of Elections oversaw an audit reconciliation procedure to identify every location that had a variance between the number of check-ins and the number of ballots counted onsite at each Vote Center. The audit reconciliation was observed by members of the political parties² and included the following procedures.

1. Compare the number of check-ins with ballots reported by Vote Center (on memory cards from each tabulator) plus the number of ballots inserted into Door 3.
2. If the number of check-ins at a Vote Center equals the number of ballots reported on the memory cards for the tabulators at the Vote Center plus the number of ballots inserted into Door 3, accept the official results reported on Election Night along with the additional ballot scanned from Door 3.
3. If the number of check-ins at a Vote Center does not equal the number of voters reported on the memory drives for the tabulators at the Vote Center plus the number of ballots inserted into Door 3, audit the vote count from the Vote Center by comparing the number of check-ins against the returned ballots.

The results of the audit reconciliation are summarized below (Exhibit: #RECONCILIATION)

- 158 Vote Centers with no variance
- 35 Vote Centers with a variance of 1
- 16 Vote Centers with a variance of 2 – 3
- 14 Vote Centers with a variance of greater than 3 (and none greater than 22)

Two Vote Centers did not separate their Door 3 ballots and the ballots that were counted by the Vote Center tabulator. For these two Vote Centers³, the Elections Department backed out the results that were reported Election Night and retabulated the entire batch of ballots to ensure that no ballot was double counted and that all ballots cast at the Vote Center were counted.

Vote Center Audit Reconciliation Comparison

When compared to other elections, the audit reconciliation for the 2022 General Election had a lower variance as a percent of Election Day voters than previous Primary and General Elections. See chart on the next page for comparison to prior elections.

² As required by the Chapter 10 of the Elections Procedures Manual, the audit reconciliation was performed under the observation of political party appointees (2 Democrat Observers appointed by the County Party, 2 Republican Observers appointed by the County Party, 1 Republican Observer appointed by the “For Prop 309” Committee, and a “Republican Observer from the U.S. Congressional Delegation”).

³ Church of Jesus Christ of LDS Gilbert, Desert Hills Community Church.



MARICOPA COUNTY

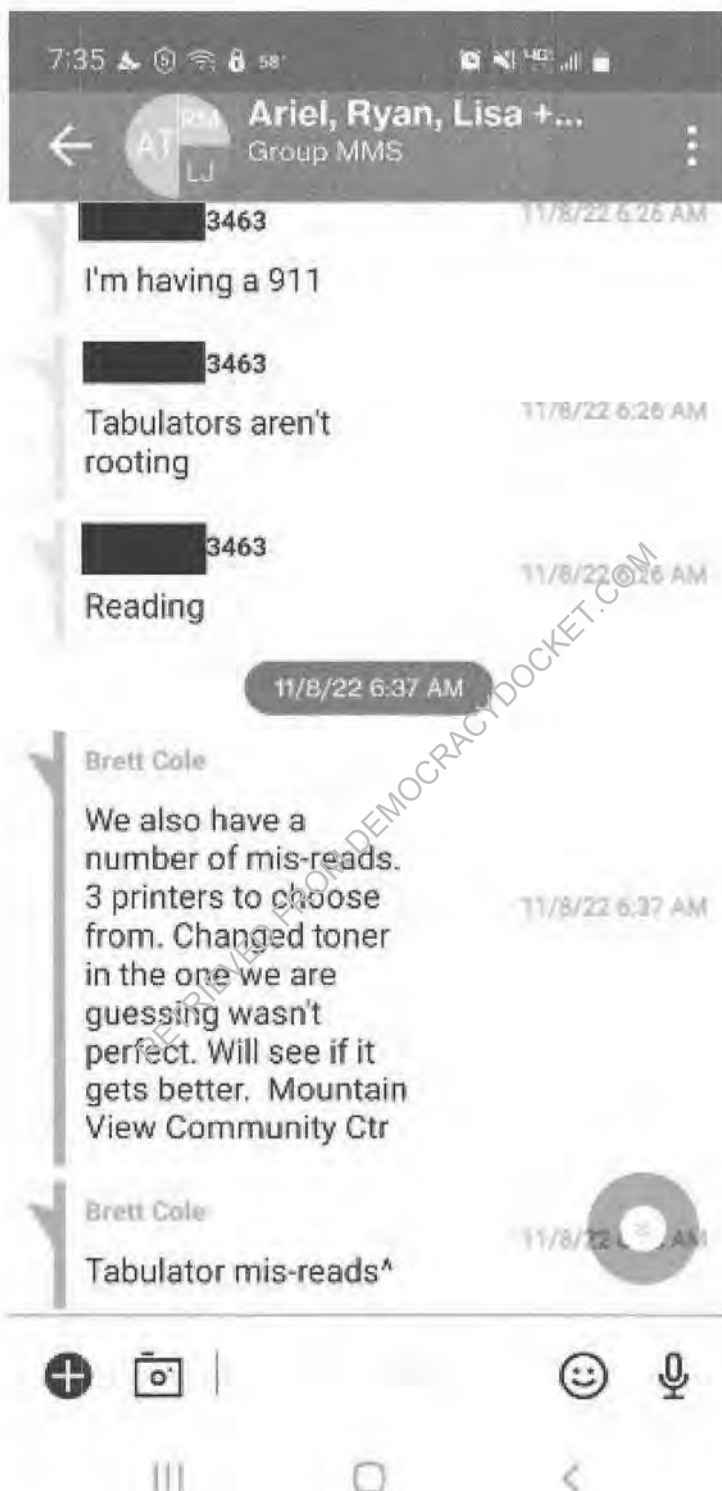
Elections Department

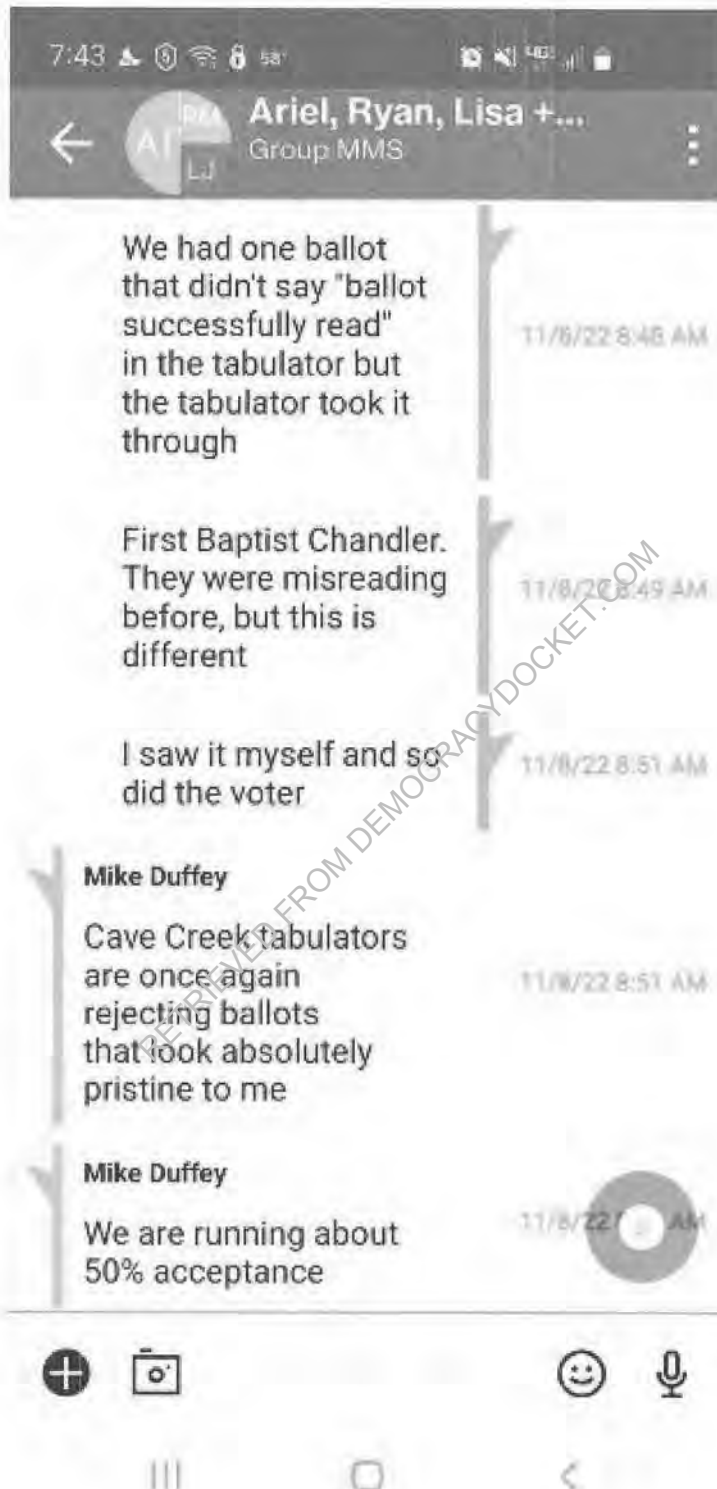


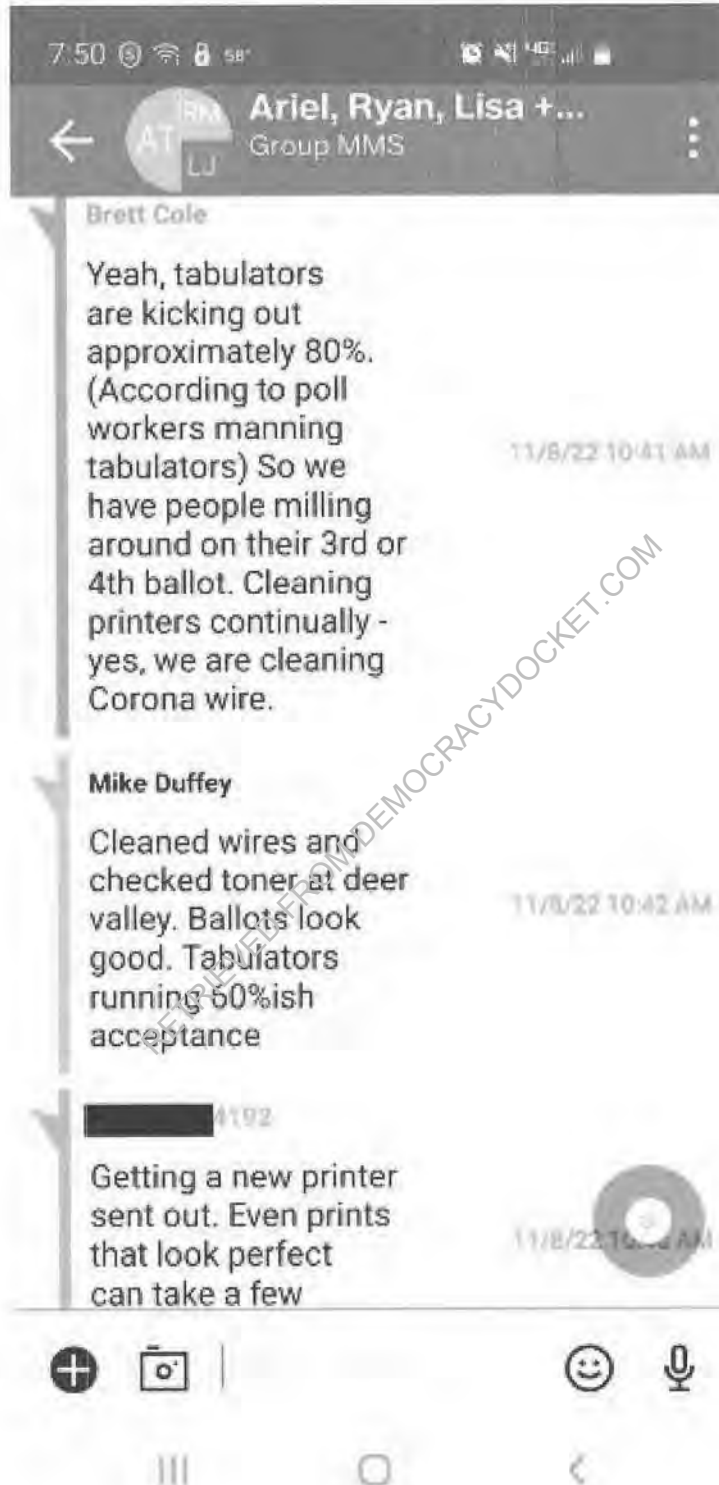
Table 5: Comparison of Fled Voters, Early Voters with Check-ins, and Provisionals with Prior Elections

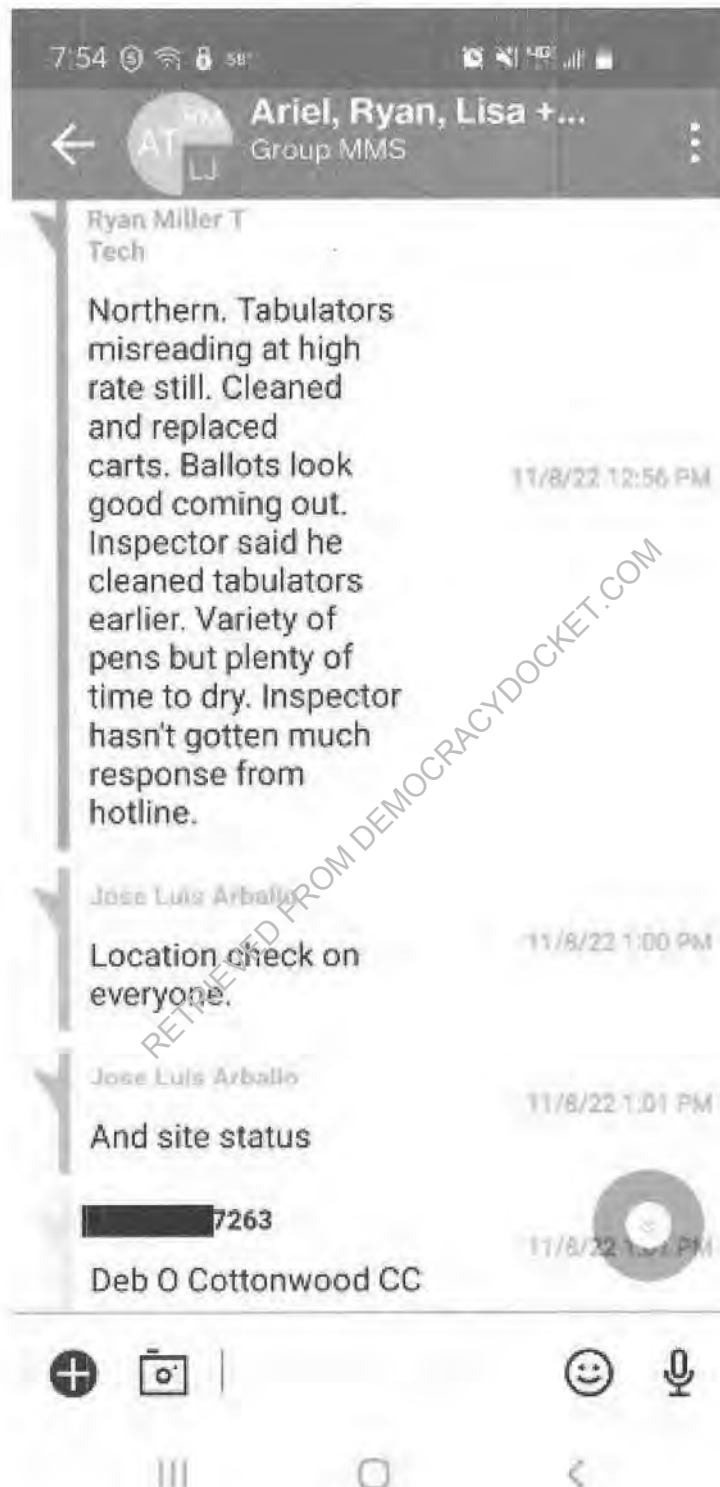
Year / Election	# of Reconciling Sites	# of Sites with a Variance	Total Variance (Fled, Early, Provisional) / % of Election Day Ballots Cast
2020 August Primary	62 of 100 (62%)	39 of 100	100 (.0019%)
2020 November General	122 of 210 (58%)	53 of 175	188 (.0011%)
2022 August Primary	92 of 210 (44%)	118 of 210	210 (.0019%)
2022 November General	155 of 223 (69%)	68 of 223	170 (.0007%)

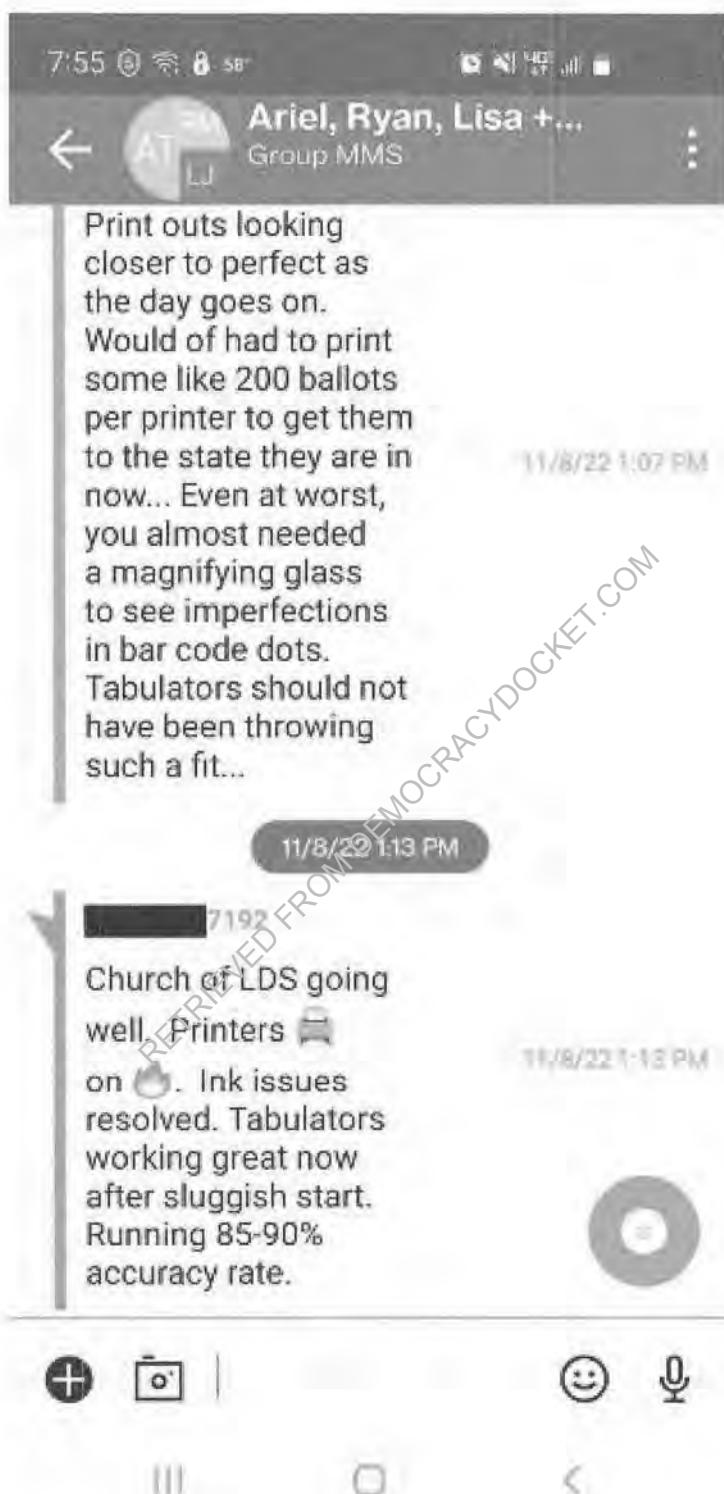
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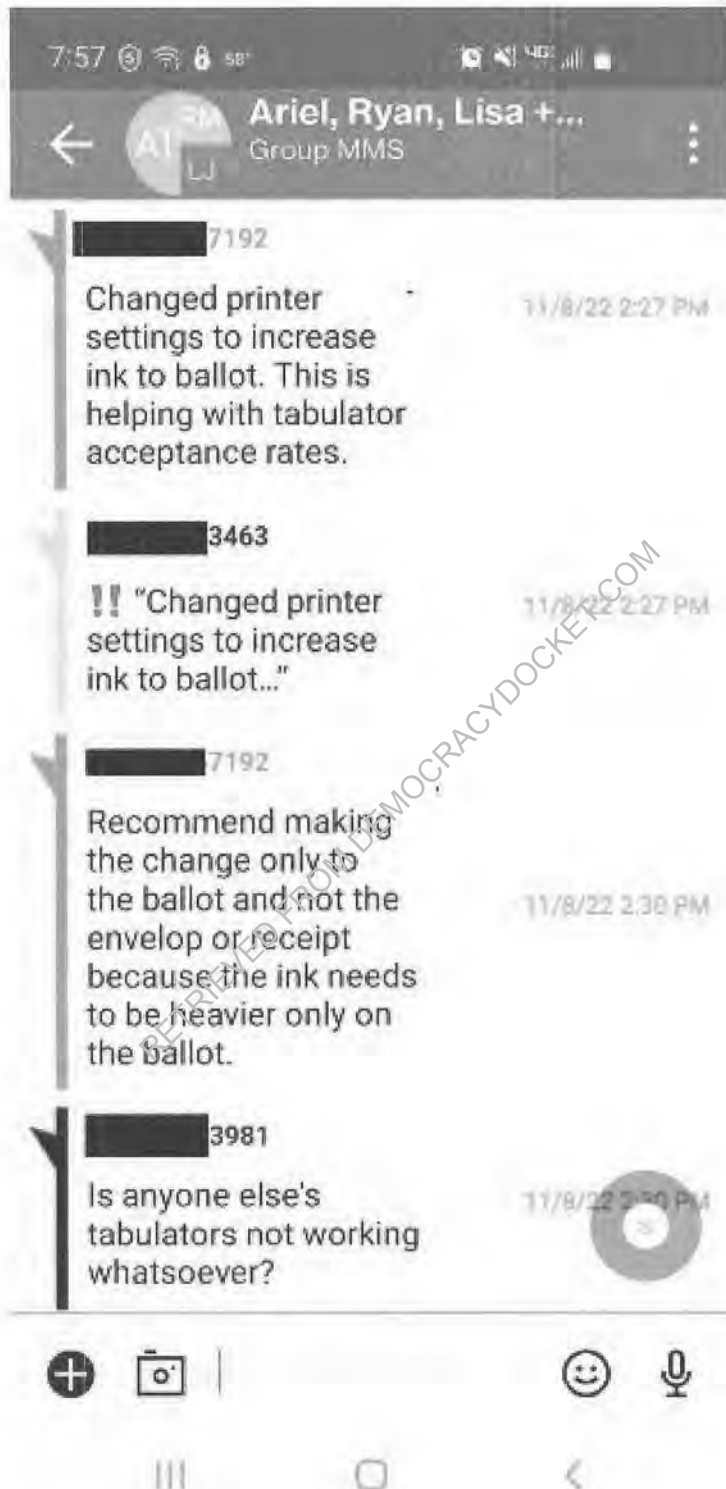








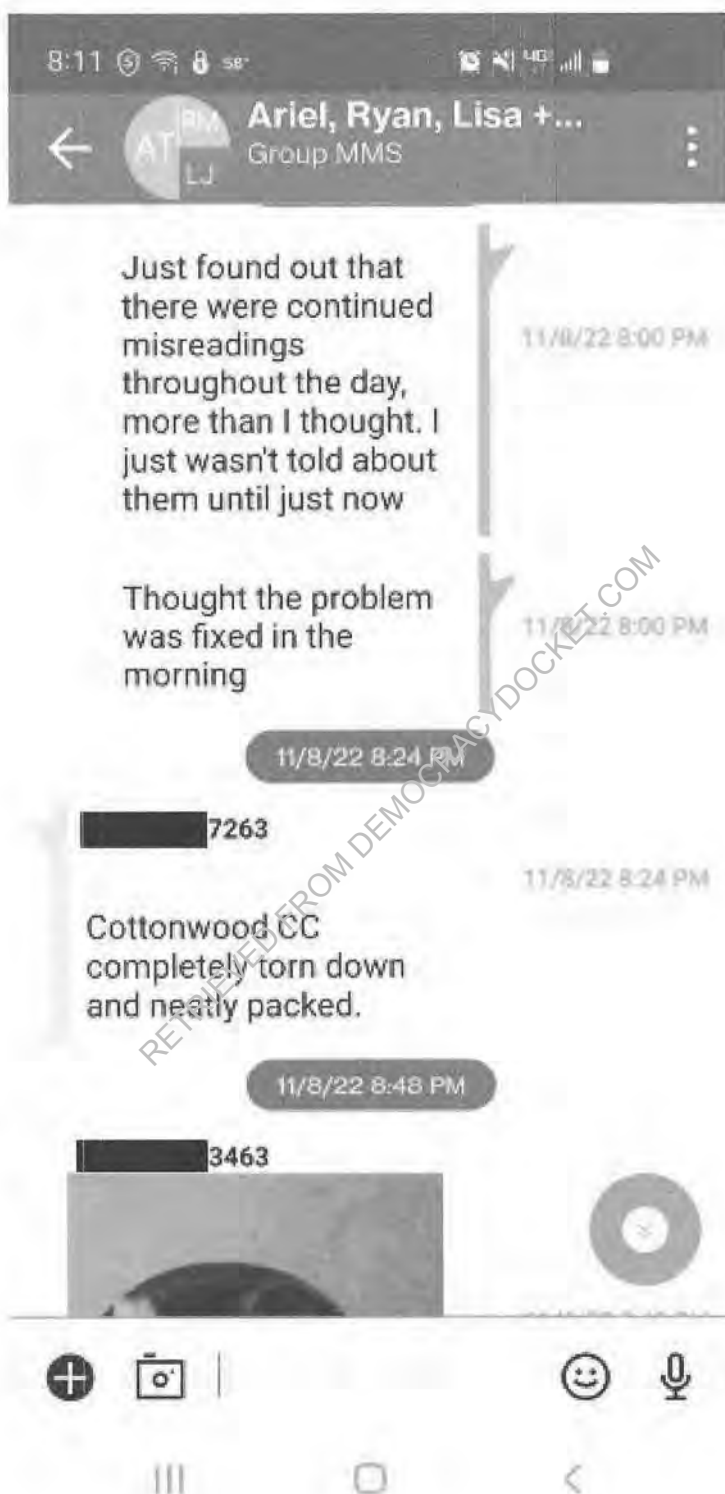












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53