



**THE
GAVEL
PROJECT**
EST. 2021

Exhibit 4

4022 E. Greenway Road, Suite 11 - 139, Phoenix, AZ 85032

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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 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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A P P E A R A N C E S (cont.)

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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
08:36:55 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,
08:37:33 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
08:47:48 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
08:48:14 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
08:51:28 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
08:52:01 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
08:55:16 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
08:55:47 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?

9 A. Maricopa is a great example of this, it really
08:59:02 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
09:06:33 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?

09:07:07 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?

09:08:00

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.

09:08:28

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
09:17:24 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.

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. MADDURI: 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.

20 THE COURT: So, Mr. Baris, can you repeat
21 your answer so my court reporter can get it clearly?

09:19:42

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.

9 MS. MADDURI: Your Honor, I would like to
09:27:33 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.

09:29:04

18 So, for instance, college-educated voter, in
19 their middle age, would be happy to stay on the phone
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
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

09:33:37

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
09:37:01 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?

09:37:45 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.

09:41:30

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?

09:42:02

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,
09:46:25 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
09:46:49 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
09:49:46 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.

09:50:18 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
09:59:30 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
09:59:58 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
10:00:46 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
10:01:09 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
10:01:57 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.

10:02:26 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
10:03:04 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
10:03:39 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

10:08:43

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.

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.

10:09:11

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?

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
10:11:03 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
10:11:30 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
10:12:48 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

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
10:20:04 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
10:20:24 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
10:21:08 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
10:21:35 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?
10:26:11

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
10:26:35

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
10:29:40 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
10:30:09 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.

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,
10:33:17 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
10:33:39 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?

10:34:21

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?

10:34:46

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,
10:35:30 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.

10:35:55 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."

11:02:02

19 THE COURT: I'll overrule it. Let you
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.

11:09:49

9 Q. Have courts relied on your expertise and
10 opinions?

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.

11:10:14

19 Q. And have you worked on behalf of both Republicans
20 and Democrats?

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
11:12:36 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
11:13:18 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
11:21:07 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.

11:25:45

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

11:26:22

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.

11:27:20

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.

11:27:58

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

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.

11:29:00

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.

11:33:45

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.

11:34:22

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
11:35:22 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
11:35:57 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
11:41:10 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.

11:42:52 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
20 the election into doubt are incorrect.

11:47:37

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?

11:49:52

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?

11:50:20

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?
11:52:27

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
11:53:07
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 12:00:06 breakdown in their vote was three-to-one, but...

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.

20 12:00:36 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?
13:03:10

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
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.

13:04:18

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.

13:08:00 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?
13:09:26

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.

13:09:54 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?

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
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?

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
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.

13:21:31

9 Q. I think you just said you accept the mail, the
10 U.S. Postal Service's weight receipt?

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.

13:21:57

19 Q. Okay. And Exhibit 80, that's just an inbound
20 receipt of estimates; is that correct?

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?

10 A. The format of the document?
13:22:25

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?

13:30:08 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.

13:30:57

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.

13:31:35

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
13:33:52 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.

13:35:19

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

13:35:52

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.

13:39:18

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?

13:39:54

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.

13:40:41

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.

13:41:13

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 13:49:59 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 13:50:32 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
20 central count facility the count of the number of early
21 ballots that were transported.
13:52:58

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,
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

13:58:18

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.
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
14:05:29 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.

14:06:56

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,

14:07:29

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
14:08:18 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
14:08:54 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.

14:14:58

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:

14:15:23

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:

14:17:03 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
14:17:43 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?

14:20:29

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?

14:21:00

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?

14:27:05

19 Q. The Election Day ballots, does Maricopa County
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.

14:30:59

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.

14:31:20

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:

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?

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?

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.

14:52:00

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.

14:52:25

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.

14:53:16

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.

14:54:04

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.

14:57:48

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.

14:58:20

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?

15:06:30

18 A. Yeah, so Maricopa County uses what is called
19 Sentio ballot on-demand system. As I had previously
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.

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?

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.

15:13:31

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

15:14:16

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 be 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
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

15:17:46

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?
15:18:39

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;
15:19:27
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.

15:23:28

19 MS. DUL: Thank you, Mr. Macias. No further
20 questions, Your Honor.

15:24:04

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.

10 A. How you doing?
15:24:30

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?

20 A. I have provided a PowerPoint presentation with
21 that title, yes.
15:25:02

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."

15:25:41

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
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.

15:42:31

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.

15:44:30 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,

15:45:30

15:46:10

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

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.

15:56:39

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.

15:57:04

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.

15:59:12

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.

15:59:45

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.

16:00:28 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.

16:02:23 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

16:15:13

16:15:56

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
16:22:31 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,
16:23:07 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.

16:24:11

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

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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