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Timothy A. La Sota, Ariz. Bar No. 020539
TIMOTHY A. LA SOTA, PLC
2198 East Camelback Road, Suite 305
Phoenix, Arizona 85016
(602) 515-2649
tim@timlasota.com

Attorney for Plaintiffs/Contestants

Alexander Kolodin (030826)
Veronica Lucero (030292)
Arno Naeckel (026158)
James C. Sabalos (*pro hac to be submitted*)
Davillier Law Group, LLC
4105 North 20th Street, Suite 110
Phoenix, AZ 85016
T: (602) 730-2985
F: (602) 801-2539
akolodin@davillierlawgroup.com
vlucero@davillierlawgroup.com
anaeckel@davillierlawgroup.com
jsabalos@davillierlawgroup.com
phxadmin@davillierlawgroup.com

Attorneys for Plaintiffs/Contestant Abraham Hamadeh

IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MOHAVE

JEANNE KENTCH, an individual; TED BOYD, an individual; ABRAHAM HAMADEH, an individual; and REPUBLICAN NATIONAL COMMITTEE, a federal political party committee Plaintiffs/Contestants, v. KRIS MAYES, Defendant/Contestee, and	No. CV-2022-01468 **MOTION FOR A NEW TRIAL** (assigned to the Honorable Lee F. Jantzen) (ORAL ARGUMENT REQUESTED)

KATIE HOBBS, in her official capacity as the Secretary of State; LARRY NOBLE, in his official capacity as the Apache County Recorder; APACHE COUNTY BOARD OF SUPERVISORS, in their official capacity; DAVID W. STEVENS, in his official capacity as Cochise County Recorder; COCHISE COUNTY BOARD OF SUPERVISORS, in their official capacity; PATTY HANSEN, in her official capacity as the Coconino County Recorder; COCONINO COUNTY BOARD OF SUPERVISORS, in their official capacity; SADIE JO BINGHAM, in her official capacity as Gila County Recorder; GILA COUNTY BOARD OF SUPERVISORS, in their official capacity; WENDY JOHN, in her official capacity as Graham County Recorder; GRAHAM COUNTY BOARD OF SUPERVISORS, in their official capacity; SHARIE MILHEIRO, in her official capacity as Greenlee County Recorder; GREENLEE COUNTY BOARD OF SUPERVISORS, in their official capacity; RICHARD GARCIA, in his capacity as the La Paz County Recorder; LA PAZ COUNTY BOARD OF SUPERVISORS, in their official capacity; STEPHEN RICHER, in his official capacity as the Maricopa County Recorder; MARICOPA COUNTY BOARD OF SUPERVISORS, in their official capacity; KRISTI BLAIR, in her official capacity as the Mohave County Recorder; MOHAVE COUNTY BOARD OF SUPERVISORS, in their official capacity; MICHAEL SAMPLE, in his official capacity as Navajo County Recorder; NAVAJO COUNTY BOARD OF SUPERVISORS, in their official capacity; GABRIELLA CAZARES-KELLY, in her official capacity as the Pima County Recorder; PIMA COUNTY BOARD OF SUPERVISORS, in their official capacity; DANA LEWIS, in her official capacity as the Pinal County Recorder; PINAL COUNTY BOARD OF SUPERVISORS, in their official capacity;

SUZANNE SAINZ, in her official capacity as the Santa Cruz County Recorder; SANTA CRUZ COUNTY BOARD OF SUPERVISORS, in their official capacity; MICHELLE M. BURCHILL, in her official capacity as the Yavapai County Recorder; YAVAPAI COUNTY BOARD OF SUPERVISORS, in their official capacity; RICHARD COLWELL, in his official capacity as the Yuma County Recorder; and YUMA COUNTY BOARD OF SUPERVISORS, in their official capacity,

Defendants.

There is new and compelling information that not all legal votes were counted in the Attorney General race. For this reason, as well as those set forth more fully below, Contestants hereby move for a new trial on the following agrounds permitted by Rule 59(a)(1):

> (A) any irregularity in the proceedings or abuse of discretion depriving the party of a fair trial;
> …
> (D) newly discovered material evidence that could not have been discovered and produced at the trial with reasonable diligence; [and]
> …
> (F) error in the admission or rejection of evidence, error in giving or refusing jury instructions, or other errors of law at the trial or during the action.

(Emphasis added).

As this Court ruled from the bench and has not yet entered final judgement containing Rule 54(c) language, this Motion should, if necessary, be treated as a motion made pursuant to Rule 60(b). The grounds for relief under Rule 60(b) are substantially similar to the grounds set forth in Rule 59(a)(1). If necessary, this motion should also be treated as a motion pursuant to Rule 60(b) for relief from this Court's order limiting

discovery. Contestants further move that entry of final judgement be stayed, pursuant to Rule 62(a) until a new trial can be held.

This Motion is supported by the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

Arizonans are entitled to have their votes accurately and properly counted. *Chavez v. Brewer*, 222 Ariz. 309, 320 (App. 2009). And the purpose of an election contest under Arizona law is to ensure the will of Arizona voters is determined and the byproduct of a contest is an accurate counting of votes that produces confidence in the result. *See* A.R.S. §§ 16-672, *et seq*. Unfortunately, the recount identified more problems in an election already riddled with process failures. This further demonstrated that the vote count totals are likely inaccurate, with thousands of Arizonans' votes not counted, thus casting further doubt about the actual result.[1]

Even more unfortunately, this information that was not available to this Court at the time of trial. The Maricopa County Superior Court read the results in open court, and the Secretary of State's Office announced the results of the statewide recount on Thursday, December 29, 2022. (Exhibit A). This reduced Mr. Hamadeh's previous 511 vote deficit by over 45% and it now stands at only 280 votes. *Id.* In other words, Mr. Hamadeh's vote

[1] Without rehashing past issues, the Pinal County Elections Director—*not* Contestants—explained that "[o]ne factor underlying this disparity is that the canvass was filed prior to taking an adequate opportunity to investigate any possible anomalies we could discern from polling place returns." (Exhibit C at 5). The Pinal County Elections Director also identified even more election day process failures that cloud this entire process: "for several hours on election day some poll pads were not scanning 60/drivers licenses," and "[t]here were multiple paper jams that were observed on election day" that "may not have been interpreted correctly." (*Id.* at 5-6). To be sure, Contestants understand that we cannot unwind the clock to Novermber 8 and hold an election without these issues. But when an election official identifies even more process failures that operated to confuse and convoluate the admittedly hasty vote count process, there must be an available remedy to ensure the accuracy of the vote count across the State. If this election with a 280 vote margin is not worth the additional process to ensure accuracy, it is hard to see an election that would be, or much of a reason to have an election contest statute in the first instance, at least in a statewide race, as considerations of time would nearly always make a real contest unworkable.

total is within **.01%** of Ms. Mayes'. Given this new margin the tiniest errors in counting are enough to change the results, or at least cast them into doubt. And there are now new reasons to believe that such errors occurred. The recount results identified significant, material discrepancies that cast doubt upon the completeness and accuracy of the election results. And at least some Defendants, including the Secretary of State, knew about these material discrepancies no later than December 21—*eight days before she made the results available to Contestants and the public*. (Exhibit B – Pinal County Recount Variance Report ("Pinal Report"). Yet, they were not made known to the public until after this matter was tried. If this is not grounds for a new trial, then nothing is.

The statewide automatic recount was primarily conducted by machine. However, during the course of this recount at least one county, Pinal, was conducting a parallel audit of its own elections processes which discovered discrepancies significant in the context of this race. As the Pinal County elections director explained in her report, dated December 21st, but only unsealed after trial in this matter (along with the results of the recount): "One factor underlying this disparity is that the canvass was filed prior to taking an adequate opportunity to investigate any possible anomalies we could discern from polling place returns." (Exhibit B – Pinal Report). In other words, given more time, new evidence, and the physical inspection of ballots - the results changed.

Partial investigation into these anomalies, which primarily impacted disproportionately conservative election day voters, resulted in a net gain of 277 votes for Mr. Hamadeh. As Pinal County explained:

> Learning of the poll pad check-in problem, we began to research this concern and started with Precinct 01 which showed a difference between poll pad check-ins and number of votes counted. Unfortunately, before the analysis was completed, the canvass was downloaded and filed. While analyzing this concern, we ultimately decided to open up the locked Precinct 01 ballot box. Upon examination, it appeared to contain more than 422 ballot cards which was indicated as number of cards tabulated on election day. Therefore, we physically hand counted the number of ballot cards in that box. Our hand count revealed 600 ballot cards- not 422. We selected 3 additional precincts

> with similar disparities (Precinct 26, 109, 15) and physically counted the number of ballots they contained. **All 3 had more ballots than were reported on election day**.

(Exhibit B at pg. 6.) The County further explained that this problem was largely caused by difficulties that the County's polling place tabulators had with reading ballots, combined with human error:

> [W]e believe that when a machine jammed or a jam led to an error message, it may not have been interpreted correctly. Thus, we believe this led to ballots the operator thought were counted were not actually counted and needed to be returned from the output trays to the input tray to be rescanned.

(Exhibit B at pg. 6.) In trial in this case on December 23, 2022, Scott Jarrett testified that Maricopa County did not adjudicate election day ballots which were tabulated as completely blank ballots, instead relying on the machines and poll workers to inform voters that an undervote had been read on their ballot. The evidence presented by Maricopa County is especially significant because another cause of the discrepancy in Pinal County was that "Ballots with unclear marks were not sorted out for adjudication on Election Day." (Exhibit B-Pinal Report.) As Pinal County recognized, in circumstances such as these, taking the time to perform a physical inspection of ballots plays a key role in identifying miscounts and ensuring that all votes are properly tabulated.

Contestants applaud the process Pinal County completed to identify and correct the vote tally discrepancies. Contestants further assert that, had this information been available to Contestants when it was available to the Secretary of State, Contestants would have had the opportunity to present an even more compelling case to this Court for wider ballot inspection and thus would have had access to additional evidence to prove its case at trial. With this information imbalance, Contestants were further hamstrung in their effort to ensure election officials counted every vote *accurately* to determine the rightful winner of this contest.

Mr. Hamadeh does not ask this Court to alter the vote totals or election results on a whim. Rather, Pinal County's more thorough process unearthed new evidence—new to Contestants, but not the Secretary of State—that indicates further ballot inspection is necessary to ensure the accuracy of the Attorney General election results. To be clear, Contestants seek an accurate vote total—nothing more, nothing less—when we now *know for a fact* that the actual variance Pinal County discovered means that a similar issue elsewhere would tip the balance in this race. In fact, the hand counts in both Yavapai, Gila, Pima and Santa Cruze Counties also suggest tabulators failed to count all votes in the Attorney General's race (instead recording the race as an undervote) and/or misidentified marks by voters as overvotes. (Exhibit D – Yavapai Recount Hand Count Report & Pima Early Ballot Audit – Hand County Report – Recount.) The hand audit results in all of these counties except Santa Cruz County favored Abe Hamadeh, meaning the machines failed to properly tabulate votes to his deteriment. As set forth below, there is reason to believe that Maricopa County's recount process apparently would not have detected any variance stemming from the same or similar causes.

With an election that is this close, even small errors in the vote count can make the difference. There are still close to 50,000 undervotes in Maricopa County that Contestants asked to examine. The relatively small amount that was examined showed a number of clear votes that were improperly not counted, and, based on the exhibits and the testimony offered, a small net gain for Mr. Hamadeh.[2] Furthermore, Contestants are statutorily entitled to inspect *all* ballots, not just a sample – and such opportunity was not afforded to Contestants in preparation for trial. *See* A.R.S. § 16-667.

[2] Contestants understand that there were a total of fourteen ballots submitted by the parties, and also acknowledge that there were votes that were improperly counted as an undervote that should have counted as a vote for the Contestee. That fact makes the need to meticulously inspect each contested ballot all the more important. The Contestee deserves to have all votes in her favor counted just as much as the Contestant does. Most importantly, Arizonans deserve to have all votes counted accurately in an election when one "human error" that would be immaterial in one context makes all the difference to the outcome in this election with a 280-vote margin. And such a request is not unprecedented. In *Hunt v. Campbell*, a meticulous review of the votes cast in the governor's race was, in fact, outcome determinative. 9 Ariz. 254 (1917).

Importantly, a gain for Mr. Hamadeh makes logical sense based on the December 23 trial testimony from Maricopa County Elections Director Scott Jarrett. Mr. Jarrett testified that he would count, and Maricopa County does count, undervotes differently based on whether it is an Election Day vote or an early ballot. Specifically, Mr. Jarrett explained that, with a completely undervoted election day ballot (i.e. if the tabulator machine indicates the ballot is completely blank - perhaps because the voter checked the ovals instead of filling them in), officials do not adjudicate the ballot because the voter was theoretically informed of the issue at the voting center and did not cast a new ballot. But officials adjudicate early ballots with this same issue. Further, in Maricopa County, a voter is never informed that a machine read a ballot as undervoted as long as there were *some* votes on the ballot the machine could read. Because Election Day votes went for Mr. Hamadeh by a wide margin, it stands to reasons that the failure to adjudicate and count supposed undervotes on Election Day would affect the vote total for Mr. Hamadeh most severely.

In contrast, an early ballot would be adjudicated because the voter mails in the ballot without an opportunity for officials to tell the voter that his or her ballot is blank. In short, according to Mr. Jarrett's testimony, Election Day ballots that are characterized initially and improperly as an undervote are far less likely to be counted than early ballots. Whereas Mr. Hamadeh lost early ballots by about 15%, he won Election Day voting by 40%, so such disparate treatment would have a significant impact. This disparate treatment of voters' ballots based solely on whether they were cast on Election Day or beforehand is unjustifiable by the Constitution and a violation of those voters' rights. "[T]he State may not . . . by later arbitrary and disparate treatment, value one person's vote over that of another." *Bush v. Gore*, 531 U.S. 98, 104-05 (2000) (internal citations omitted).

With the current margin, even a slight difference between the candidates is enough to change the outcome. Regardless, ballots improperly tabulated as an undervote *must* be counted where the race is this close. In most races, a few hundred votes to one candidate or the other would not matter. Materiality is relative to the margin in the race. Here it would.

Additionally, a new trial would allow Contestants to present evidence on provisional ballots and early ballots that Contestants believe remain (improperly) uncounted. Maricopa County finally delivered the list of provisional ballot voters last week pursuant to a public records request made well in advance of trial, as well as information related to uncounted early ballots dropped off on Election Day.[3] So that information—previously available to Maricopa County but new to Contestants—will help target the review and evidence concerning ballots that improperly went uncounted. Again, in an election this close, such a discrepancy could undoubtedly tip the balance of votes.

II. The Court Now Has Time to Conduct a Complete Contest

Kris Mayes has now taken the oath of office for Attorney General. Even so, that does not change the fact that thousands of Arizonans did not have their votes counted—no matter who they voted for. Those disenfranchised voters are entitled to have their votes counted under Arizona law, especially when such a small number of votes controls the outcome of an election. *Chavez v. Brewer*, 222 Ariz. 309, 320 (App. 2009). The proceedings Contestants requested—apparently, like the initial count according to the Pinal County Elections Director—were rushed according to an artificial timetable over concerns of interfering with the transfer of power of the office of Attorney General. Given that Ms. Mayes has now taken office, any concerns about completing the contest up front are no longer an issue. Yet, under *Hunt v. Campbell*, a contestee's act of taking office does not moot an election contest. 9 Ariz. 254 (1917); *see also Reyes v. Cuming*, 191 Ariz. 91 (Ariz. App. 1997) (setting aside the results of a contested election thirteen months after the election, and eleven months after the previously declared winner had taken office).

In *Hunt*, the contestant, George Hunt, finally prevailed nearly a year into the contestee's term, and Hunt took office at the end of the contest. Thus, there are no artificial time restraints on completing the contest process. Ms. Mayes has taken office, but the

[3] Importantly, Contestants are statutorily entitled to present *all* evidence before a decision is rendered. *See* A.R.S. § 16-676 ("The court *shall* continue in session to hear and determine *all* issues arising in contested elections.")(emphasis added).

contest may proceed. There is thus adequate time to conduct the proceedings that Contestants requested, based on the newly discovered evidence from the recount so that the vote totals can be properly verified to confirm whether any additional discrepancies exist as Pinal County discovered. Moreover, the requested proceedings will ensure that disenfranchised voters may have their votes counted (if proper) and the voters of Arizona can have confidence in the accuracy of their elections that is otherwise lacking.

Nor are such election contests confied to past eras or relatively small jurisdictions. Al Franken finally took office in July of 2009, six months into his term, following a June 30, 2009 decision by the Minnesota Supreme Court that ended any chance the challenger had to succeed. *In re Contest of General Election Held on November 4, 2008, for Purpose of Electing a U.S. Senator from State of Minnesota*, 767 N.W.2d 453 (Minn. 2009). Considerations of time are always important, but here they would be less so than in the Minnesota Senate race as the Contestee has taken office.

III. Newly Discovered Material Evidence, Irregularity of the Proceedings, and Errors of Law

The Secretary of State requested and received an order from the Maricopa County Superior Court judge that presided over the recount that the counties not disclose their own results individually, even after those counties had completed their tallies: "Apache, Cochise, Coconino, Gila, Graham, Greenlee, La Paz, Maricopa, Mohave, Navajo, Pima, Pinal, Santa Cruz, Yavapai, and Yuma Counties shall not release to the public the results of the recount, including daily vote totals, until the Court has certified the results." (Exhibit E).

But we now know that the Secretary of State, who was a party in this case, was privy to these results before the results were publicly announced. In fact, the Secretary of State received a detailed account of the Pinal County vote total, discrepancies, and processes that identified and corrected the discrepancies on *December 21*. The other parties and this Court did not know the actual vote totals, but we know them now and we know what affected the variance between initial and final totals in Pinal County thanks to the Elections Director's thorough report. (Exhibit B).

A discrepancy revealed by limited ballot inspection and sampling might not have been material to the outcome before, may be material now. This Court should order the full ballot inspections requested by the Contestants to ensure the accuracy of the election outcome. As discussed above, Contestants discovered that the Contestee also would have gained votes had undervotes been counted properly. But the limited inspection coupled with the narrowing margin following Pinal County's revelations necessitates taking a closer look at ballots when only a slight variance—even a smaller one than what Contestants observed in their previous, limited inspection—can now be outcome determinative.

In terms of the recount results and lingering questions, Pinal County accounted for the lion's share of the vote difference, and particularly the vote difference favoring Mr. Hamadeh. As Pinal County's report detailed:

> The recount identified 63 ballots that had been processed on Election Day with unclear marks. These ballots were not subject to adjudication on Election Day. On recount and to be consistent with Early Ballot tabulation procedures, these ballots were sent to the top bin of the machines for possible adjudication. These ballots were marked with either a check mark, an "x" or a slash through the chosen candidates. The duplication board discerned that voter intent could be determined, and duplicated these ballots which were then tabulated.

(Exhibit B, p. 8).

This type of voter activity, of slashing or checking an oval, is seen in some of the ballots that were introduced into evidence in this case. And of course, there is the testimony that Mr. Jarrett himself gave in this matter as to this point. Although Pinal County treats the ballots consistently whether they are Election Day or early ballots, Maricopa County does not. And this disparate treatment favors the Democratic candidate when more Republican voters prefer to vote on Election Day, as occurred here. It can and must be corrected through full inspection without the rush conditions without "an adequate opportunity to investigate any possible anomalies." (Exhibit B, p. 5).

Indeed, Pinal County set the best practice for identifying and fully analyzing potential discrepancies. When confronted with questions about the total number of votes and a possible variance, Pinal County "decided to open up the locked Precinct 01 ballot box." (Exhibit B, p. 6). "Upon examination, it appeared to contain more" ballot cards than tabulated on Election Day and a "***hand count*** revealed 600 ballot cards- not 422." (*Id.*). Upon completing this process whereby officials "physically counted the number of ballots" contained in precinct boxes, Pinal County appears to have caught and resolved a major discrepancy. (*Id.*). Some counties—Gila, Pima, Santa Cruz, and Yavapai—conducted hand counts that also revealed slight discrepancies. But others did not.[4] In fact, Santa Cruz's hand count even yielded an extra vote for Ms. Mayes. The other enumerated counties yielded additional votes for Mr. Hamadeh that, if the trend continued, could be sufficient to tip the balance of this election. Pinal County did it right. The County cracked open the box, physically counted ballots to confirm an error occurred and then corrected the discrepancy with admirable candor. Now that everyone knows what the Secratery of State knew before trial, Contestants simply ask that we be given the opportunity to apply the Pinal County process across the board to conduct a physical inspection and hand count of ballots that—if the Pinal County issue repeats itself anywhere else in the State—could be outcome determinative in this election.

Further, Contestants are now in a possession a list of the names of persons who voted provisionally but whose vote was not counted. This list, first requested via public records

[4] Quizically, Apache, Graham, and La Paz failed to conduct the statutorily required hand count for the recount. *See* A.R.S. § 16-663 ("On completion of the recount… the county chairmen… *shall* select at random… five per cent of the precincts for the recounted race for a hand count.")(emphasis added)). Although the Secretary of State's 2022 General Elections Recount Information website suggests that both political parties must agree to participate in the hand count, such a statement is not supported by the statutory requirements. https://azsos.gov/elections/voters/voting-elections/ballot-processing/2022-general-elections-recount-information (last accessed 1/2/2023). To the extent the 2019 Elections Procedures Manual might suggest hand counts for recounts and/or elections are optional based on participation of the political party, such instructions are contrary to the plain language of the statutory requirements of both 16-602 and -663, and are therefore invalid. *See Leach v. Hobbs*, 250 Ariz. 572, ¶21 (2021)("[A]n EPM regulation that exceeds the scope of its statutory authorization or contravenes an election statute's purpose does not have the force of law.").

request approximately eleven-days prior to the trial, was only received within the past few days. This new information also proves critical to evaluating any *additional* potential discrepancies and ensuring Arizonans receive and accurate vote total. The Court denied discovery on this without the full information the Secretary of State has since made available, but Contestants pursued it through a public records request, and in combination with the new mix of available evidence, it will be relevant to ensuring the accuracy of election results.

Finally, evidence revealed during the *Lake v. Hobbs* trial that concluded on December 22nd (the day before the trial in this instant matter was conducted) revealed that some ballots in Maricopa County were printed in such a way that their timing marks could not be correctly read, which prevented Maricopa County's tabulators from properly reading and tabulating a large number of ballots. *See* Exhibit F Tr. [*Lake v Hobbs* Day 2] 208:23-25. Indeed, the Cast Vote Record ("CVR") identified a total of **196,113** election day ballot rejections[5] in Maricopa County alone. *See* Exhibit F Tr. [*Lake v Hobbs* Day 2] 208:23-25. [Compiled data from CVR].[6] Some ballots were rejected multiple times before finally being accepted by the machine.

On December 21st, in testimony in *Lake v Hobbs*, Maricopa County Election Day Director Scott Jarrett admitted that he has no idea what the ramifications of running an improperly printed ballot through a tabulator would be. Exhibit C Tr. [*Lake v Hobbs* Day 1] 53:25-54:8 (but further stating, "I know based on my historical knowledge, the timing marks on the ballot matter[.]"). However, as has recently been revealed, machine-read issues, combined with human error, were a significant cause of the Pinal County discrepancy. This problem was likely compounded with respect to election day ballots cast in Maricopa County. As was stated in trial, voters in Maricopa County are never warned, either by the machine or by an elections worker, that their ballot is being read as containing

[5] Multiple rejections of the same ballot may have been double counted.

[6] The source data from which this spreadsheet has been prepared is too extensive to attach as an exhibit. Defendants make an offer of proof to produce the source data at trial along with expert testimony to support this calculation.

one or more undervotes, unless the ballot is completely blank. Further, once a machine accepts a ballot, a human being will not independently review the ballot to ensure the result has been accurately tabulated. This means that any votes for Mr. Hamadeh which were erroneously read as undervotes would likely not have been properly recorded, as they eventually were in Pinal County. And ballots recorded as containing an undervote for this race would not have been examined by hand during the recount. It supports Contestant's request to inspect all ballots read as undervotes to ensure that all votes for Attorney General are properly counted. Again, any error with respect to the tabulation with such ballots would almost certainly favor Mr. Hamadeh as election-day voters skew much more conservative than the electorate in general.

IV. Conclusion

This matter is clearly in a far different posture than it was before the Court released the election recount results, including the Pinal County report. This new evidence and the arguments set forth herein demonstrate that a new trial, as well as additional discovery, are justified under Rule 59(a) and 60(b), Ariz. R. Civ. P. Contestants respectfully request that one be granted. Contestants further ask that entry of any judgement be stayed pursuant to Rule 62(a) until a new trial is held and the case decided.

RESPECTFULLY SUBMITTED this 3rd day of January, 2023.

By: /s/ Timothy A. La Sota
Timothy A La Sota, SBN # 020539
TIMOTHY A. LA SOTA, PLC
2198 East Camelback Road, Suite 305
Phoenix, Arizona 85016

Attorney for Plaintiffs/Contestants

/s/ Alexander Kolodin
Alexander Kolodin (030826)
Veronica Lucero (030292)
Arno Naeckel (026158)
James C. Sabalos (pro hac to be submitted)
Davillier Law Group, LLC

4105 North 20th Street, Suite 110
Phoenix, AZ 85016

Attorneys for Plaintiff/Contestant Abraham Hamadeh

ORIGINAL efiled and served via electronic means this 3rd day of January, 2023, upon:

Honorable Lee F. Jantzen
Mohave County Superior Court c/o
Danielle Lecher
division4@mohavecourts.com

D. Andrew Gaona (028414)
Kristen Yost (034052)
COPPERSMITH BROCKELMAN PLC
2800 North Central Avenue, Suite 1900
Phoenix, Arizona 85004
T: (602) 381-5478
agaona@cblawyers.com

Sambo (Bo) Dul
bo@statesuniteddemocracy.org
Attorneys for Secretary of State Katie Hobbs

Daniel C. Barr
Alexis E. Danneman
Austin Yost
Samantha J. Burke
Perkins Coie LLP
2901 North Central Avenue
Suite 2000
Phoenix, AZ 85012
dbarr@perkinscoie.com
adanneman@perkinscoie.com
ayost@perkinscoie.com
sburke@perkinscoie.com
Attorneys for Kris Mayes

Joseph La Rue
Joe Branco
Karen Hartman-Tellez
Maricopa County Attorney's Office

225 West Madison St.
Phoenix, AZ 85003
laruej@mcao.maricopa.gov
brancoj@mcao.maricopa.gov
hartmank@mcao.maricopa.gov
c-civilmailbox@mcao.maricopa.gov
Attorneys for Maricopa County

Celeste Robertson
Joseph Young
Apache County Attorney's Office
245 West 1st South
St. Johns, AZ 85936
crobertson@apachelaw.net
jyoung@apachelaw.net
Attorneys for Defendant, Larry Noble, Apache County Recorder, and Apache County Board of Supervisors

Christine J. Roberts
Paul Correa
Cochise County Attorney's Office
Bisbee, AZ 85603
croberts@cochise.az.gov
pcorrea@cochise.az.gov
Attorneys for Defendant, David W. Stevens, Cochise County Recorder, and Cochise County Board of Supervisors

Bill Ring
Coconino County Attorney's Office 110
East Cherry Avenue
Flagstaff, AZ 86001
wring@coconino.az.gov
Attorney for Defendant, Patty Hansen, Coconino County Recorder, and Coconino County Board of Supervisors

Jeff Dalton
Gila County Attorney's Office 1400
East Ash Street
Globe, AZ 85551
Attorney for Defendant, Sadie Jo Bingham, Gila County Recorder, and Gila County Board of Supervisors

Jean Roof
Graham County Attorney's Office

800 West Main Street
Safford, AZ 85546
jroof@graham.az.gov
Attorneys for Defendant, Wendy John, Graham County Recorder, and Graham County Board of Supervisors

Scott Adams
Greenlee County Attorney's Office
P.O. Box 1717
Clifton, AZ 85533
sadams@greenlee.az.gov
Attorney for Defendant, Sharie Milheiro, Greenlee County Recorder, and Greenlee County Board of Supervisors

Ryan N. Dooley
La Paz County Attorney's Office
1320 Kofa Avenue
Parker, AZ 85344
rdooley@lapazcountyaz.org
Attorney for Defendant, Richard Garcia, La Paz County Recorder, and La Paz County Board of Supervisors

Ryan Esplin
Mohave County Attorney's Office Civil Division
P.O. Box 7000
Kingman, AZ 86402-7000
EspliR@mohave.gov
Attorney for Defendant, Kristi Blair, Mohave County Recorder, and Mohave County Board of Supervisors

Jason Moore
Navajo County Attorney's Office
P.O. Box 668
Holbrook, AZ 86025-0668
jason.moore@navajocountyaz.gov
Attorney for Defendant, Michael Sample, Navajo County Recorder, and Navajo County Board of Supervisors

Daniel Jurkowitz
Ellen Brown
Javier Gherna
Pima County Attorney's Office
32 N. Stone #2100

Tucson, AZ 85701
Daniel.Jurkowitz@pcao.pima.gov
Ellen.Brown@pcao.pima.gov
Javier.Gherna@pcao.p
Attorney for Gabriela Cázares-Kelley, Pima County Recorder, and Pima County Board of Supervisors

Craig Cameron
Scott Johnson
Allen Quist
Jim Mitchell
Pinal County Attorney's Office
30 North Florence Street
Florence, AZ 85132
craig.cameron@pinal.gov
scott.m.johnson@pinal.gov
allen.quist@pinal.gov
james.mitchell@pinal.gov
Attorneys for Defendant, Dana Lewis, Pinal County Recorder, and Pinal County Board of Supervisors

Kimberly Hunley
Laura Roubicek
Santa Cruz County Attorney's Office
2150 North Congress Drive, Suite 201
Nogales, AZ 85621-1090
khunley@santacruzcountyaz.gov
lroubicek@santacruzcountyaz.gov
Attorneys for Defendant, Suzanne Sainz, Santa Cruz County Recorder, and Santa Cruz County Board of Supervisors

Colleen Connor
Thomas Stoxen
Yavapai County Attorney's Office
255 East Gurley Street, 3rd Floor
Prescott, AZ 86301
Colleen.Connor@yavapaiaz.gov
Thomas.Stoxen@yavapaiaz.gov
Attorney for Defendant, Michelle M. Burchill, Yavapai County Recorder, and Yavapai County Board of Supervisors

Bill Kerekes
Yuma County Attorney's Office
198 South Main Street
Yuma, AZ 85364
bill.kerekes@yumacountyaz.gov
Richard Colwell, Yuma County Recorder, a County Board of Supervisors

/s/ Timothy A. La Sota

Exhibit A



Governor Katie Hobbs @GovernorHobbs · Dec 29, 2022

Today, a court certified results for the recounted races in the 2022 General Election. Here are the vote totals: 1/

Attorney General	
Abraham "Abe" Hamadeh (REP)	1,254,529
Kris Mayes (DEM)	1,254,809
Superintendent of Public Instruction	
Tom Horne (REP)	1,256,406
Kathy Hoffman (DEM)	1,247,218
State Representative – Legislative District 13	
Jennifer Pawlik (DEM)	47,164
Liz Harris (REP)	43,830
Julie Willoughby (REP)	43,555

135.6K 355 412 2,298

Exhibit B

Election Summary Results Report
2022 General Election
Novemher 8, 2022

RECOUNT RESULTS

Pinal County

Statistics

	TOTAL	Election Day	Early Voting	Provisional
Election Day Precincts Reporting	109 of 109	109	0	109
Precincts Complete	109 of 109	109	0	109
Precincts Partially Reported	0 of 109	0	0	0
Absentee/ Early Precincts Reporting	109 of 109	0	109	0
Registered Voters - Total	282,572			
Ballots Cast - Total	145,987	36,069	109,324	594
Ballots Cast - Blank	2,122	384	1,723	15
Voter Turnout - Total	51.66%			

Report generated with Electionware Copyright © 2007-2019

Election Summary Results Report
2022 General Election
Novemher 8, 2022

RECOUNT RESULTS

Pinal County

Attorney General
Vote For 1

	TOTAL	Election Day	Early Voting	Provisional
REP HAMADEH, ABRAHAM "ABE"	83,116	26,936	55,759	421
DEM MAYES, KRIS	59,068	8,430	50,487	151
Write-In Totals	188	43	145	0

Superintendent of Public Instruction
Vote For 1

	TOTAL	Election Day	Early Voting	Provisional
REP HORNE, TOM	83,533	27,008	56,101	424
DEM HOFFMAN, KATHY	58,919	8,367	50,402	150
Write-In Totals	169	43	126	0

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PINAL COUNTY

RECOUNT VARIANCE REPORT

RECOUNT / GENERAL ELECTION / NOVEMBER 8, 2022

Pursuant to A.R.S. §§ 16-661 through 16-664, Pinal County has completed the reconciliation for the automatic recount of the November 8, 2022 General Election. Below is a summary of the variances found between Pinal County's canvassed returns and recount returns.

Ballot Variance

- Election Day Ballots: There was a net variance of 442 ballots that were tabulated in the recount that were not tabulated on election night.
- Early Voting Ballots: There was a net variance of 29 ballots between early ballots tabulated for the General and those tabulated in the recount.
- Provisional Ballots: There was a variance of -24 ballots that were counted in the General as provisional ballots that were inadvertently counted as early ballots in the recount.
- The recount identified 63 ballots with unclear marks that were not subject to adjudication on election night but were duplicated in the recount.

The net of these ballot variances are shown below for the two races subject to the recount.

Arizona Attorney General	**General**	**Recount**	**Variance**
Hamadeh, Abraham "Abe"	**82,724**	**83,116**	**392**
Mayes, Kris	**58,953**	**59,068**	**115**
Total Net Variance = 507			
Superintendent of Public Instruction			
Horne, Tom	**83,148**	**83,533**	**385**
Hoffman, Kathy	**58,802**	**58,919**	**117**
Total Net Variance = 502			

Geraldine Roll
Pinal County Elections Director

MEMORANDUM

TO: **Kori Lorick**
Elections Director
Arizona Secretary of State

FROM: **Geraldine Roll**
Pinal County Elections Director

DATE: **December 21, 2022**

SUBJECT: **RECOUNT DISCREPANCY REPORT**

In response to the mandated recount of the Attorney General and the Superintendent of Public Instruction races, Pinal County has completed its recount and supplements the results submitted to the Secretary of State (SOS) with this discrepancy report. The purpose of this report is to assist in explaining differences in the results for the two races submitted to the SOS in the County's November 21, 2022, canvass and the results of this recount. For ease of explanation, this report breaks out the differences in (1) ballots tallied on election day, and (2) early ballots run prior to and after election (early ballots).

The canvass reported 35,627 election day ballots. Recounted election day ballots total 36,069. The difference is 442 additional ballots tallied on recount. The canvass reported early ballots to be 109,341. Recounted early ballots total 109,324. The difference in early votes tallied in the recount is -17. This is a .3% variance from the canvassed results and reflects 99.7% consistency rate.

Additionally, there was a difference of 38 ballots tallied between the canvassed amount of 632 provisional votes and the recounted 594 provisional ballots. This difference is explained as follows: There were 15 Fed only ballots that were originally part of the initial canvass but not counted in the recount because the AG or Superintendent's race were not included on the Fed only ballots. There were 21 write-ins which were tabulated with the early voting write-ins. These write-ins were inadvertently put into one of the boxes labeled as write-ins in the vault. This was not discovered until we had recounted the provisional ballots and were commencing our reconciliation. We view this as a human error because all involved were under pressure to rapidly process the provisional ballots and failed to take additional steps to ensure they were properly segregated from other

ballots. There is a 2 vote difference which we have not been able to reconcile as of yet.

Turning to the count of early ballots submitted, the difference between the canvassed amount of 109,341 early votes tallied and the recounted early votes tallied of 109,324 is -17. Our reconciliation of this discrepancy revealed there were 38 early Fed only ballots that were not counted in the recount. The difference is the 21 provisional write-ins that were erroneously tabulated in the early voting recount tabulation process.

Next, in analyzing the election day ballots that were recounted, and referring to the third tab in the attached Excel workbook entitled "Recount Results," you will find that upon conducting the recount there are 10 precincts that contained a difference of over 5 votes and several precincts that returned with differences over 50. The vote difference in these 10 precincts is 424. One factor underlying this disparity is that the canvass was filed prior to taking an adequate opportunity to investigate any possible anomalies we could discern from polling place returns.

For example, for several hours on election day some poll pads were not scanning 60/drivers licenses. A software configuration work around was created and synched to the pads to correct the issue. Although poll workers were trained to use the paper poll rosters, poll workers came up with varying ways to handle the issue. Shortly after the election, we were contacted by a voter who explained how his license wouldn't scan on the poll pad and he was given a little piece of paper which he took to the judge's table and was given a ballot. It took a few days to gather information and speak with the polling place inspector to discover that approximately 20 voters in this precinct had not been documented in any fashion such as checking them in or signing the paper roster. If their license would not scan, the marshal would call voter registration who confirmed that they were eligible voters in AVID and had not voted. They were then given a ballot. These voters were never checked in on the poll pads and their voting history was not updated in AVID. Reviewing the materials returned from the polls, it seems likely that this was the experience for possibly a hundred or more voters (an estimate).

After several weeks of investigation, KnowInk and Russ Smith informed us that when we downloaded AVID information to the poll pads we neglected to check the box to include drivers license information. Our solution going forward is to ensure that the poll pads do not leave Elections unless and until they are all checked to ensure they are scanning. We are going to ask that voter registration use a poll pad instead of AVID when checking a voter to foster coordination in getting a voter

checked in. We are going to better train and refine a uniform method for all poll workers to follow for these situations. (This was clearly a human error and processes are being updated to handle this in the future.)

Learning of the poll pad check-in problem, we began to research this concern and started with Precinct 01 which showed a difference between poll pad check-ins and number of votes counted. Unfortunately, before the analysis was completed, the canvass was downloaded and filed. While analyzing this concern, we ultimately decided to open up the locked Precinct 01 ballot box. Upon examination, it appeared to contain more than 422 ballot cards which was indicated as number of cards tabulated on election day. Therefore, we physically hand counted the number of ballot cards in that box. Our hand count revealed 600 ballot cards- not 422. We selected 3 additional precincts with similar disparities (Precinct 26, 109, 15) and physically counted the number of ballots they contained. All 3 had more ballots than were reported on election day.

We have ruled out that additional ballots were somehow added to the locked ballot boxes after they were tabulated on election day and locked in the vault by reviewing video. Since all 4 precincts had been counted on Machine B, there was a concern of a possible machine inconsistency when tabulating on election day. We notified our County Attorney and the vendor, ES&S. ES&S came out, checked the machine and ran ballots through the machine. They were unable to get Machine B to repeat the inconsistencies we experienced on election night. Instead, when batches of ballots were run again by EE&S representatives no errors were evident. (It should also be noted that all three of Pinal County's tabulation machines passed all L&A testing pre-election and post election and for the recount)

After this analysis, we conclude that human error was the cause of our election day miscounts. Machine B was manned by a bipartisan team composed of an individual who had used the machine in previous Pinal elections and was the most experienced of the tabulating team. We reviewed video of this team tabulating the questionable precincts, but could not see where they did not put ballots on the machine to be counted.

There were multiple paper jams that were observed on election day. None of the tabulating teams alerted any election employee about any issues or questions. However, we believe that when a machine jammed or a jam led to an error message, it may not have been interpreted correctly. Thus, we believe this led to ballots the operator thought were counted were not actually counted and needed to

be returned from the output trays to the input tray to be rescanned. Again, human error.

Election night ballots were being tabulated with precinct selection mode on. For that reason, we have ruled out that ballots were mistakenly placed in the wrong pile and tabulated with another precinct. Had that occurred, they would have been out stacked and someone would have noticed. However, no such incident was ever brought to our attention. Likewise we have determined during the recount, which we conducted using precinct selection mode on, as was done during election day tabulation, no ballots were co-mingled with ballots from other precincts.

Finally, 4 of the 10 precincts returning with discrepancy of 5 or more votes were co-located precincts. With precinct selection mode turned on, the machine operator had to select one of the precincts and all ballots were scanned with the precinct not selected being out stacked. These out stacked ballots had to be rescanned or manually sorted through to discern why the machine did not process the ballot. We believe the tabulating team did not properly perform this function resulting in ballots not being scanned. For example, in co-located precinct 68/95, the election day canvass in Precinct 68 was 567 votes. The recount was 640 votes. The election day canvass in Precinct 95 was 417 votes. The recount was 417 votes. It seems clear that a stack of ballots from Precinct 68 was not scanned. Again, human error.

After performing reconciliation of ballots cast, accounting for Fed only and provisional ballots, reviewing multiple hours of video footage, speaking with a number of inspectors and marshals, physically hand counting the number of ballots in a ballot box and reconciling them with the machine results, and consulting with ES&S, we believe our recount to be accurate and the discrepancies between the recount and the canvass were the results of human error. We experienced an error rate of .3% with a consistency rate of 99.7%.

SUPPLEMENT- (DECEMBER 29, 2022)

Re: DECEMBER 21, 2022 RECOUNT VARIANCE REPORT MEMO

The Memorandum sent to the Secretary of State on December 21, 2022, had to be submitted under a deadline. This supplement explains what continued research and investigation produced after that date.

The recount identified 63 ballots that had been processed on Election Day with unclear marks. These ballots were not subject to adjudication on Election Day. On recount and to be consistent with Early Ballot tabulation procedures, these ballots were sent to the top bin of the machines for possible adjudication. These ballots were marked with either a check mark, an "x" or a slash through the chosen candidates. The duplication board discerned that voter intent could be determined, and duplicated these ballots which were then tabulated. The result was that even in precincts where there were no differences in Election Day ballots cast and recount ballots cast, candidates did pick up votes.

We have concluded that when the machines were loaded for Election Day, the sort setting automatically reset to default. The default sort setting does not sort unclear marks. Election staff did not check the sort setting. Ballots with unclear marks were not sorted out for adjudication on Election Day. When the recount election was loaded onto the machines, the sort settings were checked and set to sort unclear marks. Thus, these 63 ballots were sorted out for adjudication during the recount. The failure to properly set the machines on Election Day was due to human error.

Exhibit C

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

- - -

KARI LAKE, Contestant/Plaintiff, - 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.	**CV2022-095403**

December 21, 2022
Courtroom 206, Southeast Facility
Mesa, Arizona

BEFORE: **THE HONORABLE PETER A. THOMPSON, J.**

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BENCH TRIAL - DAY 1

Reported by:

Robin G. Lawlor, RMR, CRR, FCRR
Official Court Reporter No. 50851

A P P E A R A N C E S

BLEHM LAW, PLLC.
BY: **Bryan James Blehm**, Esq.
10869 N. Scottsdale Road, 103-256
Scottsdale, Arizona 85254

OLSEN LAW, P.C.
BY: **Kurt Olsen**, Esq.
1250 Connecticut Ave., NW
Suite 700
Washington, DC 20036

Attorneys for Contestant-Plaintiff

ELIAS LAW GROUP, LLP
BY: **Abha Khanna**, Esq.
1700 Seventh Ave.
Suite 2100
Seattle, Washington 98101

ELIAS LAW GROUP, LLP
BY: **Lalitha D. Madduri**, Esq.
Christina Ford, Esq.
Elena Rodriguez Armenta, Esq.
250 Massachusetts Ave.
Suite 400
Washington, D.C. 20001

Attorneys for Defendant/Contestant Katie Hobbs

COPPERSMITH BROCKELMAN, PLC.
BY: **D. Andrew Goana**, Esq.
2800 N. Central Avenue
Suite 1900
Phoenix, Arizona 85004

Attorneys for Defendant Arizona Secretary of State Katie Hobbs

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

UNITED STATES DEMOCRACY CENTER
BY: **Sambo (Bo) Dul**, Esq.
1101 17th Street, NW
Washington, D.C. 20036

Attorneys for Defendant Arizona Secretary of State Katie Hobbs

MARICOPA COUNTY ATTORNEY'S OFFICE
BY: **Joseph LaRue**, Esq.
Thomas Liddy, Esq.
Karen Hartman-Tellez, Esq.
225 West Madison Street
Phoenix, Arizona 85003

THE BURGESS LAW GROUP, PLLC.
By: **Emily Craiger**, Esq.
3131 E. Camelback Road
Suite 224
Phoenix, Arizona 85016

Attorneys for Maricopa County Defendants

- - -

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- - -

P R O C E E D I N G S

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

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

I'll take appearances, please.

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

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

09:01:22

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

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

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

THE COURT: That's fine.

For defendants?

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

09:01:41

THE COURT: Thank you.

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

THE COURT: Thank you.

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

THE COURT: Thank you. All right.

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

09:02:26 to that schedule.

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

As far as argument goes, I can hear from

09:02:59 each of you with regard to closing argument, that type of thing. But for objection's sake, I will assume, if you wish me to, that all three defendants join in any objection made by any attorney who is handling a particular witness.

Will that be a fair process?

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

THE COURT: Mr. Liddy?

MR. LIDDY: Yes, Your Honor.

THE COURT: Mr. Goana?

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

THE COURT: Very well then. All right. There were two motions that were filed last night and responses that I've considered. The first is there's a 09:03:35 motion to exclude plaintiffs expert witnesses. I've considered those. What I intend to do at this time, to expedite things, I believe that under the local rule it's been briefed. I have everything I need to decide it, so I don't need oral argument on that, because we need to get started on the actual trial.

With regard to the motion to exclude Plaintiff's experts, Rule 702(a) allows me to consider expert testimony if they have qualifications or expertise beyond that of, in this instance, is going to 09:04:10 be the Court with regard to particular matters relating directly to this case. I find that is the case, that the experts do have some expertise that will allow them to opine to certain things. However, that's subject to foundation, and it is also going to be -- to relevance because the motion went as far as to seek to strike the

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

The other motion under Rule 807, there are

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

Second of all, those affidavits that are attached to Mr. Sonnenklar's affidavit that deal with observations by voters, poll workers, or persons present

09:06:10 on the voting day, November 8, 2022, are under oath; and I have no reason to suspect there's any indicia of unreliable information in the affidavit. So I would grant the request to enter those into evidence, but Plaintiff's exhibit numbering system left something to be desired, and the clerk has now numbered your

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

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

09:08:55 to the affidavit that I believe that are being sought to be entered.

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

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

Next, Exhibits 6, 7, 8, 9, 10, 11 -- well, 10, are -- fall within what I believe or construe as is that 807 exception to allow for observations that took place at the time and place of the election and the persons who are the declarants. The others, the declaration of Mr. Baris, he's an expert. He's retained for the purpose of litigation. He's got a report, et
09:10:31 cetera, and I've talked about that. The declaration of Shelby Bush is also not pertinent to what I have before me. The affidavit of Clay Parikh, is that how I pronounce it?

MR. OLSEN: Yes, Your Honor.

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

So what I need for you to do is to get with the defendants, show them your exhibit numbers, get me
09:11:04 those numbers, and then I can address admitting those at a later point.

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

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

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

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

THE COURT: Thank you, Mr. Liddy.

Obviously, I'm the Trier of Fact. This trial is going to be conducted with the eye that I am able to give things the weight that I deem appropriate anywhere from zero to great weight. And so I will rely upon you, counsel, on both sides, to present argument or to present the case in a manner that indicates to me

09:12:27 what you think has more weight.

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

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

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

THE COURT: Join?

MR. BLEHM: We have no objection.

MR. OLSEN: No objection, Your Honor.

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

09:13:12

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

THE COURT: Very well. I'll accept the designation. Very well. Ready to proceed?

09:13:47

MR. OLSEN: Yes, Your Honor.

THE COURT: Ready to proceed, Defense?

MS. KHANNA: Yes, Your Honor.

THE COURT: Mr. Liddy?

MR. LIDDY: Yes, Your Honor.

THE COURT: Mr. Goana?

MR. GOANA: Yes, Your Honor.

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

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

THE COURT: Okay. We have Mr. Richer then. Very well. If you would swear Mr. Richer in, please.

09:14:47

STEPHEN RICHER,

called as a witness, having been duly sworn, virtually testified as follows:

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

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

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

09:15:15

DIRECT EXAMINATION

BY MR. BLEHM:

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

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

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

Q. What is your occupation?

A. Maricopa County Recorder.

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

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

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

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

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

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

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

A. Yes, sir.

Q. All right. Are those required by law?

A. Yes.

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

A. That's correct.

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

A. I don't follow.

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

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

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

A. I believe that race is in recount.

Q. Okay. Thank you very much.

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

A. As mentioned before, I'm responsible for registering voters, so intaking those, doing all the

09:17:50 background checks, confirming identity, confirming location, maintaining the voter registration database, having that available at the cut-off date, which this election was 28 days before the election date. Ordinarily, that's 29 days before Election Day, but this year we had Columbus Day on the 29th day, and so it

moved to the 28th day.

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

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

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

09:19:25 Q. Okay.

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

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

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

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

A. That's correct.

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

A. That's correct.

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

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

Q. Okay. So are Runbeck your personnel?

A. No.

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

A. Correct.

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

A. Maricopa County has been doing this since the

1990s --

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

A. No.

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

09:21:14

A. They are.

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

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

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

A. Chain of custody is preserved throughout all

09:21:43

times of the early voting process. It's documented when it goes to Runbeck. It never leaves the sight of our personnel. It's documented when it comes back to MCTEC, correct.

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

A. Correct.
Q. What kind of forms do you use?
A. It's a ballot transportation slip. It's a white form.
Q. Does that include the total number of ballots you're taking to Runbeck?
A. It does include the total number of ballots for early voting.
Q. Okay. Thank you. That would include Election
09:22:24 Day ballots?
A. Election Day ballots are treated a little differently, if you're talking about Election Day ballots that are voted onsite, those are under the domain of Board of Supervisors. If you're talking about early ballots that are dropped off on Election Day, those come and those all come to MCTEC first where they are gathered, and then they are transferred over to Runbeck where they are counted by our people at Runbeck because they have a high-speed counter, because that's
09:22:56 the only day in which approximately 300,000 early ballots come in on one day.
Q. Okay. Is it your testimony here today that you, when Election Day happens, are no longer legally responsible for the ballots that are dropped into drop boxes?

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

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

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

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

09:23:40

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

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

THE WITNESS: Yes, sir.

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

09:24:03

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

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

THE COURT: Wait.
THE WITNESS: -- of my position.
THE COURT: Mr. Richer?
MR. BLEHM: Okay. Mr. Richer --
THE COURT: We'll let Mr. Blehm ask a question. Proceed.
BY MR. BLEHM:
Q. Mr. Richer, with respect to drop boxes in vote centers on Election Day, who is it that is responsible for those ballots?
09:24:35
A. Voting locations on Election Day are overseen by Board of Supervisors in all 15 counties.
Q. I understand that -- I understand that, Recorder, but you're not answering my question.
Is it not true that the drop boxes are under your purview as Recorder?
A. When the ballots get back to MCTEC, the early ballots, we then process those. We oversee them; we organize them; we get them all aligned in the same
09:25:13
manner; we count them. We then send them with our personnel to MCTEC so somebody can be scanned and imaged overnight so at 7:00 a.m. on Wednesday morning we could begin the signature verification process for those 290,000 ballots, the early ballots, that were dropped off on Election Day. I was distinguishing those from

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

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

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

Q. Does the statute draw a distinction between Election Day drop box ballots and early ballots that

09:26:01 take place before Election Day?

A. It does.

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

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

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

A. We must maintain chain of custody for all early

09:26:35 ballots.

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

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

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

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

A. It does.

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

09:27:23

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

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

A. Yes.

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

A. Yes.

09:27:55

Q. Okay. Thank you very much.

You're familiar with EPM, correct?

A. Are you referring to the Elections Procedures Manual?

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

A. I am.

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

A. That's correct.

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

A. I can't recollect.

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

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

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

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

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

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

A. Based upon that report which came out in

April 2022, no.

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

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

Q. All right. Why did you do that?

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

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

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

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

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

I said 61.

MR. OLSEN: It's 63.

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

THE COURT: Thank you.

BY MR. BLEHM:

Q. Are you able to see what's on -- that's not it. Be right here -- G1.

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

BY MR. BLEHM:

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

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

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

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

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

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

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

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

A. No.

Q. No? Where do they put them?

A. Well, your previous statement was inaccurate.

Q. Okay. Do they contain any documentation contained on the bins for chain of custody from

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

A. Yes.

Q. They contain those forms on Election Day?

A. Yes.

Q. On Election Day, okay?

A. Yes.

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

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

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

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

how many ballots were in each bin?
A. No, not on Election Day.
Q. Okay. That's the nature of my question. You don't have any idea how many ballots were in those bins, do you?
A. We count them at MCTEC.
Q. Okay. You count them at MCTEC, okay. And then do you create --
A. Correct.
09:34:37 Q. -- a chain of custody form on Election Day at MCTEC?
A. Yes, before it goes to Runbeck.
Q. Have you produced all of those in response to a FOIA request that was submitted to your office?
A. I don't think we're bound by federal law.
MR. LARUE: Objection, Your Honor.
BY MR. BLEHM:
Q. Have you submitted them in respect to public records request under Arizona law?
09:35:05 A. Sorry. I see Joe standing up, but I don't know if that's --
MR. BLEHM: He's sitting. I can see him, too. He's sitting.
THE WITNESS: I believe we have.
BY MR. BLEHM:

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

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

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

A. No, we added them up. They are not counted at the individual voting locations. They are counted when

09:35:44 they get back to MCTEC and then they are recounted at Runbeck.

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

A. That was my estimate at the time.

Q. No, you Tweeted it, correct?

A. If you say so.

Q. And then you said that again in the afternoon in

09:36:13 a press conference; is that correct?

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

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

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

Office. That's handled by the tabulation side.

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

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

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

A. No.

Q. All I want to know is, does anybody know when

09:36:53 those ballots leave the polling centers, the voting centers, how many are in the bins?

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

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

A. Correct.

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

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

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

A. Correct.

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

is not working? (Pause.)
BY MR. BLEHM:
Q. Do you recall sending an e-mail on the 10th to the Board of Supervisors essentially saying that you really have no idea how many ballots there are?
A. No.
Q. You don't recall that?
A. I do not recall that.
Q. All right. So I'm not finding it and I want to
09:39:24 get over this really quickly. Do you recall on the 10th of November on 2022 at 2:13 p.m. sending an e-mail to Ray Valenzuela, Scott Jarrett, Megan Gilbertson, Matthew Roberts, Philip Mosley, as well as cc'ing Bill Gates and a few others that states -- and I'll read this verbatim if anybody wants to challenge it -- "unable to currently reconcile SOS listing with our estimates from yesterday."
Do you recall sending that e-mail?
A. That -- if you say that I said that, then I said
09:40:03 that.
MR. LARUE: Your Honor, I would like to lodge an objection. We need to see the exhibit if he's going to use it.
MR. BLEHM: There you go, please. Correct the record if I quoted that wrong.

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

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

THE COURT: Is that one of the --

MR. BLEHM: This is, Your Honor. This is Exhibit 69. But for some reason, we did come in and test this system with that computer with this AV

09:40:36 technician prior to trial, Your Honor, and everything functioned perfectly fine. We're not sure what the disconnect is at this time.

THE COURT: Okay.

MR. BLEHM: Any objection?

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

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

THE COURT: No objection? I'm asking if

09:41:02 they had an objection.

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

MR. BLEHM: Thank you, Your Honor.

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

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

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

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

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

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

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

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

MR. BLEHM: Understood, Your Honor, and

09:41:58 that's what I'm doing. What I said, Exhibit 69, Your Honor.

THE COURT: Thank you.

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

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

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

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

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

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

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

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

THE COURT: Gentlemen, let me do this for you: Because the numbers were not correctly -- the exhibits were not correctly labeled by Plaintiff, my

09:43:05 clerk worked on this until 11 o'clock last night.

MR. BLEHM: Understood, Your Honor.

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

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

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

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

09:43:49

MR. LARUE: Yes, Your Honor.

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

BY MR. BLEHM:

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

A. Not at my direction.

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

09:44:14

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

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

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

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

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

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

A. That sounds right.

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

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

Q. Maricopa County delivery receipts are those --

09:45:30 Maricopa County uses to deliver ballots to Runbeck?

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

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

MR. LARUE: Objection, Your Honor.

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

MR. BLEHM: Thank you.

THE COURT: Strike that.

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

THE COURT: That's your first strike.

BY MR. BLEHM:

Q. Okay. Has the Attorney General opened investigation into the 2022 Maricopa County election?

09:46:05

A. No.

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

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

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

A. They were almost exclusively directed to the Board of Supervisors. I responded. I have not received a response back from Ms. Wright.

09:46:32

Q. Okay. Almost exclusively, correct?

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

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

THE COURT: Thank you.

If you would like to proceed.

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

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

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

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

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

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

THE COURT: Please.

CROSS-EXAMINATION

BY MR. LARUE:

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

A. Good morning, Joe.

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

A. Panama City.

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

A. First time in four years.

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

couple of years?

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

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

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

Q. All right. Thank you, Recorder. I'm sure Your Honor understands.

09:48:16

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

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

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

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

09:48:50

A. Him and many others, but he leads those, correct.

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

A. It would.

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

A. We do.

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

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

Q. Yeah, quite busy. I don't expect you to know the exact number, but do you have a reasonable estimate how

09:49:37 many public records request your office has received this calendar year?

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

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

A. I do not.

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

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

Q. So a line employee?
A. Correct.
Q. Okay.
A. A celebrated and appreciated line employee.
Q. Very much so, Recorder.
So as you sit here today and as you're sitting here testifying, do you actually know whether your public records team has completely responded to a public records request for chain of custody to documents?
09:51:00 A. I do not.
Q. Okay. Thank you.
On election night, in the first few days following the election, do you know whether your office and the Board of Supervisors sometimes make estimates regarding how many ballots were returned?
A. We try to make estimates as quickly as we can while still doing it responsibly, which is why I gave that 275,000 plus, because as I'm sure you'll appreciate, candidates, campaigns have a strong interest
09:51:35 in assessing the size of remaining ballots to run their own models to assess whether it's over or whether they still have a chance; and so we try to get those out, like I said, as quickly as possible while also being responsible.
Q. Okay. So when you wrote 270,000 plus or 275,000

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

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

Q. I think it was clear, Recorder.

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

A. Correct, and that is what we are doing throughout the evening. So we'll get these between 10:00 p.m. and midnight on election night. This is mostly early ballot drop-offs. Now, we received 120,000 more early ballot drop-offs on election night than the office had ever received before, so as these boxes were coming in and as we were organizing them, we were assessing them by tray

09:53:10 before confirming the official count, and that's how I most likely got that estimate number.

Q. Okay. Thank you, Recorder.

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

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

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

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

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

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

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

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

Q. Please.

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

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

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

A. I'm a registered Republican.

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

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

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

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

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

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

A. Absolutely not.

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

Nothing further, Your Honor.

THE COURT: Thank you.

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

09:58:13 REDIRECT EXAMINATION

BY MR. BLEHM:

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

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

prior to November 8, 2022.

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

A. That is 100 percent false.

Q. 100 percent false?

A. Correct.

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

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

MR. BLEHM: Yes.

MR. LARUE: Yes.

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

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

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

MR. BLEHM: No, I don't.

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

THE WITNESS: Thank you.

(Witness excused.)

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

As I've informed this Court, my audio and video specialist and I did come to this courtroom and test our audio video equipment on this Court's system, Your Honor, and we used a cable that was attached in this desk here that is no longer present. Everything functioned perfectly at that test, Your Honor. And so we came today and that cable is gone and we're using a different cable. It's my understanding the staff is working with the technical side to try and fix what's
09:59:45 happening, but I wanted the Court to be aware that we did do our due diligence and we come before this Court to do that.

THE COURT: Thank you, Mr. Blehm. Okay.

Who would be your next witness?

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

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

ROBERT SCOTT JARRETT,

called as a witness, having been duly sworn, testified as follows:

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

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

MR. OLSEN: Yes, Your Honor.

DIRECT EXAMINATION

BY MR. OLSEN:

Q. Good morning, Mr. Jarrett.

A. Good morning.

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

A. Yeah, Robert Scott Jarrett.

Q. And what is your occupation?

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

Q. How long have you held that position?

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

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

A. Yeah. So I oversee all in-person voting operations, which -- for that I actually report up to both the Maricopa County Board of Supervisors and the

10:01:37 Recorder, so that would be the early in-person, as well as the Election Day operations. That includes recruitment and training of poll workers, that includes our warehouse operations for distributing all materials and supplies out to voting locations, and then I also oversee all tabulation functions.

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

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

10:02:26

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

A. That's correct.

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

10:02:52

A. That's correct.

Q. And what is logic and accuracy testing?

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

County itself as well as a test performed by the Secretary of State. So I don't oversee the Secretary of State's logic and accuracy test, I have to make the equipment available for the Secretary of State's logic and accuracy test. For the County's logic and accuracy test, that is to run test ballots through; and for the County's tests, it's thousands of test ballots through our tabulation equipment, both the central count tabulation equipment as well as the tabulation equipment
10:03:36 that would be used at the vote centers, to make sure that they are accurately programmed to tabulate those ballots.

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

A. So for every election, we have to design a unique election program to tabulate the specific ballot, because each ballot is unique or specific to an election. In Maricopa County, we had over 12,000
10:04:03 different ballot styles, and so -- and that were for all the various different precincts that we have in Maricopa County, as well as our early ballot style or provisional ballot style, and our Election Day ballot style. So, essentially, making sure that the tabulation equipment will then be able to read a ballot and then be able to

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

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

A. That's correct.

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

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

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

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

Q. Prior to performing logic and accuracy testing prior to the 2022 General Election, did you perform, or did your office perform logic and accuracy testing with

10:05:18 test ballots from ballot on-demand printers in the precinct-based tabulators?

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

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

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

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

Q. And what size was that, sir?

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

Q. 20-inch ballot.

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

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

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

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

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

A. That's correct.

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

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

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

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

10:07:40

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

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

So, Mr. Jarrett, if you've understood the question, you can answer it. If you haven't understood the question, you can ask to have it rephrased; or if you don't know, don't guess. Just tell us you don't know.

10:08:09

So, do you want the question re-asked or

rephrased, sir, before you answer?

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

10:08:59

BY MR. OLSEN:

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

A. Yes, we did.

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

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

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

10:09:27

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

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

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

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

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

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

A. I can see it.

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

A. That's correct.

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

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

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

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

A. Significant amount of effort.

Q. And why such a significant amount of effort?

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

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

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

Q. I'd like to go to the page that's Bates stamped 10:12:46 last three digits 041, which is page 11 of the actual document.

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

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

for that.

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

A. No, I do not.

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

THE COURT: Exhibit 2?

MR. OLSEN: Yes, Your Honor.

10:13:30 THE COURT: Any objection?

MS. KHANNA: No objection, Your Honor.

THE COURT: Exhibit 2 is admitted.

Thank you.

BY MR. OLSEN:

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

Do you see that?

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

Q. What is the purpose of forecasting turnout?

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

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

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

A. So every election is unique, so we go back to
10:14:43 historical elections, similar or like-type elections, to try to identify how many people participate in those different elections, because that's the best guidepost. So usually it's the most recent-liked elections, so in this case it would have been the 2018 Gubernatorial Election or the 2014 Gubernatorial Election, but then we also use other factors, other similar and close elections, so the 2020 elections; differences in how a -- the difference in the turnout between a gubernatorial election and the subsequent presidential election, how
10:15:18 that impacts turnout. And then we also went back to decades and decades of turnout rates and ranges to identify.

So a significant amount of effort goes into forecasting turnout.

Q. And is that performed -- is that analysis

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

A. It's performed in-house.

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

A. Yes, that's correct.

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

A. That's correct.

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

A. We understand that they are forecasts.

Q. Correct.

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

Q. I'd like to turn to the page that is Bates stamped last three digits 043, it's actually page 13 of

10:16:37 the actual document.

Do you see that, sir?

A. I do.

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

A. I do.

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

A. That's correct.

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

Do you see that, sir?

A. I do.

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

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

Q. Why did you do two forecast models?

A. Again, because you're looking at historical elections, and variances can occur. So the first forecast model looked at 2014 and 2018. My recollection, 2014 was a historically low turnout year. 2018 was one of the higher turnout years. So we expanded this model to look at more and broader number of elections to include in that forecast model. So it was the two combined, which gave us a guiding. And when

10:18:01 I look at this 251,615, we had 248,000 in-person voters on Election Day, so very close.

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

A. In May of 2022.

Q. And how was the turnout for the Election Day

turnout for the Primary for the 2022 Primary Election?

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

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

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

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

A. That's correct.

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

A. It was within the range of both. But, yes, this first forecast model for the August Primary aligned closer with the turnout for August or the in-person

10:19:49 turnout for the August Primary.

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

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

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

being rejected.

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

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

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

10:20:55

A. Yes, I do.

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

A. What is your specific question?

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

10:21:36

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

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

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

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

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

Q. Okay. Would a disruption, such as what was
10:22:21 experienced -- I mean, would you agree with me there's a disruption on November 8, 2022, in the election?

A. I would say that we had some printers that were not printing some tiny marks on our ballots dark enough to be read in by our tabulation equipment. Voters had legal and ballot options to still be able to participate within our voting locations, so I don't agree and would not couch it as a disruption.

Q. So you don't believe that what happened on November 8th was not a disruption in the election
10:22:53 process?

A. I do not couch it as that.

Q. Are you aware that Supervisor Gates came out on Election Day and said 20 percent of all vote centers were affected by these issues with ballots being rejected by the tabulators?

A. Again, we didn't have ballots rejected by tabulators, they weren't being read in by tabulators; but that's not a disruption when voters still had valid options to participate in ballots in our Secure Door Number 3, which is a similar process that eight other counties use as their only option for voters to be able to return their ballots.

Q. Sir, you're not answering my question. My question isn't what other options existed for other

10:23:40 voters, my question is: Would you agree there's a disruption of at least 20 percent of the vote centers in Maricopa that caused delays in the voting process?

MR. LARUE: Objection, Your Honor. The witness has already answered this question as to whether he characterizes it as a disruption.

THE COURT: I'll overrule. If you can answer it, you may, sir.

THE WITNESS: I'm not changing my response.

BY MR. OLSEN:

10:24:06 Q. Okay. Is it -- do you believe that -- did you hear of any reports of wait times to vote of over 60 minutes?

A. Yes, I did.

Q. And what is the target wait time for in your -- in your model? Do you know?

A. On average, a half an hour.
Q. Please turn to Bates number 047, that's page 17.
THE COURT: Still Exhibit 2, correct?
MR. OLSEN: Yes, Your Honor.
THE COURT: Thank you.
BY MR. OLSEN:
Q. Do you see the section entitled: Time Needed to Vote a Ballot, Mr. Jarrett?
A. Yes, I do.
10:24:57 Q. And do you see the second paragraph under that section where it says, "on average, we estimate that it will take voters between 4.4 and 6.4 minutes to vote in the 2022 Primary ballot and between 8.5 and 10.5 minutes to vote the 2022 November General Election ballot"?
A. That's to complete and fill out the ballot.
Q. So is it your testimony then that 30 minutes is the time allotted projected for a normal election to enter into the vote center, cast your ballot and leave?
A. No. Our average was 30 minutes in line to check
10:25:42 in, and then to -- a few minutes to receive their ballot, upwards of 8.5 to 10.5. So on the 2020 General Election, 8.5 to 10.5 minutes to complete the ballot, and there could be some time to then wait in line at the tabulator to put in their ballot and feed it into a tabulator.

Q. Did you ever become aware of multiple reports at various vote centers in Maricopa County where wait times exceeded two hours?

A. Exceeded two hours, no.

Q. You were not aware of that?

A. Our data shows that we had some voting locations approaching two hours, but not exceeding.

Q. Even at some locations approaching two hours, would you consider that a disruption?

10:26:34 A. That's why we post wait times on our website, which was highly publicized and advertised. And all of those locations, we had close-by locations.

So, for example, Biltmore was approaching two hours in the last hour of the voting day. With two miles away at Faith Lutheran there was a voting location that had a one-minute wait time, during that same time, the longest time, that last hour of the day.

So there were options for voters to participate even at those other voting locations.

10:27:06 Q. What are you basing your report, the accuracy of the reported wait times on?

A. Information that poll workers returned to us, so it's the number of voters in line at that point in time. They report those every 15 minutes, and then we can calculate the wait time based on how long it would take

someone to check in at a voting location.

Q. So if those poll workers were testifying under oath of wait times over -- exceeding two hours at multiple locations, how would that square with what the County was reporting on its system? Are they just mistaken or --

A. Saying people can make estimates, but unless they are actually timing them they could be inaccurate. Our wait times are based off exactly how long it takes a

10:27:57 voter to check in through that process and have a ballot printed, and based off those numbers of voters that are standing in line at that point in time.

Q. And how is that figure calculated? You say it's based off that number, how do you calculate it?

A. Based off prior elections. So we can gauge how long it takes a voter to get checked in, then we can also see how many voters are checking in at a voting location throughout the day.

Q. Okay. So you're basing the wait time calculation

10:28:24 on prior elections, not on what's actually happening on scene at the day of election?

A. Based on how quickly a voter can check in through that process, that's correct.

Q. Sir, I want to go back to the earlier question about the 19-inch ballot image being placed on a 20-inch

paper.

Did you hear of any reports of that occurring in the 2022 General Election?

A. I did not.

Q. Okay. If that occurred, would that be a failure of Maricopa County's election process?

A. I'm not aware of it occurring, and I'd be surprised if there was a ballot on a printer that had a 19-inch ballot on it.

10:29:21 Q. I understand that, sir.

A. And the reason why is we did not design a 2022 General Election on a 19-inch ballot. That ballot does not exist. The only ballot that exists is a 20-inch ballot.

Q. Okay. And when you say "we designed," who designed the ballot? Is that outsourced to another company, or is that done in-house by Maricopa?

A. In-house by Maricopa County staff.

Q. Who -- what department would that staff fall

10:29:47 under? Is there a specific name for it?

A. Our Ballot Tabulation Team, so reports to me.

Q. And do you maintain records as to the ballot definition that was created for the 2022 General Election?

A. Yes, we have records of all the ballots that were

designed.

Q. And so I'll go back to my question again.

If a 19-inch ballot image was put on a 20-inch paper in the 2022 General Election, would that be a failure of your election process?

A. It would -- if something like that happened, which I don't know how it would, yes, it would have been a mistake.

Q. Could that have also been a deliberate act?

10:30:41 A. Again, you're asking me to speculate about things that I have no knowledge of occurring, so I don't know if it could have been a deliberate act or not. I don't believe that that occurred.

Q. How involved are you in creating the ballot definition?

A. So my team does, and then I overview it, and I'll review examples of those, yes.

MR. OLSEN: Thank you, Mr. Jarrett. I don't have any further questions at this time.

10:31:15 THE COURT: Okay. Thank you.

MR. LARUE: Your Honor, a quick clarifying question as to how the Court would like us to proceed. We intend to call Mr. Jarrett in our case in chief tomorrow, and so if the Court would like me to reserve all questions for him until tomorrow, we are happy to do

that. However, I would like to ask him a few questions directed just to what was just discussed during the direct examination of Mr. Jarrett.

THE COURT: You can choose to do it either way you wish. I won't dictate how you try your case, but you need to stay within the time.

MR. LARUE: Understood, Your Honor. I have just a very brief cross then.

THE COURT: Very well.

10:32:00 CROSS-EXAMINATION

BY MR. LARUE:

Q. Good morning, Mr. Jarrett. Thank you for being here today.

A. Thanks, Joe.

Q. Just a few very quick questions.

I believe you testified that your Election Day Plan called for, you know, assumed an average wait time of a half hour for each vote center.

Was that what you testified?

10:32:28 A. That's correct.

Q. Okay. Do you know what the actual average wait time was?

A. It was less than a few minutes on Election Day, average for all of our vote centers.

Q. Average for all vote centers were less than a few

minutes on Election Day, is that what you said?
A. That's correct. In our Canva's presentation, we have the exact number. I don't recall it off the top right now.
Q. Thank you, Mr. Jarrett.
Are you aware that one of the political parties urged their voters to forgo early voting and vote in person on Election Day?
A. Yes, I'm aware of that.
10:33:02 Q. Okay. You're aware of that today?
A. That's correct.
Q. All right. Were you aware of that when you prepared your analysis for the Election Day Plan?
A. No, I was not.
Q. Okay. So I'm assuming that -- you tell me, please, this urging by a political party was not factored into your Election Day Plan; is that correct?
A. That's correct.
Q. Okay. Thank you.
10:33:26 Prior to each election -- strike that.
Are you familiar with the term EMS?
A. Yes, Election Management System.
Q. The Election Management System. What does the Election Management System do?
A. So it is our tabulation system. So it's what we

use to program and design all the ballots. It is also the system that as we're running ballots through our tabulators that it's then counting those ballots. It's also then what sends ballots to be sent to our electronic adjudication system. Then it also holds the application for our results tallying and reporting.

So everything that was related to the ballot creation, to tabulating the ballots, to reporting results, is housed within our Election Management System.

10:34:17

Q. Okay. How many elections can be housed within the EMS?

A. Well, multiple elections can be housed. Given the number of ballots that Maricopa County has to tabulate, we usually only have, especially for a General Election, we will only have one housed on our Election Management System at a time.

Q. Okay. So for the 2022 General, did you only have the 2022 General on the EMS?

10:34:45

A. That's correct. That's what my understanding is. We only had those and all the data related to those files.

Q. What happens to the other data, the 2022 Primary? What happened to it?

A. So we transferred those to backup archived

storage devices and store those. We have one storage device onsite within our tabulation center and one offsite.

Q. Okay. And, Mr. Jarrett, you testified earlier that I believe you said you did not design a 19-inch ballot for the 2022 General Election; is that correct?

A. That's correct.

Q. So if it was not designed for the 2022 General Election, does it stand to reason that there would not have been a 19-inch ballot on the EMS? 10:35:25

A. That's correct.

Q. And if there was no 19-inch ballot on the EMS, does that also mean that there would have been no 19-inch ballot programmed into the ballot on-demand printers?

A. That's correct.

Q. Okay. Thank you, Mr. Jarrett.

You were asked about deliberate acts with regard to the printers. Mr. Jarrett, I'm going to ask you a very direct question: Did you personally do anything to any ballot on-demand printer to cause it to print too lightly to be read by a precinct-based tabulator? 10:35:50

A. No, I did not.

Q. Did you give an order to any of your personnel to do any such thing?

A. I did not.
Q. Are you aware of any order like that being given?
A. I'm not aware of that.
Q. Are you aware of any of your personnel engaging in such an act?
A. I am not aware.
Q. Are you aware of anybody engaging in such an act on any of our ballot on-demand printers used in the 2020 -- 2022 General Election?
10:36:26 A. I'm not aware.
MR. LARUE: That's all I have, Your Honor. Thank you.
THE COURT: Very well. May we excuse the witness?
MR. OLSEN: Brief recross, sir?
THE COURT: Recross?
MR. OLSEN: Well, redirect, excuse me. I'll be brief, Your Honor.
THE COURT: Very well.
10:36:41 REDIRECT EXAMINATION
BY MR. OLSEN:
Q. Mr. Jarrett, I believe you were just asked if questions about whether or not members of a political party encouraged their constituents, the Republican party, to come out and vote on Election Day.

Do you recall that?

A. Yes.

Q. And was that event factored into your forecast for turnout on Election Day?

A. When we made the initial forecast for the plans that were mentioned to the Board in May, no, it was not.

Q. So your estimates in the forecast would necessarily be low because they didn't take into account that factor, correct?

10:37:32 A. Our forecast forecasts 251,000, our lowest model, and there's 248,000. So I think they pretty accurately forecasted how many people turned out in person on Election Day.

Q. Well, tell me how that squares when, you know, counsel just asked you a question, you know, were you aware that members of the Republican party were telling Republican voters to come out on Election Day, and you didn't account for that, how does that square with a lower forecast number?

10:38:07 A. Well, we had record turnout -- near record turnout for the 2022 General Election, so 64 percent. You have -- the only turnout in the recent several decades that exceeded that was actually 2018, which was 64-point-something percent turnout as well.

So our forecast model was forecasting at

potentially the highest turnout percentage that the voters would turn out, so that's why it captured and forecasted 251,000 which was very close to 248,000.

Q. Actually, your forecast model, you had the other one, forecasted over 290,000, correct?

A. That's correct.

Q. And that model didn't take into account Republican leaders telling their -- their Republicans to come out on Election Day and vote, correct?

10:38:57 A. It did not. It factored in 2020 Presidential and 2016 Presidential factors, which usually a presidential election is much higher, so that's why it was ranging up to 290,000.

Q. Counsel asked you some questions about a 19-inch ballot image being projected onto a 20-inch paper.

Do you recall that I asked you questions about that?

A. Yes, I recall that.

Q. Do you have any idea how that could occur?

10:39:52 A. I do not.

Q. Would it require two different ballot definitions to be installed on the EMS?

A. Your first question asks if I have any idea how it could occur and I said I do not.

Q. Okay. Do you know what a site book is?

A. Yes, that's our check-in station.
Q. And the site book pulls up the vote -- voter, correct?
A. Yes, it's connected to our -- the Recorder's voter registration system through a virtual private network secure, so that when a voter checks in, it pulls up their specific information, and would alert our ballot on-demand printer which ballot style to print.
Q. So where does the ballot definition reside then?
10:40:37 A. So it's on a laptop that's connected to our ballot on-demand printers.
MR. OLSEN: Thank you. I have nothing further.
THE COURT: May we excuse the witness?
MR. OLSEN: Yes, Your Honor.
MS. KHANNA: Subject to recall tomorrow in our case in chief, of course.
THE COURT: Very well. Thank you, Mr. Jarrett. Please step down, sir.
10:41:01 (Witness excused.)
THE COURT: I've allocated some time to take a midmorning break, some of that has to do with my court reporter. So we do need to take a recess for that.
Who would you be calling as your next witness?

MR. OLSEN: Your Honor, as a matter of fact, I was just talking with counsel about asking the Court for a short break. I want to reassess given the time, and so if I may.

THE COURT: Yes. You certainly may because I'm going to have a midmorning break here. So what I'm trying to assess, though, is whether I can shave five minutes off of that or not.

MR. OLSEN: Your Honor, whatever you --

10:41:59 THE COURT: Do you need a full 15 minutes?

MR. OLSEN: No, Your Honor.

THE COURT: Okay. Ten minutes. We'll be back on the record then. We'll stand in recess.

COURTROOM ASSISTANT: All rise.

(Recess taken, 10:42 a.m.)

(Proceedings resume, 10:53 a.m.)

THE COURT: All right. We're back on the record in CV2022-095403, Lake v. Hobbs. Present for the record are parties and counsel, their representatives

10:53:38 and counsel.

I was just going to bring up a moment -- a matter of housekeeping. You okay with Mr. Blehm not being here, Mr. Olsen?

MR. OLSEN: Yes, Your Honor.

THE COURT: All right. Okay. At the risk

of OSHA violations from my court reporter, I'm -- what I would like to do is try and maximize the amount of time we have. Rather than starting at 1:30, we'll start back at 1 o'clock. So we'll go from 12:00 to 1:00, cutting 30 minutes off of the lunch break. So we'll do that today. And tomorrow I'd like to start at 8:30 tomorrow rather than 9 o'clock, if we can, stretch a little more out of the day. But I think by 4:30 -- you know, I don't want to burn the midnight oil on this. I think
10:54:36 that we need to have focus and attention and be clear-minded by, I think, starting at 8:30, coming back early from lunch that I'm not taxing anybody's mental capacity with that.

Do you agree, Plaintiffs?

MR. OLSEN: Yes, Your Honor.

THE COURT: Defendants?

MS. KHANNA: Yes, Your Honor.

MR. LARUE: County agrees, Your Honor.

MR. GOANA: Fine with the Secretary, Your
10:54:59 Honor.

THE COURT: So that's what we'll do.

All right. Are you prepared for your next witness?

MR. BLEHM: Yes, Your Honor.

MR. OLSEN: Yes, Your Honor. We call Clay

Parikh.

THE COURT: Very well, sir.

Mr. Parikh, if you could come forward, sir, and stand in front of my clerk to be sworn, sir.

CLAY UDAY PARIKH,

called as a witness, having been duly sworn, testified as follows:

THE COURT: Sir, if you could make your way around to the witness stand and have a seat. As soon as your witness is situated you may begin. Are you doing the questioning, Mr. Olsen?

10:55:31

MR. OLSEN: Yes, Your Honor.

DIRECT EXAMINATION

BY MR. BLEHM:

Q. Good morning, Mr. Parikh. Could you please state your full name for the record?

A. My name is Clay Uday Parikh.

Q. And where do you currently work?

A. I work at Northrop Grumman, a defense contractor.

10:55:52

Q. And what do you do with Northrop Grumman?

A. I'm an information security officer. I, basically, spend my week auditing classified systems, making sure the systems are functioning properly, looking for insider threats and those such actions.

Q. And do you have any experience with electronic

voting systems?

A. Yes, sir, I do. I have nine years of experience in three voting labs. It's actually two physical sites, because while I transferred the NTS laboratories, national testing lab, and then at Pro V & V.

Q. Does this relate to -- are you familiar with what's called is the EAC, the Election Assistance Commission?

A. Yes, sir, I am. In 2008, my very first tasking
10:56:38 was to evaluate Wyle Laboratories test procedures in which I had to evaluate the voting system guidelines.

Q. And did you perform testing on electronic voting systems in order to certify them in accordance with EAC guidelines?

A. Yes, sir, I was.

Q. And you did that for how long?

A. For nine years.

Q. And that was through Pro V & V, a voting system testing lab?

10:57:04 A. I was through a professional staffing company, and that's how I was -- I was contracted on, because they had -- none of the labs had a permanent security specialist on -- on the payroll. I was the only one.

Q. And when you say you refer to the labs, in this case Pro V & V, what is a voting system testing lab?

A. The voting system testing lab is where a vendor submits to the EAC a test plan. It gets submitted to the EAC. It gets approved and they go to a voting system test lab, there's a project that's done up, and they get tested. These tests can go either by the EAC for federal certification or they can go by the Secretary of the State, that depends on the state's requirements under their laws as far as their certification efforts.

10:57:54 Q. Do you know what voting system testing lab certifies the electronic voting machines used in Maricopa County?

MS. KHANNA: Objection, Your Honor. Relevance. I believe this line of question about certification is no longer on the table given the Court's ruling earlier this week.

THE COURT: Yeah, I'll allow the question for certification, I mean, qualifications purposes. So I'll give a little bit of leeway. You can answer the question if you're able to, Mr. Parikh.

THE WITNESS: Yes, it's Pro V & V.

BY MR. OLSEN:

Q. Do you have a background in cyber security, Mr. Parikh?

A. I have about 20 years experience in cyber

security.

Q. Can you, you know, just briefly go through some of your qualifications with the Court in cyber security?

A. Yes, sir, I can. I have a Master of Science in cyber security, which it's on a computer science track. Also I have a bachelor's in computer science systems major. I have Certified Information Systems Security Professional certification, I've had that for since the beginning of 2007. That is the gold standard as far as
10:59:00 security certifications are considered. I'm also a Certified Ethical Hacker and I'm also a Certified Hacking Forensic Investigator.

Q. What is a Certified Hacking Forensic Investigator?

A. That means, you go in, you do a forensic analysis specifically looking for malicious malware, you do root cause analysis; you find out what the malware was, how it infected. These are not your standard forensics-type approaches that most law enforcement agencies would use.
10:59:35 Their standard is a little bit slower because of the evidentiary stuff; but if you're in an incident response center, as I've helped run in the past, when you have an emergency or something happens, you have to react then. And these are the type of actions that you learn. You learn to get in, do the analysis quickly, make sure

you're secure in your analysis, because you have to come up with remediation efforts.

Q. Prior to -- how long have you been at Northrop Grumman?

A. Just about three years.

Q. So prior to working with Northrop Grumman, did you work in cyber capacity for the U.S. government?

A. Yes, I have.

Q. Could you -- could you describe some of your

11:00:22 positions starting, you know, for the past 15 years, 20 years, that you've been involved in and what you did, just briefly?

A. I've worked in anywhere from midsize companies that dealt with cyber security information assurance to as large as some of the larger ones. I've worked with Lockheed Martin, which is a good tenure of my time. Leidos Corporation, VAE Systems, and in all those capacities, I did inform assurance, cyber security. Had one stint with a smaller company I was to perform threat

11:00:55 for an agency within the United States Army.

Q. Did you ever work with the Marshall Space Flight Center?

A. Yes, I was. I was the IT security manager for the enterprise operations.

Q. And just briefly what -- what does the IT

security manager do?

A. I'm in charge of making sure the vulnerability scans were done, that all the security configurations, that all the governance and compliance that NASA developed for their security postures in daily operations and continuity of operations were followed.

Q. Did you ever work for the Army Corps of Engineers?

A. Yes, sir. I was the deputy cyber manager for

11:01:34 their enterprise operation, which includes 52 major sites throughout the world.

Q. And in that capacity, what were your job responsibilities?

A. I was the deputy cyber manager, and because of my certification and qualifications, I helped the security operation center manager, handled his task in monitoring, and I also helped the security incident response manager in her functions, because they were the ones that react to when the Army Corps is attacked, and

11:02:08 they are attacked a lot.

Q. Do you possess a security clearance, Mr. Parikh?

A. Yes, sir, I do. I'm currently a Top Secret cleared, but I've held SCI levels before.

Q. Okay. Were you -- did you ever work with the Army Threat Systems Management Office?

A. Yes, sir, that's where I played threat. I attack systems, and -- whether it was an information systems, a medical system or a weapon system.

Q. Do you have any other certifications besides CISSP or the certified forensic -- Certified Hacking Forensic Investigator or Certified Ethical Hacker?

A. Yes, sir. I have an ITIL 3 certification, which is an international process for handling IT service management. It's much like the Six Sigma, several companies like Lockheed Martin have their own, that's called LM21, these are all process improvements to refine and affect the quality output and service that you provide.

11:03:02

Q. Have you ever -- are you familiar with the phrase of root cause analysis?

A. I am very familiar with root cause analysis.

Q. Could you please just briefly explain what root cause analysis refers to?

A. In simple -- in simple terms, it's basically troubleshooting, but you have to find what caused the initial issue to happen. Sometimes this can be very complicated. Sometimes it can be fairly easy, but you have to have an intense understanding of the overall process involved in any organization. And this root cause analysis could be done from what's called a

11:03:27

governance perspective, where you look at documentation process and procedures, because faults within those can produce the issue, or it can be from a technical finding. I've done hundreds to probably thousands of root cause analyses in all different types of environments.

Q. Could you give an example of an actual event in which you led the effort for a root cause analysis and just kind of a quick overview?

11:04:21 A. I've done one for the Navy Marine Corps internet, which is the world's largest WAN, which has tens of thousands of workstations. There was an issue that resolved. They were having after upgrades of the operating systems, they had technical issues. And based on those type of issues, I analyzed and know what was going on. I requested that the bios data be provided and that ended up the root cause, because the problem systems have that, because they did not properly manage the bios. That's a low-level technical one.

11:04:54 There's been others involved where the Air Force had what's -- I would say world facing internet site. It was on the internet, got pulled down because a vulnerability was found. And I did the root -- I was put in charge to do the root cause analysis to find out how the system was compromised, what happened, and

suggested the mitigation efforts.

Q. Have there ever been any criminal prosecutions that have resulted from your work?

A. Yes, both federally and from -- privately from an employer.

Q. So the federal government relied on your assessment of a situation in order to bring criminal charges against somebody?

A. Several times. Some of those I cannot talk about because of the nature and the classification. 11:05:37

Q. Did you do an analysis of the events that took place in the Election Day operations in Maricopa County?

A. Yes, sir, I did.

Q. And what did you do in terms of your assessment of that situation?

A. I do like I do with any system that's involved with electronic voting systems, I look at the state statutes and what they reported to the federal government. As in this case, Arizona follows HAVA, and that's in their laws and statutes. Then I go from that, look at the systems they use, then I look at the procedures. I downloaded the Secretary of State's Elections Manual, the Maricopa Elections Manual. I've read through testimony, declarations. I reviewed the EAC certification of the electronic voting system, the 11:06:25

test reports from Pro V & V concerning the election system. I read -- I downloaded and read the applicable Title 16 part of the Arizona statutes, which covers the election systems. Then I read a lot of testimony, I watched a lot of the video televised meetings that Maricopa conducted and a lot of the video testimonies.

Q. Okay. And did you interview or speak with any Election Day workers, like technicians, who participated, retained by Maricopa, to work at the various vote centers on November 8, 2022?

11:07:24

A. Yes, sir, I did. I had spoken with a -- after seeing the declaration and interview conducted for the declaration, I asked to interview them and asked specific questions.

Q. Did you perform an inspection of the ballots on behalf of Plaintiff in connection with an inspection pursuant to A.R.S. 16-677?

A. Yes, sir, I did.

Q. And when did that inspection take place?

11:08:02

A. That was just yesterday.

Q. And without saying what your conclusion was from that inspection, did you reach a conclusion?

A. It confirmed my initial -- my initial assumptions on the possible effects of what caused the technical issues, yes, sir.

MR. OLSEN: Your Honor, at this time, we'd like to offer Mr. Parikh as an expert.

THE COURT: Arizona doesn't do that. Basically, you can ask the questions and then it's an objection as to foundation, so --

MR. OLSEN: Okay. Yes, Your Honor.

BY MR. OLSEN:

Q. Mr. Parikh, you examined the ballots and the inspection performed at MCTEC yesterday, correct?

11:08:49 A. Yes, I was allowed to select a sampling, per the request in the Court's instruction.

Q. Did you have a plan going into that inspection with what ballots you wanted to select and inspect?

A. Yes, sir.

Q. Could you describe that plan?

A. Through a FOIA request the cast vote records were publicly available. I reviewed those, analyzed the data and selected the roundness based so I could follow the Court's directions for the petition. So I knew exactly

11:09:23 what to request, because it was time-consuming and Maricopa County was gracious enough to give us that time, and I wanted to use it wisely and make my decision quickly and accurately.

Q. Approximately do you know how many vote centers you were able to inspect ballots from?

A. I was allowed to inspect from six vote centers.
Q. Were you able to execute on your plan after you went into MCTEC to select ballots?
A. There were some modifications to the plans because the Election Day ballot data, the cast vote records, which would be referred to as a system of record, because it has to be maintained in its integrity, was no longer valid due to the recounts.
Q. When you say it was no longer valid, what do you
11:10:18 mean?
A. The ballots had been -- they had been re-tabulated for the recounts, thus they -- Maricopa County was unable to map those back.
Q. And were some of the ballots that you inspected duplicated ballots?
A. Yes, sir, they were.
Q. And what are duplicated ballots?
A. Duplicated ballots are when there's an issue with the ballot and it cannot be ran through the tabulation
11:10:44 system; therefore, it is duplicated and then that duplication is run through the system.
Q. And is that duplication then the ballot that is actually tabulated and counted?
A. Yes, sir. The way the process works is the original ballot has to have the duplication ID attached

to it, which Maricopa did. The part where they filled in the statute is, according to the standards, that duplication ballot is supposed to be easily relatable to the original ballot. They said they could not find -- let me correct that -- they could not find the duplicated ballot which was tabulated.

Q. So you inspected the original ballot that was duplicated?

A. Yes, sir.

11:11:28 Q. And do I understand correctly that under -- your understanding of Arizona law is that the -- the duplicate ballot and the original ballot are supposed to be maintained together physically?

A. Yes, sir. That's -- that's the EAC requirement. That's -- that's a standard. When duplication is done.

Q. And the duplicate ballot which is the ballot that was counted?

A. Yes, sir.

Q. Was not available for you to inspect because of

11:11:56 that?

A. No, sir, it was not.

Q. Why would there be -- could you tell me again why there might be a duplicated ballot situation?

A. It would be because it physically -- it was physically damaged. I did see torn ballots. They could

have coffee stains on them. They could have ink marks, or they could just be improperly configured.

Q. How long did you take to conduct your inspection?

A. We were there all day except for a 45-minute lunch break. It took the morning because of not being able to track the selected ballots that I wanted to look at. We worked together and found the samplings, and that took all morning to get that sorted out.

Q. And did you take notes contemporaneously with your inspection?

11:12:52

A. Yes, sir.

Q. Approximately how many ballots did you inspect?

A. There were 348 that were set aside, and then there were approximately 25, because we did not finish because of the time restraint.

Q. And out of that 348 that were set aside, how many were ballots printed from that ballot on-demand printer?

A. In what I analyzed, between the six vote centers, I specifically -- and then there were the spoiled ballots that could be examined, I requested that the spoiled ballots be from those same vote centers. This allows me a more accurate response to look at a spoiled ballot and see it's the same ballot ID and the same actual ballot style as another ballot within that same voting center. The one thing that I have to point out

11:13:30

is out of all the spoiled ballots and the duplicated original ballots, there were a total of 113 ballots examined. 48 of those existed because there was a 19-inch image of a ballot printed on 20-inch paper.

MS. KHANNA: Objection, Your Honor. Move to strike as non-responsive. I'm not sure what question he was answering.

THE COURT: Well, I don't know that it was non-responsive. I'll overrule it. You can

11:14:26 cross-examine.

MS. KHANNA: Thank you, Your Honor.

BY MR. OLSEN:

Q. So, Mr. Parikh, it's your testimony upon inspection of these ballots that you determined that there was a 19-inch ballot image projected onto the 20-inch paper; is that accurate?

A. Yes, that is accurate. That's one of the initial things when I initially reviewing evidence that was presented, and in the public, I saw that the ballots --

11:14:54 and it was, to me, it was easily identifiable.

Q. Okay. And is this something that's going into this inspection you had seen evidence of?

A. Yes, sir.

Q. And what evidence was that?

A. That was a photograph of a spoiled ballot right

next to the reprinted ballot from a vote center, and that's included in my declaration.

Q. When you say that's included, do you mean the photographs?

A. Yes, sir.

Q. So when you were inspecting the ballots yesterday and you determined that the duplicated ballots and the spoiled ballots -- strike that.

How many duplicated ballots did you inspect?

11:15:35 A. Fifteen total.

Q. And out of that -- and duplicated, again, means that the ballot was not -- was rejected by the tabulation for some reason?

A. Yes, sir. It could not be tabulated either at ICP2's, which are at the vote center, or the ICC at MCTEC.

Q. Out of that 15, how many of those contained a 19-inch ballot image on 20-inch paper?

A. Fourteen.

11:16:05 Q. Fourteen. What about the other remaining?

A. It was physically defective. It was slightly torn.

Q. Slightly torn. Can you explain to the Court how a 19-inch ballot image -- strike that.

How did you determine that it was a 19-inch

ballot image projected on to 20-inch paper?

A. Because these ballot images are a PDF file, which gets stored along with configuration settings. That's what makes up the ballot style and the ballot definition, which is created usually on that EMS, which the actual application that does the ballot style was called EED, right? That's the application that actually does the ballot style. It's usually installed on the EMS servers. That application creates that style, the
11:17:00 definition, because it needs those things because it gets loaded on the tabulator, that's how it's evaluated when the image is created, and that's the print job, to use a common term, that gets sent to the printer.

Q. And how could an -- how did you determine that it was actually a 19-inch image projected on to a 20-inch paper?

A. I can -- I can determine that 100 percent of all the ballots are rejected because the mechanics of a printer, the feeds are not always accurate. On the
11:17:37 20-inch ballots, you can see the same -- I refer to them as tick marks, but they are actually the borders of the image that is sent. And on the 20-inch ballot, you'll see at the very corner above the borders where there's misfeed. On the 19-inch ballots, they were well viewable in the margins. They are 90-degree right

angles at each corner of the page, of the image.

Q. And did you physically measure the ballots to determine that?

A. Yes, sir, I did. I requested a ruler and Maricopa graciously got me one, and they got one of the other inspectors a ruler.

Q. How could a 19-inch ballot image appear -- well, strike that.

You've heard previous testimony, were you here for Mr. Jarrett's testimony?

11:18:26

A. Yes, sir, I was.

Q. And did you hear Mr. Jarrett testify that in the November 2022 General Election a 20-inch ballot was used?

A. Yes, sir, I did.

Q. And did you hear Mr. Jarrett testify that it would be a failure of the system if a 19-inch ballot image was projected on to a 20-inch paper?

MR. LIDDY: Objection, Your Honor. That misstates the testimony of the prior witness, as to the word failure.

11:18:53

THE COURT: I'm assuming you're going to follow up with a question. For an opinion, I think you can frame it as a hypothetical without arguing about --

MR. OLSEN: Yes, Your Honor.

THE COURT: Go ahead. Rephrase.

BY MR. OLSEN:

Q. In an election which is purportedly designed to take place with a 20-inch ballot image on 20-inch paper, how could a 19-inch ballot image appear?

MS. KHANNA: Objection. Calls for speculation.

THE COURT: Let's ask a question first. Yes or no, if you can tell. Ask him if he can tell, and then the objection, and you can re-ask the question.

11:19:40

MR. OLSEN: Yes, Your Honor.

BY MR. OLSEN:

Q. Mr. Parikh, given your experience and training particularly with electronic voting systems, nine years, can you tell what the cause of a 19-inch ballot image being projected on 20-inch paper would be?

A. Yes, I can. I can give you both the technical ways that it could happen. There are only two ways that it can happen.

11:20:14

Q. Can you tell the Court the two ways that that can happen?

A. One way is by changing the printer adjustments that would make the printer adjustments and settings override the image file that was sent. The other is from the application side, or the operating system side.

This is the same for anybody who ever prints anything at home. Your Microsoft Word can send the settings or it can use the default settings of the printers. The application doing it, in this case, as it's a ballot, would have to be that there was a 19-inch image ballot definition.

Q. And where does that definition reside?

A. That can vary depending on the system. But from what I heard in the testimony, it resides on the laptop that's connected to the printer, which would -- I've seen it referred to as a control printer, but this is actually what would be called a print spooler, and it controlled the print jobs to allow the printer to take on the load. And as there were multiple site books, this would be the technical use that that laptop should be used for.

11:21:05

Q. Is there any way, in your opinion, for a 19-inch ballot image to be projected on a 20-inch ballot by accident?

11:21:31

A. No, sir.

Q. Why not?

A. Because the settings and the configurations and the procedures that are used cannot allow that. These are not a bump up against the printer and the settings changed. They are security configurations. I've

reviewed the evidence and the printers are configured via script which, by any large organization that has to do multiple systems, is a standard. This takes away the human error of somebody miscoding in the instructions either on the printer.

Q. Prior to an election, would the -- strike that.

Prior to an election, would it be detectable that a 19-inch ballot image had been projected onto 20-inch paper?

11:22:31 A. Yes. If logic and accuracy tested that all voting styles or ballot definitions were included, which a standard logic and accuracy testing should test every style that's available and there should be a listing of such styles.

Q. Is it -- you performed testing for EAC certification, correct?

A. Yes, sir, I have.

Q. Is it permissible to have two different ballot definitions in the same election with respect to the

11:23:08 size of the ballot image?

A. No, sir. If, for example, if you live in an apartment building and your neighbor and you have the same school board district, you have the same precinct, all the jurisdictions for whether it's local, county, state or federal are basically the same, that

ballot-style definition, the ID for it, should be singular. If you do not, then you have two different styles, you're assessing them differently. That can also produce forgery. There's only supposed to be one ballot style per those voting options, and that -- that's what controls it.

Q. The 19-inch ballot image that you observed in your inspection on multiple ballots including duplicated and spoiled ballots, correct?

11:23:56 A. Yes, sir.

Q. What effect would a 19-inch ballot image projected on a 20-inch piece of paper used in the election in Maricopa for November 2022 have when it was placed into one of these vote center tabulators?

A. It would cause it to be rejected. According to the Dominion's documentation, they performed somewhere between 200 and 300 checks on the actual physical paper ballot that gets inserted into the system. They state, and this is according to Dominion, the vendor who

11:24:33 created the application, that it can reject the ballot for any one of those. A 19-inch image being on 20-inch paper increases the margin. Once the timing marks are seen and they are evaluated, the actual physical printer that created the image is saying by the application telling it, you're done, but there's a remaining inch of

paper in there, so it would assume there's a paper jam. And to detect, I specifically asked, there were paper jams to where he opened up and there was no paper.

So from a programming perspective, the machine would throw the paper jam error, but yet there would be no paper.

Q. And you're referring to a tech, you said you spoke to a tech, would that be Aaron Smith?

A. Yes, sir.

11:25:15 Q. Okay. And what did Mr. Smith tell you -- first of all, who is Aaron -- who is your -- what is your understanding of Mr. Smith's role during the November 2022 election?

A. I think he repeatedly followed all the procedures that he was instructed to follow. He put a good solid effort forward to resolve the issues. It finally became to where the issue could not be resolved, according to the procedures, and he had to actually request a replacement tabulator, which so happened to be

11:25:52 mis-configured.

Q. Do you know why Aaron wanted to testify today?

A. I think --

MS. KHANNA: Objection, Your Honor. Calls for speculation, lack of foundation.

THE COURT: That's going to call for

speculation.

MR. OLSEN: Withdraw the question, Your Honor.

BY MR. OLSEN:

Q. You mentioned that there are only two possibilities for how a 19-inch image could be configured onto the system to be put on a 20-inch piece of paper, correct?

A. Yes. My assessment applies to anything that is printed, not just -- not just the specifics of this, but to anything that's printed. These are the way the technology functions.

Q. But you testified that there's only two ways --

A. Yes, there is.

Q. -- this situation could arise?

A. There are only two.

Q. What would it take for you to determine which of the two possibilities is what occurred?

A. Specifically, as I did yesterday, inspecting the ballots. There were some ballots that were spotty, but the spottiness was also on batches from the vote centers that were correctly tabulated, so that confused me. And the stuff that was mentioned about the fusers and the heating, because, too, they first said it was a toner issue, which it was not, it's a tray weight issue, which

affects the heat of the fusers.

The mechanical function of a fuser and heater from what I observed from the spottiness did not match what is a standard error or example that would be demonstrated. There were one or two occasions that were exactly that way, but that was about two ballots out of all that I examined.

Q. But if you were to try to determine whether it was a printer issue, configuration issue, or an issue with the ballot definition with respect to how a 19-inch image was projected onto 20-inch paper, what would you need to do?

A. I would need to see the ballot styles and the ballot definitions. In totality, if there's 15,000 of them, all of them should be examined.

Q. Do you have -- obviously you have been practicing in the cyber field for two decades, correct?

A. Yes, sir, and it includes everything to include printers.

Q. That's what I was going to ask you. Can you -- do you work with printers? Do you understand how printers function and work, and at what level is your experience?

A. To a detailed level to where I actually caused one of the government agencies in the missile defense

side to get highly upset, because I understand the protocols that run. And it's not just printers, there are multifunctional devices, MFDs as we refer to them, because they can scan, they can print, they can send file transfers. And I've evaluated protocols, I've also done root cause analysis, because classified printers have -- they could print classified data even when they are not supposed to because of the rollers, and this is one thing I called -- refer to as ghost printing. I did
11:29:31 see that repeatedly on the early vote ballots that were printed by Runbeck, because in my opinion the ink was a little bit too deep and too shiny for that, and that -- and I did. I was able to even see candidates' names in white space. It's very light gray, but that's why I refer to it as ghost printing.

Q. Um-hum. What would you recommend be done with the ballots currently stored at MCTEC now, given your findings from the inspection?

MS. KHANNA: Objection to relevance. Lack
11:30:13 of foundation. Speculation.

THE COURT: You need to rephrase the question. I'm going to sustain it.

BY MR. OLSEN:

Q. Do you have any concerns regarding the security of the ballots, given your findings from your inspection

yesterday that a 19-inch image was projected onto the samples from six different vote centers that you examined of 20-inch paper?

A. Yes, I can. If it's okay with the Court, I have to answer this in two ways. They are both pertinent. But, first, I observed while ballots were being pulled out and sampled, and they obliged in every direction, whether top, middle, or that, that they were provided. I observed more improperly imaged ballots that were not
11:31:16 inspected that were there.

Now, to answer the question, those should be secured. I will state in my capacity I handle everything from physical security to accrediting buildings for classified information storage. I've been a classified courier, which means I'm authorized to transport classified information. As a forensic investigator, I fully understand chain of custody. And what I will cite is that the facility and the security and chain of custody at the vault and the tabulation
11:31:52 center are highly inaccurate, and those ballots could be tampered with. They should be -- they should be sealed and appropriate actions.

For example, security seals were only placed on the boxes that we inspected, and that was due to the court order, and they wanted to ensure that the proper

security was done.

MS. KHANNA: Objection, Your Honor. I'm going to move to strike as non-responsive. I'm not sure, again, what question that was answering.

THE COURT: That was non-responsive to the questions and beyond the scope, so -- of what's before the Court, so --

MS. KHANNA: Thank you, Your Honor.

THE COURT: -- strike the last part of his
11:32:34 answer dealing with the security measures.

MR. OLSEN: Your Honor, just a point of clarification. You said strike the last part and --

THE COURT: His answer, he had two parts to his answer. He said, first, he observed ballots, improperly imaged ballots beyond what was sampled. That was part 1. Part 2 is the commentary about the continued or ongoing storage, and the -- it's all right, I've been accused of soft-spoken. Part 2 was the testimony that related to the ongoing security concerns.
11:33:13 That's the part that is not relevant to the issues that are before the Court today.

MR. OLSEN: Yes, Your Honor.

BY MR. OLSEN:

Q. Mr. Parikh, you mentioned that you saw other ballots that you could see -- do I understand that

correctly -- had a 19-inch ballot image projected onto 20-inch paper?

A. Yes, sir.

Q. And how could you tell that?

A. Because the difference in the margin, as they were being taken out of the box and placed on the table and shuffled around, it was obvious. It was apparent to me.

Q. Okay. Is there -- when -- on these ballots with
11:33:46 a 19-inch image, are there marks that kind of -- that are different around the corners than the 20-inch ballots?

A. Yes, sir. You will see the corner edges of the image, which would be considered, you know, the actual size of the paper. Those right-angle marks at each -- the top left, top right, bottom left, bottom right, are within the margin space. They are clearly visible.

Q. Did you -- you mentioned that you kept notes --

A. Yes, sir.

11:34:17 Q. -- of your inspection. Did you draft a report that summarized those notes with conclusions?

A. Yes, sir, I did.

Q. If the Court were to ask you for it, would you be able to provide it to the Court?

A. Yes, sir, I would.

Q. And would that report be -- would you swear to the accuracy of your conclusions in that report?

A. Yes, I would.

Q. And would you swear to the accuracy of your -- the results of your inspection in that report?

A. Yes, sir, I would.

Q. You testified earlier that having a 19-inch ballot image projected on a 20-inch ballot as you observed appearing from ballots cast in six different

11:35:23 vote centers --

A. Yes.

Q. -- duplicated ballots, spoiled ballots, that could only arise from -- could it be by accident or is it?

A. No, sir, it could not be by accident. Those are configuration changes they are administrative level on the printer aren't -- with a ballot style or ballot definition file, and those are done on the EMS system, which has password security and everything else. The

11:35:54 EED application is actually the one that creates the ballot style. That's what's used. It's commonly -- it's commonly put on the EMS server because that's, like, the centerpiece, and those two systems are controlled access.

Q. You testified earlier that you have been involved

in other assessments of failures relating to cyber-related issues, correct?

A. Yes, sir.

Q. And that we call that a root cause analysis, correct?

A. Yes, sir. I was part of the working group that established what was called the IARA process, which is a risk analysis and assessment process for the missile defense agency years ago. It's a standard risk analysis and assessment, and in order to do that, that's the basis of how you analyze threat and then you also, that's why you conduct root cause analysis, because you have to be specific when you assess risk -- risk, excuse me.

Q. In the performance, in your experience, and you testified earlier that the federal government -- was it the federal government that had actually criminally prosecuted people based on your findings in a root cause analysis?

A. Yes, sir, and sometimes they ignored my analysis, but that's beyond.

Q. Given your opinion that -- strike that.

Given your opinion and your knowledge of how ballot definitions are configured and how printers work, does your finding of a 19-inch image, ballot image base

placed on 20-inch paper, does that implicate violations of criminal law?

MS. KHANNA: Objection.

THE COURT: Wait. Hold on before you answer that.

MS. KHANNA: Objection, Your Honor. Calls for speculation. Lack of foundation, and it calls for legal conclusion.

THE COURT: It does call for a legal conclusion.

MR. OLSEN: Your Honor, the witness has testified that --

THE COURT: I heard.

MR. OLSEN: Yes, Your Honor. I'll sit down.

BY MR. OLSEN:

Q. Based on what you have determined on your physical examination of these ballots, your experience both in the industry as a Certified Forensic Hacking Investigator, your CISSP, your skills with, I believe, you called it IRAP, is that --

A. It's IARA, that's the acronym that does it. They are different -- and this is specifically for technical risk and assessment. This is one of the issues when I worked for the voting system test labs to get all the vendors, I've dealt with over seven of them to my

memory, right, none of them performed it. The labs didn't perform it. I eventually convinced one lab to do this, because this is vital to when you're doing system testing let alone security system testing, and this applies not just to an electronic voter systems, this is to all information systems, all technology. These are standard engineering principles.

Q. Is there any way you could be wrong about a 19-inch image being placed on 20-inch paper?

11:39:43 A. No, sir. I give the technical options that are there. There are two ways that this can happen, and based on this system and the controls in place, this could not have been an accident, and there are only two options. It would take further investigation, further forensic examination for me to determine exactly which one it was.

MR. OLSEN: Thank you, Mr. Parikh.

Cross.

THE COURT: Cross-exam, will that be you,

11:40:20 Mr. Liddy?

MS. KHANNA: Your Honor, I think we're going to break up the cross-examination, if possible. One from the County and one for the Governor-Elect Hobbs as well, and if we could do the County's first, I think we might get to the other one after lunch.

THE COURT: Mr. Liddy?

CROSS-EXAMINATION

BY MR. LIDDY:

Q. Thank you, Your Honor. I appreciate that as some of these allegations go directly to the conduct of the election by my client Maricopa County.

Mr. Parikh, is that correct pronunciation?

A. Yes, sir, it is.

Q. And where do you reside, Mr. Parikh?

11:40:57 A. I reside in Huntsville, Alabama.

Q. You traveled up to Maricopa County for this proceeding?

A. Yes, sir, I did.

Q. And who paid for your travel?

A. The attorney fund.

Q. The attorney fund. What's the attorney fund?

A. It's the legal fund. I believe it's -- it's for all the attorneys associated with this.

Q. With this particular litigation?

11:41:23 A. Yes.

Q. And did the attorney fund pay for lodging as well? Paid for your lodging?

A. Yes, lodging is always considered travel.

Q. And are you being paid for your time?

A. Yes.

Q. And what is the rate at which you're being paid for your time?
A. $250 an hour.
Q. That's also coming from the attorney fund?
A. Yes.
Q. Are you familiar with an event called Michael Lindell's Moment of Truth?
A. Yes, I spoke at the event.
Q. You appeared and spoke at the event?
11:41:54 A. Yes, I did.
Q. And where was that event held?
A. In Missouri.
Q. In Missouri. And was your travel from Alabama to Missouri paid for by someone other than yourself?
A. Yes, sir.
Q. And who paid for that?
A. That, I assume, would be Michael Lindell. All the travel was arranged. He asked me to speak at the event and I spoke.
11:42:17 Q. And that would be true for your time, did you also get paid for your time there?
A. I did not charge for my time.
Q. And your lodging?
A. That's considered travel that was provided to me.
Q. And when you say Mr. Lindell, you're referring to

the My Pillow guy?

A. Yes, sir.

Q. And you are a cyber security professional?

A. Yes, sir, I am.

Q. During your investigation of this election, did you detect any hacking involved in the '22 General Election in Maricopa County?

A. No, sir.

Q. I believe you testified that yesterday you were down at MCTEC performing the court-ordered inspection of the ballots; is that correct?

11:43:15

A. Yes, sir, I was.

Q. And you were asked to select batches of ballots?

A. Yes.

Q. You were asked to identify them. Did you use a highlighter and highlight the boxes?

A. Yes, I did.

Q. Did you observe the custodian of those ballots opening those boxes?

11:43:40

A. Yes.

MR. OLSEN: Objection.

THE WITNESS: They opened them in front of all the inspectors. There was a court report inspected, there was the other inspector for the other, the gentleman sitting over there that says he was an

attorney. We all were there as they went through.
BY MR. LIDDY:
Q. Did the individual who opened the box break the seal?
A. By seal, are you referring to the red tape, which is simply red tape and not a security seal?
Q. Well, I'm asking you what you observed.
A. I would not categorize what closed the boxes as a seal.
11:44:13 Q. Did you see the serial numbers on it?
A. There were no serial numbers.
Q. So in your professional opinion, the ballots were not sealed?
A. The ballots did not have an appropriate security seal on the boxes.
Q. That's -- so, okay, fine. My question was: Were the ballots sealed?
A. They were closed with tape.
Q. And where were they stored?
11:44:41 A. In the vault and in the tabulation center.
Q. Now, would you say in your profession, details are important?
A. Yes, they are highly important.
Q. And you said that you reviewed the statutes prior to initiating this investigation?

A. I always have to do that, because it's relevant, especially if a state has a statute.

Q. So that's a yes?

A. Yes.

Q. And you also reviewed federal statutes?

A. Yes.

Q. HAVA, I think you said?

A. I go as far back as the 1990 FEC standards. I reviewed them all, every version of the VVSG.

11:45:33 Q. And you downloaded Title 16?

A. Yes, I like to have references for when they are referred to, because they have been referred to. And in the Secretary of State's manual, they were referred to in the Maricopa manuals and procedures. So I like to actually read what's referred to, to ensure that it's accurate.

Q. And when you read those documents, you pay close attention to detail, because that's required by your profession; is that correct?

11:45:58 A. I'm not a legal attorney, and so I read the laws for what they state and how they are.

Q. Now, you testified that you reviewed some documents that were provided to the Lake campaign by a FOIA request; is that accurate?

MR. OLSEN: Objection, Your Honor. I don't

believe he ever testified to that.

THE COURT: Well, it's cross-exam, so he can answer the question, if he understands it. If you don't understand the questions, Mr. Parikh --

THE WITNESS: No, these were public record requests. They came from me from other technical professionals.

BY MR. LIDDY:

Q. So they were not FOIA requests?

11:46:36 A. Those records were obtained via FOIA requests.

Q. Are you familiar with FOIA? Can you tell me what F-O-I-A stands for?

A. It's the Freedom of Information Act.

Q. Is that statute a federal statute or a state statute?

A. That depends on what you're requesting the FOIA for. That's categorized at the federal level and state levels, to my knowledge.

Q. So a FOIA can either be a state or a federal, in

11:47:00 your understanding?

A. Yes.

Q. And federal was FOIA and state was a public records request under the Arizona statute, that would be a detail that doesn't interest you?

A. That -- if -- if the data was illegally obtained

--

Q. That's not the question. The question is: Is the detail, the difference between a federal statute and a state statute, of interest to you?

A. When I'm provided evidence, I always ask the source of it. And I have received, in my experience, I have received evidence from law enforcement officials that, in my opinion, were not properly attained. And as a forensic investigator who understands chain of custody and all the legal ramifications, because for the court's record, the majority of that deals with the statutes.

For example, the lock picks that I own as part of my security thing, in my state, I have to have a private investigator license. These are the statutes that a forensic investigator handling evidence has to be aware of.

Q. Thank you. And when you're working with your security thing, as you said it, are you familiar with federal statutes and state statutes?

11:48:10 MR. OLSEN: Objection, Your Honor. I'm not sure about the question.

THE COURT: Well, if he's confused --

MR. LIDDY: I'll withdraw the question, Your Honor.

THE COURT: Thank you. Next question.

BY MR. LIDDY:

Q. You just testified that you receive information from law enforcement that's both federal and state law enforcement; is that correct?

A. I didn't say that. I said it was law enforcement and I --

Q. And you testified both federal law enforcement and state law enforcement; is that correct?

A. What I just told you is I said I received it from

11:48:39 law enforcement.

Q. Well, when you receive information in your profession from law enforcement, are you familiar whether the law enforcement is federal or state?

A. Yes, when they provide me the evidence, yes.

Q. Is that a detail that's important to you?

A. Yes.

Q. I believe you testified that you examined some ballots that had been duplicated; is that correct?

A. Yes.

11:49:06 Q. And you testified that you examined the originals, but not the duplicates; is that correct?

A. That's correct.

Q. And you examined -- and you testified that the duplicates were not kept next to the duplicate -- the duplicates were not kept next to the originals; is that

correct?

A. That's correct. They are supposed to be traceable and easily identifiable. Mr. Jarrett said that he would have to get his techs busy and it would take them over a week to try and find them.

Q. That's your recollection of what Mr. Jarrett said?

A. That is what Mr. Jarrett said.

Q. And if the ballots, the originals and the duplicates, were in the boxes right next to each other, would that surprise you?

11:49:51

A. The duplicates that I was shown, because they were duplicated, were part of, one, of the vote centers, and he opened both those boxes; and, two, because they couldn't identify some of the original duplicates, they had to run and count them so they could try to map them back to which site they belonged to.

Q. So that's your recollection of what Mr. Jarrett said when you asked to see the originals of the duplicates?

11:50:24

A. No.

Q. That's a detail that's important. You're telling this Court that when you asked Mr. Jarrett to view the duplicates of the originals that he told you it would take six hours?

A. To clarify, I did not ask to see duplicates. They were part of the vote center, and they provided the entirety of what they had for the vote center. They could not provide what was --

Q. Thank you, Mr. Parikh. I think the important point, and I want to ask you this to make sure that I understand it correctly, is that you did not ask to see the duplicates?

MR. OLSEN: Objection. Misstates his prior
11:51:02 testimony. Argumentative.

THE COURT: This is cross. Just for reference, on all cross, if he doesn't understand the question, he can have it rephrased; but particularly with an expert witness, I think he's capable of answering. If you don't understand, you can have him rephrase. If you do understand, you can go ahead and answer.

Would you like the question restated to you?

THE WITNESS: Yes, sir, if you would.

11:51:24 THE COURT: Please, Mr. Liddy.

BY MR. LIDDY:

Q. Mr. Parikh, is it your recollection that when you asked Mr. Jarrett to see the duplicates and the originals that he told you it would take six hours to get them?

A. One, I did not ask to see them. They were --
Q. That's the answer to my question, Mr. Parikh. You did not ask to see them.
THE WITNESS: Your Honor, if I may --
THE COURT: Wait. There's just -- your counsel will have redirect.
THE WITNESS: Yes, sir.
THE COURT: So just answer his questions.
THE WITNESS: Yes, sir. I just want to
11:52:09 state we were following --
THE COURT: Wait.
MR. LIDDY: I have another question, if it's appropriate.
THE COURT: Please.
BY MR. LIDDY:
Q. You've testified that you have a working theory that some of the ballots for the 2022 General Election were on 20-inch paper but were printed at 19 inches; is that correct?
11:52:31 A. 19-inch image printed on 20-inch paper, it is not a theory.
Q. Okay. So it was 20-inch paper, the ballot was 20 inches, correct?
A. The paper was 20 inches.
Q. And the image was 19 inches, according to your

testimony, correct?

A. The ballot image was 19 inches, yes.

Q. Are you familiar with a shrink-to-fit setting on a printer?

A. Yes, I am.

Q. Could a shrink-to-fit setting account for some of the ballots you observed being 19 inches on 20-inch paper?

A. That is a possibility, but it would -- it would violate the configuration settings they had for the voting systems and the tabulators.

Q. And you've testified that you're familiar with the election process?

A. Yes, sir.

Q. And you testified that if one were to take a 20-inch ballot that's shrunk to 19 inches and put it into a vote center precinct tabulator, it would not get tabulated?

A. It would not get tabulated at any tabulator.

Q. Any tabulator?

A. That encompasses ICP or ICCs at central.

Q. So if it went down to central, according to your understanding, and it was tried to run through the tower tabulators, it would also not be tabulated; is that correct?

A. That is correct.
Q. And you've just testified that you observed some duplicated ballots. Is it your understanding that a ballot that cannot be tabulated by precinct-based tabulator and cannot be tabulated by a tower-configured tabulator at central would then be duplicated?
A. It would have to be, because it wouldn't be tabulated, so it would require duplication.
Q. And after duplication, what would happen to that
11:54:18 ballot?
A. The duplicated ballot, which is supposed to be marked with a specific ID, and that ID must be recorded on the original, and I saw those stickers on the originals.
Q. The question is: What would happen to that ballot?
A. Then the ballot would be re-run through the -- the duplicated ballot would be run through the tabulator.
11:54:38 Q. So it would be tabulated, is that your testimony?
A. The duplicated ballot would be tabulated, yes, it should be.
Q. Okay. So if a voter walked into a vote center on Election Day, filled out a ballot, maybe had a shrink-to-fit setting on it so it wouldn't be counted on

the tabletop, would go into Door Number 3, goes on down to MCTEC. They put it into a tower -- tower tabulator, it doesn't get counted, and then it gets duplicated and then it gets counted, so that voter's ballot was voted and tabulated; is that your understanding?

A. But you started -- you started --

Q. Is that your understanding?

THE WITNESS: Your Honor, I can't answer that question the way he asked the question because it's

11:55:23 inaccurate.

THE COURT: If you don't understand, you can say I don't understand and he can rephrase it so you can understand. But if you don't like the way it's phrased, that's something that your counsel has to clear up.

THE WITNESS: Yes, sir. Your Honor, if I may address the Court?

THE COURT: No.

THE WITNESS: I'm provided for technical expertise and give those options. And if the technical

11:55:50 scenario is inaccurate, I cannot answer the question.

MR. LIDDY: Let me try again.

BY MR. LIDDY:

Q. Ms. Lake right here in this room, bona fide candidate for Governor of the Grand Canyon state, hundreds of thousands of voters would love to have had

her as the next governor. One of them chooses not to vote in the 26 days of early voting or mail-in voting, or emergency vote center voting, but chooses to show up on Election Day, gets a ballot from a ballot on-demand printer, and somebody either intentionally or inadvertently has hit the shrink-to-fit setting, and this 20-inch ballot paper comes out 19 inches, this voter fills it out. Kari Lake, wanting her bid to be next governor, throws it into the precinct tabulator. 11:56:49 It comes out, goes into Door Number 3, goes down to MCTEC, the much more sensitive tabulators, according to you, it would not count it. It would then go to duplication, it would be duplicated, then it would be tabulated.

Is that your understanding of the elections in Maricopa County?

A. Your technical description is not possible.

Q. I apologize. I wasn't attempting to give a technical description. I was just saying what happens. 11:57:25 Based on your testimony, so you're saying in that scenario, that voter who wanted to vote for Kari Lake would never have that vote tabulated; is that your testimony?

A. My testimony is that a shrink-to-fit setting would rely at the application level, which would reside

on the EMS, which Mr. Jarrett just testified sends the print job to the printer. Therefore, it can't be accidental as all the employees that man the EMS are trained.

Q. Whether it's accidental or inadvertent --

A. I gave the two options, sir.

Q. Please allow me to ask the question, and I'll allow you to answer.

Whether it's accidental or inadvertent, if the 11:58:11 shrink-to-fit 19-inch ballot has to be duplicated, once it's duplicated, would it be tabulated, to your understanding?

A. There are two technical ways that that image would be there. None of the ways you --

MR. LIDDY: Your Honor --

THE WITNESS: It's not possible, Your Honor.

THE COURT: I understand what you're saying, Mr. Parikh. That's not responsive to his question. If you are able to answer his question, you can do that.

11:58:45 BY MR. LIDDY:

Q. Sir, are you able to answer the question?

A. I'm unable to answer your question.

Q. Okay. Let me ask a different question.

Are duplicated ballots tabulated, Maricopa County General Election, 2022?

A. If they are duplicated correctly and they are configured correctly, yes, they should be.

MR. LIDDY: Thank you. No further questions, Your Honor.

THE COURT: Okay. We're at the point where we need to break. We're going to take a one-hour, not one-and-a-half-hour recess. So we'll be back here at 1 o'clock to resume. So just come back at 1 o'clock, Mr. Parikh, and we'll resume where we left off.

11:59:33 THE WITNESS: Yes, sir. And I realize I'm still under oath, sir.

THE COURT: You read my mind.

THE WITNESS: Yes, sir.

THE COURT: Thank you very much.

(Recess taken, 11:59 a.m.)

(Proceedings resume, 12:58 p.m.)

THE COURT: All right. This is CV2022-095403. This is Lake v. Hobbs, et al. Continuation of the hearing on the election challenge.

13:00:16 Present for the record are parties -- are party representatives and their respective counsel. We have Mr. Parikh still on the witness stand under oath, and we are ready to continue with the cross examination. This will be by, Ms. Khanna, I believe.

MS. KHANNA: With the opportunity to

streamline over the lunch break, we have no further questions at this time.

THE COURT: Well then. Thank you.

MR. OLSEN: Your Honor, I have very brief redirect to clear up a few points, Your Honor.

THE COURT: No, that is fine. You get redirect. I'm smiling because I have a lawyer characterizing something as brief and --

MR. OLSEN: I do my best, Your Honor.

13:00:53 THE COURT: Excuse my smile.

But there is redirect, Mr. Olsen. You may proceed.

REDIRECT EXAMINATION

BY MR. OLSEN:

Q. Mr. Parikh, Mr. Liddy asked you some questions about duplicate ballots. And kind of like, hey, if there was a shrink-to-fit that that was no big deal because the duplicate would be captured or accepted by the tabulator.

13:01:21 What happens during the duplication process?

A. The original ballot is examined, another clean ballot is set beside it and the ballot is duplicated. All those votes are transferred and verified.

Q. In the duplicated -- duplication process, could the image of a 19-inch image from the original be

transposed onto a 20-inch ballot?

A. As the duplicated ballot?

Q. Yes. In other words, if you had a 19-inch image on 20-inch paper, the original image, and then the ballot is duplicated and run through the scanner, could the duplicated ballot be brought up to a 20-inch image or --

A. Yes, it should be if the ballot was originally a 20-inch ballot, the blank ballot that they would bring
13:02:18 to put the votes transfer the votes to would be 20-inch, so yes, it would be -- it would be tabulated.

Q. It would necessarily be moved to a 20-inch image in order to be tabulated?

A. Yes, that's the only way it could be tabulated.

Q. Yes. And at the point of duplication, anything could happen to alter, or not, the original ballot, correct, if you're duplicating a ballot?

A. Yes.

Q. What's to stop somebody from altering the ballot
13:02:53 from its original --

MS. KHANNA: Objection, Your Honor. My apologies. This is beyond the scope of direct and cross, I believe. He's asking for new opinions that he never offered.

MR. OLSEN: Your Honor, if I may? Mr. Liddy

is the one who brought up duplication and then it was no big deal. This is directly relevant to his examination and implication that duplication means that no harm, no foul.

THE COURT: I agree with you in terms of the scope of redirect. I'm a little concerned about foundation, but --

MR. OLSEN: Yes, Your Honor.

THE COURT: -- go ahead and ask whatever

13:03:32 questions.

Mr. Liddy, you're standing.

MR. LIDDY: Thank you, Your Honor. I apologize. The duplication process is in Title 16, it's a very important part of the process. I would never and have never characterized it as no big deal, and I object as mischaracterization of my description of that important process.

THE COURT: Not a problem, so noted.

Mr. Olsen, do you have another question,

13:03:55 please?

BY MR. OLSEN:

Q. Mr. Parikh, Mr. Liddy asked you if you had asked for the duplicated ballots, and you said in the beginning of your testimony is that you had asked Mr. Jarrett and were given an answer that there was no way

to trace. And then subsequent to that when you were asked the question again, you said you did not ask.

What was the distinction that you were drawing in terms of asking for the duplicated ballot?

A. I thought Mr. Liddy was asking me if I had planned on -- if it was in my plan of what I selected and wanted to see, as far as the sample size, and I did not plan that. I did not plan that. It was made clear there was time taken to ensure that all the inspectors
13:04:50 were aware of how the process would be, the amounts we were allowed, and all that. And they -- they were -- they were provided to us. And when they were, I asked were the duplicates -- I did ask where the duplicated were, but that was part of the court order process to look at those, yes.

Q. And when you -- so that the record is clear, when you asked for the duplicated ballot while you were there at MCTEC, and what was the -- and who did you ask again, Mr. Jarrett?

13:05:19 A. Mr. Jarrett, yes.

Q. And what was his response?

A. He said they would have to get techs and it would take up to a week to trace that down.

Q. Okay. And you heard Mr. Jarrett testify that there was no way that a 19-inch image was placed on

20-inch paper in the November 2022 General Election, correct?

A. Yes, sir.

Q. And is there any way that a 19-inch ballot image placed on 20-inch paper in this election in Maricopa, whether it was tabulated by the vote center tabulator or the tabulators at MCTEC, that that 19-inch ballot image would be accepted by the tabulator?

A. There is no way a 19-inch image on 20-inch paper could be accepted by the tabulator.

13:06:10

Q. You also examined early votes, correct?

A. Yes, sir, I did.

Q. And you testified that those were votes that were printed by Runbeck?

A. Yes, sir.

Q. Did you see out of any of those early votes that you inspected or observed a 19-inch image on 20-inch paper?

A. No, sir, I did not.

13:06:35

Q. So the 19-inch image on 20-inch paper was only an existing condition on the ballot on-demand printed ballots, which were the day of the election; is that accurate?

A. Yes, sir, that's accurate.

Q. You took a picture of those ballots side by side

in your report, correct?

A. I did not take the picture physically. The photograph was provided to me.

Q. Okay.

A. When I initially saw it, it may not to a normal voter or user to pick this up; but again, I examine all types of media in all types of way, and it jumped out at me. And I requested to get a copy of that image, because to me that -- that was very damning. And then

13:07:40 that photograph was an overlay, and it did confirm my conclusions that it was a shrinkage and that it was a 19-inch image printed on a 20-inch ballot.

Q. Should there ever be, as Mr. Liddy characterized, a shrink-to-fit ballot that comes out for some people's ballots and not others?

A. I'm here to state the technical scientific facts. I gave the options. Mr. Liddy's assumptions of a shrink-to-fit is inaccurate, and to boot -- or to further on add -- that if the ballot definition is

13:08:17 20 inches and you print it on 20-inch paper, shrink-to-fit will do nothing. The margins will be exactly the same as they are on a regular ballot, and they should be tabulated. But what he referred to cannot happen. The only other technical possibility for that happening is if somebody messed with the print

drivers and made -- even though 20-inch paper was loaded -- made the printer think it was 19 inches and that would cause the shrink-to-fit. Those are the only technical -- that's the only technical option that would address Mr. Liddy's scenario.

MR. OLSEN: Thank you, Mr. Parikh. No further questions, Your Honor.

THE COURT: Well, may we excuse the witness?

MS. KHANNA: Yes, Your Honor.

13:09:07 MR. OLSEN: Yes, Your Honor.

THE COURT: Thank you, Mr. Parikh. You are excused, sir.

(Witness excused.)

THE COURT: Mr. Blehm, Mr. Olsen, who is your next witness?

MR. OLSEN: Your Honor, at this time, we would like to call Aaron Smith.

MS. KHANNA: Your Honor, I'm not sure that we have Mr. Smith on the witness list.

13:09:39 MR. OLSEN: Absolutely was disclosed.

MS. KHANNA: On the witness list that you filed with the Court yesterday?

MR. OLSEN: I have to look, but I know that we disclosed him.

THE COURT: I don't see a Mr. Smith on the

list yesterday. (Pause.)

MR. BLEHM: The list I'm looking at, Your Honor, Mr. Smith as a witness. If Your Honor wants to give me a few minutes, I can go through my e-mails.

THE COURT: I'm looking at what the Court was given and --

MR. OLSEN: I don't know that we provided that list, Your Honor.

MS. KHANNA: We also, I think, there was an
13:11:01 e-mail communication from Plaintiff's counsel expressly asking us to take Mr. Smith off of the list.

MR. OLSEN: No, we did not take Mr. Smith off.

THE COURT: Well, we're now burning time trying to find out who Mr. Smith is and where he is, so --

MR. OLSEN: Right. (Pause.)

Your Honor, at this time, we would call Bradley Bettencourt.

13:12:28 THE COURT: Very well.

MR. BLEHM: Your Honor, we're going to have a change and call Heather --

THE COURT: I couldn't catch that. I heard change of plans and he turned around.

MR. OLSEN: We're going to call another

witness, Your Honor. Heather Honey.

THE COURT: Okay.

MR. BLEHM: Sorry about that, Your Honor.

THE COURT: Is the witness waiting outside?

MR. BLEHM: Yes. She's coming in now.

THE COURT: Could you just hold on one second? Have her stay outside.

MR. BLEHM: Hold on one second.

THE COURT: Thank you. This was another issue that was raised in the 807 notice by Plaintiffs that they were going to use hearsay. I apologize, Mr. Olsen, you're having a hard time hearing me and I'll try and speak up.

The disclosure that I received had listed Exhibit A, there was no attachment. So all I have is information that this witness is going to testify about a voicemail from someone with a first name, no last name.

MR. BLEHM: Well, Your Honor --

THE COURT: I don't have any substance.

MR. BLEHM: Okay. It's a voicemail from somebody by the name of Betty, who identifies herself as working at the Department of Elections for Maricopa County. The voicemail was left to my client in response to a FOIA request, a Public Records Act request, that

was made for chain of custody documentation. And the voicemail we believe, Your Honor, is a statement against interest, because they basically say, well, don't know.

THE COURT: Okay.

MR. BLEHM: It has been disclosed, Your Honor.

THE COURT: Okay. There's -- who is going to respond?

MR. LIDDY: Your Honor, I will.

13:15:24 THE COURT: Thank you, Mr. Liddy.

MR. LIDDY: Thank you, Your Honor. I'm going to object to calling this witness for purposes of hearsay testimony by somebody named Betty, who is not a party in this case and, therefore, cannot make any statements, admissions on behalf of the party. And this so-called voicemail has no authentication, so I would object on foundation as well, Your Honor.

And, Your Honor, we don't have it. It hasn't been disclosed.

13:15:50 MR. BLEHM: It's been disclosed, Your Honor. This Court even has it as a trial exhibit. But, Your Honor, Betty identifies herself as someone working in the Maricopa County Department of Elections. She also identifies that she is responding to my client regarding a Public Records Act request that was -- I'm sorry -- I

said my client -- she was responding to my witness regarding a Public Records Act request. It was my client who made that Public Records Act request, and Betty is explaining in the voicemail that she's -- they are still looking for the records, but they have no idea. And she's got to go on vacation, so she should call back and talk to somebody else. It's a Public Records Act request, Your Honor, that is directly relevant to the trial here today.

13:16:42 THE COURT: That's not my problem. I agree with you, I see the relevance of what you're arguing. My problem and where I'm focusing my questioning is the authentication and the disclosure of this, because you're asking for this under 807 as an exception because there's not another recognized exception to the hearsay rule, and I didn't see anything disclosed. You're telling me this today, this is the first I'm hearing it.

So --

MR. BLEHM: Well, Your Honor --

13:17:14 THE COURT: You're asking -- 807 is the exception when everything else is gone, this is the Hail Mary that says --

MR. BLEHM: Understood, Your Honor.

THE COURT: -- I've got nothing else, Judge.

MR. BLEHM: We put it in 807 just in case,

but I believe it is a statement against interest, especially in this case. We have pending litigation between my client and the County regarding their operation to this election, Your Honor, and it is a statement made by Betty identifying herself as an employee of the Maricopa County Records Department. My witness, Your Honor, will get on the stand and testify that she deals with Betty with respect to public records requests.

13:18:03 THE COURT: Okay. Very well then, okay. So that's your offer of proof that your client -- not client -- your witness who is going to testify that this is a known person to her; in other words, she could recognize a voice. She knows this person. She has dealt with this person as a representative of the defendants with other public records request.

Did I get it right?

MR. BLEHM: You got it right, Your Honor.

THE COURT: Mr. Liddy?

13:18:26 MR. LIDDY: Your Honor, first, we have not received this, so we would object on that basis. And second, there is no Betty that's a party. We can't authenticate who she is and she cannot make an admission on behalf of any of the parties in this litigation. And the fourth point, Your Honor, is a public records

request is not one of the two counts before this Court at this time.

MR. BLEHM: Public records request, Your Honor, is specifically aimed at Mr. Richer's testimony this morning that they have documents related to chain of custody for Election Day activity when they don't, Betty says on this voicemail, Your Honor.

MR. LIDDY: Objection, Your Honor. This is -- now counsel is testifying.

13:19:09 MR. BLEHM: I'm not testifying. I'm making argument, Your Honor, regarding the evidence.

THE COURT: What you're making is an offer of proof, correct, Mr. Blehm?

MR. BLEHM: I'm doing that as well, and I can submit one formally, if you would like, Your Honor.

THE COURT: No.

MR. BLEHM: But in terms of offering proof to this Court, A, my -- my witness will testify that she is familiar with Betty. My witness will testify that

13:19:33 her employees are familiar with Betty. My witnesses will testify that she works with Betty in getting records from Maricopa County.

THE COURT: Okay.

MR. BLEHM: In response to FOIA requests, Your Honor.

THE COURT: And you've also told me that this was disclosed previously. Yes?

MR. BLEHM: I am, Your Honor, yes.

THE COURT: When was it disclosed to defense?

MR. BLEHM: Oh, I'm sorry, Your Honor. This last week has been, like, four months, and I -- if you want, Your Honor, it's going to take me a good 45 minutes to look for disclosure.

13:20:07 THE COURT: Wait. Stop one second. You're an officer of the Court. I'm just asking for your word. If you tell me it was within the last week --

MR. BLEHM: I'm telling you it was disclosed, Your Honor.

THE COURT: You're telling me within the last week, as opposed to this morning, something like that?

MR. BLEHM: I believe, Your Honor, that I have created on two separate occasions at their request

13:20:24 that I give them access to all of our records via a link so they can go online and download them, and I can show this Court that I have provided them at least two links to do so.

THE COURT: Wait a minute. I don't want to waste a bunch more time on this. We've already spent a

lot of time on it. I'm just down to the last little consideration, which is disclosure, so they are not shocked by this. Disclosure is different than saying here's -- here's where all my stuff is, you can dig it out, or it's in there somewhere. This would be specific you did a specific notice under 807, and so you realized that there's an issue with the authentication and the hearsay. So all I'm looking to do is verify that this is not something brand-new today in terms of identifying this witness in court today.

13:21:16

MR. BLEHM: It is not, Your Honor.

THE COURT: Thank you.

Mr. Liddy?

MR. LIDDY: Your Honor, we've been able to find under 73 and 74 document titled Placeholder For Voicemail, and then E, document titled Placeholder For Voicemail. I would argue, Your Honor, that that does not fit the requirement for disclosure.

THE COURT: Are you going to play the voicemail?

13:21:39

MR. BLEHM: Yes, I am, Your Honor, but that is the Court's exhibit list. I am not allowed to upload audio visual files to the court system. I had an assistant come by and drop before noon -- just before noon a flash drive, which was rejected. They have these

-- they have these audio recordings, Your Honor. I would guarantee you, as I stand here today, they know who Betty is.

THE COURT: Wait. Stop.

MR. BLEHM: Somebody knows who Betty is, because she works in the Elections Department.

THE COURT: When I say "stop," that means stop, okay?

MR. BLEHM: Yes, Your Honor.

13:22:16 THE COURT: First of all, your understanding of the website uploading links is different than mine. You can upload those.

Second of all, you did bring a flash drive by yesterday, but your office was told we can't do that. The Clerk of the Court uploads and the exhibits, and so those have to be uploaded through that website link. And, apparently, there isn't anything uploaded there.

MR. BLEHM: Your Honor --

THE COURT: Is there uploaded today?

13:22:47 MR. BLEHM: -- they were uploaded to this -- we took everything that we had in our disclosure and we uploaded it to the system. (Pause.)

THE COURT: The clerk is telling me they don't have your exhibit uploaded. So what you would be doing is playing something extraneous that you have

that's not been uploaded into the system.

MR. BLEHM: Your Honor, we tried to upload all of our documents.

THE COURT: Okay.

MR. BLEHM: But we are unable to load audio --

THE COURT: I'm not doubting you, Mr. Blehm, in that regard at all.

Coming back to this, what I want to focus on
13:23:40 is whether the defense had notice of this or not.

Have you heard the voicemail before?

MR. LIDDY: No, Your Honor. I have not heard the voicemail. None of the attorneys here have heard the voicemail, and we can avow that there's no one in the Department of Elections Public Records Department named Betty.

THE COURT: Well, why don't -- here's what I'm going to do, okay, because it's taking too long. You can call your witness. Your witness can testify and
13:24:11 cross-examination can happen, but not play the video or the audio clip, because it's not uploaded. It's not in the system. I don't have that disclosed.

MR. BLEHM: Your Honor, based on representations by counsel, we could always play it real quick before I bring the witness in. Counsel

represented that there's no one by -- by that name who works at the Elections Department.

THE COURT: No, I'm not going to have an evidentiary hearing on this issue, okay? It was raised earlier in your notice. I told you that the attachment wasn't there. Now it's not in the exhibits. We're just going to move on. You can go ahead and call your witness. There will be cross-examination, you can redirect, but we're not going to play a clip that's not uploaded and not previously disclosed.

13:24:58

MR. BLEHM: Thank you, Your Honor. Would your Honorable Court reconsider if I can go online at some point today before I'm done with my witness and show something that says you cannot upload audio/visual files through the system from this link? I tried anyway, Your Honor.

THE COURT: I have no doubt you tried.

Okay. I'm listening to two sources. Since statehood, the Clerk of the Court has been separate from Maricopa County Superior Court for whatever reasons were decided at the time of statehood, so they have a separate system. I cannot tell the Clerk of the Court how to do business, they run the exhibits. And so I'm looking to that website and my understanding of it, my clerk telling me what can be uploaded. I am not

13:25:39

doubting you, Mr. Blehm, that you tried to upload the exhibit. The operative question is whether or not it's a surprise to them, meaning the defendants, because they have not heard the video clip. That would be something, whether it's uploaded or not, you would have given them previously.

So your question to me is whether I would reconsider that ruling after having heard the evidence if you would make an offer of proof separate and apart from the witness's testimony, correct?

13:26:27

MR. BLEHM: Yes, Your Honor.

THE COURT: Okay. I'll accept that. You can -- you can go ahead and make an offer of proof.

Do you have that right now?

MR. BLEHM: The audio recording?

THE COURT: Yes.

MR. BLEHM: Yes, Your Honor. We can pull it up.

THE COURT: Well, that's what I want you to

13:26:47

do for your offer of proof.

MR. BLEHM: All right. And may I play it, Your Honor?

THE COURT: Playing it for me, yes.

MR. BLEHM: Yes, that's what I mean, Your Honor.

THE COURT: This is part of your offer of proof, Mr. Blehm.

MR. BLEHM: This is what's listed as Exhibit 74, Your Honor. For defense counsels' sake, it is listed as Q1.1.

And now, Your Honor, I'm hoping she didn't say she was Betsey.

(Audio played in open court.)

THE COURT: Okay. Is that the same one?

13:29:13 THE TECHNICIAN: It just looped, Your Honor.

THE COURT: Looped, very good.

MR. BLEHM: That would make an interesting crank phone call, Your Honor, that somebody -- that somebody identifies themselves from the Maricopa County Elections Department stating their name and saying we're still waiting for records responsive to your request, Your Honor. My client will testify as to who this individual is -- I'm sorry, not my client -- my witness. My witness will testify, Your Honor, that she interacts

13:29:46 with this individual.

THE COURT: Okay.

MR. BLEHM: When she's fulfilling FOIA requests from the Maricopa County Recorder's Office Department of Elections.

THE COURT: Very good. Okay. Go ahead and

call your witness. I'm going to give it the weight I deem appropriate, and, you know, when all the dust settles. But you can go ahead and call your witness.

MR. BLEHM: Thank you, Your Honor.

THE COURT: Ma'am, if you could just come forward, if you would. Stand in front of my clerk. Raise your right hand, she'll swear you in.

HEATHER HONEY,

called as a witness, having been duly sworn, testified as follows:

13:30:40

THE COURT: Ma'am, if you could just move your way, make your way around to the witness stand and have a seat. As soon as she's situated, you may proceed, Mr. Blehm.

DIRECT EXAMINATION

BY MR. BLEHM:

Q. Good afternoon, Ms. Honey. Can you please state your full name for the record?

A. Heather Honey.

13:30:59

Q. What do you do, Ms. Honey, for a living?

A. I'm an investigator. I'm also an auditor. I do supply chain consulting as well.

Q. Okay. How long have you engaged in that type of work, namely, as an investigator?

A. Over 30 years.

Q. Over 30 years, okay.

And so what do you do as an investigator? You just investigate?

A. Yeah, I mean, I do corporate investigations. I do, as I mentioned, supply chain investigations, counter-diversion, those sorts of things. And recently over the course of the last, about two and a half years, our research has sort of expanded into, you know, sort of government accountability, transparency and

13:31:43 elections.

Q. Okay. Do you also conduct a great deal of open-source research?

A. I do.

Q. And what is open-source research?

A. Open-source investigations, open-source intelligence is just the use of publicly available information, public records, to do investigations or research.

Q. All right. So, like, Maricopa County Elections

13:32:07 Department records, would that be correct?

A. Yes.

Q. Okay. And you can get those through how?

A. In Arizona, it's a public records request that you submit.

Q. All right. And so in terms of your work doing

open-source investigations and things of that nature, I know you're shy, but I also know you teach people.

Can you give me background in that area?

A. Yeah, I do training on open-source investigations, open-source research. I've been doing that sort of training for about five years now, and I instruct people.

Q. Who do you -- who do you train on behalf of?

A. Well, I'm -- I'm a small-business owner. I own my own company, and I wrote my own curriculum, and I train clients in military clients, special forces. I train law enforcement. I train private corporations, and I train journalists as well. So that's an awesome use of open-source investigations, skills for journalism.

13:32:54

Q. And I think you said special forces?

A. Yeah.

Q. Do you do any work with the department of -- or the DEA, I'll abbreviate?

A. I don't believe I've ever had students from the DEA, like Secret Service. Like I said, law enforcement agencies, local police departments, those sorts of things.

13:33:26

Q. All right. All right, very good. And so you -- you said you also got involved in election integrity

issues how long ago?
A. About two and a half years ago now.
Q. Three and a half -- two and a half years ago? Okay. And just what states have you done research in?
A. Well, some of our research has been in all 50 states, specifically looked into a vulnerabilities in the UOCAVA, nonmilitary UOCAVA voters. In addition to that, we've done very specific types of research in Pennsylvania, Michigan and Arizona, and a little bit of
13:34:20 -- a little bit of stuff in Georgia as well.
Q. All right. And so with respect to your work in the State of Arizona, do you know what is the EPM?
A. Yeah, the Election Procedures Manual. I'm familiar.
Q. I'd like to pull up the Elections Procedures Manual right now, Your Honor, Exhibit 60.
All right. And can you see the monitor in front of you?
A. I can.
13:34:53 Q. Does that appear to be the Elections Procedures Manual?
A. It does.
Q. Are you fairly well versed in that document?
A. I mean, I haven't committed it to memory in its entirety, but I'm familiar with the relevant statutes as

they relate to the research that I've done in Arizona.

Q. Okay. Thank you. And so let's -- let's talk about just generally, explain to this Court, how you became knowledgeable about Arizona elections as it relates specifically to the issue of chain of custody?

A. Yeah. So, you know, obviously the idea here, I mean, do like vulnerability assessments, I do supply chain consulting. So what you're looking for, right, is researching what are the vulnerabilities in the election
13:35:44 system, for example. And so one of the areas that we looked at was the drop-box chain of custody, and the Election Procedure Manual, specifically, has guidelines starting on page 61, item number 7. There are about eight specific requirements that the Recorder is required to do regarding the chain of custody of drop-box ballots.

So in addition to the EPM when we were researching this, we spoke with representatives who had actually participated in the process. We talked to
13:36:18 ballot couriers who had actually retrieved ballots from drop box as we spoke with Celia in the Maricopa County Elections Department. She was very helpful. She provided a lot of really useful information in terms of their process. The EPM is sort of the guideline for the entire state, but how each county implements the -- the

process is different.

For example, we did, you know, research and investigations into the chain of custody in a couple of elections in Arizona, several in Maricopa, but we also looked at the process in Pima County as well.

Q. Okay. So you've spent a great deal of time talking to people in Arizona that actually work in the Elections Department?

A. Yes.

13:37:05 Q. That actually work at Runbeck?

A. Well, I mean, I spoke with Jeff Ellington about -- I want to say nearly a year ago or so -- and he was able to answer a bunch of questions about how Runbeck works. Jeff Ellington is the CEO of Runbeck, and recently I had the opportunity to talk to a Runbeck employee, who provided a declaration in this case.

Q. Okay. And you also have the opportunity to work with other election integrity experts and attorneys --

A. Yes.

13:37:39 Q. -- in the State of Arizona?

A. I do.

Q. All right. And so let's go back to Pennsylvania really quick. Pennsylvania is where you got your start, isn't it?

A. Well, I'm from Pennsylvania, so that's what --

that's what definitely piqued my interest in sort of the vulnerabilities in the election system and what could be done to fix that.

Q. In Pennsylvania, I believe it's 2020, wasn't it --

A. Yes.

Q. -- what did you identify as a particular vulnerability in Arizona at that time?

A. Well, in Pennsylvania, I think you mean.

13:38:10 Q. Yes, Pennsylvania.

A. Yeah. So --

MR. LIDDY: Your Honor, objection. Relevance.

THE COURT: Sustained.

MR. BLEHM: Your Honor --

THE COURT: Sustained.

MR. BLEHM: Sorry.

BY MR. BLEHM:

Q. All right. So with respect to the State of

13:38:29 Arizona again, how many elections have you looked at in the State of Arizona with respect, specifically, to the chain-of-custody issue?

A. Three.

Q. Three. Which ones were those?

A. It was the 2020 Election, there was a 2021 -- I'm

sorry -- 2022 Municipal Election and then this 2022 General.

Q. Okay. And so I've got a demonstrative presentation, Your Honor, I would like to pull up, and it has citations to all of our exhibits.

MR. LIDDY: Your Honor, I would like a moment to review this with my co-counsel before it's published to the witness.

THE COURT: That would be fine. (Pause.)

13:39:57 MR. LIDDY: Your Honor, I'm going to object in that this exhibit seems to be more of an exhibit more than demonstrative, contains many signatures from individuals whose signatures should not be published to the public, Your Honor.

MR. BLEHM: Your Honor, signatures are routinely published.

THE COURT: Let me ask a question, if I could, please, Mr. Blehm.

MR. BLEHM: Yes, Your Honor.

13:40:25 THE COURT: Are these signatures related to the 2020 Election in Arizona?

MR. BLEHM: You know, I believe these are.

THE WITNESS: May I answer that question?

THE COURT: Well --

MR. BLEHM: Yes, these are related to 2022.

This is the 2022 Election, Your Honor. The documents contained within this PowerPoint are from the 2022 Election. They were all provided either in response to my client's FOIA request, or they are public source documents that are published online, including there's a citation right off the bat, Your Honor, for the EPM, and so there's nothing in here that's been a surprise. This chart made by my client has also been disclosed, and with respect to the signatures, Your Honor, signatures
13:41:22 are public all the time. Signatures of voters, people -- people check their -- their list, their roster list. I'm sorry. I'm not active in politics. I don't know what it's called when you run for office. You got to have, whatever it is, enough signatures to get on the ballots. Those are accessible to the public. I can go on the County Recorder's web page right now, today, this very second, and I can pull up titles, deeds, financial documents, all kinds of records that specifically contain signatures.

13:41:55 These documents, Your Honor, which I'm going to move all of the underlying documents into the record, contain no PII. We're not talking about birth dates, Social Security numbers, we're not talking about driver's license. We're talking about Maricopa County's own documents.

THE COURT: Mr. Liddy?

MR. LIDDY: Your Honor, if -- if I heard counsel correctly, he wants to move these in as exhibits so, therefore, they are not a demonstrative and they have not been provided on his exhibit list.

MR. BLEHM: Your Honor, I'll tell you what, the moment I come across the document that has not been provided on my exhibit list, this Court doesn't have, then I'll stop with the demonstrative. I'm not seeking
13:42:51 to admit this demonstrative exhibit into the record. I may do so after my client -- my witness testifies, Your Honor. But right now, I would like to walk through this demonstrative, which is based on documents received from open source, the EPM. You can go online, you can Google it and there it is, documents that were provided by Maricopa County.

MR. LIDDY: If I may, Your Honor?

THE COURT: Yes.

MR. LIDDY: These documents appear to fall
13:43:26 under Title 16-168, any person in possession of precinct registered list, in whole or in part, or any reproduction of precinct registered list shall not permit the register or list to be used, but shall otherwise transfer for any purpose other than otherwise authorized in this section. And this is not the use

authorized in the section for these documents.

MR. BLEHM: Was that section F?

MR. LIDDY: Section F. It's for -- excuse me -- it's for election officials, or perhaps, expanded by court to government officials, and the witness is not a government official or an election official, Your Honor.

MR. BLEHM: Your Honor, if the entirety of section F were read, there are very clear and very
13:44:11 specific exclusions, including the media, Your Honor. The media have access to signatures. Elections, Your Honor, is an exclusion. It does not say government officials running elections, and this case, Your Honor, is about an election.

THE COURT: What's the statute again, 16 what?

MR. LIDDY: Your Honor, it's Title 16-168(f). If I may, Your Honor, I would ask that the counsel direct his comments to the Court and not to
13:44:45 my co-counsel.

MR. BLEHM: Sorry. I look around when I talk.

THE COURT: Okay. Your representation is that there's none of the information prohibited in the form of month, date and year of birth, Social Security

number, driver's license number, non-operating identification license number, Indian census number, father's name, mother's maiden name, state or country of birth, none of that is contained, and then signatures and voters' e-mail addresses. And then none of that is contained in the information, or are you saying it's an exception because it's available to the media?

MR. BLEHM: There are signatures contained, Your Honor, but following the portion I believe you just
13:46:27 read, it's specifically carves out exclusions, and one of them are for elections. If we didn't have these exclusions, Your Honor, candidates wouldn't be able to get on the ballot because they couldn't do signature petitions, okay? There are exclusions for the media. I believe it goes elections media, Your Honor, but I may be mistaken. I tend to forget.

THE COURT: This is limited to 16(f) is limited to persons in possession of precinct voter registration or lists, and then it says --

13:47:09 MR. BLEHM: Well, then, Your Honor --

THE COURT: It says, can't be bought, sold or otherwise transferred for any purpose, except for uses otherwise authorized by this section. And you're correct that it talks about authorized uses, including newspaper, radio, television.

MR. BLEHM: I would also point out, Your Honor --

THE COURT: Yes.

MR. BLEHM: -- that none of the documents contain within this -- within this presentation --

THE COURT: Okay.

MR. BLEHM: -- are poll lists.

MR. LIDDY: Your Honor --

MR. BLEHM: None of them.

13:47:41 THE COURT: What are we going -- what is the demonstrative exhibit and the testimony going to demonstrate?

MR. BLEHM: It's a demonstrative exhibit, Your Honor, prepared by my witness to walk the Court through the various chain of custody documents used by the Maricopa County Recorder's Office, as well as the Court -- as well as the Board of Supervisors. I think this --

THE COURT: To show?

13:48:08 MR. BLEHM: -- just to show Your Honor and the court and the witness. The media deserves to know, Your Honor.

THE COURT: Show what?

MR. BLEHM: To show the process, the documents used, okay, how the flow of ballots move.

THE COURT: Okay.

MR. BLEHM: And I will tell you, Your Honor, it's one of our contentions that because Maricopa County does not adequately maintain chain of custody of drop box and mail ballots that it becomes much easier to infuse ballots into the system, and that's one of our allegations, Your Honor.

THE COURT: Okay. I understand what your offer of proof is about.

13:48:51 MR. LIDDY: Your Honor, the signatures contained in the proposed demonstrative are not voters' signatures, so I would withdraw any objection based on that.

THE COURT: Very good. Then we can proceed. Mr. Blehm, you can proceed with your demonstration, and we'll get to that other part later about the exhibits you want to admit after you're finished.

MR. BLEHM: Thank you, Your Honor. Did I move to admit Exhibit 60, the EPM? If not, I do so now.

13:49:17 THE COURT: Any objection?

MS. KHANNA: Yes.

MR. LIDDY: Yes, Your Honor. Objection to relevance.

THE COURT: The EPM, not the demonstrative exhibit.

MR. LIDDY: No objection, Your Honor.
THE COURT: I didn't think so.
MR. LIDDY: Thank you.
THE COURT: 60 is admitted.
BY MR. BLEHM:
Q. All right. And so your familiarity with EPM came from your reading it and talking to other people, correct?
A. Yeah, I mean, the extensive research we did, yes.
13:49:40 Q. And the EMG has guidelines -- I'm sorry, I think I misspoke, didn't I? They are not guidelines?
A. I believe they are requirements. It says that the Recorder shall develop and implement the secure ballot retrieval and chain-of-custody process.
Q. Okay. So the County Recorder or officer in charge of elections shall develop and implement secure ballot retrieval and chain-of-custody procedures?
A. Yes. There's eight guidelines. This slide only has a couple of them on there, but the requirements are
13:50:12 things like, you know, two couriers of differing parties, date and time of arrival at the drop box, date and time of departure from the drop box, and the date and time you arrive at the County. But most importantly, it requires that when that secure transport container is opened that the number of ballots inside

that container shall be counted and noted on the retrieval form. And, of course, these retrieval forms are specific to a -- one specific drop box, so it's a one-to-one correspondence.

Q. Okay. So based on the law then, if I were to go to what's designated as drop box P57 and retrieve the ballots from there, I would create a chain-of-custody record that identifies the two people who went to get the ballots, it identifies the time they went there, and more importantly, it identifies the number of ballots contained within that box?

13:51:10

A. Well, to be clear, the -- the form is called the Early Voting Ballot Transport Statement, and it is -- the ballots are not counted at the time of retrieval. Instead, what happens is those couriers, they go out to the drop box, they open the drop box, they retrieve all of the ballots, they put them inside. Again, I'm going to tell you how Maricopa County does it. It's not necessarily how all of the counties do, but specifically in Maricopa County, the two couriers put the ballots in the box. They close the -- the transport container. They zip-tie it with security seals, and they document the fact that it was the two of them, the location, the time, et cetera, as I already mentioned. And then that secure container is transported back to the County.

13:51:41

Q. Okay. And does it sound like a pretty secure process when that is done?

A. Yeah, I mean, that's -- that's the process and that's compliant with the law in Arizona, so...

Q. But do you think it's important to have the number of ballots in each box?

A. Well, what the law requires is that when it's transported back to the County and when the Recorder or the Recorder's designee opens up that container, that at

13:52:29 that point when the container is opened, the Recorder must count those ballots and record the precise number of ballots inside the container on that retrieval form and, again, the retrieval form is required in the EPM.

Q. Okay. And really quickly, I'm going to sort of interrupt your PowerPoint from time to time, because I think you said EVBTS?

A. Yes.

Q. Early Votes Ballot Transport Statement?

A. I actually have that on one of the slides so that

13:53:03 you can see it.

Q. Understood. But I want the Court to be able to see a standalone of that document, and then we'll turn back to your slide; is that fair?

A. Understood, sure.

Q. Can you please pull up Exhibit 75, R1, on this

slide.

All right. Can you see the document that's currently on the screen?

A. Yes.

Q. And that's an Early Voting Ballot Transport Statement, correct?

A. Correct, it's the retrieval form used in Maricopa.

Q. Does that look like it's completely filled out?

13:54:07 A. Yeah, it looks great. It has all of the required fields. If I was doing an audit of that, I would say that's a perfect score.

Q. So you say perfect score for this one Bates number 009916, correct?

A. Yes.

Q. Okay. You're happy with that?

A. Yeah.

Q. Good. So you're not here just to criticize to criticize, are you?

13:54:32 A. I'm not here to criticize at all. I just want to sort of shed some light on the vulnerabilities in the system in the hopes that they'll be fixed.

Q. And how many, in response to my client's FOIA request -- or I keep saying FOIA, I apologize -- Public Records Act request, how many of these specific

documents did you get?

A. I apologize, I -- the precise count has escaped me, but I will tell you that they produced -- they said that they produced all the documents that they had. We specifically asked for these documents as well as a bunch of others, but they said that they provided all of the Early Voting Ballot Transport Statements that they had for the entire election, and we had them for every day that drop boxes were opened. So, you know, we
13:55:23 compared that to the list of locations when they were open, and we did have these transport -- transport statements for each and every day that they were open, with the exception of Election Day. There were no Early Voting Ballot Transport Statements provided for Election Day.

Q. And that's where I was going next. The exhibit we have currently on screen, Exhibit Number 75, and really quickly, I'm just going to move to admit Exhibit Number 75, Your Honor?

13:55:55 THE COURT: Any objection?

MR. LIDDY: No objection, Your Honor.

THE COURT: 71 is admitted. Oh, wait, is it 75?

MR. BLEHM: 75, Your Honor. It's your -- your 75, our R1.

THE COURT: No, it's -- there's only one number. It's the Court's number that we're referring to, not mine, yours and his. It's 75, and 75 is admitted.

MR. BLEHM: Understood, Your Honor.

I say our R1 for their benefit --

THE COURT: Got it.

MR. BLEHM: Very good. 75, Your Honor.

BY MR. BLEHM:

13:56:26 Q. All right. And, you know, I'm going to sort of divert a little bit here, because do you have any problems with any of the Early Ballot Transport Statements that you reviewed for early voting until Election Day?

A. No, I think that they actually compared to previous elections they did a really -- a significantly better job with the documents this time around. But again, there were no documents produced for Election Day which amounted to a significant number of drop box

13:57:08 ballots.

Q. All right. And so let's go back a little bit to talk a little bit more about your history as we sort of go through this. But what did you find when you did the 2020 Election? You looked at all of the documents they had for chain of custody, correct?

A. Yeah. So -- so we made a couple of observations. The first one was that there were a significant number of -- of these Early Voting Ballot Transport Statements that were not properly completed; specifically, I would say, the biggest issue was that there were quite a few of them that did not --

MR. LIDDY: Objection, Your Honor. The witness testifying about 2020, relevance.

THE COURT: Yes, she is.

13:57:42 MR. BLEHM: Yes, Your Honor. It's just relevant to my client's -- sorry -- my witness's history, A, and it's also relevant to, you know, Richer's testimony. He said he came in and he made it better and changed forms, and it was my witness, Your Honor, that sort of led that effort to get the forms changed.

THE COURT: Okay. But that count was dismissed. The process changes. They could have been done either by the Arizona House, Senate, Governor

13:58:18 working together or the Supreme Court. Might have been, whatever could have been, that is dismissed.

So I understand, I'm not going to debate with you --

MR. BLEHM: Understood, Your Honor.

THE COURT: -- endlessly. Move on.

MR. BLEHM: I understand, Your Honor. I won't go there.

THE COURT: But you are now.

MR. BLEHM: I'm sorry, Your Honor. I'm not trying to be argumentative or anything. If we get at the end of our presentation of evidence and defendants stand up here and raise the laches allegation.

THE COURT: They won't be doing that because the motion ruled on that. There was the laches argument
13:58:54 that was upheld with regard to the 2020 Election and the other part of the case.

MR. BLEHM: Okay.

THE COURT: So today we're talking about, hopefully, she's shedding light in her statement shedding light on vulnerabilities to be fixed is exactly what was dismissed. I'm looking at today what happened in the 2020 Election and understanding that, and to that end, I've allowed this presentation. And so far even though she said that, you're explaining how it's -- how
13:59:24 the process works, and that's fine. But going into the 2020, we're out of that.

MR. BLEHM: Understood, Your Honor.

THE COURT: Thank you.

BY MR. BLEHM:

Q. All right. Can we change the slide?

Thank you very much. Can you please explain to the Court what this -- this all means.

A. Yeah. So this is a diagram of Maricopa County ballot chain of custody from the voter to tabulation. And so what you notice is if you vote on Election Day, you put your ballot in the tabulation. But if you vote early in person in Maricopa, or if you vote by mail, there are several transfers of the ballot and, therefore, requirements for chain of custody. And
14:00:09 what's interesting or unique about Maricopa County is, to my knowledge, they are one of the only counties in the country that outsources the intake or the receipt of their ballots to a third-party organization.

So, for example, we talked about the EPM and the requirement for chain of custody from the drop box to the County. In most counties, that's the end of the road, you know. You retrieve the ballot from the drop box, you transport it securely to the county, and it's tabulated there. That's not the case in Maricopa
14:00:42 County.

In Maricopa County, they then have to, after they have received it in the County and processed it, according to the Arizona law, then they must again maintain secure chain of custody as they transfer it from Maricopa County to Runbeck, and then again, when it

comes back the other way.

Q. Okay. Thank you very much. And how many steps are there? If you vote, let's say you get -- you either, I guess, you get a vote by mail, couldn't you or you could go into the vote center and get a ballot early?

A. Right. So on the next slide, I kind of just point out the fact that a drop box in Maricopa County does not just contain mail ballots, right? So mail

14:01:31 ballots that are, you know, sent to the voter and in the mail through the U.S. Postal Service -- it was the next slide.

Q. Well, I'm not done asking you questions, Ms. Honey.

A. Oh, I'm sorry. I thought you were asking me about the different ways. I'm sorry.

Q. All right. Why is it that chain of custody when all of these transfers take place is so important?

A. Well, I mean, chain of custody, first of all,

14:01:59 it's the law. And, secondly, it's what allows sort of the security of the ballot, right? If you have ten ballots and, you know, you have ten ballots and they are transferred to the next location and they are still ten ballots, then, you know, you feel like that's a pretty good secure chain. But, you know, if there are ballots

added or subtracted, you become aware of that if you are properly managing chain of custody.

Q. Okay. So is what you're saying that at each of these different points in this process where a transfer is made, there are vulnerabilities in the system that could either induce or reduce the number of ballots?

A. Well, I mean, I think the reason that you maintain chain of custody, the reason that it's part of business, it's part of elections is because if failure

14:02:51 to maintain chain of custody presents, a situation where ballots could be added, but ballots could also be removed, and so that's why this whole chain of custody is important enough to have its own laws written about it.

Q. Okay. And can you pull up Exhibit 102?

THE COURT: Is there another exhibit they are pulling up?

MR. BLEHM: Excuse me, Your Honor?

THE COURT: Is there another exhibit he's

14:03:38 pulling up?

MR. BLEHM: They are pulling up Exhibit 102, Your Honor.

THE COURT: 102.

BY MR. BLEHM:

Q. Okay. All right. And so you can see the screen,

Ms. Honey?

A. Yes.

Q. And is that the chart you made that is -- that we marked, the Court has marked as Exhibit 2?

A. It is.

MR. BLEHM: I move to admit Exhibit 2, Your Honor.

MR. LIDDY: Objection, Your Honor. Foundation.

14:04:16 THE COURT: 102?

MR. BLEHM: I'm sorry.

THE COURT: You said 2.

MR. BLEHM: I am sorry, Your Honor, 102.

THE COURT: That's why I had this look on my face.

MR. BLEHM: I'm sorry. 102, Your Honor.

THE COURT: And is there an objection?

MR. LIDDY: Yes, Your Honor. This is offered as demonstrative. We're fine with that, but if

14:04:34 it's going to be offered an as exhibit, it lacks foundation and no authentication.

THE COURT: Well, okay.

MR. BLEHM: Ms. Honey, did you make this document?

THE COURT: Wait. Let me rule. I think

that that's what the witness has done is she testified as to her understanding, and that's what this represents, her understanding of the system as the law. And your objection next might be?

MR. LIDDY: My objection is I would like to know where she got it, who created it.

THE COURT: Go ahead.

BY MR. BLEHM:

Q. Did you make this chart, diagram, whatever?

14:05:07 A. I made it in PowerPoint.

Q. And did you make this based upon your --

MR. LIDDY: Thank you, Your Honor. Based on that, no objection.

THE COURT: Great. 102 is admitted. Thank you.

BY MR. BLEHM:

Q. All right. Can we go back to the slide and move on to the next one?

THE COURT: Which is? Which exhibit?

14:05:26 MR. BLEHM: Oh, the demonstrative. I'm sorry, the PowerPoint.

THE COURT: I'm sorry.

BY MR. BLEHM:

Q. All right. Can you tell us what this slide shows, Ms. Honey?

A. Yes, so this slide shows that in a lot of counties a drop box is only for a place for people, an alternative returning their mail ballot by mail. But in Maricopa County, the drop boxes are, in fact, a repository for a ballot that's mailed to a voter they choose not to return by postal service, but it's also where people who vote early in person who vote -- who go into a vote center, show their ID; they, you know, get their ballot printed, they vote, put it in an envelope
14:06:10 and they sign the envelope, and they drop that ballot envelope into a drop box. So when we talk about drop-box ballot retrieval for early voting, it includes early in-person and mail ballots that are deposited in a drop box as well, so it's those two different types of drop-box ballots.

Q. Okay. And so I believe you had testified previously that you have reviewed all of the early ballot EVBTS's?

A. Right.

14:06:48 Q. And it's my understanding you praise Maricopa County for having improved their documents and actually followed their procedures?

A. Yes, on the documents that were completed; but again, there's the absence of documents for Election Day ballots, which again, is a significant number.

Q. Okay. Well, your FOIA request, my client's FOIA request, requested all the chain of custody documents for Maricopa County Election Day, correct?

A. Correct.

Q. Have they provided any to you?

A. Yes, they actually provided all of the documents that we requested, with the exception of the Maricopa County Delivery Receipt Form.

Q. Okay. The Maricopa County Delivery Receipt Form, can you please tell the Court what that is? 14:07:32

A. So the Maricopa County Delivery Receipt, as I mentioned in that, like, previous sort of thing, I think -- you can go to the one that actually has it on there, the -- it is the document, the chain-of-custody document that is created at Maricopa County to record the precise number -- that's not this slide. If you go to, like, two more -- the precise, that's the one -- perfect, thank you -- oops. Back one. There you go, perfect.

It's in this diagram here, it's the number 2, right? So when the drop box -- when the ballots are retrieved from the drop box, the Early Voting Ballot Transport Statement is used to document the chain of custody from the drop box to Maricopa County. 14:08:10

Again, when it gets to Maricopa County, what the law requires is that they break open the seals and they

count the number of ballots inside that transport container and they document, they record that precise count of ballots on the Early Voting Ballot Transport Statement.

From there, again, this is unique to Maricopa County, Maricopa County election officials then create this delivery receipt form, which is like a half sheet, and that has on it the precise count of the ballots that they are then loading on a truck and transferring to
14:08:55 Runbeck. The larger thing there, the thing that has the number 3 on it, is a document that's created at Runbeck, basically, just saying, hey, this is how many ballots were dropped off.

Q. Okay.

A. And to answer your question, what we did not receive is the number 2, the delivery receipts.

Q. All right. And I'd like to move away from the PowerPoint really quickly and open Exhibit Number 67.

THE COURT: I couldn't hear you because you
14:09:26 turned away.

MR. BLEHM: I'm sorry, Your Honor, 67.

BY MR. BLEHM:

Q. All right. Ms. Honey, you were talking about the Early Voting Ballot Transport Statement, is this it?

A. I mean, this is one of them. This is from ASU

West from October 25th.

Q. Okay. By one of them, you mean there were many of these?

A. Yeah. So there's one of these forms for each day that a drop box is opened, and so if there are 50 drop boxes opened on a particular day, there are 50 of these forms created because there are 50 retrievals of ballots.

Q. Okay. And you reviewed all of these?

14:10:23 A. We did.

Q. All right. And --

MR. BLEHM: Did I already move this one into evidence?

THE COURT: I don't have that you did.

MR. BLEHM: I don't believe I did.

I would like to move 67 into evidence, Your Honor.

MR. LIDDY: No objection, Your Honor.

MR. BLEHM: Thank you.

14:10:39 THE COURT: 67 is admitted.

BY MR. BLEHM:

Q. All right. Do you have any problem with any of these statements for the early voting period?

A. No.

Q. No, you've reviewed them all?

A. Yeah, I mean, I think they -- like I said, they did a much -- much better job.

Q. Okay. So could you actually go through all of these, add them up and figure out exactly how many ballots Maricopa County retrieved from drop boxes up until the day of the election?

A. Exactly, yes.

Q. Okay. And you can do that, is that what you're supposed to be able to do?

14:11:09 A. I mean, on a daily basis, yeah. You have to do it for each and every retrieval, according to the law.

Q. All right. Thank you very much. And so Transport Receipt, again, what is that?

A. So the delivery receipt is, again, that half sheet that I had on the display there which is created at Maricopa County at MCTEC that accompanies the ballots as they traveled from Maricopa County to Runbeck so that when they arrive at Runbeck, Runbeck knows precisely how many ballots are on that shipment.

14:11:44 Q. All right. Do you have all of Maricopa County delivery receipt documents?

A. We do not have any. We requested them, but they said they had misplaced them.

Q. And those are the ones that were for Election Day, correct?

A. Well, actually, we didn't get a single one of those for the entire election. It is -- the testimony of the -- in the declaration of the Runbeck employee is that no such documents existed for Election Day.

Q. For Election Day?

A. Right.

Q. Okay. What about prior to the election?

A. Yeah, so this form was actually created for all of the days prior to Election Day.

14:12:25 Q. And, I'm sorry, but my question was specifically related to Election Day.

A. There were --

Q. There were none?

A. Well, we did not receive any. They said they misplaced them and the Runbeck employee said that none existed.

Q. Okay. All right.

Have you been trying to get the records?

A. We have.

14:12:44 Q. Do you know somebody by the name of Betty that works at Maricopa County Department of Elections?

A. So we, as in response to our public records request for these documents on behalf of Kari Lake, some of the documents they provided to us electronically and others they said were in binders, and we had to go and

copy them ourselves. So we had a couple representatives go down to Maricopa County Elections Office to copy them, and they were -- and Betty and Christie were sort of overseeing their copying of records.

Q. Okay. Have you met Betty?

A. I have not met Betty.

Q. Then I've got to correct a misrepresentation to the Court, Your Honor. I believe that my witness had, and so I apologize and I correct that.

14:13:33 Are you familiar with Betty's voicemail?

A. Well, I called Betty a couple of times to try to get the records, but when they were there actually scanning all of the records, she exchanged business cards with Michelle, who was one of the representatives.

Q. Have you spoken with Betty?

A. No, she's not responded.

Q. Have you been able to get ahold of her?

A. No.

Q. Okay. All right. Can we go to the next slide,

14:14:05 please? What is this document again?

A. So this document is created at Runbeck, and this records the total count of the ballots that are received from the MCTEC delivery truck.

Q. Um-hum.

A. So they break this down into a couple of

different ways, you know, the post office inbound is separated because, of course, those are slightly different ballots and we're not really talking about those together. But the regular MOB is the mail ballots, right, so that would be the green envelopes. And then you'll see down at the bottom the CTR, that's the vote center ballots. Those are the white envelopes for early in-person voting.

Q. Okay. All right. And what do these documents really tell you?

14:14:51

A. So these documents -- these documents reflect the number of ballots that are received at Runbeck. So, again, this is created at Runbeck, and you'll see, like, in the line here this document is dated 11/6, and it is the precise number of pieces of regular MOB, and the precise number of pieces of the CTR. And that's because they copy this information from the delivery receipt form, that half sheet that's generated at MCTEC, and then this form accompanies it and, again, they keep a copy of it, and the other copy goes back with the driver to -- to Maricopa County to document that, in fact, he did take the ballots as he was supposed to, delivered them to the possession of Runbeck, and completes that chain of custody.

14:15:30

Q. Okay. Okay. So these then are created by

Runbeck when Maricopa County officials drop ballots off at their third party; is that correct?

A. Correct. It's the drivers, so it's not, like, actually like the Recorder or anybody doing that delivery.

Q. Understood. And so Runbeck employees, they simply estimate the number of ballots?

A. No, just to make the distinction. For the post office inbound, what happens is the driver, if there
14:16:16 are, you know, stops -- sometimes he makes special delivery, but sometimes he also stops on the way. So he'll go to the U.S. postal facility.

So the post office doesn't deliver the ballots to Runbeck, the post office doesn't deliver the ballots to Maricopa County, the driver goes to the facility in Phoenix, and then he loads the trays of mail ballots onto the truck, and then that is taken to Runbeck. And for those ballots, they count the number of trays, the number of postal trays and they estimate that. There is
14:16:48 a receipt that accompanies the post office ballots, but Maricopa County does not use that to record the precise number; however, they started preserving that at Runbeck.

Q. Okay. So Runbeck is starting preserving documents obtained from United States Postal Service

regarding how many ballots the U.S. Postal Service was transferring to Maricopa County's care and control?

MR. LIDDY: Objection, Your Honor.

MR. BLEHM: Custody and control. Is that your understanding?

THE COURT: Hold on. There's an objection.

MR. LIDDY: Objection, Your Honor. The witness said the post office provides estimates, not counts of the number of ballot packages.

14:17:29 MR. BLEHM: Shaking her head no, Your Honor. That's not what she said.

THE COURT: Well, he's objecting to the form of the question. I think what he's saying, it's leading.

MR. BLEHM: That's fine.

THE COURT: Rephrase it.

MR. BLEHM: I'll ask the question in another way, Your Honor.

THE COURT: Thank you.

14:17:43 BY MR. BLEHM:

Q. Based upon your knowledge, training and experience with respect to Maricopa County chain of custody and election-related mail ballots, do you know if the postal service provides receipts showing the exact number of mail-in ballots that the United States

Postal Service is transferring to Maricopa County?

A. Right. Yes. The answer to that is it is my understanding that they do. They tuck them into the tray, so it's, again, my understanding that they are difficult to find, but that's how they base how much they are going to charge. That's, like, how they bill for the postage, so that's how they count it. And, of course, they have, like, machines that do that at the post office.

14:18:22 Q. Okay. And so Maricopa County then gets a receipt or, at least, the Maricopa County driver gets a receipt from the postal service that says, essentially, how many pieces of mail ballots were delivered to Maricopa County driver, correct?

A. That is my understanding.

Q. Okay. Does the County maintain those documents?

A. So to my knowledge, they didn't turn over any to us, so let me just start with that. We didn't receive any in response to our request for those public records,

14:18:53 but it's also my understanding that -- that the Runbeck employees attempted to sort of return them to Maricopa County, and they said they didn't need them.

Q. Okay. And so is there any way to tell, other than this inbound receipt given by Runbeck to the Maricopa County driver, exactly how many ballots left

Maricopa County were picked up at the post office and actually delivered to Runbeck?

A. Well, on this form here, on 11/6, you can see that they have a precise count. But, unfortunately, on Election Day, because they were not using the other chain of custody documents that we described, they were -- this was the one and only form that was -- that was used, according to, again, the records request that were produced for us and based on the Runbeck employees, who
14:19:55 described receiving these trucks coming with no corresponding documentation.

Q. Thank you. Thank you, Ms. Honey.

And so I would like to -- Exhibit 66? Is this 66? Go to 66.

THE COURT: Are we on 66?

MR. BLEHM: 66, Your Honor.

THE COURT: Thank you.

BY MR. BLEHM:

Q. If you look at the screen, Ms. Honey, these look
14:20:49 like the Maricopa County Audit Challenges receipts?

A. Yes.

MR. BLEHM: I'd move to admit Exhibit 66 into the record, Your Honor.

MR. LIDDY: No objection.

THE COURT: 66 is admitted. Thank you.

MR. BLEHM: Thank you.

BY MR. BLEHM:

Q. Okay. Go back to the PowerPoint.

Ms. Honey, how many ballots did Maricopa County claim they received on Election Day that were not tabulated ballots?

A. So I think that -- I think your question is how many drop box ballots did they report?

Q. Yes.

14:21:39 A. Yeah, so initially on the morning after the election, they reported that there had been 275,000, I think, that Stephen Richer said approximately 275,000 drop box ballots had been dropped off on Election Day.

Q. Okay. Did that number change?

A. That number did change.

Q. What's the number now?

A. I believe that that -- that -- the number went from the 275 on the 9th. They also had a press conference during which the press at the press

14:22:14 conference, Recorder Richer also talked about what an extraordinary number the 275 was.

Q. Ms. Honey, that was not my question.

A. I'm sorry.

Q. My question was: What is the number now?

A. I believe they ultimately said it was 292,000

that had been dropped off at drop boxes.

Q. As you sit here today, how many of those ballots have legal chain of custody?

A. Based on the documents provided, none.

MR. LIDDY: Your Honor, objection. Calls for conclusion.

MR. BLEHM: Rule --

THE COURT: Wait. Wait. You're asking her, according to her understanding from what she's

14:23:01 experienced and observed, what's her number?

MR. BLEHM: Yes, Your Honor.

THE COURT: Ma'am, if you can answer it, go ahead and answer it.

THE WITNESS: So we viewed all of the documents provided by Maricopa County in response to our request, and the answer is that none of the documents that they created meet the requirements from the EPM.

BY MR. BLEHM:

Q. You had the opportunity to talk to somebody from

14:23:31 Runbeck following this election; is that correct?

A. I did.

Q. All right. And did you have an opportunity to read that -- that Runbeck employee's declaration?

A. I did.

MR. BLEHM: All right. And so I would like

to -- let's see here -- 46, and while he's pulling this up, Your Honor, may I ask the Court a quick procedural question?

THE COURT: Go ahead.

MR. BLEHM: When we began this morning, Your Honor noted that it would be unduly difficult to get this many witnesses through. So it said it was going to admit the declarations with the exception of Kurt Olsen that were attached to the Complaint, Your Honor.

14:24:34 THE COURT: No, I didn't say that.

MR. BLEHM: Well, I'm sorry then. I misunderstood.

THE COURT: I know what I said, but I know where you're going. You want to admit those now.

MR. BLEHM: I would like to, yes, Your Honor, admit Leslie White and --

THE COURT: Ms. White.

MR. BLEHM: -- Denise Marie and Leslie White, and those are listed as Denise Marie is

14:25:01 Exhibit 46, Leslie White is Exhibit 47.

THE COURT: Okay. Yes, Mr. Liddy?

MR. LIDDY: Objection. Hearsay, Your Honor.

THE COURT: Very well. All of your objections were preserved. These are two of the ones that I had listed specifically this morning and told you

that I needed the numbers. Now, I have the numbers for, at least, two of these, okay? So your objections are all preserved, all three defendants have joined. They were in writing under the Rule 807 notice, and so over your objection, I'm going to admit 46 and 47.

MR. BLEHM: Thank you, Your Honor.

BY MR. BLEHM:

Q. Ms. Honey, the Runbeck employee, Denise, did she -- did she tell you that -- did she tell you about any
14:25:55 problems at Runbeck with respect to chain of custody?

A. Yes, she expressed her concern over the fact that the procedure that had been well-established throughout the election was not used for the large number of Election Day drop box ballots that were received.

MR. GOANA: Your Honor, I want object and move to strike everything that was said there while the declaration was admitted. Now we have this witness testifying about separate hearsay statements made by this Denise individual, who allegedly used to work at
14:26:26 Runbeck. This seems to me to be a separate issue from the admission of the declaration, itself, and I just want to clarify that the hearsay objection extends to any hearsay testimony that this witness will offer in addition to what may or may not be in the declaration.

MR. LIDDY: Your Honor, the County joins

that objection.

THE COURT: Which exhibit was it in, this is?

MR. BLEHM: This is --

THE COURT: Denise Marie, 46?

MR. BLEHM: Denise Marie, 46.

THE COURT: 46.

MR. BLEHM: Your Honor, I'm not asking any questions outside the scope of this declaration.

14:26:59 MR. GOANA: Your Honor, the declaration is in evidence. It's in evidence now, over our objection. This witness should not be able to repeat hearsay again in a sense, put Ms. Marie's words into her own mouth that Ms. Marie said them herself in her declaration. The Court can consider Ms. Marie's declaration giving it whatever weight it deems fit, but to have this witness repeat what is already hearsay again, I think is inappropriate.

THE COURT: Okay. We're not going to go

14:27:25 back and forth. Here's, I believe -- as I told Mr. Olsen earlier, the Court does not print out somebody an expert, but if they are testifying and they have an information, experience or -- or education beyond that of the trier of fact, it's instructive or informative, and this witness, I find, meets that. If she's relying

upon which she has just said to formulate her opinions, I'll let her do that. I understand the objection is that it's hearsay, but that's going to be something that you can cross-examine; for instance, if that's incorrect then your -- I'm not going to tell you how to cross-examine. You already understand all of that.

So, Mr. Blehm, proceed, please.

BY MR. BLEHM:

Q. Okay. So lack of chain of custody was one of her concerns?

14:28:12

A. It was.

Q. All right. You talked to Leslie White as well?

A. I did.

Q. Was lack of chain of custody one of her concerns?

A. Yeah, so Leslie was actually an observer at MCTEC on election night when the ballots were received back from the drop boxes, and her concern was that specifically the seals were being removed from the transport containers and the ballots inside were not counted. She, you know, that was a requirement as she understood it, and the fact that they were just taking those ballots out of the transport containers without counting them was -- was her primary concern.

14:28:44

Q. Okay. So we have two different people you have spoken to working in two different places, correct?

A. Correct.
Q. One is here at Runbeck, the third-party vendor, and one's here at MCTEC, right?
A. Correct.
Q. From MCTEC?
A. Um-hum.
Q. And both of them, both of them, are telling you there's no chain of custody on Election Day for ballots being transported from MCTEC to Runbeck; is that
14:29:28 correct?
A. Correct. They weren't following the legal requirements for chain of custody. So there were seals on the containers when they transported them, but the specific issues were that they were just cutting them open, taking the ballots out, putting them in trays without regard to how many, or there was no documentation. There were handbags and purses where they were processing the ballots, and that was --
Q. All right. With respect to -- with respect to --
14:30:14 sorry. I just lost my train of thought.
With respect to Denise White, Denise White, did she raise other concerns with you regarding potential vulnerabilities with our election system in Maricopa County?
A. Yes. So, I mean, two issues, right? So the

first one was that the trucks were coming with ballots that there was no -- no associated counts, right? So that was number 1. They just didn't know how many they were, should have had. So she was concerned about that; but then after the election, on the evening of November 9th, right -- so November 8th is Election Day, November 9th in the evening she was called by her supervisor and asked to go down to the system and actually pull the total number of ballot packets that
14:31:04 had gone through the system to provide a count to Maricopa County.

Q. Why?

A. Well, I --

MR. GOANA: Objection to foundation and hearsay on this one as well.

MR. BLEHM: I'll withdraw the question, Your Honor.

THE COURT: Thank you.

MR. BLEHM: Improper, I admit.

14:31:20 BY MR. BLEHM:

Q. Okay. And so she gets a call, she gets tasked with an assignment, a job, and that is to go find what the numbers are to report those to Maricopa County because they don't know?

MR. GOANA: Objection, Your Honor. Again,

foundation.

MR. BLEHM: Is that what she told you?

MR. LIDDY: County joins.

THE COURT: Great. What I told you before, I'm going to assume all the defendants join all the other objections you've made, okay, and your objection is speculation.

MR. GOANA: Your Honor, just foundation and speculation. And I just want to make clear that we have
14:31:54 a continuing objection to any of these continued hearsay conversations that this witness is relaying.

THE COURT: So noted.

MR. BLEHM: I'm almost done, Your Honor.

THE COURT: Pardon me?

MR. BLEHM: I'm almost done, Your Honor.

THE COURT: That doesn't take care of this question.

MR. GOANA: I was going to say, Your Honor, the question was what did she say and why, and now we're
14:32:12 getting into this witness's motivations which is now beyond hearsay and pure speculation and lacks foundation.

THE COURT: My understanding was it was calling for this witness to speculate about why Maricopa County did something, and so rephrase the question.

BY MR. BLEHM:

Q. Did this witness tell you that she was concerned about how Maricopa County was conducting operations with respect to drop-box ballots?

A. Yes.

Q. Okay. Did this witness, Denise, did she also tell you about possible vulnerabilities where people can inject ballots into this system?

A. Right. So what she said that Runbeck employees were permitted almost, like, it was a perk of employment to bring their ballots from home, so their ballots from home, their family members' ballots, bring them from home and add them to the inbound scans.

14:32:59

Q. Is that consistent with Arizona law?

A. No.

MR. GOANA: Objection, Your Honor. Calls for a legal conclusion.

THE COURT: You're asking for her understanding, correct?

14:33:25

MR. BLEHM: Yes, Your Honor.

THE COURT: Your understanding, ma'am, if you can answer it based on that.

THE WITNESS: I can. It is my understanding that ballots must be returned to an authorized drop-off location. Maricopa County publishes a list of those

authorized drop-off locations and Runbeck elections is not one of those.

BY MR. BLEHM:

Q. All right. Are you familiar with these social media posts I put up here?

A. I am.

Q. Okay. And this is -- these are Tweets by Maricopa County Elections Department, correct?

A. Correct.

14:34:01 MR. BLEHM: I'd move to admit these, Your Honor, Exhibit 63.

THE COURT: Mr. Blehm, can you bring those back up on the screen?

MR. BLEHM: Oh, I apologize. I didn't take it off.

THE COURT: Give the defendants a moment to look at it.

Any objection?

MR. LARUE: No objection.

14:34:56 THE COURT: Very well. That was 63. It will be admitted.

MR. LARUE: We're not sure about the number.

MR. LIDDY: I believe it's 70, Your Honor.

MR. BLEHM: It's 63.

Did I say that was Stephen Richer?

THE COURT: I'm looking at 63. I pull them up as you discuss them.

MR. BLEHM: 70 is Stephen Richer.

THE COURT: Which one?

MR. LARUE: Maybe it's misnumbered on the sheet we received.

THE COURT: Which one are we moving, Mr. Blehm?

MR. BLEHM: You know, I think I might have
14:35:36 written these down backwards, Your Honor. I'm going to move in Exhibit 70 and then we will --

THE COURT: Before you're going to get to 63, I think that you looked at 63, Defendants, correct? Did you have any objection to 63?

MR. LARUE: Your Honor, I have not looked at 63, but I did look at 70. And we have no objection to 70. Is this 63 right here? Just one moment.

THE COURT: Thank you.

MR. LARUE: No objection, Your Honor.

14:36:02 THE COURT: Are you moving 63 and 70 into evidence, Mr. Blehm?

MR. BLEHM: Yes, Your Honor.

THE COURT: They are admitted.

MR. BLEHM: Thank you.

BY MR. BLEHM:

Q. Okay. And so are you familiar with the Tweets that are up here from Stephen, Recorder Richer?

A. Yes.

Q. Is this where he was saying there were 275,000 ballots?

A. Yeah, there was a series of Tweets, sort of, after they -- the day after the election where he explains that they had processed all of the ballots and transferred them to Runbeck. And, again, it was 275,000 was the number he says, over 275, 275 plus. Obviously it's a round number, right, it's 000. So, you know, and not an exact count.

MR. BLEHM: May I approach, Your Honor?

THE COURT: You may.

MR. BLEHM: All right.

BY MR. BLEHM:

Q. In this Tweet, Mr. -- I'm sorry -- Recorder Richer says, last night from midnight to 5:00 a.m., we sorted those 275 plus thousand documents or ballots so they can be scanned in and imaged, captured at Runbeck?

A. Correct.

Q. Or signature captured; is that correct?

A. Yes.

Q. Okay. Does that indicate that those ballots that already had been sent to Runbeck at some point -- at

that time or at some point after?

MR. GOANA: Objection, Your Honor. Speculation and foundation. The Tweet speaks for itself. Mr. Richer was on the stand.

MR. BLEHM: I was going to withdraw the question.

THE COURT: Withdrawn. Thank you.

BY MR. BLEHM:

Q. Did they count these ballots before they put them in a truck and sent them to Runbeck?

14:38:01

A. There are --

MR. GOANA: Objection, Your Honor. Foundation again.

THE COURT: Which ballots? Rephrase, please.

BY MR. BLEHM:

Q. The 275 Mr. Richer is talking about?

MR. GOANA: Same objection.

THE COURT: I'm sorry. Rephrase the whole question for the witness, please.

14:38:16

MR. BLEHM: Okay.

BY MR. BLEHM:

Q. Do you have any evidence they counted these ballots before they put them in a truck, departed from the Maricopa County facility with ballots from Maricopa

County residents, and delivered them to a third party?

A. No, there's no record that they counted any of them.

Q. Thank you.

Did Maricopa County, knowing that we had these claims, come here with their exhibits saying, hey, look, no harm, no foul? Sorry we got them to you late?

MR. GOANA: Objection, Your Honor. Argumentative. Foundation.

14:38:56 MR. BLEHM: Yes or no?

THE COURT: Save it for close. Sustained.

BY MR. BLEHM:

Q. Did you, Ms. Honey, have a chance to review the documents that Maricopa County submitted as exhibits before this Court?

A. Yes.

Q. Did they provide those missing documents?

A. They did not.

Q. Did they provide any documents that allow them or

14:39:17 their witnesses to sit up here before this Court and do the math?

MR. GOANA: Objection, Your Honor. Speculation and foundation.

MR. BLEHM: She has reviewed the exhibits.

THE COURT: You can rephrase it by saying,

to her knowledge.
BY MR. BLEHM:
Q. To your knowledge, Ms. Honey, will they be able to put witnesses up before this Court and do the math, based on their own disclosures and exhibits?
A. No, to my knowledge, no. And I will, like, to also expand that we looked at the chain-of-custody documents that they did use on Election Day, which are those are called the precinct ballot reports, and the
14:39:59 precinct ballots reports are really the chain of custody for those voted ballots that come from the vote center on Election Day; and it also includes, by the way, a count of the Door 3 ballots. Those documents, which I have on one of these exhibits here --
MR. GOANA: Objection, Your Honor. I'm going to move everything the witness just said about the precinct-based ballots as being completely non-responsive to the question.
THE COURT: Re-ask the question. I'm too
14:40:40 busy trying to follow, take notes, and keep up with the two of you. Re-ask the question.
BY MR. BLEHM:
Q. Well, to use an old adage, that's a road we're getting ready to hoe, Your Honor. So we'll just start from scratch and then we'll go down that road.

So I believe we pulled up what has been marked as Exhibit 65. What is that document, Ms. Honey?

A. This is an example of a Precinct Ballot Report.

Q. Precinct Ballot Report. What are they?

A. These are the documents, according to the Maricopa County poll worker training and the poll worker manual, these are the documents that are used when they close the polling places to provide chain of custody for the voted ballots that are, you know, voted on Election Day. In addition to that, the poll worker training requires the poll workers to empty the drop boxes of all of the early voting ballots and place those in a container. And, of course, there's no counting of those ballots, there's nowhere on this form to record a number, is really the point of this.

14:41:36

Q. Thank you, Ms. Honey.

Anywhere in this form can you find -- well, I will withdraw that. Strike that.

Did you have a chance to review each and every one of these documents the County provided to you?

14:42:08

A. I did.

Q. You did. On any one of those for Election Day, did you see any documentation of drop box ballots and the number of ballots contained within the drop box?

A. Definitely not the number of ballots. The seal

numbers that were put on those containers are on here, but there's no ballot counts.

Q. All right. And so if I look at the vote totals for tabulator 1, 494 in this example, and tabulator 2, 384 in that example, that's how many ballots were contained in the black bags; is that correct?

A. Correct. If they followed the procedure, the misread ballots, the 101, would have been transported separately in that blue tote as well.

14:43:04 Q. All right. If -- if Recorder Richer hypothetically were to testify that, oh, no, I'm not responsible for drop boxes on Election Day, would that be accurate?

A. It's my understanding, according to the EPM, that it specifically makes the Recorder or the Recorder's designee responsible for the secure retrieval of ballots deposited in drop boxes. So it would be my understanding that that applies to Election Day. There is no exception to the requirements for Election Day.

14:43:46 MR. BLEHM: All right. Thank you, Ms. Honey. Now, I forgot what Exhibit it is, Your Honor. Exhibit Number 65, I move it into evidence.

THE COURT: Any objection?

MR. LARUE: No objection, Your Honor.

THE COURT: 65 is admitted.

MR. BLEHM: Thank you.

BY MR. BLEHM:

Q. You had an opportunity to review some of Recorder Richer's e-mails, is that not correct?

A. Yes.

Q. All right. And I'm looking for them on my list right now, but --

A. They are on the PowerPoint.

Q. What?

14:44:38 A. They are on the PowerPoint.

Q. Oh, they are on the PowerPoint. Thank you, Ms. Honey.

Did you want to finish your PowerPoint? All right. I just -- don't want -- I don't want Ms. Honey to be duplicative for the Court.

A. Sure.

MR. BLEHM: But you -- I do kind of want to -- I think Recorder Richer's e-mail is exceptionally important, and I believe I moved this into evidence

14:45:15 earlier, Your Honor?

These are 69, Your Honor.

MR. LIDDY: This morning, Your Honor.

MR. BLEHM: Go to the last page of this Exhibit.

BY MR. BLEHM:

Q. Ms. Honey, aside from making guesses, did Recorder Richer, based on documents, really know exactly how many ballots Maricopa County had in its possession?

MR. LARUE: Objection. So it calls for her speculation, and Recorder Richer was on the stand this morning. He could have asked the Recorder that.

MR. BLEHM: I believe I did, Your Honor. My question was related to based on County documents, does Recorder Richer have any clue as to how many ballots he has aside from an estimate based on County records.

14:47:08

MR. LARUE: And I make the same objection that it calls for speculation, Your Honor, as to what Recorder Richer, how he understands County documents.

THE COURT: Right. I believe the question can be phrased in terms of does any of the documentation show or provide a method where someone, County person, would know.

BY MR. BLEHM:

Q. Does any of the documentation show that Recorder Richer had any idea how many ballots he had on Election Day other than, you know, mere guesses?

14:47:35

A. No.

Q. The exhibit on the board, what does that say?

A. It's an e-mail from Stephen Richer, it looks like it's Thursday, the 10th, so two days after the election.

And he says he's unable to reconcile, basically, there's a 15,000 difference somewhere, and...

Q. Unable to reconcile. The number he throws out is 15,000, right?

A. Correct.

Q. I don't know where these come from. Is that any way to run an election, Ms. Honey?

MR. GOANA: Objection, Your Honor, to the extent the editorial comment was embedded in the question. It should be stricken.

14:48:29

THE COURT: Which part of the question?

MR. GOANA: Your Honor, I can't even remember what the exact wording was, it was --

MR. BLEHM: I can't either, Your Honor. It's been a long week.

MR. GOANA: Maybe Mr. Blehm could re-ask the question, we can avoid --

MR. BLEHM: I don't remember what it was. I don't know how I'm going to re-ask it.

14:48:50

THE COURT: Go ahead.

MR. BLEHM: All right. Ms. Honey, thank you. I don't have any further questions at this time.

Oh, really quickly, before I -- before I stop, I want to move in Exhibit 69, Your Honor.

THE COURT: Any objection to 69?

MS. KHANNA: I think it was already admitted this morning, but I don't believe we have any other objection.

THE COURT: You're correct, it was admitted this morning.

MR. BLEHM: Okay. Very good. Thank you, Your Honor.

THE COURT: All right. Thank you.

MR. LARUE: Just one moment, Your Honor. Hold on one second.

14:49:46

THE COURT: I think that we should be taking an afternoon break for the sake of my court reporter's carpal tunnel syndrome, if we don't. And so I would rather take a break now than start and take a break in ten minutes. So let's recess for -- I'm not going to do the math, whatever until 3 o'clock, we'll come back at 3:00 and resume with the cross-examination, okay. We're off the record until then.

(Recess taken, 2:50 p.m.)

15:00:31

(Proceedings resume, 3:00 p.m.)

THE COURT: We are back on the record in CV2022-095403. This is Lake v. Hobbs, et al. Present are the parties, their representatives and counsel. We have Heather Honey on the stand remaining under oath, and we're ready to begin the cross-examination. You may

proceed whenever you're ready, Mr. LaRue.

MR. LARUE: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. LARUE:

Q. Good afternoon, Ms. Honey.

A. Good afternoon.

Q. Thank you for being here today, this trial. I know that all the parties appreciate your attendance. I just have a few questions for you.

15:01:09 It's obvious to me that you've done a lot of work to try to understand elections and that's, you know, more than what a lot of citizens do. But would you agree with me that election law is a complicated area of law?

A. I would agree with that.

Q. Okay. And there are a lot of complexities to running an election, would you agree with that?

A. Yes.

Q. Okay. Have you ever taken the Election Officer

15:01:39 Certification course that's offered by the Secretary of State?

A. I have not.

Q. Okay. Have you ever worked as an election official in Arizona?

A. No.

Q. Have you ever worked as a poll worker in Arizona?
A. No.
Q. All right. Have you ever been an observer at MCTEC, observing the processes there? And by observer, I mean an Election Day observer or a ballot count observer, an observer and in an official capacity at MCTEC?
A. No, I've never been a credentialed observer at MCTEC.
15:02:14 Q. You've been to MCTEC, correct?
A. Yeah, sort of.
Q. Sort of?
A. I've not gotten a tour, if that's what you mean. I mean, I've been there, but I haven't gotten a tour.
Q. Okay, all right. Now, you testified that you didn't receive certain forms in response to your public records request, correct?
A. Correct.
Q. Okay. And is it fair to say that because you
15:02:42 didn't receive those forms, you're assuming that they do not exist?
A. No, quite the contrary. I know they exist. They exist in more than one copy. I know that they exist at Runbeck, because I've seen photographs of them, so I -- I know they exist. And, in fact, the e-mail

correspondence between the attorney for -- for Ms. Lake and the -- your office was that, hey, if you can't find yours, your copy, could you get the copy at Runbeck for us.

Q. So you know the forms exist, they just haven't been provided to you?

A. They haven't been provided in about three weeks.

Q. Okay. And, Ms. Honey, I will let you know that we -- we believe you're being honest that you don't believe you've received them. We take a different position. Do you think it's possible that you were provided them and you simply missed them in the large stack of documents that you were offered to review?

A. Absolutely not.

Q. Okay. All right. Have you ever -- sorry. Have you ever observed the ballot pickup at the post office when the Maricopa County employees come, the Election Department employees come and pick up the ballots to transport to Runbeck? Have you ever been there to observe that?

A. I'm sorry, when they pick up the ballots at the post office?

Q. At the post office.

A. No, but I did actually speak to three people at the Phoenix postal facility.

Q. But you've never personally observed that?
A. I have not personally observed, no.
Q. Okay.
MS. KHANNA: Your Honor, I apologize for interrupting, but I believe we have the rule to exclude from the courtroom any testifying non-expert witnesses, and I believe one of those witnesses just entered. Mr. Sonnenklar, I believe.
THE COURT: I have to rely on counsel for that.
15:04:34
MR. SONNENKLAR: What's the question?
MR. OLSEN: You need to leave.
THE COURT: He's been sitting there for the last hour.
MR. OLSEN: I did not see him, Your Honor. I was focused this way.
MS. KHANNA: I believe the attention was brought to opposing counsel and he thought it was Mr. Baris, but it was not.
15:04:59
THE COURT: I don't know who the gentleman is. I wasn't privy to your conversation. I just know that gentleman has been sitting there for the last hour plus. But, so... I don't believe it was intentional. I believe you're like me, you're intent and focused on what's in front of you. So I'm not casting any

aspersions. I'm just -- let's be all more astute, I guess. That's the best I can do.

Thank you for pointing it out.

MS. KHANNA: Thank you, Your Honor.

THE COURT: Go ahead and proceed.

MR. LARUE: Thank you, Your Honor.

BY MR. LARUE:

Q. Now, Ms. Honey, I believe you testified earlier, correct me if I have this wrong, but I believe you

15:05:41 testified earlier that the United States Postal Service provides an exact count of the ballots that are picked up by the Elections Department staff. Was that your testimony?

A. So I think what I said was that in the trays, they include a receipt, which basically is, like, a bill, how many ballots were -- and it includes, like, the total amount of postage on that form, and it's actually tucked into the trays. I have some photographs of that as well.

15:06:09 Q. Okay. And you said they put it in. You mean United States Postal Service employees?

A. That is my understanding.

Q. Prepare the receipt and put it in.

Okay. And is it your understanding that that receipt includes an exact number of ballots for that

tray?

A. I don't believe it's for the tray. I think it's for the entire, like, pickup.

Q. For the entire pickup?

A. Right, so however many trays are included. It's not a one for one, like, this is how many are in this tray. I think it's the whole, that's my understanding.

Q. Would it surprise you to learn that the United States Postal Service actually weighs the trays and
15:06:48 makes an estimated determination based on the weight of the tray?

A. Well, that would, I mean, obviously that's a great way to do it. Weight counting is a very effective way of method of counting paper.

Q. Okay. Thank you.

I want to talk to you for just a minute about the woman who, I believe, is identified as Denise Marie.

Do you know who I'm speaking about?

15:07:11 A. I do.

Q. Okay. And I believe you testified that she was an employee at Runbeck; is that right?

A. She still is an employee at Runbeck.

Q. Okay. Do you know how long she's been employed there?

A. I think probably close to a year, but you'd have to look at her declaration just to be certain. I'm not 100 percent sure.

Q. Okay. Do you know what her position is?

A. I know what her position -- well, no.

Q. All right. I want to talk with you about Leslie White. And, again, when I say Leslie White, you know to whom I'm referring?

A. I do.

15:07:57 Q. Okay. I believe you testified that she was an observer at MCTEC; is that correct?

A. Correct.

Q. Do you know whether she was a first-time observer, whether she was a repeat observer, what her background is with regard to the observation process?

A. I believe she said that that was the first time that she had been credentialed to observe that particular process, right. So that was a little bit different than, like, the MCTEC observers who are

15:08:26 watching, say, signature verification, for example, which I believe she -- she also witnessed that process. But this was unique in that she was credentialed to watch that sort of incoming close-of-election-night process.

Q. But your belief is she was a first-time observer?

A. I believe that was the first time she observed that process, if that's what you're asking. I'm sorry.

Q. No, no, no. That's fine.

Did she, by any chance, mention to you that from her assigned location where she was at she did not have a clear view of the activities on the truck or on the dock?

A. Right.

Q. Okay. Do you agree with me when I say that
15:09:16 Leslie White did not actually say in her declaration that she was worried that ballots were not being counted, that she didn't actually say that, I'm worried that ballots are not being counted?

A. Are you asking if that was -- if those were her words specifically in her --

MR. BLEHM: I'm going to object, Your Honor. The declaration speaks for itself.

THE COURT: You can ask the question related to the -- to this, her -- her statement; but I thought
15:09:51 there was testimony as well about conversations with people. So re-ask it, Mr. LaRue.

BY MR. LARUE:

Q. Would you agree with me that Ms. White, Leslie White, never actually said in her declaration or to you that she was worried the ballots were not being counted?

A. She most certainly said to me that she saw the seals being removed, the transport containers being opened, and that there was absolutely -- that's in her words -- absolutely no counting of the ballots. They were simply picking them up out of the transport container and putting them into trays and then putting those trays onto, like, what she was calling a cage or a cart, and that they were just moving these through. She was concerned about that.

15:10:43 Q. So in her declaration, she doesn't say that. She says, and I'm wondering if she said any of this to you: She was concerned with the disorganized way the ballots were being handled. She said, I did not see any person count any ballots or record any information. I didn't see it, but she didn't say it didn't happen.

When she spoke with you, did she talk about what she saw and what she observed, or was she making statements beyond that?

A. So I think you're mischaracterizing what she

15:11:20 said. But if you would like me, if you have a copy of her statement, I'd be happy to point out what I'm -- what I'm talking about.

Q. It's all right. We'll move on.

A. Okay.

Q. I want to talk about -- I want to come back to

Denise Marie. You testified that, I believe, you testified that she told you that Runbeck had -- well, Runbeck allowed or maybe it just happened -- I don't remember exactly what you said. But employees brought in ballots from home.

Do you remember talking about that?

A. Yes.

Q. Okay. And Denise Marie was concerned about that, correct?

15:11:58 A. Denise was concerned that this -- that this was, basically, announced as though it was a perk of working at Runbeck and that they were permitted to do it. She thought it was, you know, in her conversation with me, she thought it was, you know, questionable practice, but -- but that, you know, people did it. She saw people do it.

Q. Did she tell you how many people or how many ballots she estimated might have -- might have been subject to this?

15:12:27 A. Yeah. So she said she personally saw at least 50 that were brought in by employees and added at that point.

Q. Okay. Thank you.

Now, continuing on with Denise Marie, there was some back and forth between Mr. Blehm and someone

for the defense counsel and some objections were lodged, and so I'm not sure if you ever answered the question Mr. Blehm asked. I believe he asked you if it was true that Denise Marie was asked to go get a ballot count because Maricopa didn't know.

Did you answer that question? Do you have knowledge as to whether Denise claimed that she was asking to do get a ballot count because Maricopa didn't know?

15:13:23 A. I don't believe that's what she said.

Q. Okay. Very good.

A. But to clarify, I mean, she was asked to go get a count and report it back so that they could call Maricopa and say, hey, this is how many ballots we scanned, and subsequently the number that the County was reporting increased by the same difference, you know. He was reporting 275, she counted the actual number of inbound scans, reported 298, and subsequently the number that Maricopa was reporting as the total ballots in the

15:14:01 election increased by 25,000.

Q. Let's talk about that for a minute.

In your experience, just based on your knowledge in working with elections, is it typical for elections departments to do reconciliation of ballots and make sure that they have the numbers right?

A. Reconciliation should happen in multiple different places. For example, you reconcile the number of voters who check in to a vote center to the number of ballots cast in a vote center. Those types of reconciliation are incredibly important.

Q. Okay. And -- let's move on from that. I want to talk about what happens at Runbeck. Do you know what happens to the ballots actually at Runbeck, what the Elections Department and Runbeck employees do with the

15:14:55 ballots there?

A. Yes.

Q. What do they do?

A. So they run -- they load the ballots on the inbound machine, and the inbound machine, by the way, is only operated by Runbeck employees, so they load them on, and they go through and they cut them off at about a 10, 11,000 batch size. At that point they stop, they create the paperwork for that particular, you know, batch of signature verification files, right. So they

15:15:24 are scanning the signature on the envelope. They are creating a file for that, that is then transmitted to Maricopa County so that they can start that signature verification process.

Q. All right. So they go to Maricopa County to start the signature verification process. Is it your

understanding that before a ballot, an early ballot, is tabulated, the Elections Department has to examine the signature and determine whether the signature matches the signature in the voter registration file?

A. I'm sorry. Can you repeat that question?

Q. Yeah. Is it your understanding that before an early ballot is tabulated, the Elections Department looks at the signature on the affidavit envelope and must determine whether it matches a signature in the voter registration file for that voter before it's going to go to tabulation?

15:16:18

A. Yes.

Q. Okay. So if employees at Runbeck put ballots into the stream at Runbeck, now, let's say hypothetically that did happen, is it your understanding that those ballots would then go to MCTEC to be signature verified?

A. Well, to be clear, the ballots don't go for signature verification, the ballot images do. And, yes, when they go through the inbound scan, they would be, but I don't believe that that's the point. The point is is that Arizona law says they are invalid ballots if they are not returned to an authorized location. So that's an opportunity to insert ballots, and if Maricopa County was aware of the precise number of ballots, then

15:16:53

if they inserted two, they would know they inserted two.

Q. So if Arizona --

MR. BLEHM: Your Honor, I'm going to object to this line of questioning. This Court would not let us come before it with evidence of signature verification. We wanted to, and now he's going right down that road, Your Honor. And if he keeps going down this road, I'm going to ask for a couple days next week to come to this Court and talk about signatures.

15:17:41 THE COURT: You mean about the process?

MR. BLEHM: The process is part of it, Your Honor, and he's talking exclusively about process. Her direct examination, Your Honor, was limited to talking about chain of custody with respect to drop box to Runbeck and not beyond that point. And so, Your Honor --

THE COURT: I understand.

MR. BLEHM: -- if that door was still open, I'm more than happy to drive a truck through it.

15:18:14 MR. LARUE: May I respond, Your Honor, or do you want to rule?

THE COURT: Go ahead.

MR. LARUE: All right. My response would be the road I'm driving down is a different road, I think, than Mr. Blehm wants to drive his truck. I'm talking

about what actually happens, and I'm talking about it from the limited perspective of understanding what the effect of these votes that might have been -- may have been inserted at Runbeck may actually be. I'm not really talking about the signature verification process itself. I'm simply talking about what happens to a ballot that is at Runbeck as it moves through the system.

MR. BLEHM: Your Honor, may it please the
15:18:56 Court, I'll stipulate that those 50 ballots they talked about got counted; but I'll also do so only in the understanding, Your Honor, that that is a concession by defendants that it is possible to inject illegal ballots into the system.

MR. LARUE: Your Honor, may I respond one more time?

THE COURT: Well, he's offered to stipulate is out there.

MR. LARUE: I understand. But I think this
15:19:22 needs to be cleared up. Mr. Blehm is making a legal argument that ballots that are harvested are illegal ballots and should not be counted. That's a legal argument.

MR. BLEHM: Your Honor, I don't believe -- I don't believe in my direct examination of this client I

ever even said the word "harvested." Now, more than happy to talk about it, and as a matter of fact, I believe it was defense counsel who brought up *2000 Mules*. I haven't said anything about it, Your Honor. I'm talking about chain of custody, the legal documents this County has --

MR. LARUE: Your Honor --

MR. BLEHM: -- to prove how many ballots they picked up from drop boxes and took to Runbeck.

15:20:09 THE COURT: Right.

MR. LARUE: Let me change my statement. I understand it may have inadvertently irritated Mr. Blehm. I didn't mean to do that with my choice of words, and I apologize.

THE COURT: Well, it's not about irritating Mr. Blehm, it's just about making sure we get it right as far as what's allowed to go into, so if you want --

MR. LARUE: Let me amend my statement.

What I was attempting to say was that Mr.

15:20:33 Blehm is making a legal argument that a ballot that is not deposited into the United States Postal Service mail or dropped off in a drop box is an illegal ballot, I believe is what he said, and that's a legal argument.

THE COURT: No, I think we're talking about chain of custody, if we could distinguish things, and he

did discuss chain of custody very thoroughly with this witness. I believe I understand what you're asking about, but he's correct that what you're discussing is the process for validation of signatures as it would relate to possible injection of ballots into the system without the chain of custody accounting for them.

Have I got that right, Mr. Blehm?

Did you listen to what I said?

MR. BLEHM: I did, Your Honor, but I'm kind of hard of hearing.

15:21:23

THE COURT: Well, I'm speaking soft maybe. Do you want me to say it again?

MR. BLEHM: Probably a combination of both, if you would, please. Sure.

THE COURT: If I understand your objection, Mr. Blehm, it's that you've limited your direct examination to chain of custody and what is being talked about here by Mr. LaRue. The questioning is to elicit testimony about the handling of ballots that might violate the chain of custody if they are into the system and why those ballots would still be subject to verification through the signature validation process, regardless of how they came in. Your point is that you are saying, wait, it's only about the chain of custody and if it violates the chain of custody. That's the

15:21:55

analysis that you're -- end of story. That's where it goes.

MR. BLEHM: What I'm saying is, Your Honor, the direct examination was about chain of custody and the importance of chain of custody.

THE COURT: Got that.

MR. BLEHM: So that there are no points of access of illegal votes into the system.

THE COURT: Well, he's taking issue with the word "illegal," and he's talking about the legal argument. What you're talking about that there's not -- that there are votes that are not accounted for under the chain of custody that are placed into the ballot system or the election system. And go ahead.

MR. BLEHM: I didn't go down that road, Your Honor. It's illegal for a county elections official not to do a job they are legally required to do. So if we want to talk about illegality, we can go into that point.

THE COURT: I understand your point, but I guess you're objecting to Mr. LaRue going into his argument that separate and apart from your position there that if, in fact, ballots were somehow put into the system in this instance, I think we're talking about the Runbeck ballots.

MR. BLEHM: And, Your Honor, that's fine. I'll let him go down this road, because it's my understanding what he's saying is -- doesn't matter, their ballots were counted. So I'll let him go down this road, Your Honor, but I'm going to reserve my argument.

THE COURT: Well, certainly. And I'm going to talk to you all about closing arguments at the end of the day today.

15:23:51 MR. BLEHM: Thank you, Your Honor.

THE COURT: Mr. LaRue, go ahead.

MR. LARUE: Thank you, Your Honor.

BY MR. LARUE:

Q. Just a few more questions, Ms. Honey.

You're not an attorney, correct?

A. No.

Q. Okay. So I'm going to ask you a legal question, but you only have to answer if you have an understanding about it. If you don't have an understanding, it's

15:24:12 perfectly fine to say "I don't know."

Are you aware that under Arizona law a ballot is not actually unlawful if it is -- the term that's used sometimes is harvested or ballot collection -- but if somebody who is not authorized to handle it deposits it, or like what happened at Runbeck, if somebody brings it

and inserts it into the stream but not into a designated authorized drop box, are you aware under Arizona law that is not actually an unlawful ballot?

A. I think the term in the law is an invalid ballot.

MR. LARUE: Okay. Just one minute, Your Honor.

No more questions. Thank you very much, Ms. Honey.

THE COURT: Okay.

15:25:17 MR. GOANA: Your Honor, can we have a moment to confer on this side to see if we have any questions?

THE COURT: Yes, you may.

BY MR. GOANA:

Q. Good afternoon, Ms. Honey. My name is Andy Goana. I represent Secretary Hobbs in her official capacity. I want to echo Mr. LaRue's thanks for being here today. I'm going to be -- and I may surprise Judge Thompson as well, I'll be very brief.

First of all, as you sit here today, you have no 15:25:47 evidence that anybody intentionally interfered with the chain of custody of ballots in Maricopa County for the 2022 General Election, do you?

A. Well, I don't think I said that anybody interfered with it. I said they failed to maintain their legally required chain of custody.

Q. So your answer to my question then is, yes, you have no evidence that anybody intentionally interfered with the chain of custody for ballots cast in Maricopa County for the 2022 General Election, correct?

MR. BLEHM: Asked and answered, Your Honor.

THE COURT: Well, I didn't hear it, so if you can answer. If you understand it, ma'am, you can ask it -- answer it -- excuse me. If you need it rephrased, I'll have him rephrase it.

15:26:25 THE WITNESS: Well, I think you're asking a question and sort of saying it in a way that I didn't say it. So if you would ask it in, maybe, a different way, that would be good.

BY MR. GOANA:

Q. Sure. You have no evidence that anybody intentionally did not obey the law with respect to the chain of custody in -- with respect to any ballots cast in Maricopa County for the 2022 General Election?

A. I believe I understand your question.

15:26:54 Q. Okay.

A. And I would say that somebody, a person, and it's my understanding that the Recorder is responsible for maintaining chain of custody, somebody made the decision not to do it. And I would say that when they made that decision, knowing what the law is in Arizona, that that

was an intentional decision.

Q. I'm sorry, Ms. Honey. That's not what I'm asking. What evidence -- you have no evidence that anybody made an intentional decision to do anything here, correct?

A. Well, I think --

MR. BLEHM: Asked and answered.

MR. GOANA: Your Honor, I think this is a yes or no question.

15:27:28 THE COURT: Yes, it is, if you understand the question. If you don't understand it, ma'am.

THE WITNESS: I don't understand the question. I think I felt like I answered it, so I'm sorry. I don't understand.

BY MR. GOANA:

Q. Okay. Other than the 50 ballots or so that were mentioned in one of the declarations about family members at Runbeck, you have no evidence that any other ballots were quote, unquote, injected into the system at

15:27:51 any point in time, correct?

A. Well, unfortunately because of the failure --

Q. I'm sorry, Ms. Honey. Again, it's a yes or no question. Other than those 50, you have no evidence of that, correct?

A. Can you ask the question in a different way?

Q. Certainly.

There was some discussion earlier that the employee at Runbeck told you, and it's reflected in her declaration, that she estimated that approximately -- there were approximately 50 ballots of either Runbeck employees or Runbeck employee family members who dropped off their ballots at the Runbeck facility; is that correct?

A. Correct.

15:28:27 Q. Okay. And my question is: Beyond what that particular person told you with respect to those approximately 50 ballots, you have no evidence that any other ballots were quote, unquote, injected into the system at any point in Maricopa County for the 2022 General Election; is that correct?

A. I could say that's not an answerable question.

Q. As you sit here right now, you have nothing else to say on that issue beyond the 50 ballots that were specifically mentioned to you by that individual,

15:28:57 correct?

A. No, I have something to say.

Q. No, I'm asking about evidence. Do you have evidence?

A. Yes, I think that the failure to have chain of custody makes it impossible to know how many ballots

were or were not transferred.

Q. But as you sit here now, the only ones you know about are the 50 that were mentioned to you by the one witness, correct? The only identifiable ballots that you can speak to today are the 50 that were mentioned by the Runbeck witness?

A. I can't identify those 50. I don't know who they are.

MR. GOANA: Okay. Thank you. I have
15:29:29 nothing further, Your Honor.

THE COURT: All right. Done with cross?

MR. LARUE: Yes, Your Honor. I'm sorry. We have no further questions, and we have no objection to the witness being excused.

REDIRECT EXAMINATION

BY MR. BLEHM:

Q. Ms. Honey, do you recall the last question you were asked?

A. Yes.

15:29:59 Q. All right. Is your point that it is impossible to know if any and/or how many illegal votes were injected into a system without valid chain of custody?

A. Correct. You can't tell how many potentially were added or how many were removed even. I mean, that's the whole point of chain of custody, to have that

sort of security and that -- without chain of custody, there's -- there's no way to know and, you know, coupled with, you know, the sort of changing numbers, it's very concerning.

Q. All right. Defense counsel asked you if there was any evidence of intentional conduct.

Do you recall that?

A. Yes.

Q. All right. If I hypothetically have a choice to get a cup of coffee or a cup of water, and I choose coffee, I didn't choose water, do I have a choice?

15:30:53

A. Yes.

Q. Did somebody choose, A, either not to make these documents or, B, to produce them to my client's attorney?

MR. GOANA: Objection. Calls for speculation. Foundation.

THE COURT: I'm assuming you're asking the witness to the extent of her knowledge.

15:31:25

MR. BLEHM: To the extent of your knowledge, Ms. Honey. Yes, I am.

THE COURT: Go ahead.

THE WITNESS: I forget question again.

MR. BLEHM: I forget these real quick, Ms. Honey.

THE WITNESS: Me too.

BY MR. BLEHM:

Q. And so, Ms. Honey, A or B, to the extent of your knowledge, would it be an intentional act for somebody to choose not to make chain-of-custody documents to count the number of ballots, or would it also be an intentional act to choose not to produce the documents that had been created?

A. Well, again, to the extent that they didn't count them, I think that there's no reason to believe that they -- that they did count them or any documents exist. I believe somebody made a decision not to maintain the chain of custody and not to follow the laws as they are written in the EPM. Somebody had to decide that.

15:32:05

Q. Just as I chose to come to court today instead of stay home on the sofa, I made a choice. Thank you.

They have a legal requirement, don't they, to choose to make these documents. They don't have a choice not to make them, do they?

A. Right. There's no exception in the EPM to -- to --

15:32:36

Q. I believe it was -- I believe wasn't it -- where's my exhibit list? I believe Secretary of State Hobbs, as a matter of fact, in a recent matter involving Cochise County, and I think we got correspondence on

that as an exhibit, and did you see correspondence from Secretary of State Hobbs --

A. I did.

Q. -- to Cochise County?

A. Yes.

Q. What did she tell them in that correspondence with respect to Arizona law and EPM?

MR. GOANA: Objection, Your Honor. This is beyond the scope of the cross-examination or the direct at this point, and irrelevant. 15:33:19

MR. BLEHM: It is not, Your Honor. They asked my client specifically if she had any evidence, and I want to make the point, Your Honor, that even their client says you have no -- you have no choice. You must follow the law. When she told Cochise County, you just certify your election, Your Honor.

THE COURT: They are two different --

MR. BLEHM: She said it in her letter.

THE COURT: Just to clarify, I'm not sure what the letter says that you're referring to. It says you must what? 15:33:58

MR. BLEHM: She told the Board of Supervisors for Cochise County that they have no choice but to do their legal duty.

THE COURT: Oh.

MR. BLEHM: And certify the election to make her Governor of the State of Arizona.

THE COURT: And that --

MR. BLEHM: My argument here, Your Honor, that that same legal duty applies to Maricopa County with respect to their obligation to follow Arizona law and the Elections Procedure Manual.

THE COURT: No, okay. You are correct, they are obligated to follow the procedures in the manual; but the question that was asked is whether she has any direct evidence that there was an intentional decision to not make the documents or not produce the documents is what I recall.

15:34:40

MR. BLEHM: Okay.

THE COURT: And she didn't answer it directly. What she said in response was they are supposed to do this, and the fact that it didn't get done tells me somebody must have made a decision, and that was the answer. So I think it's been asked and answered. To the extent that you're going to ask her about it, a conclusion of law, that's --

15:35:10

MR. BLEHM: Fair enough, Your Honor.

THE COURT: -- not appropriate.

MR. BLEHM: I only got a few more questions anyway.

THE COURT: Please proceed, Mr. Blehm.

BY MR. BLEHM:

Q. I think if you'll recall cross-examination correctly, I got the impression that defense counsel was sort of downplaying the injection to 50 ballots into the system.

Do you recall those questions?

A. I do.

Q. I believe they were -- do you have any evidence

15:35:44 those 50 votes were not counted or something along those lines? Do you recall that question?

A. I do.

Q. Okay. You don't have any evidence that those votes were not counted, do you?

A. I don't know which ballots those were.

Q. Okay. Is that the point?

A. That is the point. I mean, Denise said that she observed -- personally observed 50. She's not there all the time, so we don't know what that number is. And the

15:36:13 reason we don't know what number that is is because we don't know how many there were supposed to be.

Q. Right. Could it be 5,000?

MR. GOANA: Objection, Your Honor. Speculation, foundation.

MR. BLEHM: I agree, Your Honor.

THE COURT: That's your point. That's your point, so sustained.

MR. BLEHM: Can't blame a guy for trying.

BY MR. BLEHM:

Q. That's all we can do, isn't it, Ms. Honey, is speculate, isn't it?

A. Well, I strongly dislike speculating, but I think there's just no way to know the answer, and that's the problem, there's no way.

15:36:52 Q. Any question I ask you about how many ballots it could have been would be nothing but pure speculation; isn't that right?

A. Correct.

Q. And isn't that the problem? You testified earlier and this gets back to, you know, their questions about chain of custody being complicated.

Do you recall that?

A. Yes.

Q. Is it complicated?

15:37:13 A. I mean, it's more complicated in Maricopa because they outsource it, but, you know, chain of custody is chain of custody. I want to know how many ballots I'm transferring from point A to point B and, you know, if you understand, the EAC says it's incredibly important. It's critical for --

Q. Now, let's go back to your history and your background just very briefly so I can wrap this up. Supply chain management, what do you do in that area?

A. I do consulting in the supply chain space, again, a lot of it is counter-diversion, but it's also in terms of loss prevention.

Q. Okay. Loss prevention, all right.

And so do companies pay -- and let's talk about widgets, because everybody likes widgets. Do companies pay millions of dollars every year to consultants to help them with their supply chain management?

MR. LARUE: Your Honor, I'm going to object. It seems to me this is beyond the scope of the cross-examination.

THE COURT: It is.

MR. BLEHM: Your Honor, he asked her specifically -- specifically he asked her is chain of custody complicated.

MR. LARUE: Your Honor, I don't believe that was my question.

THE COURT: Hold on.

MR. BLEHM: My argument is this, Your Honor --

THE COURT: Wait. I'm not in the habit of

debating objection and rulings of objections.

MR. BLEHM: Understood. I was just going to make a legal argument.

THE COURT: Which is an argument with a Judge about the ruling on the objections.

MR. BLEHM: Oh, no. I'm not trying to argue with the Judge. I want to make a challenge to his objection.

THE COURT: It may be a distinction without a difference, Mr. Blehm.

15:38:54

MR. BLEHM: All right. Thank you, Your Honor.

THE COURT: But if you're ever in a position where I make a ruling and you think that you need to make an offer of proof to show that I may be mistaken, I will let you do that, okay, but not back-and-forth --

MR. BLEHM: Understood.

THE COURT: -- argument, okay? So I've --

MR. BLEHM: I'd like to make a quick offer of proof right now, Your Honor.

15:39:16

THE COURT: Then go ahead and do that.

BY MR. BLEHM:

Q. Heather Honey, do companies spend millions of dollars a year --

THE COURT: Wait. You're just continuing

the questioning?

MR. BLEHM: Okay.

THE COURT: As far as an offer of proof, I want you to tell me what you expect to prove and how that would make a difference with regard to my ruling. That's what an offer of proof is.

MR. BLEHM: I guess, Your Honor, I would expect to prove that -- that, you know, companies, big companies spend millions of dollars every year, you
15:39:47 know, to get 5,000 widgets to your local Ace Hardware store, and they do it successfully.

THE COURT: I'm not arguing -- wait -- I'm not arguing the concept. I'm arguing that whether or not your offer of proof is going to show me that this is something that was touched on in his cross.

MR. BLEHM: Understood, Your Honor. And I'll just move on to my last -- my last point.

BY MR. BLEHM:

Q. You were a part of the 2021 Arizona election
15:40:15 other than that, correct, Ms. Honey?

A. I was.

Q. And this is relevant to Mr. LaRue's question to you about the postal service receipts. You recall that question?

A. I do.

Q. Okay. And Mr. LaRue was telling you -- well, those aren't really receipts, are they? Are those are weights; isn't that true?

A. I believe Mr. LaRue asked if it was possible that they were weight counts.

Q. Okay. And are weight counts a valid tool to count paper documents?

A. Yes.

Q. Okay. Why is that?

15:41:00 A. Scales are precise and you can determine the weight of a single sheet of paper. You can determine the weight of a single ballot and then weigh it. And, you know, you're within -- it's a pretty accurate measurement. That's how -- that's what weight counting is.

Q. Let me ask you this question: Did -- during the 2021 audit, did you and your crew weigh all of the ballots?

MR. GOANA: Objection, Your Honor.

15:41:34 Relevance.

MR. BLEHM: I'm getting to my relevance.

THE COURT: I'll give him some leeway. Go ahead. If you can answer it, ma'am. Go ahead.

THE WITNESS: We didn't weigh all of them, no. We weighed some boxes.

BY MR. BLEHM:

Q. Okay. Now, the boxes that you did weigh, was the weight count consistent with the other counts?

A. Yes.

Q. How many counts did you do? Different counts?

A. I can't say. I mean, half maybe.

Q. The machine count, right?

A. Oh, oh, I'm sorry. I didn't understand your question. Yes, there was a hand count, a weigh count, a machine count, and in some cases, an audit count, and then there was a count of ballot images as well.

Q. Ballot images because you photographed each ballot?

A. Correct.

Q. So you could count those images. And were they all consistent with the weight count?

A. Yes.

Q. And so if the United States Postal Service or some other large company wants to bill their client for 50,000 pieces of mail, it's an effective way to do so by measuring the weight; isn't that correct?

A. If it's the same piece of mail type.

MR. BLEHM: Same mail type. All right. I have no further questions, Your Honor.

THE COURT: Okay. Can we excuse the

witness?

MR. BLEHM: I excuse the witness.

THE COURT: Defendants?

MR. LARUE: No objection, Your Honor.

THE COURT: Ma'am, you're excused.

(Witness excused.)

THE COURT: Your next witness. I think we're okay. Your next witness will be?

MR. OLSEN: Your Honor, our next witness is
15:43:21 Bradley Bettencourt, please.

THE COURT: Sir, if you could just stand there in front of my clerk, she'll swear you in.

BRADLEY BETTENCOURT,

called as a witness, having been duly sworn, testified as follows:

THE COURT: Thank you, sir. If you'll make your way around to the witness stand and have a seat, please. Who is going to do this examination?

MR. OLSEN: I am, Your Honor.

15:44:36 THE COURT: Whenever you're ready, Mr. Olsen.

MR. OLSEN: Yes, Your Honor.

DIRECT EXAMINATION

BY MR. OLSEN:

Q. Good afternoon, Mr. Bettencourt. Could you

please state your full name for the record?
A. Bradley David Bettencourt.
Q. What is your occupation?
A. Well, I generally work with real estate and have my own company and work with my dad.
Q. Okay. Did you have occasion to be hired by Maricopa County for any elections?
A. Yes, I decided to work as a T Tech with them. They reached out, I applied, and they reached out after.
15:45:08 Q. And when did they reach out to you?
A. A little over a month before the election.
Q. And you're referring to the 2022 General Election?
A. Correct.
Q. Or the Primary?
A. The General Election.
Q. Okay. And what is a T tech?
A. Well, we would set up the sites beforehand and site watch on the days of polling.
15:45:34 Q. And in terms of setting up the sites beforehand, what kind of work were you doing?
A. Well, we focus mainly on the site books, the printers, and the MoFi, which is like a WiFi, basically.
Q. And the site books are the device that's used to check in a voter and have their ballot directed towards

whatever precinct they are in?
A. Correct, yes.
Q. And did you have -- did you participate in the election prior to Election Day in any kind of fashion?
A. I was working with them for about a month approximately, and we set up sites beforehand, some of the early polling sites. And we also site watched early, and we actually created a T Tech group, a text group, to stay in touch while we were site watching.
15:46:26 Q. How was that group set up? Was it through your supervisor or --
A. Yeah, it was through the supervisor.
Q. And who was that?
A. That was Jose.
Q. Do you have a last name?
A. Jose Luis Arpaio.
Q. Is a he an employee of Maricopa County?
A. He's a permanent employee, yes.
Q. What's his function at Maricopa County?
15:46:46 A. Well, he was basically our supervisor for the T Techs. He had been a T Tech previously as a temporary employee, and he wound up getting a permanent position.
Q. And how many T Techs were in this group that he set up?
A. Well, there was him as the supervisor and then 15

T Techs.

Q. And approximately how many vote centers would be covered by these 15 T Techs of which I assume you were one of them?

A. Correct, yes. I was a T Tech.

So on Election Day, if that's what you're referring to, we all started out at one location. Some of us stayed at that location the whole day and other ones moved around to multiple locations. If you 15:47:27 actually look in one of the exhibits on the text messages one person had well over 100 miles driving around to probably about five or six sites throughout the day.

Q. Do you have an estimate as to how many vote centers were covered by the 15 T Techs, approximately?

A. I would say a minimum of 20 to 30. That's a bare minimum.

Q. Um-hum. And at this point, I would like to bring up Exhibit 58, Your Honor. And Exhibit 58 is a series 15:48:15 of about over 54 pages of text messages.

Do you recognize this document, sir?

A. Absolutely, yes.

Q. And what is it?

A. It's the group text from that day, the Election Day.

Q. And is this a group text chats from your phone?
A. Yes. Yes, sir.
Q. And did you provide a declaration in this case?
A. Yes.
Q. And you swore under oath under the penalty of perjury to tell the truth, correct?
A. Absolutely, correct.
Q. And did you, in connection with this declaration, provide screenshots of your text messages with the other
15:48:55 T Techs, the other 15 T Techs that day?
A. Yes, correct.
Q. Do you believe this to be, and you can scroll through some, does this appear to be a true and accurate copy of your text messages?
A. Yes, sir, it does. There are a lot of issues that came up throughout the day, and including at times they would -- people, T Techs, would say that the ballots look pristine, but the tabulators aren't reading them. So that would really not have to do with the
15:49:43 printers from our point of view, and that wasn't just one person. There were other persons that said similar things.
Q. Do these text messages represent communications that were happening as they were occurring on Election Day?

A. Yes. Yes, in real-time, absolutely.

MR. OLSEN: Your Honor, at this point, we would like to move for Exhibit 58 to be entered into the record as evidence. It is hearsay; however, under present impression and excited utterance, you will see some of them. For example, if we could go to -- go to page Bates number 367, and at the bottom you'll see, Your Honor, it says, I'm having a 9-1-1. I would say that there are a number of -- as you just can scroll
15:50:42 through would classify or qualify as either an excited utterance or present sense impression, certainly. So we would move to have them admitted in the record under those exceptions, Your Honor.

THE COURT: Any objections?

MS. FORD: Your Honor, Christina Ford on behalf of the Governor-Elect. We do object to these coming in. There are more than, I believe, 50 pages of these texts and one -- one text out of 50 pages that potentially qualifies for an excited utterance doesn't
15:51:17 make up for 50 pages of texts from this day of otherwise out-of-court statements that they are trying to enter for the truth of the matter.

MR. OLSEN: Your Honor, I --

THE COURT: Go ahead.

MR. OLSEN: -- I also submitted them, sir,

with the -- under the present sense impression. These are real-time messages, text messages, that are being typed in as the events are unfolding the day of Election, and I believe it falls under that exception as well.

THE COURT: Okay. I'm going to allow them because I think that they represent the correspondence back and forth between the techs who were working with their immediate impressions of trying to resolve problems. So go ahead. So what you're offering, what's the number again?

15:51:54

MR. OLSEN: It's 58, Your Honor.

THE COURT: 58. So I'll admit 58 over objection.

MS. FORD: Thank you, Your Honor.

THE COURT: Go ahead.

BY MR. OLSEN:

Q. Mr. Bettencourt, can you describe what was going on with -- between you and your other T Techs on Election Day, if you had to characterize it?

15:52:15

A. Yeah, it was we were consistently talking back and forth trying to solve the problems, and this group was really trying hard, because there were a lot of issues that popped up. And actually our main fix turned out to be walk up to the printer, open up the printer,

take out the ink cartridge and shake it, so that was our main fix. That was the big one we were tending to do. I know the official County statement was that changed the printer settings; but I would say based on the techs I saw, that was probably about 10 to 20 percent of the issue there, so that I would say that would be an incomplete description of the issues, from my point of view, seeing the techs.

Q. Did the situation resolve very quickly, or did it last throughout the day with the problems?

15:53:17

A. It depended on the location. Some got better and some kept having issues. I mean, we had issues, I believe, there was one even after closing time where they were asking someone to go over to Biltmore, I believe it is. You can confirm towards the end there.

Q. How long have you -- how old are you, sir?

A. I'm 34 years old.

Q. Okay. And how long have you been in Arizona?

A. Well, I've been off and on. I actually lived in five states, but overall a little over a decade in Arizona in total.

15:53:46

Q. So you've been voting for how long?

A. Well, I've been voting for 16 years, you know, in some different states, but mostly in Arizona during that time.

Q. How would you characterize the events on Election Day that you observed personally and also communicated with the fellow T Techs that were servicing between 20 and 30 vote centers compared to elections that you even just participated in as a voter?

A. It felt a bit chaotic. I have people from the other places I've lived reaching out and saying, what's going on in Maricopa County down there? So it felt a little chaotic, I would say.

15:54:31 Q. Were these problems that continued throughout the day at many of these vote centers?

A. Yeah, and like I said, we tried to shake the ink cartridge. They cleaned the Corona wire. They would have the inspector call over the troubleshooter, try and clean the tabulation, because like I said, sometimes in there the prints looked good, but the tabulator wasn't taking them anyway.

Q. Did you hear of any long lines outside of the vote centers?

15:55:05 A. Yeah, there were a lot of long lines, and in there actually describes at least one in there that describes -- and I know of other locations where they completely wound up shutting down for a certain amount of time -- and they were basically sending people to other locations.

Q. How upset were voters that you interacted with or heard about?

A. Well, they -- well, I heard some people being very upset, more so at other locations. We didn't have quite as many issues at our location, but it did shut down for about five to ten minutes at one point with both tabulators being down, and that actually happened because one lady had put in a ballot and I was standing there when I saw this, the tabulator took it through. 15:55:53 It didn't reject it. I took it through, but it didn't have the green checkmark or say that it can be successfully cast. So I hadn't seen that on anything else, so we called the inspector over and she called the hotline. And they said she should open up the blue bin where the tabulator is, pull out the ballots. They were going to count those downtown and then restart, basically, from zero, restart counting the ballots that go into that tabulator from that point on.

Q. Did the problems with the tabulators, did they, 15:56:32 in your opinion, create the long lines that you heard about from different T Techs?

A. I would say it made it worse because we have lines to begin the day, and once those tabulator issues start happening, you know, the lines just backed up more.

Q. And were there lines outside of the voting center?

A. Oh, yeah. At our place, there was a line outside the door all day and, you know, we had less problems than a lot of other places.

Q. And do you understand the check-in process?

A. That's more the polling worker side of it, the site book area. That's more the poll worker is responsible for that. I wasn't responsible for that part of it.

15:57:14

Q. Okay. Did you hear about long lines extending past 8:00 o'clock at night?

A. Yes, it's in the texts. I know at least one or two places, and then I know someone who wasn't in this group, because this was the East Valley group, and there was a West Valley group as well. So I know someone in the West Valley, he didn't get home -- I left my site at about 10:00 and we had had a short line, you know, at the end of the night, probably wrapped up about 8:00 p.m., and then this other guy from the west group had left about 10:30, 10:45 and I know there was at least one or two people in this group that left later than me.

15:57:50

Q. Do you -- do you know whether or not any people who were waiting in line just simply gave up waiting in

line or saw things on the news and decided not that they just didn't have the time to come out and vote?

MR. GOANA: Objection, Your Honor. Speculation, foundation.

THE COURT: He can answer it yes or no. He was asked do you know. Sir, if you're able to, you can answer yes or no.

THE WITNESS: Yes, I don't know that personally. As I said, my site had less problems than
15:58:31 the others, so I can only speak for my site, and I don't have any knowledge of that specifically.

MR. OLSEN: Thank you, Mr. Bettencourt.

THE COURT: Cross-exam.

CROSS-EXAMINATION

BY MS. FORD:

Q. Good afternoon, Mr. Bettencourt.

A. Good afternoon.

Q. I understand from your testimony and from your declaration in this case that you helped set up
15:59:01 equipment in preparation for Election Day?

A. Correct.

Q. You didn't intentionally cause the tabulators to reject ballots, correct?

A. No. Actually, we weren't even specifically focused on the tabulators with our position.

Q. And you don't know of any T Techs who intentionally caused the issue?

A. They were temporary employees, so I don't know of any T Techs that caused that issue, no.

Q. And you said here today that you were hired along with your other T Techs to help resolve problems that were occurring at polling locations, correct?

A. Yes, that was part of it, the setting up of sites along with resolving problems when they arose.

15:59:52 Q. And then you were, in fact, employed to help resolve these issues when they did spike up, correct?

A. Yes.

Q. Would you agree with me that sometimes tabulators cannot read a ballot due to the way that the voter marks the ballot?

A. Yes, and I actually wrote that in my declaration as well. That's part of it, but that wasn't the whole part. So I could specify that definitely wasn't the whole part. There was some that looks very good and the

16:00:21 voters had marked them very well and they weren't being read.

Q. Okay. Well, I wanted to go through some of those. So I understand from your declaration that you and your fellow T Techs sometimes found that cleaning the Corona wire in the printer would sometimes help fix

the tabulator issue; is that correct?

A. Yes, and the Corona wire that was on the older printers, I actually had the new Lexmarks in the location that I was at, so that wasn't part of the location I was at.

Q. Okay. And the group also found that changing the toner, shaking the toner, could sometimes make improvements to the tabulators?

A. Yeah, shaking the toner actually worked a decent amount. It wasn't perfect, but it helped at times.

Q. Okay. And then you also found that letting the printer warm up could also improve the situation?

A. I would have to go back through the texts and confirm that. I don't recall that specifically, but there were a lot of techs in there, so I don't recall every text that we had.

Q. Okay. You have no personal knowledge as to whether the printing and tabulator errors changed the outcome of the collection -- sorry -- the outcome of the election, correct?

A. I don't see how there's any way I could prove that one way or the other.

Q. But you have no personal knowledge?

A. I believe I just said I can't prove anything one way or another by myself.

Q. Okay. So you similarly don't have any personal knowledge whether the printing errors were the result of an intentional scheme to undermine the election?

A. Well, I was just a temporary employee doing what I was employed to do there.

MS. FORD: Okay. Thank you. No further questions.

MR. OLSEN: Nothing further, Your Honor. Nothing further, Your Honor.

16:02:25 THE COURT: Nothing further. Okay. Can we excuse the witness?

MR. OLSEN: Yes, Your Honor.

MS. FORD: Yes, Your Honor.

THE COURT: You're free to go.

(Witness excused.)

THE COURT: Next witness?

MR. OLSEN: Your Honor, we next call Mark Sonnenklar.

THE COURT: Mr. Sonnenklar, if you could

16:03:34 just come over in front of the clerk and be sworn in, sir.

MARK SONNENKLAR,

called as a witness, having been duly sworn, testified as follows:

THE COURT: If you could just have a seat

and make your way over to the witness stand, please.

Go ahead, Mr. Olsen.

DIRECT EXAMINATION

BY MR. OLSEN:

Q. Good afternoon, Mr. Sonnenklar.

A. Good afternoon.

Q. Would you please state your full name for the record?

A. Mark Sonnenklar, S-O-N-N-E-N-K-L-A-R.

16:04:12 Q. And what is your occupation, sir?

A. I'm a lawyer.

Q. And how long have you been a lawyer?

A. Twenty-six, almost 27 years.

Q. Did you have an opportunity to -- strike that. How long have you lived in Arizona?

A. Moved back to Arizona about two years ago, a little more than two years ago. I was here from age 9 through 21, so I don't know, 13 years total.

Q. Did you have an opportunity to participate in the

16:04:43 2022 Election cycle?

A. I did.

Q. And in what capacity did you participate in that cycle?

A. I was a roving attorney in the Republican National Committee's Election Integrity Program for the

Primary and the General Election.

Q. And what does a roving attorney do?

A. A roving attorney goes to the vote centers and just observes what is happening at the vote centers to determine if, you know, things are going well or not, whether things are working in accordance with law.

Q. Okay. And when did you first act as a roving attorney?

A. During the Primary on August 2, 2022.

16:05:29 Q. And can you describe what you did as a roving attorney during the Primary?

A. The process that I used, which we were trained to use for both the Primary and the General Election, was to go to the vote center, talk to the inspector, go directly to the inspector of that vote center.

Q. Who is an inspector?

A. The inspector is the -- the lead person -- the lead poll worker at a vote center.

Q. Were they employed by Maricopa County?

16:06:05 A. Yes, I believe they are paid by Maricopa County.

Q. Is that a temporary position or are they a full-time employee of Maricopa?

A. They are temporary.

Q. Okay.

A. So I would go to the vote center, I would ask for

the inspector. I would ask the inspector if there was a Republican observer inside the vote center, because there's not by law, we're not allowed to have more than two observers from any one party within the vote center. I would ask to speak with the Republican observer, if there was one, outside. I would ask that Republican observer how things were going, you know, what he or she was seeing inside the vote center. I would take notes on -- on what the observer, the Republican observer, told me. I would then ask the Republican observer to stay, remain outside, and then I would go back into the vote center and speak with the inspector and ask really the same questions that I had asked the Republican observer. How are things going? If there were issues, I would ask more questions about those issues. And I was trying to determine whether, you know, what the Republican observer was -- was telling me was matching up with what the inspector was telling me. And I took notes while I was talking with the inspectors as well.

16:06:56

16:07:34

Q. Did you create a report in connection after the election associated with that, and I'm talking about the Primary?

A. I did. I had a sense that there was going to be litigation, and I knew that I had information that would be critical to that litigation, and so I reached out to

-- there were 17 -- 17 or 18, I'm not clear exactly, but I believe there were 17 roving attorneys in the program with the RNC, and I reached out to all of them and asked them what their experience was. And they reported to me, and I created a report based on my own personal experience at ten vote centers during the General Election, and 105 other vote centers that the roving attorneys who responded to me, which I believe were ten, I believe, responded to me and were willing to, you
16:08:38 know, tell me what -- what had occurred, what they had seen. So the 11 of us put together, observed 115 vote centers.

Q. How many vote centers did you personally visit?

A. Ten.

Q. Ten. And this is during the General Election, correct?

A. Yes.

Q. And what was your experience what you personally saw at those ten vote centers?

16:09:04 A. Well, it was really pandemonium out there everywhere. I was within from Fountain Hills to North Scottsdale where my vote centers were. I started out in Fountain Hills and immediately, I mean, there was a line -- there was a line of 150 people at Fountain Hills. The tabulators were not working, and that was what I saw

at, you know, I saw the same thing happening at six of my ten vote centers. There were different things happening at some of the other ones too, but six of them in particular were really bad, you know.

Q. And so you -- you have been voting for a number of years, correct?

A. Yeah.

Q. How would you characterize the events of the 2022 General Election compared to other elections that you witnessed?

16:10:04

A. Oh, this was a completely different animal here. So I was a roving attorney at -- during the Primary, and there were, you know, some minimal problems there too, but the General Election was a complete -- completely different situation. There were lines out the door, which did not -- you did not see during the Primary at many of the vote centers. There were angry and frustrated voters who did not want to put their ballots in the Box 3, and there, you know, it was just -- and then there were the poll workers who were extremely frustrated and really didn't know what to do. Most of them, I would say, were doing their best, you know, to -- to figure out a solution to the fact that the tabulators were down, were not reading the ballots. Everyone was just freaked out.

16:10:48

Q. I have a question for you. There's been some testimony earlier about wait times. Do you have an understanding of how the County measures wait times?

A. Yes. I understand that one of the poll workers is supposed to check the line every 15 minutes and report back to MCTEC, is my understanding. It would have been difficult. I don't know where you're going with the question, but it would have been very difficult for the poll workers who were crazed trying to figure

16:11:43 out just how to get the -- the tabulators to read the ballots. I can't imagine that -- that there was time for any poll workers at the worst vote centers anyway to actually go out and check the line.

Q. Okay. I believe you mentioned that you visited personally about ten vote centers?

A. Yes.

Q. And that the other roving attorneys that you were working with, it was a total of about 115 vote centers in total?

16:12:14 A. Yes.

Q. And that's 115 out of about, I think, 223 vote centers, correct?

A. That's correct.

Q. So that's a little over half of the vote centers?

A. I believe it was 52 percent.

Q. Are you able to characterize what your other -- the other roving attorneys were experiencing, whether it was similar to what you were experiencing or worse or -- or maybe not as bad? How would you characterize?

A. Well, I would say that most of the roving attorneys had a similar experience to mine. I can't think of -- I can't think of one that had a different experience. There may be, but -- but for the most part, you know, aggregated together, pretty much everyone had the same experience.

16:12:59

Q. And if somebody were to characterize the events of that day as minor technical difficulties that should be expected in any election, what would you say to that?

A. I would say that's nonsense. When you have 132 -- we've been able to document that there were at least 132 vote centers with tabulator problems out of 227, which comes out to about 59 percent. I don't see how that could be characterized as a small matter.

Q. You mentioned you created a report along with the other roving attorneys that you worked with. Did you disseminate that report to anybody?

16:13:44

A. I did send that report out. Yes, I did.

Q. Do you believe that report is accurate in its recitation of the events of Election Day?

A. Absolutely. I was very careful not to

exaggerate, overstate. I was careful to be factual.

Q. And is that report based on sworn -- your conversations plus sworn declarations from the other roving attorneys that were given to you?

A. Yes, it is.

MR. OLSEN: And if you would call up Exhibit 52?

THE COURT: Is there a problem?

MR. OLSEN: I'm being told that the person over here needs...

16:15:02

(Discussion off the record.)

BY MR. OLSEN:

Q. Mr. Sonnenklar, is this --

MR. LIDDY: Your Honor, for Maricopa County, I would object to this document to the extent it's duplicative of this witness's testimony, just provided in this Court. And to the extent that it is intended to be admitted for the truth of the matter asserted for persons he's talked to, it would be hearsay.

16:15:54

MR. OLSEN: Your Honor, we have submitted this report under Rule 807. It is one of the documents that we gave notice to, and I would say that Your Honor can judge the value of the weight; but given as the witness has testified to, we're talking of about 105 vote centers and so to -- he and his other fellow roving

attorneys gave sworn testimony about the occurrences there. It's -- I think it should go to the weight, Your Honor. I think it would be probative, and given the limited time we have to, you know, talk about 105 vote centers that we respectfully request Your Honor to admit it.

THE COURT: Well, he's here to testify about what he saw and he observed, and so it's cumulative as to that. I think this morning I told you that I was
16:16:43 willing to admit under 807 the attached statements of the other roving attorneys, so you can choose. You can choose to either have those affidavits admitted under 807, or you can forgo that and ask him questions about it and go with his report. But I'm not going to do both.

MR. OLSEN: Your Honor, just point of clarification.

THE COURT: That's a three-fer. That's him testifying, his report, and the affidavits that he's
16:17:13 referring to in his testimony and his report. So I don't know if you understood this morning that I was willing to admit the affidavits attached to Mr. Sonnenklar's affidavit under 807 provided that you can -- because I've read them.

MR. OLSEN: Yes, Your Honor.

THE COURT: And I believe that under 807 the same analysis applies to what I told you this morning that they appear to also be very factual as opposed to advocate -- advocacy, even though I believe that he's just said all of this was prepared in anticipation of litigation. The affidavits are sworn to and contain facts rather than advocacy or opinions; so after all my speaking, your choice how you wish to proceed, Mr. Olsen, but I'm not going to do both. I'm not going to
16:18:13 put in all those affidavits and have him talk about everything in his report and all the hearsay.

MR. OLSEN: I think I know where I'm going, sir. We will forgo -- we will keep them into evidence as Your Honor alluded to, and we will move on to another topic.

THE COURT: Okay. Very good, sir.

MR. OLSEN: Your Honor, at this time, we would like to open up Exhibit 91.

BY MR. OLSEN:

16:20:26 Q. Mr. Sonnenklar, up on the screen is what has been marked for identification as Exhibit 91. It is an exhibit that was part of a response letter by Maricopa County to the AG -- AG's letter dated November 19th questioning some of the events around Election Day.

Have you ever seen this document before?

A. Yes, I've read it multiple times.
Q. And do you recognize this as a document that was produced by Maricopa County?
A. Yes.
Q. Do you have any reason to doubt that it's a true and accurate copy?
A. No.
MR. OLSEN: Your Honor, at this time, we would move to admit Exhibit 91 into evidence.
16:21:11 MR. LIDDY: No objection, Your Honor.
THE COURT: 91 is admitted. I think it's a self-authenticating document.
MR. OLSEN: Yes, Your Honor.
BY MR. OLSEN:
Q. Mr. Sonnenklar, do you see where it states on the first page of this document in the paragraph beginning "while a few"? Do you see that "while a few, 2022 General Election locations encountered 115-minute waiting times on Election Day, Maricopa County posted
16:21:51 these wait times on our website informing voters of other nearby options that had shorter times"?
A. Yes, I see it.
Q. Do you have an understanding based on your work whether or not that's an accurate statement?
A. That's not an accurate statement.

Q. And why do you say that?

A. There were many more vote centers. I mean, I must have had, I believe I had two, at least, just in my ten that had longer wait times than 80 minutes, and they are not included in the list in footnote 1.

Q. And you're talking about footnote 1 on the page that's Bates stamped last three digits 715, the first page of this document?

A. And in addition to that, you know, there were -- we documented through declarations that there were many, many other vote centers that had over 80-minute wait times.

Q. Do you have an opinion as to whether or not the County has been trying to understate the extent of the problems at the vote centers that arose on Election Day?

A. Yes.

MS. FORD: Your Honor, object to foundation and speculation.

THE COURT: All right. As to foundation, I'll overrule it. So if you're able to answer it, and I assume you're asking him based on his personal knowledge.

MR. OLSEN: Yes, Your Honor.

THE COURT: If you're able to answer it, Mr. Sonnenklar.

THE WITNESS: Thank you. Well, I mean, I was the one who oversaw the -- the, you know, putting together of the issues spreadsheet, which showed how many vote centers had tabulator problems, how many vote centers had long lines. I've also read this Board of Supervisors report multiple times, and there are many, many mischaracterizations and flat-out falsehoods in this. Now, so, yes, I believe that they have not presented the truth here in this document.

16:24:56 MR. OLSEN: We have nothing further at this time, sir.

THE COURT: All right. Cross-exam, please.

CROSS-EXAMINATION

BY MS. FORD:

Q. Good afternoon, Mr. Sonnenklar.

A. Good afternoon.

Q. I'm here on behalf of the Governor-Elect.

Your declaration gives some figures about how many vote centers were affected with tabulator issues

16:25:21 and lines, and these figures were gathered from reports of yourself, other RNC roving attorneys and Republican observers, correct?

A. That's correct.

Q. Your declaration in this case concludes that 64 of 223 vote centers had long lines on Election Day,

correct?

A. Yeah, that's correct.

Q. So you concluded that more than 70 percent of vote centers on Election Day did not have long lines?

A. You could infer that, but -- but actually, what I would say about that is that we had time constraints in putting together our issues spreadsheet, and so I firmly believe that had we had additional time, basically, we had to put it together in two weeks. So we had to

16:26:12 gather declarations from a lot of people in order to prove what we wanted to prove, you know, in order for the evidence to show 64 -- we showed on the issues spreadsheet that 64 vote centers had long lines. Had we had more time, I firmly believe that we would have been able to show that more vote centers had long lines.

Q. The same declaration concluded that only 24 of 223 vote centers had long lines on Election Day after 3:00 p.m., correct?

A. I would say the same thing, had we had more time

16:26:49 to gather the evidence, we probably would have been able to find that more than 24. But what we were able to document in the time period that we had was that 24, which in my view is a lot of vote centers to have problems after 3:00 p.m., given the fact that the Board of Supervisors stated that the problem was completely

resolved as of midafternoon quote, unquote, according to the Board of Supervisors report that was just brought into evidence.

Q. But the evidence that you put forward in your declaration was that only 24 of 223 had long lines after 3:00 p.m., correct?

A. That's all I was able to conclude in the time that I had to put together the issue spreadsheet.

Q. Any voter in Maricopa County may go to any vote

16:27:41 center they wish, correct?

A. That's my understanding.

Q. You did not personally witness any voter who left a vote center without casting a ballot after encountering a tabulator rejection, correct?

A. I wasn't looking for that.

Q. So here today you can't tell me that you witnessed that?

A. I can't, but a lot of the declarations do indicate that did occur over and over.

16:28:06 Q. You have no personal knowledge as to whether these printing errors changed the outcome of the election, correct?

MR. OLSEN: Objection, Your Honor. Foundation.

MS. FORD: Your Honor, I'm just asking

whether he knows.

THE COURT: His knowledge, it's the same thing. If you know, sir, and you're able to answer, go ahead.

THE WITNESS: Well, I would say, you know, there's only 17,000, roughly, votes separating the two candidates for governor. Based on what I saw on Election Day, I would say there's no question in my mind that had there not been tabulator issues at 132 vote
16:28:46 centers, this election would have ended up Kari Lake winning.

MS. FORD:

Q. That's an inference you're making, correct?

A. You asked me for my opinion, I gave it.

Q. I didn't ask for your opinion. I asked if you had personal knowledge.

A. I don't have knowledge of specific numbers, no.

MS. FORD: Okay. No further questions, thank you.

16:29:19 BY MR. LIDDY:

Q. Mr. Sonnenklar, you testified that the Maricopa County Board of Supervisors in drafting its correspondence to Jennifer Wright at the Attorney General's Office intended to deceive her; is that correct?

A. I don't see how you could --
Q. Is that correct?
A. I don't see how you could view what happened on Election Day and issue that report in good faith.
Q. Do you have any evidence that the authors of that wrote that report with an intent to deceive?
A. It's just common sense, sir.
Q. Is that a yes or a no?
A. Common sense tells you that if they issued that
16:30:14 report and they, and you know, they are the ones in charge of the election, then -- and so many things in that report were false, that, yeah, they were trying to cover up.
Q. So that's what common sense tells me is that your testimony?
A. Yeah, common sense tells me, that there was a cover-up here.
Q. Okay. That tells you, but not me, as you earlier testified, correct?
16:30:42 A. I don't know what's in your mind, sir.
Q. But you do know what's in the mind of the five members of the Board of Supervisors?
A. All I can say is that I have that -- I believe they were trying to cover up here because I don't see how else you could explain the Board of Supervisor

report. It was blatantly false in so many ways.
Q. But you have no evidence of that, correct?
A. Oh, no, I have a lot of evidence.
Q. Evidence of their intent to deceive the Attorney General's Office?
A. My conclusion is that there's an intent to deceive.
Q. Okay. So your testimony today is you can't read my mind, but you can read the mind of the members of the
16:31:23 Board of Supervisors; is that correct?
A. I don't see how else you could interpret the statements on the Board of Supervisor report other than to conclude that there was an intent to minimize the problems on Election Day, because they probably knew they were going to be in this courtroom today.
Q. Well, it's interesting that you've just responded to my query by saying problems plural, because when you initially testified, you said problems singular, and your testimony was about problems related to tabulators.
16:31:56 Do you remember that testimony?
A. Do you mean in my declaration?
Q. No, I mean in your testimony right here in this courtroom a few minutes ago?
A. Yes, I recall my testimony.
Q. Okay. And you recall that you had witnessed at

least two vote centers, and you've heard of a lot of others that have problems with tabulators?

A. No, there were six vote centers out of ten in my -- that I observed at that had material tabulator problems.

Q. Okay. Did any of them have printer problems?

A. Yeah, you know, my -- my understanding is that the printers were not printing dark enough, that is one theory anyway.

16:32:33 Q. Was that your understanding from your direct observation?

A. Yes.

Q. So you were able to observe the printers putting in not enough ink in some of the ballots?

A. So my declaration sets this out that one of the vote centers that I went to I spoke with the inspector. They had a massive problem with the tabulator not working.

Q. Okay. Thank you. You've already testified about

16:32:56 your conversation with the inspector. I heard that, and I thank you for that.

A. No, may I actually answer your question?

Q. Yes, please. My question was your observation.

A. This is my observation.

Q. Excuse me. Your observation with the problems

with the printers, not what you heard from inspectors. Can you answer that?

A. My observation was in relation to a conversation I had with the inspector.

Q. So that would be you heard it from somebody else who observed it, but you didn't?

A. I'm not a technical person. I don't know exactly what caused the problem, okay, but an inspector showed me the ballots.

16:33:33 Q. Okay. So you don't know what caused the problem, right? But you know that whatever the Board of Supervisors said was intended to deceive the Attorney General, even though you don't know, correct?

A. I don't see what one thing has to do with the other.

Q. There's a problem as well.

How about wet pens, wet pens that might cause problems with the tabulators? Did you observe any of that?

16:33:55 A. No, I didn't note that at all.

Q. No. So you had testified earlier that you had voted several times in Arizona, but you've never seen lines like the lines you saw in the General Election of 2022; is that correct?

A. That is correct.

Q. Did you vote in the presidential preference of 2016?

A. No, I wasn't here in 2016.

Q. Okay. Would it surprise you to find out that in many instances all over this country there will be lines far longer than those to which you just testified to?

A. I would be surprised by that now.

MR. LIDDY: Thank you. No further questions.

16:34:36 MR. OLSEN: Your Honor, I just have a brief question on redirect.

THE COURT: It's your favorite word. Go ahead.

REDIRECT EXAMINATION

BY MR. OLSEN:

Q. Mr. Sonnenklar, would it surprise you if people in Maricopa County, voters in Maricopa County heard about the problems at all the vote centers and simply didn't get into line to vote because they didn't have

16:35:04 time?

MR. GOANA: Objection to foundation, speculation, beyond the scope as well.

THE COURT: Sustained.

BY MR. OLSEN:

Q. Do you have a belief as to -- and it's a yes or

no question -- do you have a belief as to whether or not voters on Election Day -- strike that.

Do you have a belief that there are -- there were voters on Election Day that were not able to cast their vote and wanted to?

MR. GOANA: Same objections, Your Honor.

THE COURT: Sustained.

MR. OLSEN: Your Honor, I have no further questions. I do have a housekeeping matter. I just

16:36:08 wanted to make sure with our 807, I just want to make point of clarification. We had a summary Exhibit 2, summary exhibits that were attached to his declaration, and we are moving those -- I want to make sure that was part of the evidence that Your Honor was --

THE COURT: Are you planning to rest?

MR. OLSEN: Pardon me?

THE COURT: Are you planning to rest now?

MR. OLSEN: Yes.

THE COURT: Okay. Can we excuse this

16:36:34 gentleman?

MR. OLSEN: Yes.

THE COURT: Thank you, Mr. Sonnenklar. You're excused, sir.

(Witness excused.)

THE COURT: Okay. I'm pushing my court

reporter beyond what I should.

What I'm hearing is, is Plaintiffs are willing to rest with the exception of addressing the exhibit issue. I understand you need to address the issue before you rest.

MR. OLSEN: We're not resting our case, Your Honor, so I have a couple more witnesses to do.

THE COURT: Okay.

MR. OLSEN: I wasn't resting on that.

16:37:15 THE COURT: Okay. Do you have -- do both sides have worked out the exhibit numbers that would apply to my ruling this morning? No?

MR. OLSEN: I don't think we talked so much.

THE COURT: Here's what I can't do at the end of this day, I can't put my court reporter through another hour of us going back and forth about whether a certain exhibit fits within my ruling or not. This is probably a poor question -- in fact, I won't ask it. I'm going to restate what I told you this morning. I

16:37:59 said that the 807 ruling was extended to admitting whatever exhibits are associated with the following exhibits or attachments to the affidavit that you filed, Mr. Olsen. Exhibit 6, Exhibit 7, Exhibit 8, 9 and 10 have already been admitted today, and that takes care of all the attachments to the affidavit that was filed by

Mr. Olsen.

There's a more extensive list constituting what Plaintiffs have labeled Exhibits A1 through A220 that were attached to, I believe, Mr. Sonnenklar's affidavit. I don't have before me the corresponding exhibit numbers for the exhibits that would have been the other attorney poll workers that were submitted, but those were included in that.

So here's what I want you to do is I want
16:39:53 you to get together, caucus, come up with an agreed list of what those numbers are. I basically told you what the ruling is, I just need you to make sure that we got clear which exhibits are coming in, okay, so I can spare my clerk and my court reporter all that back and forth. I need that by the morning, okay.

MR. OLSEN: Yes, Your Honor.

MR. LIDDY: Yes, Your Honor.

MS. KHANNA: Yes, Your Honor.

THE COURT: I haven't -- I've been keeping
16:40:24 track of the time, but I haven't got a grand total. Somebody else keeping track closely?

Do you know where you are with regard to time?

MR. OLSEN: We have somebody tracking, Your Honor, for us. But I don't --

THE COURT: Okay. How many more witnesses do you have, Mr. Olsen?

MR. OLSEN: Your Honor I believe, it's just one, which is Richard Baris.

THE COURT: That's going to take awhile. If it's anything like Mr. Parikh, which is our other expert.

MR. OLSEN: Your Honor, I don't think it will take as long as Mr. Parikh. Famous last words.

16:41:21 THE COURT: I'm smiling again because we're down to the brief, "and I've only got a few things, Your Honor."

MR. LIDDY: Your Honor, if I may, our records indicate the Plaintiff has consumed 272 minutes 22 seconds and defense together has consumed 87 minutes 27 seconds.

MR. OLSEN: Your Honor, I'll have to check with our person.

THE COURT: If I take his total, that puts

16:42:06 you at four and a half hours.

MR. OLSEN: Yes, Your Honor.

THE COURT: So you would still have another hour with Mr. Baris, right? What about your case -- well, all three of you, what do you think about -- how many witnesses are you thinking about calling and --

MS. KHANNA: We have four witnesses that we intend to call if we put on our case in chief tomorrow.

THE COURT: Part of my problem is if you spent all your time, then there's nothing left for cross-examination.

MR. OLSEN: I'm aware of that, Your Honor.

THE COURT: Okay. It's a strategy call, so you got four witnesses. How much time do you think; again, I'm skating fast on thin ice talking to lawyers about time estimates.

16:42:49

MS. KHANNA: Well, I will, of course, promise that we're going to be as efficient as possible. We'll use tonight to make sure. We have estimates in what we submitted to the Court, and we'll go back and see if we can pare those down to make sure we're staying within time.

THE COURT: Okay. That's fair.

Here's my -- here's my concern, and even with -- I know what I said about the time, but I'm concerned about closing arguments, okay?

16:43:16

I do want to hear closing argument, okay.

So I'm not saying that that means you got to go out and drag in more witnesses tomorrow to use up all your time, but we'll see how it goes tomorrow.

MR. LIDDY: On my notes estimate, our

estimate is that we'll come in below the time significantly. We will probably only need another two and a half hours.

THE COURT: Okay. All right.

MS. KHANNA: We'll reserve time for closing.

THE COURT: That will probably put us, though, realistically we're going to start at 8:30, we're going to come back at 1:00, midafternoon? I mean, that may be fuzzy math, but it's best guesstimate. So

16:44:16 at that point in time, I do want you to prepare closings. How much time do you think you would need to sum it all up? That's the both of you, I'm asking.

MR. OLSEN: Your Honor, I would think that we would not need more than 15 minutes.

MS. KHANNA: I think we would be more like 20, Your Honor.

THE COURT: Well, okay. But they carry the burden, so I'm not going to hold you to the, you know, 15, 20. If they have 20, you do 15; if you want five

16:44:58 rebuttal at the end, I'd give it to you.

MR. BLEHM: Thank you, Your Honor.

THE COURT: Sound fair?

MR. OLSEN: Thank you, Your Honor.

THE COURT: Sound fair?

MR. OLSEN: Yes.

MS. KHANNA: Yes, Your Honor. Thank you.

THE COURT: Well, the goal is to get all of that done by tomorrow then, okay.

So tonight, you're going to put your heads together, come up with a list of exhibits for me by morning. Get the exhibits straightened out. We'll do that as a matter of housekeeping first thing, and I think that's all I've got for you tonight. I can let you go.

16:45:30 Is there anything else absolutely essential before my court reporter collapses?

MR. OLSEN: I'm not saying anything.

MS. KHANNA: Nothing for defendants, Your Honor.

THE COURT: Thank you, all. I'll see you tomorrow morning at 8:30.

(Proceedings conclude, 4:45 p.m.)

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C E R T I F I C A T I O N

I, ROBIN G. LAWLOR, Registered Professional Reporter, Registered Merit Reporter, Certified Realtime Reporter, Federal Certified Realtime Reporter, Certified Court Reporter, Certificate No. 50851, in and for the State of Arizona, do hereby certify that the foregoing pages constitute a full, true, and accurate transcript of all proceedings had in the foregoing matter, all done to the best of my skill and ability.

WITNESS my hand this 25th day of December, 2022.

/s/Robin G. Lawlor

Robin G. Lawlor, RMR, CRR, FCRR
Arizona CCR No. 50851

Exhibit D

Yavapai County
Department of Elections
1015 Fair Street-Room 228
Prescott, Arizona 86305
Phone: (928) 771-3250
Elections@yavapaiAZ.gov

Laurin L. Custis
Director of Elections

December 19, 2022

Honorable Katie Hobbs, Arizona Secretary of State
1700 West Washington St, 7th Floor
Phoenix, AZ 85007

Secretary Hobbs:

Pursuant to A.R.S. §16-602, Yavapai County conducted a hand count audit of the November 8, 2022, General Election Recount.

The Yavapai County Party Chairs / Designees from the Democratic, Libertarian, and Republican parties met at 3:00 PM on December 12, 2022, and randomly chose batch numbers: 1, 4, 6, 8, 15, 17, 18, 21, 23, 24, 26, 27, 31, 32, 36, 37, 38, 40, 41, 42, 43, 46, 47, 49, 50, and 51 to be hand counted.

Two contested races were audited as required by law for the General Election. Specifically, the following list displays the contested races that were recounted:

Statewide Candidate: *Attorney General*
Statewide Candidate: *Superintendent of Public Instruction*

Eighteen hand count workers met at 9:00 AM on December 17, 2022, to begin the hand count: nine Democrats and nine Republicans. By 11:35 AM, the hand count audit had been completed successfully.

Attached are the precinct and early ballot hand count worksheets, which depict the results of the hand count audit for each race. I am happy to report that the hand count matched the machine determined results within the allowable margin of error.

Respectfully Submitted,

Laurin L. Custis

Laurin L. Custis
Yavapai County Director of Elections

YAVAPAI COUNTY ELECTIONS

MASTER LIST OF ALL CONTESTED RACES

Election: November 8, 2022 General Election Recount

Category: Statewide Candidate

Race: Attorney General

Category: Statewide Candidate

Race: Superintendent of Public Instruction

YAVAPAI COUNTY ELECTIONS
HAND COUNT

Date of Draw: December 12, 2022

Master Vote Center and Race Selection

Party Order to Draw

Draw 1st: D Draw 2nd: L Draw 3: R

Races to be Recounted

RACE CATEGORY	# of Category to Count	Races to Count
Statewide Candidate	1	Attorney General
Statewide Candidate	1	Superintendent of Public Instruction

Official Recount Ballot Count Draw

203/1880	202/1247	204/1890	204/1848	205/1600	203/1945	204/1872	203/1998
51	40	26	4	15	43	38	6
205/1615	205/1567	204/1905	204/1855	203/1938	202/1293	205/1573	202/1270
8	36	24	50	21	23	47	37
203/1966	205/1559	205/1532	205/1517	203/1901	202/1326	204/1897	203/1893
1	32	46	41	27	49	18	31
202/1259	202/1313						
42	17						

Lindsay Ann Bell — Democratic Party Representative

Timothy Bevin — Libertarian Party Representative

Republican Party Representative

Election Official:

Subscribed and sworn before me this 12 day of December, 2022

Laurie L. Curtis

Director of Elections

COUNTY OF YAVAPAI

GENERAL ELECTION RECOUNT
NOVEMBER 8, 2022

CERTIFICATE OF HAND COUNT

We, the undersigned, do hereby certify that on the 17th day of December 2022, a Hand Count was conducted in Yavapai County for the November 8, 2022 General Election Recount. We further certify that the results of the Hand Count did correspond or were within the designated margin of error with the Machine Tabulated Results as described in the subsequent documentation.

Lindsay Ann Bell — Election Integrity Co-chair — 11:35 am

Democratic Representative — Title — Time

Kristin Baumgartner — Election Oversight Committee Chair — 11:34AM

Republican Representative — Title — Time

Laurie L. Curtis — 11:35am

Director of Elections — *Time*

YAVAPAI COUNTY ELECTIONS

AGGREGATE - BALLOT AUDIT – RECOUNT HAND COUNT REPORT - TOTAL FROM ALL BATCHES

November 8, 2022 General Election Recount

Race Category: Statewide Candidate **Race: Attorney General**

Batch	Hand Count Total	Machine Count Total	Absolute Difference
1	98	98	0
4	99	99	0
6	100	98	2
8	99	99	0
15	99	99	0
17	99	99	0
18	100	100	0
21	98	98	0
23	96	96	0
24	98	98	0
26	99	99	0
27	98	98	0
31	95	95	0
32	96	96	0
36	99	99	0
37	99	99	0
38	100	100	0
40	94	94	0
41	98	98	0
42	96	96	0
43	96	96	0
46	96	96	0
47	98	98	0
49	99	99	0
50	96	96	0
51	100	100	0
Totals	2545	2543	2

	Aggregated Margin
Margin = Absolute Difference ÷ Machine Count X 100	0.078647267

YAVAPAI COUNTY ELECTIONS

AGGREGATE - BALLOT AUDIT – RECOUNT HAND COUNT REPORT - TOTAL FROM ALL BATCHES

November 8, 2022 General Election Recount

Race Category: Statewide Candidate **Race: Superintendent of Public Instruction**

Batch	Hand Count Total	Machine Count Total	Absolute Difference
1	96	96	0
4	97	97	0
6	100	98	2
8	96	96	0
15	99	99	0
17	97	97	0
18	98	98	0
21	101	101	0
23	96	96	0
24	98	98	0
26	99	99	0
27	98	98	0
31	96	96	0
32	94	94	0
36	97	97	0
37	99	99	0
38	98	98	0
40	93	93	0
41	97	97	0
42	98	98	0
43	94	94	0
46	95	95	0
47	96	96	0
49	101	101	0
50	96	96	0
51	99	99	0
Totals	2528	2526	2

	Aggregated Margin
Margin = Absolute Difference ÷ Machine Count X 100	0.079176564

ADDITIONAL COMMENTS: _____

_____

_____

_____

YAVAPAI COUNTY ELECTIONS

BALLOT AUDIT – RECOUNT HAND COUNT REPORT

November 8, 2022 General Election Recount

Batch Counted: # 01 # of Ballots in Batch: 100

Race Category: Statewide Candidate Race: Attorney General

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hamadeh, Abraham "Abe"	93	93	0
Mayes, Kris	5	5	0
TOTAL	98	98	0

Comments for why a discrepancy occurred:

Race Category: Statewide Candidate Race: Superintendent of Public Instruction

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Horne, Tom	90	90	0
Hoffman, Kathy	6	6	0
TOTAL	96	96	0

Comments for why a discrepancy occurred:

Batch Counted: # 04 # of Ballots in Batch: 100

Race Category: Statewide Candidate Race: Attorney General

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hamadeh, Abraham "Abe"	84	84	0
Mayes, Kris	15	15	0
TOTAL	99	99	0

Comments for why a discrepancy occurred:

Race Category: Statewide Candidate Race: Superintendent of Public Instruction

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Horne, Tom	84	84	0
Hoffman, Kathy	13	13	0
TOTAL	97	97	0

Comments for why a discrepancy occurred:

YAVAPAI COUNTY ELECTIONS

BALLOT AUDIT – RECOUNT HAND COUNT REPORT

November 8, 2022 General Election Recount

Batch Counted: # 06 # of Ballots in Batch: 100

Race Category: Statewide Candidate Race: Attorney General

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hamadeh, Abraham "Abe"	94	92	2
Mayes, Kris	6	6	0
TOTAL	100	98	2

Comments for why a discrepancy occurred: Board 3 added 2 votes based on voter intent as the voters marked their ballots in such a way that a vote was not recorded for this candidate by the tabulator.

Race Category: Statewide Candidate Race: Superintendent of Public Instruction

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Horne, Tom	92	90	2
Hoffman, Kathy	8	8	0
TOTAL	100	98	2

Comments for why a discrepancy occurred: Board 3 added 2 votes based on voter intent as the voters marked their ballots in such a way that a vote was not recorded for this candidate by the tabulator.

Batch Counted: # 08 # of Ballots in Batch: 100

Race Category: Statewide Candidate Race: Attorney General

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hamadeh, Abraham "Abe"	71	71	0
Mayes, Kris	28	28	0
TOTAL	99	99	0

Comments for why a discrepancy occurred:

Race Category: Statewide Candidate Race: Superintendent of Public Instruction

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Horne, Tom	70	70	0
Hoffman, Kathy	26	26	0
TOTAL	96	96	0

Comments for why a discrepancy occurred:

YAVAPAI COUNTY ELECTIONS

BALLOT AUDIT – RECOUNT HAND COUNT REPORT

November 8, 2022 General Election Recount

Batch Counted: # 15 # of Ballots in Batch: 100

Race Category: Statewide Candidate Race: Attorney General

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hamadeh, Abraham "Abe"	87	87	0
Mayes, Kris	12	12	0
TOTAL	99	99	0

Comments for why a discrepancy occurred:

Race Category: Statewide Candidate Race: Superintendent of Public Instruction

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Horne, Tom	87	87	0
Hoffman, Kathy	12	12	0
TOTAL	99	99	0

Comments for why a discrepancy occurred:

Batch Counted: # 17 # of Ballots in Batch: 100

Race Category: Statewide Candidate Race: Attorney General

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hamadeh, Abraham "Abe"	41	41	0
Mayes, Kris	58	58	0
TOTAL	99	99	0

Comments for why a discrepancy occurred:

Race Category: Statewide Candidate Race: Superintendent of Public Instruction

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Horne, Tom	40	40	0
Hoffman, Kathy	57	57	0
TOTAL	97	97	0

Comments for why a discrepancy occurred:

YAVAPAI COUNTY ELECTIONS

BALLOT AUDIT – RECOUNT HAND COUNT REPORT

November 8, 2022 General Election Recount

Batch Counted: # 18 # of Ballots in Batch: 101

Race Category: Statewide Candidate Race: Attorney General

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hamadeh, Abraham "Abe"	52	52	0
Mayes, Kris	48	48	0
TOTAL	100	100	0

Comments for why a discrepancy occurred:

Race Category: Statewide Candidate Race: Superintendent of Public Instruction

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Horne, Tom	51	51	0
Hoffman, Kathy	47	47	0
TOTAL	98	98	0

Comments for why a discrepancy occurred:

Batch Counted: # 21 # of Ballots in Batch: 101

Race Category: Statewide Candidate Race: Attorney General

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hamadeh, Abraham "Abe"	34	34	0
Mayes, Kris	64	64	0
TOTAL	98	98	0

Comments for why a discrepancy occurred:

Race Category: Statewide Candidate Race: Superintendent of Public Instruction

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Horne, Tom	35	35	0
Hoffman, Kathy	66	66	0
TOTAL	101	101	0

Comments for why a discrepancy occurred:

YAVAPAI COUNTY ELECTIONS

BALLOT AUDIT – RECOUNT HAND COUNT REPORT

November 8, 2022 General Election Recount

Batch Counted: # 23 # of Ballots in Batch: 100

Race Category: Statewide Candidate Race: Attorney General

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hamadeh, Abraham "Abe"	60	60	0
Mayes, Kris	36	36	0
TOTAL	96	96	0

Comments for why a discrepancy occurred:

Race Category: Statewide Candidate Race: Superintendent of Public Instruction

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Horne, Tom	59	59	0
Hoffman, Kathy	37	37	0
TOTAL	96	96	0

Comments for why a discrepancy occurred:

Batch Counted: # 24 # of Ballots in Batch: 101

Race Category: Statewide Candidate Race: Attorney General

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hamadeh, Abraham "Abe"	49	49	0
Mayes, Kris	49	49	0
TOTAL	98	98	0

Comments for why a discrepancy occurred:

Race Category: Statewide Candidate Race: Superintendent of Public Instruction

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Horne, Tom	51	51	0
Hoffman, Kathy	47	47	0
TOTAL	98	98	0

Comments for why a discrepancy occurred:

YAVAPAI COUNTY ELECTIONS

BALLOT AUDIT – RECOUNT HAND COUNT REPORT

November 8, 2022 General Election Recount

Batch Counted: # 26 # of Ballots in Batch: 100

Race Category: Statewide Candidate Race: Attorney General

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hamadeh, Abraham "Abe"	51	51	0
Mayes, Kris	48	48	0
TOTAL	99	99	0

Comments for why a discrepancy occurred:

Race Category: Statewide Candidate Race: Superintendent of Public Instruction

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Horne, Tom	53	53	0
Hoffman, Kathy	46	46	0
TOTAL	99	99	0

Comments for why a discrepancy occurred:

Batch Counted: # 27 # of Ballots in Batch: 100

Race Category: Statewide Candidate Race: Attorney General

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hamadeh, Abraham "Abe"	49	49	0
Mayes, Kris	49	49	0
TOTAL	98	98	0

Comments for why a discrepancy occurred:

Race Category: Statewide Candidate Race: Superintendent of Public Instruction

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Horne, Tom	49	49	0
Hoffman, Kathy	49	49	0
TOTAL	98	98	0

Comments for why a discrepancy occurred:

YAVAPAI COUNTY ELECTIONS

BALLOT AUDIT – RECOUNT HAND COUNT REPORT

November 8, 2022 General Election Recount

Batch Counted: # 31 # of Ballots in Batch: 100

Race Category: Statewide Candidate Race: Attorney General

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hamadeh, Abraham "Abe"	80	80	0
Mayes, Kris	15	15	0
TOTAL	95	95	0

Comments for why a discrepancy occurred:

Race Category: Statewide Candidate Race: Superintendent of Public Instruction

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Horne, Tom	85	85	0
Hoffman, Kathy	11	11	0
TOTAL	96	96	0

Comments for why a discrepancy occurred:

Batch Counted: # 32 # of Ballots in Batch: 100

Race Category: Statewide Candidate Race: Attorney General

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hamadeh, Abraham "Abe"	48	48	0
Mayes, Kris	48	48	0
TOTAL	96	96	0

Comments for why a discrepancy occurred:

Race Category: Statewide Candidate Race: Superintendent of Public Instruction

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Horne, Tom	44	44	0
Hoffman, Kathy	50	50	0
TOTAL	94	94	0

Comments for why a discrepancy occurred:

YAVAPAI COUNTY ELECTIONS

BALLOT AUDIT – RECOUNT HAND COUNT REPORT

November 8, 2022 General Election Recount

Batch Counted: # 36 # of Ballots in Batch: 100

Race Category: Statewide Candidate Race: Attorney General

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hamadeh, Abraham "Abe"	67	67	0
Mayes, Kris	32	32	0
TOTAL	99	99	0

Comments for why a discrepancy occurred:

Race Category: Statewide Candidate Race: Superintendent of Public Instruction

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Horne, Tom	64	64	0
Hoffman, Kathy	33	33	0
TOTAL	97	97	0

Comments for why a discrepancy occurred:

Batch Counted: # 37 # of Ballots in Batch: 100

Race Category: Statewide Candidate Race: Attorney General

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hamadeh, Abraham "Abe"	57	57	0
Mayes, Kris	42	42	0
TOTAL	99	99	0

Comments for why a discrepancy occurred:

Race Category: Statewide Candidate Race: Superintendent of Public Instruction

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Horne, Tom	56	56	0
Hoffman, Kathy	43	43	0
TOTAL	99	99	0

Comments for why a discrepancy occurred:

YAVAPAI COUNTY ELECTIONS

BALLOT AUDIT – RECOUNT HAND COUNT REPORT

November 8, 2022 General Election Recount

Batch Counted: # 38 # of Ballots in Batch: 101

Race Category: Statewide Candidate Race: Attorney General

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hamadeh, Abraham "Abe"	55	55	0
Mayes, Kris	45	45	0
TOTAL	100	100	0

Comments for why a discrepancy occurred:

Race Category: Statewide Candidate Race: Superintendent of Public Instruction

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Horne, Tom	55	55	0
Hoffman, Kathy	43	43	0
TOTAL	98	98	0

Comments for why a discrepancy occurred:

Batch Counted: # 40 # of Ballots in Batch: 100

Race Category: Statewide Candidate Race: Attorney General

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hamadeh, Abraham "Abe"	73	73	0
Mayes, Kris	21	21	0
TOTAL	94	94	0

Comments for why a discrepancy occurred:

Race Category: Statewide Candidate Race: Superintendent of Public Instruction

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Horne, Tom	71	71	0
Hoffman, Kathy	22	22	0
TOTAL	93	93	0

Comments for why a discrepancy occurred:

YAVAPAI COUNTY ELECTIONS

BALLOT AUDIT – RECOUNT HAND COUNT REPORT

November 8, 2022 General Election Recount

Batch Counted: # 41 # of Ballots in Batch: 100

Race Category: Statewide Candidate Race: Attorney General

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hamadeh, Abraham "Abe"	69	69	0
Mayes, Kris	29	29	0
TOTAL	98	98	0

Comments for why a discrepancy occurred:

Race Category: Statewide Candidate Race: Superintendent of Public Instruction

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Horne, Tom	67	67	0
Hoffman, Kathy	30	30	0
TOTAL	97	97	0

Comments for why a discrepancy occurred:

Batch Counted: # 42 # of Ballots in Batch: 100

Race Category: Statewide Candidate Race: Attorney General

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hamadeh, Abraham "Abe"	79	79	0
Mayes, Kris	17	17	0
TOTAL	96	96	0

Comments for why a discrepancy occurred:

Race Category: Statewide Candidate Race: Superintendent of Public Instruction

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Horne, Tom	78	78	0
Hoffman, Kathy	20	20	0
TOTAL	98	98	0

Comments for why a discrepancy occurred:

YAVAPAI COUNTY ELECTIONS

BALLOT AUDIT – RECOUNT HAND COUNT REPORT

November 8, 2022 General Election Recount

Batch Counted: # 43 # of Ballots in Batch: 101

Race Category: Statewide Candidate Race: Attorney General

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hamadeh, Abraham "Abe"	72	72	0
Mayes, Kris	24	24	0
TOTAL	96	96	0

Comments for why a discrepancy occurred:

Race Category: Statewide Candidate Race: Superintendent of Public Instruction

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Horne, Tom	72	72	0
Hoffman, Kathy	22	22	0
TOTAL	94	94	0

Comments for why a discrepancy occurred:

Batch Counted: # 46 # of Ballots in Batch: 100

Race Category: Statewide Candidate Race: Attorney General

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hamadeh, Abraham "Abe"	74	74	0
Mayes, Kris	22	22	0
TOTAL	96	96	0

Comments for why a discrepancy occurred:

Race Category: Statewide Candidate Race: Superintendent of Public Instruction

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Horne, Tom	71	71	0
Hoffman, Kathy	24	24	0
TOTAL	95	95	0

Comments for why a discrepancy occurred:

YAVAPAI COUNTY ELECTIONS

BALLOT AUDIT – RECOUNT HAND COUNT REPORT

November 8, 2022 General Election Recount

Batch Counted: # 47 # of Ballots in Batch: 101

Race Category: Statewide Candidate Race: Attorney General

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hamadeh, Abraham "Abe"	79	79	0
Mayes, Kris	19	19	0
TOTAL	98	98	0

Comments for why a discrepancy occurred:

Race Category: Statewide Candidate Race: Superintendent of Public Instruction

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Horne, Tom	74	74	0
Hoffman, Kathy	22	22	0
TOTAL	96	96	0

Comments for why a discrepancy occurred:

Batch Counted: # 49 # of Ballots in Batch: 101

Race Category: Statewide Candidate Race: Attorney General

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hamadeh, Abraham "Abe"	54	54	0
Mayes, Kris	45	45	0
TOTAL	99	99	0

Comments for why a discrepancy occurred:

Race Category: Statewide Candidate Race: Superintendent of Public Instruction

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Horne, Tom	58	58	0
Hoffman, Kathy	43	43	0
TOTAL	101	101	0

Comments for why a discrepancy occurred:

YAVAPAI COUNTY ELECTIONS

BALLOT AUDIT – RECOUNT HAND COUNT REPORT

November 8, 2022 General Election Recount

Batch Counted: # 50 # of Ballots in Batch: 100

Race Category: Statewide Candidate Race: Attorney General

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hamadeh, Abraham "Abe"	58	58	0
Mayes, Kris	38	38	0
TOTAL	96	96	0

Comments for why a discrepancy occurred:

Race Category: Statewide Candidate Race: Superintendent of Public Instruction

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Horne, Tom	58	58	0
Hoffman, Kathy	38	38	0
TOTAL	96	96	0

Comments for why a discrepancy occurred:

Batch Counted: # 51 # of Ballots in Batch: 100

Race Category: Statewide Candidate Race: Attorney General

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hamadeh, Abraham "Abe"	54	54	0
Mayes, Kris	46	46	0
TOTAL	100	100	0

Comments for why a discrepancy occurred:

Race Category: Statewide Candidate Race: Superintendent of Public Instruction

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Horne, Tom	55	55	0
Hoffman, Kathy	44	44	0
TOTAL	99	99	0

Comments for why a discrepancy occurred:

ELECTIONS DEPARTMENT
PIMA COUNTY GOVERNMENT
6550 SOUTH COUNTRY CLUB RD. TUCSON, AZ 85756
(520) 724-6830 FAX (520) 724-6870

PIMA COUNTY
Hand Count Audit Report - Recount November 8, 2022 General Election.

Synopsis:

Pursuant to A.R.S. § 16-602 & § 16-663 (B) Pima County conducted the hand count ballot audit for the November 8, 2022 General Election Recount. At least two percent of ballots that were subject to the recount were audited as per Arizona State Law. The audit consisted of 18 batches, for a total of 8764 ballots.

The hand count began on December 6, 2022 when representatives from the Pima County Republican and Democratic Parties began to select the audit batches to be counted. All ballots were accounted for in the central counting location before the selection process started.

The physical hand count started at 9:00 AM on December 17, 2022 and was concluded at 12:45 PM on December 17, 2022. The tabulation method used was the stacking method. The hand count was conducted by 16 boards consisting of 3 to 4 members, of which not more than 2 members were from the same political party.

Comments:

The results of the hand count audit were within the variance as defined by the Arizona Secretary of State.

Constance L. Hargrove
Elections Director

Master List of All Contested Races

November 8, 2022 General Election - RECOUNT

Category: State Candidate
Race: Attorney General
Race: Superintendent of Public Instruction

Category: Statewide Ballot Measure
Category: Federal Candidate
Category: State Legislative

Master Vote Center and Race Selection Worksheet

SECTION A. SELECTED VOTE CENTER (LISTED IN ORDER SELECTED)

Not applicable

SECTION B. NUMBER OF RACES TO COUNT PER CATEGORY

Race Category	Tick Mark Tally	Number of Races per Category	Received Precinct Hand Count Margin Worksheet
1. Presidential Elector	0	0	0
2. Statewide Candidate	II	2	0
3. Statewide Ballot Measure	0	0	0
4. Federal Candidate	0	0	0
5. State Legislative	0	0	0
Additional Races Needed	0		

SECTION C. RACES TO BE COUNTED IN EACH SELETED VOTE CENTER

Race To Be Counted	Category Of Race
ATTORNEY GENERAL	Statewide Candidate
SUPERINTENDENT OF PUBLIC INSTRUCTION	Statewide Candidate

AGGREGATE - EARLY BALLOT AUDIT - HAND COUNT REPORT - TOTAL FROM ALL BATCHES

November 8, 2022 General Election - RECOUNT

Race Category: Statewide Candidate **Race:** ATTORNEY GENERAL

Batch	Hand Count Total	Machine Count Total	Absolute Difference
1	496	496	0
2	509	509	0
3	533	533	0
4	507	506	1
5	439	439	0
6	479	479	0
7	481	481	0
9	437	437	0
10	435	435	0
11	443	443	0
12	445	445	0
13	439	439	0
14	449	449	0
15	461	462	1
16	519	519	0
17	470	470	0
19	497	497	0
20	531	530	1
Total:	**8570**	**8569**	**3**

Margin = (Absolute Difference / Machine Count) X 100% **Aggregated Margin:** **0.04%**

Race Category: Statewide Candidate **Race:** SUPERINTENDENT OF PUBLIC INSTRUCTION

Batch	Hand Count Total	Machine Count Total	Absolute Difference
1	494	494	0
2	506	505	1
3	528	528	0
4	506	506	0
5	438	438	0
6	478	478	0
7	478	478	0
9	437	437	0
10	439	439	0
11	442	442	0
12	444	444	0
13	440	440	0
14	447	447	0
15	462	462	0
16	520	520	0
17	469	469	0
19	498	498	0
20	531	531	0
Total:	**8557**	**8556**	**1**

Margin = (Absolute Difference / Machine Count) X 100% **Aggregated Margin:** **0.01%**

EARLY BALLOT AUDIT - HAND COUNT REPORT
November 8, 2022 General Election - RECOUNT

Batch Counted: 1 **Total Numberof Ballots:** 505

Race Category: Statewide Candidate **Race:** ATTORNEY GENERAL

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
MAYES, KRIS	91	91	0
HAMADEH, ABRAHAM "ABE"	405	405	0
Total:	**496**	**496**	**0**

Race Category: Statewide Candidate **Race:** SUPERINTENDENT OF PUBLIC INSTRUCTION

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hoffman, Kathy	90	90	0
Horne, Tom	404	404	0
Total:	**494**	**494**	**0**

Batch Counted: 2 **Total Numberof Ballots:** 521

Race Category: Statewide Candidate **Race:** ATTORNEY GENERAL

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
MAYES, KRIS	97	97	0
HAMADEH, ABRAHAM "ABE"	412	412	0
Total:	**509**	**509**	**0**

Race Category: Statewide Candidate **Race:** SUPERINTENDENT OF PUBLIC INSTRUCTION

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hoffman, Kathy	92	92	0
Horne, Tom	414	413	1
Total:	**506**	**505**	**1**

A lightly filled oval was determined to be an additional vote for Horne, Tom.

Batch Counted: 3 **Total Numberof Ballots:** 540

Race Category: Statewide Candidate **Race:** ATTORNEY GENERAL

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
MAYES, KRIS	73	73	0
HAMADEH, ABRAHAM "ABE"	460	460	0
Total:	**533**	**533**	**0**

Race Category: Statewide Candidate **Race:** SUPERINTENDENT OF PUBLIC INSTRUCTION

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hoffman, Kathy	67	67	0
Horne, Tom	461	461	0
Total:	**528**	**528**	**0**

EARLY BALLOT AUDIT - HAND COUNT REPORT
November 8, 2022 General Election - RECOUNT

Batch Counted: 4 **Total Numberof Ballots:** 517

Race Category: Statewide Candidate **Race:** ATTORNEY GENERAL

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
MAYES, KRIS	129	129	0
HAMADEH, ABRAHAM "ABE"	378	377	1
Total:	**507**	**506**	**1**

Non standard mark was awarded as a vote for Hamadeh, Abrahm "Abe".

Race Category: Statewide Candidate **Race:** SUPERINTENDENT OF PUBLIC INSTRUCTION

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hoffman, Kathy	132	132	0
Horne, Tom	374	374	0
Total:	**506**	**506**	**0**

Batch Counted: 5 **Total Numberof Ballots:** 455

Race Category: Statewide Candidate **Race:** ATTORNEY GENERAL

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
MAYES, KRIS	261	261	0
HAMADEH, ABRAHAM "ABE"	178	178	0
Total:	**439**	**439**	**0**

Race Category: Statewide Candidate **Race:** SUPERINTENDENT OF PUBLIC INSTRUCTION

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hoffman, Kathy	250	250	0
Horne, Tom	188	188	0
Total:	**438**	**438**	**0**

Batch Counted: 6 **Total Numberof Ballots:** 489

Race Category: Statewide Candidate **Race:** ATTORNEY GENERAL

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
MAYES, KRIS	263	263	0
HAMADEH, ABRAHAM "ABE"	216	216	0
Total:	**479**	**479**	**0**

Race Category: Statewide Candidate **Race:** SUPERINTENDENT OF PUBLIC INSTRUCTION

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hoffman, Kathy	266	266	0
Horne, Tom	212	212	0
Total:	**478**	**478**	**0**

EARLY BALLOT AUDIT - HAND COUNT REPORT
November 8, 2022 General Election - RECOUNT

Batch Counted: 7 **Total Numberof Ballots:** 496

Race Category: Statewide Candidate **Race:** ATTORNEY GENERAL

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
MAYES, KRIS	298	298	0
HAMADEH, ABRAHAM "ABE"	183	183	0
Total:	**481**	**481**	**0**

Race Category: Statewide Candidate **Race:** SUPERINTENDENT OF PUBLIC INSTRUCTION

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hoffman, Kathy	293	293	0
Horne, Tom	185	185	0
Total:	**478**	**478**	**0**

Batch Counted: 9 **Total Numberof Ballots:** 452

Race Category: Statewide Candidate **Race:** ATTORNEY GENERAL

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
MAYES, KRIS	250	250	0
HAMADEH, ABRAHAM "ABE"	187	187	0
Total:	**437**	**437**	**0**

Race Category: Statewide Candidate **Race:** SUPERINTENDENT OF PUBLIC INSTRUCTION

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hoffman, Kathy	252	252	0
Horne, Tom	185	185	0
Total:	**437**	**437**	**0**

Batch Counted: 10 **Total Numberof Ballots:** 445

Race Category: Statewide Candidate **Race:** ATTORNEY GENERAL

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
MAYES, KRIS	270	270	0
HAMADEH, ABRAHAM "ABE"	165	165	0
Total:	**435**	**435**	**0**

Race Category: Statewide Candidate **Race:** SUPERINTENDENT OF PUBLIC INSTRUCTION

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hoffman, Kathy	267	267	0
Horne, Tom	172	172	0
Total:	**439**	**439**	**0**

EARLY BALLOT AUDIT - HAND COUNT REPORT
November 8, 2022 General Election - RECOUNT

Batch Counted: 11 **Total Numberof Ballots:** 453

Race Category: Statewide Candidate **Race:** ATTORNEY GENERAL

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
MAYES, KRIS	292	292	0
HAMADEH, ABRAHAM "ABE"	151	151	0
Total:	**443**	**443**	**0**

Race Category: Statewide Candidate **Race:** SUPERINTENDENT OF PUBLIC INSTRUCTION

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hoffman, Kathy	290	290	0
Horne, Tom	152	152	0
Total:	**442**	**442**	**0**

Batch Counted: 12 **Total Numberof Ballots:** 455

Race Category: Statewide Candidate **Race:** ATTORNEY GENERAL

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
MAYES, KRIS	284	284	0
HAMADEH, ABRAHAM "ABE"	161	161	0
Total:	**445**	**445**	**0**

Race Category: Statewide Candidate **Race:** SUPERINTENDENT OF PUBLIC INSTRUCTION

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hoffman, Kathy	283	283	0
Horne, Tom	161	161	0
Total:	**444**	**444**	**0**

Batch Counted: 13 **Total Numberof Ballots:** 451

Race Category: Statewide Candidate **Race:** ATTORNEY GENERAL

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
MAYES, KRIS	312	312	0
HAMADEH, ABRAHAM "ABE"	127	127	0
Total:	**439**	**439**	**0**

Race Category: Statewide Candidate **Race:** SUPERINTENDENT OF PUBLIC INSTRUCTION

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hoffman, Kathy	304	304	0
Horne, Tom	136	136	0
Total:	**440**	**440**	**0**

EARLY BALLOT AUDIT - HAND COUNT REPORT
November 8, 2022 General Election - RECOUNT

Batch Counted: 14 **Total Numberof Ballots:** 454

Race Category: Statewide Candidate **Race:** ATTORNEY GENERAL

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
MAYES, KRIS	303	303	0
HAMADEH, ABRAHAM "ABE"	146	146	0
Total:	**449**	**449**	**0**

Race Category: Statewide Candidate **Race:** SUPERINTENDENT OF PUBLIC INSTRUCTION

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hoffman, Kathy	301	301	0
Horne, Tom	146	146	0
Total:	**447**	**447**	**0**

Batch Counted: 15 **Total Numberof Ballots:** 472

Race Category: 0 **Race:** 0

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
MAYES, KRIS	313	314	1
HAMADEH, ABRAHAM "ABE"	148	148	0
Total:	**461**	**462**	**1**

Race Category: 0 **Race:** 0

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hoffman, Kathy	317	317	0
Horne, Tom	145	145	0
Total:	**462**	**462**	**0**

Batch Counted: 16 **Total Numberof Ballots:** 531

Race Category: 0 **Race:** 0

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
MAYES, KRIS	368	368	0
HAMADEH, ABRAHAM "ABE"	151	151	0
Total:	**519**	**519**	**0**

Race Category: 0 **Race:** 0

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hoffman, Kathy	362	362	0
Horne, Tom	158	158	0
Total:	**520**	**520**	**0**

EARLY BALLOT AUDIT - HAND COUNT REPORT
November 8, 2022 General Election - RECOUNT

Batch Counted: 17 **Total Numberof Ballots:** 480

Race Category: 0 **Race:** 0

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
MAYES, KRIS	320	320	0
HAMADEH, ABRAHAM "ABE"	150	150	0
Total:	**470**	**470**	**0**

Race Category: 0 **Race:** 0

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hoffman, Kathy	310	310	0
Horne, Tom	159	159	0
Total:	**469**	**469**	**0**

Batch Counted: 19 **Total Numberof Ballots:** 508

Race Category: 0 **Race:** 0

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
MAYES, KRIS	346	346	0
HAMADEH, ABRAHAM "ABE"	151	151	0
Total:	**497**	**497**	**0**

Race Category: 0 **Race:** 0

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hoffman, Kathy	342	342	0
Horne, Tom	156	156	0
Total:	**498**	**498**	**0**

Batch Counted: 20 **Total Numberof Ballots:** 540

Race Category: 0 **Race:** 0

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
MAYES, KRIS	363	363	0
HAMADEH, ABRAHAM "ABE"	168	167	1
Total:	**531**	**530**	**1**

One voter fill in oval & Write-in oval for Hamadeh, Abraham "Abe" an additional vote was assigned to that candidate.

Race Category: 0 **Race:** 0

Candidate Name	Hand Count Total	Machine Count Total	Absolute Difference
Hoffman, Kathy	355	355	0
Horne, Tom	176	176	0
Total:	**531**	**531**	**0**

Exhibit E

CLERK OF THE SUPERIOR COURT
FILED
DEC 05 2022 3:07 PM
N. Johnson, Deputy

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

IN THE MATTER OF the November 8, 2022, General Election for Attorney General; Superintendent of Public Instruction; and State Representative for District 13	No. CV2022-015915 **ORDER TO CONDUCT RECOUNT** **Priority Case – A.R.S. § 16-663(A)**

The facts requiring a recount of the votes cast in the November 8, 2022 General Election for the offices of Attorney General, Superintendent of Public Instruction, and State Representative for District 13 having been certified to this Court,

IT IS ORDERED pursuant to A.R.S. §§ 16-624(D) and 16-663 that:

A. A recount of the votes cast in the November 8, 2022 General Election for the offices of Attorney General, Superintendent of Public Inspection, and State Representative for District 13 shall be conducted;

B. The Apache, Cochise, Coconino, Gila, Graham, Greenlee, La Paz, Maricopa, Mohave, Navajo, Pima, Pinal, Santa Cruz, Yavapai, and Yuma Counties' Boards of Supervisors, as the designees of the Secretary of State, shall conduct the recount on an automatic tabulating system to be furnished and programmed under the authority of the respective Boards of Supervisors to electronically tabulate the ballots. The Boards of Supervisors shall satisfy A.R.S. § 16-664(C) by reprogramming the automatic tabulating system to recount only the votes cast in the November 8, 2022 General Election for the offices of Attorney General, Superintendent of Public Inspection, and State Representative for District 13 (in Maricopa County);

C. The Secretary and the Apache, Cochise, Coconino, Gila, Graham, Greenlee, La Paz, Maricopa, Mohave, Navajo, Pima, Pinal, Santa Cruz, Yavapai, and Yuma

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Counties' Boards of Supervisors shall conduct logic and accuracy testing on the automatic tabulating system in accordance with A.R.S. § 16-449;

D. If the ballots are not currently in the possession of the Apache, Cochise, Coconino, Gila, Graham, Greenlee, La Paz, Maricopa, Mohave, Navajo, Pima, Pinal, Santa Cruz, Yavapai, and Yuma Counties' Boards Supervisors or their designees, the respective Counties' Treasurers shall deliver to the respective Counties' Boards of Supervisors the packages or envelopes containing the ballots cast in the November 8, 2022 General Election, pursuant to A.R.S. § 16-624(D);

E. The Apache, Cochise, Coconino, Gila, Graham, Greenlee, La Paz, Maricopa, Mohave, Navajo, Pima, Pinal, Santa Cruz, Yavapai, and Yuma Counties' Boards of Supervisors shall certify, through their designees, their recount results to the Secretary of State by 5:00 p.m. on December 21, 2022, by e-mail to Elections Director Kori Lorick at klorick@azsos.gov;

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F. Apache, Cochise, Coconino, Gila, Graham, Greenlee, La Paz, Maricopa, Mohave, Navajo, Pima, Pinal, Santa Cruz, Yavapai, and Yuma Counties shall not release to the public the results of the recount, including daily vote totals, until the Court has certified the results;

G. All participants to the recount keep confidential any information they may acquire that would disclose the vote of any elector and destroy any notes that would disclose the same; and

H. Setting a hearing for December 22, 2022 at 9:00 a.m. for the presentation of the results under A.R.S. § 16-665(A) before Judge Timothy J. Thomason, 101 W. Jefferson, Phoenix, AZ 85003, 7th Floor, Courtroom 713.

DONE IN OPEN COURT this 5th day of December, 2022.

Timothy J. Thomason

Hon. Timothy J. Thomason

Judge of the Superior Court for Maricopa County

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Exhibit F

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

A P P E A R A N C E S

BLEHM LAW, PLLC.
BY: **Bryan James Blehm**, Esq.
10869 N. Scottsdale Road, 103-256
Scottsdale, Arizona 85254

OLSEN LAW, P.C.
BY: **Kurt Olsen**, Esq.
1250 Connecticut Ave., NW
Suite 700
Washington, DC 20036

Attorneys for Contestant-Plaintiff

ELIAS LAW GROUP, LLP
BY: **Abha Khanna**, Esq.
1700 Seventh Ave.
Suite 2100
Seattle, Washington 98101

ELIAS LAW GROUP, LLP
BY: **Lalitha D. Madduri**, Esq.
Christina Ford, Esq.
Elena Rodriguez Armenta, Esq.
250 Massachusetts Ave.
Suite 400
Washington, D.C. 20001

Attorneys for Defendant/Contestant Katie Hobbs

COPPERSMITH BROCKELMAN, PLC.
BY: **D. Andrew Goana**, Esq.
2800 N. Central Avenue
Suite 1900
Phoenix, Arizona 85004

Attorneys for Defendant Arizona Secretary of State Katie Hobbs

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

UNITED STATES DEMOCRACY CENTER
BY: **Sambo (Bo) Dul**, Esq.
1101 17th Street, NW
Washington, D.C. 20036

Attorneys for Defendant Arizona Secretary of State Katie Hobbs

MARICOPA COUNTY ATTORNEY'S OFFICE
BY: **Joseph LaRue**, Esq.
Thomas Liddy, Esq.
Karen Hartman-Tellez, Esq.
225 West Madison Street
Phoenix, Arizona 85003

THE BURGESS LAW GROUP, PLLC.
By: **Emily Craiger**, Esq.
3131 E. Camelback Road
Suite 224
Phoenix, Arizona 85016

Attorneys for Maricopa County Defendants

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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.

08:31:11

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.

08:31:27

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,

Mr. Liddy.

MR. GOANA: Good morning, Your Honor. Andy Goana with Coppersmith Brockelman on behalf of Secretary Hobbs in her official capacity.

Bo Dul will also be joining us shortly. She's down the hall in another hearing in another election contest, but she will be joining us shortly.

THE COURT: Good morning, Mr. Gonna. Very well.

08:32:39 I apologize, got a momentarily technical issue with Teams just to make sure everything is functioning. (Pause.)

Very good, thank you. All right. Yesterday when we adjourned, I had asked counsel to meet together to go over the exhibits so that we can have the right exhibit numbers delineated for the 807 ruling that I made yesterday.

Have counsel done that?

MR. OLSEN: Yes, Your Honor.

08:33:52 THE COURT: Okay. Why don't I have you be the spokesman for that to give me the numbers, whoever, Mr. Blehm or Mr. Olsen, and then I want Defendants to confirm that this is correct, okay.

So, Mr. Olsen, will you read me the list, please, the numbers?

MR. OLSEN: So yes, Your Honor. With respect to the 807 exhibits, 53, 54, and 76, the parties agree that they are admitted. We have a disagreement as to Exhibit 52, whether that should be admitted.

THE COURT: Give me a second to pull up 52. (Pause.)

Okay. What you're referring to is the affidavit of Mr. Sonnenklar?

MR. OLSEN: Yes, Your Honor.

08:35:27 THE COURT: What's the issue?

MR. OLSEN: Your Honor, this was the summary memo that Mr. Sonnenklar did that he testified briefly about in working both his own personal observations and with the other roving observers, which submitted sworn declarations. It's more -- it's a summary encapsulation; and we believe that, you know, as we said before with respect to the other exhibits, that that should also be admitted.

THE COURT: Have you admitted -- within the

08:35:58 53, 54 and 76, obviously, those encapsulate a number of affidavits together. Included in 53, 54 and 76 are the affidavits of -- no.

MR. OLSEN: My apologies.

THE COURT: You know, I appreciate you doing that because it reminds me of being soft spoken and I

need to speak up. Don't apologize for that, Mr. Olsen.

I want to know if 53, 54 and 76 contain the affidavits of the other attorney poll watchers that are referred to in Mr. Sonnenklar's affidavit.

MR. OLSEN: Yes, Your Honor.

THE COURT: Very well then. My intent was to admit them and not Mr. Sonnenklar's statement or report, the reason being he testified yesterday subject to cross-examination. This would be cumulative, and I
08:36:55 believe I gave you the option of having his report at the time or having him testify, and with his testimony also admitting the affidavits of the other court observers under 807. And I think we -- I understood that you elected to proceed with the supporting affidavits and Mr. Sonnenklar's testimony.

MR. OLSEN: With that understanding, Your Honor, we -- we withdraw.

THE COURT: Okay. All right.

Before you even get going on your position,
08:37:33 let me just tell you again, I am noting for the record the Defendants' continuing objection to the admission of these affidavits that I've entered under 807, based upon the stated written position of each of the Defendants under the 807 notice and its response; and as Mr. Goana noted yesterday in court, the continuing objection to

the questioning based upon those affidavits.

Is there anything further that you want to add as a matter of record, Ms. Khanna?

MS. KHANNA: No. Thank you, Your Honor. Subject to that continuing objection, I think we agree that 53, 54, 76 would be in, and 52 is out.

MR. LIDDY: 54 that contains the roving objection is out.

MS. KHANNA: Sorry. Based upon what Your
08:38:22 Honor just said, apparently 54 -- I think Your Honor just ruled only that 52, which is Mr. Sonnenklar's declaration, should be excluded, but also 54 which is the roving report.

THE COURT: Let me look at it.

MS. KHANNA: I don't know if Your Honor intended for that to come in or not. Again, subject to the same objections that we have written about, we have no real dispute about 53, 54 and 76.

THE COURT: I'm pulling up Exhibit 54, I see
08:39:17 that to be the summary listing A1 through A220 and the affidavits that support that, and that's precisely what I was having admitted.

MS. KHANNA: Yes, Your Honor, and that's fine. That's fine by Defendants.

THE COURT: Very well. Then Exhibits 53, 54

and 76 are admitted over the Defendants' objection, as I've stated on the record.

Have I got it correct?

MR. OLSEN: Yes, Your Honor.

MS. KHANNA: Yes, Your Honor.

THE COURT: Okay. With that matter of housekeeping out of the way, I think we're ready to proceed. Mr. Blehm?

MR. BLEHM: Your Honor, with leave of Court, I would ask that I just take a couple of minutes of your time this morning to address an issue yesterday, and I'm going to ask you, Your Honor, that you not take this out of our limited time. And one of the reasons for my request, Your Honor, is, A, to clarify the record before this Court to get an exhibit admitted that I believe was wrongfully objected to, and to ask for some of our time spent fighting objections to that exhibit, Your Honor; and there were certain representations made in the court yesterday. And, Your Honor, if I may --

08:40:00

08:40:43

THE COURT: Please.

MR. BLEHM: -- may I use the ELMO, please? And this is with respect to Ms. Honey's exhibit, the voicemail.

THE COURT: Got it.

MR. BLEHM: I'm putting something on the

ELMO.

THE COURT: What number was it?

MR. BLEHM: Excuse me, Your Honor?

THE COURT: What number is it? You have a placeholder, is it 74?

MR. BLEHM: I believe it was somewhere in that area, Your Honor, but --

THE COURT: Anyway, I just want to -- it's -- I've got that bent. I need to focus on what exhibit.

08:41:21 So actually you had a placeholder for Number 74, and I presume you're going to explain to me a little bit more about that process.

MR. BLEHM: Yes, Your Honor.

THE COURT: Go ahead. Am I right about it's 74?

MR. OLSEN: Yes.

MR. BLEHM: Yes, Your Honor.

THE COURT: Thank you. Go ahead. I'm sorry, Mr. Blehm.

08:41:37 MR. BLEHM: Now, certain avowals were made to this Court by defense counsel yesterday --

THE COURT: Yes.

MR. BLEHM: -- they avowed yesterday.

THE COURT: Wait.

MR. BLEHM: That nobody by the name of Betty

worked in the Department of Elections, and what I've placed on the ELMO, Your Honor, is a copy of a business card for Betty Galanter.

Betty Galanter is not just some low-level employee --

THE COURT: Right, got it.

MR. BLEHM: -- of the Elections Department, Your Honor. She's the Voter Outreach Manager, the Voter Outreach Manager, Your Honor.

08:42:18 THE COURT: Wait. If --

MR. BLEHM: This business -- I'm explaining the context of this business card. I made representations to this Court, Your Honor, yesterday, and when my client and I spoke -- not my client, my witness, I'm sorry -- my witness and I spoke yesterday --

THE COURT: Let me -- I'm sorry to interrupt, but to save you some time, I thought yesterday I ruled that you could play it in court and

08:42:48 then I would address exactly what you're talking about if the exhibit --

MR. BLEHM: I want to clarify, Your Honor, that it was admitted because I don't believe that it was admitted.

THE COURT: Well, we admitted. It's got to

be in some format that I can put it into the record, and you told me that you tried, and after your best efforts, you could not upload it into the Clerk of Court system. I accepted that.

So how would you have me admit it?

MR. BLEHM: May I have a CD ROM brought down to the court?

THE COURT: I'm going to be very upfront with you about my hesitation and the look on my face.

08:43:29 The County has spent millions of dollars on its computer system.

MR. BLEHM: I understand, Your Honor.

THE COURT: I do not want to be the one to go to the presiding judge and explain why I put something into the County system.

MR. BLEHM: Understood, Your Honor. With that, Your Honor, I can go to Costco or some store and buy a standalone tape player. I can record that audio onto that and we can admit the entire tape player as an

08:44:02 exhibit.

THE COURT: Wait. I don't need the plug for Costco either. Hold on just a second. (Pause.)

Okay. I've got a resolution for you. Here's the way it works, according to the Clerk's office. You can do -- I don't care where you buy your

player. You can play the recording in open court to mark it and have it part of the record. You're going to have to, I'm told, submit it as a physical exhibit that's actually played; in other words, if you have -- have the recording, and I'm a little hesitant here because the Clerk of the Court is a separate entity from me, and so I'm trying to meld these two.

As long as there's something that shows that it's -- if you -- you're an officer of the court. If
08:45:23 you give me the package that shows this is where this came from; in other words, I bought a clean, new thumb drive, put -- and you're avowing to me I downloaded this from some type of media that has viral, you know, antivirus software protection on it --

MR. BLEHM: Yes, Your Honor.

THE COURT: -- I will take that as the physical exhibit.

MR. BLEHM: Yes, Your Honor.

THE COURT: I won't let you plug it into the
08:45:50 court's system.

MR. BLEHM: Understood, Your Honor.

THE COURT: You take your Costco player and plug it in and you bear the risk of what happens to your Costco player, and you can play it in court, okay.

MR. BLEHM: And with that, Your Honor, I

would say also that it was played on the record yesterday or it was played in court yesterday. I'm fine with that, as long as I can get the actual audio admitted as exhibit, and I will have our technical people do that today.

THE COURT: I just ruled. I just told you if you get me that, I will take it now.

MR. BLEHM: I thought you said play it again in court, Your Honor.

08:46:29 THE COURT: You did it. But here's the thing: Before that physical exhibit gets accepted, the Defendants have a right to hear it. I'm not casting aspersions on anybody, but if you take what you're going to give the clerk, plug it in, play it, and they say, yeah, that's exactly what was played in court, then we've got no problems with foundation. Then that will be -- I know -- go ahead -- I know you don't do placeholders. So what number is this?

COURTROOM CLERK: It would be Exhibit 120.

08:47:07 THE COURT: We don't do placeholders, so it will be Exhibit 120. So, for the record, it's Exhibit 120 we've been discussing, not 74.

MR. BLEHM: Exhibit 120.

THE COURT: 120.

MR. BLEHM: And I will make that happen

today, Your Honor.

THE COURT: It's your responsibility to make sure it happens; you know, I anticipate you're going to rest your case today.

MR. BLEHM: Yes, Your Honor.

THE COURT: But that's going to be contingent upon making sure that you've got all the exhibits in. So for this one exhibit, I will give you until we're actually, we adjourn the hearing beyond when you rest, because I know you've got -- you have to jump through these hoops that I just told you, okay? But you have responsibility to make sure this happens in case I forget, in case something else happens, okay.

08:47:48

MR. BLEHM: This will happen, Your Honor. And the second question I have is we spent a lot of time discussing Betty yesterday.

THE COURT: Okay.

MR. BLEHM: And this exhibit, this specific exhibit, and this is an e-mail from me, Your Honor. I avow this is an e-mail from me.

08:48:14

THE COURT: I'll take your word for that. Just tell me.

MR. BLEHM: This is an e-mail from me to, I believe, all of the defense counsel sitting up here.

THE COURT: Um-hum.

MR. BLEHM: In which I, again, on behalf of both my client who submitted the Public Records Act request and my witness who was on the stand yesterday talking about those documents that she needed that the County will not produce, this e-mail, Your Honor, specifically talks about Betty. It says "Betty Galanter."

THE COURT: How much time are you asking for?

08:48:53 MR. BLEHM: I'm asking for at least 15 minutes, Your Honor, that were spent debating about this issue. And, you know, with leave of Court, I would also like to move to admit this e-mail as an exhibit. This e-mail is highly relevant, Your Honor, because it does discuss the chain-of-custody documents that are -- that were discussed yesterday, and those very documents, Your Honor, that Maricopa County says they have, but will not give to anybody or have not given to anybody.

THE COURT: Now we're beyond the scope of

08:49:36 the exhibit that you're talking about. If you're talking about you want time back focused on the discussion we had about chain of custody and how to do it, without arguing, I think we have -- we have some additional time. I've made time. This time we're doing right now, this is time that I made by making you come

in earlier, okay? I didn't take this into account.

So this is on me, okay. So I have no problem giving you 15 minutes.

MR. BLEHM: Thank you, Your Honor.

THE COURT: Okay. And I'm not -- but I'm not going to admit the e-mail and give you all of that. I'm giving you the 15 minutes because I think the e-mail goes well beyond this, and I think I'm going to invest more than 15 minutes of my time straightening out what's
08:50:25 relevant and what's not relevant. So I'm going to give you the 15 minutes and not go into that.

MR. BLEHM: Much appreciated, Your Honor.

THE COURT: Defendants, if you want to make a record?

MR. LIDDY: Your Honor, you saved me and you saved the court some time because I'm not going to argue for the 9 minutes and 22 seconds that should be allocated, so I'm not even going to mention that. But what I will mention, and we can check the record, is
08:50:45 that the question was asked about a Betty who works in the Maricopa County Public Records Department, and there is no Betty who works at the Maricopa County Public Records Department. That's the avowal that I made. That goes directly to my integrity, Your Honor, so I have to put that on the record.

And, secondly, avowals were made by counsel that his client knew Betty personally and then he changed and said, no, his witness knew Betty personally, and then she testified that no, she didn't.

I just want that on the record, Your Honor. Thank you.

THE COURT: Thank you. Let me just explain something to you. I listened carefully to that testimony and I understood that -- Mr. Blehm is
08:51:28 distracted -- some of the things Mr. Blehm told me weren't true. Some of the things Mr. Liddy told me weren't, you know, exactly what Mr. -- what Mr. Blehm said. I'm not saying you didn't say -- what you said isn't true. I'm saying that in terms of the representations that went back and forth, I didn't take this as being -- there was trying to be instructive to me to have an idea or focus of what the exhibit would actually say. I didn't make my rulings based on your reputation, Mr. Liddy, nor Mr. Blehm and his
08:52:01 representations. I listened to the evidence. And if during the testimony Mr. Blehm realized that some of the things he had said were not in line with what the witness said, and so he may not have come out on the record, but I saw it, and he acknowledged by body language.

Let me -- let me just digress just a second here. I've tried to be respectful, fair and impartial to both sides throughout all of this, and I have the highest regard for the attorneys involved in the case on both sides and the presentation of the evidence, and I feel it's been very professional and it's been very well done. So I just encourage you -- I know this is hotly contested, and it hasn't -- well, I'll leave it at that. I think I rely on your professionalism and dignity, and
08:52:57 I don't take things to be personal attacks. I've already given you my view of each of you, all right?

So let's leave this and proceed. I think you got 15 minutes back, Mr. Blehm. I didn't go into --

MR. BLEHM: Thank you.

THE COURT: -- anything further. I think that should cover everything, and --

MR. LIDDY: I just want to be clear, Your Honor. Twice in court it was played, the tape. A woman named Betty who works for Maricopa County said we'll get
08:53:31 the documents to you when we get them --

THE COURT: Wait. Wait. Wait. I don't want you to rehash the testimony.

MR. LIDDY: Okay.

THE COURT: Fair enough. Because I've tried to take very good notes and I've paid attention.

MR. LIDDY: Thank you, Your Honor.

THE COURT: So, thank you. Okay.

Plaintiff, do you have a witness that you'd like to call?

MR. OLSEN: Yes, Your Honor. We call Rich Baris.

THE COURT: Mr. Baris, if you'll stand in front of my clerk, raise your right arm, she'll swear you in.

RICHARD D. BARIS,

called as a witness, having been duly sworn, testified as follows:

THE COURT: Thank you, Mr. Baris. You can have a seat at the witness stand.

All right. You may begin when you're ready, Mr. Olsen.

DIRECT EXAMINATION

BY MR. OLSEN:

Q. Good morning, Mr. Baris. Would you please state

08:54:29 your full name for the record?

A. Good morning, Mr. Olsen. Richard D. Baris. Daniel.

Q. Where do you work currently?

A. For about over six years I'm the director of Big Data Poll. Before that, I worked in election

forecasting, modeled the election forecast model for People's Pundit Daily. I did that from 2014 until 2018.

Q. Can you briefly go through your qualifications and experience in conducting exit polling?

A. Yeah.

Q. And describe what exit polling is?

A. Yeah, I studied political science; but for, you know, since 2014, I've been conducting exit polling and studying what is -- no secret that the industry has had

08:55:16 problems, so I largely focused on response biases, and the -- the exit poll that we conducted in Arizona, for instance, is modeled very much off of the vote cast, which is done by the Associated Press now.

Q. Okay. How long have you been doing exit polling?

A. Exit polling, particularly, for about a little over six years.

Q. Okay. And did you always do that with respect to the company called the People's Pundit?

A. We do pre-election polling as well. We do what

08:55:47 is called -- what we call electorate mapping. We forecast turnout models. We come up with different ranges of modeling, and we also have a decision desk for election night where we set thresholds for candidates, whether they are going to win or lose an election, for instance.

Q. Okay. Do you do any type of a survey work for other companies outside of exit polling in elections?

A. Yeah, absolutely. We conduct voir dire research for clients for legal firms to determine juries, the profiles of jurors for that may be favorable or unfavorable to a particular client. We do market research. We do branding. It's a wide scope, but there's no doubt, I would say, the vast majority of our work is in politics.

08:56:34 Q. Okay.

A. And we conducted media polling as well, just for the record.

Q. What type of methodology do you employ in conducting an exit poll for an election?

A. So the methodology that we employ now because exit polling has changed over the years is the methodology that is now used by the Associated Press, which has broken away from traditional exit polling in recent years, and it will be the future.

08:57:05 Q. Okay. What is the difference between a turnout model and exit polling?

A. So turnout modeling -- and that's a great question -- turnout modeling, we only have certain variables that we could look out with turnout modeling; for instance, historical turnout, population increases,

but that is limited. So the difference between exit polling and just, you know, turnout modeling, in general, is that we're able to talk to people to see whether or not there's something that would have changed.

For instance, in regular turnout modeling data looked at in the Maricopa County 2022 Election Plan, they gave two different variants. There's always variances to models, but they gave two different plans.

08:57:49 If they would have used those plans in 2018, they likely would have understated turnout, because there would have been no historical basis for turnouts to be as high as it was in 2018 Midterm Election.

Q. When you say they give two different, what are you referring to?

A. So if you look at, I believe, page 11 in the election -- 2022 Maricopa Election Plan, you'll see that they are providing two different turnout models. One is a lower turnout model, the other is a higher turnout

08:58:13 model; and they are using various variables that they are putting into this, turnout rates. They are averaging certain cycles over the last several decades, but again, that -- I applaud them for that work. They did a good job, but it's limited because the turnout was very, very low in some of those elections, so you would

never see a high turnout election coming if you didn't have long-term interviews with voters on the ground.

Q. For the record, I believe the -- you're referring to Exhibit 2?

A. It is Exhibit 2, exactly, yes.

Q. That's Defendants' Exhibit 2.

What type -- what are the factors that you take into account with respect to turnout modeling?

A. Maricopa is a great example of this, it really
08:59:02 is, because it's an enormous amount of population growth. And when we look at voter records we, of course, ask them their vote history. Did you vote in 2020? Did you vote in 2018? But that would be verified against the voter file, and a lot of new movers that come to Maricopa County have robust vote records. So a pollster may not know them as a long-term voter in a state unless they check those records, and maybe when they move from New York, as so many have done, or California, or Illinois. And when we look at those
08:59:32 records we'll see that they, in fact, are high-propensity voters.

So these are voters that a lot of people can miss on what are called voter screens, what you're referring to. We screen these voters, and for an exit poll we would have called them first and we would have asked

them to participate in that exit poll, and we would have checked their vote history, whether or not they are high-propensity voters or not. We would put them through traditional screens, and if they agreed to take the exit poll, we would tell them to re-interview and take it. And we would contact them and complete the questionnaire as they cast their vote, which I think is very important in this case.

THE COURT: Hold on, Mr. Olsen. Before

09:00:07 there's a next question, you talk fast.

THE WITNESS: I'm sorry, Your Honor. I do, I know. I'll slow it down.

THE COURT: I talk softly, no one is perfect. All I'm pointing this out for is for the benefit of my court reporter, she has to take this down. And so if you wait -- wait for the question to be completely asked and then I will make whoever asks you the next question wait until you've answered so you're not rushed, you'll get to say what you need to say, but

09:00:38 just for her sake --

THE WITNESS: Understood, Your Honor.

THE COURT: -- say it slower. Thank you.

BY MR. OLSEN:

Q. So when you conduct an exit poll, are you saying that you identify, prior to the election, participants

and voters who you think are going to go out and vote and, therefore, fill out the exit poll questionnaire?

A. Yes, that's correct.

Q. And in identifying those voters, do you review their voter history?

A. Yes, we do.

Q. And do you interview those voters or survey them?

A. Yes, we do. And we'll also check to see -- sometimes people just don't tell the truth -- so we will

09:01:16 check those voter records what they are self-reporting to us against what is on their voter file.

Q. And were you hired by the Plaintiff prior to the election?

A. In fact, we were not hired by the Plaintiff to conduct this exit poll.

Q. Okay. So you created this exit poll based on a turnout model that included going through and identifying voters through their voter history and other factors?

09:01:52 A. Yes, that's correct. Absolutely -- well, let me just leave it there for now.

Q. Okay. And you created a turnout model prior to the election, correct?

A. Yes.

Q. And then in terms of the exit polling, those

voters who agree to participate, and they were part of your turnout model, would fill out a questionnaire?

A. Yes.

Q. And what kinds of questions would that questionnaire ask?

A. So -- and some of them did this over a duration of time. So an interview may not be complete immediately. There are different ways in Maricopa County, in Arizona, as there are in many states to vote. So we will identify after screening them and qualifying them as a likely voter. We will identify what method they intend to vote by. Do they intend to cast a vote by mail and mail it in early? Do they intend to drop it off at a drop box, do they intend to vote in person? And at that point, if they are in-person voters, or if they have not cast that ballot or mailed it in, and they intend to drop it in the drop box, they are told not to; and they won't finish the questionnaire until or finish their interview -- there are different ways they can take it -- until they actually cast that vote.

09:02:34

09:03:08

Q. And in terms of the number of participants in this exit poll that you created for the 2022 General Election, was that for Arizona or for Maricopa County, or was it national?

A. It was for Arizona, although we did other states

-- we polled other states as well, but it was for Arizona. With Maricopa being such a large share of the vote in Arizona, it made up a substantial portion of the sample, so roughly a little over 1,300 people we spoke to statewide in Arizona, and about 813 of them were residents and voters in Maricopa County.

Q. And did you perform an analysis to determine whether or not that was a statistically reliable sample?

A. Sure. So we can actually see the share of the voting population that is -- that comes from Maricopa County. It doesn't mean it will make up that share of the vote on, you know, when all the votes are counted and all is said and done, but it's a great place to start. And as -- as a modeler, as a pollster, anybody who does this, we have to set ranges for where we think these numbers are going to fall.

Q. Was the sample that you chose and obtained participation from in your exit polling statistically significant in your opinion?

A. Yes.

Q. And what do you base that opinion on?

A. Well, we calculate sampling errors, of course, like everybody else. We have at Big Data Poll, we have certain minimum standards and minimum population. They are sample sizes. And I could go into the principles of

random sample, but ultimately the more -- it would be ideal if you could speak to the entire population, if you're polling an entire population, but it's not possible. So the larger sample you speak to of the target population, the lower the sampling error is going to be. So anything -- every pollster is different, but we have minimum sample sizes that we employ by state, by population, whatever it may be, and it is statistically significant.

09:05:13 Q. How would you characterize your methodology and the statistical reliability of the turnout model and the exit poll that you conducted in Arizona for the 2022 General Election?

A. We used the same methodology for the exit poll that we conducted in Arizona that we have used for six years, even before the Associated Press moved to this methodology. In over six years since we began releasing public polling on a steady basis in 2016, we have not inaccurately predicted the winner, outside of a sampling

09:05:51 error, in a single poll, not one. So everybody gets it wrong sometimes, but I'm very proud of the record that we've amassed at Big Data Poll. Everybody gets it wrong; but did you get it wrong outside the sampling area routinely, then there's a problem with your methodology. So everyone is constantly refining what

they are doing and the world changes. So the ways that you can contact voters are always going to change with it, but we feel we've done a good job evolving.

Q. You said that you have never inaccurately predicted within this --

A. Not outside of the sampling error. So, for instance, you could predict the winner of a presidential election is going to be Candidate A by a point, maybe he loses by two points or a point and a half; but you're

09:06:33 sampling error is 3.5 percent, so you're within the sampling error at that point.

Q. During the 2022 General Election in Arizona, did you make any changes to your exit-poll questions?

A. We did on the day of election.

Q. And what change was that?

A. And just to for the record, the reason we added this question is because of the interactions we had during the conducting the exit poll. Shortly after --

Q. Interactions with who?

09:07:07 A. Voters, people, participants of the exit poll. Shortly after polls opened on Election Day, several of the participants, who had previously agreed to take the exit poll, but indicated that they would vote on Election Day, were trying to vote before work; and when they went to go cast their ballot, the lines were long.

So some of them would tell us we'll come back after work and we'll see if we can do it. Some others, you know, complained, you know, that they couldn't wait on line, so they had to go pick up a kid, you know, life really. So we, in fact, added a question that was not designed to see how many voters may have been suppressed. In fact, it was designed to try to point people to a direction, to a polling station where they could vote. So we added a question that basically said, did you have
09:08:00 any issues or run into any complications while attempting to vote, such as tabulators rejecting ballots or running out of paper when -- at the polling station?

And we took this from issues that voters were telling us, we didn't make this up, we took this from issues that we heard directly from them.

Q. And was this change in terms of the questions, to add this question, was that done in connection with any anticipated litigation?

A. No.

09:08:28 Q. That might arise out of this election?

A. No. The goal was attempt to tell the participants where they could go vote, and we were taking lists of polling places. Those who were able to successfully cast a ballot, where were they able to do so.

Q. Okay. Now, you did a report for use in this election challenge, correct?

A. We did.

Q. And what was your conclusion as to the number of likely voters that were suppressed from turnout as a result of the chaos on Election Day?

A. Well, like anything else, I try to set a range, because we have sampling errors and we have variances, so I have to feel comfortable with the estimates that

09:09:09 we're looking at, and we put -- I put a couple of things into this.

First, I'm looking to see whether or not there's still a substantial amount of voters out there that historically we could say -- we could support with historical data that they could have turned out, meaning, would this be out of the range of normal if we were missing such a large chunk of voters, or can we -- can we look at the numbers and have expected it? The bottom line here is that those who said they would cast

09:09:40 their vote by mail, or drop their ballot off my mail, completed their questionnaire at a 93-percent rate. There are always going to be people who tell you that they are going -- they are going to participate in your poll but then don't, especially in exit polls. The rate for Election Day voters was only 72 percent, so that

doesn't -- I can tell you that has never happened to me before, ever.

Q. And why is that significant?

A. It's significant because, you know, looking at, you know, we can go through it a lot more in-depth, but looking at all the totality of it, there's no explanation for why these voters simply did not come back; they didn't cast their ballot. There's always going to be a difference, but the difference is almost

09:10:20 20 points, it's roughly 20 percentage points. It's a significant finding, and I can only -- look, in my professional opinion, I've done many, many of these exit polls, these people didn't complete this questionnaire because they didn't vote. They didn't get to vote, and I don't know why anybody who agree to participate in an exit poll and then not, you know, show up and in such -- why would they not vote and then complete the interview? This just doesn't happen.

Q. What was the range of voters lost on Election

09:10:56 Day?

A. So if we look at that 20 percent, admittedly very large. Could we have expected the Election Day electorate, itself, roughly 250,000 Election Day voters, could we have expected that to expand by another 20 percent? That's, you know, that's a lot, but there

are means. Could we expect it to expand by 10 percent? Could turnout for Election Day have been 10 percent higher? 15 percent higher? Look at the number of votes that would mean, 10 percent would be 25,000 votes. Did that fall within our modeling? Sure, it fell within the modeling of the 2020 Election Plan [sic] for Maricopa County.

What about 15 percent? If turnout increased on Election Day by 15 percent, we'd be looking at almost 40,000 votes roughly, something like that. Absolutely could have.

Q. You're talking a little fast.

A. Sorry.

Q. So what was the expected range that you determined of voters who were disenfranchised as a result of the Election Day chaos?

A. Between 25,000 to 40,000; and, again, there is always going to be some variance there.

Q. Okay. And what of the 25 to 40,000, what was the net effect on Republican voters?

A. This is important, and you can only understand that by understanding the difference in vote preference by vote method. If you showed up on Election Day, you were far more likely to be a straight-ticket Republican than if you cast in a ballot by mail. The same is also

09:11:38
09:12:07

true if you were, for instance, a Democratic voter. If you voted on Election Day, you were far more likely to cross over and vote for another party, and the same is true of Republicans. If they voted by mail, they were far more likely to vote, for instance, for the Democratic candidate, Katie Hobbs.

So you have to understand that when you're looking at it, it's not as significant of a number for disenfranchised voters as you may think. So the
09:12:56 Election Day margin for Ms. Lake was huge in the areas where we saw these depressions, and by huge, it was not uncommon for her to win 75-76 percent of the vote there. It's because she was also winning large numbers of crossover voters.

So, you know, when we're looking at who may have been disenfranchised, the mail-in vote is in, we can only be talking about Election Day voters at this point. So one -- one more -- we call them dumps -- but one more batch of tabulated votes in Maricopa County really could
09:13:32 have done it.

Q. Well, do you recall the range that you concluded in your report as to the number of Republican voters that were suppressed from coming out on Election Day as a result of the chaos?

A. Well, it's -- again, I really want to caution

anybody for thinking about this just as Republicans because the vote share is so large. Republicans were absolutely disproportionately impacted by this, and were we're talking about a net advantage that absolutely puts the margin in doubt.

So we're looking, if it was 25 to roughly 40,000 votes, Mr. Olsen, the margin that we saw in these areas puts this election within a few votes either way. It really does.

09:14:21 Q. Would it refresh your recollection if we brought your report to know the number of voters, Republican voters, that you determined were suppressed as a result of the election?

A. Percentages we could absolutely --

Q. No, sir. I'm asking, you came up in your report with an expected range of suppressed Republican voters. Do you recall that range?

A. Well, the range, yes. The range was a low of 25,000 to a high of 40,000, yes.

09:14:47 Q. Was that overall voters or Republican voters?

A. That's just -- that's overall votes that would have netted -- what I did in the report, Mr. Olsen, was explain how the net change in the vote would have been impacted.

Q. What was that figure?

A. Well, that figure was between 2,000 -- it would have ranged between 2,000, a hold for the current leader, to roughly 4,000 for Ms. Lake.

Q. Do you recall a range of 15,000 to 29,000 in your report?

A. Well, yes, yes. That's --

MS. MADDURI: Objection, Your Honor. Objection to that question.

THE WITNESS: I understand, though, what

09:15:28 he's saying. Sure.

MS. MADDURI: Counsel is leading the witness in testimony.

THE COURT: It is leading. If you would like to have him refresh his recollection, that would be fine with the report, but I don't want to -- it's not in evidence, put it that way.

MR. OLSEN: Yes, Your Honor.

THE COURT: Which exhibit is it, Mr. Olsen?

MR. OLSEN: It's Exhibit 48, Your Honor.

09:16:27 MS. MADDURI: Your Honor, I think counsel wants to use that to refresh the witness's recollection, but the witness hasn't actually said he needs that, or said that he doesn't know something.

THE COURT: I think there was a previous question where he asked about the actual numbers, and

that's why I was drawing that off of. So if she wants you to ask him the question if it would refresh his recollection or not before he's allowed to refer to his report --

MS. MADDURI: Sorry, let me clarify what I'm saying. He actually testified to the numbers, so he doesn't need his recollection reflected -- refreshed.

MR. OLSEN: I think I'm entitled to ask the question, Your Honor.

09:17:01 THE COURT: You may.

BY MR. OLSEN:

Q. Would it refresh your recollection in terms of some of these numbers to look at your report?

A. No, I think this is a matter of nomenclature. We're talking in different terms, where you're saying Republican votes, and I'm referring to it as the net change. So I'm not thinking about this as the registered -- the registration of that voter, I'm thinking about how it would impact the margin of the

09:17:24 governor's race. So the net gain for the Republican candidate, what would the net gain, would be the margin -- is the number that you're referring to. So, yes, it would be significant enough to change the leader of the race, it would.

Q. And you're basing that on the net difference

between the candidates of 17,000 --

A. Yes.

Q. -- plus votes?

A. That's correct, yes.

Q. So in your opinion, the suppression of Republican voters that you saw on Election Day, based on your exit polling and survey, exceeded, or would have exceeded, the margin between the two candidates of 17,000 plus votes?

09:18:04 THE COURT: Wait just a second. When the lawyers stand up, it usually means there's an objection coming.

THE WITNESS: Yes, Your Honor.

MS. MADDURI: Objection, Your Honor. Counsel, again, is leading the witness and mischaracterized his testimony about voter suppression.

THE COURT: Okay. Let's stick with leading, it was leading. You can ask him for his opinion.

BY MR. OLSEN:

09:18:28 Q. Mr. Baris, what is your opinion with respect to the effect of the voter suppression as a result of Election Day chaos, based on your survey exit polling and experience, in connection with this race where the margin between the two candidates is a little over 17,000 votes?

A. Mr. Olsen, in my professional opinion, and some of this is not opinion, we know the vote totals in these areas that we're talking about; we know what the margins were. In my opinion, in my professional opinion, this did have an impact -- it definitely impacted the outcome. The only question for me is whether it had the potential to change the result. And in my opinion, in my professional opinion, I believe it did have the -- it did have that. It was substantial enough to change the
09:19:18 leader board, it was.

Q. When you say change the leader board, do you mean that the --

A. That Ms. Lake would be ahead right now. Ms. Lake would be ahead.

THE COURT: Wait. Another rule. One person talks at a time, because she can only take down one person at a time, so I cut into your answer and broke my own rule to try to get you not speak at the same time.

THE WITNESS: It's okay, Your Honor.

09:19:42 THE COURT: So, Mr. Baris, can you repeat your answer so my court reporter can get it clearly?

THE WITNESS: In my professional opinion, the amount of Election Day voters that we're talking about here, with the margin, would have changed the outcome of the race, and the number is substantial

enough to have changed who the overall winner was in this race.

BY MR. OLSEN:

Q. And are you saying that Plaintiff Kari Lake would have won this race but for the Election Day chaos?

A. I have no doubt. I believe it that strongly. It's my opinion that strongly, yes.

MR. OLSEN: Thank you, Mr. Baris.

THE COURT: Are you done with questioning?

09:20:30 MR. OLSEN: Yes, Your Honor.

THE COURT: Thank you. Cross-examination, please?

CROSS-EXAMINATION

BY MS. MADDURI:

Q. Good morning, Mr. Baris. Thank you for being here.

A. Good morning. Thank you.

Q. My name is Lali Madduri and I represent Governor-Elect Hobbs, and I'm going to ask you a few

09:21:13 questions.

Just, first, have you ever testified in federal or state court before?

A. No, but I have been consulted by lawyers about election processes and laws, and...

Q. Have you in an academic study -- academic

setting, ever studied polling?
A. In an academic study?
Q. Academic setting?
A. Academic setting? You know, it's funny, the professor who got me into this said be aware of presidents and pollsters who have Ph.D.'s, they don't make good ones of either, so no.
Q. Have you ever studied long lines in the context of elections?
09:21:59 A. I'm not sure --
Q. In academic setting?
A. That's not my purview, and I'm not sure that has any bearing here.
Q. Have you ever studied the effect of long lines on turnout?
A. No.
Q. Have you ever studied the various factors that can affect Election Day, or any kind of turnout?
A. Of course.
09:22:22 Q. In what setting, but not in academic setting?
A. Well, I'll say it again, I make my living in the real world. There's a difference between practice and theory, ma'am. There is.
Q. So no, you've never studied --
A. No.

Q. -- the effect of --
A. No.
Q. Have you ever published any peer-reviewed academic articles?
A. No, but I've appeared in numerous outlets after elections. You know, I've been -- I've written commentary articles for various news organizations. No, it's not academic; but again, in my industry, academia means nothing, accuracy matters. People come to me when
09:23:03 they want the truth and accurate information. They don't care about theory.
Q. So no, you've never published --
A. No.
Q. -- any kind of academic --
A. No, I haven't.
Q. -- peer-reviewed article?
A. That's correct, yes.
Q. Are you familiar with the *New York Times?*
A. Yes.
09:23:23 Q. Are you familiar with FiveThirtyEight?
A. Unfortunately, yes.
Q. Are you aware that FiveThirtyEight aggregates more than 450 different polls for its analyses?
A. I'm a long-standing critic of FiveThirtyEight. Yes, I'm very aware of that, our adversarial

relationship.

Q. So you're aware --

A. I'm a competitor to FiveThirtyEight. I risk --

MS. MADDURI: I'm sorry. I just want to remind you about what the Judge said about -- because we can't talk over each other because our court reporter is taking everything down.

THE WITNESS: I got you. Sorry about that.

MS. MADDURI: So I'll make sure not to speak

09:23:56 over you if you can do the same.

THE COURT: Stop. Please, just calm down, because even when you're both trying to correct this, you're talking over each other, okay? So take a deep breath. What I'll do is I will give you the chance to answer the question once she's finished, but don't answer the question until you've actually heard it, even if you think you know where it's going. On the other hand, let him answer before you ask the next question, and we'll be just fine, okay?

09:24:26 So I apologize for the testy nature of what I'm telling you, but I'm looking down at my court reporter and she has to take this down, and it's a mess, and that's not a technical-legal term. Just one person talking at a time. Thank you.

MS. MADDURI: Thank you, Your Honor.

BY MS. MADDURI:

Q. So, Mr. Baris, are you aware that FiveThirtyEight aggregates more than 450 polls for its analyses?

A. Yes.

Q. Your polling organization, Big Data Poll, is excluded from 538's aggregated polls; is that right?

A. That is true, yes.

Q. And Big Data Poll received a grade of F as in a failing grade from FiveThirtyEight; is that right?

09:25:11 A. It is. And can I just elab?

THE COURT: There will be more examination after she's done.

MR. OLSEN: Briefly.

BY MS. MADDURI:

Q. And it sounds like you're aware that FiveThirtyEight currently ranks about 500 different pollsters; is that right?

A. You know, honestly, ma'am, I don't know how many they rank. I don't pay much attention to them.

09:25:38 Q. Any reason to disagree that it's about 500?

A. No, I'll take your word for it.

Q. Okay. And are you aware that just 11 of those polling organizations have received an F grade?

A. No.

Q. Are you aware that F grades are given to

pollsters if their methodology is unreliable, their methods are not transparent, or their results are inaccurate?

A. No. But, again, I would just argue that you're acting as if they are an authority on polling; they are not.

Q. Are you familiar with RealClearPolitics?

A. Yes. Yes, I am.

Q. And are you aware that it's been described as a

09:26:20 right-leaning media outlet?

A. No, they are not right leaning.

Q. Are you aware that they also aggregate polls?

A. Yes.

Q. And Big Data Polls are also not included in RealClearPolitics's aggregation; is that right?

A. They just, at their request, asked for our stuff for submission. So they go through a review process, we just gave it to them. I've had -- stay tuned. I don't know what to tell you. We've been under the radar for a

09:26:48 while and I suspect that will change. They just -- RealClearPolitics just announced something called, the polling accountability initiative, because polling has been so horrible; and outlets like the one you're describing, ma'am, FiveThirtyEight, have used them for narratives and were losing public trust. So RCP just

began this initiative and starting to rank pollsters. I gave them our stuff for their review and I expect we'll end up in the top three, like we are in Election Recon right behind the IBD/TIPP poll. And unlike them, we poll states as well, not just national, so it's actually harder to get a higher grade if you're polling both states and national polling. National polling is easier; state polling is more complicated.

MS. MADDURI: Your Honor, I would like to move to strike that testimony as nonresponsive to the question that I asked.

09:27:33

THE COURT: I'm not going to strike it, but go ahead and ask further questions, if you want to clarify.

BY MS. MADDURI:

Q. Okay. So I understand the explanation you just gave, but is it correct that you have not previously been part of the aggregations --

A. That's correct -- sorry, Your Honor.

09:27:57

Q. Is Big Data Poll a member of the National Council on Public Polls?

A. No, but we do follow the transparency initiative that they laid out.

Q. And you're not -- it's also not a member of the Association of Public Opinion Researchers?

A. Same -- same answer, and just for the -- just for the sake -- it's only, you know, a lot of pollsters, probably 70 percent of them, are not. Nobody wants to pay dues. That's not the point of polling and to be part of the clique.

Q. And you're also not a part of the Roper Center?

A. No, I've never contacted them.

Q. Okay. I'd like to discuss now the poll that you conducted in this -- for this election --

09:28:37 A. Sure.

Q. -- that you just discussed with your counsel.

Just to clarify, how was the poll conducted? Was it phone? Written? Text? What was the medium that it was conducted under?

A. You could consider it mixed mode, ma'am, because there are different rates that different voters respond to different modes of collection.

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

09:29:04 with you and conduct a live interview for 20 minutes or so, but a steelworker in Pittsburgh, or a -- for instance, a working-class Hispanic in Maricopa County does not want to do that, so you have to give them different ranges to do it. We do live caller. We do peer-to-peer in this context, again, very much like the

Associated Press. They can fill out a questionnaire online if they want, but they are contacted live in all instances.

Q. Okay. So some of the interviews were conducted by phone and some were conducted by some kind of written online submission; is that right?

A. Well, that is correct, they would be contacted live and then get texted a link, it's called peer-to-peer texting, if they chose to opt in that way. For anonymity, they could conduct it like that, yes.

09:29:42

Q. And the poll was conducted between November 1st and November 8th; is that right?

A. That's correct.

Q. How many of those polled reported voting on Election Day?

A. Overall, there were about, at the end of the day, about 160-something filled out, if I remember correctly. I honestly needed that in front of me because, you know, I conduct a lot of polls, ma'am, honestly. But it was shy of what was expected, which was in the range of about 250 to 300, and you're referring only to Maricopa County or the entire state, because there was a state-level poll?

09:30:16

Q. The 160 estimate you gave, what was that for?

A. That -- Maricopa County. And we do, just to

elab, we do believe in oversampling. Again, the larger the sample, the smaller you can reduce error rates for --

Q. Of those who responded from Maricopa who voted on Election Day, were there respondents from all of the congressional districts that Maricopa covers?

A. That's a great question. Yes.

Q. To make sure I understand correctly, the poll -- people who filled out the poll were all people who

09:31:23 self-reported as having voted; is that right?

A. Yes. We would not be -- that is correct. We would not be able to verify that until in this case the County or Secretary of State's office, we do use vendors that often give us that information faster. That's correct.

Q. So I think you answered this, but then you didn't do anything to verify whether they have voted or not?

A. At this point, there is -- there is just the tools there are not at our disposal. I mean, that's --

09:31:58 there's no way at this point to confirm whether -- Election Day records are typically the last ones to come. But if I may, while it's true we didn't talk to people after the fact, it really very much is like a way an astronomer observes a planet when they can't see it. It dims the light of the planet as it passes it.

There's -- it's the same principle. I can observe them by their absence.

Q. Okay. So let's talk about the questions that you asked. So I think the key question that's at play here, you asked Election Day self-reported voters, "Did you have any issues or complications when trying to vote in person, such as tabulators rejecting the ballot or voting locations running out of ballots"; is that right?

A. That's correct, ma'am.

09:32:56 Q. And based on how many voters said yes to that question, you drew the conclusion that to a reasonable degree of mathematical certainty that turnout depression occurred on Election Day; is that right?

A. Well, it's not -- the conclusion is not derived from the answers to that question. In fact, the -- the percentage of areas affected, polling stations affected, is where we -- we can draw that conclusion from using that question; but the conclusion is of how many or what is the range of the group of voters that were depressed

09:33:37 or comes from the modeling itself that we went over, but also the absence of their completion. And this is -- while we can't check their vote record now, these are people that do have vote histories. So if I see a woman who has voted in every election since 1980, and for some reason she didn't show up this time when she told us I

am certain to vote and I am going to vote on Election Day, there is no reason not to believe her.

Q. So the conclusion you draw about how many voters, to use your words, were either suppressed or disenfranchised, that is based on who failed to complete your survey --

A. Not only that --

Q. -- is that correct?

A. No, it's not. That's not only -- it's a number

09:34:27 of factors. We have historic data here, we have voting records of the past. There's a lot that goes into it, there is.

Q. I understand -- sorry -- I understand that. But the actual number, sort of, that you're saying that didn't turnout or were suppressed, that is based on how many people didn't complete the survey?

A. In part. The exit poll would have projected a higher number. The exit poll would have projected over 50,000, if I took just the word of the people who told

09:34:58 us they were going to vote but then did not show up. I thought that, honestly, that was a little bit hard to support, you know, with historical data, so I'm using a mean, and that's what anybody else would do when you're -- when you're trying to project. It's what Mr. Jarrett did when his team put together these models you saw

yesterday in court, Model 1, Model 2, he's using means. So he's using the averages. It says right on page 11, using the averages of historical turnout. That's what we do.

Q. In your projection about how many people would vote, was that based on any sort of interview with a person?

A. Yes, later in part, absolutely. So --

Q. I think I asked my question. Let me just make sure --

09:35:48

A. Okay.

Q. -- we're speaking about the same thing.

Your projection about how many people would vote on Election Day, that is based on how many people told you they would complete your poll, correct?

A. On Election Day specifically you're referring to?

Q. Or at all?

A. No, no. I actually -- again, I applaud the work I saw in the Election Plan in Maricopa County, it just has limitations, so we would add those interviews as a variable.

09:36:14

Again, I use 2018 as a great example. If you only used historical data, then you would never have saw over 64-percent turnout in Maricopa County coming, because you haven't seen an example like that in

decades.

So the reason, for instance, a pre-election pollster would be able to accurately project the outcome of that election is by talking to these voters and, at some point, you have to believe them. And you have to, of course, verify and make sure that their vote history checks out. But if you're a pollster and you're interviewing them, you actually are a little bit -- you have the advantage. You're able to catch on to new
09:37:01 movers, for instance, whereas if you're just looking at historic turnout model, you're going to miss it. You're going to fall shy.

Q. Okay. And the people who actually responded to your poll, they all reported voting, right?

A. Who actually responded, that's correct, yes.

Q. Let's dig into that question just a little bit more. So for voters who -- so you discussed with your counsel that you added a question to your poll on Election Day, right?

09:37:45 A. Yes.

Q. Okay. So that question, which we've already gone over, about sort of facing issues with any issues specifically referencing tabulators, there's no similar question that was asked to anybody who completed your poll before Election Day, right?

A. Yes, that's true.
Q. Okay. Great.
A. And there's a reason for that.
Q. That's fine, so yes.
So if early voters had faced issues, there was no question in your poll that would have captured that response?
A. If early voters had faced issues, we would have added the question. That's what I'm trying to
09:38:23 distinguish here.
Q. I understand. So they were not asked the question?
A. They were not, that's true, and they were not alerting us of any issues either.
Q. Did you ask Election Day voters outside of Maricopa if they had issues on Election Day?
A. Yes.
Q. Okay. It's not really an accepted practice in the political polling industry to change or add
09:38:43 questions partway through a poll, is it?
A. Yes, it is. In a tracking poll, you can change a question every day. There's nothing wrong with adding a question on -- if you feel that there's a subgroup within the poll that is being uniquely impacted by it, then, sure. Sure, you can.

Q. Part of the question had a premise in it. One of the issues you give as an example that a voter could face was a voting location running out of ballots, correct?

A. Yes.

Q. You're aware that Maricopa prints ballots on-demand, correct?

A. Yes, but Pinal County had an issue in the Primary, so we were simply reflecting what -- what

09:39:29 participants of the poll were telling us they have had in the past. That's -- and again, the entire poll was conducted state -- that was even asked of other voters statewide. And it's worth noting that only Maricopa voters, only participants in the poll who -- who vote and reside in Maricopa County responded that they had issues. There were no other voters outside in the state who said, yes, I ran into a problem.

Q. Okay. Your poll can't tell us how many voters encountered an issue with a tabulator in Maricopa,

09:40:00 correct?

A. Election Day voters about -- it was about 32.7 percent did say they had an issue, yes.

Q. They said they had an issue?

A. Yes.

Q. Okay. But your analysis can't tell us how many

voters encountered an issue with a tabulator, correct?
A. That's true. We didn't give them the option to -- that's true, absolutely.
Q. And it can't tell us how many voters of a specific party encountered an issue with a tabulator, correct?
A. Specifically with a tabulator?
Q. That's right.
A. No, but we can give the share of each party that had issues.
09:40:32
Q. That had some issue --
A. Yes.
Q. -- on Election Day?
A. You are correct, yes.
Q. And no voter in your poll was asked whether they waited in the line on Election Day?
A. No.
Q. So your analysis can't tell us about how many voters encountered a line when they went to vote?
09:40:48
A. No, I think that's fair.
Q. And you can't tell us anything about where lines occurred in Maricopa?
A. Well, not lines specifically, just issues being able to cast a ballot, yes.
Q. Okay. It also can't tell us how long those lines

were, should a voter --

A. No, ma'am.

Q. -- encountered a line?

A. No.

Q. It also can't tell us whether a voter decided not to vote because they encountered a line?

A. That specific question, no. The only way we can, again, infer that is by the absence of their participation and them being the only ones to have an absence of participation.

09:41:30

So there's always going to be a percentage of voters who tell you they are going to do your exit poll and then don't do it. Those who voted by mail were significantly less likely to not complete the questionnaire, and they are instructed to complete it at the time they cast their vote. Ninety-three percent did, if they did not vote by election; 72 percent did if they voted on Election.

Q. And you can't tell us anything about whether long lines occurred in more Republican areas of Maricopa or more Democratic areas of Maricopa, correct?

09:42:02

A. I can't. I can only speak to general, like the question was worded, general issues, did you encounter issues, yes.

Q. So, again, the question was, you had asked was:

"Did you have any issues or complications when trying to vote in person," right?

A. Yes.

Q. Okay. So this question doesn't allow us to distinguish between voters who encountered a significant issue versus a voter who had some kind of trivial issue, right?

A. Well, because of the sample size, we can technically do that by just the amount of -- the amount

09:42:49 of signals is what we would call it, so are there areas that are consistently showing up as problematic areas? But because it's sample size, we can only look by congressional district. I would not be able to look at vote centers specifically.

Q. I understand that. We can talk about your congressional district analysis; but I just want to clarify, the question doesn't allow us to distinguish between the type of issue that a voter faced?

A. That's true. You're correct about that.

09:43:15 Q. And voters who encountered a problem with something other than tabulators could have also reported experiencing an issue, correct?

A. Yes.

Q. So, for example, if somebody had an issue with their photo ID -- their voter ID, I said photo -- that

could have been reported as an issue in your poll?

A. That is -- yes, and that's fair. I just want to make the point, though, that we decided what to ask people based on what was being relayed to us. So there were people who were attempting to contact us and couldn't tell us, you know, basically, I'm sorry. I know I said I would take your survey, but I had an issue, the line is too long.

I mean, they were tell us these things; it's just
09:44:01 at the time, you know, we did not design the poll thinking this -- we'd be here today, you know, that's just a fact.

Q. Yeah, I understand. I heard you explain that to your counsel, I understand that.

But for your poll, if somebody had gone to a Maricopa voter, went to a voting location that wasn't in Maricopa, and they found out they couldn't vote there, they could have reported that as an issue or complication when trying to vote in person, correct?

09:44:29 A. I just want to make sure I'm understanding you. So you're saying whether or not a voter who lives in Maricopa, who can vote anywhere in the county, went to neighboring -- a neighboring county and voted, is that what you mean?

Q. It's just a hypothetical. So that voter had they

done that --

A. I suppose it's possible, but we're talking about such large numbers. It shows that there was something systemic going on. We're not talking about -- a whole third of those that reported on Election Day that they had some complication, that's not going to be a culmination of a ton of different issues. It's very unlikely, highly unlikely. It means it indicates there was something systemic going on.

09:45:14 Q. But a voter who showed up and had to vote provisionally, say, because their identity couldn't be identified, that person could report that they had an issue or complication when voting, right?

A. No, no, they would have voted. If they cast a ballot, provisional or not, they would have continued -- completed -- been instructed to complete the survey.

Q. I think maybe my question didn't come across, but the question I was trying to ask you is a person who went to a voting center, expected to vote, and then

09:45:39 found out that they could only vote provisionally, they might report that as an issue or complication?

A. Yes. Yes, ma'am, yes. Now that I understand your question better, yes.

Q. Thank you. Apologize for the lack of clarity there.

So just a couple more of these hypos. So a voter who had to, say, spoil their ballot and then vote a new ballot, they could have reported that as an issue or complication when voting on Election Day, right?

A. I think that's unlikely. I have -- we did actually speak to several people who asked us whether they were looking for instruction, they got a ballot in the mail, and then they wanted to vote on Election Day. So they told us they went down to the polling station, their mail ballot -- they were told their mail ballot would be spoiled, but they wanted -- and I know this just has to do with how voters are feeling right now, but they wanted an Election Day ballot and they wanted it to go through the tabulator and count it that day. There was just a group of people who were diehard about this.

So if they received an absentee ballot, they were telling us that they were instructed it would be spoiled, and then we told them complete the survey, you voted, and it will be counted.

Q. Right. And I'll just clarify the question again. The question is just if a person, a voter, like you said, a frustrated voter, who had that experience, who actually voted, they might have still reported in your poll that they had a complication or issue when they

went to vote?

A. I honestly don't think that's likely. I don't. We interact with them, we do. So, I mean, we're constantly, you know, if they have an issue or something, our agents are telling them, no, that's -- no, that's not. You are able to cast a vote, you know, and that's it. I think it's unlikely. Is it possible? Sure, I guess; but if somebody didn't say anything out loud to us, but we are constantly interacting with them. We're very hands-on. We try to be. We really do.

09:47:29

But, again, we've done so many of these -- I really have to point out -- we've done so many of these and these issues are not new, a lot of these issues you're bringing up, so it doesn't explain why out of nowhere we're seeing such huge, positive responses. We would see this elsewhere.

Q. Okay. I'm just going to clarify, we're on a very limited clock --

A. I understand.

09:47:56

Q. -- so if you can just answer my question and your counsel will have an opportunity to ask you any clarifying questions and elicit more testimony.

A. I'll do my best.

Q. Thank you. I appreciate that.

So kind of wrap this up here, so your poll

doesn't give us any specific numbers about how many voters had issues that related to tabulators?

A. That's correct.

Q. Correct?

A. That's correct.

Q. And it doesn't give us any information about what number of voters had issues that related to long lines, correct?

A. That's true, correct.

09:48:38 Q. I think in our conversation and also with your conversation with counsel, you mentioned sort of a geographical analysis that you did about where respondents of your poll reported encountering issues --

A. Yes.

Q. -- is that right? Okay. So I would like to ask you a little bit about that now.

A. Sure.

Q. You did that analysis by looking at the different congressional districts in Maricopa; is that right?

09:49:02 A. Yes, 2022, by the way, yeah.

Q. Right. All of my questions, just to be clear, pertain to the 2022 General Election.

A. Redistricting, I just want to be --

Q. I understand what you're saying. The districts change between 2020 and 2022, and you used the districts

as they were in 2022?

A. Yes.

Q. Okay. How did you determine where a poll respondent resided? How did you determine which congressional district they voted in?

A. So we do know over -- it's a little scary, but you know a lot about a voter from the voter file, so we do try, even using if they are on a cell phone using a longitude/latitude to verify where they are claiming to

09:49:46 vote is -- is honest. So we do ask them what congressional district they live in and vote in, and then we do verify that through the voter file. We even give them a map if they have -- if they are taking a survey through a certain mode where they can view, they can even see the map of their own address.

Q. So to clarify, was it a question in your poll, did you ask the voter where did you vote?

A. No, just in which congressional district do you live in and vote in and reside.

09:50:18 Q. So the question was, which congressional district do you reside in?

A. Both. They get both is what I'm saying. Did you live in -- and Maricopa is a little bit different because you can vote anywhere. You can go up the street and outside of Mr. Biggs's district and end up in Mr.

Stanton's district, so they get both questions. And we have the added benefit, if they are taking that question on a cell phone, we can track them with their longitude and latitude. Software is crazy these days.

Q. Okay. And I think your general testimony was, and please clarify if I'm mischaracterizing, but something along the lines that congressional districts that ultimately elected either Republican or Democratic candidate, that's the basis for which you said this is

09:51:19 a, you know, a Democratic area or a Republican area; is that right?

A. That's part of it, I would say. We did show whether or not it was both prior to the election represented by either a Republican or a Democratic, whether that congressional district changed hands, but also, as well, judging by -- again, it's hard to really look when you're looking at samples this -- this size. It's hard to look by senders, so they are all parts of congressional districts you know support more Democratic

09:51:53 candidates than Republican candidates, and vice versa, but that is part of it. Yeah, we try to provide both.

Q. Congressional District 9 is one of the districts that's in Maricopa, right?

A. One, 5 -- Schweikert, Stanton. Yeah, ultimately what we had I believe was five congressional districts

in total, I believe, to wrap through; but I'd have to look and make sure. They are a small sample. Sometimes you'll get a couple from, you know, a corner from one district, yeah.

Q. Are you aware of how many congressional districts are in Maricopa?

A. There are five congressional districts that wrap through Maricopa County.

Q. Would it surprise you to learn that there are

09:52:41 eight?

A. Well, no, it wouldn't. Sorry. But there were five that participants that took the poll, there are five in the report.

Q. I see, so there are three of the eight --

A. Yes, that's what I meant by a few -- sorry. Sorry.

Q. So does that mean that in your poll respondents only came from five of the three districts, or sorry, five of the eight districts?

09:53:10 A. There were some more than others, and they are on the table, but they are so statistically insignificant, I really can't draw any conclusions from them, and they are in the report.

Q. Okay. So there were three districts -- three congressional districts in Maricopa where you didn't

have enough of a response to be able --

A. That's correct.

Q. -- to report what the issues, how frequent the issues were in those congressional districts?

A. That's correct. We're talking about 0.2 percent, zero point -- you know, it was very small.

Q. And one of those congressional districts, I remember from your report, is Congressional District 9. Does that -- any reason to disagree with me?

09:53:49 A. Yeah. I'm not sure -- I mean, I have to have it in front of me to make sure I know exactly which one, eight -- I know the percentage for eight, first -- to feel comfortable if you're about to ask me about percentages, I'd need to, you know, honestly refer to... one -- go ahead.

Q. So you analyzed for each congressional district what percentage of the people who reported problems or complications resided in a specific district; is that right?

09:54:39 A. Yes. So if memory serves, about 30 percent of the people who said they had encountered issues came from the 1st Congressional District, what is now the 1st Congressional District; and the 8th Congressional District, if I remember correctly, was about 14 percent, I believe, there's the 5th as well. I mean, again, I'd

have to have it, you know, right in front of me but -- go ahead. I thought you were going to ask me something.

Q. Sorry. So you just reported some percentages, and it's fine if they are exact or not, I'm not asking you to -- it's not a memory test to report what the percentages were.

What I wanted to know about is when you reported that percentage, I think you just said around 14 percent for CD8, did you consider how much of the voter

09:55:32 population resides in CD8?

A. Sure, and that's why we chose to show it as a -- it is, first of all, that waiting, if it was necessary, would have taken care of that as a share of the overall population in Maricopa, so it doesn't -- it's not -- because each district is representative, as far as how many came from that -- that district in the overall sample. Basically, it's the principle of randomization. It wouldn't matter if there were 30 percent more in David Schweikert's district versus a much less populated

09:56:09 district like Andy Biggs's district, or more populated like former-Congressman Stanton's district. It wouldn't matter. There still -- they still have the same probability of being -- of being asked the question, so they are basically going to -- we have to look at this by -- by vote by party and -- and, you know, I don't

want to get ahead of myself, but they still have the same probability. So it doesn't really matter that the one district is smaller than the other, it doesn't.

Q. Let me back up and make sure I understood then. So the congressional districts that you excluded from this analysis, I think we determined it was three of the eight, does that mean that there weren't sufficient voters from those three districts who reported having problems, and that's why they are not included?

09:56:58 A. No. The size was so small, that's why they weren't included.

Q. The sample size from that district?

A. Maybe I'm misunderstanding you, but, yeah. Yes, the sample size.

Q. Okay. So for an excluded district, you didn't have a large enough sample size to say whether or not voters have problems in that district?

A. That's right. That's right.

Q. So for the three of eight, there wasn't enough

09:57:23 voters to determine whether there were problems in that district?

A. That's fair to say.

Q. Okay. So moving on, you discussed some calculations with your counsel and you provided some calculations in your report about what could have

happened had turnout been different than what it was; is that right?

A. Yes.

Q. Okay. And specifically you, in your report, did these calculations based on if turnout had been 2.5 percent higher for all voters?

A. Not turnout, because that might confuse turnout rates. But if the total -- if the total vote was just 2 percent higher, not a turnout rate, if the total vote was 2 percent higher, or 2 and a half percent higher, what would that be?

09:58:23

Q. I understand.

A. Would that fall within the range of the share the Election Day vote was projected to make out.

Q. I understand. So you're saying had 2.5 percent more voters voted, what would have happened?

A. Yes, total vote.

Q. And specifically you're looking at what would have happened if those 2.5 percent of voters had voted on Election Day --

09:58:47

A. Right.

Q. -- correct?

A. Correct. Because we have all the ballots from early votes and could only have been from Election Day voters, the only population.

Q. You don't have any evidence specifically, other than your projection, that 2.5 percent of total voters stayed home on Election Day, correct?

A. Yeah, and just to be clear, I'm -- I'm trying in that report just to show whether or not we needed some historically ridiculously high significant number to show up; but I was looking at that two and a half, and just -- I think it's probably the least significant number to look at. It's whether or not they could

09:59:30 historically; and from what people told us, whether or not Election Day vote could have increased as a share of the overall electorate by what it would have needed to in order for it to change the outcome.

Q. Okay. And other than your projection, you don't have any evidence that 2.5 percent of total voters stayed home on Election Day?

A. Not just the projection, you know.

Q. Everything that goes into your projection?

A. Including what people told us in their vote

09:59:58 history, and yeah.

Q. So -- but it's your projection, right?

A. Well, sure. Sure.

Q. And you're not offering any opinion that 2.5 percent of total voters stayed home on Election Day because of tabulator issues, correct?

A. Well, my opinion is that's, you know, it's when you look at Joe voter -- you know, for politicos, it might be a little hard to understand how, you know, how average people would react if they were listening to their friends, or they saw on social media, they saw news reports if there were widespread issues and that deterred people from voting, or if there were long lines people couldn't wait in. It's easy to see how people walk away. Not everyone is so, you know, intense about
10:00:46 politics that life can't be put aside. Life gets in the way.

Q. So is that a no, you're not offering an opinion that 2.5 percent of total voters stayed home on Election Day because of tabulator issues?

A. Maybe not -- you know, no, no. Let me clear that up.

Q. You said no, I understand.

A. No, no. It's no, because I'm trying to explain that it is my opinion that the problems that people
10:01:09 heard about and the issues they experienced, and that is 2.5 percent, not that much, 40,000 -- that is my opinion, absolutely, from what people told us. And the amount, the percent that was missing from the poll, again, at all the exit polls we have ever conducted, you don't see missing participants like this without

something happening, some other variable getting thrown into the equation.

Q. You're not offering an opinion that any specific percentage of voters stayed home as a result of tabulator issues on Election Day, are you?

A. A range, yes. I gave a range. I mean, I can't give -- nobody can give a specific number. I can only give you, you know, an idea of whether or not it's -- it's mathematically or not -- just whether or not the

10:01:57 range that is reasonable, you know, we can conclude with it's a degree of mathematical certainty that this affected this chunk of voters. Is that enough to have changed the outcome? And I am offering the opinion that that range is enough to put the outcome in doubt.

Q. So you're offering a range, not a specific number, correct?

A. That's correct, you can -- if that -- yes.

Q. Okay. Let's talk about some of the math that you did, and you'll have to bear with me, sir.

10:02:26 A. That's all right.

Q. I'm notoriously bad at math. Okay. So you do a calculation based on what would have happened if 2.5 percent more voters turned out, 2.5 percent additional voters, not as a proportion of turnout as we talked about.

A. That's correct.

Q. And you give a projection of what would have happened in the election had those people turned out and voted on Election Day, right?

A. Yes, it would only be Election Day voters.

Q. Okay. And that calculation that you do, you said, 2.5 percent is about 39,000 more voters.

Does that sound right?

A. Well, I know -- yes, it does, but the 2.5 percent

10:03:04 is -- I -- you really shouldn't focus on that. The -- the point is the range of the share of Election Day -- how many voters would have needed to turn out. How many more voters to push the share, the overall share of the Election Day voter, you know, as opposed to those who dropped off in a box, those who voted by mail, to push it within a certain -- basically, I'm looking for the low of my range. So we estimated it would be over -- over one-fifth, could be a quarter of the vote, was Election Day vote as, by the way, model -- Model 1 does

10:03:39 on -- in the 2022 Maricopa plan. It could have been that high, which would have pushed Election Day voters from 250 roughly to over 300, much closer to 300.

I'm looking for the bottom of that range, which is roughly 20 -- 20 to 22 percent.

Q. I understand that you're looking at a range. I'm

actually -- I understand your opinion. I'm not asking you about that. I just want to talk to you about the actual calculation that you did.

A. Okay.

Q. So the number that you use was 2.5 percent and you -- that was about 39,000 more votes on Election Day.

Does that sound right to you?

A. Roughly, yeah.

Q. Okay. As of Election Day, there were 2.5 million registered voters in Maricopa.

10:04:20

Does that sound right?

A. Yes.

Q. Of those, 1.3 million had already voted before Election Day, right?

A. That's true.

Q. Those are all those early votes that were already cast?

A. Leaving about 900, a little less than 900,000 voters who would have been eligible to vote, that's

10:04:38

true.

Q. You're going to fix my math if this is wrong, but 2.4 minus 1.3, I think, is about 1.1 million voters?

A. Say that again?

Q. You said there were 2.4 million total registered voters in Maricopa --

A. Oh, yes, but we have to remove the Election Day votes that -- go ahead. Go ahead.

Q. I understand what you're saying.

A. Yes.

Q. Let's just take it step by step so we're on the same page.

So of those 2.4 million, 1.3 million had already voted by Election Day. That's those early voters, non-Election Day voters, correct?

10:05:09 A. There was more than that, though, if you count those who drop by drop box and voted in person early, right.

Q. Sure, that whole number. So that would have left about 1.1 million voters who could have voted on Election Day?

A. Sure. Sure.

Q. And we know that 250,000 of those voters did vote on Election Day?

A. But nobody has a perfect voter file, so you can't

10:05:34 get to the 100 percent turnout. So the difference between your 1.1 and where I'm going with, it's less, is that there are just -- there are voters who just are not going to show. They are not high-propensity voters. I can't justify that they could have showed up. They don't have the vote history to show up.

Q. I understand. I'm not asking you about that.
A. Okay.
Q. So, and I think you said a 900,000 number, is that what you mentioned just now?
A. Just now? No.
Q. Okay. So -- so, 250,000 people voted on Election Day. Does that sound right, in Maricopa?
A. Roughly, yeah.
Q. Okay. In taking out the number of people who had already voted before Election Day, so adding that group up with the people who actually did turn out on Election Day, that leaves about 900,000 voters in Maricopa who ultimately didn't vote in the election.
Does that sound right?
10:06:19
A. Yeah, that's ballpark, yeah.
Q. Okay. Now, 2.5 percent of those voters, that's not 39,000, right?
A. No.
Q. That's about 22,000?
10:06:45
A. Yeah, I mean, I'll take your word for it.
Q. I used a calculator.
A. Yeah.
Q. So it was a ballpark of 22,000 votes --
A. Yeah.
Q. -- using your 2.5 percent?

A. Yeah.

Q. Okay. And you say that the vote splits on Election Day, you give a range, but you say about 70 percent vote for Ms. Lake and about 30 percent voted for Governor-Elect Hobbs is one of the ranges that you use; is that right?

A. It's not --

Q. I'm sorry, not a range. It's a specific number.

A. Yes, there are specific numbers. I was being

10:07:26 actually conservative with those numbers.

Q. Yes.

A. The first, you know, tabulated batch from Maricopa was a much higher margin; and just to be clear on the math before, did 2.5 percent of what is -- had been voted already, just to show whether it was plausible. It's not a matter of what's left. We know what's left out there as far as who is still eligible to vote, so I'm not using -- I wasn't using that 2.5 percent as that -- you know, as -- I see what you were

10:07:55 saying, but that's not the relevant math. The relevant math is whether or not there's enough voters to push the overall share of the Election Day vote. The 2.5 percent you're focusing on a lot. That's not the point of the number. I didn't pull 2.5 percent out of the air. I was trying to show how small of the vote that had been

cast would have need to have been changed. It's not -- the relevant number is the percentage of people who did not participate and whether or not there still would have been enough eligible voters out there that could have pushed the share of the Election Day vote higher, and then that would have changed the outcome because of the margin. And I didn't pull 70 percent out of thin area, that is the vote total. That's -- that's -- she -- she had won among the group of voters we're talking about in question.

10:08:43

Q. Okay. But taking your number -- just this is the number you reported and that's the reason I'm using it. I understand that you're saying that there could have been a range, but the number you used was 2.5 percent. So I want to make sure we're understanding what that 2.5 percent actually means, so that's --

A. I understand that. I understand.

Q. Okay. So taking your number, the 2.5 percent, of the voters who could have been left to vote on Election Day, that's actually about 22,000, not 39,000?

10:09:11

A. I'm talking about the entire election with that, too. And you're -- again, the math is still the math. There was still number of the -- what the exit poll indicated to us was that it could have been 20 percent of that 250 that did not show up because of a lack of

completion of that questionnaire, and because of the issues they reported.

Again, would there -- if that's the case, would there be 50,000 votes remaining, you know, from those already voted early versus those who voted by Election Day, and there would have. There would have been 800-plus thousand, and to speculate that they would have voted, they could have voted by mail. I mean, the mail was done; it's in. There's nothing else to talk about.

10:09:58 We're talking about Election Day. Is there enough? And I'm using that as a -- that 2.5 percent of the total vote just to see whether or not it would fall anywhere near that range, and it would.

Q. So you gave some projections, had 39,000 people more -- 39,000 more people voted on Election Day, right?

A. Yes.

Q. 39,000 people out of the 250,000 people who did vote on Election Day, that's about a 16 percent --

A. It is.

10:10:23 Q. Okay.

A. Yes.

Q. So your hypothetical, the number you chose, what you're evaluating is what could have happened in theory if almost 16 percent more voters had turned out on Election Day; is that right?

A. Yeah, that's fair to say. I mean, it could have because of the margins, and they did vary. For instance, in some of the door -- Drawer 3, she won 80 percent of those votes, it wasn't 70. I was being conservative with that 70 percent. The truth is in the areas that we're talking about that are likely, if you want to call them suppressed, I don't know what term you want to use, but those voters who didn't show because of those lines, in some of those areas it was higher. I
10:11:03 was being conservative with 70 percent. Ms. Lake was winning 76 percent-plus of some of these areas, so it didn't need to be -- it didn't -- it might not needed to even increase by 15 percent, or 16. Almost 15.7, maybe something like that.

Q. I defer to your math over mine. Around 16 percent?

A. Yes.

Q. Okay. So it's actually sort of what you just talked about, it's actually a little bit different what
10:11:30 I was trying to ask you about. Let me rephrase what I was trying to ask.

A. Sure.

Q. You have this 39,000 number of 250,000 voters, that's about -- that's just a raw number, about 16 percent of that total that actually turned out on

Election Day, right?

A. Sure.

Q. Okay. So your 2.5 percent selection, that example that you give, what that is really saying is what would have happened if 16 percent more voters had turned out on Election Day, right?

A. It is, but that's not unusual in what we do; it's not. It happens.

Q. And so the math the way you've done it, that
10:12:06 basically assumes that one out of every six voters who is going to vote on Election Day didn't vote, right?

A. I guess that's fair. A little less, actually; but, you know, the -- the truth is who are -- you know, we absolutely can anticipate that that could have happened. It's not that many votes; it's not. And if you look -- another thing here is that maybe a little bit uncomfortable is how much those numbers would have made the Election Day vote as a share of the overall electorate; but then when I look at new registrations
10:12:48 and who was voting, who is registering to vote via what is, essentially, Arizona, Maricopa permanent absentee ballot there, 25 percent are not registering to vote by mail. So it seems to me, you know, ten years ago Arizona was 80-plus percent all male. It seems to me that the Election Day vote is getting more and more the

electorate as the time goes on. And I think that probably, you know, the parties, like I said, they employ strategies to get voters to vote different ways. I think it would be folly. American people are unpredicted, and I think it would be folly if that's what the data tells us they were going to do would be folly or pretend like we know better.

Q. In your direct testimony, you used the term "disenfranchised." What did you mean by that term?

10:14:09 A. I think if governments can't do everything in their power, there are always problems on Election Day. There's always going to be something that turns up.

But if this was normal, then I would see this in every exit poll I do. This was not normal. This is the first time this has ever happened to me, the first time. So I can only assume these people -- when you hear the frustrations in their voice like we did, there's no -- there's no other word for it.

Q. Okay. So by disenfranchised, you mean the people

10:14:45 who chose not to vote?

A. I would argue they didn't choose not to vote. Again, they may have chose not to vote early, but that's their right. They chose to vote on Election Day and they were not provided ample opportunity to do so. This one gentleman is going to stick in my head forever. He

showed up, it was 7:13 in the morning, and he said, you know, I'll vote after work if I can. I don't know if he did or not, and then to be fair, but he didn't take the exit poll.

Q. And I think just one last question for you: You have no knowledge that anyone from Maricopa County, or otherwise, intentionally tampered with the printers or tabulators, correct?

A. Not my purview, ma'am, no, correct. Although I will say this, when you look at it --

10:15:29

Q. I'm sorry. You said --

A. No. No, you're right.

MS. MADDURI: Thank you for your time, Mr. Baris. You might have a little more time to go. Oh, I'm sorry.

- - -

BY MR. LIDDY:

Q. Good morning, Mr. Baris.

A. Good morning.

10:15:55

Q. How long have you been working in the polling industry?

A. Altogether about eight years.

Q. Did you start eight years ago or --

A. On my own, six.

Q. Six. Did you start eight years ago or was there

a gap?

A. I don't understand what you mean.

Q. So the last eight years of your professional life you've been working in the polling industry; is that correct?

A. From 2014 on, polling and elections, correct.

Q. How familiar are you with the challenges to the polling industry, technical and otherwise, that precede 2014?

10:16:31 A. Only from research, sir.

Q. And you testified earlier that even the Associated Press has broken away from traditional polling practices; is that correct?

A. That's correct. Traditional exit polling practices, yes.

Q. That was your testimony, okay. Are you aware that they have also broken away from traditional polling practices from pre-election?

A. From pre-Election Day polling, yes, yes.

10:17:03 Q. Do you know why?

A. They moved to different panel response biases, various, I imagine, like everybody else.

Q. But you're familiar with the technical issues with the changing behavior of the American people with regard to cell phones rather than landlines?

A. Oh, yes.
Q. Working people out of the home, people answering in the home, random digit dialing no longer used?
A. That's correct.
Q. Okay. So because of those changes, polling, specifically in the last 25 years, has been notoriously flawed, correct?
A. Not all of it.
Q. Some of it?
10:17:39 A. Most of it.
Q. Most of it?
A. Yes.
Q. Now, as a pollster, you're familiar with the term "random sample"?
A. Yes.
Q. And my understanding from your report is that you sampled or attempted to sample 813 voters in the State of Arizona?
A. No, 813 just in Maricopa.
10:18:07 Q. 813 just in Maricopa?
A. It was a statewide survey. That was what represented Maricopa.
Q. And how many voters in Maricopa?
A. About 813, yes -- about 813 that qualified and participated.

Q. I'm sorry. I wasn't clear on my question. How many registered voters are there in Maricopa County?

A. There are about 2.4 and change, almost two and a half, I would say.

Q. And would you say 813 is a sample size that would give you a significant amount of confidence in the outcome of that?

A. You know, I do. And the reason I would say that is because we're looking at certain subgroups of the

10:18:47 population. It is a midterm, so admittedly not everybody is going to come out and vote. There are people who have vote histories that support that. That's part of projecting this -- the projections we use for turnout is -- goes into the sampling errors, the calculations we do for sampling errors. But 813, there are polls out there right now from before the election that did 800, maybe even less, for the State of Arizona, not just Maricopa.

Q. What confidence level did you attribute to your

10:19:20 813 sample size?

A. About 3.5 percent.

Q. Plus or minus?

A. Plus or minus.

Q. And you said there were 2.4 million voters in Arizona?

A. Yes.
Q. Maricopa County?
A. But there's not going to be 2.4 projected, you know, to turn out.
Q. What steps did you take in order to ensure that those 813 were selected randomly?
A. That's a great question. We use a vendor, a national voter file database. In this case, it is national, but we obviously just stuck to Arizona, and
10:20:04 they draw random sample off of the voter file, and from there when we contact them, it is randomly selected.
Q. So my understanding from your testimony that you did not select the random sample; is that correct?
A. Well, of course I did. I mean --
Q. You just testified that a vendor did it; is that correct?
A. No, the vendor is the --
MR. OLSEN: Your Honor, I would ask --
THE WITNESS: -- data source. It is
10:20:24 randomly selected.
MR. OLSEN: Your Honor, may I object? I would just ask that counsel allow the witness to finish responding before he interrupts him?
THE COURT: Here's the way it has to work, okay? Your attorneys on the other side are going to

have the chance to ask other questions. So, like I said before, wait until the question is completely asked, and there may be an objection. So if you see somebody stand up, it's a clue that an objection is coming. Give me a chance to rule on it before you answer.

THE WITNESS: Yes, Your Honor.

THE COURT: Then I'm going to let, Mr. Liddy, give him a chance to answer before you ask the next question. But when you -- if you're asked a
10:21:08 question and you can answer it yes or no, you should answer it yes or no and move on. And then another question later will maybe clarify further the answer, okay?

So, next question.

BY MR. LIDDY:

Q. Mr. Baris, I apologize if I misunderstood your response. I now understand your response to be that you've got the universe of registered voters from a vendor, but it was you, yourself, that did the random
10:21:35 sampling?

A. Software does the random sampling for everybody, Counselor, everybody.

Q. For everybody?

A. All the pollsters -- let me rephrase that. All the pollsters I know rely on software to draw random

samples from the database. I'm not sure --

Q. Now, when you collect a random sampling, you're going to assume that some of those people that were randomly sampled are not going to participate in a poll, correct?

A. Absolutely.

Q. So in your original universe it exceeded 813?

A. Yes, of course. Yes, if I understand you correctly, yes.

10:22:13 Q. And then you assume that those who decline to participate in your poll and that those who -- well, I mean, I don't want to ask a compound question. You'll assume that those who you invited to participate in your poll but chose not to, their behavior would be the same as those who did choose to participate in your poll, correct?

A. Not always, and that's why we're big proponents of larger samples because, you know, people are different. And, for instance, in a more educated voter

10:22:45 of the same party would be much more likely to participate than somebody who is non-college educated, even though it's the same party and they may appear to be the same kind of voter.

Q. So that's a no?

A. Yes, that's a no, I would imagine, yes.

Q. So when you get responses, you're not assuming that people who did not respond are going to behave in the same manner as those who did respond, is that your testimony?

A. No, that's mischaracterized. Obviously it's principles of random sampling that you assume everybody has the same chance and that they will, but we believe in larger samples to reduce that error. That's, maybe, I wasn't saying that correctly, but that's --

10:23:26 Q. What I'm trying to get at, Mr. Baris, is, which is it? Do you make an assumption that those who don't participate in your poll will behave in the same manner as those who do, or do you not make that assumption?

A. We make the assumption that those who do participate will -- will mirror the behaviors of those who don't, yes.

Q. And particularly you were interested in tracking the behavior of people by voter registration; is that correct?

10:23:51 A. Not only, no.

Q. But it's correct that you were interested in tracking the behavior of people by voter registration?

A. In -- for this poll alone, are you -- I just want to make sure I'm understanding your question. For this poll alone, you're asking if I'm interested in tracking

the behavior of registered voters?

Q. Yes, for the issues before this Court. Your poll -- yeah, that's right.

A. Yes, at the most simple basic, yes. Yes.

Q. I think you've testified that in addition to party registration there are many different variables that can impact the behavior of a voter, correct?

A. Correct.

Q. Did you test for those in this poll?

10:24:42 A. Give me an example.

Q. Well, let's say that in a previous election there was a candidate for statewide office who was registered a Republican prior to 2022; and then in 2022, there was a candidate for statewide office, who upon winning the Primary, feigned to have a dagger and slaughter the supporters of that other Republican; could that be broadcast throughout the state, affect the voting patterns of other people that are registered as Republicans that you would anticipate and, in fact, did

10:25:27 vote in 2022?

THE WITNESS: I've got to be honest, I mean, Your Honor, I don't know if I could -- that's such an over-the-top example. I don't know if I could be -- make a serious response to that.

THE COURT: Well, you can ask to have a

question rephrased, if you -- if you wish. If you don't understand the question, don't guess. Please say that you can't.

THE WITNESS: Can we get a -- yeah. There are events that do -- that do change voting behavior, absolutely, if I understand that correctly.

BY MR. LIDDY:

Q. And are you aware that, as you characterize it, over-the-top example actually happened; it's not a hypothetical?

10:26:11

A. No, I'm not.

Q. Okay. And so, therefore, you did not test for that in your survey the results of which are here in this court?

A. Yeah, but if you're suggesting it impacted one group of voters over the other, I can absolutely point to ten counter examples where our main problem is not a response bias that would act in the direction that would change the behavior of a voter in the course you're

10:26:35

suggesting. I could point to ten others that would suggest that I have to do my job a lot harder and dig a lot deeper because voters are so terrified to even talk to people and give their opinions anymore, so I mean --

Q. So it's your professional opinion that registered Republicans in Maricopa County that have a history of

voting in every election and have for Senator John McCain every time he was elected and when he ran for President would not have a negative reaction to another Republican running statewide who feigns to slaughter the McCain supports?

A. You know what, that's all going to come up in -- in the margins for candidates, you know. And if they tell me they are going to vote, your example is irrelevant, because if you're telling me they are going to vote and they have vote history, they are not going to lie to a pollster. They'll just simply tell me, I'm not going to vote.

10:27:23

Q. So your opinion is that my example is not going to matter. Is that because every registered Republican is going to vote the same way in every election, regardless of whether the difference of the Republican candidate running for statewide office?

A. Well, first, let me just clarify. I'm not saying your example doesn't matter. I'm saying, I'd catch your example, I'd catch those voters. The vast majority of them, I'm going to catch them. So I'm not going to miss them. They are going to say, no, I'm not voting for this Candidate A because whatever, click, and that's it; or I'm not going to vote because of it. They'll tell us that.

10:27:52

But what was the second part of your question again, or the follow-up?

Q. I'll accept your answer.

Your general conclusion is that fewer Republicans voted on Election Day than otherwise would have but for the problems of the printers and perceived problems of the tabulators; is that correct?

A. I would just say -- I would say general issues that led to long wait lines, that's what we heard from the voters. I can't nail down one, that's not my -- you know, that's not my purview.

10:28:40

Q. I believe you testified that your research is based upon your study of the behavior of these registered voters in previous elections in Maricopa County?

A. Yes, it's fair to say.

Q. And did you track as a variable in your survey the wait lines of other midterms elections, such as 2018 to 2014?

10:29:04

A. Sure.

Q. 2012?

A. Sure, and compared them to presidential-election turnouts as well.

Q. What was the wait time that you looked at in 2012?

A. I thought when you said weight, I thought how much how much weight is given to turnout for different -- when you're modeling. Wait lines, you're being specific to wait times.

Q. That's correct.

A. No, I did not study the impact of wait lines in prior elections, I'll say that.

Q. So it's difficult for you to examine your own data from 2022 with regard to registered Republicans voting on Election Day and 2022 General Election because of wait times based on previous behavior for Republicans who voted on Election Day when you did not look at the wait times in those previous elections?

10:29:40

A. Actually, in truth, I did look at some wait lines in the presidential election in '18. I didn't look at, you know, in great depth, but I do understand that the wait lines in some areas, reported wait lines, were actually longer in 2020; but I think we have to be clear here that your wait-time estimate is not the estimate for people who are waiting on line. You're looking at site check to the time they get a ballot. You're not looking at estimates of people who are wrapped around the corner in a shopping center, you know, a mile long. The County wait estimate is not the true estimate, and the three-minute estimate is greatly exaggerated by

10:30:09

adding Election Day drop-off ballots into that equation.
Q. Thank you. So is it your testimony that you did not account for the wait times in the midterm elections of 2012, '14 and '18?
A. We -- I would just say anything beyond a four-cycle rolling, four-cycle average, which is what we do, I would not have looked at, no. If I may, there's a reason for that --
Q. No, it's okay. You already answered the
10:30:54 question. I have another one.
Is it your understanding that Republican vote on '22 was low?
A. Republican vote in '22 was low? No, it was high.
Q. In Maricopa County?
A. It was still high. It was. Turnout was very strong for Republicans in Maricopa.
Q. And to what do you attribute your opinion that it was very strong?
A. The turnout rates versus the Democratic Party,
10:31:16 for instance, Republicans absolutely outvoted Democrats as a turnout, 80-plus probably -- I haven't looked at the latest because the numbers have changed -- but probably I wouldn't be surprised to hear if it was mid-80s while Democrats were much lower.
Q. Mid-70s?

A. Mid-70s, okay.
Q. Democrats very, very high?
A. 60 some.
Q. 69.9, would you be surprised to hear that?
A. No.
Q. Now, you've said that you base your opinions, in part, on the previous voting behavior of the subjects of your survey, correct?
A. Correct.
10:31:50 Q. And I believe your early testimony was that you have perceived a difference in voting behavior of people who vote from the Early Voting List who vote by mail and people who vote Election Day; is that correct?
A. That's correct.
Q. And you base that on examining the voting behavior in previous election cycles?
A. It's starting now to become a trend, but I base it on the actual vote totals that we're seeing come in; and that's part also on Election Day we do get real-time
10:32:25 results at my company, so I can actually see as Maricopa tabulates what those election results are. So when I'm -- and then, you know, I'm going to compare that on the work on the exit poll to see how accurate we were.
So, for instance, in Maricopa or statewide, what was Ms. Hobbs's margin when all of the early, early vote

was reported, and we'll go and we'll see how close we are on the exit poll, for instance.

Q. So you've based your opinion, in part, on the previous voting behavior of people who voted early in Maricopa as opposed to people who vote on Election Day; is that correct?

A. That's correct. And --

Q. And that's the answer. And did you account for a political party or a political campaign urging voters, who already are on the Permanent Early Voting List and have their ballots to not turn them in and vote on Election Day?

A. I did.

Q. You did?

A. We definitely looked at that.

Q. And did you make the assumption that the behavior of voters on the Permanent Early Voting List, who have a history of voting early, were going to change their behavior in 2022 because now they are going to vote on Election Day?

A. A great deal of them told us that, yes.

Q. So then your assumption that people's behavior tends to be the same whether they vote early, two or three or four cycles back versus one year is not valid, correct?

A. No, I think you're misinterpreting. I mean, if they are going to vote at all, they are going to vote based on prior behavior. How they vote by method changes a great deal as time goes on. I would say from 2020 on, we're really experiencing a very drastic change in how people, certain groups, are deciding to vote.

Q. I think you testified that in Arizona or Maricopa, I don't think you were clear, but according to your results, that vote by mail is getting less and less and less popular?

10:34:21

A. It -- well, I don't know if we can call that a trend yet, but it does appear from the last two cycles that it will be -- yes, that's true, just to be --

Q. Would it surprise you?

A. Not with everybody, but --

Q. Would it surprise you that early voting popularity has exploded in Arizona?

A. I don't know what you're basing that on.

Q. Data, early voters?

10:34:46

A. Yeah, I -- I, you know, would, because the people who registered in the last two years are newly registered voters in Maricopa County are registering to vote less as early vote than had in the past, you know. If you were -- 2014, for instance, 80 percent of the vote, 85 percent, it wouldn't surprise me if Election

Day vote was only 10 or 12 percent. Now those new voters, 25 percent of them are choosing not to register as early voters.

Q. So it would surprise you that the percentage of early voters registered -- that the people that register for early vote went from 75 percent to 77 percent?

A. Well, you know what, that could happen, and then like I said, it's still that they are not changing their status, you know. And when we talk to them, they are, as you said before, and you were right, there are people who are and we can see them on the voter file, they are on the absentee ballot list; but then they tell us, I'm still going to bring my vote on Election Day, I'm going to bring my ballot. So I think we're just in a process, and maybe it hasn't caught up yet.

Q. And you're aware that 84 -- are you aware that 84 percent of the vote in General Election 2022 was early voting?

A. Yes, combined, yes. 16 percent Election Day.

10:35:55 MR. LIDDY: Thank you. No further questions, Your Honor.

THE COURT: That's all the cross-examination? Okay. We desperately need the morning break. We're 35 minutes or 40 minutes past it, so we'll take a 15-minute recess. We will come back at

five minutes to 11:00.

(Recess taken, 10:36 a.m.)

(Proceedings resume, 10:56 a.m.)

THE COURT: We are back on the record in CV2022-095403, Lake v. Hobbs, et al. Present for the record are the parties or their representatives and their respective counsel. Apparently absent is my assistant. Got it. All right. I know how to hit the record button.

10:57:12 For the record again, this is CV2022-095403, Lake v. Hobbs, et al. Present for the record are the parties or their representatives and their respective counsel.

I've been informed you've addressed the issue with the exhibit, Mr. Blehm.

MR. BLEHM: Yes, Your Honor, we have.

THE COURT: I'm led to understand that it's Exhibit 120 that will be marked, that you've complied with my request to have an outside clean thumb drive

10:57:41 provided that the recording has been downloaded to the clean thumb drive that has been played for the defense.

Am I correct?

MR. BLEHM: You are correct, Your Honor.

THE COURT: And you wish to offer that as Exhibit 20 [sic] to be admitted into the record,

correct?

MR. BLEHM: I wish to offer Exhibit 120 to be admitted into the record.

THE COURT: Any objection from the defense?

MR. GOANA: Your Honor, beyond the standing objection with respect to the 807 issue, I would also note foundation and relevance objections. The witness who purportedly received the voicemail never testified about what document is referred to in there and laid no

10:58:15 foundation for its admission.

THE COURT: Okay. I'll give that the relevance that it's entitled to, but I'm going to admit it over objection.

MR. BLEHM: Thank you, Your Honor.

THE COURT: All right. Exhibit 120 is admitted.

All right. I believe where we left off was the redirect.

MR. OLSEN: Your Honor, I have a few brief

10:58:37 questions.

THE COURT: Thank you, Mr. Olsen.

REDIRECT EXAMINATION

BY MR. OLSEN:

Q. Mr. Baris, has your polling company ever been ranked by any professional organizations?

A. Yes.
Q. And which professional organizations ranked your company?
A. Well, it's my understanding it's being ranked by RealClearPolitics right now. The only other bipartisan group, I would say, that has looked at our work thoroughly and ranked it as Election Recon. They are a forecast website.
Q. And what was your ranking by Election Recon?
10:59:11 A. Big Data Poll is number 2.
Q. So your company is ranked number 2?
A. Yes.
Q. Out of how many?
A. They look at a lot of polls, only published the top ten. You have to have four cycles of polling history to be ranked by them, so a good deal. I would say it's probably in the neighborhood of 200-plus.
Q. So out of 200-plus polling organizations, you were ranked by Election Recon as number 2?
10:59:34 A. Yes.
Q. And is that based, at least in part, on the accuracy of your polling results?
A. It's, yes, how much of a bias you may have to one party candidate over the other and your accuracy rate.
Q. In your cross-examination, counsel asked you a

number of questions about hypothetical issues that might have arose on Election Day that could have affected turnout. Based on your conversations with the participants in your survey, do you have an opinion as to -- or as to what the primary issues that those participants were telling you about?

A. Absolutely.

Q. And what is that?

MS. MADDURI: Objection, Your Honor. And it

11:00:24 calls for speculation and mischaracterizes the prior testimony and discussion.

THE COURT: Okay. We could cure the second half of the objection by simply asking -- asking a straight question and not basing it upon any statement of prior testimony or answers, and I would -- the question I think that you were posing, I just want to make sure that it's directed to the basis for his statements related to the opinion relating to the reasons for not showing up.

11:01:09 MR. OLSEN: I'll rephrase the question, Your Honor.

THE COURT: You understand what I'm saying?

MR. OLSEN: I think I do.

THE COURT: If you don't, I think we'll hear about it in just a second. So please re-ask the

question, sir.
BY MR. OLSEN:
Q. You were asked by counsel for the Defendants a number of hypotheticals that might have affected turnout on Election Day. You spoke with the number of participants --
MR. LIDDY: I'm sorry. Objection, Your Honor.
MR. OLSEN: Can I finish my question maybe?
11:01:36 MR. LIDDY: He's repeating exactly what he did before and he's characterizing my questions hypothetical when it was not, and the Court specifically asked him just pose the question without referring to my previous question.
MR. OLSEN: Your Honor, I'm actually not referring to his examination. I'm referring to your co-counsel, and she actually used the word "hypothetical."
THE COURT: I'll overrule it. Let you
11:02:02 re-ask the question along the lines that you're asking. Just restate the question, Mr. Olsen.
MR. OLSEN: Yes, Your Honor.
BY MR. OLSEN:
Q. Mr. Baris, you were asked a number of questions by counsel for the Defendants as what possibly could

have caused voter concerns on Election Day.

Do you recall that?

A. Yes.

Q. In your conversations with those voters, what do you believe was the main concern expressed by those voters?

A. Long wait times and ballots not reading properly, generally, is what they expressed.

Q. You were also asked by Mr. Liddy about certain
11:02:40 events, I think he used the word if somebody talked about a knife and some kind of gory details as possibly affecting voters?

A. Yeah, I recall.

Q. And if I told you that any comments like that were made several months before the election, would any impact, any comments such as that, be included in your -- your data?

A. Yes. As I said before, Mr. Olsen, people would tell us they're simply are not voting, or they are
11:03:11 voting for somebody else. It would have been included. It's after the fact.

Q. So I believe you said that you have never experienced a drop-off rate on exit polling that you experienced in November 2022 before?

A. That's correct.

Q. And what was that drop-off rate again?
A. The drop-off rate is normally anywhere between 5 to 8 percent. So for mail-in balloting, those who chose to vote by mail, the drop-off to -- 93-percent completion rate, meaning of those who said, yes, I will take your exit poll, 93 percent did, in fact, complete the exit poll. It was 72 percent for Election Day voters, which we don't see the differences like that. They are not that stark, never have.
11:03:53 Q. So that was approximately 19 percent drop-off rate in comparison?
A. Approximately, yes.
Q. Out of how many polls have you conducted, in your experience?
A. Over six years, I think it's fair to say hundreds.
Q. Have you ever seen that much of a drop-off rate in the several hundred polls that you've conducted in your six years?
11:04:15 A. No, I have not.
Q. Have you ever experienced anything even remotely close to that drop-off rate?
A. Not in an exit poll, no.
MR. OLSEN: Thank you, Mr. Baris. Your Honor, we have no further questions.

THE COURT: May we excuse the witness?
MS. MADDURI: Yes, Your Honor.
THE COURT: Mr. Baris, you're free to go, sir.
THE WITNESS: Thank you, Your Honor.
(Witness excused.)
THE COURT: Counsel, we attended to all the exhibits that the Plaintiff intended to offer?
MR. OLSEN: Yes, Your Honor.
11:05:07 THE COURT: Okay. Do you have any further witnesses or testimony?
MR. OLSEN: No, Your Honor.
THE COURT: So the Plaintiff rests?
MR. OLSEN: Yes, Your Honor.
THE COURT: Thank you.
Defense?
MS. MADDURI: Thank you, Your Honor. We'll call our first witness who is Kenneth Mayer, and he'll be joining us by the Teams link.
11:06:07 THE COURT: Very well. Mr. Mayer, can you hear me?
THE WITNESS: I can, Your Honor.
THE COURT: I'm going to have you sworn in, sir. If you'll raise your right hand, my clerk is going to swear you in.

DR. KENNETH MAYER,

called as a witness, having been duly sworn, virtually testified as follows:

THE COURT: Very well. Ms. Madduri, you may proceed when you're ready to proceed.

MS. MADDURI: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. MADDURI:

Q. Good morning, Dr. Mayer, and thank you for being here. I would just like to begin by discussing your background.

So, first, will you please briefly describe your education?

A. I have a Ph.D. in political science from Yale University that I received in 1988 in political science. I received a Bachelor's in Political Science with a minor in applied mathematics from UC San Diego in 1982.

Q. Next, will you describe what position you currently hold?

A. I'm currently a professor of political science at the University of Wisconsin Madison and affiliate faculty of the La Follette School of Public Affairs, also at UW Madison.

Q. Now, can you briefly describe had some of your scholarly work and the publications in which it appears?

A. Most of my recent scholarly work has been in the area of election administration, everything from voter turnout to wait time and non-voting, voting rights, redistricting and also academic studies of the presidency.

Q. Can you -- I know you just described a number of different areas of research, can you focus a little bit on some of your work as it relates to polling and tell us a little bit about your background there?

11:08:02 A. I have actually done various polls since my earliest days at Wisconsin. I was hired as a pollster in the early 1990s. I have done work in the last 15 years, surveys of state election officials. I'm on the board of a steering committee of a unit here at UW called the Election Research Center, and we've done a number of polls around the midwestern states in 2016 and 2020. I've also done surveys of non-voters, so I've been involved with the design and execution of surveys and polls over the last 30 years.

11:08:53 Q. And another sort of relevant to this case area that I would like you to describe some of your background in, specifically, can you describe some of the work that you have done relating to polling place lines?

A. I was part of a national research group that did

a study of polling place wait times and lines in 2016, and am currently involved with some advice or consulting with a local municipality about optimizing their allocation of polling place resources to reduce wait times.

Q. And have you previously testified as an expert in legal cases?

A. Yes, many times.

Q. Have courts relied on your expertise and

11:09:49 opinions?

A. Yes, they have.

Q. Has a court ever rejected your testimony?

A. As being excluded as a nonwitness, or not an expert witness? No.

Q. Have you served as an expert witness for both plaintiffs and defendants in the cases that you've been involved in?

A. Yes.

Q. And have you worked on behalf of both Republicans

11:10:14 and Democrats?

A. Yes.

Q. Now, turning to this case and your work in connection in this case, as it relates to printing and tabulator issues, what were you asked to do?

A. I was asked to evaluate claims that -- issues at

voting centers caused long wait times or had resulted in voters, basically, walking off or not being able to vote. My analysis was focused on the available data.

Q. Did you review the Complaint that was filed in this case?

A. Yes, I did.

Q. What about any of the attachments to that Complaint?

A. I reviewed the attachments with respect to a number of the affidavits or declarations that -- that voters had filed, and I also reviewed the report of Mr. Baris.

Q. Have you watched any of the testimony that's been given in this case yesterday and today?

A. Yes.

Q. Have you watched all of it?

A. Yes.

Q. So as it relates to the question that you analyzed, what is sort of your high-level opinion?

A. My high-level opinion is that all of the claims that were made in the Complaint about the effects of voter wait times, the claims of disenfranchisement, claims of a disproportionate effect on Republicans and Lake voters that they are all based on pure speculation, that there's simply no data to support any of those

claims and actually quite a bit of data that suggests that those things actually did not happen.

Q. Okay. Let's discuss sort of the specifics of what you based your opinion on.

Are you familiar with reconciliation and provisional vote data?

A. Yes.

Q. Just generally, what is that?

A. So in this context reconciliation data typically refers to comparing data on a number of voters who check in at a polling place and the number of ballots that are cast, provisional vote data. There are a number of circumstances in which people will present at a polling place, and for one reason or another, there are questions about their eligibility. And rather than turn them away after the Help America Vote Act in 2002, polling places were required to let them vote provisionally. They cast a ballot, and then after Election Day, election officials try to figure out whether or not they were eligible, and if they find out they -- conclude those voters are eligible, the ballots are counted; otherwise they are rejected.

Q. And what about reconciliation data? What is that?

A. Well, that's the comparison of check-ins and

ballots, which will provide information. If there are people who check in at a polling place, when they check in, they show their ID, they identify themselves; and the number of ballots that are cast and those numbers should line up or be close.

Q. And did you examine reconciliation and provisional vote data in this case?

A. I examined the summary data reported by Maricopa County.

11:14:05 Q. And what did that data show?

A. It showed that there were, I think, the numbers are -- there were 170 voter difference between the number of people who checked in and the number of people who cast a ballot, and we don't have information about why they were not or they did not cast a ballot, either a ballot that wasn't counted or a potential walk-off. So that gives us an idea of the number of people who, for example, might have presented in the polling place and because of trouble with the ballot or trouble with

11:14:44 the tabulator simply left without putting their ballot into Door 3. I also looked at the provisional vote data, the summary data produced by the County, which shows the number of provisional ballots that were cast in the county.

Q. And what about -- did you look at any data about

voters who, perhaps, checked in at one voting location but then didn't ultimately vote there and voted somewhere else?

A. Yes. So there is a process that voters would check in at a voting center, and for one reason or another, have trouble turning in their ballot or the there was a tabulator issue, they didn't want to use the Door 3. They had the opportunity to actually check out of a vote station and go to a vote center and go to another vote center. And it would also show up that if someone checked in at a vote center and for whatever reason didn't submit a ballot that was tabulated and they actually left the vote center without checking out and went to another vote center, that's also something that will show up in the data, because then they'll -- they'll be in the registration system twice. Once where they checked in initially, and once where they checked in a second time.

11:15:46

And there were kind of -- I'll have to look at the County report, I think there were -- there were 84 people, 94 people who checked out and then checked back in and voted. There were another 120 or so people who checked in and then left without checking out and then cast a ballot at a second vote center. And I think all but 13 of those ballots -- all but 13 of those voters

11:16:21

were able to successfully cast a ballot that was counted.

Q. Okay. So in your opinion, is there any reason to believe that large numbers of voters abandoned their efforts to vote after encountering difficulties with tabulators?

A. Not only is there no evidence that that happens, the evidence that exists suggests strongly that that did not happen.

11:17:17 Q. I think you mentioned this already, but the voters who, perhaps, did encounter an issue with a tabulator, did they have another option of how to -- how to submit their ballot for counting?

A. Yes. They could have submitted them into what Arizona calls Door Number 3, which is just a storage area within the tabulator that the voter submits their ballots, and then it is later either tabulated at a tabulator at a central location, or if it's not readable or there's an issue with the pens or the ambiguity of 11:18:01 the mark, it's duplicated and then tabulated. So there was -- there was a fail-safe option for voters who could not get their ballot to be read by a tabulator at a vote center.

Q. In your experience with election administration and your work, are there -- are things like tabulator

malfunctions something that can happen in elections?

A. Yes, it happens. I want to make sure, it is -- it is one of the most common issues that arises in the work on Election Day operations that I have studied.

Q. And is it possible for issues with tabulators to occur even when election officials follow best practices?

A. Yes. It can happen for reasons that are not anticipatable. It can be just sort of machine

11:18:59 breakdowns are the sorts of things that are hard to -- hard to predict.

Q. When tabulators do break down, is that a reason to suspect that integrity of the election results are somehow compromised?

A. No, it's not.

Q. Are you familiar with the cyber security and infrastructure security agency?

A. Yes, I am.

Q. What is that?

11:19:31 A. It is a unit within the Department of Homeland Security that was created to address critical infrastructure problems and cyber security problems, and I believe it was in 2017 when election infrastructure was declared a critical infrastructure, it became part of the purview of that unit within DHS.

Q. Has that agency put out any information or guidance on, sort of, how to think about tabulator malfunctioning and whether that has any effect on election integrity?

A. Yes, they have. They put out information that provides their conclusion that when you have a paper ballot, that's a physical record, and that's universally agreed to be the best way to secure the integrity of elections because you have a physical representation of the vote; and they put out information to combat misinformation that says that the fact that there's a paper ballot means that tabulator malfunctions actually don't undermine the integrity of elections, because even if one tabulator is not able to count a ballot, the ballot is still there, it can be counted. So and in the view of CISA, a tabulator problem does not compromise the integrity of an election when you have a paper ballot.

11:20:32

Q. Okay. So to kind of wrap up this part of what we've been discussing, did you find any evidence that large numbers or any specific number of voters were disenfranchised because of the tabulator issues that occurred in Maricopa County?

11:21:07

A. No, and I'll restate this as about what I said earlier. Not only is there no evidence that that

occurred, the evidence that we have and things that we can directly observe suggest conclusively that that did not happen.

Q. Okay. Let's next discuss the lines in voting centers in Maricopa County. What does the data show about wait times in the 2022 General Election in Maricopa?

A. Working with the data that the County produced, it does indicate that there were long wait times

11:21:55 sometimes exceeding an hour and a half, two hours, at some vote centers.

Q. Do you recall roughly how many vote centers had that sort of a wait time?

A. I would have to look at the report. I think it may have been 7 percent, so -- but I'm -- I don't recall specifically sitting here.

Q. Okay. Can we pull up what's been marked as Defendants' Exhibit 2? I'm sorry, Exhibit 1. And we can turn to page 8 and we can focus in on the paragraph

11:22:57 that starts in 2022.

Dr. Mayer, looking at this, does this refresh your recollection about, sort of, the specific numbers about purported wait times in Maricopa?

A. Yes. So the 7 percent reflects the percentage of vote centers that had maximum wait times of over an

hour, and that nearly three-quarters or 72 percent reported a maximum wait time of 30 minutes or less.

Q. What's your understanding of how Maricopa County measured the vote times?

A. My recollection is that the process was described in the 2022 Election Plan that they were monitoring the number of voters who were checking in over time at vote centers and then were actually counting the number of people waiting in line at regular intervals. I think it

11:24:00 was 15 minutes.

Q. Have you heard testimony today or yesterday that the vote times reported by Maricopa were inaccurate?

A. Yes.

Q. And what's your understanding of the kind of evidence that forms the basis for that testimony?

A. So my understanding is that some of the evidence comes from declarations or affidavits that were submitted by people who were in vote centers and also the testimony of Mr. Sonnenklar yesterday afternoon when

11:24:43 he testified that he observed, and other people who told them that they observed, long wait times at more vote centers than what the County data reported.

Q. And based on your experience, how does that kind of sort of self-reporting or one-off statements, how does that compare to the type of systematic monitoring

that you described that Maricopa did?

A. Well, one of the things that we know on this research that I've been involved with is that estimating or calculating voter wait times is not a completely straightforward process. You can't just look at a line by itself and estimate the line or the wait time from looking at a line. You have to go through a systematic process of looking at -- at the throughput or the number of people that, in this case a vote center, can process in a given amount of time, and you have to do it regularly.

11:25:45

In the research that I was involved with in 2016, we had people observing polling places at precincts and locations all over the country, and we trained the observers that the way that you estimate the vote time and processing time is that you have to systematically pick every fourth, every eighth, some regular number of voters. You have to count the number of people waiting in line. You have to time it with a stopwatch or a digital timer on a phone or a watch. It's not something that you can -- that you can estimate by just kind of eyeballing it. It needs to be systematic. And my conclusion from comparing the way that the County estimated vote times in those self-reports, that my conclusion is that the -- the County method is likely to

11:26:22

have been more reliable than the self-reports.

Q. Are there any issues with self-reporting specifically that can affect how reliable those sorts of estimates are?

A. Yes, there's actually a long literature, not just on line length and wait time for elections, but this is something businesses are -- are concerned about. One of the things that research shows is that even someone's perception of how long they have been waiting in line is

11:27:20 frequently not accurate, and it can be -- it can be affected by their frustration and expectations.

Someone may feel or report that they have been waiting in line longer than they actually have when it conflicts with their -- what they think ought to have happened. So there are a lot of ways in which non-systematic or impressionistic reports of wait times can be less accurate than systematic evaluation or estimation, or calculation of wait times.

Q. And you mentioned that you reviewed some of the

11:27:58 declarations that were submitted in this alongside the Complaint. Was there any evidence in those complaints of sort of this unreliability or variation from the self-reporting that you saw?

A. One of the things that I noticed in those reports is that there were -- there were very, very wide

variation in reports of the number of people who were waiting in line and how that correlated with wait times. There were some reports that said that the -- someone at the vote center counted the line of 35 to 100 people with a wait time of an hour, hour and a half. Other reports that a line was 500-people long with an hour wait time. People were giving ranges of line lengths from 250 to 500, 35 to 100, 100 and 250; there's lots of variation. And again, you can count the number of
11:29:00 people in line, but it actually is -- it's more difficult to do that when you're just kind of estimating it. So there was wide variation in the reports of line length and wide variation in how line length was -- the claims that a particular line length led to a particular wait time.

Q. Thank you. So now I'd like to move on to Mr. Baris and the testimony that was given this morning and the report that you reviewed.

Let's start with the conclusion or the opinion
11:29:44 that the tabulator issues at vote centers disenfranchised enough voters to affect the outcome of the election.

Do you agree with that conclusion?

A. No, absolutely not. There's -- there's absolutely no evidence to support that conclusion.

Q. Okay. We can, we can sort of break it down and go through each piece of it. So let's start with the poll that Mr. Baris conducted and that he described this morning.

In your opinion, does that exit poll support Mr. Baris's conclusion?

A. Not at all.

Q. What are some of the issues that you found with that poll?

11:30:26 A. So as I listened to Mr. Baris's testimony, the -- virtually the entirety of his conclusion rests on the inference that because people in his exit poll, because people who said they were going to vote didn't respond to his poll, that he is making the assumption that every one of those people, who didn't respond to his poll, tried to vote or didn't vote because they were disenfranchised; that he's essentially taking that nonresponse rate and he's assuming that every person in his poll, who didn't actually respond to his poll, 11:31:13 didn't vote because of tabulator problems. And there are about five logical leaps that you have to go through to get from that premise to the conclusion, and there's just no evidence to support that contention. It's just a series of assumptions and speculation.

Q. Can you give some examples of other reasons that

somebody might not have ended up responding to that poll?

A. One of the reasons is that people often say they are going to vote when they are not going to vote -- when they don't vote. There's research from 20 years ago that shows that when you validate vote records and, again, when you are doing an exit poll or you're connecting with the voter or registrant because of being able to identify in a voter file, you know who they are, and you can follow up and see if they actually voted. And there's research from, sort of, the early 2000s that show that sometimes 25, 30 percent of people who say they are going to vote actually don't vote. So that's one possibility is that the people who said that they were going to vote didn't vote, so that's one possibility.

Another is that the people who fall under that category say that they are going to vote and then don't vote, there are all kinds of reasons why the effects might be different for different types of voters. You might have someone who votes absentee more likely to respond positively to vote as opposed to someone who is telling you what they might do two or three weeks in the future. There could be a proximity effect where someone who was just asked to participate in a poll and agree to

it, and they complete the poll in a couple of days or a week they might be more likely to eventually respond to the poll and participate when they just voted, as opposed to if they are going to vote on Election Day and that act might be two or three days, a week, two weeks, three weeks, in the future.

So there are all kinds of reasons why someone might say that they are a likely voter and then not vote, or say they are going to participate in the poll and agree to participate in a poll, and wind up not participating.

Q. Based on your experience, if a poll had an unexpected nonresponse rate, what would that tell you about the poll?

A. Well, the first thing that I would think of, if I had that kind of differential nonresponse rate, is I would -- I would worry that there was something wrong with the poll, there was something -- something about the sample, something about the selection criteria, something about who was more likely to respond, whether it's demographics or age, or even partisanship.

I think it's worth noting that Mr. Baris has actually presented no data to support any of his contentions, neither in his testimony or his report. There are no marginals, there are no demographics that

break down the people who responded or didn't respond. There are all kinds of reasons why that -- that might happen.

And again, having gone through this process myself, my -- my initial reaction would be there's something going on with my sample. There's something going on with that screen that's not picking up the thing that I'm trying to measure.

Q. In your view, I mean, you heard Mr. Baris's testimony and he said that the people who ultimately responded to the poll, those are the people who voted. Is that your understanding? Or at least self-reported voting, I should say.

11:35:22

A. That's my understanding. These are people who said that they voted.

Q. What's your opinion on drawing conclusions about non-voters based on polls of voters?

A. My conclusion is that you shouldn't do it. When -- there are polls -- there are surveys, large-scale surveys, some of them are done by the Census Bureau, some of them are done by academic centers that actually go into the details of who voted and who didn't vote, and those polls actually have a battery of items for people who say that it didn't vote about why they didn't vote. And the one that I referred to is called the

11:35:57

Survey on the Performance of American Elections. It actually has a 13-item battery that goes into why people didn't vote, that they weren't interested, they weren't registered, the lines were too long, it was raining, they had lacked transportation. There were all kinds of reasons, but I -- I -- I don't think, in my view, it's decidedly improper or wrong to make inferences about why people didn't vote by asking questions of people who did vote.

11:37:00 Q. Let's shift gears a little bit and talk about some of the specific calculations that Mr. Baris did.

Mr. Baris gave some testimony about what would happen if overall turnout had been 2.5 percent higher or some range, some, I guess, undefined range higher. In your opinion, is there any reasonable basis for Mr. Baris's selection of 2.5 percent or any range?

A. Well, I mean, if going by what Mr. Baris said in his report is that he picked 2.5 percent, because that is the number that would generate in his view

11:37:46 uncertainty about the outcome. Theres's -- there's just no -- no basis for that. He's -- he's picking that number out of the air. There just is zero basis for speculating what turnout might have been. And, you know, he's presenting this as a what-if, but it's not just a what-if. He's presenting this as a possible

scenario to shed doubt on the outcome, and there's just no basis for -- for that number. And there's also a little bit of sleight of hand that he did in doing the calculation because the 2.5 percent he thinks, well, what if 2.5 percent of voters, you know, turnout overall increased by 2.5 percent? Well, he's assuming that every one of those 2.5 percents would vote like an Election Day voter, and there's just no basis for that. If he wants to say that turnout would go up by
11:38:50 2.5 percent, well, fine. But those voters, most of them will vote early or absentee. Some of them will vote on Election Day. You want to speculate the turnout goes up by 2.5 or 5 percent or 10 percent, you would have to assume that those voters would vote like the ones who have already voted.

So, you know, not only is there no basis for 2.5-percent figure, he's doing his math incorrectly about how he thinks those people would vote.

Q. So now -- so kind of putting aside the kind of
11:39:28 fundamental flaws that you just described with Mr. Baris's process, can you talk a little bit about the actual calculation he did using that 2.5 percent, and any issues that you see with that calculation?

A. Sure, that he -- he speculated. So this is all just a -- a counterfactual that he's making up. In

asking what would happen if 2.5 percent more people voted, he's applying that 2.5 percent to the total number of people who voted in Maricopa County, so he's counting Election Day voters, early voters, people who dropped off -- the total number of voters, when what you would have to do, if you were thinking about what a 2.5-percent Election Day turnout difference would make, you would have to think about who hasn't voted; taking the population, registered voters minus the people who
11:40:29 voted absentee or early, minus the people who voted early on Election Day, minus the people who dropped off their ballots on Election Day, minus the people who voted provisionally, and that gets you down to about 900,000 voters. And so if he wants to speculate about what a 2.5-percent turnout increase might be, that's the population that you would have to look at.

So, again, that's not 39,000, which is his top-level result, that's about 21,000 and change.

Q. So total Election Day turnout was about 250,000
11:41:10 people. Had there been 39,000 more voters, what sort of increase in Election Day turnout are we talking about there?

A. That would be about a 16-percent increase in Election Day turnout.

Q. Just briefly, Mr. Baris I think used terms like a

reasonable degree of mathematical certainty or other phrases like that. What's your -- what are your thoughts on those sorts of qualifications or modifiers, I guess?

A. Well, reasonable degree of mathematical certainty is actually a term that has no meaning. It's not something that is used in academic work. It's something that the National Institutes of Standards and Technology, the federal agency, says you shouldn't use because it doesn't convey any actual meaning. And I think what Mr. Baris is doing is he's relying on jargon to give a veneer of scientific precision to his calculations, again, that there's no basis for.

So it's a phrase that doesn't have any real meaning.

Q. And getting close to the end here. Are you familiar with Big Data Poll?

A. I have not heard of them before my work on this case.

Q. Through your work on this case, what's your general impression of how they are regarded in the polling community?

A. Well, again, FiveThirtyEight gives them a failing grade and excludes them. And again, they -- they do that because of either lack of transparency about

methods, inaccurate methods or accuracy. So based on that and the evaluation of the pollsters who are in that group, about 490 pollsters. Based on that, my conclusion is that they are not well regarded by the professional polling community.

Q. Okay. And I think last question for you from me, you've already said that you watched all the testimony given at this trial. Based on everything that you have seen and heard, in your opinion, is there any reason to
11:43:54 believe that the tabulator issue on Election Day in Maricopa County prevented or discouraged enough voters sufficient to change the outcome of the election?

A. No. And again, not only is there no reason to think that that happened, available data suggests conclusively that that did not happen.

MS. MADDURI: Thank you, Dr. Mayer. That's all from me, and now the Plaintiff's counsel will probably ask you some questions.

THE COURT: Cross-examine, Mr. Olsen?

11:44:36 MR. OLSEN: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. OLSEN:

Q. Mr. Mayer, I have up on the screen your report which is Defendants' Exhibit Number 1, I believe?

A. So, counsel, I can't see you.

THE COURT: Can you see the exhibit, Mr. Mayer?

THE WITNESS: Dr. Mayer, please.

THE COURT: I'm sorry. I apologize, Dr. Mayer. Can you see the exhibit, sir?

THE WITNESS: No, Your Honor, I can't.

THE COURT: Okay.

THE WITNESS: I can see it now.

MR. OLSEN: Good.

11:45:38 BY MR. OLSEN:

Q. All right. Mr. Mayer, let me read you the first paragraph of your report. You state -- and you drafted this report before you -- before the Court sustained the claim, certain claims in this Complaint, correct?

A. I'm sorry. I don't understand the question.

Q. What date did you draft this report?

A. I believe I submitted this report on Monday the 19th.

Q. Did you know that the Court had sustained certain

11:46:12 claims made in Plaintiff's Complaint before you submitted this report?

A. No.

Q. Okay. So in your report you state in the third paragraph, "The allegations are reminiscent of false claims made about the 2020 Election in which Former

President Donald Trump and his supporters made absurd arguments about election fraud in multiple states including Arizona. As was repeatedly found by federal and state courts all over the country, those claims were based on completely unreliable data and evidence, and contorted basic facts about election administration into fanciful conspiracy theories."

Do you see that, sir?

A. I actually can't see that in --

11:47:04 Q. Do you recall making -- do you recall making that statement in your report?

A. Yes.

Q. Okay. So as I said earlier, the Court found that two of Plaintiff's claims were sufficiently meritorious to allow them to proceed to this trial.

Is it still your contention that these two claims are absurd, fanciful conspiracy theories?

A. My contention is that the claims that the tabulator problems disenfranchised enough voters to cast

11:47:37 the election into doubt are incorrect.

Q. Well, you made a number of assumptions or arguments in your report such as on signature verification as well, didn't you?

A. Yes.

Q. Okay. Are you a signature verification expert?

A. No, my conclusions were based on data on signature rejection rates.

Q. Did you ever review the 6,000 examples of mismatched signatures that Plaintiffs put forward to the Court --

MS. MADDURI: Objection, Your Honor.

MR. OLSEN: -- attached as an exhibit to their Complaint?

MS. MADDURI: This is all relating to claims that have been since dismissed from the case, and were not part of the direct examination or anything that Mr. Mayer has testified to testified.

11:48:20

THE COURT: Okay. Scope of cross isn't going to apply. Relevance?

MR. OLSEN: Your Honor, he submitted this report. He is making a number of -- of arguments and opinions on issues, and this goes to his bias. So he is castigating all of Plaintiff's claims, calling them absurd, calling them of conspiracy theories. And he, in fact, has no basis to make any of those arguments, and that's what this shows.

11:48:46

THE COURT: Okay. Hold on. The report isn't in evidence. Nobody has offered it into evidence, and frankly, it's not coming into evidence, as none of your experts' claims or reports are in evidence. So

you're the one that's -- the door wasn't opened for, so to speak, as to those issues. You're addressing credibility.

MR. OLSEN: Yes, Your Honor.

THE COURT: By going into the counts that were dismissed. So... I can give you some leeway in terms of addressing his opinions as they relate to a baseline for who he is and where he draws his experience from for rendering opinions, but not -- we're not getting into the weeds related to the minor details of why certain claims were dismissed or not. Fair enough?

11:49:52

MR. OLSEN: Yes, Your Honor.

MS. MADDURI: Thank you, Your Honor.

BY MR. OLSEN:

Q. Mr. Mayer, you claim to be an expert in a number of things. I'm curious, as an expert, is it important to rely on relevant data before you render an opinion?

A. Yes.

Q. Okay. And in terms of signature verification, Plaintiff submitted over 5,000 examples of mismatched signatures. Did you review any of that data before you criticized Plaintiff's claims regarding signature verification?

11:50:20

A. My claim was based on the data on signature matching rejection rates in Arizona and in jurisdictions

around the country that engage in signature matching.

Q. So you didn't -- so the answer is no, you did not review that data, correct?

A. That's correct.

Q. Did you review any of the sworn testimony of the actual signature reviewers who were reviewing signatures for Maricopa County in the 2022 General Election?

MR. LIDDY: Objection, Your Honor.

THE WITNESS: Yes.

11:51:04 MR. LIDDY: Relevance. The data he's referring to is from the 2020 Election, which is not before this Court.

MR. OLSEN: No, Your Honor. I'm referring to the sworn testimony of signature verifiers for the 2022 General Election, and I've moved on from the 5,000 examples.

THE COURT: I'm puzzled. I have this look on my face because I've read the affidavits, and I must have missed those thousands of signatures.

11:51:39 MR. OLSEN: The declarations that we submitted, the three from the signature verifiers, testified under oath as to rejection rates that they were performing for 2022 signature verification.

THE COURT: Okay. Granted, now with that explanation, I understand what you're asking; but that

wasn't what you asked.

MR. OLSEN: I'll rephrase.

THE COURT: In all respect, I think if you were talking about did he review the affidavits of people who reviewed signatures in the 2022 Election, you can proceed. Thank you, sir.

BY MR. OLSEN:

Q. Mr. Mayer, did you review the declarations of the three signature verifiers for the 2022 process in Maricopa County?

11:52:27

A. I believe I did.

Q. Okay. And do you recall those -- those witnesses testifying to rejection rates that they were performing and observed between 20 and, say, 40 percent?

A. That's what I recall.

Q. Okay. Do you think they are lying about that?

A. My conclusion was based on those rejection rates were hundreds of times higher than the actual rejection rates in Maricopa County, Arizona, and jurisdictions around the country that use signature verification. I'm not making a claim about whether or not they are telling the truth or lying. I'm saying that those reported signature verification rates are wildly higher than rates that have -- that have occurred historically in jurisdictions around the country.

11:53:07

Q. Okay. But you've never personally inspected signatures in Maricopa County?
A. That's correct.
Q. Are you an expert in anything related to cyber?
A. I'm not offering an conclusion about anything related to cyber security other than the sources that I cite in my report.
Q. Okay. Did you examine any of the ballots that were used in the 2022 Election?
11:53:57 A. No.
Q. Okay. Are you aware that Plaintiff's cyber expert examined ballots used in the 2022 Election?
A. That's what he testified to.
Q. So you are aware of it?
A. Yes.
Q. Were you in Maricopa County on Election Day?
A. No.
Q. So you didn't observe any of the events that occurred on Election Day?
11:54:44 A. That's correct.
Q. You gave some testimony on the reported wait times of Maricopa County.
Do you recall that?
A. Yes.
Q. What did you do to verify the accuracy of

Maricopa County's data?

A. I relied on the data that was reported by the County.

Q. So you did nothing to verify the accuracy of that data, correct?

A. That's correct.

Q. Is it fair to say that there -- that wait lines at various vote centers could vary in the rate of movement?

11:55:28 A. I'm sorry. Can you ask that again?

Q. So you can have varying rates of movement within wait lines at different vote centers locations, correct?

A. I'm not quite sure I understand what you mean by rates of movement.

Q. Well, the length of time it takes to get through the line.

A. So that can vary, yes.

Q. Okay. And that can vary for many reasons, correct?

11:55:59 A. That's correct.

Q. So, for example, if tabulators at one center were down 80 percent of the time compared to another center where the tabulators were down maybe 10 percent of the time, that could cause the wait lines -- wait times to vary, correct?

A. That's correct.
Q. And so a variance in wait times wouldn't necessarily just be because of some supposed issues with self-reporting, correct?
A. It's possible, yes.
Q. You had some -- you had some questions about the 2.5 percent that Mr. Baris referred to in terms of the projected increase in overall turnout.
Do you recall that?
11:56:52 A. Well, it wasn't a projected increase, it was a hypothetical increase, but yes.
Q. Are you aware that the County in their 2022 General Election Plan made two forecasting models for turnout on Election Day?
A. Yes.
Q. Okay. And are you aware that the one model projected around, I think, 290,000 as the turnout on Election Day?
A. Yes.
11:57:17 Q. And are you aware that the other model projected somewhere around, I think, 250,000 on Election Day?
A. Yes.
Q. What's the -- that's about roughly a 40,000 voter difference, correct?
A. That's correct.

Q. 290 minus 250? What's the percentage on the overall turnout of that 40,000 delta, approximately?

A. So you're asking what's 40,000 divided by total turnout in Maricopa County?

Q. Yes, for 2022.

A. I -- I -- I try and do the math in my head. It looks like it's about 3 percent maybe, a little bit less than 3 percent.

Q. Okay. So Maricopa's own projections showed a
11:58:17 delta of approximately 40,000 voters as having about 2.5, 3-percent impact on overall turnout, correct?

A. Well, you're talking about two probabilistic forecasts; but, yes, the difference is about 40,000 between those two forecasts.

Q. You testified that it's speculative -- speculative to think that Republicans would be disproportionately affected by increased wait times and what -- even Supervisor Gates referred to as chaos on Election Day. Is that your testimony?

11:59:03 A. I'm not sure that that was my testimony. I don't -- I don't think I said that when I was testifying.

Q. Well, did you testify that it was speculative that Republican turnout on Election Day would be affected disproportionately by issues arising on Election Day?

A. With respect to turnout, yes. That's speculative.

Q. Okay. Would you agree that Republicans' turnout on Election Day for the 2022 General Election in Maricopa at, at least, a three-to-one ratio compared to Democrats?

A. Well, I would -- I would phrase it differently that of those who turn out on Election Day, those are more likely to be Republicans. I'm not sure if the

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

Q. So you don't know what the ratio is?

A. Well, you could look at it with the -- what the vote actually was.

Q. Um-hum. Do you know what the vote actually was, the ratio, between Republicans and Democrats on Election Day?

A. Specifically with regard to Election Day turnout, I think it was in the range 70 percent, but I'm not certain what the precise figure is.

12:00:36 Q. So 70 percent favoring Republicans to Democrats?

A. Well, in terms of the vote.

Q. You gave some testimony about the reconciliation procedure for check-in versus voting. Do you recall that?

A. Yes.

Q. Would that data include voters who simply looked on TV and saw a long line or heard reports on social media about long lines and decided not to go and vote, or would it include that data?

A. It would not include -- it would not include that.

MR. OLSEN: Thank you. I have no further questions.

THE COURT: Redirect?

12:01:36 MS. MADDURI: No redirect, Your Honor.

THE COURT: Okay. Could we excuse the witness then?

MS. MADDURI: Yes, Your Honor.

THE COURT: Thank you.

Thank you, Dr. Mayer, that will conclude your participation. You're excused, sir.

THE WITNESS: Thank you, Your Honor.

(Witness excused.)

THE COURT: Okay. All right. We'll take

12:02:00 the noon recess until 1 o'clock. We'll resume at that time.

(Recess taken, 12:02 p.m.)

(Proceedings resume, 1:01 p.m.)

THE COURT: All right. This is CV2022-095403. This is Lake v. Hobbs, et al. Present,

for the record, are the parties or their representatives and their respective counsel. I believe we are proceeding with the presentation of Defendants' case. Your next witness would be?

MS. HARTMAN-TELLEZ: Your Honor, our next witness is Rey Valenzuela.

THE COURT: Thank you.

MR. LIDDY: Your Honor, as we get started, can we get a time check? I've got our calculation, but

13:02:08 I just want to know where we are.

THE COURT: Tell me what you've got.

MR. LIDDY: I have 25 minutes remaining for Plaintiffs, 2 hours 24 minutes remaining for Defendants combined.

THE COURT: Okay. Where does that stack up with your count?

MR. OLSEN: Your Honor, we have 33 minutes remaining.

THE COURT: Okay.

13:02:28 MR. OLSEN: This may be how we're calculating objections.

MR. LIDDY: We don't want to dispute, whatever the Court wants to do.

THE COURT: Thirty-three minutes is fine. Okay. Mr. Valenzuela, if you'll step over here, raise

your right hand to be sworn.

REYNALDO VALENZUELA,

called as a witness, having been duly sworn, testified as follows:

THE COURT: Please proceed as soon as you're ready.

DIRECT EXAMINATION

BY MS. HARTMAN-TELLEZ:

Q. Good afternoon, Mr. Valenzuela. Can you please state your name for the record?

13:03:10

A. Reynaldo Valenzuela.

Q. Can you describe your current employment, please?

A. I am the Co-Elections Director of Maricopa County Elections Department overseeing early voting and election services.

Q. Did you have other positions with the Maricopa County Elections Department before you became the Co-Election Director?

A. Approximately six years ago, I was the Elections Director before we the department had gone through -- rearranged, and I also worked as Assistant Director For Early Voting in other positions for the last 32 years with Maricopa County Elections.

13:03:34

Q. In your role as Co-Elections Director, what are your responsibilities briefly?

A. Overseeing primarily the early voting process, all of its departments, as far as special election boards, mail-out bailing, and so on, and also candidate filing campaign finance.

Q. Do you hold any professional certifications?

A. Yes, I'm a CERA-certified Certified Election Registration Administrator through Elections Center and Auburn University, held that certification for 16 years and renew every four years. I'm also a Certified

13:04:18 Election Officer through the Arizona Secretary of State, and I've held that certification for 30 years, and it's renewed every two years.

Q. Does Maricopa County's process for receiving and processing early ballot packets come within your responsibilities?

A. It is under my purview.

Q. And you may note that I just said early ballot packets. Can you explain why you call them packets and not ballots?

13:04:47 A. Absolutely. So in our department, the Early Voting Department, we actually -- that is our preferred term because I know a lot of folks, as far as lay folks, would say that ballot was inserted in the drop box, that ballot. And, in fact, it's not the ballot, it's the packet that has to undergo scrutiny, verification and

validation. So our department, the Early Voting Department, calls them packets because that's exactly what they are until they undergo that verification process to become a ballot that could be tabulated.

Q. So at the front end, how does a voter get an early ballot in the mail?

A. So there's multiple ways a voter can get, obviously, they can get it by requesting it by mail. They can get it early in person. They can also get it Election Day, and there is that process, again, by which we -- the mail process is probably the predominant process that most get early ballots.

13:05:30

Q. And when a voter receives a ballot by mail, how do you know that that's going to a registered voter?

A. Well, early voting is reliant on the voter registration. Voter registration is a vetted process where the registered voter is verified through multiple statewide database that says that we check it against motor vehicles, we check it against INS, we check it against SSN, vital statistics, all those things to come back. Once that voter is put on the registration roles, we verify their address through sending them a return-service-requested registration card.

13:06:05

But why I mention that is because then that vetted voter is put in eligible for early ballot, which

is then created utilizing that record, and a specific, unique Piece ID that is created for every election for that particular voter for that early ballot pack.

Q. And does that Piece ID appear on the affidavit envelope in which a person would return an early ballot to the County?

A. It does.

Q. What are the different ways that the County gets early ballots from voters?

13:06:49 A. So...

Q. Ballot packets?

A. Ballot packets, yes. So the ballot packet, itself, can be dropped off at one of our drop box locations, whether it's standalone drop box, which we have two. One here in Mesa, one in our MCTEC facility. Can drop it off on Election Day or in person at any time during the early voting in-person period, or can return it by mail.

THE COURT: Before you ask the next

13:07:11 question, I just noticed you speak quickly, Mr. Valenzuela. That may be a little bit difficult for the court reporter to follow. If you could just slow down slightly, sir.

THE WITNESS: Yes, sir.

BY MS. HARTMAN-TELLEZ:

Q. Mr. Valenzuela, you just mentioned one of the ways that voters can return early ballot packets is by delivering them to vote centers or drop boxes. If they -- how do those ballots that have been delivered to a drop box or vote center during early voting, how do those -- how does the County get those back to the central count facility?

A. So we do have a courier process by which we assign two individuals of bipartisan, differing parties, 13:08:00 a Dem and a Rep, specifically. And those individuals will visit the site, whether it be a standalone drop box, a city clerk that is assigned to be a drop box only, and/or an early voting in-person site. And those couriers would present themselves, they would -- those bipartisan couriers to the clerk, city town clerk, or the inspector at the polling place or vote center, and that -- they would begin that process of emptying that sealed blue box that is present for collection of that -- of those ballots or packets.

13:08:35 Q. Okay. And you said -- when you say emptying those boxes, that's emptying them at the site, the early voting site, or at the drop box?

A. That is correct. So they would -- they would -- if they have a process by which, and I can delineate it as short as possible, or -- but it is a secure process

where they are filling out logs, a ballot, Early Voting Ballot Transfer Receipt that is documenting seals, documenting the transfer of those into a secured cage that is sealed and brought back to our MCTEC facility.

MS. HARTMAN-TELLEZ: And if we could bring up Exhibit 20.

BY MS. HARTMAN-TELLEZ:

Q. It seems like you may have anticipated my question. Is this document what you've just described as the Early Voting Transport Statement?

13:09:26

A. It is.

Q. And do these statements contain information about how many ballot packets the County received from the vote center or drop box?

A. It does, but it is an after receipt at MCTEC; but it does, indeed, have that in the Transport Receipt Section.

Q. Towards the bottom of that document?

A. Correct.

13:09:54 Q. Where it says, Count of Ballots in Transport Bin?

A. Correct.

MS. HARTMAN-TELLEZ: At this time, Your Honor, I would move to admit Exhibit 20.

THE COURT: Any objection?

MR. BLEHM: No objection, Your Honor.

THE COURT: 20 is admitted.

BY MS. HARTMAN-TELLEZ:

Q. So I think we've gotten to the point where ballots, early ballots, come back to central count facility at the County. Where do they go next?

A. So they go -- this top part of the receipt, and actually very clear is at location is where they are, basically, just transferring those packets into a secure bin, sealing that, come to our MCTEC facility. Then we
13:10:40 have two representatives, auditor boards, that are, again, made up of differing parties, a Dem and a Rep, that will take that and open that box and confirm and document on this bottom section, this Transport Receipt, all the seals that were removed, brought back to from the original blue box, the new seals, or the red-box seals, and also the new seals put on the box that we just left.

It also will begin a process -- because they are a smaller quantity, we do have a counting machine that
13:11:10 we can run those packets through, and we will then process those, and not shown here, but is an audit slip that we document how many of each packet we have received. There are three different types of packets: an in-person counter packet, which is a white envelope; a mail ballot, which an individual we mailed it and they

opted to deliver it, so it's a green envelope; and then we have voters that may have cast a provisional ballot. So there are three envelopes. They will take those bins, they will count those. They will document on there, count a balance and transform bin, and they will ready them to then be co-mingled with several other boxes brought in, and seal that for transport to the -- for an inbound scan process at Runbeck.

Q. And just briefly you just mentioned the different colors of envelopes. On this form next to the line where it says Count of Ballots where it says 107G/31W, what does that mean?

13:11:57

A. That would mean the 107 green affidavits, which would indicate mail ballots returned, and 31 white, which would mean in-person early voters that still -- because there is to tabulator there -- still follow the envelope process or packet.

Q. Okay. So you've also mentioned receiving ballots by mail. How does the County take possession of ballots that are mailed back?

13:12:31

A. So the County has with the United States Postal Service an arrangement that they do not deliver to us, we actually must physically be present at their main processing distribution center and have access, list of individuals from our offices that would be eligible for

that secure facility entry. And so we pick those up again with two individuals, a differing party, and they have those individuals' names on file, and they must show badges, and we collect those directly from the United States Postal Service.

Q. And when the County employees at -- pick up the ballots from the United States Postal Service, how are they packaged?

A. So like all mail that goes to that distribution, millions of pieces that go through, including mail packets, they are trayed and sleeved and caged. So when we come, there's a postal receipt that is an estimate of tray counts and totals within that tray, and so they are delivered to us at the dock in those cages, trayed. And approximately 30 trays per cage, so we have two cages, we could have 60 trays with X amount of packets within them.

Q. And what do the County employees -- where do they go next with those ballots when they leave the United States Postal Service facility on 48th and Washington?

A. So those two couriers, or pickup individuals, will go straight to Runbeck with that particular day's mail, whether it's several trays or several cages, depending on, you know, the turnout on that given day, and we then check in and transfer that. We complete a

delivery receipt with Runbeck with -- and transfer that -- those cages into their custody with our County Protective Services there onsite, but they are taken to Runbeck and transferred custody with chain-of-custody documentation.

Q. So in this -- at this point in the early ballot process, what services is Runbeck providing to the County when you drop those ballots off, ballot packets?

A. So those packets, themselves, they undergo what is called an inbound scan, and what that inbound scan's purpose is, three things, is to: One, take an image of that packet so that we have an actual image to utilize for signature verification instead of farming those physical packets around for signature review. So image of the packet, number 1; two, they do a count, an actual detailed count of those packets in that cage to report back; and three, they are -- they're also identifying and validating that it is an actual packet that we created utilizing that Piece ID. That unique Piece ID tied to that voter that is specific to that election and created by us, and in our system for the voter.

Q. Thank you. And let me step back for a moment. Well, I think I needed to go one step back in the process to cover something else.

Can you bring up Exhibit 82, please? So I think

you mentioned that the ballots from the postal service come sleeved and trayed and in cages.

Do you recognize this document that's up on the screen right now?

A. I do.

Q. And can you tell us what that is?

A. It is, as I mentioned, the process is called inbound scan. It's -- this is our Maricopa County inbound receipt of delivery document that when we show up at Runbeck that we are, basically, transferring that custody, but also it's the results of that scan or the results of that estimate. Example is showing here, 84 trays at 600 per -- or 400 per tray, and so on, then it tells you the quantity, estimated quantity based on that -- that receipt, in addition to we may have regular MOBs, which is a mail-out ballot, that we're bringing because we've adjudicated or we cured one, and so on.

So for this particular day, we had one tray of 599 regular MOBs and one tray of 13 what we call need packets, and that's a disposition that should we have reviewed it and we can't make an absolute final determination, we need the packet -- very simple, we are very creative -- need the packet back so we can have the physical packet to do follow-up with the voter or on the packet itself.

Q. So we've mentioned that there are estimates when you receive the ballots from the USPS. Do you get an exact count of the ballots, the USPS ballots, that are delivered to Runbeck when they scan them?

A. Exactly. That is exactly the process, because it could be upwards of ten, hundreds of thousands, that we can't count them at the dock, so we accept the tray count, the estimated weight count, as the post office provides to all vendors that pick up, and we take it to

13:17:52 that next detail inbound scan count to get the exact amount.

Q. Let's briefly talk about signature verification. I don't want to get into the details of the process, but why does the Recorder do signature verification of Early Ballot Affidavit envelopes?

A. It is part of the process by which to prove identity. So, obviously, Arizona has a proof of identity. You go in person, you would provide photo ID. For a mail ballot, we don't request that you send your

13:18:25 driver's license in, so that proof of identification is done through the signature verification on signature exemplars on file, vetted signature exemplars, registration form, multiple registration forms, that you may have on file. Also, past signature rosters. Maybe you're not an early voter, but you voted in person, we

have all of those signature rosters and signatures, in addition to past EV affidavit, vetted EV affidavit signatures.

As an example, I, myself, when we train, I have close to 32 different exemplars from all the times I voted and/or registration forms.

Q. And just for the sake of clarity on the record, when you say EV affidavit, what does that mean?

A. EV affidavit is the packet that we speak of. It is the packet that has the attestation, and it has that I am who I am, and it has our unique Piece ID printed and the voter's information.

Q. And EV stands for?

A. Early voting.

Q. And it's what the general public commonly knows as the envelope?

A. The green envelope, if they get it by mail.

Q. Does every early ballot that the County eventually tabulates go through the signature verification process?

A. One hundred percent. They cannot make it to the next phase. There's multiple bipartisan phases in between. They can't make it to the processing phase made up of bipartisan boards who are auditing that tray report that says, we made these good; we made these bad;

we made these need packet, whatever it may be, but the basics to get to tabulation must be signature verified.

MS. HARTMAN-TELLEZ: And I have a piece of housekeeping I think I did not attempt to -- I did not ask to move the admission of Exhibit 82, Your Honor. I would at this time move admission of that exhibit.

MR. BLEHM: No objection, Your Honor.

THE COURT: 82 is admitted.

BY MS. HARTMAN-TELLEZ:

13:20:21 Q. Has the County ever authorized Runbeck to allow its employees to deliver their own early ballot packets directly to Runbeck?

A. No.

Q. And are you aware of Runbeck allowing its employees to do so in the past?

A. No.

MS. HARTMAN-TELLEZ: I have no further questions for this witness. There may be some cross-examination.

13:20:57 THE COURT: I was asking you who it would be. You've answered my question. Mr. Blehm, cross.

MR. BLEHM: I'm sorry, Your Honor.

CROSS-EXAMINATION

BY MR. BLEHM:

Q. Mr. Valenzuela, isn't it that true that no

Maricopa County employees operate Runbeck equipment?
A. Correct.
Q. Okay. So isn't it true then that you farm out the counting of ballots to Runbeck on Election Day?
A. We do not.
Q. You do not?
A. We do not count ballots, counting ballot -- count packets.
Q. I think you just said you accept the mail, the
13:21:31 U.S. Postal Service's weight receipt?
A. We accept -- we don't utilize that for a final count.
Q. You rely on Runbeck to run these through their machine and give you a count; isn't that correct?
A. That is correct, of the packets.
Q. Okay. And the County does not run or operate Runbeck?
A. It is a certified vendor that we contract with.
Q. Okay. And Exhibit 80, that's just an inbound
13:21:57 receipt of estimates; is that correct?
A. I'm sorry, you had turned.
Q. The inbound receipt of estimates, that's just an estimate, correct, Exhibit 80?
A. For the USPS packets.
Q. Who created Exhibit 80?

THE COURT: Hold on.

MS. HARTMAN-TELLEZ: Objection. I think Mr. Blehm has -- is citing the wrong exhibit number.

MR. BLEHM: Oh, I'm sorry. The inbound receipt, the last one that was received.

MS. HARTMAN-TELLEZ: 82.

THE COURT: 82.

BY MR. BLEHM:

Q. 82, who created that document?

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

Q. Who made the document? Who signs the document?

A. Signs the document, it's shared between Runbeck and a County employee, that courier.

Q. It shows, does it not, that you are turning over ballots to Runbeck, correct?

A. We are turning packets over.

Q. Packets. You have no idea exactly how many you're turning over, correct?

A. We don't. We have an estimate, but we don't --

13:22:49 we rely on that count, the certified vendor, to do that --

Q. Why do we use -- why do we use chain-of-custody documents that show the details of how many ballots we have?

MS. HARTMAN-TELLEZ: Objection.

BY MR. BLEHM:

Q. When you count ballots, you put them on a chain-of-custody form, is that correct, during the EVBTS process?

MS. HARTMAN-TELLEZ: Objection. He's calling for speculation. Lack of foundation.

MR. BLEHM: Speculation?

THE COURT: Hold on. Let me rule.

MR. BLEHM: I was just going to ask a different question, Your Honor.

13:23:16

THE COURT: Okay. Withdrawn?

BY MR. BLEHM:

Q. EVBTS documents that you just testified about and we just admitted into evidence, those contain counts, do they not --

A. They do.

Q. -- of the number of ballots that were brought back?

A. Some --

13:23:32

Q. Why do we do that?

A. Of the number of ballots are delivered and number estimated, in some cases.

Q. Why do we do that?

A. Why do we provide that?

Q. Yes.

A. So that we have a basis to reconcile to some agree.

Q. Isn't it so we know exactly how many ballots were injected into the system at each point in the process?

A. It is not, because we don't have that at the post office level.

Q. As you've sat here, you just testified --

THE COURT: Hold on. Wait a second. Just a second. Let him finish answering. We only have one
13:24:09 person speaking at a time, please. Okay. For the sake of my court reporter, okay? The record will look -- if you've ever read a transcript it has a bunch of dashes when people talk over themselves or each other. So, please. Thank you.

BY MR. BLEHM:

Q. Mr. Valenzuela, you had absolutely no idea that Runbeck employees were allowed to inject ballots into the system; isn't that correct?

A. I do not. I did not.

13:24:37 Q. You had no idea. And isn't it true that you had no idea because you do not keep adequate documentation with regards to the number of ballots you receive on Election Day and give to Runbeck, yes or no. It's a simple question.

MS. HARTMAN-TELLEZ: Objection, Your Honor.

THE COURT: Objection to what?

MS. HARTMAN-TELLEZ: Foundation. Mr. Valenzuela has not testified to -- regarding Election Day.

THE COURT: If he's able to answer the question, I'm going to let him answer. If he doesn't understand it, I'll have Mr. Blehm rephrase it. If you can answer the question, sir, do so; if you cannot, tell us.

13:25:13 THE WITNESS: Repeat, if you will.

BY MR. BLEHM:

Q. So you have no idea how many Election Day ballots are transported to Runbeck because you do not document exactly how many ballots are transported to Runbeck; isn't that correct?

A. For the United States Postal Service pickup, we do not receive a finite number, so we do not know that number when we deliver to Runbeck.

Q. Drop box ballots, does the same apply?

13:25:35 A. It does not. We do know that because it is small quantity where we have a counter that we can count 100 ballots, 1,000 ballots, but not 290 through this counter.

Q. Do you know the exact number?

A. Exact number of --

Q. Ballots, ballot packets, drop box ballot packets?
A. We do -- we do, part of our audit review is we do count the drop box ballot packets because they are outside of the purview, whereas a federal post office, they don't leave chain of custody from the federal post office once we pick them up; but the ballot boxes, we do make that count.
Q. On Election Day?
A. On Election Day, no, because we're not doing drop box courier process at that time. It's a different process for Election Day.
13:26:26
MR. BLEHM: Thank you, Your Honor. Hold on.
BY MR. BLEHM:
Q. Would you, by chance, happen to know how many exact ballots were Door 3 ballots? Was it 17,000?
A. I wouldn't speak exactly to it. That would be under the purview --
Q. Do you know how many thousands of duplicated ballots there were?
13:26:49
A. I don't have that number to speak definitively.
Q. Do you know how many spoiled ballots there were?
A. I do not.
Q. Okay. Do you know how many ballots were rejected and not put in Door 3, spoiled, duplicated or otherwise?
A. I have an estimate, but that's not under my

purview as Early Voting.

Q. What's your estimate?

A. For the --

Q. Okay. My question again, very quickly, Mr. Valenzuela, how many ballots rejected and not put in Door 3, spoiled or duplicated?

A. That I don't know. I just know of the 17,000 number, which is a total of unread, but not broken down.

MR. BLEHM: Thank you, Your Honor. No

13:27:28 further questions.

THE COURT: Thank you. Redirect?

MS. HARTMAN-TELLEZ: Briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. HARTMAN-TELLEZ:

Q. Mr. Valenzuela, are Election Day operations and tabulation under your responsibility?

A. They are not.

Q. And whose responsibility is over those two items?

A. My Co-Director of Elections, Mr. Scott Jarrett.

13:28:01 MS. HARTMAN-TELLEZ: Thank you. I have no further questions.

THE COURT: Okay. May the witness be excused?

MR. BLEHM: Yes, Your Honor.

MS. HARTMAN-TELLEZ: Yes, Your Honor.

THE COURT: Thank you, Mr. Valenzuela. You're excused, sir.

(Witness excused.)

THE COURT: County's next witness, please.

MS. HARTMAN-TELLEZ: Your Honor, we call Scott Jarrett.

THE COURT: Go ahead and take the stand.

(Witness previously sworn.)

THE COURT: Mr. Jarrett, you remain under
13:28:49 oath from your previous appearance. Do you understand that, sir?

THE WITNESS: Yes, I do, Your Honor.

THE COURT: Thank you. You may proceed, Counsel.

DIRECT EXAMINATION

BY MS. CRAIGER:

Q. Good afternoon, Mr. Jarrett. Could you please state your name?

A. Yeah, Robert Scott Jarrett.

13:29:01 Q. And where do you currently work, Mr. Jarrett?

A. I work for the Maricopa County Elections Department.

Q. What is your current position?

A. So I am the Co-Director of the Elections Department. I oversee in-person voting and tabulation

operations.

Q. How long have you held this position?

A. I was appointed by the Board of Supervisors in 2019.

Q. And could you just briefly describe your job duties in that position?

A. Yes. So I oversee all in-person voting operations, so that includes early in-person voting that I report up to the Maricopa County Recorder for, that
13:29:37 does include drop boxes.

I also then oversee in-person voting on Election Day, as well as -- so that will be all the recruiting and training of poll workers, recruiting of temporary staff that work at MCTEC or the Maricopa County Elections and Tabulations Center; and then I would also oversee warehouse operations then all tabulation functions, including at the central count facility as well as at the voting locations.

Q. And what's your educational background?

13:30:08 A. So I have a Bachelor's Degree in Accounting from the Arizona State University.

Q. What did you do before you were the Co-Elections Director?

A. So I was an internal auditor with Maricopa County and then also had some time with the Maricopa County

Community College District auditing performance, auditing risk management, risk mitigation, as well as compliance audits.

Q. So we're just going to generally discuss how elections are conducted in Maricopa County on Election Day.

To start, what was the total voter turnout in Maricopa County for the 2022 General Election?

A. So voter turnout was 64 percent or 1,562,000 voters, or approximately there.

13:30:57

Q. And how did that compare to previous midterm elections?

A. So it was one of the higher percentages. If you go back for several decades, all the way back to the '70s, it was actually the second highest as far as voter turnout; 2018 only exceeded it by a small percentage. And then even more recently, the three -- the average of the three midterm elections was about 54 percent, so that would be 2018, 2014, and then 2010. So turnout in 2022 was about 10 percentage points higher.

13:31:35

Q. So we've talked about vote centers. Just briefly explain how the vote center model works?

A. Yes. So a vote center model works is it allows a voter to vote at any location that Maricopa County is offering. We offer 223 vote centers in the 2022 August

-- or, sorry -- November General Election. That was an increase over the August Primary, which we had 200 -- 210, so -- and it was also an increase over 2020, which we had 175 vote centers.

So we're able to offer that option through our site book check-in station. So that will confirm if a voter is registered, confirm that they have not voted previously, and then it will allow us, in conjunction with our ballot on-demand technology, our printers, to 13:32:30 print that specific ballot for that voter. Maricopa County had over 12,000 different ballot styles, so we cannot offer a vote center model without that ballot on-demand technology.

Q. So, thank you. How does the Elections Department -- well, actually, what's the average distance between vote centers? What was the average distance in the 2022 general?

A. So we perform that calculation actually based off the August Primary where we had 210 vote centers, and 13:33:08 that average distance was just under two miles per vote center, 1.98. We did add then those 13 additional vote centers for the General Election, so that actually distance would be smaller, but I don't have that specific calculation.

Q. Okay. So on Election Day when people are voting,

and at times waiting in line to vote at certain vote centers, how does the Elections Department communicate with the public about the wait times that are at the various vote centers?

A. So when we're tracking this information through our site books, our poll workers are going, gathering the number of voters in line, and they will go count all the way until the end of those lines. They report that back to us through that site book. Then we post that
13:33:52 information onto our website that is updated about every 15 minutes from every one of our voting locations, so voters will know when they are attempting or driving to a voting location, what is that wait time at that location. We advertise that through -- we have many different press conferences leading up to the election informing voters to use that website. All in-person voters are also provided a sample ballot, and on that sample ballot, it directs voters. It provides their closest location, but also they could go to locations at
13:34:25 maricopa.vote website to identify what are all their voting options, and in-person voting locations.

Q. So based on Maricopa County's calculations, which -- well, let's start with you heard Dr. Mayer's testimony earlier today regarding his analysis of wait times; is that right?

A. That's correct.

Q. And did you agree with his description of the way that Maricopa County makes that calculation?

A. So we make our calculation based off of how many voters are in line and how quickly they are able to check in to those voting locations, so that is how long it's taking them, from the end of the line, to be able to check in to then receive their ballot; and that's based off historical knowledge, as well as the

13:35:19 throughput, how many voters are getting through and checking in at a site book.

Q. And I think you heard -- or I recall Dr. Mayer testifying about people's perceptions sometimes being incorrect about the length of time. What are some of the things that you've observed or experienced impacting that perception or misperception, perhaps?

A. Yeah, I think when someone is making an estimate about how long they've waited in line, they may be making that off of when they arrived. They parked at

13:35:52 the voting location, right, whether they've then stood in line, right, to be checked in at the voting location, how long it took them to get their ballot, but also then how long it would take them to actually vote their ballot. And that can vary greatly, right? So some voters we had in Maricopa County, one of the longest

ballots ever, on average over 85 contests. So some voters come in very, very prepared, right? They may even bring a sample ballot with them, and that can help them expedite and fill out that ballot much more quickly. Some voters may come in and they'll see the contest and they only want to vote a few, so that might only take them a minute, or fewer, to even complete that ballot. But then some voters, and this is in -- we allow this, we encourage voters to be able to do this, we want them to be informed. So they will go get a publicity pamphlet and they may investigate and read all the different information about each individual contest and then make their decisions in that voting booth. For example, one day in early voting, we had a voter show up, our voting location closed at 5:00, they showed up at about shortly before 4:00 p.m., and that voter didn't end up leaving the voting booth until close to 7:00 p.m.

13:36:37

13:37:11

So they did not wait in any line to check in, they did not wait in any line to get their ballot printed out on ballot on-demand printer, but they spent several hours in the voting booth completing their ballot then put that into an affidavit envelope to be returned to the Elections Department. So when voters calculate the time that they spent voting, it's all based on some of their choices, their own choices that

they make, and how long they are going to complete their ballot, or whether they are going to put their ballot into a tabulator or drop it into Door Number 3, a secure ballot box.

Q. So based on the County's analysis, what were the longest wait times on Election Day?

A. So we had at about 16 locations wait times approaching about two hours or between 90 minutes and two hours, and that was not for the entire day, that was 13:38:00 intermittent; some of those were towards the end of the day. But in every one of those instances, we have locations that were close by where a voter could be able to choose a different option to be able to drive to, and some of those cases it was less than one minute wait times.

Q. And just to reiterate earlier, that's all communicated and publicly available to the public on the County's websites?

A. That's correct. They could sort on our website 13:38:28 not only by entering in their address, they can sort by wait times as well. And we had more than 85 percent of our voting locations on Election Day never had a wait time in excess of 45 minutes, and it was, I believe, it was over 160 locations, never had a wait time over 30 minutes.

Q. So this -- this information that you just provided, was this part of the analysis that was provided in the report to the Attorney General that was discussed yesterday?

A. Yes, that's correct. So I drafted that report. It was based off of all the information that we had, the data that we had in the Maricopa County Elections Department, so every aspect of that. And regarding wait times, it's based off that very systematic approach in how we train voters, or how we train our poll workers to enter that data, based on the number of voters in line.

13:39:18

Q. So is it your belief that the information in that report was accurate and correct?

A. That's correct, I believe that it was accurate. And what I communicated to the Attorney General through that report, was done with integrity and was accurate.

Q. Okay. So let's move on to actually Election Day. And you talked about the ballot on-demand printers and you discussed that more than 12,000 ballot styles Maricopa County has, and that's why those ballot on-demand printers are required, right?

13:39:54

A. That's correct.

Q. Okay. On Election Day in 2022, were there issues with some of the County's ballot on-demand printers?

A. Yes, there were some issues with some of our

printers.

Q. And can you describe what those issues were?

A. So we are in the middle of our root cause analysis still on this, but we have identified a few items that contributed to the printer issues. The first was our -- what we would have our smaller printers, or OKI printer, and that was we had -- it was not printing ballot timing marks on the back of the timing mark dark enough, or some of them were speckled, and that was due
13:40:41 to what we identified was the printer settings or the heat settings on the fuser, and we needed to adjust those printer settings to all be consistent at the highest heat setting.

Now, we had used these heat settings for prior elections in 2020 as well as the August 2022 Primary, the exact same heat settings. We had gone through stress testing and identified that this was not an issue or was not identified through that testing; but on Election Day, we identified that due to the variants and
13:41:13 the number of ballots being printed through, as well as the affidavit envelope, as well as the control slip, we needed to change those heat settings to be consistent for all three types of items being printed from those printers to be at the highest heat setting or the heavy heat setting.

A few of the other items that we've identified, though, as far as our ballot on-demand printers, we did identify three different locations that had a fit-to-paper setting that was adjusted on Election Day. So those were at our Journey Church in a north Glendale/Peoria area, that had about 200 or a little over 200 ballots had that setting on it out of about 1,500 ballots voted at that voting location. That would be the same with our Gateway Fellowship church, which is
13:42:02 an east Mesa voting location. That had about 900 ballots out of just shy of 2,000 ballots voted at the voting location. And then we had LDS church, Lakeshore, in the heart of Tempe, that had about 60 ballots out of 1,500.

So just shy of 1,300 ballots, and that was due to our temporary technicians, when they were trying to identify solutions on Election Day, adjusting a setting -- now this was not direction that we provided from the Maricopa County Elections Department -- but
13:42:35 adjusting that setting to a fit-to-paper setting, and that was -- that was one of the vote centers that was reviewed in the inspection by -- by the Plaintiffs in this trial on Monday.

Q. So that --

A. Or was that Tuesday? I forget the day. I've

been working every day through the weekend.

Q. So -- so if I'm understanding you, on Election Day, when there was troubleshooting trying to identify this ballot on-demand printer issue, one of the T Techs, or some of the T Techs, adjusted that setting and that impacted some of the ballots that were cast at that -- at those three locations; is that right?

A. That's correct, and that was a -- not a 19-inch ballot, right? When that happens, it's a 20-inch
13:43:23 ballot, a definition of a 20-inch ballot that's loaded on the laptop from -- that is connected to the ballot on-demand printer that gets printed onto then a 20-inch piece of paper; but because of the fit-to-paper setting, that actually shrinks the size of that ballot. And then that ballot would not be tabulated onsite at the voting location and also cannot be -- tabulated onsite at central count.

Q. So if it couldn't be tabulated at the voting location and at central count through the regular
13:43:55 tabulators, what happened to those ballots?

A. So those ballots came back to the central count facility, and then we had hired duplication boards, a bipartisan team, Republicans and Democrats, to duplicate that ballot. So they first affix a marrying number to that ballot, so that would then be able to identify that

ballot back to then the ballot that gets duplicated onsite at the Elections Department so it can marry those two up, and all the votes get -- get transferred to the duplicated ballot that gets counted and tabulated.

Q. So ultimately all of those ballots were tabulated?

A. That's correct.

Q. So just to sort of close the loop on this, there were heat settings that had been identified so far in your investigation; there were the T Techs who had changed the fit-to-page setting, and that impacted some of the ballots that were printed on Election Day. Were there any other issues that you discovered at this point that impacted the ability for some tabulators at vote centers to be able to read ballots that were cast on Election Day?

A. So there's a few other instances that we've identified. One is the use of a very thin writing utensil, such as a ballpoint pen, and then voters using checkmarks or X's, and that is because our precinct-based tabulators, or vote center tabulators that are onsite, they cannot read an ambiguous mark, right?

So if a voter has ambiguous mark on their ballot, the tabulator alerts the voter there is an ambiguous

mark, right? And then that voter is given the option to either spoil that ballot and vote a new ballot, or to put that ballot into the secure Door Number 3, the drop box, so then that can then be returned to the Elections Department and duplicated. So we did identify about 10 percent of those Door Number 3 ballots were the cause of having an ambiguous mark on the ballot.

We also did identify in our Door Number 3 as well some early ballots that were inserted into that, so that 13:46:02 was an indication that a voter took the early ballot out of the affidavit envelope, attempted to insert those into the vote center tabulator, which is not unusual. That happens every election. We also identified a few provisional ballots as well. So that's when a voter would be issued a provisional ballot onsite, they take it out of the envelope and then attempt to insert that into the tabulator as well.

So our poll workers are trained not to look at the voter's ballot to see how they voted, but they work 13:46:31 with the voter to identify, okay, this ballot is not reading, and then if they were issued a provisional, ask them where's your affidavit envelope, you need to insert that into the affidavit envelope. But at that point in time it becomes the voter's choice. Do they want to insert it back into the affidavit envelope, do they want

to drop it into Door Number 3?

Q. And to be clear, can the onsite -- I think you've testified to this, but just to be clear, can the onsite tabulators read early ballots?

A. They cannot read early ballots or provisional ballots, they are specifically programmed not to read those ballots as a control measure to prevent double voting.

Q. So we've talked now about the issue that arose. I want to talk a little bit about, sort of, the timing of when you learned that this was happening and the process that the County took to try and identify a resolution that you said was identified. At about what point in the day did you determine -- did you learn that there were some issues with tabulation?

A. We received our first call from our first vote centers starting about 6:20 to 6:30. And that point in time, we once we started receiving those calls, we alerted the poll workers to follow their training, which was to -- a couple options -- one was to have those voters and give them the option to drop their ballot into that secure Door Number 3, or drop box, a practice that we've used in Maricopa County since the '90s, right, ever since we first introduced onsite tabulators at those voting locations.

Again, voters being able to put their ballots in that secured drop box at -- there's 15 counties in Maricopa County -- eight of them, so if you go to the five largest counts in Arizona, Pima County, slightly Democratic leaning; you look at Pinal County, the third largest, slightly Republican leaning; you look at Yavapai County, again slightly Republican leaning; and Mohave County, all of those don't offer onsite tabulation. They only offer a secure ballot drop box.

13:48:43 So we alerted our voters to be able -- or our poll workers, remind voters that they had that option to drop off their ballot in that secure ballot drop box. We also reminded them that they can have those voters spoil that ballot, check in again, get a new ballot. And then we had also implemented a cleaning procedure for this election for our troubleshooters, and so we had some of our troubleshooters start cleaning those precinct-based tabulators, so that was right away at about 6:20 to 6:30 point.

13:49:12 We also deployed T Techs, or technicians, out into the field. We had over 90 of them deployed on Election Day, and they started investigating and troubleshooting the issue. So that took us about a couple hours to rule out that it was not a tabulator issue. So at that point in time, those first couple

hours, we were -- was it a tabulator issue? Was it a printer issue? We started getting reports back by about 8:30 that it was the timing marks on the ballots themselves, that they were not printed dark enough. So at that point in time, we needed to determine why that was, because all of our stress testing at that point in time had never identified this as being an issue.

So once we went through and were investigating that, we were working with our print vendor. They had
13:49:59 members out in the field deployed as well. We also had members from our tabulation company out in the field investigating as well.

So by about 10:15, we identified the solution, or a potential solution, and that was to change those heat settings. At that point in time, we need to replicate it. So then it took us about another hour at several different sites to replicate that that would be the solution on Election Day. Once we had identified that solution between then, I think it was around 11:30 all
13:50:32 the way through 7:00 p.m., which that's the time that's referenced in the Attorney General's report, the 7:00 p.m. timeline, we were making -- and going out and changing those heat settings on those tabulators.

Q. So just to take a step back. Some of the vote centers at Maricopa County are also early voting

locations; is that right?

A. That's correct. We use a phased-in opening approach for our vote centers.

Q. So why is it that this issue with the ballot on-demand printers wouldn't have been discovered through the early voting process?

A. Well, because we didn't have any onsite tabulators at any of our early voting locations. So all of the timing -- the timing marks that were printed, so
13:51:15 the lighter timing marks, all of those were able to actually be read through our central count tabulation equipment. So during early voting, a voter puts in their ballot into an affidavit envelope and brings it back to central count. Those get then run through our central count tabulation equipment. So those were running fine, we had no issues.

So only ones, actually, that weren't running through our central count or our tabulator were the ones that were the fit-to-page setting for those printers,
13:51:45 and none of those were occurring during early voting as well.

Q. So, Mr. Jarrett, do you have any reason to believe that the issues that occurred on Election Day was some ballot on-demand prints was caused by intentional misconduct?

A. I have no knowledge or no reason to believe that.
Q. Okay. We're going to switch gears a little and talk about chain-of-custody documents.
So you heard Mr. Valenzuela talking about the Early Ballot Transport Statements. You're familiar with those documents, correct?
A. That's correct, because I oversee the in-person voting operations.
Q. And what are -- just to reiterate, what are those
13:52:26 documents used for?
A. So those are used by our bipartisan courier teams to go out to vote centers and drop boxes used during early voting, the early voting period all the way up until the day before Election Day, to retrieve early ballots that are in that affidavit envelope, and to document how they are transferred from those vote centers back to the central count tabulation center. So documents all the tamper-evident seals, who those individuals were, as well as once they get back to the
13:52:58 central count facility the count of the number of early ballots that were transported.
Q. So then that gets us to the day before Election Day, right? Let's talk about Election Day and the chain-of-custody documents that are used on Election Day. Can we put Plaintiff's Exhibit 85, please?

So I believe, Your Honor, that this has already been admitted into evidence.

THE COURT: I believe you're correct, right?

82 --

MS. CRAIGER: Okay. So, thank you, Your Honor. I'll take some -- a minute to establish the foundation for this document.

BY MS. CRAIGER:

Q. Mr. Jarrett, do you recognize this document?

13:53:43 A. Yes, this is an example of one of our precinct ballot reports that are completed -- well, first, the seal numbers that are here are actually during our logic and accuracy tests. When we're scanning those in, those seal numbers are for the tabulators that are onsite at every voting location. So some of this information is populated by the Elections Department. Pre to it occurring on Election Day, we deliver all of these precinct ballot reports to our inspectors, so those are the supervisors at every voting location, and then the

13:54:15 inspectors, along with their fellow poll workers, will complete these documents onsite at the voting location. Some of those tasks are done during the opening procedures; some of those tasks are done during the closing procedures.

Q. So let's walk through section by section what's

on here. So you talked the purpose of this is for the inspector and some of the poll workers on Election Day to -- to document what's -- what's occurred at that location. So what is the first section that's identified as opening polls? What information is provided in that section?

A. Well, so I will say there is a name of the facility that was just higher up on the voting location. So each one of our facilities has this report, so it identifies the location of the facility. The next section talks about the tabulators and our accessible voting device. So this is to document that each door or port on that tabulator has a seal number affixed, right? Those seals were affixed by the Elections Department employees prior to or during the logic and accuracy test, and those are what the poll workers use to verify that those tabulators have not been tampered with between the time that the Elections Department affixed those seals and when the poll workers are opening up the voting location and opening the polls on Election Day.

You also have information related to the accessible voting device. You have a lifetime counter that is -- that is being added to the -- the right there beginning lifetime counter under the accessible voting device. And then if there were any beginning total

ballots printed, the accessible voting device is not widely used at all of our different voting locations. So it's not unusual for them not to have a ballot count on that next line, the Beginning Total Ballots Printed.

Q. Okay. And I think you said that the inspectors and the poll workers are completing these documents. What, just briefly, kind of training do the inspectors get prior to having that role at the vote centers on Election Day?

13:56:37 A. So we go into in-depth in-person training on this form for all of our poll workers on how to complete this, not only our inspectors; but it's covered through a PowerPoint presentation that goes through what is their responsibilities. We also provide a training manual that details exactly how this form should be completed, and then there's different checklists in our training manual for assignments on what the different poll workers and the roles of the poll workers play in completely this form.

13:57:07 Q. So there's two tabulators at every location, correct?

A. That's correct. We had two tabulators at every location, except for one, which is our DACA village location, which is actually to get there, we have to go through Pinal County and it serves the Tohono O'odham

Nation.

Q. So --

A. Every other vote center had two tabulators.

Q. Thank you. So if we could scroll down a little further on the document.

So let's talk about the closing poll section in the middle. What information is provided in that section and when is that -- well, let's start with what information is provided?

13:57:48 A. So at the end of the night after the polls have closed, all voters have finished voting and left the voting location, the poll workers start their closing operations, and then they start getting and compiling some information. Some of that information comes from the tabulators themselves, so that's what we see, the ballot count on tabulator screen. So there's the two different tabulators, so then they'll log how many ballots were counted on each tabulator. They'll then check off as they are performing some specific tasks, 13:58:18 whether they removed the memory cards, so those memory cards are what are going to be read in on election night to report results. So they are going to be removing those, they are going to be taking off the tamper-evidence seal. Actually they are going to be affixing that tamper-evidence seal to the back of this

form, and then they are going to then take those memory cards, put them into what we call a bubble pack that's going to be in a container, so that those memory cards can be securely and safely transported back from the voting locations.

After both memory cards from the two different tabulators onsite are in those -- those bubble packs, those are then affixed with a tamper-evidence seal as well, which is logged here in this information.

13:58:59 Q. And that I believe is the second or the next page of this exhibit under seals. Is that what you're describing?

A. That's correct. So they tape the actual seal itself, and then they'll affix it to the back of the form.

Q. So let's then move down to the bottom section. It says, security seals. What information is being provided in that section?

A. So here is where we're documenting the chain of 13:59:30 custody of items being returned back from the voting location. So if they have a black bag, so those black canvas bags, those are what the poll workers use to return the voted ballots, so those live loose ballots that are not in an affidavit envelope so they'll put those in a black canvas bag, then they'll affix a

tamper-evidence seal to those bags, and then they'll log that information here.

Now, every voting location has two black bags that we issue to it. Sometimes the voters will only use one of the precinct-based tabulators, so they only take out the ballots from one of those locations, put it into that black canvas bag, so there will only be one seal that's logged, they are logging here.

The other information here is a red box, our red box seal, so those are the forms that are being returned to us from the voting location. So it's a secure container that is able -- has a closing lid, and then they'll be able to affix tamper-evident seals to those, and then log that information here on this form. And then those blue box seals, those are the transport containers that we're delivering the early ballots that are in those affidavit envelopes back to the elections department. So it's very clear, they are not loose ballots at this point in time. They are in a sealed green affidavit envelope with a unique Piece ID on that affidavit envelope. Those go into these blue bins and they got logged -- the seals on those get logged onto this form, and this is what documents the secure transport from the voting location from the poll workers to the Elections Department.

14:00:16
14:00:46

Q. So before we talk about how all of this information and all of these items make their way back to MCTEC, Scott, in your position, are you familiar with the Elections Procedures Manual?

A. Yes, I am.

Q. And in talking about this section on the blue box seals and the process that you just described for putting those green affidavit envelopes that were collected on Election Day into those boxes and sealing them, is that consistent with the requirements of the Elections Procedures Manual?

14:01:36

A. Yes, it is. Chapter 9, subsection 8, subpart B -- I believe it's on page 192 -- it describes that at the end during -- that's closing procedures for our elections -- elections boards at our voting locations. So they will -- it provides for them to be able to put those -- those early ballot affidavit envelopes with the ballots sealed inside into a secured container. It does not require that we count those at the voting location. It just requires that we put those into a secure container -- container, affix that with tamper-evident seals, and return it back to the Elections Department.

14:02:10

MS. CRAIGER: Your Honor, before we move to that, I would like to move Plaintiff's Exhibit 85 into evidence?

THE COURT: Any objection?
MR. BLEHM: No objection, Your Honor.
MR. OLSEN: No objection, Your Honor.
THE COURT: All right. 85 is admitted.
BY MS. CRAIGER:
Q. If we can go to -- it's page 192 that Mr. Jarrett just referenced.
Mr. Jarrett, is this the section that you were referring to?
14:03:06 A. That's correct -- correct, on that subpart B, Election Board Close-Out Duties, and if you go -- so you can see that on the left page 192, on the right page 193, it's actually that bullet G, the number of early ballots received by the voting location. So it asks that -- we document that on the -- what we call our Precinct Ballot Report, unless the ballots are transported in a secure sealed transport container to the central counting place.
Q. And that's the practice of Maricopa County?
14:03:33 A. That's correct.
Q. So once the form is completed, what happens next with the items that are documented on there and the forms?
A. So those secure containers will then be transported one of two ways. One will be by the poll

workers directly to MCTEC, our central counting facility, if it's one of the locations that's close by, the central counting facility. So most of those are within central Phoenix.

If it is a more remote location, then we set up a receiving site that has sheriff deputies onsite, we have bipartisan teams, we have truck drivers at those voting locations, so -- and then those would be receiving sites where the poll workers then will deliver all the items, including the ballots, those loose ballots, that are in a black canvas bag that are sealed, the memory cards, the red transport containers and the blue transport containers.

Once they arrive onsite, we have bipartisan teams filling out chain-of-custody documents receiving all those items, so documenting them coming into that receiving site. We're also then for the first time now scanning those items, so all those tamper-evident seals have a little barcode can be scanned, so we're scanning all those items that are coming in from the voting location to the receiving site.

They get loaded up, so all of the different receiving sites that are close by, so if we have one, like, at Surprise City Hall, all the voting locations that are close by to Surprise City Hall drive there,

deliver their items. Those will then be escorted from two different patrol deputies from the Maricopa County Sheriff's Office, those trucks, all the way back to MCTEC.

Once they arrive back at MCTEC, we're then scanning in all of those seals again, documenting that transfer of chain of custody from the truck drivers to MCTEC.

Then once all those seals are scanned, then for
14:05:29 those early ballots that are in those blue transport containers, we send them through our bipartisan teams, which we call our blue line. So that's where those -- those seals will finally be broken, once they get to the Elections Department, and then we will begin sorting them. So what will be in there are green affidavit envelopes, so those would be any of the early ballot drop-offs. There could be some of those white envelopes, those counter ballots that were still there from the night before so on that Monday, during
14:06:01 emergency voting, if voters had participated, or there could be provisional ballots in all of those.

So that blue line team is now sorting those into different mail trails -- trays by ballot type. So, and then, those will then be going into secure cages, and in those secure cages, we're able to estimate and provide

an estimate of the number of ballots that are in each of those trays as well as those -- those secure cages. We then have a bipartisan team then in a truck deliver those to Runbeck on election night.

We also employ a two-member team at Runbeck. So when we are delivering that first ballot, those first ballots, those early ballots, again, in a green affidavit envelope, there's a team onsite at Runbeck. One of them is a permanent employee. That permanent
14:06:56 employee has a County-issued cell phone so they can take pictures of forms that are being scanned through and counts and numbers documenting the exact numbers that are being scanned in by Runbeck.

We also had a temporary staff member that was appointed by the County chairman for the -- for the Republican party that was also onsite during this whole process. Those members are signing those Inbound Scan Receipt Forms, so as they are going through and being counted by those high-capacity scanners counting those
14:07:29 green affidavit envelopes on election night, all the way through until the next day, which was not completed until actually 5:00 p.m., or just shortly after 5:00 p.m., they were scanning each one of those, and they would be able to scan them by ballot types. So here's the number of green affidavits that were in spec,

right? So some of them are underweight, so we're even documenting how many of those ballots were underweight. How many of those ballots were overweight, how many of those ballots actually didn't have a valid ID number. Those are a voter returning to us in a green affidavit envelope. There may be primary ballot or their 2020 ballot, and so we're documenting all of those. So once they are scanned in, we have a one-for-one tracking for every one of those affidavit envelopes, but we also have
14:08:18 a total count, and we had a total count of 291,890 early ballots scanned in and the Elections Department with our vendor -- best-in-class vendor, Runbeck, certified vendor -- was performing those counts under the direct supervision and observation of Maricopa County employees, and we signed every single one of those inbound scanned forms as they were coming in. They documented the start time of the scan; they documented the end time of the scan. That's how we maintained chain of custody for every one of those early ballots
14:08:54 all the way through the process until we transferred it over to Runbeck; and then we had a one-for-one, that Piece ID on every affidavit envelope, so we would know if a ballot was inserted or rejected or lost in any one part of that process, we would know it.

Q. Thank you, Scott.

So I just want to be clear on the number. So this 291,890 are the number of ballot or, I mean, early ballot packets that came in on election night; is that right?

A. That's correct.

Q. So earlier Mr. Valenzuela talked about the need to use the high-speed scanners at Runbeck to be able to process a number that high; is that correct?

A. That's correct, and that's why we had a team, right, following that chain of custody all the way through the process until we got to Runbeck, and then even after Runbeck, we had teams hired by Maricopa County to maintain that custody until it was transferred and we had an actual count of those ballots.

14:09:43

Q. So could we pull up Defendants' Exhibit 33, please?

So this is a little challenging to read, Scott, but do you recognize this document?

A. Yes, I do.

14:10:15

Q. And is this the inbound receipt of delivery forms that you were talking about?

A. That's correct. So that is a Runbeck, it's a three-part form that's completed, and then you can see and not in the best image quality, but you can see right under where you can see the grid or the boxes, there's

some staff member's signatures that are being signed right there, and those are the Maricopa County employees.

MS. CRAIGER: Sorry. Just a little housekeeping, Your Honor, did we admit Exhibit Number 85? Plaintiff's Exhibit 85, I believe?

THE COURT: Today, yes, it was.

BY MS. CRAIGER:

Q. Okay. Sorry, Scott.

14:11:11 So, I'm sorry, so we started -- these are the ones that are used on election night I believe you just said?

A. That's correct.

Q. Okay. So let's talk about the information that's documented on here starting at the top.

A. So it will be identifying the date and the operator at Runbeck that's running their equipment, right, and then we have an election number that's assigned for every election, so that's documented at the

14:11:37 very top of this.

The next items are going to be the batch ID that's assigned by Runbeck and that's being scanned through their inbound scanning equipment, and then the next pieces of information start counting the number of green affidavit envelopes that are being scanned in

through their equipment. So the inbound scan here showing there's 9,940 inbound scanned green affidavit envelopes. Also will then show the number of provisionals, and here I can't read it on -- on this equipment because the image quality. It will also show the number of early ballot affidavit envelopes that are overweight, so that could be that the voter kept the instructions in that green affidavit envelope. It will show then the number of green affidavit envelopes that
14:12:25 are underweight, so maybe that's an empty affidavit envelope, or maybe the ballot is damaged inside, is not a complete ballot. It will also show then the number of ballots that didn't have or had an invalid ID, so those are potentially the green affidavit envelopes that are from the primary election, right? Or then if it's unreadable, so there are some times where there's a damaged green affidavit envelope or that affidavit envelope can't be read, so we're taking that image and those will go through special handling, be turned over
14:12:56 to the Recorder's Office in the early voting team to document that transfer of the custody.

Q. And I think you testified before that at all times of this process from when these are taken out of the blue bins, placed into the trays, into the cages, transported to Runbeck, that is all done under the

observation of Maricopa County permanent employees; is that right?

A. That's correct.

Q. Okay. And so if you look at this document again, and it's hard to see it on here, but where do you see that the County employees have signed off and verified the information on here?

A. So it's that -- those signatures just below that grid, and you can see two different signatures. One of

14:13:38 those is one of our permanent employees, and one of those was then that temporary employees; and by the way, it was a Democrat and a Republican there so that we had that bipartisan representation as well.

And then our permanent employee with their County-issued cell phone after each one of these were scanned in, they would take a -- they take a picture of that, and then they send that via e-mail to me, Mr. Valenzuela, and a few of the other election directors, or assistant election directors within so we had then an

14:14:07 accounting for these via image as well.

Q. And just to be clear, the temporary employee that you were referred to as appointed by --

A. The County Republican Chair for the Maricopa County Republican Party.

Q. Thank you. And then once this process is

completed, then these go -- am I correct that these go through then the signature verification process like Mr. Valenzuela described in his testimony; is that right?

A. That's correct. So these ballots would then be secured and stored in an vault. Right under them we have security guard onsite, a Maricopa County employee security guard onsite for 24 hours a day. And then once they are completed with the signature verification process, then they won't be transferred back to the

14:14:58 County until that's completed, and all of those are documented through those forms that Rey, or Mr. Valenzuela, went through.

MS. CRAIGER: Your Honor, I would like to move Defendants' Exhibit 33 into evidence, please.

THE COURT: Any objection?

MR. OLSEN: No, Your Honor.

THE COURT: 33 is admitted.

BY MR. CRAIGER:

Q. All right. One last point, Scott. During the

14:15:23 course of this process we've heard suggestions of the 275,000-plus estimate that was made after voting was completed on Election Day. Can you explain how that number -- how that estimate gets made on election night?

A. So those were based off -- all those green affidavit envelopes coming back through those blue

transfer bins that we broke the tamper-evident seals on inserting -- taking those out and organizing them into those mail trays. So at that point, it's just an estimate. And so then Mr. Recorder Richer, he made an estimate early in the day following Election Day, on 11/9, the day after. We had not finished our scanning-in process. That wasn't completed until much later in the evening, just shortly after 5:00 p.m. when we had that full accounting for all those 290,000 early
14:16:26 ballots. So that estimate was released earlier in the day to just give an indication of there was going to be 275,000-plus early ballots that still needed to be counted.

MS. CRAIGER: Thank you, Scott. One moment. All right. Thank you, Your Honor.

THE COURT: Okay. Cross?

MR. OLSEN: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. OLSEN:

14:17:03 Q. Mr. Jarrett, do you recall your testimony yesterday?

A. Yes, I do.

Q. And yesterday you testified that a 19-inch ballot image being imprinted on a 20-inch ballot did not happen in the 2022 General Election.

Do you recall that?

A. Yes, I recall that there was not a 19-ballot definition in the 2022 General Election.

Q. But that wasn't my question, sir. I asked you specifically about a 19-inch ballot image being imprinted on a 20-inch piece of paper.

So are you changing your testimony now with respect to that?

A. No, I'm not. I don't know the exact measurements
14:17:43 of a fit to -- fit-to-paper printing. I know that it just creates a slightly smaller image of a 20-inch image on a 20-inch paper ballot.

Q. Slightly smaller image. How come you didn't mention that yesterday?

A. I wasn't asked about that.

Q. Well, I was asking you is 19 inches smaller than 20 inches? It is, isn't it? Sure.

A. Yes.

Q. So when I said, you know, asked you questions
14:18:14 about a 19-inch ballot image being imprinted on a 20-inch piece of paper, and you denied that that happened in the 2022 General Election, did you not think it would be relevant to say, hey, by the way, you know, there was this fit-to-print image issue that we discovered?

MS. CRAIGER: Your Honor, I object. Counsel is misstating Mr. Jarrett's testimony from yesterday.

THE COURT: Okay. Once again, if he's able to understand the question and answer it, he can do so. If you don't understand or need it rephrased, you can do that as well, Mr. Jarrett. If you're able to answer, please do so.

THE WITNESS: What I recall from yesterday's questioning was that there was a 19-inch definition, which that did not occur, ballot definition.

14:18:58

BY MR. OLSEN:

Q. So if your testimony reflects my question or -- strike that -- if the back and forth between our question and answer shows me asking you specifically about a 19-inch ballot image being printed on a 20-inch piece of paper, you are now saying that you interpreted that as a ballot definition issue?

A. Yes, that's correct.

Q. And you wouldn't think it would be relevant, even in that circumstance to say, hey, we learned about this fit-to-print issue? Did you know about the -- when did you learn about this fit-to-print issue?

14:19:36

A. When we started doing the audit reconciliation of those Door 3 ballots, we identified some of those ballots had then a fit-to-paper issue.

Q. And when was that?
A. I don't remember the exact dates, but a few days after Election Day.
Q. And who told you about that?
A. Our ballot tabulation team and our -- our audit review team that was then doing -- doing the inspection of the Door 3 ballots.
Q. So, and I believe your testimony was that you discovered this only in three vote center locations, correct?
14:20:29
A. That's correct.
Q. So did you look at the other locations to see if this so-called fit-to-print issue arose at other locations?
A. We looked at all the Door 3 misread ballots that were in the secured Door 3, and we didn't identify any of those that a fit-to-paper issue.
Q. Fit-to-paper issue.
So if evidence showed up that there was a 19-inch
14:21:00
ballot imprinted on a 20-inch piece of paper out of the Anthem location, that's not one of the locations that you identified, is it?
A. I did not identify that at -- from Anthem.
Q. When did this so-called adjustment to the printer settings happen on Election Day that gave rise to this

fit-to-print issue?

A. I don't have the specific time, but it was during the course of Election Day.

Q. And was this fit-to-print issue, how did those settings get changed? Was it at the direction of somebody from Maricopa or just somebody on their own doing it?

A. It was not at the direction of anyone from Maricopa County.

14:21:51 Q. So was the change in the settings in response to tabulator issues?

A. So we believe at least at one of the sites one of the technicians was attempting to troubleshoot and then made that change.

Q. So if other sites, if the tabulator issues arose immediately before any technician made any changes to the print settings, then your theory of a fit-to-print issue would not be correct, yes?

A. No, I disagree.

14:22:22 Q. So when would the changes to the printer settings have been made?

A. So the reason I know it didn't occur prior is because during our test prints prior to Election Day there was no identified fit to paper setting issue.

Q. And when was that?

A. We do that during -- when we're setting up each voting location, we run test prints on all of the printers.

Q. And how would you know that it didn't arise?

A. It was never reported back through our chain of custody from the technicians to -- up to me, which they would have reported that to me.

Q. Why do you think they would have reported it to you?

14:22:59 A. Because I meet with the team routinely and throughout the day, and I've even asked them subsequently, and they have said that they never identified it during any of the setups.

Q. So did you have a meeting with all these technicians and ask them this question?

A. I had a meeting with our command center teams.

Q. Were all the technicians asked about this fit-to-print issue?

A. I don't know if all the technicians were.

14:23:25 Q. Is there any documentation of any inquiry about this fit-to-print issue?

A. I don't know if there's any documentation.

Q. So you said you performed a root cause analysis to determine the -- how these problems arose on Election Day?

A. We're in the process of performing a root cause analysis.

Q. And as part of that root cause analysis, you determined that there was this fit-to-print issue at three locations, correct?

A. That's correct.

Q. Is there any documentation preceding yesterday's testimony that identifies this issue?

A. As part of -- yes, there is some documentation.

14:24:06 Q. What documentation?

A. So some of our audit reconciliation forms that identified the three locations.

Q. And what do those audit reconciliation forms show?

A. They show the number of check-ins from voting locations. They show the number of Door 3 ballots and then notes based off our audit reconciliation.

Q. Does it say fit-to-print issue was the cause, or words to that effect on those forms?

14:24:33 A. It actually is using the term shrink-to-fit, not fit-to-shrink.

Q. Shrink-to-fit, shrink-to-fit. And was that determined to be the cause, or is that a -- was that an assumption as a possibility?

A. It was determined to be the cause for those three

locations, for the ones wouldn't be read at the voting location and then be read at central count.

Q. And, again, you did not mention this in your testimony yesterday, did you?

A. I did not.

Q. Did you publish anywhere that there was this shrink-to-fit issue after the election?

A. I believe not.

Q. So you didn't tell the public, hey, we've discovered -- I mean, you're performing your root cause analysis and you find out that there was this shrink-to-fit issue that gave rise to problems in the tabulators, and you did not inform the public about this?

A. We're still in the process of our root cause analysis.

Q. With respect to the chain-of-custody issues that you testified to, does Maricopa County know the exact number of ballots that come in -- Election Day ballots, not early vote ballots -- do they know the number of ballots that come in to MCTEC on Election Day, the exact number?

A. Through our memory cards or what are read in from that memory cards we have an accounting for what gets reported.

Q. And how this memory card is generated with the ballots, where do the numbers come from on them?

A. From our vote center tabulators, those onsite tabulators. So every ballot that gets read into a vote -- a vote center tabulators get logged, and then those results are read on to that memory card.

Q. Before they are sent to the tabulator, aren't the ballots sent up to Runbeck for scanning and processing?

A. Are you referring to Election Day ballots?

14:26:38 Q. Yes.

A. The ones that are tabulated onsite, no.

Q. No, not tabulated onsite, that are -- aren't they ballots envelopes delivered to Runbeck for scanning and processing then sent back to MCTEC?

A. I'm sorry. When you say Election Day ballots, you didn't say the early ballots that were dropped off on Election Day, so I misunderstood.

So can you repeat your question?

Q. The Election Day ballots, does Maricopa County

14:27:05 maintain an exact count of them before they are shipped to Runbeck?

A. So you're referring to, again, the early ballots that are dropped off on Election Day, are those the ballots that you're referring to?

Q. No. I'm referring to the ballots that come in on

Election Day that are dropped off?

A. I don't understand your question, because the Election Day ballots, we refer to those as the ballots that are tabulated onsite. So I'm asking you, the ones that go to Runbeck are the early ballots that are in affidavit envelopes that get transferred at Runbeck, so that's what I'm asking you. Are those the ballots that your referring to?

Q. What about the ballots that are dropped off in

14:27:43 drop boxes on Election Day?

A. Yes. So those are the early ballots in the green affidavit envelopes. Those go to Runbeck to be counted by our -- and then we have a team onsite when that accounting happens.

Q. So Maricopa does not maintain an exact count of those ballots prior to them being transferred to Runbeck?

A. That's not true.

Q. You do?

14:28:04 A. Because we have employees onsite that entire time.

Q. Onsite where?

A. At Runbeck.

Q. So why would somebody from MCTEC -- strike that.

Is it your testimony that the printer set changes

that gave rise to this so-called shrink-to-fit issue, was that done on Election Day?

A. That's correct.

MR. OLSEN: Thank you. I have no further questions.

MS. CRAIGER: Thank you, Your Honor. I just have a couple questions.

REDIRECT EXAMINATION

BY MS. CRAIGER:

14:28:56 Q. Scott, to be clear, the question you were asked yesterday was whether or not there was an 19-inch definition in the Election Management System; is that correct?

A. That's correct.

MR. OLSEN: Objection, Your Honor. The record will speak for itself in terms of what question he was asked and whether there was -- it was asked with the question of a definition.

THE COURT: Fair. Overruled. I'll let him

14:29:18 answer and you can both argue. Go ahead.

BY MS. CRAIGER:

Q. Scott, was that your understanding of the question that was being asked of you?

A. Yes, that was my understanding.

Q. And that was true yesterday and that's true

today; is that right?
A. That's correct.
Q. There were no 19-inch definitions in the Election Management System?
A. That's correct.
Q. So this fit-to-print issue that we're talking about, has this ever happened before in any previous elections?
A. Yes, it has.
14:29:45 Q. When did it happen before?
A. So it happened in August 2020 Primary Election, the November 2020 General Election, and the August 2022 Primary Election.
Q. So is it safe to say that this, you know, falls into the category of, you know, an Election Day hiccup and it's related to a human error on that day trying to resolve a problem related to the printers; is that right?
A. That's correct.
14:30:14 Q. Okay. And you testified before the total number of ballots that were impacted by this shrink-to-print -- fit -- I'm sorry -- fit-to-print issue. What was that total number?
A. That was just -- I don't have that exact count, it was just under 1,300.

Q. Okay. And I believe you testified before, but what's the process then for once those are identified so that those ballots can get tabulated?

A. So then those would go to a bipartisan duplication board, and then they together would make determinations to -- on voter intent for each contest on the ballot. Those would then get duplicated, that ballot would be printed and that ballot would then be run through a central count tabulator to be counted and then reported.

14:30:59

Q. And the bipartisan adjudication board process, is that observed?

A. That is by political parties.

Q. Okay. And you testified that there were a few -- thus far in the root cause analysis, there had been a few different issues that have been identified that caused some ballots to be placed into Door 3; is that right?

A. That's correct.

14:31:20

Q. Okay. And have you -- is the root cause analysis completed?

A. No, it's not.

Q. Have you presented it publicly to the Board of Supervisors yet?

A. We have not.

MS. CRAIGER: I have no further questions, Your Honor.

THE COURT: All right. May the witness be excused?

MR. OLSEN: Yes, Your Honor.

MS. CRAIGER: Yes, Your Honor.

THE COURT: Thank you, Mr. Jarrett. You're excused, sir.

(Witness excused.)

14:31:46 THE COURT: Okay. County have another witness? Does defense?

MS. DUL: Bo Dul on behalf of the Secretary of State. With Your Honor's permission, I would like to call Ryan Macias and put him on from counsel table. He'll be appearing remotely so that he can see me while I'm examining him.

MR. BLEHM: From counsel table?

THE COURT: She's going to sit there rather than be at the podium.

14:32:12 MR. BLEHM: Oh, yeah. That's fine.

THE COURT: Not a problem. So you're calling Mr. Macias?

MS. DUL: Yeah, I believe he's in the waiting room, Your Honor.

MR. BLEHM: Your Honor, I just want to point

out before we get going on another witness, it's about time for we 50-year-olds' afternoon break.

THE COURT: Thank you, Mr. Blehm. Whether I'm in good shape or not on time, we'll take the 15 minutes right now. Thank you. So we'll come back here at 10 'til.

(Recess taken, 2:32 p.m.)

(Proceedings resume, 2:48 p.m.)

THE COURT: Go ahead. All right. This is
14:49:20 CV2020-095403. This is Lake v. Hobbs, et al. We are continuing on the record and we have the parties and their representatives present and their respective counsel. I believe the Defendants were calling Mr. Macias as a witness.

Mr. Macias, can you raise your right hand to be sworn in, sir?

RYAN MACIAS,

called as a witness, having been duly sworn, virtually testified as follows:

14:49:54 THE COURT: Thank you. Go ahead, proceed.

MS. DUL: Your Honor, before we get started, I want to let Your Honor know for planning purposes that this will be the defense's last witness.

THE COURT: Thank you.

DIRECT EXAMINATION

BY MS. DUL:

Q. Good afternoon, Mr. Macias. Please state your full name for the record.

A. Ryan Macias.

Q. Thank you for being here, Mr. Macias. Will you please describe your current work and profession?

A. Yes. I am a subject matter expert consultant in election technology, election infrastructure, elections administration, as well as voting systems and other areas of critical infrastructure. I have worked in the healthcare field, the space sector, information and communication technologies, and other areas of critical infrastructure as well.

Q. To whom do you provide your election technology and security consulting services?

A. Yes, my typical clients are government entities what we call federal, state, local territorial and tribal government entities, and I have also done work, like I said, outside with federally funded research and development centers. So these are entities that are funded through the federal government but are organizations outside.

Q. And how many states across the U.S. have you worked with on election matters?

A. Yes. So in my career, I have worked with almost

every state across the nation. This year alone, I was present in 19 -- approximately 19 different dates and worked with thousands of local election jurisdictions across the United States.

MR. BLEHM: Your Honor, may I interject really quickly? It would appear to me that Mr. Macias is reading from something that we're not privy to. He keeps looking to the side as if he's reading something, Your Honor, and if he is, we would like to know what it is.

14:52:00

THE COURT: Mr. Macias, when you testify, you need to testify from your own --

THE WITNESS: Yes.

THE COURT: -- not referring to something. If you need to refer to something, you can tell us you need to and then look. Are you looking at something?

THE WITNESS: Yeah. No, I apologize if I am, there is a little bit of a glare from the right-hand side with a light, but I am not reading anything.

14:52:25

THE COURT: Very well. Thank you, sir. Please proceed, Ms. Dul.

MS. DUL: Thank you, Your Honor.

BY MS. DUL:

Q. Mr. Macias, can you tell us any other examples of entities that you've provided election technology and

security consulting services to?

A. Yes. As I had mentioned, I worked for Idaho National Laboratories, which is a federally funded research and development center. Specifically, I worked on their Cyber Core Integration Center, where I conducted or developed, excuse me, the methodology and process for the critical product evaluation, or CPE, which is an ethical hacking in a laboratory environment of critical infrastructure products and technologies, including election technologies. And so I worked with them from 2019 to 2020, and developed the methodology and implementation of the critical product evaluation.

14:53:16

Q. Are there other examples of election technology or security assignments you've done on behalf of government entities that you haven't already shared?

A. Well, I worked both for the -- as a consultant to an entity that was funded by the Department of State to do cyber security and risk assessments on election infrastructure abroad, as well as I have acted as a subject matter expert consultant to the Cyber Security and Infrastructure Security Agency, and -- and that's the majority of my work outside of either federal or state government.

14:54:04

Q. Do you do any work on behalf of election technology vendors such as Dominion, ES&S, Unisyn or

Runbeck?

A. No, I have never worked directly for and have no financial interest in any election technology provider including those that you have mentioned. However, in some of the roles that I have worked including those federally funded roles, I have provided services, trainings, resources to those entities on behalf of a federally funded client.

Q. Have you ever been on the payroll of or paid --

14:55:03 MR. BLEHM: Your Honor, sorry. It's clear he's reading something, Your Honor. When he's asked a question, he's looking directly into the camera. When he is answering that question, he will look down into -- he will look to the right. All we've got to do is watch his eyes, Your Honor. It's clear, it's there. And so, again, if Mr. Macias is reading from materials, Your Honor, that we don't have, we're not privy to, we would like to know about it.

THE COURT: Mr. Macias, are you reading

14:55:31 material?

THE WITNESS: I am not reading material. I have the Teams up on full screen in front of me.

THE COURT: Okay. That's a minute and a half you've used for the two questions, so... thank you. You can continue.

MS. DUL: Thank you, Your Honor.

BY MS. DUL:

Q. Mr. Macias, I was asking have you ever been on the payroll of or paid by an election technology provider?

A. No.

Q. Have you been engaged as an expert election technology and security consultant by state and local officials of different political parties?

14:56:07 A. Yes, I have. As a matter of fact, I am currently under contract for both state and local governments, from both major political parties, and I have conducted work on behalf of both Republicans, Democrats, and non-partisan elections officials, including immense amount of work for Republican secretaries of state, such as Idaho and Arkansas, and Democrat secretaries of state, such as Pennsylvania and right here in Arizona.

Q. And how long have you been working in this field, Mr. Macias?

14:56:46 A. I've been working in this field for over 17 years, with 13 of those years working directly within federal or state government.

Q. Can you describe any election administration technology, election security-related roles you've had with the federal government?

A. Yeah, with the federal government, from 2016 to 2019, I worked directly for the United States Elections Assistance Commission. This is the entity that was stood up by the Help America Vote Act of 2002. And in that capacity, my last role was Acting Director of the Voting System Testing and Certification Program. This is one of the roles of the United States Elections Assistance Commission is to provide for a testing and certification program. It is the only federal testing and certification program.

14:57:48

Another role is to develop the voluntary voting system guidelines or the standards by which the voting systems are tested.

A third role is to accredit the voting system testing laboratories. These are the laboratories in which the EAC utilizes to conduct the testing for voting systems against those voluntary voting systems standards. And so I oversaw that process as the Acting Director of the Voting System Testing and Certification

14:58:20

Program. And prior to that, and in that role as well, I performed all of the duties that I just described to you.

Q. Great. Can you describe any election administration technology or security related roles that you've had in state government?

A. Yeah. For over ten years, I worked for the California Secretary of State, specifically for the Office of Voting Systems Technology Assessment. In that role at OVSTA, as we called it, California has the most robust security testing for all election technologies. This is not just voting systems, but also for ballot printing companies, ballot printing facilities, ballot on-demand systems, and other types of election technology. Also in that role, I was appointed by then
14:59:19 Secretary of State Alex Padilla to be the California representative to the United States Elections Assistance Commissions Standards Board, which is a federal advisory -- excuse me -- Federal Advisory Committee Act or FACA board, established by Help America Vote Act as well.

Q. Have you done elections-specific work in Arizona?

A. Yes, I've done a lot of work here in Arizona, including providing an advisory role on the Voting System Testing and Certification Program, along with their Election Equipment Advisory Board. I have also,
15:00:06 in 2021, I was named by Secretary Hobbs to be one of her expert observers for the State Senate review of Maricopa County's voting technology, as well as the ballots, which confirmed the results of the 2020 election in Maricopa County as tabulated by the Dominion Democracy Suite 5.5B voting system.

I have also conducted logic and accuracy testing. I was hired to perform logic and accuracy testing for the 2022 Election cycle where I performed and worked with the state in developing the methodology for performing those tasks on the logic and accuracy in 13 of the 15 counties in Arizona for the August Primary Election.

Q. Before testifying today, Mr. Macias, did you provide a current copy of your résumé or your CV to me?

15:01:14 A. Yes, I did.

Q. Can we pull up Exhibit 17? Can you see the exhibit, Mr. Macias?

A. I cannot. Yes, I can now.

Q. Can you take a minute to look at it and then let me know if this is a true and correct copy of your CV that was provided to me?

A. Yes, it's hard to read, but it does look like the copy I provided to you.

Q. You prepared this document, correct?

15:02:06 A. That is correct.

Q. And does it include your experience and expertise relating to election administration, election technology, and election security that you just testified about?

A. That is correct.

Q. And does it also include a listing of the legal cases in which you've testified as an expert on these issues?

A. That is correct.

Q. And courts have relied on you as an expert witness on election procedures, election technology and election security?

A. That is correct.

MS. DUL: Your Honor, I'd like to move Exhibit 17 into evidence.

15:02:41

MR. BLEHM: No objection, Your Honor.

THE COURT: No objection?

MR. BLEHM: No objection, Your Honor.

THE COURT: Okay. 17 is admitted.

MS. DUL: Thank you.

BY MS. DUL:

Q. Mr. Macias, what experience, if any, do you have with the Election Management System that Maricopa County uses?

15:03:01

A. Yes. So, as I previously stated, I actually have a lot of experience not just with the Election Management System, which is one component of the Dominion Democracy Suite 5.5B voting system, but I have experience in the entire system testing the Dominion Democracy Suite 5.5B.

In fact, I have tested and/or overseen the testing of six versions of the Democracy Suite voting system, which are either predecessors to the Dominion Democracy Suite 5.5B voting system, and/or a derivative thereof.

Q. Based on your experience with voting systems, including the EMS, the Election Management System, which I'll refer to as the EMS, can you please describe to the Court the functions of Maricopa County's EMS in producing a ballot?

15:04:08

A. Yes. So the Election Management System, specifically, Election Event Designer, EED, which is an application of the Election Management System, does -- we call it generates ballot definitions and creates ballot styles. A ballot style is a unique list of candidates and contests for a given voter -- voter based on the jurisdictions in which they live. So myself, if I lived in a city with a county, I'm going to have a list of candidates and contests. A friend of mine who may live in the same county but in a different city may have a different mayor and, therefore, they would have a different ballot style. These ballot styles are rendered or generated into what we call a ballot definition file. These ballot definition files are used to program the voting system, but they are also used to

15:04:51

generate what we call a ballot PDF, or a PDF file that contains all of the ballot styles within the election definition. These ballot PDFs are then utilized to print the ballots, both early ballots and Election Day ballots. The ballot definition files are sent to the printers to be printed on commercial print presses, as well as uploaded onto the ballot on-demand printers to print early and in-person -- in-person, early and Election Day ballots as well.

15:05:53 So, again, as it pertains to ballot printing, the EMS solely generates a set of files to be used either on other portions of the voting system or on other election technologies, such as a ballot on-demand technology.

Q. That's a good transition, so I'll shift from the EMS to the ballot on-demand printers. What experience, if any, do you have with Maricopa's ballot on-demand printing technology?

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

15:06:30 stated when I worked for the State of California, California was the first in the nation to certify ballot on-demand printers, one of which was -- that I had tested and overseen the certification of was the Sentio ballot on-demand technology. I have also worked with, tested and or certified or overseen the certification of

all three major providers of ballot on-demand technology.

Q. And, Mr. Macias, just to clarify, when you say that you worked on certifying the ballot on-demand printer in California, that's under California state law requirement, not federal law requirements, or Arizona law requirement, correct?

A. That is correct, yeah. So as I had stated, this was in my role as a California entity. I was certifying on behalf of and for use in the State of California. 15:07:21

Q. Okay. Can you tell us what comprises a ballot on-demand system?

A. Yes. So generally a ballot on-demand system is a standalone system, again, not part of the EMS, not part of the voting system. It is a standalone computer that is running an application, the ballot on-demand application or software, and is attached to a printer, and it's just those three components.

Q. And can you explain how Maricopa County's ballot on-demand system interacts with the EMS? 15:07:58

A. Yes. As mentioned, the Sentio system as used in Maricopa County is a standalone system. It does not directly, in any way, interact with the voting system or the Election Management System. The ballot on-demand laptop and printer are sent out to in-person voting

locations, and on those laptops are those ballot definition files, as I have talked about, or the ballot PDFs. And so the only interaction is the upload of a document onto that computer. It would be very similar to me providing you with a copy of my CV, as we had talked about earlier, and then you putting it onto your computer.

Q. Okay. So if the ballot PDF file contained an image with a 19-inch ballot in it, what would you expect to see when this ballot is printed in a different location?

15:09:02

A. So if the ballot definition file had contained a 19-inch ballot in it, so this is the ballot definition file created at the EMS, then I would anticipate to see that ballot style, or ballot styles, that have a 19-inch ballot in it, to be printed on a 19 -- to be printed at scale of 19 inches, regardless of where they were printed. So for early ballots that were printed by the vendor, you would see a 19-inch ballot. If it was printed on-demand, you would see a 19-inch ballot, or wherever this would be printed, because the file, itself, was a 19-inch ballot. You would see it across the board in every location.

15:09:38

Q. Did you listen to the testimony from Plaintiff's witness, Mr. Clay Parikh yesterday and review -- just

did you listen to the testimony, Mr. Macias?

A. Yes, I did.

Q. Mr. Parikh testified that ballots he inspected contained 19-inch ballot images that were printed on 20-inch ballot paper, and that the only way this would have -- could have happened was through data manipulation or some sort of other action in the Election Management System. Based on your expertise and with voting systems and with ballot and demand systems, does that sound accurate to you?

15:10:27

THE COURT: Hold on, Mr. Macias, before you answer that. You can't see the full courtroom, Mr. Olsen?

MR. OLSEN: Yes, Your Honor. I object because that mischaracterizes Mr. Parikh's testimony. He specifically said there were two --

THE COURT: Wait. I don't need you to repeat that. I'm going to sustain that what you're asking for, Ms. Dul, is you can ask him a hypothetical; but if you're going to state the testimony precisely that you want him to use as a factor in consideration, based on somebody else's testimony, I'd rather have you state it as just a hypothetical. Ask him to assume certain things, and then he can offer his opinion.

15:10:52

MS. DUL: Thank you, Your Honor. I can do

that.

THE COURT: Thank you.

BY MS. DUL:

Q. Mr. Macias, if a 19-inch ballot image were somehow printed on 20-inch ballot paper, would you, based on your expertise and your experience with voting systems and ballot on-demand systems, would you conclude that the only way this can happen is through data manipulation or some other interference with the Election Management System?

15:11:36

A. No. As a matter of fact, as I had stated, you know, based on what I have heard in the testimony, or on my expertise is, if that were the case, we would have seen or Maricopa County would have seen every ballot of that ballot style or styles printed on a 19-inch ballot, because again, the ballot PDF file would have contained that image with a 19-inch ballot on it.

An analogy would be if I created a document with a typographical error on it and I provided that to you,

15:12:23

and then you and five other people printed out that document, that typographical error would be on all five printouts. And so it could -- if it happened on the EMS, then we would have seen this at full scale.

Q. So based on your expertise and assuming that some ballots were printed with a shrunken image or a 19-inch

image on 20-inch ballot paper, what are possible reasons why this could occur, based on your experience and expertise?

A. Yes. So, specifically, for a 19-inch ballot image being printed on a 20-inch piece of paper, there's a few different scenarios in which that could have happened. One of which is, as I was listening to Mr. Jarrett's testimony a little while ago, with the shrink-to-fit, this could have shrunken it down to a
15:13:31 smaller scale. I don't know necessarily whether or not that would be down to a 19-inch scale, but it could have shrunken it down to a smaller scale on 20-inch paper.

In terms of 19-inch scale specifically, it can be through settings in the ballot on-demand application. It could be on the operating system, for instance, Windows, on the ballot on-demand laptop. It could also be that this was completely unintentional, because as Mr. Jarrett had testified yesterday, in the August Primary, they used a 19-inch ballot. If one of the
15:14:16 ballot on-demand printers or a subset of ballot on-demand printers had unintentionally not been upgraded or updated to say that the paper size was a 20-inch ballot and, therefore, it remained at a 19-inch ballot scale, the system would have thought that it needed to print on a 19-inch piece of paper. So that is another

opportunity whereby this could have occurred.

Q. And did you hear Mr. Jarrett's testimony just now today about another possible explanation for this issue?

A. I did.

Q. And does that sound, based on your experience, is that also a reasonable or possible explanation?

A. Yes, that is a reasonable and possible situation that was the shrink-to-fit one that I was referring to.

Q. Thank you. And based on your experience and
15:15:13 expertise and your familiarity with Maricopa County's processes, are you aware of or can you tell us what would happen to a ballot that a tabulator cannot scan because of an either print-to-fit issue or a faintly printed timing mark, what would happen to those ballots?

A. Yes, so those ballots, first and foremost, would be counted. They would ultimately be counted because as elections are resilient, we have processes in place to be able to be ensure that every voter's ballot is counted and cast as intended. And so the Elections
15:15:55 Procedures Manual has a process that allows for a ballot that cannot be scanned, whether this is because of a shrink-to-fit issue, a torn ballot, or another issue where a timing mark cannot be read or the scanner cannot read the ballot. To set up a ballot duplication board, the ballot duplication board would thereby mark another

ballot with the voters' votes as intended, and then scan and tabulate that alternate ballot.

Q. Thank you. If -- based on your experience and expertise, do you believe that the Election Day printer issues that occurred in Maricopa County during the November 8, 2022, General Election could not be accidental or inadvertent?

A. Absolutely not. As a matter of fact, you know, I've seen issues like this occur in elections.

15:17:01 Elections have issues that happen, but they are naturally resilient, and elections officials are risk managers, are naturally risk managers, so they have processes in place to ensure that every valid voter's vote is counted and cast accurately. And so in situations whereby I have seen things like this, it is typically created by a machine malfunction; and this would be, basically, just the equipment breaking down, just as your car breaks down, or any piece of equipment can break down, it is because of human error, a human

15:17:46 made a mistake such as switching a setting when they should not have, and/or just being, you know, tired at the end of the day and miscounting something, or by something that is outside the purview of the election official, like weather issues, humidity issues and other things that can occur. And so although it is rare that

something like this occurs, in all of the instances that I am aware of, they were accidental or unintentional.

Q. Okay. Thank you, Mr. Macias. We're going to move on from the ballot on-demand printer discussion and talk a little bit about chain-of-custody issues.

Do you have any experience with ballot chain-of-custody and security procedures?

A. Yes, I do.

Q. Can you tell us a little bit about your

15:18:39 experience with ballot chain-of-custody procedures?

A. Yeah, in my role as a consultant to the federal government, I have developed and worked on and developed products and performed trainings on secure practices in election infrastructure, and these include practices such as ballot chain of custody, ballot reconciliation, as well as auditing those processes as well. Furthermore, when I was in the Secretary of State of California in the role -- in OVSTA, I was the technical lead and what was called Senate Bill 450, and this was

15:19:27 the implementation of ballot drop boxes in vote centers; and one of the things that we did was implement the security process for transporting ballots from a ballot drop box to a central tabulation location, and all of the security around that. So I have worked with chain-of-custody and ballot reconciliation.

Q. Thank you. Do you recall hearing testimony yesterday, including from Maricopa County Recorder Stephen Richer, about the fact that the number of early ballots dropped off at vote centers on Election Day are not counted at the vote center, but rather they are transported to MCTEC, the central count facility, in a secure sealed and tamper-evidence container?

A. Yes, I do.

Q. And do you have any kind of -- do you have concerns that this practice, based on your experience and expertise, raises chain-of-custody concerns or violates chain-of-custody requirements?

A. No. As a matter of fact, if you were to look at kind of industry standards in the election infrastructure community and across jurisdictions, one of the ways to ensure chain of custody is to put into place both protective and detective measures on the ballot box themselves. And so a protective measure would be to lock the ballot box; a detective measure would be to implement some sort of tamper evidence, whether that be a seal, a tamper-evident lock, a tamper-evident tape, place it in a banker's bag or something that would detect if something had gone awry; and to ensure that the protective and detective measures of that transport case itself and all of the contents

within are transferred from one location to another. Then when it is received at a central location, then you would, again, validate those protective and detective measures, then you would open up the ballot box and do your count at that time, ensuring that everything contained within those transport boxes was protected and you can validate that through the detective measures.

So this is not only a process for early and in-person vote ballots. As a matter of fact, many
15:22:00 jurisdictions who do all central count for Election Day voting where they do not do tabulation in precinct, so they don't have a precinct tabulator that the voter places their ballot in, rather the voter places their ballot in a ballot box, they also utilize these types of chain-of-custody practices as well.

Q. So based on your 17 years of experience and expertise with election administration and election security, do you see any security or chain-of-custody problems with the practice of not counting the number of
15:22:35 early ballots at the vote center?

A. I do not.

Q. And based on your experience and expertise, are you aware of any jurisdictions where solely because a chain-of-custody form on a batch of ballots is not completely filled out or missing, for that reason alone

that all ballots in that batch must be invalidated?

A. No. As a matter of fact, that would be disenfranchising of voters, because these are voters who have the eligibility and they have been authorized to submit a ballot packet. They have received a ballot packet. They have taken the time and the effort to go through the process and do everything that they, the voter, needs to do. They crossed their T's, they dotted their I's, and so to go and throw out their ballots
15:23:28 because of an administrative paperwork error that was most likely unintentional by a poll worker or election worker who has already worked a 16-hour day would, in essence, be telling that voter that something that is outside of their control, even though they have done everything that is necessary to register, to be authenticated and to cast their ballot, is now going to be thrown out because of an administrative paperwork error.

MS. DUL: Thank you, Mr. Macias. No further
15:24:04 questions, Your Honor.

THE COURT: Cross-exam.

MR. BLEHM: Yes, Your Honor.

THE COURT: Either way, you can sit there or you can come up to the podium.

MR. BLEHM: Thank you, Your Honor. First of

all, I apologize for not standing. I think my brain is falling asleep.

THE COURT: Mr. Blehm, you don't apologize for that.

MR. BLEHM: All right. I have -- can I use the ELMO, please?

CROSS-EXAMINATION

BY MR. BLEHM:

Q. Good afternoon, Mr. Macias.

15:24:30 A. How you doing?

Q. I just placed a document on the ELMO, I believe it's titled Mitigating Risk Chain of Custody written January 5, 2022, and I believe it's got your name on it.

Did you prepare this or have someone prepare it at your request, and I will -- I will attest to you, Mr. Macias, this document I believe was downloaded off of your website with absolutely no changes.

Does this appear to be your PowerPoint presentation?

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

Q. I'm turning now to page 3 under Highlights Impacts and Risks From a Broken Chain of Custody, did I read that correctly?

A. Yes, I'm sorry -- thank you for zooming in. Yup.

Q. Okay. Point 1 says, "The integrity of the system's data will be deemed untrustworthy."

Did I read that correctly?

A. Yes.

Q. Point 2. "A court of law can render the system and data inadmissible."

Did I read that correctly?

A. That's correct.

Q. Point 3, "Inability to definitively determine if an actor has manipulated your system or data."

15:25:41

Did I read that correctly?

A. That's correct.

Q. Thank you very much. Now, really quickly, do administrative errors, Mr. Macias, generally impact 298,000 ballots? Yes or no?

A. I'm sorry. I'm having a hard time hearing.

Q. Do administrative errors generally impact 298,000 ballots?

A. I don't know what you mean by impact.

15:26:18

Q. You said general administrative errors shouldn't allow ballots to be thrown out, okay. If chain of custody is not valid for 298,000 ballots, is that a simple administrative error, yes or no?

MS. DUL: Objection, Your Honor. Foundation. Calls for speculation.

THE COURT: He's asking hypothetical.
MR. BLEHM: It's a simple question.
THE COURT: No, nothing is a simple question. You're asking a hypothetical.
MR. BLEHM: Yes, Your Honor.
THE COURT: Mr. Macias, if you understand the question, sir, and you can answer it, please answer it. If you don't understand, we can have it rephrased, sir.
15:26:51 THE WITNESS: Can I get it rephrased, please?
BY MR. BLEHM:
Q. All right. If 298,000 ballots did not have valid chain of custody, would that be a simple administrative error?
A. Missing a piece of information on a piece of paper would not invalidate the chain of custody if the protective and detective measures were still in place.
Q. Can you say yes or no to that question? Yes or
15:27:25 no. Do administrative errors routinely impact 298,000 ballots delivered at different times throughout the day to different locations?
MS. DUL: Objection, Your Honor. Objection. Foundation.
MR. BLEHM: I'll just -- I'll withdraw that.

I want to save some of our time. I've just got one question to ask.

THE COURT: Go ahead.

BY MR. BLEHM:

Q. Mr. Macias, did I hear you testify when you were talking about your background and experience that you were hired by Katie Hobbs and the Secretary of State's Office to do Arizona's logic and accuracy testing for the 2022 Election?

15:28:03 A. If I used the word "hired," then I misstated and I would like to correct the record. I was retained to be an expert observer, and I did that at no cost and was not hired to do so. I did it on a pro bono basis.

MR. BLEHM: Thank you.

THE COURT: That's it?

MR. BLEHM: I'm done.

THE COURT: Thank you. Redirect?

MS. DUL: Just one question.

REDIRECT EXAMINATION

15:28:28 BY MS. DUL:

Q. Mr. Macias, going back to the PowerPoint presentation that Mr. Blehm showed to you, can we pull that -- or I'll put it on the ELMO.

Can you see that, Mr. Macias?

A. I can.

Q. Mr. Blehm read to you that bottom bullet that says, "highlights, impacts and risks from a broken chain of custody, the integrity of the system and its data will be deemed untrustworthy," and then the below two bullets. Is that about ballots?

A. So this is general chain of custody of critical infrastructure systems, and again, this is about the integrity of the system and its data. And so typically when we're talking about the system, it can be a manual
15:29:27 process, but it can also be a technology; but it is not specific to ballots in this situation. Again, the docket -- it is coming from a document that is general for critical infrastructure systems.

Q. And would you consider a missing date or -- on a chain-of-custody form, a missing signature from one of the three board members that transported the -- the container, the secure container, or even a missing form in one step of the process a total break in the chain of custody?

15:30:03 A. No. As I had mentioned, that would be an administrative error, and the chain of custody can still be maintained through the protective and detective measures that are implemented.

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

THE COURT: May the witness be excused?
MS. DUL: Yes.
MR. BLEHM: Yes, Your Honor.
THE COURT: Mr. Macias, thank you, sir. You're excused.
THE WITNESS: Thank you.
(Witness excused.)
THE COURT: I believe you told me that was your last witness.
15:30:33 MS. DUL: Yes, Your Honor.
THE COURT: Is that true with all Defendants?
MS. KHANNA: Yes, Your Honor.
THE COURT: Defendants rest? Are there any exhibits that you're missing that you need before I have you rest?
MS. KHANNA: No, Your Honor, thank you.
THE COURT: Okay. So Defendants have rested.
15:30:50 MS. KHANNA: Yes, Your Honor.
THE COURT: Anything further?
MR. BLEHM: We just have one point of clarification, Your Honor, because based upon our counts, they are out of time approximately three minutes ago, Your Honor.

THE COURT: I'd have to add up the last bit here. So you're just pointing it out for my edification? I'm -- do you want me to add it up?

MS. KHANNA: Your Honor, we're happy to provide our estimates as well, if that would be helpful to the Court.

THE COURT: I don't want to waste a bunch of time, three minutes, and I think I've tried to give you all as much --

15:31:41 MR. BLEHM: I understand, Your Honor, and I don't want to waste this Court's time.

THE COURT: I appreciate that, so are we -- so that concludes all the presentation of evidence and testimony. And we're ready to go to closing; is that right?

MR. BLEHM: That would be correct, Your Honor.

THE COURT: Okay. I'm sorry. Do you have something?

15:31:59 MS. KHANNA: I wasn't sure what Your Honor was thinking. I would just ask for five minutes for a break to prepare for closing.

THE COURT: We can -- well, five minutes is not preparing for closing. What you're really referring to is a biological break, right? And I am not opposed

to that for either side.

MR. BLEHM: We were going to stipulate to that is correct, Your Honor.

THE COURT: Thank you, Mr. Blehm. Okay. Why don't we come back then at 20 until, okay, and we'll resume with closing. It will be 15, 20 and five, correct?

MR. OLSEN: Yes, Your Honor.

THE COURT: All right. Thank you.

15:32:37 (Recess taken, 3:32 p.m.)

(Proceedings resume, 3:40 p.m.)

THE COURT: All right. This is CV2022-095403, Lake v. Hobbs, et al. Present for the record are the parties and their representatives and their respective counsel.

Ready to proceed with closing arguments, Plaintiff?

MR. OLSEN: Yes, Your Honor.

THE COURT: Defense?

15:40:58 MS. KHANNA: Yes, Your Honor.

MR. LIDDY: Yes, Your Honor.

THE COURT: Very well. Mr. Olsen, we'll hear from you first, sir.

CLOSING ARGUMENTS

MR. OLSEN: Thank you, Your Honor. Your

Honor has heard two days of testimony, sworn testimony. Some of it doesn't make sense, some of it does. The law in Arizona is that an election challenger must forward evidence sufficient to show that the outcome is wrong, or at least uncertain, and that is the seminal case of *Findley v. Sorenson*. Plaintiffs have met that standard. There's just a little over 17,000 votes out of nearly 1.6 million that separate the candidates. That's less than .06 percent.

15:41:46 The two issues that Your Honor directed Plaintiff to support that was intentional conduct with the tabulators in terms of the malfunctions, the rejections that occurred on Election Day, and also the chain-of-custody issue. We've done that, Your Honor. We heard some startling testimony. I had to kind of regroup here from what my prepared closing remarks, and that startling testimony from Mr. Jarrett today, it just doesn't make sense, and I'll say why, and this is in terms of whether when we showed through the inspection

15:42:31 of ballots, random selection of ballots, from six -- six voting centers -- not three -- six. Mr. Parikh found evidence, ballots that had 19-inch images imprinted on them on 20-inch sized paper. He found that in all six vote centers that were randomly selected.

Mr. Jarrett yesterday testified under oath

when he was asked that could it happen or did it happen that in 19-inch image was imprinted on a 20-inch piece of paper and he testified no. And not only that, his counsel, Mr. Liddy, went with the shrink-to-fit excuse. And he never said, oh, yeah, that's what happened; we've known about this since shortly after the election and we're doing a root cause analysis. None of this -- it doesn't make sense. Another thing that doesn't make sense, they are doing a root cause analysis now, yet he says that, wow, this has happened in three prior elections. Why are you doing a root cause analysis on this if this same event, this shrink-to-fit issue, arose in three prior elections?

15:43:38

The other thing that doesn't make sense about this shrink-to-fit excuse is that it's illegal under Arizona law to modify a ballot after it's been set. You just can't do that, and they are saying that it happened not only in this election but in three prior elections? It just doesn't make sense, Your Honor.

15:44:30

The other thing that doesn't make sense is that somehow, and you heard Mr. Macias, he kind of equivocated on this shrink-to-fit argument about whether you could get it to exactly 19 inches. So all of a sudden there are supposedly techs that are running around making modifications on Election Day, which by

the way, has happened in three prior elections, and they are all getting it to exactly 19 inches for shrink-to-fit. Random techs just kind of doing things on their own. This doesn't make sense, Your Honor. And I'm actually troubled to even be talking about this.

The idea that when I questioned Mr. Jarrett about this issue, and he said unequivocally, it could not happen, and his counsel then trying to clean this up said, well, what about, you know, shrink-to-fit, that he
15:45:30 didn't immediately say, yeah, that was it when he supposedly had known about it since shortly after the election. It doesn't make sense, Your Honor.

The same thing with respect to the conflicting testimony regarding whether it's chaos or massive disruption that occurred on Election Day with, you know, 200-plus declarants. You have Mr. Baris, who is doing exit polls and talking to people on Election Day; news reports; you have other witnesses who, Mr. Sonnenklar, who testified that they visited -- he and
15:46:10 his fellow roving observers went to 115 vote centers, the same thing. So you have independent sources talking about massive chaos at well over 50-plus percent, about 59 percent, by the County's own admission, it would be 30, or about a third, 70 vote centers; or as counsel has been or their witnesses have been saying up here, yeah,

these were just kind of minor technical difficulties that you expect in every election. It's not even close. I mean, there's -- it's, like, two ships passing in the night.

The fact that they would downplay what happened on Election Day that everybody knows, I think the word that came out -- I read a couple months ago was gaslighting, and that's like telling you to your face what you know is not true and what they know you know is not true, but they are going to tell you anyway. This -- the disconnect here is very troubling. We put on sworn testimony, either on the stand or through sworn declarations, people who put their name and made it public in a time in our country when to put yourself out as they did is not exactly something that doesn't carry risk, and I'm sure you've heard about cancel culture and everything else. There were hundreds of people who came forward to tell the truth about what happened on Election Day. And even Supervisor Gates, you know, early on in the election when he was giving a press conference characterized it as chaos, and then on November 28th, they have an update. And it's, like, yeah, I think the election was run pretty well. It's like the story just kind of shifted. This just doesn't happen, Your Honor. We have independent sources that

say Election Day was chaotic and was a mess, and it absolutely disenfranchised voters, there were long lines everywhere; and we put forward specific compelling evidence that of quantifiable shifts in votes through Mr. Baris, a range of 15,000 to 29,000 votes, Republican votes, and he said that was a conservative estimate. The Defendants put up this expert from the University of Wisconsin, and his bias, for one thing, was completely obvious; but he had to admit that the County, which
15:48:51 bases its whole election plan on modeling turnout -- they had a high model of 290,000 projected for 2022 with a low model of 250,000. And as you heard testimony, that low model was -- was performed prior to the election, as it must, and did not account for any kind of Election Day chaos. So that was a perfect election just with a little bit lower turnout in a time when everybody knew Republican turnout on Election Day, because even as counsel repeatedly said, you know, Republican leaders were telling people to not vote by
15:49:31 mail and to come out on Election Day. And guess what? They did, and then just so happened that pandaemonium ensued. And whether you believe it's a shrink-to-fit allegation at three vote centers when we know, we have direct evidence, that it's in all six -- six of the six that Mr. Parikh inspected had that same 19-inch ballot

image imprinted on a 20-inch piece of paper.

There's no doubt that that caused mayhem. There's no doubt that it caused long lines. You have this professor from University of Wisconsin who comes out and says, well, I looked at the wait-time data from Maricopa County and, you know, it says that the wait lines weren't that bad. Well, we have sworn testimony and charged in the record that shows they are far more, and Maricopa County has -- has repeatedly downplayed and
15:50:29 said that, you know, a pretty well-run election, Your Honor. It doesn't make sense. You don't get this kind of disconnect -- I've never seen anything like this.

All the witnesses, people who come up testifying on behalf of Plaintiffs who have nothing to gain. They have nothing to gain by coming forward to testify about this. And then you have the Defendants' witnesses come up and tell a completely different story. Like I said, it's like two different worlds.

On chain of custody, Mr. Richer admitted
15:51:05 they estimated the amount of ballots that come in to MCTEC, that they don't know the count. Well, A.R.S. 16-621(e) says you will maintain chain of custody every step of the way, and the form that is filled out, that EVBT form has a number for the ballots, the number of ballots in the drop boxes. They know the precise

number. But now the excuse has shifted, well, yeah, we don't count them at MCTEC. When they go to Runbeck, we have employees there, even though they are dropping them off at MCTEC. And as Leslie White in her declaration testified to, the trucks were coming in, they are cutting seals, they are throwing these ballots and taking them out of the bins and throwing them in trays, and nobody is counting the ballots. Nobody is taking the form that's with them and counting the ballots.

15:51:55 Now, having heard this testimony, they have come up and said -- Mr. Jarrett came up today and said, well, when they are shipped up to Runbeck to be processed, because they are still in the envelopes and scanning the envelopes, well, yeah, we count them up there.

Well, that makes no sense. They have taken those ballots out of the bins and delivered them to MCTEC on election night, and we're talking about ballots that are delivered on Election Day. They take them out. When the trucks get up to the ramp, they take them out

15:52:26 of the bins, they break the seals. They are supposed to count them. If you don't have a count from MCTEC when those ballots are being transported to Runbeck, how do you know whether that -- that count is secure? They didn't follow the law. And by the way, we have a manifestation which is still unexplained.

On November 9th, the reported count is 25,000 ballots less, which is beyond the margin here, than on November 10th. So the day after the election, they don't -- they put out what the count is and then magically 25,000 ballots appear on November 10th, and well, hey, that's the race. It doesn't make sense. This is just flat wrong what is going on here.

The law is there for a reason. The law is there to protect the integrity of the vote. And there's
15:53:29 a quote from a Wisconsin Supreme Court decision that came out in July 2022 that I just want to read, Your Honor, and this was just about drop boxes. And so the issue here in Wisconsin was whether or not the Wisconsin Election Commission which said, hey, we're going to go with unmanned drop boxes, and the statute said, no unmanned drop boxes, but they did it anyway. So it went up to the Supreme Court, the Wisconsin Supreme Court, and here's what the Wisconsin Supreme Court stated. And I'll just, you know, drop boxes are not that sexy, and
15:54:06 chain of custody is not -- but these are incredibly important issues to ensure the integrity of the vote.

This is about trust. This is the people are watching this. This whole thing is being televised, and they are hearing two different stories, and this is -- this is what the Wisconsin, three justice on the

Wisconsin Supreme Court stated in this opinion; and the opinion is *Tiegen* v. *Wisconsin's Election Commission*, "The right to vote presupposes the rule of law governs elections. If elections are conducted outside the law, the people have not conferred their consent on the government. Such elections are unlawful and the results are illegitimate."

And they have a quote from John Adams that follows: "If an election can be procured by a party
15:55:03 through artifice or corruption, the government may be the choice of a party for its own end, not of the nation for the national good."

The testimony that this Court heard today from the Plaintiff's side was compelling, it was truthful and it made sense. The testimony that Your Honor respectfully heard today from the Defendants doesn't make sense. What Mr. Jarrett did on that stand today doesn't fit, it doesn't make sense. Three voting centers we found this shrink-to-fit. Mr. Parikh, I
15:55:44 inspected six vote centers. A well-run election? Pandemonium, chaos. From different sources. Everything corroborates, Your Honor, what we -- what the evidence that we have put forth is corroborative with respect to the violations of law, the intentional misconduct with respect to the malfunctions in the tabulators, and to

the violations of the chain-of-custody rules.

This is about trust, Your Honor. It's about restoring people's trust. There's not a person that's watching this thing that isn't shaking their head right now. And with that, Your Honor, I'll sit back.

THE COURT: How did the Defendants want to break up their time?

MS. KHANNA: Your Honor, I'm going to try to keep mine at about 15 to 17 minutes, and leave the remainder of time for Mr. Liddy.

15:56:39

THE COURT: You all right with that, Mr. Liddy?

MR. LIDDY: Their contest, Your Honor.

THE COURT: Very well.

MS. KHANNA: Thank you, Your Honor. Just three days ago, Kari Lake's lawyer stood in this room and made a promise. Having filled 70 pages of a Complaint with grandiose tales of electoral malfeasance, they asked the Court to give them a chance to prove

15:57:04

their case at trial.

Underpinning that argument was the implied promise that they would come to court to trial with something, with anything, to justify Ms. Lake's decision to call on a court of law to give her a victory that the voters of Arizona had denied her.

Kari Lake asked this Court to give her the opportunity to make good on that promise, and the Court did just that. It gave her the opportunity to move beyond mere allegations and speculations and accusations and bring to light the factual bases for her claims and the actual evidence to prove them. This Court not only provided a forum for her to establish her claims, but also set up a clear roadmap for how to do it in its order from earlier this week.

15:57:53 Kari Lake and her lawyers knew what they had to do at this trial, and three days ago, they knew the hand that they had to play. They knew the evidence they had, and they knew the evidence they didn't. This was their big moment to show their hand, but the only thing that has come to light over the last day and a half, everyone waiting with bated breath to see the big reveal behind these claims is that they never had the evidence to back them up.

I would like to walk briefly through what

15:58:22 Ms. Lake needed to do to prevail on her claims and what she actually proved at this trial.

As to Count 2 on pages 6 to 7 of its order from earlier this week, the Court ruled that Plaintiff must show at trial that the BOD printer malfunctions were intentional and directed to affect the results of

the election, and that such actions did actually affect the outcome. Plaintiff established none of this.

Plaintiff's star witness was Clay Parikh, a purported cyber security expert. Mr. Parikh drafted a report in preparation of this case in which he cited everything from Twitter posts to unsigned declarations, to provide a host of theories about all the things that could possibly have gone wrong on Election Day. Nothing in the report or any of its exhibits was offered into the record, and instead, by the time he took the stand yesterday, he was sure he had smoked out the problem.

15:59:12

According to Mr. Parikh, in some vote centers, there are 19-inch ballot images printed on 20-inch paper, which is what caused the tabulation issues at Election Day. Mr. Parikh also testified that the only possible explanation for those Election Day errors is intentional interference in the system. It simply could not have happened by accident. There are more than a few flaws with Mr. Parikh's analysis, Your Honor, but for the sake of expediency, I'll focus here only on three.

15:59:45

First, despite Mr. Parikh's newfound certainty, there is reason to doubt that the 19-inch, 20-inch discrepancy was the root cause of all of the printer issues. Plaintiff's own witness, Bradley

Bettencourt, a T Tech on Election Day, testified that restarting the printer and shaking the cartridge helped the printer problem significantly at some locations, neither of which would have shifted paper margins.

Second, even if Mr. Parikh had put his finger on the tech issue that happened on Election Day, the mere identification of the cause does not indicate that it was the result of an intent to alter the election. To the contrary, the testimony from Plaintiff's own witness, Mr. Bettencourt, indicated that the County had deployed employees to fix the problem and in many instances was -- were successful.

16:00:28

Mr. Jarrett, one of the co-directors of the elections, testified based on his office's investigation that the printer settings were likely adjusted by T Techs who were trying to fix the printer problems. They did not create 19-inch ballots in the system, but rather they caused ballots to be printed with a fit-to-paper setting in some locations.

16:01:00

And Mr. -- as Mr. Macias just testified, in his experience, these kinds of widespread tech failures or tech issues are usually the result of equipment failures, or some other administrative error, beyond the purview of election officials, and are specifically accounted for in the many layers of redundancies within

the system to assure the security of the election.

Neither Mr. Parikh nor anyone else has provided any evidentiary basis to call into question the good faith of Maricopa County election officials, which is presumed in this election contest.

Third, even if Mr. Parikh had uncovered some malicious intent to alter the ballot margins, he failed to demonstrate this had any actual impact on the outcome of the election. To the contrary, he admitted that any
16:01:51 ballot that was not able to be read by a tabulator would have been duplicated and that those duplicates would have been counted.

Mr. Jarrett testified that if the three locations identified with issues of shrunken images on ballots, the total number of affected ballots was less than 1,300, a far cry from the outcome determinative number. And these ballots were located, went to a bipartisan adjudication board process, duplicated and ultimately successfully tabulated.

16:02:23 Plaintiff also called Mr. Sonnenklar, a roving attorney from the RNC. Mr. Sonnenklar testified about his observations on Election Day, long lines and frustrated voters who didn't want to put their ballots in Door 3. Mr. Sonnenklar offered his opinion that there had been some wrongdoing and that Kari Lake should

have won, but the only evidence he could point to in support was, quote, common sense. And when asked if he had any personal knowledge of either claim, he admitted he did not.

Plaintiff's final witness on Count 2 is Mr. Baris this morning. He was the one person who might be able to say whether this purported misconduct actually affected the outcome of the election. But this morning's testimony from Mr. Baris and Dr. Mayer lays bare the numerous reasons why Mr. Baris's analysis lacks any merit. Mr. Baris's outfit, Big Data Polls, has been thoroughly discredited. He only polled people who said they actually voted, yet drew conclusions about people who didn't vote. His conclusions were based not actually on the responses to his poll, but on his assumptions of all of the people who chose not to respond to his poll. According to Mr. Baris, quote, I can observe them by their absence.

Even if there were any conceivably scientific basis for this polling method, you don't have to be a mathematician to detect the fundamental flaws in his math. He opines if there had been 2.5 percent more voters, and all those voters voted on Election Day, then some of those voters would have voted for Kari Lake, and then Kari Lake would have won the election.

Mr. Baris plucked this figure out of thin air. He admitted neither his forecast nor his poll provide evidence that 2.5 percent, or any other specific number of voters, stayed home as a result of tabulation issues or anything else. Even putting aside that fact, Mr. Baris pulled a sleight of hand with his calculations. He assumed that all 2.5 percent of those voters would have the same voting patterns as Election Day voters, even though the vast majority of Maricopa voters voted early and had different voting patterns.

16:04:42

He also admitted by Election Day, 1.3 million Maricopa voters had already cast their ballots. So for Kari Lake to come close to closing that 17,000 vote deficit, she didn't need 2.5 percent more voters to vote on Election Day, she needed at least 16 percent more voters. In other words, Mr. Baris admitted that for his speculations to come close to changing the election, one out of every six voters who planned to vote on Election Day would have had to stay home as a result of tabulator issues.

16:05:19

Mr. Baris admitted that his poll provided no information about the number of voters that encountered a tabulator issue, or even the number of voters who encountered a line.

Dr. Mayer, a respected expert who studies election administration for a living, whose testimony

courts consistently rely upon, summed it up. Mr. Baris provided no evidence that any number of voters were disenfranchised by malfunctioning tabulators. In the end, not only is Mr. Baris's testimony not credible and nonsensical, it fails even on its own terms.

That is the sum total of the evidence on Count 2, Your Honor. And what did it prove? A printer issue happened. It's unclear what that issue was and if it was the same issue everywhere, and some voters were upset about it. That's it. No evidence of any person with any intent to do anything, let alone malicious intent to affect the election. No evidence that anyone didn't vote as a result, let alone that they were deprived of the right to vote. And not only did Plaintiff provide no evidence whatsoever that any errors actually affected the outcome of the election, Defendants provided affirmative evidence to the contrary.

16:06:11

As to Count 4, this Court wrote on pages 8 to 9 of its order that Plaintiff must establish that a person under the control of Maricopa County committed misconduct in violation of state law that affected the outcome of the election. Here Plaintiff's star witness on chain of custody was Heather Honey. Ms. Honey is an interested bystander to Arizona election administration.

16:06:44

She conceded that she has never taken the election officer certification course. She's never worked as an election official. She's never worked as a poll worker. She's never worked as a poll observer. According to Ms. Honey, she has only, sort of, ever been to the MCTEC facility and has no personal information whatever about what happened at Runbeck or MCTEC on Election Day this year. Ms. Honey's testimony consisted of her personal understanding of Arizona law and the EPM, which this
16:07:36 Court has no reason to credit, and her retelling of information that a Runbeck employee and a MCTEC observer told her after the fact.

Now, one might wonder why Plaintiff chose to call Ms. Honey instead of the actual witnesses to the events she testified about, both of whom were on Plaintiff's witness list, and neither of whom they called. It may be because in their own -- in those declarations provided by Ms. Honey, these witnesses acknowledge the limitations of their own personal
16:08:05 knowledge. According to the MCTEC observer, Leslie Marie, she did not have a clear view of the activities on the truck or on the dock, and thus would not have seen any scanning or chain-of-custody documentation that occurred in those areas.

And the Runbeck employee, Denise Marie,

admitted that she saw about 50 ballots given to the sorting department by employees and that she left an hour before mail ballots even arrived at Runbeck.

But even if the Court were to assume the credibility of Ms. Honey's testimony, all it establishes is that she hoped to see certain chain-of-custody documentation that she did not receive from the County. Based on Ms. Honey's testimony and the voicemail that Mr. Blehm seems to think has broken this case wide open, it appears that Plaintiff's new theory is that Maricopa County has failed to comply with a PRR request in a timely fashion. Needless to say, that claim is not currently before this Court, nor is it any basis for overturning an election.

Plaintiff's chain-of-custody claims seems to hinge on this notion that perhaps some number of ballots were injected into the batches at Runbeck. Denise Marie's declaration states her belief that she knew of approximately 50 ballots dropped off by Runbeck employees on behalf of their family members. Ms. Honey and Plaintiff's counsel from there opine that for all we know, there could have been 50, 500, 50,000, 500,000 ballots injected at Runbeck. There are at least two fatal flaws in Plaintiff's logic here.

First of all, Plaintiff's burden is to

demonstrate that an actual number of votes were improperly counted and affected the outcome of the election, but Ms. Honey's testimony confirmed that any estimate of how many ballots are at issue in this chain-of-custody claim, quote, would be nothing but pure speculation. In short, Ms. Honey conceded that Plaintiff could not meet her burden on this claim.

Second of all, even if there were 50, 500, 500,000 ballots somehow injected into the process, Plaintiff has not established that a single one of those ballots was invalid or shouldn't have been counted, nor could they. Every ballot received by Maricopa County is processed, checked against the voter registration record to make sure the person hasn't already voted, and then verified by a multilevel signature review process. Even if this Court were to indulge Plaintiff's chain-of-custody speculations, there is no evidence or even reason to believe that it had any effect on the number of votes lawfully counted, let alone on the outcome of an election that Katie Hobbs won by over 17,000 votes.

16:10:15
16:10:48

The claims Plaintiff has advanced in this election, Your Honor, in this election contest, raise serious allegations intended to bring with them very serious consequences. But Plaintiff's approach to this

litigation has been anything but serious. Instead, Plaintiff's record consists of hearsay upon hearsay upon hearsay, rank speculation, and a good dose of theatrics. In short, the trial record in this case reveals that there was never a case to begin with.

On Monday in arguing the motion to dismiss, I told the Court that this was all just an elaborate story Plaintiff was trying to tell, looking for the exciting plot twist. In allowing this contest to
16:11:39 proceed to trial, this Court gave Ms. Lake a chance to tell her story, and not just spin yarns, but the chance to actually point to evidence to stitch together a coherent narrative. What we got instead was just loose threads and gaping plot holes. We know now that her story was a work of fiction, and what we are left with today are the facts, and those facts are as follows:

Kari Lake lost this election and must lose this election contest. The reason she lost is not because of a printer error, not because of missing
16:12:18 paperwork, not because the election was rigged against her, and certainly not for lack of a full opportunity to prove her claims in a court of law. Kari Lake lost the election, because at the end of the day, she received fewer votes than Katie Hobbs. Katie Hobbs is the next governor. The people of Arizona said so. It is time to

put this contest and these spurious claims to bed.

Thank you, Your Honor.

THE COURT: Okay. By my count, you got five minutes.

MR. LIDDY: Thank you, Your Honor. Most of this is just theatrics anyway, I'll just cut that out.

THE COURT: Much appreciated.

MR. LIDDY: Your Honor, I want to first touch on a couple things that we just heard from counsel for Kari Lake. Cancel culture, I don't think that means what you think it means. Bias. Their star witness, Parikh, gives freebies to the prince to Stop the Steal. That's the pillow guy. That's bias, and we trust this Court will be able to recognize true bias, perceived bias, and weigh and rule accordingly.

Candidates are allowed to say anything they want out in the town common, and they'll be held responsible by the voters; not true with lawyers who come into courtrooms in the State of Arizona. There's an obligation. Every lawyer is obligated to interview his or her clients, his or her witnesses, and make sure they know what they are going to say, and if it's not true, can't present it to the Court. It's an ethical violation. And if what exists for their testimony is not enough to meet the burden, the case should not be

brought. And so, Your Honor, once you rule, we will be back seeking A.R.S. 12-349 sanctions and Rule 11 sanctions.

Maricopa County takes responsibility for the errors that occur in every election, and in this particular election, November 8, 2022, there were a significant number of printer errors, a minority by far, but significant, and those did cause real inconvenience and heartache for a lot of people. Maricopa County
16:15:13 acknowledges that. Those were Election Day operations that are on the Board of Supervisors, not the Recorder. But those errors or those mishaps by machines, if you will, the effect that had on an Election Day voter has compounded, Your Honor, not by intentional misconduct by any employee or anybody under the control of Maricopa County, but by months and months and months of communication from the current leadership of the Republican party of Arizona and the communications specialist of the Kari Lake for Governor Campaign that
16:15:56 said do not vote early, even if you were on the pebble and you got an early ballot, don't mail it. Don't drop it off at the drop box. *2000 Mules*. Bring in your car, maybe. Go on Election Day and vote on person, and Lord forbid, don't ever put your ballot in the drop box, in the ballot box or Drawer Number 3, because there's

something very scary about drawer number 3, which is nothing but a ballot box. It's what people all over the world do with their ballots, vote it, stick it in the ballot box; but people were terrorized by that on Election Day. That's not on Maricopa County, that's on the Kari Lake for Governor Campaign. That's on the Dr. Kelli Ward-led Republican Party communications apparatus.

So we did not see in two days of testimony in all those affidavits that came in evidence of a botched election. We saw evidence of a botched campaign, political malpractice.

Who goes out and tells their voters don't vote on day 1 of early voting, day 2, day 3, all the way up to day 26 of the voting? That's political malpractice. You reap what you sow.

Your Honor, the burden has not been met. When people come into this courtroom without evidence, there should be a day of reckoning. And this has been happening all over the country, Your Honor, and it's got to stop, and it's got to stop right now. And the place to stop it is right here in your courtroom, Your Honor, right here in Mesa, Arizona. This has got to stop. We've got to get back to respecting elections, because that's all we have, Your Honor. Different religions,

different creeds, different ethnicities, different backgrounds. There's only one thing that makes us Americans, and that's we believe in choosing our own election -- our own rulers, our own governors, our own mayors, our own presidents, and we do that through elections. And because of our forefathers' experience, those elections are split up, the 50 different states and all the different counties, and the legislature makes the rules, the counties follow the rules. You
16:18:13 carry out the election and you live with the results. If you lose, you live to fight another day. You don't go into court and spew conspiracy theories and spill sour grapes.

Thank you, Your Honor.

THE COURT: Very well. Mr. Olsen?

MR. OLSEN: Yes. Thank you, Your Honor. I've heard summary theories, rank speculation, making up facts. You know what's not rank speculation, or a work of fiction? The fact that there were 19-inch ballot
16:18:43 images printed on 20-inch pieces of paper, and nobody talked about that until this trial. And nobody talked about a shrink-to-fit excuse for that until this trial, until Mr. Liddy got up here and asked Mr. Jarrett, and he denied that was the issue. And then he comes back today and says, well, yeah, we've known about that, it

happened in three prior elections and we're doing root cause analysis, and we figured this out that this was the issue back in November.

The 19 -- that's the -- the 19-inch ballot image printed on 20-inch paper is a fact. They have now admitted it. They just shifted the excuse for the cause of it. They tried to say, well, the T Tech, Mr. Bettencourt, contradicts it. No, he doesn't. Nobody knew what was going on with the printers. They were
16:19:31 shaking printers, they were cleaning the tab -- they were doing all kinds of things because these printers weren't working. But we know from the inspection that six out of six randomly selected vote sites by Mr. Parikh had the 19-inch image printed on 20-inch paper, and not three vote locations. The arguments from Defendants' counsel don't make sense.

And by the way, if these printers, the configurations had been changed, then this would have occurred uniformly from the time of the change. Every
16:20:06 ballot from that point would be changed to this 19-inch configuration that somehow got to 19 inches by their own statement at all three locations by different people making a change on shrink-to-fit, but Mr. Macias was very hesitant to say, well, I don't know how it would get to exactly to 19 inches, but...

The fact that they want to blame Republicans for coming out and voting on Election Day, that's atrocious. That's atrocious. It's in our Constitution to vote on Election Day. The County plans for turnout on Election Day. As a matter of fact, they plan for higher turnout with the 290,000 vote projection even before Republican leaders they claim were telling their constituents to come out and vote on Election Day. They planned on it. We're supposed to believe they weren't ready to go? And if they weren't, then that is, again, consistent with our claims.

16:21:01

But the fact is, Your Honor, that 19-inch ballot image on ballots from every single six locations that were inspected is a fact. It's a fact. And how arrogant it is to blame Republican, or any voter, Republican, Democrat or otherwise. If they don't trust the system for whatever reason, and they want to cast their vote in the most secure manner possible, which is on Election Day. Earlier when we started out in opening, I said that, you know, the Carter-Baker Commission in 2005 said that mail-in voting is the method of voting that is most vulnerable to fraud. So if a voter, whether they were Republican, Democrat or Independent, wants to see their vote get cast and counted, why is that wrong?

16:21:38

Your Honor, the evidence shows that Kari Lake won this race. At a minimum, we have put forth solid evidence that the outcome of this election is uncertain.

Mr. Baris's testimony, his modeling, which is actually even more detailed than what the County itself does, and his model is on the high end of what the County predicted, but Mr. Baris actually talked to voters, and as he testified to, they all consistently said this thing was a train wreck. And in terms of the response rate, never before had he seen that with a 20-percent drop in response rate out of hundreds of polls. He was not hired for this litigation. This was an observation that he had completely independent, and it didn't make sense absent the issues that occurred on Election Day.

Your Honor, we put forward solid evidence, stand behind that evidence. We would come back -- they said, you know, we didn't bring these other witnesses, if we had more time, we'll bring them here tomorrow. I'm not suggesting, but that has no bearing.

So I want to thank Your Honor for giving us the opportunity to present this case, for the opportunity for people to see the evidence for themselves and judge. And with that, Your Honor,

Plaintiff rests.

THE COURT: Thank you.

All right. I will take the matter under advisement and issue a ruling forthwith. I need to go over everything and be very thorough, so don't expect this is coming out by 5:00 o'clock. For what it's worth, I'll also say that I appreciate -- I know this is highly contested and emotional issue for both sides, but I want to express my appreciation to counsel for both
16:24:11 sides for your professionalism and your ability to present this case in a way that was thought through, meaningful. Thank you.

With that, I will take this under advisement. We're adjourned.

(Proceedings conclude, 4:24 p.m.)

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C E R T I F I C A T I O N

I, ROBIN G. LAWLOR, Registered Professional Reporter, Registered Merit Reporter, Certified Realtime Reporter, Federal Certified Realtime Reporter, Certified Court Reporter, Certificate No. 50851, in and for the State of Arizona, do hereby certify that the foregoing pages constitute a full, true, and accurate transcript of all proceedings had in the foregoing matter, all done to the best of my skill and ability.

WITNESS my hand this 24th day of December, 2022.

/s/Robin G. Lawlor

Robin G. Lawlor, RMR, CRR, FCRR
Arizona CCR No. 50851

Exhibit G

Vote Center	TOTAL BALLOTS REJECTED
Academies at South Mtn 12716 *	612
Aguila Fire Department 14489 *	100
Aire Libre School 10619 *	746
All Saints Lutheran Church 11820 *	825
Altrain Medical and Dental Center 15728 *	55
Asante Library 15723 *	2010
Ascension Lutheran Church 11244 *	1415
ASU Downtown Campus 15719 *	60
ASU Polytechnic Campus 15642 *	61
ASU Sun Devil Fitness Center 15566 *	116
ASU West Campus 15105 *	129
Avondale City Hall 14886 *	167
Biltmore Fashion Park 15667 *	2139
Black Mountain Baptist Church 14509 *	1721
Bridgeway Community Church 14295 *	537
Brophy College Prep 12897 *	80
Buckeye City Hall 14044 *	248
Buckeye Fire Station 704 15621 *	181
Burton Barr Library 11405 *	96
Cactus High School 11363 *	3032
Calvary Free Lutheran Ch 14432 *	2682
Camelback Christian Church 10360 *	863
Carefree Town Council Center 15585 *	144
Cartwright Sch Dist Annex 13694 *	48
Cave Creek Town Hall 12226 *	759
Central Christian Church/Gilbert 15407 *	109

Central Christian Church/Mesa 11901 *	1571
Chandler Bible Church 13836 *	385
Chandler City Hall 15551 *	131
Chandler Gilbert Comm College 13905 *	108
Chandler Nature Center 15486 *	957
Chandler United Methodist Church 15416 *	108
Chandler USD Office 10003 *	443
Charles W Harris School 10958 *	396
Christ the Redeemer Luth Ch 12667 *	127
Christian Community Church 11770 *	674
Church At Litchfield Park 10647 *	116
Church of Jesus Christ LDS 15090 GREENFIELD*	1206
Church of Jesus Christ JOMAX LDS 15592 *	2011
Church Of Jesus Christ Of LDS MESA MARICOPA STAKE 10895 *	75
Church Of Jesus Christ Of LDS Union Hills 14326 *	2170
Church Of Jesus Christ Of LDS LAKE SHORE 14357 *	1737
Church Of Jesus Christ Of LDS SOUTHERN 15216 *	2198
Church Of Jesus Christ Of LDS GILBERT 15268 *	987
Church Of Jesus Christ Of LDS Buckeye 15595 *	367
Church Of The Beatitudes 13020 *	112
Community of Christ 14168 *	1620
Community Of Christ Church 10756 *	1737
Communiversity QC 15675 *	145
Compass Church 15355 *	1214
Copper Canyon School 13237 *	324
Copper Hills Church/ Westwing 15558 *	538
Cortez High School (#205) 12814 *	846
Cottonwood Country Club 12407 *	860

David Crockett School 11380 *	737
Dayspring United Methodist Church 11884 *	434
Deer Valley Airport 12875 *	5768
Deer Valley Lutheran Church 12740 *	254
Deer Valley USD Office 11462 *	589
Desert Christian Fellowship 12662 *	2467
Desert Foothills United Meth Ch 13953 *	239
Desert Hills Community Church 12362 *	1949
Desert Oasis Aquatic Center 13838 *	293
Dist 6 Community Service Center 12215 *	28
Dist 7 Community Service Center 13856 *	385
Dove Of The Desert UMC 13869 *	2851
Dream City Church Phoenix 12800 *	1143
Dream City Church Scottsdale 15151 *	653
Dysart Community Center 15203 *	285
El Mirage City Hall 12350 *	177
El Tianguis Mercado 15521 *	93
Eldorado Park Community Center 11564 *	1362
Envision Community Center 15682 *	206
Escalante Community Center Tempe 12165 *	1817
Estrella Foothills High School 14506 *	648
Estrella Mnt School/Goodyear 12234 *	587
Estrella Mountain Comm College 14218 *	245
Faith Baptist Church 10492 *	2391
Faith Lutheran Church 12773 *	617
First Baptist Church Chandler 15277 *	116
First UMC of Gilbert 11932 *	3184
Flite Goodyear 15705 *	325

Florence Ely Nelson Desert Park 14227 *	223
Footprint Center 15736 *	236
Fort McDowell Indian Comm 12015 *	56
Fountain Hills Community Center 14400 *	1776
Fowler School 10403 *	1019
Gateway Fellowship Chr/Sbc 14864 *	2416
GCC North Chinle Bldg 14225 *	123
Gila Bend School Dist 10438 *	536
Gilbert Freestone Rec Center 14669 *	1492
Gilbert Presbyterian Church 12354 *	95
Gilbert Public Works N Ctr 15720 *	66
Glendale Christian Church 10098 *	68
Glendale Comm College 10378 *	204
Glendale M and Ministry Ctr 10381 *	103
Goelet A.C. Beuf Comm Ctr 15144 *	127
Golden Gate Community Center 11593 *	249
Goodyear City Hall (NEW) 15724 *	138
Goodyear City Hall 12921 *	44
Grace In The Desert Adv Ch 11988 *	1091
Grace United Methodist Church 11634 *	601
Granada West Elementary School 12039 *	38
Happy Trails Resort 12154 *	1804
Hi-Way Baptist Chuch 14286 *	1066
Holiday Park School 10574 *	585
Holy Trinity GOC11868 *	637
Horizon Community Center 13859 *	921
Horizon Presbyterian Church 13877 *	77
IBEW Local 640 Electrical Wrk 11651 *	26

Indian Bend Wash Visitor Ctr 11490 *	67
Islamic Center East Valley 15717 *	2058
Islamic Center Scottsdale 15170 *	2890
Islamic Community Ctr of Phx 11449 *	90
James W Rice School 14820 *	698
Journey Church 15731 *	3592
Kaka Village Comm Center 13481 *	28
Knights of Pythias Lodge 15359 *	51
LakesRecCtr @ WestbrookVillage 12187 *	2001
Laveen Baptist Church 11622 *	767
Laveen Elem Sch Dist 13770 *	1028
Liberty ESD Office 15469 *	26
Lifeway Church 14884 *	213
Light And Life Church 12903 *	2760
Litchfield Park First Baptist Ch 11682 *	1140
Litchfield Support Svcs Bldg A 15578 *	186
Living Water Lutheran Church 14773 *	245
Living Word Bible Church Ahw 14988 *	203
Love Of Christ Lutheran Chr 13196 *	1596
Loyal Order of the Moose Lodge 10238 *	70
Madison Baptist Church 12807 *	1368
Maricopa County Cooperative Ext 11621 *	254
Marley Park 15349 *	678
Maryvale Bridge UMC 10074 *	837
McQueen Park Activity Center 13939 *	826
Memorial Presbyterian Church 11316 *	3194
Mesa Baptist Church 12082 *	2120
Mesa Comm College Red Mtn 14202 *	211

Mesa Convention Center 15634 *	180
Mesquite Groves Aquatic Center 15622 *	2147
Messinger Mortuary 14396 *	2576
Mount Calvary Baptist Church 11109 *	1070
Mountain Park Health Center 15680 *	1796
Mountain Park Maryvale Clinic 15584 *	719
Mountain View Park Comm Ctr 10982 *	1366
Mountain View School *	0
Mountain Vista Club/Vistancia 15511 *	1054
Murphy ESD Education Center 15616 *	295
Nadaburg School District Office 15282 *	296
North Phx Bap Ch PV Campus 10769 *	5993
North Scottsdale UMC 12219 *	1157
North Valley Free Will Bap Ch 14098 *	113
Nozomi Aquatic Center 15494 *	1607
Oasis Community Church 12913 *	835
Outlets at Anthem 15607 *	1580
Palm Lane School 10248 *	425
Palm Ridge Recreation Center 13302	66
Paradise Valley Comm College 12103 *	245
Paradise Valley Town Hall 13977 *	330
Peace Lutheran Church 13888 *	511
Pendergast ESD Office 10055 *	1001
Perry Branch Library/Gilbert 15308 *	411
Phoenix Art Museum 15729 *	102
Phoenix Laestadian Luth Ch12449 *	581
Phoenix Union HS Dist 14187 *	250
Praise And Worship Center 15523 *	373

Progressive Baptist Church 11145 *	654
Pyle Adult Recreation Center 11072 *	145
Queen Creek Library 15550 *	131
Radiant Church Sun City 10371 *	2151
Salt River Pima Community Center 10580 *	1557
San Lucy Dist Admin Bldg 13851 *	9
San Tan Village Mall 15664 *	605
Save the Family 15726 *	129
Scottsdale Elks Ldg Pboe #2148 11966 *	1157
Scottsdale Worship Center 10215 *	1820
SE Regional Library Gilbert 10443 *	132
Second Ch Of Christ Scientist 11731 *	92
Sevilla Elementary School 10432 *	1725
Shadow Mountain High School 12774 *	3869
Shadow Rock Church 12771 *	197
Shepherd Of The Hills UMC 10287 *	1118
Sheriff Posse of SCW *	1112
Skyway Church - West Valley 15022 *	657
South Phoenix Baptist Church 10611 *	899
Spirit Of Grace Lutheran Church 13927 *	139
St Andrew Lutheran Church 11092 *	578
St Johns Lutheran Church 10440 *	578
St Margarets Catholic Church 11054 *	906
St Nikolas Serbian Orth Ch 12268 *	2918
Standing Stones Comm Ch 15405 *	1288
Sun Lakes UMC 12938 *	903
Sunland Village East 12374 *	1772
Sunrise United Methodist Church 12809 *	467

Sunset Canyon School 14814 *	687
Surprise City Hall 14239 *	1183
Surprise Senior Center 11007 *	206
Tempe History Museum 15612 *	103
Tempe Mountain Park Hlth Ctr 15695 *	25
The Refinery Christian Church 15735 *	243
Tolleson Council Chambers *	214
Tomahawk School 10692 *	526
Trilogy @ Power Ranch 14134 *	530
Trinity Bible Church of SCW 14584 *	718
Tumbleweed Recreation Center 15418 *	980
Union ESD Office 11289 *	526
University Lutheran Church 11063 *	326
University Presbyterian Church 10323 *	510
Valley Baptist Church Tonopah 14178 *	1182
Valor Christian Center 15567 *	623
Velda Rose UMC 11186 *	538
Venue 8600 15599 *	2265
Via Linda Senior Center 13833 *	2105
Victory Lutheran Church 11349 *	1859
Vineyard Church Of North Phx 14644 *	142
Washington ESD Office 14138 *	187
Wesley Community Center 12104 *	279
West Valley UUC 15136 *	112
Westwood Elementary School 11307 *	1838
Wickenburg Community Center 11322 *	860
Worship & Word Church 15581 *	2778
Youngker High School 15322 *	1009

Youngtown Clubhouse 12156 *	1817
TOTAL BALLOTS REJECTED	**196113**