

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Democratic National Committee, DSCC, and
Arizona Democratic Party,

Plaintiffs,

v.

Michele Reagan and Mark Brnovich,

Defendants.

No. CV-16-01065-PHX-DLR

ORDER

This order addresses a number of evidentiary issues raised during the bench trial in this matter.

I. Deposition Designations

Upon review of deposition transcripts, the Court issues the following rulings on Plaintiffs' and Defendants' objections and counter-designations.

A. July 14, 2016 Deposition of Sheila Healy

1. Defendants' objection to Plaintiffs' designation from page 5 at line 10, through page 7 at line 22, on the rule of completeness is sustained;
2. Defendants' objection from page 8, lines 1 through 5, on the issue of relevance is overruled;
3. Defendants' objection from page 9 at line 18, through page 10 at line 7, on the rule of completeness is sustained;
4. Defendants' objection from page 13 at line 10, through page 15 at line 11,

- 1 on the rule of completeness is sustained;
- 2 5. Defendants' objection from page 13 at line 10, through page 15 at line 11,
- 3 on the issue of relevance is sustained;
- 4 6. Defendants' objection from page 17 at line 14, through page 18 at line 14
- 5 on the issue of relevance is overruled;
- 6 7. Defendants' objection from page 31 at line 18, through page 32 at line 4 on
- 7 the issue of relevance is overruled;
- 8 8. Defendants' objection from page 32 at lines 5 through 18, on the rule of
- 9 completeness is sustained;
- 10 9. Defendants' objection from page 32 at line 25, through page 33 at line 4 on
- 11 the rule of completeness is sustained;
- 12 10. Defendants' objection from page 47 at line 24, through page 48 at line 8 on
- 13 the rule of completeness is sustained;
- 14 11. Defendants' objection from page 50 at line 10, through page 51 at line 5,
- 15 and from page 52 at lines 2-8 on the rule of completeness is sustained;
- 16 12. Defendants' objection from page 61 at lines 15 through 22 on the rule of
- 17 completeness is sustained;
- 18 13. Defendants' objection from page 61 at line 23, through page 62 at line 1 on
- 19 Healy's lack of personal knowledge is overruled;
- 20 14. Defendants' objection from page 64 at lines 1 through 12 on the issue of
- 21 legal conclusions is overruled;
- 22 15. Defendants' objection from page 64 at lines 13 through 22 on Healy's lack
- 23 of personal knowledge is sustained;
- 24 16. Defendants' objection from page 65 at lines 1 through 3 for lack of
- 25 foundation and Healy's lack of personal knowledge is overruled;
- 26 17. Defendants' objection from page 66 at line 22, through page 67 at line 3 on
- 27 the issue of legal conclusions is overruled;
- 28 18. Defendants' objection from page 78 at line 12 through page 79 at line 8 on

1 the issue of relevance is overruled;

2 19. Defendants' objection from page 79 at lines 11 through 15 on the issue of
3 legal conclusions is overruled;

4 20. Defendants' objection from page 80 at line 24, through page 81 at line 20
5 on the issue of relevance is sustained;

6 21. Defendants' objection from page 82 at line 17, through page 83 at line 6,
7 for Healy's lack of personal knowledge is overruled;

8 22. Defendants' objection from page 83 at line 18, through page 87 at line 2,
9 for foundation and legal conclusions is sustained;

10 23. Defendants' objection from page 90 at line 7, through page 91 at line 9, and
11 page 91 at lines 10 through 24, for Healy's lack of personal knowledge is
12 overruled;

13 24. Defendants' objection from page 95 at line 3, through page 97 at line 3 on
14 the issues of foundation, relevance, and Healy's lack of personal knowledge
15 is overruled;

16 25. Defendants' objection from page 97 at line 18, through page 98 at line 14
17 on Healy's lack of personal knowledge is overruled;

18 26. Plaintiffs' objection to Defendant's counter-designation from page 98 at
19 lines 15 through 24 on foundation and calls for speculation are overruled;

20 27. Defendants' objection from page 98 at line 25, through page 99 at line 22,
21 on the issue of Healy's lack of personal knowledge is overruled;

22 28. Defendants' objection from page 102 at line 24, through page 103 at line 7,
23 on the issue of legal conclusions is overruled;

24 29. Defendants' objection from page 114 at line 1, through page 115 at line 4
25 on Healy's lack of personal knowledge is sustained;

26 30. Defendants' objection to Plaintiffs' counter-designation on page 90 from
27 lines 2 through 17 on the issue of hearsay is sustained;

28 31. Plaintiffs' objection on page 63 from lines 1 through 4 on the issue of

1 Healy's lack of personal knowledge is overruled;

2 32. Defendants' objection to Plaintiffs' counter-designation on page 82 at line
3 17, through page 83 at line 6 on foundation and hearsay issues is overruled;

4 33. Plaintiffs' objection from page 70 at line 17, through page 71 at line 14
5 regarding calls for impermissible opinion testimony is overruled;

6 34. Plaintiffs' objection on page 77 from line 13 through 16 on Healy's lack of
7 personal knowledge, foundation, and attempt to use for legal conclusion
8 issues is overruled;

9 35. Defendants' objection to Plaintiffs' counter-designation from page 82 at
10 line 17, through page 83 at line 6, on foundation and hearsay issues is
11 overruled;

12 36. Plaintiffs' objection on page 95 from line 7 through 15 on speculation and
13 improper legal opinion is overruled;

14 37. Defendants' objection to Plaintiffs' counter-designation from page 96 at
15 line 13, through page 97 at line 3, and from page 97 at lines 18 through 24,
16 on foundation, hearsay, and improper expert opinion issues is overruled;

17 38. Plaintiffs' objection on page 98 at lines 3 through 14 on the foundation of
18 Healy's testimony is overruled.

19 **B. July 7, 2016 Deposition of Randy Parraz**

20 1. Defendants' objection from page 4 at line 17, through page 5 at line 3 on
21 the relevance of Parraz's testimony is overruled;

22 2. Defendants' objection from page 5 at lines 4 through 7 on the rule of
23 completeness is sustained;

24 3. Defendants' objection from page 10 at lines 13 through 23 on the rule of
25 completeness is sustained;

26 4. Defendants' objection from page 11 at line 24, through page 12 at line 6 on
27 the rule of completeness is sustained;

28 5. Defendants' objection from page 26 at line 12, through page 57 at line 14

- on issues of relevance and lack of personal knowledge is overruled;
6. Defendants' objection from page 52 at line 12, through page 53 at line 3 on issues of foundation and lack of personal knowledge is overruled;
7. Defendants' objection from page 57 at line 20, through page 67 at line 24, and from page 60 at line 23, through page 61 at line 21 on the relevance of Parraz's testimony is sustained;
8. Defendants' objection from page 73 at line 10, through page 74 at line 25 on the relevance of Parazz's testimony is overruled;
9. Defendants' objection from page 76 at line 24, through page 77 at line 1 on the rule of completeness is sustained;
10. Defendants' objection from page 88 at lines 1 through 3, on foundational and lack of knowledge issues is overruled;
11. Defendants' objection from page 90 at line 18, through page 91 at line 19 on the rule of completeness is sustained;
12. Defendants' objection on page 96 from lines 5 through 18, on the rule of completeness is sustained;
13. Defendants' objection on page 104 from lines 4 through 10, on the rule of completeness is sustained;
14. Defendants' objection on page 104 at line 4, through page 105 at line 2, on lack of personal knowledge is overruled;
15. Defendants' objection on page 105 from lines 3 through 25, on the rule of completeness is sustained;
16. Defendants' objection from page 112 at line 16, through page 113 at line 25, on the rule of completeness is sustained;
17. Defendants' objection on page 117 at lines 16 through 25, on the rule of completeness is sustained;
18. Defendants' objection from page 127 at line 18, through page 128 at line 10, on foundation and lack of personal knowledge issues is overruled;

1 19. Defendants' objections to Plaintiffs' counter-designations from pages 30 at
2 lines 6 through 13 and from page 30 at line 17, through page 31 at line 5 are
3 sustained.

4 **C. May 15, 2017 Deposition of Samantha Pstross**

- 5 1. Defendants' objection from page 10 at line 20, through page 12 at line 5 on
6 the rule of completeness is sustained;
- 7 2. Defendants' objection from page 21 at line 20, through page 22 at line 24
8 on the rule of completeness is sustained;
- 9 3. Defendants' objection from page 23 at line 15, through page 24 at line 19
10 on the rule of completeness is sustained;
- 11 4. Defendants' objections from page 24 at line 23, through page 25 at line 19
12 regarding foundation, as well as the issue of lack of personal knowledge,
13 are both overruled;
- 14 5. Defendants' objections from page 25 at line 24, through page 32 at line 18
15 regarding foundation, as well as the issue of lack of personal knowledge,
16 are both overruled;
- 17 6. Defendants' objections from page 32 at line 24, through page 34 at line 22
18 regarding foundation, lack of personal knowledge, and the rule of
19 completeness, are all overruled;
- 20 7. Defendants' objections from page 35 at line 14, through page 36 at line 9
21 regarding foundation, lack of personal knowledge, and the rule of
22 completeness, are all overruled, but are not admitted for the truth of the
23 matter asserted;
- 24 8. Defendants' objections from page 38 at lines 6 through 18 regarding
25 foundation, as well as the issue of lack of personal knowledge, are both
26 sustained;
- 27 9. Defendants' objections from page 36 at line 18, through page 38 at line 5
28 regarding foundation, as well as the issue of lack of personal knowledge,

1 are both overruled;

2 10. Defendants' objections from page 40 at line 10, through page 42 at line 17
3 regarding foundation, as well as the issue of lack of personal knowledge,
4 are both overruled;

5 11. Defendants' objection from page 42 at line 25, through page 45 at line 1 on
6 the rule of completeness is sustained;

7 12. Defendants' objection from page 48 at line 17, through page 49 at line 12
8 on the issue of relevance is overruled;

9 13. Defendants' objection from page 51 at line 5, through page 56 at line 4 on
10 the rule of completeness is sustained;

11 14. Defendants' objections from page 60 at lines 19 through 24 regarding the
12 rule of completion, foundation, and lack of personal knowledge are all
13 sustained;

14 15. Defendants' objections from page 62 at line 14, through page 64 at line 24
15 regarding foundation, as well as the issue of lack of personal knowledge,
16 are both overruled;

17 16. Defendants' objection from page 66 at lines 4 through 19 on the rule of
18 completeness is sustained;

19 17. Defendants' objections from page 66 at lines 4 through 19 regarding
20 foundation, as well as the issue of lack of personal knowledge, are both
21 overruled;

22 18. Defendants' objections from page 70 at line 20, through page 71 at line 23
23 regarding foundation, as well as the issue of lack of personal knowledge,
24 are both sustained;

25 19. Defendants' objections from page 82 at lines 10 through 15 regarding
26 foundation, as well as the issue of lack of personal knowledge, are both
27 sustained;

28 20. Defendants' objections from page 80 at line 3, through page 82 at line 9

1 regarding foundation, as well as the issue of lack of personal knowledge,
2 are both overruled;

3 21. Defendants' objections from page 82 at line 16, through page 84 at line 1
4 regarding foundation, as well as the issue of lack of personal knowledge,
5 are both overruled;

6 22. Defendants' objection from page 99 at line 9 through page 100 at line 24 on
7 the rule of completeness is sustained;

8 23. Defendants' objection from page 102 at line 15 through page 103 at line 14
9 on the rule of completeness is sustained;

10 24. Defendants' objection from page 107 at line 5, through page 108 at line 25
11 on the issue of legal conclusions is overruled;

12 25. Plaintiffs' objection to Defendants' counter-designations from page 109 at
13 line 3 to page 114 at line 5, on the issue of scope is overruled.

14 **D. May 22, 2017 Deposition of Michele Reagan**

15 1. Defendants' objection from page 34 at line 25, through page 34 at line 6 on
16 the rule of completeness is sustained;

17 2. Defendants' objection from page 37 at line 21, through page 38 at line 17
18 on the rule of completeness is sustained;

19 3. Defendants' objection from page 42 at line 17, through page 43 at line 3 on
20 the issue of legislative privilege is overruled;

21 4. Defendants' objection from page 46 at line 14, through page 47 at line 14
22 on the issue of legislative privilege is overruled;

23 5. Defendants' objection from page 53 at lines 15 through 19 on the issue of
24 lack of personal knowledge is overruled;

25 6. Defendants' objection from page 53 at line 24, through page 54 at line 9
26 regarding the Plaintiffs' misstatement of the contents of a document is
27 overruled;

28 7. Defendants' objection from page 54 at lines 14 through 24 on the issue of

1 lack of personal knowledge is overruled;

2 8. Defendants' objection from page 103 at lines 7 through 14 on the issue of
3 lack of personal knowledge is overruled;

4 9. Defendants' objection from page 98 at line 22, through page 99 at line 3 on
5 the issue of personal knowledge is overruled;

6 10. Defendants' objections from page 111 at line 2, through page 114 at line 11
7 regarding calls for legal conclusions, as well as the issue of lack of personal
8 knowledge, are both overruled.

9 **E. June 1, 2017 Deposition of Donald Shooter**

10 1. Defendants' objection from page 19 at line 8, through page 20 at line 3, and
11 page 54 at line 10, through page 55 at line 9 is overruled.

12 2. Defendants' objection from page 40 at line 25, through page 42 at line 8 on
13 the rule of completeness is sustained;

14 3. Defendants' objection from page 49 at lines 17 through 25 due to Plaintiffs'
15 allegedly misstating the content of a bill amendment is overruled;

16 4. Plaintiffs' objection on page 92 from lines 14 through 23 on the lack of
17 foundation on Defendant's counter-designation is sustained;

18 5. Defendants' objections from page 83 at line 17 through page 87 at line 4 on
19 the issues of Shooter's lack of personal knowledge and Plaintiff's alleged
20 calls for legal conclusion are overruled;

21 6. Defendants' objection from page 117 at lines 9 through 16 on the issue of
22 Shooter's lack of personal knowledge is overruled;

23 7. Plaintiffs' objection to Defendants' counter-designation from page 96 at
24 line 22, through page 98 at line 4, and from page 98 at line 9, through page
25 99 at line 22 on the issues of foundation and Shooter's lack of personal
26 knowledge is sustained;

27 8. Plaintiffs' objection to Defendants' counter-designation from page 112 at
28 lines 1 through 17 on the rule of completeness is sustained.

F. May 4, 2017 Deposition of Eric Spencer

1. Defendants' objection from page 8 at line 8, through page 11 at line 1 on the rule of completeness is sustained;
2. Defendants' objection from page 20 at line 20, through page 26 at line 15 on the rule of completeness is sustained;
3. Defendants' objection from page 26 at line 23, through page 27 at line 13 on the rule of completeness is sustained;
4. Defendants' objection from page 62 at line 7, through page 66 at line 13 on the rule of completeness is sustained;
5. Defendants' objections from page 88 at line 20, through page 90 at line 4 on relevance, as well as the issue of lack of personal knowledge, are both overruled;
6. Defendants' objection from page 90 at line 16, through page 91 at line 10 on the rule of completeness is sustained;
7. Defendants' objection from page 92 at line 25, through page 94 at line 17 on relevance is sustained;
8. Defendants' objection from page 96 at lines 7 through 14 on relevance is sustained;
9. Defendants' objection from page 98 at line 9, through page 100 at line 18 on relevance is sustained;
10. Defendants' objection from page 102 at line 4, through page 107 at line 10 on relevance is overruled.

G. June 13, 2017 Deposition of Robyn Stallworth-Pouquette:

1. Plaintiffs' objection to Defendants' counter-designation from page 28 at line 20, through page 33 at line 1 regarding scope, as well as the rule of completeness, are both overruled;
2. Plaintiffs' objection to Defendants' counter-designation from page 35 at line 11, through page 36 at line 18 regarding scope, as well as the rule of

- 1 completeness, are both overruled;
- 2 3. Plaintiffs' objection to Defendants' counter-designation from page 38 at
- 3 line 22, through page 39 at line 25 regarding scope, as well as the rule of
- 4 completeness, are both overruled;
- 5 4. Plaintiffs' objection to Defendants' counter-designation from page 40 at
- 6 lines 4 through 10 regarding scope, as well as the rule of completeness, are
- 7 both overruled;
- 8 5. Plaintiffs' objection to Defendants' counter-designation from page 41 at
- 9 line 20, through page 42 at line 24 regarding scope, as well as the rule of
- 10 completeness, are both overruled;
- 11 6. Plaintiffs' objection to Defendants' counter-designation from page 43 at
- 12 lines 4 through 11 regarding scope, as well as the rule of completeness, are
- 13 both overruled;
- 14 7. Plaintiffs' objection to Defendants' counter-designation from page 43 at
- 15 line 18, through page 44 at line 6 regarding scope, as well as the rule of
- 16 completeness, are both overruled;
- 17 8. Plaintiffs' objection to Defendants' counter-designation from page 44 at
- 18 line 10, through page 45 at line 16 regarding scope, as well as the rule of
- 19 completeness, are both overruled;
- 20 9. Plaintiffs' objection to Defendants' counter-designation from page 51 at
- 21 lines 6 through 13 regarding scope, as well as the rule of completeness, are
- 22 both overruled;
- 23 10. Plaintiffs' objection to Defendants' counter-designation from page 59 at
- 24 line 3, through page 60 at line 13 regarding scope, as well as the rule of
- 25 completeness, are both overruled;
- 26 11. Plaintiffs' objection to Defendants' counter-designation from page 62 at
- 27 line 10, through page 63 at line 17 regarding scope, as well as the rule of
- 28 completeness, are both overruled;

12. Plaintiffs' objection to Defendants' counter-designation from page 65 at line 9, through page 66 at line 6 regarding scope, as well as the rule of completeness, are both overruled;
13. Plaintiffs' objection to Defendants' counter-designation from page 94 at line 11, through page 95 at line 19 regarding scope, as well as the rule of completeness, are both overruled;
14. Plaintiffs' objection to Defendants' counter-designation from page 111 at line 24, through page 112 at line 2 regarding scope, as well as the rule of completeness, are both overruled;
15. Plaintiffs' objection to Defendants' counter-designation from page 112 at line 4, through page 113 at line 9 regarding scope, as well as the rule of completeness, are both overruled;
16. Plaintiffs' objection to Defendants' counter-designation from page 125 at line 9, through page 127 at line 15 regarding scope, as well as the rule of completeness, are both overruled;
17. Plaintiffs' objection to Defendants' counter-designation from page 131 at line 13, through page 132 at line 8 regarding scope, as well as the rule of completeness, are both overruled;
18. Plaintiffs' objections to Defendants' counter-designation from page 31 at line 14, through page 32 at line 1 on the issue of hearsay, as well as the lack of personal knowledge, are both sustained;
19. Plaintiffs' objection to Defendants' counter-designation from page 38 at line 22, through page 39 at line 17 on the issue of hearsay is sustained;
20. Plaintiffs' objections to Defendants' counter-designation from page 42 at lines 8 through 14 on the issues of hearsay, foundation, and lack of personal knowledge, are all sustained;
21. Plaintiffs' objections to Defendants' counter-designation from page 42 at lines 19 through 24 regarding foundation, as well as the issue of lack of

1 personal knowledge, are both sustained;

2 22.Plaintiffs' objection to Defendants' counter-designation from page 44 at
3 line 10, through page 45 at line 16 on the issue of hearsay is sustained;

4 23.Plaintiffs' objection to Defendants' counter-designation from page 51 at
5 lines 6 through 13 on the issue of hearsay is sustained;

6 24.Plaintiffs' objection to Defendants' counter-designation from page 59 at
7 line 3, through page 60 at line 13 on the issue of hearsay is sustained;

8 25.Plaintiffs' objection to Defendants' counter-designation from page 62 at
9 line 10, through page 63 at line 17 on the issue of hearsay is sustained;

10 26.Plaintiffs' objection to Defendants' counter-designation from page 11 at
11 line 24, through page 112 at line 2 on the issue of hearsay is sustained;

12 27.Plaintiffs' objection to Defendants' counter-designation from page 112 at
13 lines 4 through 10 on the issue of hearsay is sustained;

14 28.Plaintiffs' objection to Defendants' counter-designation from page 65 at
15 line 9, through page 6 at line 6 on the issue of hearsay is sustained;

16 29.Plaintiffs' objections to Defendants' counter-designation from page 94 at
17 line 11, through page 95 at line 19 on the issues of hearsay and lack of
18 foundation are both sustained;

19 30.Plaintiffs' objection to Defendants' counter-designation from page 112 at
20 lines 12 through 15 for lack of foundation is sustained;

21 31.Defendants' objection from page 23 at lines 16 through 19 for lack of
22 personal knowledge is sustained;

23 32.Defendants' objection from page 24 at lines 1 through 3 for lack of
24 personal knowledge is overruled;

25 33.Defendants' objection from page 24 at lines 4 through 5 for lack of
26 personal knowledge is overruled;

27 34.Defendants' objection from page 27 at lines 4 through 12 for lack of
28 personal knowledge is overruled.

H. May 9, 2017 Deposition of Victor Vasquez:

1. Defendants' objection from page 15 at line 14, through page 18 at line 13, on the issue of narrative is overruled;
2. Defendants' objection from page 66 at line 22, through page 70 at line 8, on the issue of relevance is overruled;
3. Defendants' objections from page 58 at line 4, through page 59 at line 3, on the issues of narrative and relevance are both overruled;
4. Defendants' objections from page 69 at line 23, through page 69 at line 3, on the issues of narrative and relevance are both overruled.

I. May 10, 2017 Deposition of Alexis Tameron

1. Defendants' objection from page 34 at line 4, through page 35 at line 11, for use of First Amendment privilege, is overruled;
2. Defendants' objections from page 52 at line 18, through page 53 at line 3, regarding foundation and lack of personal knowledge, are both overruled;
3. Plaintiffs' objections from page 72 at line 17, through page 75 at line 5, regarding foundation, hearsay, and impermissible opinion testimony, are all overruled;
4. Plaintiffs' objections from page 82 at line 17, through page 83 at line 2, regarding foundation, speculation, and hearsay, are all overruled;
5. Plaintiffs' objections from page 83 at line 9 through line 13, regarding foundation, speculation, and hearsay, are all overruled;
6. Plaintiffs' objections from page 83 at line 14 through line 24, regarding foundation and speculation, are both overruled;
7. Plaintiffs' objection from page 83 at line 25, through page 84 at line 2, regarding foundation, is overruled;
8. Plaintiffs' objection to Defendants' designations from page 88 at line 25, through page 89 at line 17, regarding hearsay, is sustained;
9. Defendants' objections from page 160 at line 19, through page 162 at line

1 7, regarding foundation, improper opinion, and calls for legal conclusion,
2 are all overruled;

3 10. Plaintiffs' objections to Defendants' designations from page 91 at line 10
4 through line 18, regarding foundation and speculation, are both overruled;

5 11. Plaintiffs' objection from page 126 at line 4 through line 6, regarding
6 improper testimony, is overruled;

7 12. Plaintiffs' objections from page 126 at line 10, through page 127 at line 23,
8 regarding foundation, speculation, and improper opinion testimony, are all
9 overruled;

10 13. Plaintiffs' objections from page 133 at line 12 through line 15, regarding
11 form, foundation, speculation, and legal conclusion, are all sustained;

12 14. Defendants' objections to Plaintiffs' counter-designations from page 165 at
13 line 1 through line 16, regarding improper foundation, legal conclusion, and
14 the improper use of opinion testimony, are all sustained;

15 15. Defendant's objection to Plaintiffs' counter-designation from page 147 at
16 line 11, to page 148 at line 10, on the issue of counsel testifying, is
17 sustained;

18 16. Defendants' objection to Plaintiffs' counter-designation from page 34 at
19 line 4, through page 35 at line 11, for use of First Amendment privilege, is
20 overruled.

21 **J. June 6, 2017 Deposition of Spencer Scharff:**

22 1. Defendant's objection from page 17 at line 8 through line 14, on the issue
23 of a statement from counsel, is sustained.

24 **II. Admission of Exhibits Containing Legislator Statements**

25 The Court took under advisement the admissibility of Exhibits 47, 53, 54, 56, 87,
26 and 88, which contain statements by Representative Michelle Ugenti-Rita, pending
27 briefing by the parties. Having considering the parties' briefs (Docs. 390, 396), the Court
28 finds as follows:

1 Exhibits 87 and 88 are admitted into evidence. Defendants' hearsay objection is
2 overruled. Representative Ugenti-Rita's statements made during the public presentation
3 and discussion at an Arizona State Bar continuing legal education seminar are statements
4 of a party opponent. Although she is not a named party, Representative Ugenti-Rita was
5 the sponsor of H.B. 2023. For purposes of the issues associated with the passage of H.B.
6 2023, she was exercising the authority of the State. Her relationship to the State was
7 illustrated by Defendants' argument that her testimony should be given more weight than
8 other evidence on the subject of the discriminatory intent. (Tr. 2313.) Exhibits 87 and 88
9 are not hearsay. Fed. R. Evid. 801(d)(2).

10 Exhibit 47 is not admitted into evidence. Defendants' objection is sustained. An
11 email to Representative Ugenti-Rita from a reporter asking several questions, for which
12 there is no evidence she read and to which she did not respond, is not relevant. Fed. R.
13 Evid. 401-403.

14 Exhibit 53 is admitted into evidence. Defendants' objection is overruled. The
15 email chain between Representative Ugenti-Rita and General Counsel to the Secretary of
16 State is relevant as foundation for the admission of Exhibits 87 and 88. It is evidence that
17 Representative Ugenti-Rita was acting as if she were a party to the litigation. Fed. R.
18 Evid. 401.

19 Exhibit 54 is admitted into evidence. Defendants' Rule 403 objection is overruled.
20 The probative value of the email chain between Representative Ugenti-Rita, legislative
21 staff, and other legislators regarding the scheduling of a stakeholder meeting is not
22 substantially outweighed by a danger of needlessly presenting cumulative evidence. Fed.
23 R. Evid. 403.

24 Exhibit 56 is not admitted into evidence. Defendants' relevance objection is
25 sustained. Fed. R. Evid. 401-403.

26 **III. Expert Witness Testimony of Drs. Allan Lichtman and Jonathan Rodden**

27 Defendants move to exclude the following: (1) Dr. Lichtman's testimony on
28 legislative intent, (2) Dr. Lichtman's testimony on housing discrimination and

1 socioeconomic disparities; (3) Dr. Rodden's testimony on racial disparities in OOP
 2 voting, and (4) Dr. Rodden's testimony on disparities in home mail access. (Doc. 356.)

3 Pursuant to Federal Rule of Evidence 702:

4 A witness who is qualified as an expert by knowledge, skill,
 5 experience, training, or education may testify in the form of
 an opinion or otherwise if:

6 (a) the expert's scientific, technical, or other specialized
 7 knowledge will help the trier of fact to understand the
 evidence or to determine a fact in issue;

8 (b) the testimony is based on sufficient facts or data;

9 (c) the testimony is the product of reliable principles and
 10 methods; and

11 (d) the expert has reliably applied the principles and methods
 to the facts of the case.

12 Rule 702 requires expert testimony to be both relevant and reliable. *Estate of Barabin v.*
 13 *AstenJohnson, Inc.*, 740 F.3d 457, 463 (9th Cir. 2014). Testimony is relevant if "[t]he
 14 evidence . . . logically advance[s] a material aspect of the party's case," *Cooper v. Brown*,
 15 510 F.3d 870, 942 (9th Cir. 2007), and reliable if it has "a reliable basis in the knowledge
 16 and experience of the relevant discipline," *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S.
 17 137, 149 (1999).

18 When assessing the reliability of expert witness testimony, the court should
 19 consider the non-exhaustive factors identified by the Supreme Court in *Daubert v.*
 20 *Merrell Dow Pharmaceuticals, Inc.*: (1) whether the method "can be (and has been)
 21 tested;" (2) whether the method "has been subjected to peer review and publication;" (3)
 22 the method's "known or potential rate of error;" (4) whether there are "standards
 23 controlling the technique's operation;" and (5) whether the method has "general
 24 acceptance" within the "relevant scientific community." 509 U.S. 579, 592-94 (1993).
 25 "[T]he test of reliability is 'flexible,' and *Daubert*'s list of specific factors neither
 26 necessarily nor exclusively applies to all experts or in every case." *Kumho Tire*, 526 U.S.
 27 at 141.

28 With that said, "[r]ejection of expert testimony is the exception rather than the

1 rule. *Daubert* did not work a ‘seachange over federal evidence law,’ and ‘the trial court’s
 2 role as gatekeeper is not intended to serve as a replacement for the adversary system.’”
 3 Rule 702 advisory committee note to the 2000 amendment (quoting *United States v.*
 4 *14.38 Acres of Land Situated in Leflore Cty., Mississippi*, 80 F.3d 1074, 1078 (5th Cir.
 5 1996)). Instead, “[v]igorous cross-examination, presentation of contrary evidence, and
 6 careful instruction on the burden of proof are the traditional and appropriate means of
 7 attacking shaky but admissible evidence.” *Daubert*, 509 U.S. at 596.

8 **A. Dr. Lichtman**

9 Defendants’ motion to exclude Dr. Lichtman’s opinions on the ultimate
 10 conclusion of legislative intent is granted. Those ultimate opinions will not be
 11 considered. “Courts routinely exclude as impermissible expert testimony as to intent,
 12 motive, or state of mind.” *Siring v. Or. St. Bd. of Higher Educ. ex rel. E. Or. Univ.*, 927
 13 F. Supp. 2d 1069, 1077 (D. Or. 2013). This is so because:

14 Expert testimony as to intent, motive, or state of mind offers
 15 no more than the drawing of an inference from the facts of the
 16 case. The [fact-finder] is sufficiently capable of drawing its
 17 own inferences regarding intent, motive,
 18 or state of mind from the evidence, and permitting expert
 testimony on this subject would be merely substituting
 the expert’s judgment for the [fact-finder] and would not be
 helpful[.]

19 *Id.*

20 To the extent Defendants seek to exclude other aspects of Dr. Lichtman’s
 21 testimony, or the information he curated to form his opinions, the motion is denied.
 22 Though Dr. Lichtman’s ultimate opinions on legislative intent are not helpful, his
 23 curation of material facts surrounding the legislative history and his underlying research
 24 are both helpful and reliable.

25 Defendants’ motion to exclude Dr. Lichtman’s testimony about housing
 26 discrimination and socioeconomic disparities is denied. Dr. Lichtman is a Distinguished
 27 Professor of History at American University in Washington, D.C., where he has been
 28 employed for 42 years. He formerly served as Chair of the History Department and

1 Associate Dean of the College of Arts and Sciences at American University. He received
 2 his B.A. in History from Brandeis University in 1967 and his Ph.D. in History from
 3 Harvard University in 1973, with a specialty in the mathematical analysis of historical
 4 data. Dr. Lichtman's areas of expertise include political history, electoral analysis, and
 5 historical and quantitative methodology. Dr. Lichtman also has worked as a consultant or
 6 expert witness for plaintiffs and defendants in more than 80 voting and civil rights cases,
 7 and has testified several times on issues of intentional discrimination and application of
 8 Section 2 of the Voting Rights Act ("VRA") of 1965. The Court finds that Dr. Lichtman
 9 is adequately qualified to opine on these matters. Defendants' critiques go to the weight
 10 of Dr. Lichtman's testimony, not to its admissibility.

11 **B. Dr. Rodden**

12 Defendants' motion to exclude Dr. Rodden's opinions on racial disparities in OOP
 13 voting and disparities in home mail delivery is denied. Dr. Rodden is a tenured Professor
 14 of Political Science at Stanford University and the founder and director of the Stanford
 15 Spatial Social Science Lab, a center for research and teaching with a focus on the analysis
 16 of geo-spatial data in the social sciences. Prior to joining the Stanford faculty, Dr.
 17 Rodden was the Ford Professor of Political Science at the Massachusetts Institute of
 18 Technology. He received his Ph.D. from Yale University and his B.A. from the
 19 University of Michigan, Ann Arbor, both in political science.

20 Dr. Rodden has expertise in the use of large data sets and geographic information
 21 systems to analyze aspects of political representation. He has developed a national data
 22 set of geo-coded precinct-level election results that has been used extensively in policy-
 23 oriented research related to redistricting and representation. He also has worked
 24 extensively with Census data from the United States and other countries.

25 Dr. Rodden has published papers on political geography and representation in a
 26 variety of academic journals and has been featured in popular publications like the Wall
 27 Street Journal, the New York Times, and Boston Review. Dr. Rodden also has testified
 28 as an expert witness in recent election law cases.

1 The Court finds Dr. Rodden's use of a combination of individual-level and
2 aggregate data analyses to assess racial disparities in OOP voting, both of which have
3 been accepted in previous cases analyzing questions under the VRA, to be helpful and
4 reliable. Defendants' criticisms go to weight, not admissibility.

5 Dr. Rodden also employed standard and accepted methods in his field to analyze
6 the "mailability" of Arizona's non-metropolitan counties in order to estimate the
7 populations that likely would be most affected by H.B. 2023's ballot collection
8 restrictions. Though somewhat imprecise, the Court finds his method of analysis to be
9 generally reliable and based on sufficient data given the circumstances, though the Court
10 is mindful of the limitations of his methods. Defendants' criticisms again go to weight,
11 not admissibility.

12 **IT IS ORDERED** as follows:

13 1. The parties' objections to the admissibility of various deposition designations
14 are addressed as stated herein.

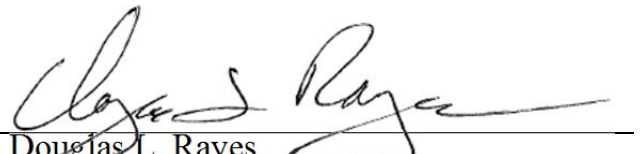
15 2. Plaintiffs' Exhibits 53, 54, 87, and 88 are admitted into evidence.

16 3. Plaintiffs' Exhibits 47 and 56 are not admitted into evidence.

17 4. Defendants' motion to exclude Dr. Lichtman's expert witness testimony (Doc.
18 356) is **GRANTED IN PART** and **DENIED IN PART** as explained herein.

19 5. Defendants' motion to exclude Dr. Rodden's expert witness testimony (Doc.
20 356) is **DENIED** as explained herein.

21 Dated this 8th day of May, 2018.

22
23
24
25 
26 Douglas L. Rayes
27 United States District Judge
28

General Information

Court	United States District Court for the District of Arizona; United States District Court for the District of Arizona
Federal Nature of Suit	Civil Rights - Voting[441]
Docket Number	2:16-cv-01065
Status	CLOSED