

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

O. JOHN BENISEK, et al.,

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Plaintiffs,

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v.

CIVIL NO. JKB-13-3233

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LINDA H. LAMONE, et al.,

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Defendants.

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ORDER

Defendants move, ECF No. 215, to exclude portions of the Declaration of Micah Stein in Support of Plaintiffs’ Supplemental Summary Judgment Brief, claiming that (1) the attached campaign finance reports are not capable of being admitted at trial, *see* Fed. R. Civ. P. 56 (c)(2), and (2) Mr. Stein’s collective analysis constitutes inadmissible lay opinions, *see* Fed. R. Evid. 702. We note that, in a bench trial, certain rules of evidence are relaxed because the rules assume that a trial judge is able to weigh the evidence, avoid improper inferences, and, if it becomes necessary, strike any inadmissible evidence. *Schultz v. Butcher*, 24 F.3d 626, 632 (4th Cir. 1994); *see United States v. Wood*, 741 F.3d 417, 425 (4th Cir. 2013) (“[B]ecause the district court was also the trier of facts, the district court’s evidentiary gatekeeping function was relaxed, and the district court was in the best position to decide the proper weight to give the expert opinions.”); *see also In re Salem*, 465 F.3d 767, 777 (7th Cir. 2006) (“[W]here the factfinder and the gatekeeper are the same, the court does not err in admitting the evidence subject to the ability later to exclude it or disregard it if it turns out not to meet the standard of reliability established

by Rule 702.”); *United States v. Brown*, 415 F.3d 1257, 1268–69 (11th Cir. 2005) (“There is less need for the gatekeeper to keep the gate when the gatekeeper is keeping the gate only for himself.”); *Allison v. McGhan Med. Corp.*, 184 F.3d 1300, 1310 (11th Cir. 1999) (noting that judges must determine the admissibility of expert testimony to avoid “dumping a barrage of questionable scientific evidence on a jury”). Because a panel of judges will hear the issues in this case, there is no need to exclude the declaration at this point. If determined to be problematic, the Court can simply strike the evidence later.

For the reasons set forth above, it is hereby ORDERED:

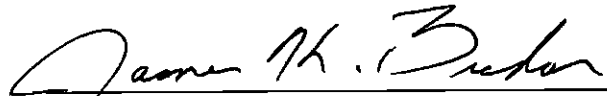
Defendants’ Motion to Exclude Portions of the Declaration of Micah D. Stein is DENIED.

Judge Russell joins in this Order.

Judge Niemeyer would defer ruling until during the hearing on October 4, 2018.

DATED this 2 day of October, 2018.

BY THE COURT:

A handwritten signature in black ink, appearing to read "James K. Breder", written over a horizontal line.

James K. Breder
Chief Judge