

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown  
Clerk of Supreme Court

Jesse Law, an individual; Michael McDonald; an individual; James DeGraffenreid III, an individual; Durward James Hindle III, an individual; Eileen Rice, an individual; Shawn Meehan, an individual, as candidates for presidential electors on behalf of Donald J. Trump,

Appellants,

vs.

Judith Whitmer, an individual; Sarah Mahler, an individual; Joseph Throneberry, an individual; Artemesia Blanco, an individual; Gabrielle D'Ayr, an individual; and Yvanna Cancela, an individual, as candidates for presidential electors on behalf of Joseph R. Biden, Jr.,

Respondents.

Case No. 82178

First Judicial District Court Case  
No.: 20 OC 001631B  
(Assigned to Judge James T. Russell)

**EMERGENCY MOTION UNDER NRAP 27(e)**  
**TO EXPEDITE APPEAL**

(Immediate Relief Requested—12/8/20)

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## N.R.A.P 26.1 DISCLOSURE

Pursuant to N.R.A.P. 26.1, the undersigned counsel of record certifies that there are no persons or entities as described in N.R.A.P. 26.1(a) that must be disclosed.

Dated this 7<sup>th</sup> day of December, 2020.

### WEIR LAW GROUP, LLC



By \_\_\_\_\_

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Our society cannot claim to be free unless its elections are fair and there are meaningful procedures in place to ensure transparency and confirm the results. Our election officials cannot claim that an election is fair if they have intentionally or negligently allowed tens of thousands of illegal or improper ballots to be cast and counted. Appellants utilized the specific procedures afforded by Nevada law to contest Nevada's 2020 Presidential Election ("Election"). Appellants presented substantial evidence that tens of thousands of illegal or improper ballots were cast and counted in the Election. The District Court erred when it denied the Contest and it used judicial gloss to increase the burden Contestants were required to meet to show that its evidence of voter fraud and other improprieties cast a reasonable doubt on the result of the Election.

Appellants seek review of the District Court's Judgment to ensure that all Nevadan voters have confidence in their state's elections. This appeal is urgent, as no slate of presidential electors will be eligible to take their oaths or cast their ballots until this Contest is resolved here.<sup>1</sup> Consequently, Appellants move this Court on an expedited basis, pursuant to Nevada Rules of Appellate Procedure Rule 27(e), to expedite this appeal before Nevada sends its six electors to the United States Electoral College on December 14, 2020.<sup>2</sup>

## **I. INTRODUCTION**

Nevada law allows for election results to be contested through an expedited procedure.<sup>3</sup> Pursuant to Nevada election contest law, Appellants timely filed a Statement of Contest pursuant to NRS 293.410 on November 17, 2020. Because Nevada must designate its electors for the Electoral College by December 8, 2020 in order to take advantage of the Federal Safe Harbor provisions of 3 U.S. Code § 5, the District Court set the hearing for trial on the Contest for December 3, 2020.

Appellants presented evidence of thousands of illegal and improper votes that were cast and counted in the Election. Those illegal and improper votes were in an amount that is greater than the margin between the contestant and the defendant. Further, the totality of the

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<sup>1</sup> It can be readily seen that unless a strict time schedule is required and adhered to... so also, after a general election it would not be possible to make certain who were the elected officials to be sworn in on the dates provided by law. *A Study of the Election Laws of Nevada Relating to Primary and General Elections, Bulletin No. 42*, Nevada Legislative Counsel Bureau, January 1960, Carson City, page 14.

<sup>2</sup> 3 U.S. Code § 5

<sup>3</sup> *See* NRS 293.407 *et seq.*

evidence was sufficient to raise reasonable doubt as to the outcome of the Election.

The District Court however failed to properly review and consider the evidence, resulting in a denial of the Contest. It is clear from the record that there is sufficient evidence of illegal and improper votes cast and counted in Nevada in an amount sufficient to overturn or annul the results of the Election. 2020.

## **II. PROCEDURAL BACKGROUND**

On November 17, 2020, Appellants timely filed a Statement of Contest of the November 3, 2020 Presidential Election pursuant to NRS 293.407 and 293.410 (“Statement of Contest”) in the First Judicial District Court for Carson City, Nevada.<sup>4</sup> The Statement of Contest was tried by the District Court by hearing on December 3, 2020. On December 4, 2020, the District Court issued an Order denying Appellants’ Contest (“Order”).<sup>5</sup>

## **III. THIS APPEAL SHOULD BE EXPEDITED**

Pursuant to Nevada Rules of Appellate Procedure (“NRAP”), Rule 27(e), Appellant will suffer irreparable harm if the requested relief is not granted and Appellate wins this appeal. On December 4, 2020, within hours of receipt of the Order, the Notice of Appeal was filed electronically with the District Court. As certified below, the movant notified the clerk of the Supreme Court and opposing counsel of the instant request. Further, movant served the motion at the earliest possible time.

Petitioners request that an expedited briefing schedule be set by

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<sup>4</sup> See Appendix of Exhibits (“Appendix”), Ex. 1.

<sup>5</sup> See Appendix, Ex. 2.

this Court so that the matter can be fully briefed and set for argument this week.

#### **IV. CONCLUSION**

For the forgoing reasons, Appellants respectfully request that this Court issue a stay and expedite its review of this appeal.

Dated: this 7<sup>TH</sup> day of December, 2020      **WEIR LAW GROUP, LLC**

BY: 

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## NRAP 27(e) CERTIFICATE

I hereby certify that this Emergency Motion for Relief Under NRAP 27(e) relies upon issues raised by Appellants in the District Court, and otherwise complies with the provisions of NRAP 27(e).

As set forth in the body of this motion, emergency relief is needed immediately given the Electoral College meets on December 14, 2020. The telephone numbers and office addresses of the attorneys for the parties are as follows:

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According to the attached certificate of service, all parties through their counsel of records have been served electronically through this Court's electronic filing system, and by email as indicated. Furthermore, the undersigned notified the parties by email on December 4, 2020 of the pending appeal and on December 7, 2020 of the emergency motion and the basis for the same. Then undersigned's office also informed the Clerk of the emergency motion on the same day.

Dated this 7<sup>th</sup> day of December, 2020

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## CERTIFICATE OF SERVICE

I hereby certify that the foregoing **EMERGENCY MOTION FOR RELIEF UNDER NRAP 27(e) TO EXPEDITE APPEAL** was filed electronically with the Nevada Supreme Court on the 7<sup>th</sup> day of December, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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By

  
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**EXHIBITS TO EMERGENCY MOTION UNDER NRAP 27(e)**  
**TO EXPEDITE APPEAL**

<b>Exhibit No.</b>	<b>Description</b>
<b>1</b>	<b>Statement of Contest of the November 3, 2020 Presidential Election Pursuant to NRS 293.407 and 293.410</b>
<b>2</b>	<b>Order Granting Motion to Dismiss Statement of Contest</b>

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## **EXHIBIT “1”**

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IN THE FIRST JUDICIAL DISTRICT COURT  
CARSON CITY, NEVADA

Jesse Law, an individual; Michael McDonald; an individual; James DeGraffenreid III, an individual; Durward James Hindle III, an individual; Eileen Rice, an individual; Shawn Meehan, an individual, as candidates for presidential electors on behalf of Donald J. Trump.

Contestants,

vs.

Judith Whitmer, an individual; Sarah Mahler, an individual; Joseph Throneberry, an individual; Artemesia Blanco, an individual; Gabrielle D'Ayr, an individual; and Yvanna Cancela, an individual, as candidates for presidential electors on behalf of Joseph R. Biden, Jr..

Defendants.

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DEPUTY

Case No. 20 OC 00143 18  
Dept. II

STATEMENT OF CONTEST OF THE  
NOVEMBER 3, 2020 PRESIDENTIAL  
ELECTION PURSUANT TO NRS  
293.407 AND 293.410

STATEMENT OF CONTEST

This election contest arises from the substantial irregularities, improprieties, and fraud that occurred in Nevada's 2020 general election for the office of President of the United States. Nevada election officials developed and implemented an election

1 system that was highly susceptible to fraud and abuse. Indeed, Registrar Joe Gloria  
2 acknowledged to the Clark County Commission his staff "discovered discrepancies  
3 that we cannot explain" and cannot be remedied with a recount.<sup>1</sup>

4 Even though election officials were warned about these dangers, they persisted  
5 in implementing an election plan devoid of protections that could have prevented or  
6 discouraged malfeasance from third parties. Consequently, the fraud and abuse came  
7 with the election. This contest is the natural result, as evidence will show that the  
8 nature and scale of that fraud and abuse renders the purported results of the Nevada  
9 election illegitimate.

10 The contestants, Michael McDonald, an individual; James DeGraffenreid, an  
11 individual; Jim Hindle, an individual; Jesse Law, an individual; Eileen Rice, an  
12 individual; Shawn Meehan, an individual (hereinafter collectively, "Contestants")  
13 state and allege the following for their election contest against Judith Whitmer, an  
14 individual; Sarah Mahler, an individual; Joseph Throneberry, an individual;  
15 Artemesia Blanco, an individual; Gabrielle D'Ayr, an individual; and Yvanna Cancela,  
16 an individual, as candidates for presidential electors on behalf of Joseph R. Biden, Jr,  
17 (hereinafter collectively, "Defendants") pursuant to NRS 293.407:

#### 18 JURISDICTION AND PARTIES

19 1. This Court has jurisdiction over this matter pursuant to NRS 293.407(2).

20 2. Donald J. Trump is the President of the United States of America and  
21 candidate for reelection to that office in the general election of November 3, 2020 (the  
22 "Election").

23 3. Contestant Michael McDonald is a resident and registered voter in the  
24 State of Nevada, and a candidate Presidential Elector for Donald J. Trump.

25 4. Contestant James DeGraffenreid is a resident and registered voter in the  
26 State of Nevada, and a candidate presidential elector for Donald J. Trump.  
27

28 <sup>1</sup> Clark County Commission Meeting, November 16, 2020.

5. Contestant Jim Hindle is a resident and registered voter in the State of Nevada, and a candidate presidential elector for Donald J. Trump.

6. Contestant Jesse Law is a resident and registered voter in the State of Nevada, and a candidate presidential elector for Donald J. Trump.

7. Contestant Eileen Rice is a resident and registered voter in the State of Nevada, and a candidate presidential elector for Donald J. Trump.

8. Contestant Shawn Meehan is a resident and registered voter in the State of Nevada, and a candidate presidential elector for Donald J. Trump.

9. Joseph R. Biden, Jr. is a candidate for the President of the United States of America in the Nevada general election of November 3, 2020.

10. Defendants Judith Whitmer, an individual; Sarah Mahler, an individual; Joseph Throneberry, an individual; Artemesia Blanco, an individual; Gabrielle D'Ayr, an individual; and Yvanna Cancela are the candidates for presidential elector chosen by Joseph R. Biden, Jr..

11. Subsequent to the Election, the news media declared that Joseph Biden won the Election in Nevada and would be the recipient of Nevada's six (6) electoral votes for the office of President of the United States of America. The Nevada Secretary of State has yet to make a certification of the election.

## BACKGROUND

12. Contestants repeat and reallege all foregoing allegations and incorporate the same by reference as if fully set forth herein.

13. Citing the widespread effects of the COVID19 pandemic, and concerns over community spread, and recommendations for individuals to socially distance from one another, after the state primary election, the Governor called a special session of the State Legislature for the express purpose of changing Nevada's voting procedures.

14. As a result, during the 32<sup>nd</sup> Special Session of the Nevada Legislature, the Legislature passed Assembly Bill ("AB") 4, which for the first time in the history

1 of the State of Nevada, required that unsolicited ballots be mailed to all registered  
2 voters in the state and established a procedure for voters to cast their ballots by mail.  
3 An overwhelming number of voters received multiple ballots for themselves and  
4 others. During the Election, state election boards received a combination of ballots  
5 from voters who chose to vote by mail, chose to vote in-person during various "early  
6 voting" periods, or chose to vote in person on election day – November 3, 2020.

7 15. The State of Nevada received 8.5 times more mail-in ballots in the  
8 Election (671,899) as it did in the 2016 election (78,572). Clark County, Nevada  
9 received more than 10 times more ballots in the 2020 election (453,248) than it did in  
10 the 2016 election (44,387).

11 16. Clark County election officials and election personnel were not prepared  
12 to accurately and efficiently verify the signatures on the mail-in ballots with election  
13 personnel as required by Nevada law. Accordingly, Clark County unilaterally  
14 decided to use a signature verification machine to verify mail-in ballot signatures in  
15 lieu of election personnel.

16 17. Mail-in ballots cast in Clark County, Nevada were processed through a  
17 machine manufactured by Runbeck Election Services referred to as the Agilis Ballot  
18 Sorting System ("Agilis"), which processed and scanned the ballots for the purposes  
19 of (a) recording the fact that the voter cast a vote; (b) sorting the ballots by precinct;  
20 and (c) matching voters' ballot envelope signatures to exemplars maintained by the  
21 Clark County Registrar of Voters.

22 18. The reliability of signature verification machines to analyze mail-in  
23 ballots has not been established through scientific study and testing to a degree that  
24 warrants their use in elections. There is very little scientific literature to consult to  
25 verify the accuracy of signature verification voting machines or to suggest that it is  
26 prudent to use them in elections. Election experts and computer scientists find that  
27 signature verification machines are potentially problematic for use in elections even  
28 if they are operated flawlessly and in strict conformance with the manufacturer's



1 specifications. Further, there appears to be little or no regulation and certification  
2 of signature verification machines in elections as compared to the longstanding,  
3 robust, and unparalleled regulation and certification of gambling machines in  
4 Nevada.

5 19. It appears that there have been insufficient or non-existent post-election  
6 audits of signature verification voting machines that have been used in elections.  
7 Election officials were warned not to use signature verification machines in the  
8 Election to evaluate mail-in ballot signatures and to instead increase staff to handle  
9 the expected surge.

10 20. In light of the stated intention of Nevada election officials to ignore the  
11 concerns with signature verification machines and to proceed with the use of the  
12 Agilis machine, lawsuits were filed prior to the Nevada election in an attempt to  
13 enjoin the use of the Agilis signature verification machines for evaluating mail-in  
14 ballot signatures. Nevada election officials opposed the lawsuits. In response to the  
15 concerns, Nevada election officials did nothing to safeguard and ensure that mail-in  
16 ballots were properly distributed, verified or counted.

17 21. Clark County was the only county in the State of Nevada to utilize the  
18 Agilis machine during the Election. Nevada utilized the Agilis machine to verify over  
19 130,000 mail-in ballot signatures in Clark County. The Agilis machine was not  
20 operated in conformance with the manufacturer's recommendations in at least two  
21 respects. First, the signature images on file with the State, which were used by the  
22 Agilis machine to compare to the signatures on the outside of the mail-in ballots, were  
23 of a lower image quality than suggested by the manufacturer in order to allow the  
24 machine to operate properly. Second, the setting of the Agilis machine was altered  
25 or adjusted by Nevada election officials in a manner that was lower than the  
26 manufacturer's recommendations and therefore unreliable.

27 22. The Agilis machine was not used by Clark County to simply flag  
28 questionable signatures for further review by election personnel. It was used to

1 entirely replace signature verification by election personnel with respect to over  
2 130,000 mail-in ballot envelope signatures. Other states that utilize the Agilis  
3 machine for signature verification machine do not allow the machine to make the  
4 ultimate decision on which mail-in ballots should be forwarded for counting. Rather,  
5 these other states use the Agilis machine to flag the most obvious signature  
6 verification discrepancies so that trained election personnel can review those mail-in  
7 ballots more carefully.

8 23. Not surprisingly, the Agilis machine performed erratically and the false  
9 negatives on signature matches (instances when the Agilis machine incorrectly  
10 rejected a signature) were at such a high rate that it was not reasonable for the State  
11 of Nevada or Clark County to rely on it for signature verification conclusions in any  
12 meaningful way, especially since there was no method or means to test or correct for  
13 false positives (instances when the Agilis machine incorrectly matched a signature).  
14 In short, the machine's malfunction made it inherently unreliable from a scientific  
15 perspective for unilaterally approving or rejecting signatures using its artificial  
16 intelligence protocols. Nevada election officials, however, evidently relied exclusively  
17 on the machine to verify over 130,000 mail-in ballot signatures without any further  
18 review of those mail-in ballots by trained election personnel.

19 24. Election Department procedures were poorly explained and  
20 inconsistently applied leaving the process unreliable, susceptible to failure, and  
21 potential malfeasance. Workers who questioned deviations were ignored or brushed  
22 off by other staff. For example, initially, same-day registrants were required to  
23 provide a Nevada photographic identification at early voter polling locations. Later,  
24 poll workers at some early voter polling locations unilaterally decided to allow same-  
25 day registrants to provide proof of a DMV appointment in place of a Nevada  
26 photographic identification. Consequently, voters were treated differently based on  
27 when and where they voted. Additionally, voters who insisted they did not mail in  
28 their ballot and wanted to vote in-person were treated differently depending on which

1 poll location they visited and when. Some voters were allowed to vote provisionally  
2 while others were turned away.

3 25. During in-person voting – whether during early voting periods or on  
4 election day, the computer system used by kiosk workers to check voters in  
5 consistently malfunctioned.

6 26. During in-person voting – whether during various early voting periods  
7 or on election day – all in-person voters in Nevada cast their ballots on computerized  
8 voting machines, which were also utilized in other jurisdictions throughout the  
9 United States. The voting machines and printers consistently malfunctioned.

10 27. During the Election, many ballots in the State of Nevada were cast (or  
11 categorized by election personnel) as “provisional ballots.” Voters were allowed to  
12 cast provisional ballots in-person if they could not satisfy address or signature  
13 verification requirements upon arrival at the polling place. They were required to  
14 cast provisional ballots if they made in-person changes to their name, address, date  
15 of birth or party affiliation. Provisional ballots were supposed to be segregated from  
16 the other ballots pending resolution of whatever particular issue affected the  
17 particular ballot. Provisional ballots that could not be cured were supposed to be  
18 “spoiled” or not counted; provisional ballots that were cured were subsequently cast  
19 and those votes officially counted towards candidates’ vote totals.

20 28. During the Election, various groups in the State of Nevada conducted  
21 “voting drives” to encourage the members of Native American communities to vote.  
22 These voting drives were promoted via various social media outlets, and voters were  
23 provided with various “incentives” to cast their vote.

24 29. As of November 16, 2020, the published vote margin in the State of  
25 Nevada between Vice-President Biden and President Trump was 33,596. The  
26 discrepancies and irregularities in this election will eclipse the difference in votes  
27 between the candidates.  
28

1       30. The evidence presented by Contestants in this matter will show that  
2 significant problems plagued the Election in the State of Nevada, showing that the  
3 purported election results lacked integrity and demonstrate that the reported  
4 election results are inherently unreliable.

5       31. Upon the grounds for contest pleaded below, Contestants are entitled to  
6 the relief afforded in NRS 293.417.

7                                 **GROUNDS FOR CONTEST**  

8                                 **CLARK COUNTY'S USE OF THE AGILIS MACHINE**  

9  
10       32. Contestants repeat and reallege all foregoing allegations and incorporate  
11 the same by reference as if fully set forth herein.

12       33. As alleged above, election personnel used the Agilis machine during the  
13 Election in Clark County, Nevada for the purposes of processing and scanning mail-  
14 in ballots.

15       34. In addition to other functions, the Agilis machine was utilized to  
16 compare, through artificial intelligence ("AI"), voter signatures on the mail-in ballot  
17 envelopes to the corresponding voter signature exemplar maintained by the Clark  
18 County Registrar of Voters.

19       35. As of November 16, 2020, Clark County reported receipt of 453,248 mail-  
20 in ballots for the Election. Each and every mail-in ballot received by the Clark  
21 County Election Department was processed and scanned by the Agilis machine. The  
22 Agilis machine rejected approximately 70% of the voter signatures and verified  
23 approximately 30% of the voter signatures accompanying those ballots. These highly  
24 unusual results should have caused the State of Nevada and Clark County to declare  
25 that the machine had malfunctioned and to abandon any reliance on the Agilis  
26 machine for signature verification. It did not.

27       36. The Agilis machine is designed to signature match with a tolerance  
28 setting between 50 and 100. Prior to use during the Election, Election personnel

1 adjusted the tolerance level of the Agilis machines downward, ultimately settling on  
2 40. When they lowered the tolerance level to 40, they failed to do sufficient testing  
3 and calibration to validate the accuracy of the machine at that tolerance level so as  
4 to avoid any false positives on matched signatures.

5 37. The Agilis machine factory specifications requires that signatures be  
6 scanned at a minimum of 200 dots per inch ("dpi") to meet the minimum standards  
7 for the machine's signature matching artificial intelligence technology. Most of the  
8 voter signature exemplars in Clark County against which the Agilis machine  
9 compared the mail-in ballot signatures originated from signatures maintained by the  
10 Nevada Department of Motor Vehicles ("DMV"). The Nevada DMV does not have the  
11 technological capacity to scan signatures at a minimum of 200 dpi and instead scans  
12 signatures at a lower resolution. Therefore, the signature exemplars obtained from  
13 the Nevada DMV are below the minimum resolution required by the Agilis machine  
14 to properly function.

15 38. NRS 293.8874(1), as enacted in Assembly Bill 4, Sec. 4, 32d Special  
16 Session (Nev. 2020), requires "the clerk or an employee in the office of the county  
17 clerk shall check the signature used for the mail ballot in accordance with" detailed  
18 procedures.<sup>2</sup> Those procedures do not include relying on artificial intelligence  
19 software to verify matching signatures. Moreover, neither the Election Ordinance of  
20 Clark County, nor the Nevada State Constitution, make any provision for the  
21 electronic verification of signatures. Rather, human verification is required in every  
22 instance.

23 39. In violation of Nevada law, the Clark County Election Department  
24 allowed the Agilis machine to solely verify 30% of the signatures accompanying the  
25 mail-in ballots without ever having human eyes inspect those signatures.

26  
27 <sup>2</sup> The use of the word "shall" in a statute imposes a mandatory duty. (*Kingdomware Technologies,*  
28 *Inc.*, 136 S.Ct. 1969, 195 L.Ed 2d 334 (2016). *See United States ex rel. Siegel v. Thoman*, 156 U.S.  
353, 359-360, 15 S.Ct. 378, 39 L.Ed. 450 (1895) "When a statute distinguishes between 'may' and  
'shall,' it is generally clear that 'shall' imposes a mandatory duty.")

1       40. Even after the error tolerance setting of the Agilis machine was adjusted  
2 downward, as alleged above, the Agilis machine still rejected 70% of the mail-in ballot  
3 signatures. A 70% rejection rate demonstrates that the Agilis machine is completely  
4 unreliable and that no confidence should be maintained with respect to the 30% of  
5 signatures that the Agilis machine allegedly verified.

6       41. With respect to the estimated 30% of mail-in ballot signatures verified  
7 by the Agilis machine, those estimated 130,000 votes should be invalidated as illegal  
8 votes, since they were verified in violation of NRS 293.8874(1), as enacted in AB 4.

9       42. The signatures rejected by the Agilis machine were then passed to  
10 human election personnel to inspect and verify the signatures.

11       43. Upon information and belief, among the mail-in ballots subject to human  
12 signature inspection, approximately 1% of those were ultimately rejected.

13       44. The evidence in this matter will show that Clark County election  
14 personnel were under immense pressure to "push the votes through" and were  
15 instructed to verify a signature match so long as at least one letter between the ballot  
16 envelope signature and the maintained exemplar appeared to match. Indeed, often  
17 the signature approved by the election officials bore little to no resemblance to the  
18 signature on file Clark County. This method of signature verification is objectively  
19 unreasonable.

20       45. The evidence in this matter will show that the expected rejection rate  
21 during the course of signature comparisons is well in excess of 1%. Therefore, among  
22 the human inspected signatures, far more than 3,188 should have been rejected and  
23 not counted in the vote totals.

24       46. Therefore, incorporating the expected number of signature rejections  
25 through human inspection, as well as invalidation of the ballots whose signatures  
26 were unlawfully verified through the Agilis machine alone, the illegally counted votes  
27 far exceed the difference in the vote counts between Vice-President Biden and  
28 President Trump.

1       47. Clark County's use of the Agilis machine also violated the equal  
2 protection rights of the citizens of Nevada:

3           a. Clark County mail-in voters were treated differently than mail-in  
4 voters in the rest of the state, as Clark County was the only county to utilize the  
5 Agilis machine.

6           b. In-person voters in Clark County were not treated in the same  
7 manner as mail-in voters in that they were not subject to the same system of  
8 signature verification.

9           c. Even among mail-in voters in Clark County, two classes were  
10 created as between those whose signatures were verified by the Agilis machine versus  
11 those who were rejected when, in fact, under AB 4 each and every voter signature in  
12 the State of Nevada was required to be checked and verified by human eyes, with no  
13 provision for electronic or AI verification.

14       48. The issues with the use of the Agilis machine in Clark County, as alleged  
15 above, demonstrate that the election board or members thereof were guilty of  
16 malfeasance under NRS 293.410(2)(a) by:

17           a. Violating Nevada law in using the Agilis machine, rather than  
18 human beings, to verify signature matches for mail-in ballots.

19           b. Utilizing the Agilis machine in a manner inconsistent with its  
20 factory specifications – i.e. altering the error tolerance level and utilizing signature  
21 exemplars at lower than the minimum resolution required for the Agilis machine's  
22 AI function.

23           c. Violating the equal protection rights afforded to the citizens of  
24 Nevada by the Nevada and United States Constitutions.

25       49. The issues with the use of the Agilis machine in Clark County, as alleged  
26 above, demonstrate that illegal or improper votes were cast and counted (NRS  
27 293.410(2)(c)) in an amount that is equal to or greater than the margin between  
28

1 President Trump and Vice-President Biden, or in an amount sufficient to raise  
2 reasonable doubt as to the outcome of the election.

3 50. The issues with the use of the Agilis machine in Clark County, as alleged  
4 above, constitute a malfunction of the machine sufficient to raise reasonable doubt as  
5 to the outcome of the election (NRS 293.410(2)(f)), in that even after lowering the  
6 calibration for error tolerance, the Agilis machine still rejected 70% of mail-in ballot  
7 envelopes for failure of the signature match.

### 8 ELECTRONIC VOTING MACHINES

9 51. Contestants repeat and reallege all foregoing allegations and incorporate  
10 the same by reference as if fully set forth herein.

11 52. During the Election, in-person votes in Nevada were cast on electronic  
12 voting machines.

13 53. The machines used in Nevada were inherently unreliable and  
14 susceptible to being electronically compromised by malicious parties, due to a  
15 shocking lack of physical security and cybersecurity.

16 54. The evidence in this matter will show that during in-person voting in  
17 Nevada, the voting machines regularly "froze," forcing voters to interrupt their voting  
18 process to have the machines rebooted or tended to by election personnel and to have  
19 their individual voter cards reactivated. Some machines had to be removed and  
20 replaced entirely.

21 55. The evidence in this matter will show that during in-person voting, the  
22 printers of the voting machines failed in several different ways: the thermal print  
23 head would fail causing blank sheets where there should have been a record of the  
24 vote cast; the scanner would fail to read the QR codes in order to verify the machine  
25 had cast the votes correctly; and the gears within the printer would fail. Printers often  
26 ran out of paper, which required replacing the whole machine because the paper was  
27 locked inside the machine during the Election. If a printer broke down while printing  
28 a receipt, that receipt would not be printed and that vote count information would not



1 be captured for recording and audit purposes. Ripped and torn paper receipts were  
2 delivered to the election departments.

3 56. The evidence in this matter will show the voting machines used in the  
4 State of Nevada also suffer from a lack of adequate password protection and no data  
5 encryption. The voting data from each voting machine is stored on a removable USB  
6 drive which, without adequate password protection or data encryption, can be altered  
7 with minimal computer and/or hacking skills.

8 57. The evidence in this matter will show that during in-person early voting,  
9 team leaders were required to remove USB drives from machines each night and log  
10 the machine's vote totals (hand write) on a sheet of paper that was turned into the  
11 election department. There were multiple days where the total vote counts provided  
12 on the pre-printed log sheet in the morning did not match the vote counts provided to  
13 the election department the night before. On some days, the vote totaled more than  
14 the machine had logged; and on some days, the vote total was less. In other words,  
15 votes appear to have been added to or deleted from these drives overnight during the  
16 early voting period.

17 58. The issues with the use of the voting machine, as alleged above,  
18 demonstrate that the election board or members thereof were guilty of malfeasance  
19 under NRS 293.410(2)(a) by:

20 a. Failing to adequately update and/or maintain the voting machines  
21 prior to the election.

22 b. Failing to ensure continuous and proper operation of the voting  
23 machines.

24 c. Failure to protect the integrity of voting information through  
25 adequate password and data encryption measures.

26 d. Failure to ensure the integrity of voting information such that vote  
27 hand-tallies matched voting machine logs throughout the voting process.

28 e. Failure to count legal and proper votes.

1        59. The issues with the use of the voting machine, as alleged above,  
2 demonstrate that illegal or improper votes were cast and counted (NRS 293.410(2)(c))  
3 in an amount sufficient to raise reasonable doubt as to the outcome of the election.  
4 The evidence will show that there were no less than 1,000 illegal or improper votes  
5 cast and counted through the use of the voting machine.

6        60. The issues with the voting machine and printers, as alleged above,  
7 demonstrate that all legal and proper votes were not cast and counted (NRS  
8 293.410(2)(c) in an amount sufficient to raise reasonable doubt as to the outcome of  
9 the election. The evidence will show that there were no less than 1,000 legal and  
10 proper votes that were not cast and counted through the use of the voting machine.

11        61. The issues with the use of the voting machine, as alleged above,  
12 constitute a malfunction of the machine sufficient to raise reasonable doubt as to the  
13 outcome of the Election (NRS 293.410(2)(d)).

#### 14                    **OTHER ILLEGAL OR IMPROPER VOTES**

15        62. Contestants repeat and reallege all foregoing allegations and incorporate  
16 the same by reference as if fully set forth herein.

17        63. The evidence in this matter will show that throughout the ballot counting  
18 process commencing on November 3, 2020, Clark County election personnel were  
19 under constant pressure from the Clark County Registrar of Voters to authenticate,  
20 process, and count ballots that presented problems and irregularities.

21        64. Upon information and belief, there are significant numbers of mail-in  
22 ballots received in Nevada from voters who are also known to have voted in other  
23 states. The evidence will show that there were no less than 15,000 of these illegal and  
24 improper votes.

25        65. The evidence in this matter will show that Nevada failed to cure its voter  
26 lists to reflect returned ballots during the 2020 primary election. This failure resulted  
27 in ballots being delivered to addresses where no known voter lives.  
28

66. The evidence in this matter will also show that United States Postal Service letter carriers were directed to violate the USPS policy by delivering mail-in ballots to addresses where the addressee of the ballot was known to be deceased, known to have moved from that address, or had no affiliation with that address at all.

67. Upon information and belief, there were significant numbers of votes cast by voters who did not meet the residency requirement to vote in Nevada. The evidence will show that there were no less than 1,000 of these illegal and improper votes.

68. Upon information and belief, there have been mail-in ballots received from deceased persons. The evidence will show that there were no less than 500 of these illegal and improper votes.

69. On information and belief, statewide election departments continued to receive and process mail-in ballots that were submitted after deadlines.

70. Upon information and belief, mail-in ballots were completed and submitted at polling places by those other than voters. The evidence will show that there were no less than 500 of these illegal and improper votes.

71. These illegal or improper votes cast and counted are in an amount sufficient to raise reasonable doubt as to the outcome of the Election (293.410(2)(c)(1)).

## PROVISIONAL BALLOTS

72. Contestants repeat and reallege all foregoing allegations and incorporate the same by reference as if fully set forth herein.

73. The procedure for accepting provisional ballots in the Election was rife with significant problems and irregularities.

74. Workers arbitrarily imposed, and systematically failed to clarify the consequences of provisional voting. These failures both increased the likelihood of ineligible votes being cast and wrongfully disenfranchised properly registered voters.

75. Properly registered voters were often not even notified that their ballots were cast provisionally or that they were required to take further action to cure a defect with their identification or registration.

1        76. The evidence in this matter will show that numerous voters arrived to  
2 vote at their respective polling place only to be informed that a mail-in ballot had  
3 already been received on their behalf when, in fact, the voter had not submitted a  
4 mail-in ballot.

5        77. The evidence in this matter will show that no less than 500 provisional  
6 ballots were counted in the official vote totals without the issues which rendered them  
7 provisional in the first place ever being resolved, thereby rendering them illegal and  
8 improper votes.

9        78. The evidence in this matter will show that many Nevada voters were  
10 made to cast a provisional ballot on election day and then not given the opportunity  
11 to cure their lack of identification, as the Department of Motor Vehicles ("DMV") did  
12 not have appointments available for those people to obtain their identifications before  
13 the statutory cure date of November 6, 2020. Voters that were made to cast provisional  
14 ballots in the early voting period, however, were given the opportunity to have  
15 specially set appointments at the DMV to cure their ballots. The result is that  
16 provisional voters who cast votes during the early voting period were preferred over  
17 provisional voters who cast their votes on election day.

18        79. These illegal or improper votes cast and counted are in an amount  
19 sufficient to raise reasonable doubt as to the outcome of the Election (293.410(2)(c)(1))  
20 and were also a violation of equal protection under the Fourteenth Amendment of the  
21 United States Constitution.

#### 22        **NEVADA'S FAILURE TO ALLOW MEANINGFUL OBSERVATION**

23        80. Contestants repeat and reallege all foregoing allegations and incorporate  
24 the same by reference as if fully set forth herein.

25        81. NRS 293B.353(1) affords members of the general public the right to  
26 observe the counting of the ballots.

27        82. Section 25 of AB 4 clarified that the public's right to observe ballot  
28 counting is equally applicable to the processing and counting of mail-in ballots, which

1 may begin 15 days before the date of the Election. "The counting procedure must be  
2 public." AB 4, § 25.

3 83. In violation of Nevada law, the County Registrars failed and refused to  
4 grant meaningful observation opportunities to the general public with respect to the  
5 mail-in ballots.

6 84. Clark County's observation procedures failed to ensure transparency and  
7 integrity as it did not allow the public to see election officials during key points of mail  
8 ballot processing. For instance, a mail ballot arrives at the Clark County Division of  
9 Elections in an envelope sealed and signed by the voter. It was then scanned several  
10 times by an Agilis machine, as described above. Upon alleged authentication of the  
11 signature, the ballot was transported to another Clark County facility, known as  
12 Greystone, where it was removed from its envelope by election officials.

13 85. Once the envelope was opened, the ballot would then be separated from  
14 the envelope and inspected to determine if any deficiencies would obstruct it from  
15 being fed through a tabulation machine. If any deficiencies existed, the ballot was  
16 hand duplicated by being placed in a green envelope for a "runner" to take into a small  
17 room known as the "MB Vault" and matched with a blank ballot from the voter's  
18 precinct.

19 86. The evidence in this matter will show that runners often went into the  
20 MB Vault alone, sometimes even with a writing instrument, and closed the door. The  
21 runner would then leave the MB Vault with the voter's ballot and a blank ballot and  
22 take them to duplicators who allegedly duplicated the voter's choices on the clean  
23 ballot, so it could be fed through a tabulation machine.

24 87. The procedure described above provides an opportunity for a careless or  
25 unscrupulous official or worker to mark choices for any unfilled elections or questions  
26 on the ballot, potentially substantially affecting down ballot races where there are  
27 often significant undervotes, or causing the ballots to be thrown out due to overvotes.  
28

88. The evidence in this matter will show that members of the public who attempted to observe the processing and tabulation of mail-in ballots, as is their right under Nevada law, were routinely confined to small spaces or corners too far away from the locations where the mail-in ballots were being processed to afford meaningful observation.

89. The evidence in this matter will show that those locations where observers were permitted often allowed only obstructed and distant views of the locations where the mail-in ballots were being processed.

90. The evidence in this matter will show that at times during mail-in ballot processing, public observers were simply ordered out of the processing areas with no explanation.

91. The evidence in this matter will show that observers were provided with no opportunity at all to observe the processes by which Election personnel addressed issues with rejected mail-in ballots and determined whether those ballots would be spoiled, or their issues cured.

92. Clark County's failure to provide the general public with meaningful opportunities to observe the processing and tabulation of mail-in ballots was a violation of Nevada law and, therefore, a malfeasance of which the election board or members thereof are guilty under NRS 293.410(2)(a).

93. Poll watchers were constantly denied the ability to meaningfully observe operations at the in-person voting locations.

## VOTING DRIVES

94. Contestants repeat and reallege all foregoing allegations and incorporate the same by reference as if fully set forth herein.

95. In conjunction with the Election, the Nevada Native Vote Project ("NNVP") coordinated a voting drive campaign among the Native American community in Nevada.

1           96. To incentivize voters within the Native American Community, the NNVP  
2 offered gift cards, gas cards, raffle entries, and t-shirts in exchange for voters coming  
3 to the polling place and casting their votes.

4           97. The provision of incentives in exchange for votes occurred during the  
5 early voting period and on election day in communities including, but not limited to,  
6 the Lovelock Paiute Tribe community; the Elko Indian Colony; the Moapa Paiute  
7 community; the Reno-Sparks Indian Colony; the Duck Valley Indian Reservation; and  
8 the Battle Mountain Band Indian Colony.

9           98. The NNVP voting drives among these communities, and the incentives  
10 offered in exchange for voting, were heavily advertised on online social media,  
11 depicting voting drive information; photos and video of voters receiving gift cards, gas  
12 cards, t-shirts, and raffle tickets; and video of NNVP personnel promoting these  
13 efforts.

14           99. At least one of the social media videos in which NNVP promoted the  
15 voting drives and the incentives depicted NNVP personnel wearing a "Biden-Harris"  
16 face covering and standing in front of a van bearing a "Biden-Harris" logo and openly  
17 encouraged people to vote for Joseph Biden.

18           100. Offering something of value to a voter in exchange for his/her vote is a  
19 violation of Federal and Nevada law. All such votes cast in exchange for the above  
20 described incentives are, therefore, illegal and improper votes. The evidence will show  
21 that there were no less than 500 of these illegal and improper votes.

22           101. These illegal or improper votes cast and counted are in an amount  
23 sufficient to raise reasonable doubt as to the outcome of the Election (293.410(2)(c)(1)).

24           102. The fact that the voting drives were officially promoted by NNVP  
25 organizing personnel displaying "Biden-Harris" promotional material and logos  
26 reflects that value was being offered to voters under these circumstances in an effort  
27 to manipulate or alter the outcome of the Election (NRS 293.407(2)(e)).

28 ///

**TOTALITY OF CIRCUMSTANCES**

103. Contestants repeat and reallege all foregoing allegations and incorporate the same by reference as if fully set forth herein.

104. The statutory violations and voting irregularities alleged above, when considered in total, invalidate significant numbers of ballots and thereby reduce the vote totals of both candidates in large numbers. The evidence will show that the reduction in votes for Defendant, however, is 40,000 or more than the reduction in votes for the Contestant or, at the very least, in an amount sufficient to raise reasonable doubt as to the outcome of the Election.

105. The Boards of County Commissioners completed the canvass of returns on November 16, 2020. The Election results are due to be certified by the Nevada Secretary of State on November 24, 2020.

WHEREFORE, Contestants, reserving the right to amend this Statement of Contest, pray that, by virtue of Defendant's failure to comply with the law:

1. President Trump be declared the victor of the Election in Nevada and that Contestants McDonald, DeGraffenreid, Hindle, Law, Rice, and Meehan be certified as the duly elected electors for the State of Nevada; or, in the alternative,

2. That Defendants' election to the office of elector be declared null and void, that the Election in Nevada of November 3, 2020, be annulled and that no candidate for elector for the office of President of the United States of America be certified from the State of Nevada.

3. For any such additional relief as the Court deems proper in the circumstances.

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**AFFIRMATION**

The undersigned attorney does hereby affirm, pursuant to NRS 239B.030, that this document and any attachments do not contain personal information as defined in NRS 603.040 about any persons.

Dated: this 17<sup>TH</sup> day of November, 2020 WEIR LAW GROUP, LLC

BY:

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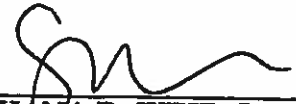
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The undersigned attorney does hereby affirm, pursuant to NRS 239B.030, that this document and any attachments do not contain personal information as defined in NRS 603.040 about any persons.

Dated: this 17<sup>TH</sup> day of November, 2020 WEIR LAW GROUP, LLC

BY:   
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**VERIFICATION**

I, Durward James Hindle III, am a contestant in this matter, have read the foregoing STATEMENT OF CONTEST OF THE NOVEMBER 3, 2020 PRESIDENTIAL ELECTION PURSUANT TO NRS 293.407 AND 293.410 and know the contents thereof. I declare, under penalty of perjury under the laws of the state of Nevada that the foregoing is true and correct of my own knowledge, except as to matters stated on information and belief, and that as to those matters I believe them to be true.

DATED this 17<sup>th</sup> day of November, 2020

Signed: 

Printed name: Durward James Hindle III

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**VERIFICATION**

I, Michael McDonald, am a contestant in this matter, have read the foregoing  
STATEMENT OF CONTEST OF THE NOVEMBER 3, 2020 PRESIDENTIAL  
ELECTION PURSUANT TO NRS 293.407 AND 293.410 and know the contents  
thereof. I declare, under penalty of perjury under the laws of the state of Nevada  
that the foregoing is true and correct of my own knowledge, except as to matters  
stated on information and belief, and that as to those matters I believe them to be  
true.

DATED this 17<sup>th</sup> day of November, 2020

Signed: \_\_\_\_\_

Printed name: Michael McDonald

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VERIFICATION

I, James DeGraffenreid III, am a contestant in this matter, have read the foregoing STATEMENT OF CONTEST OF THE NOVEMBER 3, 2020 PRESIDENTIAL ELECTION PURSUANT TO NRS 293.407 AND 293.410 and know the contents thereof. I declare, under penalty of perjury under the laws of the state of Nevada that the foregoing is true and correct of my own knowledge, except as to matters stated on information and belief, and that as to those matters I believe them to be true.

DATED this 17<sup>th</sup> day of November, 2020

Signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

JAMES W. DEGRAFFENREID III

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DATED this 17<sup>th</sup> day of November, 2020

Signature: \_\_\_\_\_

SHAWN M. MEEHAN

**VERIFICATION**

I, Jesse Law, am a contestant in this matter, have read the foregoing  
STATEMENT OF CONTEST OF THE NOVEMBER 3, 2020 PRESIDENTIAL  
ELECTION PURSUANT TO NRS 293.407 AND 293.410 and know the contents  
thereof. I declare, under penalty of perjury under the laws of the state of Nevada  
that the foregoing is true and correct of my own knowledge, except as to matters  
stated on information and belief, and that as to those matters I believe them to be  
true.

DATED this 17<sup>th</sup> day of November, 2020

Signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Jesse Law

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VERIFICATION

I, Eileen Rice, am a contestant in this matter, have read the foregoing STATEMENT OF CONTEST OF THE NOVEMBER 3, 2020 PRESIDENTIAL ELECTION PURSUANT TO NRS 293.407 AND 293.410 and know the contents thereof. I declare, under penalty of perjury under the laws of the state of Nevada that the foregoing is true and correct of my own knowledge, except as to matters stated on information and belief, and that as to those matters I believe them to be true.

DATED this 17<sup>th</sup> day of November, 2020

Signed: \_\_\_\_\_

*Eileen Rice*

Printed name: \_\_\_\_\_

*EILEEN RICE*

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## **EXHIBIT “2”**

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JOHN M. DEVANEY, ESQ. (D.C. Bar No. 375465) (admitted pro hac vice)  
HENRY J. BREWSTER, ESQ. (D.C. Bar No. 1033410) (admitted pro hac vice)  
COURTNEY A. ELGART, ESQ. (D.C. Bar No. 1645065) (admitted pro hac vice)  
JYOTI JASRASARIA, ESQ. (D.C. Bar No. 1671527) (admitted pro hac vice)

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REINA A. ALMON-GRIFFIN, ESQ. (Wash. Bar No. 54651) (admitted pro hac vice)

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*Attorneys for Defendants*

**IN THE FIRST JUDICIAL DISTRICT COURT  
CARSON CITY, NEVADA**

JESSE LAW, an individual; MICHAEL  
MCDONALD, an individual; JAMES  
DEGRAFFENREID III, an individual;  
DURWARD JAMES HINDLE III, an  
individual; EILEEN RICE, an individual;  
SHAWN MEEHAN, an individual, as  
candidates for presidential electors on behalf of  
Donald J. Trump.

Case No.: 20 OC 00163 1B

Dept.: 1

**NOTICE OF ENTRY OF ORDER  
GRANTING MOTION TO DISMISS  
STATEMENT OF CONTEST**

1 Contestants,

2 vs.

3 JUDITH WHITMER, an individual; SARAH  
4 MAHLER, an individual; JOSEPH  
5 THRONEBERRY, an individual; ARTEMISA  
6 BLANCO, an individual; GABRIELLE  
7 D'AYR, an individual; and YVANNA  
8 CANCELA, an individual, as candidates for  
9 presidential electors on behalf of Joseph R.  
10 Biden, Jr.,

11 Defendants.

12 NOTICE IS HEREBY GIVEN that an ORDER GRANTING MOTION TO DISMISS  
13 STATEMENT OF CONTEST was entered in the above-captioned matter on the 4th day of  
14 December, 2020. A true and correct copy of the Order is attached hereto as Exhibit 1.

15 **AFFIRMATION**

16 The undersigned does hereby affirm that the preceding document does not contain the  
17 Social Security number of any person.

18 DATED this 4th day of December, 2020.

19 **WOLF, RIFKIN, SHAPIRO,**  
20 **SCHULMAN & RABKIN, LLP**

21 By: /s/ Bradley S. Schrager

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*Attorneys for Defendants*

*\*Pro hac vice*

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 4th of December, 2020 a true and correct copy of **NOTICE**  
3 **OF ENTRY OF ORDER** was served upon all parties via electronic mailing to the following:

4 Shanna D. Weir, Esq. (SBN 9468)  
5 WEIR LAW GROUP, LLC  
6 [sweir@weirlawgroup.com](mailto:sweir@weirlawgroup.com)

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10 *Attorneys for the Contestants*

11  
12 By: /s/ Danielle Fresquez

13 Danielle Fresquez, an Employee of  
14 WOLF RIFKIN, SHAPIRO, SCHULMAN &  
15 RABKIN, LLP  
16  
17

18 **INDEX OF EXHIBITS**

19 Exhibit No.	Documents	Pages
20 1	Order Granting Motion to Dismiss Statement of Contest	35

# EXHIBIT 1

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# EXHIBIT 1

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AUDREY ROY ATT

CLERK  
BY   
DEPUTY

**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY**

JESSE LAW, an individual; MICHAEL  
MCDONALD, an individual; JAMES  
DEGRAFFENREID III, an individual;  
DURWARD JAMES HINDLE III, an  
individual; EILEEN RICE, an individual;  
SHAWN MEEHAN, an individual, as  
candidates for presidential electors on behalf of  
Donald J. Trump,

Contestants,

vs.

JUDITH WHITMER, an individual; SARAH  
MAHLER, an individual; JOSEPH  
THRONEBERRY, an individual; ARTEMISA  
BLANCO, an individual; GABRIELLE  
D'AYR, an individual; and YVANNA  
CANCELA, an individual, as candidates for  
presidential electors on behalf of Joseph R.  
Biden, Jr.,

Defendants.

Case No.: 20 OC 00163 1B

Dept.: 1

**ORDER GRANTING MOTION TO  
DISMISS STATEMENT OF CONTEST**

**PROCEDURAL HISTORY**

On November 17, 2020, Contestants—Republican Party presidential elector candidates—  
filed a statement of contest challenging the results of the 2020 presidential election in Nevada,  
seeking an order from this Court either declaring President Donald Trump the winner in Nevada  
and certifying Contestants as the State's duly elected presidential electors, or holding that  
President-elect Joe Biden's victory "be declared null and void" and that the November 3 election  
"be annulled and that no candidate for elector for the office of President of the United States of

1 America be certified from the State of Nevada.” Statement of Contest of the Nov. 3, 2020  
2 Presidential Election 20. In orders dated November 19 and 24, 2020, this Court expanded the  
3 depositions available to each party from 10 to 15 and shortened the time for notice from seven  
4 days to 48 hours. The parties submitted their evidence to the Court on Wednesday, December 2,  
5 2020. Defendants submitted the testimony by deposition of four witnesses and Contestants  
6 submitted the testimony by deposition of eight witnesses along with numerous declarations,  
7 affidavits, and other documents. The Court held a hearing on December 3, 2020.

### 8 **FINDINGS OF FACT**

9 Having reviewed the full evidentiary record submitted by Contestants and Defendants, and  
10 having considered, without limitation, all evidence submitted to the Court as well as the parties’  
11 written and oral arguments, the Court makes the following findings of fact:

#### 12 **I. The Election Results**

13 1. In the November 3, 2020 General Election for President of the United States,  
14 President-elect Joe Biden prevailed over President Donald Trump in the State of Nevada by 33,596  
15 votes.

#### 16 **II. The Agilis Machine**

17 2. The COVID-19 pandemic spurred a sharp increase in mail voting for Nevada’s June  
18 2020 Primary Election. The transition to expanded mail voting placed particular stress on larger  
19 counties like Clark County because processing and counting mail ballots is time- and labor-  
20 intensive. Deposition of Wayne Thorley dated Dec. 1, 2020 (“Thorley Dep.”) 12:9–14:11;  
21 Deposition of Joseph Gloria dated Dec. 1, 2020 (“Gloria Dep.”) 13:11–12.

22 3. Accordingly, Clark County looked for solutions to enable it to meet this increased  
23 interest in mail voting. It ultimately acquired an Agilis Ballot Sorting System (the “Agilis  
24 machine”) from Runbeck Election Services (“Runbeck”). Thorley Dep. 14:10–15:18; Gloria Dep.  
25 12:20–13:22.

26 4. Runbeck is a well-respected election services company headquartered in Phoenix,  
27 Arizona. It provides a suite of hardware and software products that assist with mail ballot sorting  
28



1 and processing, initiative petitions, voter registration, and ballot-on-demand printing. It is also one  
2 of the largest printing vendors for ballots in the United States. In 2020 alone, it printed 76 million  
3 ballots and mailed 30 million. Runbeck's clients are state and county election officials in the  
4 United States. Runbeck does not do work for political parties or candidates. Deposition of Jeff  
5 Ellington dated Nov. 3, 2020 ("Ellington Dep.") 8:2-19; 10:4-11; Thorley Dep. 16:1-12; Gloria  
6 Dep. 12:20-14:3.

7         5.       The Agilis machine is a ballot-sorting machine similar to those used by the U.S.  
8 Postal Service ("USPS"). As a ballot envelope is run through the machine, the Agilis takes a picture  
9 of the envelope. It also does preliminary processing to ensure the ballot is appropriate to be  
10 counted. For example, the machine scans the envelope to see if it was signed by the voter, weighs  
11 the envelope to determine if it properly contains only one ballot, and reads a barcode on the  
12 envelope to help ensure that the ballot is for the election that is being processed. The Agilis  
13 machine then sorts the mail pieces into those appropriate for counting and those with likely  
14 deficiencies, as well as by precinct or district. Ellington Dep. 11:18-13:11.

15         6.       Runbeck sells the Agilis machine with automatic signature verification software  
16 licensed from Parascript. Parascript is a preeminent provider of handwriting and signature  
17 verification software that is widely used by USPS and financial institutions across the United  
18 States. Upwards of 80 percent of bank checks in the United States are verified by Parascript's  
19 automatic signature verification technology. Ellington Dep. 13:20-14:24.

20         7.       As offered with the Agilis machine, the automatic signature verification software  
21 takes a picture of the signature on the ballot envelope. It then compares the signature from the  
22 envelope to a comparator signature from the voter registration files and, using a logarithmic  
23 algorithm, scores the signature. If that score is above the threshold setting chosen by the  
24 jurisdiction, the ballot is sorted for counting. A ballot below the threshold setting is flagged for  
25 further review. Ellington Dep. 13:3-11, 15:25-16:6; Gloria Dep. 12:1-13.

26         8.       Clark County acquired and used the Agilis machine for the June primary. Before  
27 acquiring the Agilis, Clark County approached the Office of the Nevada Secretary of State (the  
28

1 “Secretary”) to request funding for the acquisition. The Secretary and Clark County engaged in  
2 extensive conversations about how the County planned to use the Agilis machine and what exactly  
3 it would do for them. Ultimately, the Secretary approved the funding. Thorley Dep. 14:15–15:21,  
4 18:1–19:6; Gloria Dep. 14:4–13.

5 9. Clark County used the Agilis machine during the June primary and November  
6 election. Before each election, Clark County conducted testing on the machine to determine what  
7 threshold setting to use. After completing this testing process, the County ultimately set the  
8 machine at a setting of 40. More testing was performed after the June primary to confirm the setting  
9 was appropriate for the November election. As a result, Clark County continued to use the Agilis  
10 machine at a setting of 40 for the November election. Gloria Dep. 16:10–17:4; 22: 1–10.

11 10. The threshold setting determines what score a signature must be given by the Agilis  
12 machine to be accepted. While it operates on a 1 to 100 scale, it does not correlate to a percentage;  
13 in other words, a setting of 40 does not represent a 40 percent likelihood that the signature is  
14 accurate, nor will a setting of 40 instruct the Agilis machine to accept 40 percent of ballots. Instead,  
15 the threshold setting is merely a cutoff for which signature scores will be accepted. Ellington Dep.  
16 16:1–17:9.

17 11. While the Agilis machine comes preset at 50, that setting does not constitute a  
18 recommended setting. Runbeck does not recommend that its customers run the machine at any  
19 particular setting. Ellington Dep. 17:10–21, 18:7–12; Gloria Dep. 15:5–22; 16:23–17:4.

20 12. Instead, Runbeck recommends that its customers do their own testing to determine  
21 a setting with which they are comfortable. Clark County complied with this best practice in  
22 choosing the setting of 40. Ellington Dep. 19:2–6.

23 13. Many jurisdictions run their Agilis machines below a threshold setting of 50.  
24 Ellington Dep. 17:17–18, 18:17–19:1; Deposition of Scott Gessler dated Dec. 1, 2020 (“Gessler  
25 Dep.”) 22:16–20.

26 14. Because the automatic signature verification is a logarithmic algorithm, there is no  
27 significant difference in the number of signatures that are verified at a setting of 40 versus a setting  
28

1 of 50. Instead, the rate of verification sees a sudden high rate of change at the two extremes but  
2 not in the middle. Any setting between a 15 and 85 would produce substantially similar results.  
3 Ellington Dep. 17:12–18:6.

4 15. Accordingly, during both the June primary and November election in Clark County,  
5 a ballot envelope bearing a signature that was scored 40 or better by the Agilis machine was  
6 accepted without further review. Gloria Dep. 11:6–12:13.

7 16. If a signature was scored below 40, it was flagged for human verification. Clark  
8 County's permanent election personnel were initially trained by a forensic signature expert and  
9 former FBI agent, and they developed a training program for temporary staff based on this  
10 instruction. During the human verification process, an election worker reviewed the signature  
11 against a reference signature on a computer screen. If the reviewer was uncertain about a signature,  
12 the signature was passed along for additional review and compared against the voter's entire  
13 history of signatures. If uncertainty persisted, the signature was reviewed by Joseph P. Gloria,  
14 Clark County's Registrar of Voters, as a final check. If the signature was then rejected, the voter  
15 could undertake Nevada's statutory cure process. Gloria Dep. 17:10–20:6.

16 17. Accordingly, no ballot was rejected for signature mismatch by Clark County  
17 without first being reviewed by Clark County employees. A ballot would only ever be rejected if  
18 "at least two employees" agreed that the signature on the envelope differed in "multiple, significant  
19 and obvious respects from the signatures of the voter available in" the County's records. Nevada  
20 Revised Statutes ("NRS") 293.8874; *see also* Thorley Dep. 17:13–19.

21 18. During the November election, roughly 30 percent of signatures were verified by  
22 the Agilis machine, while roughly 70 percent were flagged for human verification. Gloria Dep.  
23 12:1–13.

24 19. The Agilis machine's verification rate was relatively low because many of the  
25 comparator signatures in Clark County's database are low-quality images from the Department of  
26 Motor Vehicles ("DMV"). A low-quality image is one with a DPI (dots per inch) below 200.  
27 Ellington Dep. 21:12–22:1.

1           20.     When an image is below 200 DPI, the Agilis machine cannot make a match because  
2 it will not read the image file as containing a signature. Instead, it will read the image file as a  
3 series of squares and pass the signature along for human verification. In other words, low-quality  
4 comparator signatures will cause the Agilis machine to not verify signatures; it will not cause the  
5 Agilis machine to erroneously accept signatures that are not genuine. Ellington Dep. 19:19–22:1.

6           21.     During the November election, 6,864 ballots were initially rejected by Clark  
7 County for signature mismatch, representing 1.51 percent of all mail ballots received. Of those,  
8 5,506 voters (or 80.22 percent of voters whose ballots were rejected) cured their ballots, resulting  
9 in 1,358 (or 0.30 percent of) ballots being rejected for signature mismatch. See Deposition of Dr.  
10 Michael Herron dated Dec. 2, 2020 (“Herron Dep.”) 30:25–32:24, Expert Declaration of Dr.  
11 Michael Herron dated Dec. 30, 2020 (“Herron Decl.”), 23-24 (Defs.’ Ex. 6).

12           22.     Clark County’s pre-cure signature mismatch rate of 1.51 percent is nearly  
13 equivalent to that of Washoe County, which was 1.53 percent in the 2020 General Election.  
14 Washoe County did not use the Agilis machine in processing mail ballots in the 2020 General  
15 Election. The signature mismatch rate in the 2016 general election was 0.13 in both Clark County  
16 and statewide. See Herron Dep. 36:15–39:7; Herron Decl. 25–26.

### 17 **III.     Electronic Voting Machines**

18           23.     Clark County, along with 15 other counties in Nevada, uses Dominion Voting  
19 Systems to conduct in-person voting. Thorley Dep. 23:3–11.

#### 20 **A.     In-Person Voting Technology**

21           24.     When a voter shows up at a polling place, she must first check in with an election  
22 worker. Clark County, like other counties in Nevada, uses an electronic poll book to check the  
23 voter in and confirm the voter’s identity. Thorley Dep. 26:9–13.

24           25.     First, the election worker will look up the voter on an electronic roster and, upon  
25 locating the voter’s record, confirm her identity. This process can involve checking more than the  
26 voter’s name if there are multiple records with the same name. Thorley Dep. 26:13–19.

27 ///

1       26.     Next, the election worker will ensure that the voter does not need to make any  
2 changes to her voter registration information. Thorley Dep. 26:20–21.

3       27.     Finally, the election worker will provide a pen with a metal screen tip to the voter,  
4 which will allow her to sign an electronic tablet to provide a signature. Thorley Dep. 22–24; Gloria  
5 Dep. 99:24–100:3.

6       28.     In Clark County, after successfully checking in the voter, the election worker will  
7 initialize a voting machine activation card—“voter card”—and provide it to the voter. The voter  
8 must insert the voter card into the electronic voting machine for her ballot to appear and to begin  
9 the voting process. Clark County uses “vote centers,” meaning any voter in the County can vote at  
10 any polling location. The voter card ensures that the voter is presented the ballot for her specific  
11 precinct. Thorley Dep. 26:5–27:10.

12       29.     When the voter inserts the voter card into the voting machine (also called the  
13 “ICX”), the voting machine pulls up the correct ballot, allowing the voter to go through and make  
14 selections on a touchscreen. The voter has various opportunities to make changes and review the  
15 ballot on the screen itself. Thorley Dep. 27:11–16.

16       30.     Once the voter has reviewed her selections, a printer connected to the voting  
17 machine (the voter verified paper audit trail printer, or “VVPAT”) flashes a green light before  
18 creating a printout of the voter’s selections. The printout is printed on a roll of paper—like a receipt  
19 from a grocery store cash register—behind a plastic covering, which allows the voter to privately  
20 review her selections. The printout is statutorily required for electronic voting machines as an  
21 alternative method for voters to confirm the selections made on electronic voting machines. If  
22 there is anything wrong with the printer, such as a paper jam or a need for more paper, the printer  
23 will flash a red light so that the voter can be assisted. Thorley Dep. 27:17–25, 28:10–22; Gloria  
24 Dep. 28:13–21, 42:13–25.

25       31.     A voter can make changes on the touchscreen, if necessary, after reading the  
26 printout. Otherwise, the voter touches the “cast-ballot” button on the machine, completing the  
27  
28

1 voting process. The voter will then retrieve the voter card from the machine, hand it to a poll  
2 worker, and receive an "I Voted" sticker. Thorley Dep. 27:25–28:9; Gloria Dep. 29:7–12.

3 32. Voters who check in but do not complete the voting process are known as "fled  
4 voters." Fled voters can be explained for various innocuous reasons, including voter confusion or  
5 an ultimate decision not to vote. Thorley Dep. 30:11–25; Gloria Dep. 52:14–18.

6 **B. Certification and Auditing**

7 33. These voting systems are subject to extensive testing and certification before each  
8 election and are audited after each election. Thorley Dep. 35:12–39:23; Gloria Dep. 31:3–32:7,  
9 33:9–21.

10 34. For example, the electronic voting systems used by Clark County were certified by  
11 the federal government when they were first brought on the market, as well as any time a hardware  
12 or software component is upgraded. This certification is done by a voting system test laboratory.  
13 Thorley Dep. 36:19–37:12.

14 35. The electronic voting machines are also tested and certified by the Secretary, who  
15 contracts with the Nevada Gaming Control Board for this certification. Thorley Dep. 37:17–38:21.

16 36. Clark County's electronic voting machines were last inspected by the Gaming  
17 Control Board in December 2019 and certified by the Secretary shortly thereafter. Thorley Dep.  
18 39:6–15; Gloria Dep. 31:3–32:7.

19 37. The voting machines are also audited against a paper trail that is generated, as  
20 discussed above, when voters make their selections. A Clark County voting machine will not  
21 operate unless it is connected to a printer (the VVPAT), which creates a paper record that voters  
22 can review. Thorley Dep. 28:11–29:6; Gloria Dep. 28:13–29:5.

23 38. After each election, Clark County, like Nevada's other counties, conducts a random  
24 audit of its voting machines. Specifically, it compares the paper trail created by the printer against  
25 the results recorded by the voting machine to ensure they match. Thorley Dep. 35:12–36:12; Gloria  
26 Dep. 33:9–21.

27 ///

1 39. If there are any issues with or discrepancies in the data recorded by Clark's voting  
2 machines, or issues with the accuracy of the paper trail created by the printers, then they would  
3 appear in this audit; indeed, that is what the audit is designed to catch. Thorley Dep. 36:8–12.

4 40. Clark County conducted this audit following the November election and there were  
5 no discrepancies between the paper audit trail created by the printer and the data from the voting  
6 machine. Gloria Dep. 33:9–21.

#### 7 **IV. Previous Lawsuits**

8 41. Several of the issues raised in Contestants' statement have been litigated and  
9 resolved in previous state and federal cases.

##### 10 **A. *Kraus v. Cegavske***

11 42. District Judge James E. Wilson, Jr. concluded that Clark County's use of the Agilis  
12 machine is permissible under Nevada law in *Kraus v. Cegavske*, No. 20 OC 00142 1B, slip op. at  
13 12 (Nev. 1st Jud. Dist. Ct. Oct. 29, 2020).

14 43. During a ten-hour evidentiary hearing, the parties' counsel—including Contestants'  
15 counsel, Jesse Binnall—addressed Clark County's use of the Agilis machine. *See, e.g.*, Transcript  
16 of Video-Recorded Hearing 19–20, 36–37, 47–56, 70–74, 76–78, 240–43, *Kraus v. Cegavske*, No.  
17 20 OC 00142 1B (Nev. 1st Jud. Dist. Ct. Oct. 28, 2020).

18 44. Judge Wilson found that “major metropolitan areas including Cook County,  
19 Illinois, Salt Lake City, Utah, and Houston, Texas use Agilis,” and that the same system was “used  
20 for the June primary election,” during which “[n]o evidence was presented that the setting used by  
21 Clark County causes or has resulted in any fraudulent ballot being validated or any valid ballot  
22 invalidated.” *Kraus*, slip op. at 4.

23 45. Judge Wilson concluded that “[t]here is no evidence that any vote that should  
24 lawfully not be counted has been or will be counted,” and that “[t]here is no evidence that any  
25 election worker did anything outside of the law, policy, or procedures.” *Id.* at 9.

26 46. On the merits of the challenge to the Agilis machine, Judge Wilson explained that  
27 Assembly Bill 4 (“AB 4”)—omnibus election legislation enacted by the Nevada Legislature during  
28

1 a special session in the summer of 2020—“specifically authorized county officials to process and  
2 count ballots by electronic means. Petitioners’ argument that AB 4, Sec. 23(a) requires a clerk or  
3 employee check the signature on a returned ballot means the check can only be done manually is  
4 meritless. The ballot must certainly be checked but the statute does not prohibit the use of  
5 electronic means to check the signature.” *Id.* at 12 (citation omitted).

6 47. Judge Wilson rejected the argument that Clark County’s use of the Agilis machine  
7 violates equal protection, concluding that “[n]othing the State or Clark County has done values  
8 one voter’s vote over another’s.” *Id.* at 13.

9 48. Judge Wilson further determined that the “[p]etitioners [] failed to prove” that Mr.  
10 Gloria “has interfered with any right they or anyone else has as an observer” and that “Gloria has  
11 not failed to meet his statutory duties . . . to allow members of the general public to observe the  
12 counting of ballots.” *Id.* at 11.

13 49. The *Kraus* petitioners filed an emergency motion for immediate relief with the  
14 Nevada Supreme Court, which denied the request after concluding that they “ha[d] not  
15 demonstrated a sufficient likelihood of success to merit a stay or injunction.” *Kraus v. Cegavske*,  
16 No. 82018, slip op. at 2–3 (Nev. Nov. 3, 2020).

17 50. The *Kraus* petitioners subsequently dismissed the appeal. *See Kraus v. Cegavske*,  
18 No. 82018, slip op. at 1–2 (Nev. Nov. 10, 2020).

#### 19 **B. Other Cases**

20 51. In *Donald J. Trump for President, Inc. v. Cegavske*, Donald J. Trump for President,  
21 Inc. (the “Trump Campaign”), the Republican National Committee, and the Nevada Republican  
22 Party challenged AB 4 soon after the law was enacted, and the U.S. District Court for the District  
23 of Nevada dismissed the lawsuit after concluding that these plaintiffs lacked standing. *See* No.  
24 2:20-CV-1445 JCM (VCF), 2020 WL 5626974, at \*7 (D. Nev. Sept. 18, 2020).

25 52. Both the Eighth Judicial District Court and the Nevada Supreme Court denied relief  
26 requested by the Election Integrity Project of Nevada and Sharron Angle in a lawsuit alleging,  
27 among other claims, that AB 4 violates equal protection. *See Election Integrity Project of Nev. v.*  
28



1 *State ex rel. Cegavske*, No. A-20-820510-C, slip op. at 12 (Nev. 8th Jud. Dist. Ct. Sept. 28, 2020);  
2 *Election Integrity Project of Nev. v. Eighth Jud. Dist. Ct.*, No. 81847, slip op. at 6 (Nev. Oct. 7,  
3 2020).

4 53. On November 5, 2020, another group of plaintiffs, again backed by the Trump  
5 Campaign, filed suit in federal court and alleged that Clark County's use of the Agilis machine  
6 violates Nevada law; after conducting a hearing and concluding that use of the Agilis machine  
7 does not "conflict with the other provisions of the Nevada election laws" and that there was "little  
8 to no evidence that the machine is not doing what it's supposed to do, or incorrectly verifying other  
9 signatures," the court denied the plaintiffs' motion for temporary restraining order and preliminary  
10 injunction. Reporter's Tr. of Proceedings at 79:5-7, 79:24-80:1, *Stokke v. Cegavske*, No. 2:20-cv-  
11 02046-APG-DJA (D. Nev. Nov. 6, 2020). The *Stokke* plaintiffs voluntarily dismissed their case.  
12 See Notice of Voluntary Dismissal Under FRCP 41(a)(1)(A)(i), *Stokke v. Cegavske*, No. 2:20-cv-  
13 02046-APG-DJA (D. Nev. Nov. 24, 2020), ECF No. 31.

14 54. Other lawsuits challenging Clark County's administration of the November  
15 election have been dismissed on various grounds. See, e.g., *Becker v. Gloria*, No. A-20-824878-  
16 W, slip op. at 4 (Nev. 8th Jud. Dist. Ct. Dec. 2, 2020) ("The Court finds that Plaintiff has offered  
17 no evidence sufficient to find any error on the part of either Clark County or Registrar Gloria that  
18 would warrant granting the relief sought here."); *Rodimer v. Gloria*, No. A-20-825130-W, slip op.  
19 at 4 (Nev. 8th Jud. Dist. Ct. Nov. 25, 2020); *Marchant v. Gloria*, No. A-20-824878-W, slip op. at  
20 4 (Nev. 8th Jud. Dist. Ct. Nov. 23, 2020).

## 21 **V. Evidence Presented**

### 22 **A. Contestants' Evidence**

23 55. The Court's orders required Contestants to disclose all witnesses and provide  
24 Defendants with all evidence they intended to use at the hearing in this matter by 5:00 p.m. on  
25 November 25, 2020.

26 56. Contestants did not issue their first deposition notices until Friday, November 27,  
27 2020.  
28

1        57. Much of Contestants' evidence consists of non-deposition evidence in the form of  
2 witness declarations. These declarations fall outside the scope of the contest statute, which  
3 provides that election contests "shall be tried and submitted so far as may be possible upon  
4 depositions and written or oral argument as the court may order." NRS 293.415. The reason for  
5 this is to allow for the cross-examination of the deponent under oath.

6        58. These declarations also constitute hearsay, as they are out-of-court statements  
7 offered in evidence to prove the truth of the matters asserted. *See* NRS 51.035, 51.065; *Cramer v.*  
8 *State*, 126 Nev. 388, 392, 240 P.3d 8, 11 (2010) ("An affidavit is generally inadmissible hearsay.").  
9 Most of these declarations were self-serving statements of little or no evidentiary value.

10        59. The Court nonetheless considers the totality of the evidence provided by  
11 Contestants in reaching and ruling upon the merits of their claims.

12        **B. Contestants' Expert Evidence**

13            **i. Michael Baselice**

14        60. Contestants offered Mr. Baselice to opine on the incidence of illegal voting in the  
15 2020 General Election based on a phone survey of voters.

16        61. The Court questions Mr. Baselice's methodology because he was unable to identify  
17 the source of the data for his survey and conducted no quality control of the data he received.  
18 Baselice Dep. 29:13–30:8, 34:24–35:21, 57:13–58:14.

19            **ii. Jesse Kamzol**

20        62. Contestants offered Mr. Kamzol to opine that significant illegal voting occurred in  
21 Nevada during the 2020 General Election, based on his analysis of various commercially available  
22 databases of voters.

23        63. The Court questions Mr. Kamzol's methodology because he had little to no  
24 information about or supervision over the origins of his data, the manner in which it had been  
25 matched, and what the rate of false positives would be. Additionally, there was little or no  
26 verification of his numbers. Kamzol Dep. 58:6–11, 58:15–17, 59:22–24.

27 ///

1                   **iii.     Scott Gessler**

2           64.     Contestants offered Mr. Gessler to opine on the transition to and administration of  
3 mail voting.

4           65.     Mr. Gessler's report lacked citations to facts and evidence that he used to come to  
5 his conclusions and did not include a single exhibit to support of any of his conclusions.

6           66.     The Court finds that Mr. Gessler's methodology is unsound because he based nearly  
7 all his opinions on a handful of affidavits that he took no steps to corroborate through independent  
8 investigation. Gessler Dep. 44:12-14, 48:11-25, 50:8-22, 66: 1-7.

9                   **C.     Defendants' Evidence**

10          67.     Defendants put forth the testimony by deposition of Wayne Thorley, Nevada's  
11 former Deputy Secretary of State for Elections. This testimony is credible because of Mr.  
12 Thorley's experience, lack of bias, and first-hand knowledge of the subjects he testified to.

13          68.     Defendants put forth the testimony by deposition of Jeff Ellington, President and  
14 Chief Operating Office of Runbeck, which manufactures the Agilis machine. This testimony is  
15 credible because of Mr. Ellington's experience, lack of bias, and first-hand knowledge of the  
16 subjects he testified to.

17          69.     Defendants put forth the testimony by deposition of Joseph P. Gloria, the Registrar  
18 of Voters for Clark County. This testimony is credible because of Mr. Gloria's experience, lack of  
19 bias, and first-hand knowledge of the subjects he testified to.

20          70.     Defendants put forth the testimony by deposition of Dr. Michael Herron. Dr. Herron  
21 is qualified as an expert in the areas of election administration, voter fraud, survey design, and  
22 statistical analysis. Dr. Herron holds advanced degrees in statistics and political science; has  
23 published academic papers in peer-reviewed journals about election administration and voter  
24 fraud; and has an extensive record of serving as an expert on related topics in litigation before  
25 numerous courts, none of which has found that his testimony lacks credibility.

26          71.     The Court finds the testimony of Dr. Herron credible and his methodology and  
27 conclusions reliable. His testimony is relevant and limited in scope because it considered each  
28

1 ground for contest, both individually and within the context of Nevada's registration and voting  
2 system, and the prevalence of voter fraud nationwide and in Nevada. His methodology is reliable  
3 because it is similar to that which he uses in his published work and because he produced all of  
4 the data on which he relied, such that his conclusions are testable by others in his field.

## 5 **VI. Illegal or Improper Votes**

### 6 **A. Voter Fraud Rates**

7 72. Contestants allege that fraud occurred at multiple points in the voting process in  
8 Nevada in rates that exceed the margin of victory in the presidential race. Based on Dr. Herron's  
9 analysis, the Court finds there is no evidence that voter fraud rates associated with mail voting are  
10 systematically higher than voter fraud rates associated with other forms of voting. *See* Herron Dep.  
11 17:7–13; Herron Decl. 17.

12 73. Based on Dr. Herron's analysis, the Court finds there is no evidence that voter fraud  
13 rates associated with mail voting are systematically higher than voter fraud rates associated with  
14 other forms of voting. *See* Herron Dep. 17:7–13; Herron Decl. 17.

15 74. After examining voter turnout in Nevada and constructing a database of voter fraud  
16 instances in the State from 2012 to 2020, Dr. Herron concluded that out of 5,143,652 ballots cast  
17 in general and primary elections during that timeframe (not including the 2020 General Election),  
18 the illegal vote rate totaled at most only 0.00054 percent. Herron Dep. 22:19–24:7; Herron Decl.  
19 18–21.

20 75. Dr. Herron considered the academic literature on voter fraud in the United States  
21 (including published papers that he has authored) and analyzed publicly available election data in  
22 Clark County to evaluate Contestants' allegations of fraud. Based on his study, Dr. Herron  
23 concluded that Contestants' allegations "strain credulity." Herron Dep. 41:4–18; Herron Decl. 28  
24 (explaining that Contest implied that double-voting rate experienced by mail-in voters in Nevada  
25 was at least 89 times greater than conservative academic estimate); Herron Dep. 45:2–46:24;  
26 Herron Decl. 33 (explaining that only 537 ballots arrived after deadline in Clark County and that  
27 there is no evidence that single one was counted).

1        76. Dr. Herron's comparative analysis across counties of signature mismatch rates was  
2 similar to an analysis he conducted in North Carolina's Ninth Congressional District in 2018,  
3 during which publicly available absentee ballot data was consistent with allegations of fraud. His  
4 analysis there was credited by the North Carolina State Board of Elections. Herron Dep. 9:19–  
5 10:9. In contrast to his study in North Carolina, Dr. Herron's comparative analysis in the 2020  
6 Nevada election revealed no irregularities across counties. *See* Herron Dep. 33:9–34:25 (finding  
7 nearly identical signature mismatch rates in Clark County and Washoe County despite that one  
8 uses the Agilis machine and one does not).

9        77. Based on his evaluation of Contestants' allegations, Dr. Herron concluded that  
10 "none of the grounds [in the Contest] contains persuasive evidence [(1)] that there were fraudulent  
11 activities associated with the 2020 General Election in particular [or] the presidential election in  
12 Nevada; [(2)] that these fraudulent activities led to fraudulent votes, [or (3)] that these allegedly  
13 fraudulent votes affected the vote margin of 33,596 . . . that separates Joe Biden and Donald Trump  
14 in Nevada." Herron Dep. 25:1–17; Herron Decl. 1, 21. The Court credits these findings and accepts  
15 them as its own.

16        78. Dr. Herron's testimony is buttressed by Contestants' own expert witness, Mr.  
17 Gessler, who also testified that he has no personal knowledge that any voting fraud occurred in  
18 Nevada's 2020 General Election. Gessler Dep. 7:3–9, 40:13–12.

19        79. Based on this testimony, the Court finds that there is no credible or reliable evidence  
20 that the 2020 General Election in Nevada was affected by fraud. Herron Dep. 56:19–57:21.

21        **B. Provisional Ballots**

22        80. Contestants allege problems and irregularities with the provisional balloting  
23 process, including that certain voters were allowed to vote without proper Nevada identification  
24 and that the consequences of voting provisionally were not explained to voters.

25        81. The record does not support a finding that election officials counted ballots cast by  
26 same-day registrants who only provided proof of a DMV appointment in place of a Nevada  
27 photographic identification. *Cf.* Doe 3 Dep. 38:7–13, 41:6–8 (testifying that voters who provided  
28

1 only proof of DMV appointments after election day were given provisional ballots, but admitting  
2 that she did not participate in counting of provisional ballots and did not know whether any such  
3 ballots were counted); Doe 5 Decl. (LAW 000462) (hearsay declaration stating that voters without  
4 identification could make DMV appointment and vote, but not alleging that this process was  
5 improper or illegal).

6 82. The record does not support a finding that any provisional voters were wrongfully  
7 disenfranchised because of directions provided by election officials or because they were not given  
8 an opportunity to cure their ballots. *Cf.* Gloria Dep. 55:5–56:11 (testifying that all provisional  
9 voters received a set of paperwork explaining why they voted provisionally).

10 83. The record does not support a finding that voters were made to cast provisional  
11 ballots on election day and then not given the opportunity to cure their lack of identification. *Cf.*  
12 Doe 3 Dep. 38:7–13, 41:6–8 (testifying that voters with DMV appointments after election day  
13 were given provisional ballots, but admitting that she did not participate in counting of provisional  
14 ballots and not testifying that such voters were not given opportunity to cure); Huff Decl. (LAW  
15 001689–92) (hearsay declaration alleging various issues with cure process, but never identifying  
16 any voters who were denied the opportunity to cure).

17 84. The record does not support a finding that same day registrants with out-of-state  
18 identification were permitted to vote a regular, rather than provisional, ballot. *Cf.* Doe 1 Dep.  
19 (describing that such voters were made to vote provisional ballots to be later verified).

### 20 C. Mismatched Signatures

21 85. Contestants assert that the Agilis machine consistently malfunctioned and accepted  
22 invalid signatures because the machine setting was set impermissibly low and approved signatures  
23 based on low quality reference images.

24 86. The record does not support a finding that the Agilis machine functioned  
25 improperly and accepted signatures that should have been rejected during the signature verification  
26 process.

1        87.     The record does not support a finding that election workers counted ballots with  
2 improper signatures that should have been rejected. *Cf.* Blanco Decl. (LAW 000238) (hearsay  
3 declaration asserting that single signature from Clark County did not appear to match, but  
4 providing no evidence that it was not the voter's signature); Cordell Criddle Decl. (LAW 000364)  
5 (hearsay declaration alleging that illegible signature was nevertheless accepted, but not that vote  
6 was illegal); Debra Criddle Decl. (LAW 000364) (same); Doe 6 Decl. (LAW 000454) (hearsay  
7 declaration alleging several instances where signatures appeared to have been signed by others  
8 assisting voters, but not providing evidence that this assistance was unlawful).

9        88.     The record does not support a finding that election workers authenticated,  
10 processed, or counted ballots that presented problems and irregularities under pressure from  
11 election officials. *Cf.* Doe 2 Dep. 53:19–54:18 (testifying that ballots with purportedly strange  
12 signatures were counted, but admitting that she did not see comparator signatures and could not  
13 confirm that these were not voters' actual signatures); Doe 3 Dep. 43:15–20 (testifying that on  
14 election day she was instructed not to score or surrender ballots, but not that any unlawful ballots  
15 were counted as result).

16        89.     The record does not support a finding that illegal ballots were cast because the  
17 signature on the ballot envelope did not match the voter's signature. *Cf.* Blanco Decl. (LAW  
18 000238) (hearsay declaration asserting that single signature from Clark County did not match, but  
19 providing no evidence that signature was not voter's); Cordell Criddle Decl. (LAW 000364)  
20 (hearsay declaration alleging that illegible signature was nevertheless accepted, but not that vote  
21 was illegal); Debra Criddle Decl. (LAW 000364) (same); Doe 6 Decl. (LAW 000454) (hearsay  
22 declaration alleging several instances where signatures appeared to have been signed by others  
23 assisting voters, but not providing evidence that this assistance was unlawful).

24 ///

1           **D.     Illegal Votes from In-Person Voting Technology**

2           90.     Contestants allege that 1,000 illegal or improper votes were cast and counted as a  
3 result of maintenance and security issues with voting machines and that 1,000 legal votes were not  
4 counted due to issues with voting machines.

5           91.     The record does not support a finding that maintenance and security issues resulted  
6 in illegal votes being cast and counted or legal votes not being counted. *See* Gloria Dep. 33:9–21,  
7 36:8–12 (testifying that the voting machines were audited against a paper trail and that audit turned  
8 up no discrepancies).

9           **E.     Ineligible Voters and Double Voting**

10          92.     Contestants allege that voters were sent and cast multiple ballots and otherwise  
11 double voted, that non-Nevada residents cast ballots and those ballots were counted, and that  
12 numerous persons arrived to vote in-person on election day only to find out that a mail ballots was  
13 cast in their name already.

14          93.     The record does not support a finding that any Nevada voter voted twice. *See* Doe  
15 4 Dep. 10:6–13 (testifying that two voters he checked in were not allowed to vote because of record  
16 that they already voted).

17          94.     The record does not support a finding that any individuals were sent and cast  
18 multiple mail ballots. *Cf.* Negrete Decl. (LAW 001626) (hearsay declaration alleging that she  
19 received two ballots, one each for her married and maiden names, but not that she or anyone else  
20 cast multiple votes); Finley Decl. (LAW 004944) (hearsay declaration alleging that voter received  
21 two ballots, but providing no evidence that ballot was cast or counted).

22          95.     The record does not support a finding that numerous voters arrived to vote at their  
23 respective polling places only to be informed that a mail ballot had already been received on their  
24 behalf when, in fact, the voter had not submitted a mail ballot. *Cf.* Doe 3 Dep. 36:18–25, 37:1–18  
25 (testifying that single unidentified man arrived at her polling place and claimed that he did not cast  
26 mail ballot allegedly received by election officials, but not providing any corroborating evidence);  
27  
28



1 Doe 4 Dep. 10:6–13 (testifying that two voters he checked in were not allowed to vote because of  
2 record that they already voted, but not demonstrating whether these voters had in fact cast ballots).

3 96. The record does not support a finding that election officials counted mail ballots  
4 from voters who also voted in other states. *Cf.* Doe 2 Dep. 56:15–25 (testifying that she saw ballots  
5 arrive from out of state but admitting that she did not know whether they were lawfully cast); Doe  
6 3 Dep. 12:8–16 (testifying that she was asked to accept a voter’s California identification with  
7 Nevada address and was instructed to give them a provisional ballot, but not that voter had also  
8 voted in California).

9 97. The record does not support a finding that election officials counted ballots from  
10 voters who did not meet Nevada residency requirements. *Cf.* Doe 2 Dep. 56:15–25 (testifying that  
11 voters were allowed to cast ballots without presenting identification, but not that voters did not  
12 meet residency requirements); Doe 4 Dep. 10:14–11:12, 40:7–23 (testifying to belief that  
13 individuals with out-of-state identification were allowed to vote, but admitting that he did not know  
14 if these individuals voted after they were directed to team leaders); Linda Smith Decl. (LAW  
15 004650) (hearsay declaration describing voters arriving with out-of-state license plates, but not  
16 claiming that these voters were ineligible to vote in Nevada); *see* Thorley Dep. 47:1–48:12  
17 (testifying that Nevada directs the USPS not to forward ballots and that ballots are mailed as  
18 marketing mail, which does not include mail forwarding, a feature that requires additional  
19 payment).

20 **F. Ballot Issues**

21 98. Contestants allege that Clark County election workers were pressured to push  
22 ballots through despite deficiencies.

23 99. The record does not support a finding that Clark County election workers were  
24 pressured to process and count ballots that presented problems and irregularities. *Cf.* Doe 2 Dep.  
25 53:19–54:18 (testifying that ballots with purportedly strange signatures were counted, but  
26 admitting that she did not see comparator signatures and could not confirm that these were not  
27  
28

1 voters' actual signatures); Doe 3 Dep. 43:15–20 (testifying that on election day she was instructed  
2 not to score or surrender ballots, but not that any unlawful ballots were counted as result).

3 **G. Deceased Voters**

4 100. Contestants allege that votes from deceased voters were improperly cast and  
5 counted.

6 101. The record does not support a finding that, as Contestants allege, 500 votes were  
7 illegal or improper because they were cast by deceased voters. *See* Thorley Dep. 44:2–45:24  
8 (testifying to the process in place to maintain voter rolls, including removing confirmed deceased  
9 voters); Gloria Dep. 63:24–64:8, 90:7–23 (same); Hartle Decl. (LAW 000260–61) (hearsay  
10 declaration asserting only that single vote from deceased wife was counted during November  
11 election); 2020 General Election Rejection Log (LAW 004366, 004527) (showing only two “voter  
12 is deceased” entries).

13 **H. Voter Impersonation**

14 102. Contestants allege that persons cast mail ballots in other persons' names.

15 103. The record does not support a finding that ballots that were completed and  
16 submitted by anyone other than the proper voters. *Cf.* Doe 3 Dep. 14:8–14, 35:1–5 (testifying that  
17 unidentified persons near purported Biden-Harris bus next to polling location prefilled mail ballots  
18 and put them in pink ballot envelopes, but admitting that she did not see these ballots cast and  
19 cannot confirm that these ballots were counted); Walters Decl. (LAW 000266) (hearsay  
20 declaration claiming that occupants of van seen following USPS truck took mail ballots from  
21 mailboxes, but providing no evidence that these ballots were cast and counted); Garrett Smith  
22 Decl. (LAW 000453) (hearsay declaration claiming that he did not vote and that “[a] search of the  
23 Clark County web site [] disclosed that a ballot in my name was accepted by the county on  
24 November 7, 2020,” but providing no evidence that this was his ballot and not ballot of someone  
25 with same name).

1           **I.       Untimely Ballots**

2           104. Contestants allege that election officials counted ballots that arrived after the  
3 deadline for submitting them.

4           105. The record does not support a finding that election officials counted untimely mail  
5 ballots that were submitted after deadlines.

6           **J.       Other Allegedly Illegal or Improper Votes**

7           106. Contestants allege that Nevada failed to properly maintain its voter lists resulting  
8 in illegal votes cast and counted, and that the postal service was directed to violate USPS policy  
9 and improperly deliver ballots.

10          107. The record does not support a finding that Nevada failed to cure its voter lists to  
11 reflect returned ballots during the 2020 primary election and that, as a result, ballots were delivered  
12 to addresses where no known voter lives and were cast and counted at all or in an amount equal to  
13 or greater than 33,596. *Cf.* Walter Decl. (LAW 000266) (hearsay declaration alleging that he  
14 received ballot for individual who never lived at his address, but not demonstrating that the ballot  
15 was voted or counted); Gessler Dep. 41:23–42:10 (testifying that he has no knowledge of how  
16 Nevada maintains its voter rolls and that he knows of no one who is improperly included in those  
17 rolls).

18          108. The record does not support a finding that USPS letter carriers were directed to  
19 violate USPS policy by delivering mail ballots to addresses where the addressee of the ballot was  
20 known to be deceased, known to have moved from that address, or had no affiliation with that  
21 address at all. Thorley Dep. 46:18–48:14; *cf.* Doe 7 Decl. (LAW 000265) (hearsay declaration  
22 alleging that deceased mother's ballot was forwarded to son in California, but not demonstrating  
23 that person was actually deceased and not simply living with son temporarily); *id.* (alleging that  
24 USPS supervisor instructed her to forward ballot to deceased person in California, but providing  
25 no evidence that such ballot was returned as voted).

26          109. Despite two of Contestants' experts testifying to "questionable ballots" and "illegal  
27 ballots," Baselice Dep. 52:20–25 ("questionable ballots"); Kamzol Dep. 53:10–14 ("illegal  
28

1 ballots”), neither provided evidence to support Contestants’ allegations regarding the presence of  
2 illegal votes in the 2020 presidential election. *See* Herron Dep. 59:22–60:12, 68:13–69:12  
3 (testifying that neither Mr. Baselice nor Mr. Kamzol disclosed the data underlying their analysis);  
4 Baselice Dep. 24:7–15 (explaining that he did not participate in compiling the data he used and  
5 “shouldn’t even surmise” “what the original source of the data was”); Kamzol Dep. 58:6–59:15  
6 (explaining that he did not know how the matching work to enhance the data he used was  
7 performed); Baselice Dep. 60:8–61:17 (acknowledging that he could not determine how many  
8 “questionable” ballots were actually counted, contained votes in the presidential election, or were  
9 cast for a particular candidate); Kamzol Dep. 92:4–16 (same). Little or no verification of numbers  
10 was done by Mr. Kamzol.

## 11 **VII. Observation of the Ballot Processing and Counting Process**

12 110. The record does not support a finding that Clark County’s policy for observation of  
13 ballot counting and ballot duplication was designed to shield voter fraud or actually led to voter  
14 fraud. Gessler Dep. 64:16–66:21 (testifying he has no knowledge of Nevada law relating to voting  
15 observation and no personal knowledge of how Clark County allowed observation of ballot  
16 counting and ballot duplication).

17 111. The record does not support a finding that election workers marked choices for any  
18 unfilled elections or questions on duplicated ballots. *Cf.* Fezza Decl. (LAW 000257) (hearsay  
19 declaration describing ballot duplication process, but providing no evidence that anything  
20 unscrupulous occurred and noting that duplication teams were comprised of members of opposite  
21 parties, that each team “worked well together,” and that “getting things done right was encouraged  
22 over speed”); Taylor Decl. (LAW 001749) (hearsay declaration describing ballot duplication  
23 process, but providing no evidence that anything unscrupulous occurred); Kraus Decl. (LAW  
24 000440) (similar); Stewart Decl. (LAW 000456) (similar).

25 112. The record does not support a finding that members of the public were denied the  
26 right to observe the processing and tabulation of mail ballots. *Cf.* Fezza Decl. (LAW 000257)  
27 (hearsay declaration asserting that observers were confined to “tiny, taped off area” in corner of  
28

1 room, but admitting that observers were always present and given access); Kraus Decl. (LAW  
2 000441) (hearsay declaration alleging insufficient access to Clark County's facilities for  
3 "meaningful observation," but confirming he was consistently given access to facilities); Taylor  
4 Decl. (LAW 001749) (similar); Percin Decl. (LAW 001642-88) (similar); Stewart Decl. (LAW  
5 000456) (similar); Gloria Dep. 61:1-7 (explaining that observers were stationed in pre-designated  
6 locations that ensured social distancing).

7 113. In *Kraus*, Judge Wilson found that Clark County had not interfered with any  
8 individual's statutory right to observe ballot processing. *Kraus*, slip op. at 10-11 ("Petitioners have  
9 failed to prove Registrar Gloria has interfered with any right they or anyone else has as an  
10 observer."). The Court adopts this finding of fact as its own.

## 11 **VIII. Candidate Misconduct**

### 12 **A. The Nevada Native Vote Project**

13 114. The record does not support a finding that groups or individuals linked to the Biden-  
14 Harris campaign offered or gave, directly or indirectly, anything of value to manipulate votes in  
15 this election or otherwise alter the outcome of the election. *Cf.* LAW 004662-751 (depicting only  
16 two posts including Biden-Harris paraphernalia, neither of which were affiliated with Nevada  
17 Native Vote Project or Biden-Harris campaign). The record also does not support a finding that  
18 any group or individual offered anything of value to voters to manipulate the voters' choice for  
19 president. *Cf.* LAW 000274-358 (showing purported Facebook screenshots from groups and  
20 individuals, but not demonstrating that they offered anything of value to alter outcome of election).

21 115. Although the Nevada Native Vote Project ("NNVP") organized voter drives, that  
22 organization expressly disclaimed any relationship with President-elect Biden's or any other  
23 political campaign. *See* Official Statement from the Nevada Native Vote Project ("The NNVP is a  
24 non-partisan, non-profit organization that is dedicated to engaging the Native community in their  
25 Constitutional right to vote. Regardless of party affiliation, the ability to make your voice heard  
26 and ensure the Native perspective is present in every determination made on the ballot is of the  
27 utmost importance.").

1 116. The record does not support a finding that NNVP or any other group or individual  
2 engaged in voting drives acted on behalf of Defendants or President-elect Biden. *Cf.* LAW  
3 000274–358 (showing purported Facebook screenshots from groups and individuals, but not  
4 demonstrating any partisan activity linked to Biden-Harris campaign).

5 **B. The Biden-Harris Bus**

6 117. The record does not support a finding that multiple ballots were filled out against a  
7 bus bearing the Biden-Harris emblem outside a polling place in Clark County. *Cf.* Doe 3 Dep.  
8 14:13–19:7. While Doe 3 testified to alleged ballot-stuffing occurring in broad daylight outside a  
9 busy polling location in Nevada’s most populous county, no other witness corroborated Doe 3’s  
10 account. The Court finds Doe 3’s account not credible.

11 118. The record does not support a finding that the Biden-Harris campaign paid anything  
12 of value for anyone to alter votes. *Cf.* Doe 3 Dep. 23:21–24:10 (admitting that she had no hard  
13 evidence tying activities she saw to Democratic candidates); *id.* 35:1–8 (admitting to not knowing  
14 whether these allegedly unlawful ballots were accepted and counted).

15 **CONCLUSIONS OF LAW**

16 **I. Expert Evidence by Contestants**

17 119. “To testify as an expert witness . . . , the witness must satisfy the following three  
18 requirements: (1) he or she must be qualified in an area of ‘scientific, technical or other specialized  
19 knowledge’ (the qualification requirement); (2) his or her specialized knowledge must ‘assist the  
20 trier of fact to understand the evidence or to determine a fact in issue’ (the assistance requirement);  
21 and (3) his or her testimony must be limited ‘to matters within the scope of [his or her specialized]  
22 knowledge’ (the limited scope requirement).” *Hallmark v. Eldridge*, 124 Nev. 492, 498, 189 P.3d  
23 646, 650 (2008) (alteration in original) (quoting NRS 50.275); *see also Higgs v. State*, 126 Nev.  
24 1043 1, 16, 222 P.3d 648, 658 (2010).

25 120. As reflected herein, the Court finds that the expert testimony provided by  
26 Contestants was of little to no value. The Court did not exclude consideration of this evidence,  
27 which it could have, but gave it very little weight.  
28

121. To determine whether these three requirements are satisfied, Nevada courts consider several non-exhaustive factors. *See Higgs*, 126 Nev. at 16–17, 222 P.3d at 657–58.

122. For the qualification requirement, the Court must consider the witness’s “(1) formal schooling and academic degrees, (2) licensure, (3) employment experience, and (4) practical experience and specialized training.” *Hallmark*, 124 Nev. at 499, 189 P.3d at 650–51 (footnotes omitted).

123. For the assistance requirement, the expert’s testimony must be (1) relevant and (2) reliable. *Id.* at 500, 189 P.3d at 651; *see also Perez v. State*, 129 Nev. 850, 858, 313 P.3d 862, 867–68 (2013) (“Evidence is relevant when it tends ‘to make the existence of any fact that is of consequence to the determination of the action more or less probable.’” (quoting NRS 48.015)); *Hallmark*, 124 Nev. at 500–01, 189 P.3d at 651–52 (“In determining whether an expert’s opinion is based upon reliable methodology, a district court should consider whether the opinion is (1) within a recognized field of expertise; (2) testable and has been tested; (3) published and subjected to peer review; (4) generally accepted in the scientific community . . . ; and (5) based more on particularized facts rather than assumption, conjecture, or generalization.” (footnotes omitted)).

124. For the limited scope requirement, the expert testimony must be related to the “highly particularized facts” of the case, *Higgs*, 126 Nev. at 20, 222 P.3d at 660, and fall within the scope of the witness’s specialized knowledge. *See Perez*, 129 Nev. at 861, 313 P.3d at 869.

125. As reflected above, this Court gave very little weight to Contestants’ experts and could possibly have excluded their testimony under the above stated standards. The Court is concerned about the failure of these experts to verify the data they were relying on.

126. The Court nonetheless considers Contestants’ proffered expert testimony in reaching and ruling upon the merits of Contestants’ claims.

## II. Issue Preclusion

127. Under Nevada law, issue preclusion applies when (1) the issue decided in the prior litigation is identical to the issue in the current action; (2) the initial ruling was on the merits and

1 has become final; (3) the party against whom the judgment is asserted was a party or in privity  
2 with a party to the prior litigation; and (4) the issue was necessarily and actually litigated. *Five*  
3 *Star Cap. Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008).

4 128. Contestants' challenges to Clark County's use of the Agilis machine and its  
5 observation policies are identical to issues raised by the *Kraus* petitioners because two challenges  
6 are the same and the same facts underlie these challenges and the *Kraus* claims. *See LaForge v.*  
7 *State, Univ. & Cmty. Coll. Sys.*, 116 Nev. 415, 420, 997 P.2d 130, 134 (2000); *see also Kraus*, slip  
8 op. at 12–13.

9 129. Contestants' challenge to an alleged lack of meaningful observation was also raised  
10 and addressed in *Kraus*. *See* slip op. at 10–11, 13.

11 130. This Court issued a thorough, well-reasoned opinion in *Kraus* denying the  
12 petitioners mandamus relief, which constituted a final decision on the merits because it was neither  
13 tentative nor subject to further determination. *See Kirsch v. Traber*, 134 Nev. 163, 166–67, 414  
14 P.3d 818, 821–22 (2018); *Hoffman v. Second Jud. Dist. Ct.*, No. 60119, 2013 WL 7158424, at \*4  
15 (Nev. Dec. 16, 2013).

16 131. As Trump electors, Contestants are in privity with the *Kraus* petitioners—  
17 specifically, the Trump Campaign and Nevada Republican Party—because they were  
18 “nomin[ated]” and “select[ed]” to serve as electors by the Nevada Republican Party, NRS  
19 298.035(1), and are functionaries of the Trump Campaign. *See* NRS 298.065; NRS 298.075; *see*  
20 *also Chiafalo v. Washington*, 140 S. Ct. 2316, 2322 (2020). Contestants are thus “sufficiently  
21 close” to, such that their interests were “adequate[ly] represent[ed]” by, the *Kraus* petitioners.  
22 *Mendenhall v. Tassinari*, 133 Nev. 614, 618, 403 P.3d 364, 369 (2017) (first quoting *Vets N., Inc.*  
23 *v. Libutti*, No. CV-01-7773-DRHETB, 2003 WL 21542554, at \*11 (E.D.N.Y. Jan. 24, 2003); and  
24 then quoting *Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, 261, 321 P.3d  
25 912, 917 (2014)); *cf. In re Coday*, 130 P.3d 809, 816–17 (Wash. 2006).

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1           132. The issues relating to the Agilis machine and meaningful observation of tabulation  
2 were necessarily and actually litigated in *Kraus* because they were properly raised and submitted  
3 for determination. *See Alcantara*, 130 Nev. at 262, 321 P.3d at 918.

4           133. Each of the four requirements for issue preclusion is therefore satisfied as to  
5 Contestants' grounds for contest related to the lawfulness of the Agilis machines and meaningful  
6 observation of ballot tabulation

7           134. While issue preclusion provides alternative grounds to dispose of these issues, the  
8 Court reaches and rules on the merits of all of Contestants' claims.

### 9 **III. Grounds for Contests**

10           135. Although Nevada has not addressed this issue, the Court believes that Contestants  
11 are required to prove the grounds for their contest by clear and convincing evidence. *See, e.g.,*  
12 *Gooch v. Hendrix*, 851 P.2d 1321, 1328 (Cal. 1993); *Bazydlo v. Volant*, 647 N.E.2d 273, 276 (Ill.  
13 1995); *Adair Cnty. Bd. of Elections v. Arnold*, No. 2015-CA-000661-MR, 2015 WL 5308132, at  
14 \*6 (Ky. Ct. App. Sept. 11, 2015); *Snyder v. Glusing*, 520 A.2d 349, 357 (Md. 1987); *Drummond*  
15 *v. Town of Virginia City*, 833 P.2d 1067, 1070 (Mont. 1992); *Harmon v. Baldwin*, 837 N.E.2d  
16 1196, 1201 (Ohio 2005) (per curiam); *Quinn v. City of Tulsa*, 777 P.2d 1331, 1341 (Okla. 1989);  
17 *Thomas v. Penfold*, 541 P.2d 1065, 1067 (Or. 1975); *Gonzalez v. Villarreal*, 251 S.W.3d 763, 773  
18 (Tex. Ct. App. 2008).

19           136. This higher standard of proof is appropriate in election contests because it  
20 "adequately balances the conflicting interests in preserving the integrity of the election and  
21 avoiding unnecessary disenfranchisement of qualified absentee voters." *Bazydlo*, 647 N.E.2d at  
22 276 (quoting *Bazydlo v. Volant*, 636 N.E.2d 1107, 1110 (Ill. App. Ct. 1994)); *accord Sadler v.*  
23 *Connolly*, 575 P.2d 51, 55 (Mont. 1978) ("The underlying basis for [the clear and convincing  
24 evidence] standard is that an election contest . . . , if successful, has the serious effect of  
25 disenfranchisement of the voters." (citing *Thornton v. Johnson*, 453 P.2d 178, 182 (Or. 1969) (per  
26 curiam))).

27 ///

1 137. "In Nevada, a plaintiff must prove a general civil fraud claim, which requires intent  
2 to defraud, with clear and convincing evidence." *Nellis Motors v. State*, 124 Nev. 1263, 1267, 197  
3 P.3d 1061, 1064 (2008).

4 138. "[C]lear and convincing evidence must be 'satisfactory' proof that is 'so strong and  
5 cogent as to satisfy the mind and conscience of a common man, and so to convince him that he  
6 would venture to act upon that conviction in matters of the highest concern and importance to his  
7 own interest. It need not possess such a degree of force as to be irresistible, but there must be  
8 evidence of tangible facts from which a legitimate inference . . . may be drawn.'" *In re Discipline*  
9 *of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995) (alteration in original) (quoting  
10 *Gruber v. Baker*, 20 Nev. 453, 477, 23 P. 858, 865 (1890)).

11 139. However, even if a preponderance of the evidence standard was used, the Court  
12 concludes that Contestants' claims fail on the merits there under or under any other standard.

13 **A. Contestants did not prove that there was a "malfunction of any voting device**  
14 **or electronic tabulator, counting device or computer in a manner sufficient to**  
**raise reasonable doubt as to the outcome of the election."**

15 140. Contestants' evidence does not establish by clear and convincing proof, or under  
16 any standard of evidence, that "there was a malfunction of any voting device or electronic  
17 tabulator, counting device or computer in a manner sufficient to raise reasonable doubt as to the  
18 outcome of the election." NRS 293.410(2)(f).

19 141. A "malfunction" is "[a] fault in the way something works," *Malfunction, Black's*  
20 *Law Dictionary* (11th ed. 2019), and "a failure to operate or function in the normal or correct  
21 manner," *Malfunction, Merriam-Webster's Collegiate Dictionary* (11th ed. 2003); *see also Otis*  
22 *Elevator Co. v. Reid*, 101 Nev. 515, 520, 706 P.2d 1378, 1381 (1985) (describing incidents where  
23 elevator operated differently than "normal" as "malfunctions").

24 142. Contests did not prove under any standard of proof that the Agilis machine  
25 malfunctioned.

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1 143. Contestants did not prove under any standard of proof that the Agilis machine  
2 malfunctioned in a manner sufficient to raise reasonable doubt as to the outcome of the election.

3 144. Contests did not prove under any standard of proof that the electronic voting  
4 machines malfunctioned in a manner sufficient to raise reasonable doubt as to the outcome of the  
5 election.

6 **B. Contestants did not prove that “[i]llegal or improper votes were cast and**  
7 **counted,” and/or “[l]egal and proper votes were not counted . . . in an**  
8 **amount that is equal to or greater than the margin between the contestant**  
**and the defendant, or otherwise in an amount sufficient to raise reasonable**  
**doubt as to the outcome of the election.”**

9 145. Contestants evidence does not establish by clear and convincing proof, or under  
10 any standard of evidence, that “[i]llegal or improper votes were cast and counted,” and/or “[l]egal  
11 and proper votes were not counted . . . in an amount that is equal to or greater than the margin  
12 between the contestant and the defendant, or otherwise in an amount sufficient to raise reasonable  
13 doubt as to the outcome of the election.” NRS 293.410(2)(c).

14 146. “Illegal or improper votes” are those that could not have been lawfully cast and  
15 therefore should not be counted. *See, e.g., Mahaffey v. Barnhill*, 855 P.2d 847, 850 (Colo. 1993)  
16 (defining votes cast by those ineligible to vote as “illegal votes”); *Turner v. Cooper*, 347 So. 2d  
17 1339, 1341 (Ala. 1977) (describing “illegal votes” as those cast by unqualified voters); *Grounds*  
18 *v. Lawe*, 193 P.2d 447, 449 (Ariz. 1948) (explaining that trial court found “fifteen illegal votes”  
19 because “fifteen [votes] had been cast by persons not qualified to vote”); *Harris v. Stewart*, 193  
20 So. 339, 341 (Miss. 1940) (describing “illegal votes” as those cast by someone “not a qualified  
21 voter”); *Jaycox v. Varnum*, 226 P. 285, 288 (Idaho 1924) (similar); *Montoya v. Ortiz*, 175 P. 335,  
22 337 (N.M. 1918) (“There was no question raised as to illegal votes. All voters who voted at the  
23 election were concededly qualified voters.”); *Horton v. Sullivan*, 86 A. 314, 314 (R.I. 1913) (using  
24 “illegal votes” to describe those cast by “illegal voters”).

25 147. Contestants did not prove under any standard of proof that illegal votes were cast  
26 and counted, or legal votes were not counted at all, due to voter fraud, nor in an amount equal to  
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1 or greater than 33,596, or otherwise in an amount sufficient to raise reasonable doubt as to the  
2 outcome of the election.

3 148. Contestants did not prove under any standard of proof that voters who were given  
4 provisional ballots cast illegal votes which were then counted, or voters who were given provision  
5 ballots cast legal votes which were not counted at all, nor in an amount equal to or greater than  
6 33,596, or otherwise in an amount sufficient to raise reasonable doubt as to the outcome of the  
7 election.

8 149. Contestants did not prove under any standard of proof that illegal votes were cast  
9 and counted that should have been rejected during the signature verification process, or legal votes  
10 were not counted that should have been accepted during the signature verification process at all,  
11 nor in an amount equal to or greater than 33,596, or otherwise in an amount sufficient to raise  
12 reasonable doubt as to the outcome of the election.

13 150. Contestants did not prove under any standard of proof that illegal votes were cast  
14 and counted, or legal votes were not counted at all, due to issues with in-person voting technology,  
15 nor in an amount equal to or greater than 33,596, or otherwise in an amount sufficient to raise  
16 reasonable doubt as to the outcome of the election.

17 151. Contestants did not prove under any standard of proof that illegal votes by ineligible  
18 voters were cast and counted, nor in an amount equal to or greater than 33,596, or otherwise in an  
19 amount sufficient to raise reasonable doubt as to the outcome of the election.

20 152. Contestants did not prove under any standard of proof that illegal votes were cast  
21 and counted wherein the ballots had problems or irregularities, nor in an amount equal to or greater  
22 than 33,596, or otherwise in an amount sufficient to raise reasonable doubt as to the outcome of  
23 the election.

24 153. Contestants did not prove under any standard of proof that illegal votes by deceased  
25 voters were cast and counted, nor in an amount equal to or greater than 33,596, or otherwise in an  
26 amount sufficient to raise reasonable doubt as to the outcome of the election.

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1        154. Contestants did not prove under any standard of proof that illegal votes were cast  
2 by individuals other than the intended voters and counted, nor in an amount equal to or greater  
3 than 33,596, or otherwise in an amount sufficient to raise reasonable doubt as to the outcome of  
4 the election.

5        155. Contestants did not prove under any standard of proof that illegal votes submitted  
6 after deadlines were cast and counted, nor in an amount equal to or greater than 33,596, or  
7 otherwise in an amount sufficient to raise reasonable doubt as to the outcome of the election.

8        156. Contestants did not prove under any standard of proof that any illegal votes were  
9 cast and counted, or legal votes were not counted at all, for any other improper or illegal reason,  
10 nor in an amount equal to or greater than 33,596, or otherwise in an amount sufficient to raise  
11 reasonable doubt as to the outcome of the election. Reasonable doubt is one based on reason, not  
12 mere possibility.

13        **C. Contestants did not prove that that “the election board or any member**  
14        **thereof was guilty of malfeasance.”**

15        157. Contestants evidence does not establish by clear and convincing proof, or under  
16 any standard of evidence, that “the election board or any member thereof was guilty of  
17 malfeasance.” NRS 293.410(2)(a).

18        158. Under Nevada law, “malfeasance . . . constitute[s] an act of commission as  
19 distinguished from an act of omission.” *Jones v. Eighth Jud. Dist. Ct.*, 67 Nev. 404, 408, 219 P.2d  
20 1055, 1057 (1950).

21        159. “Omissions to act are not acts of malfeasance in office, but constitute nonfeasance.  
22 A distinct difference is recognized between the two. Conduct invoking one charge will not be  
23 sufficient to justify the other.” *Buckingham v. Fifth Jud. Dist. Ct.*, 60 Nev. 129, 136, 102 P.2d 632,  
24 635 (1940).

25        160. Malfeasance requires, at the very least, an allegation of knowledge that the act was  
26 wrongful, if not a greater level of nefarious intent. *See Jones*, 67 Nev. at 415–18, 219 P.2d at 1060–  
27 62 (finding that complaint sufficiently alleged malfeasance by alleging knowledge and agreeing  
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1 that officer “must have done [the illegal act] knowing that he was doing wrong or at least under  
2 such circumstances that any reasonable person who had done the same thing would have known  
3 that he was doing something wrong” (quoting *Atwood v. Cox*, 55 P.2d 377, 393 (Utah 1936))).

4 161. Contestants did not prove under any standard of proof that any of Nevada’s election  
5 officials committed malfeasance.

6 162. Contestants did not prove under any standard of proof that Clark County or any  
7 other county or state election officials violated any right to observation provided for in Nevada  
8 Law. *Cf. Kraus*, slip op. at 11 (concluding that “[p]etitioners [] failed to prove Registrar Gloria has  
9 interfered with any right they or anyone else has as an observer” and that Registrar “Gloria has not  
10 failed to meet his statutory duties . . . to allow members of the general public to observe the  
11 counting of ballots”).

12 163. Contestants did not prove under any standard of proof that Clark County election  
13 officials or any other election officials acted with knowledge or intent that they were violating the  
14 law as it relates to public observation of ballot processing or counting.

15 164. Contestants did not prove under any standard of proof that Clark County’s use of  
16 the Agilis machines constitutes malfeasance.

17 165. Clark County’s use of the Agilis machines was lawful under Nevada law. *See* NRS  
18 293.8871(2)(a) (permitting processing and counting of mail ballots “by electronic means”).

19 166. Clark County did not violate the Equal Protection Clauses of the Nevada or U.S.  
20 Constitutions by using the Agilis machine, let alone intentionally so, because county by county  
21 differences in the way votes are processed does not violate equal protection unless it impedes or  
22 obstructs the ability of individual citizens to cast their votes or have those votes counted. *See*  
23 *Kraus*, slip op. at 12–13 (concluding that Clark County’s use of Agilis machine is permitted under  
24 Nevada’s election law and Equal Protection Clause).

25 167. Contestants did not prove under any standard of proof that Clark County election  
26 officials had knowledge that their use of the Agilis, including the settings it was used with and its  
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1 use to verify certain ballots without additional human review violated any law, nor that election  
2 officials acted with nefarious intent.

3 168. Contestants did not prove under any standard of proof that any state or county  
4 election officials misused electronic voting machines or other voting equipment.

5 169. Contestants did not prove under any standard of proof that any election officials  
6 knowingly committed any misconduct relating to the operation of electronic voting machines, nor  
7 that election officials acted with nefarious intent in doing so.

8 **D. Contestants did not prove that “the defendant or any person acting, either**  
9 **directly or indirectly, on behalf of the defendant has given, or offered to give,**  
10 **to any person anything of value for the purpose of manipulating or altering**  
11 **the outcome of the election.”**

12 170. Contestants evidence does not establish by clear and convincing proof, or under  
13 any standard of evidence, that “the defendant or any person acting, either directly or indirectly, on  
14 behalf of the defendant has given, or offered to give, to any person anything of value for the  
15 purpose of manipulating or altering the outcome of the election.” NRS 293.410(2)(e).

16 171. By its plain terms, this ground requires intentional wrongdoing by a person who  
17 (1) has an agency relationship with the candidate—“the defendant or any person acting, either  
18 directly or indirectly, on behalf of the defendant”—and (2) offers a thing of value “for the purpose  
19 of manipulating or altering the outcome of the election.” NRS 293.410(2)(e).

20 172. Contestants did not prove under any standard of proof that Defendants, the Biden-  
21 Harris Campaign, or anyone acting on their behalf gave or offered to give to any person anything  
22 of value for the purpose of manipulating or altering the outcome of the election.

23 173. Contestants did not prove under any standard of proof that NNVP had an agency  
24 relationship with Defendants or the Biden-Harris Campaign, or otherwise acted on the behalf of,  
25 either directly or indirectly, Defendants or the Biden-Harris campaign.

26 174. Contestants did not prove under any standard of proof that NNVP gave or offered  
27 to give to any person anything of value for the purpose of manipulating or altering the outcome of  
28 the election.

1 175. Contestants did not prove under any standard of proof that the persons witnessed  
2 by Doe 3 had an agency relationship with Defendants or the Biden-Harris Campaign, or otherwise  
3 acted on the behalf of, either directly or indirectly, Defendants or the Biden-Harris campaign.

4 176. Contestants did not prove under any standard of proof that the persons witnessed  
5 by Doe 3 gave or offered to give to any person anything of value for the purpose of manipulating  
6 or altering the outcome of the election.

7 **CONCLUSION**

8 177. The Contestants failed to meet their burden to provide credible and relevant  
9 evidence to substantiate any of the grounds set forth in NRS 293.410 to contest the November 3,  
10 2020 General Election.

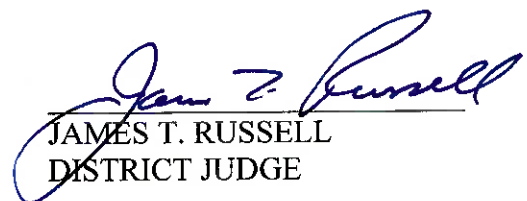
11 **JUDGMENT**

12 Therefore, based upon the above Findings of Fact and Conclusions of Law made by this  
13 Court, after trial, and good cause appearing, the following Judgment is entered by the Court:

14 **IT IS HEREBY ORDERED** that Contestants' contest is **DENIED** and this case is  
15 **DISMISSED** with prejudice.

16 **IT IS HEREBY FURTHER ORDERED** that Contestants are shall pay Defendants' costs  
17 pursuant to NRS 293.420.

18 DATED this 4th day of December, 2020.

19  
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21   
22 JAMES T. RUSSELL  
23 DISTRICT JUDGE  
24  
25  
26  
27  
28



**CERTIFICATE OF MAILING**

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 4<sup>th</sup> day of December, 2020, I caused to be transmitted via email, a true and correct copy of the foregoing Order addressed as follows:


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