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1 MARC E. ELIAS, ESQ. (D.C. Bar No. 442007) (pro hac vice submitted)  
2 JOHN M. DEVANEY, ESQ. (D.C. Bar No. 375465) (pro hac vice submitted)  
3 HENRY J. BREWSTER, ESQ. (D.C. Bar No. 1033410) (pro hac vice submitted)  
4 COURTNEY A. ELGART, ESQ. (D.C. Bar No. 1645065) (pro hac vice submitted)  
5 JYOTI JASRASARIA, ESQ. (D.C. Bar No. 1671527) (pro hac vice submitted)

**PERKINS COIE LLP**

6 700 Thirteenth Street NW, Suite 800  
7 Washington, D.C. 20005-3960  
8 Tel: (202) 654-6200  
9 melias@perkinscoie.com  
10 jdevaney@perkinscoie.com  
11 hbrewster@perkinscoie.com  
12 celgart@perkinscoie.com  
13 jjasrasaria@perkinscoie.com

14 KEVIN J. HAMILTON, ESQ. (Wash. Bar No. 15648) (pro hac vice submitted)  
15 ABHA KHANNA, ESQ. (Wash. Bar No. 42612) (pro hac vice submitted)  
16 JONATHAN P. HAWLEY, ESQ. (Wash. Bar No. 56297) (pro hac vice submitted)  
17 REINA A. ALMON-GRIFFIN, ESQ. (Wash. Bar No. 54651) (pro hac vice submitted)  
18 NITIKA ARORA, ESQ. (Wash. Bar No. 54084) (pro hac vice submitted)

**PERKINS COIE LLP**

19 1201 Third Avenue, Suite 4900  
20 Seattle, Washington 98101-3099  
21 Tel: (206) 359-8000  
22 khamilton@perkinscoie.com  
23 akhanna@perkinscoie.com  
24 jhawley@perkinscoie.com  
25 ralmon-griffin@perkinscoie.com  
26 narora@perkinscoie.com

27 BRADLEY SCHRAGER, ESQ. (SBN 10217)  
28 DANIEL BRAVO, ESQ. (SBN 13078)

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

3556 East Russell Road, Second Floor  
Las Vegas, Nevada 89120  
Tel: (702) 341-5200  
bschrager@wrslawyers.com  
dbravo@wrslawyers.com

*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

**DEFENDANTS' OPPOSITION TO  
CONTESTANTS' EX PARTE  
MOTION**

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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.

**INTRODUCTION**

What Contestants ask this Court to do—overturn the results of the November 3, 2020 election and effectively disenfranchise all 1.3 million Nevadans who cast ballots—is no small thing. “One might expect that when seeking such a startling outcome, a plaintiff would come formidably armed with compelling legal arguments and factual proof of rampant corruption . . . . That has not happened.” *Donald J. Trump for President, Inc. v. Boockver*, No. 4:20-CV-2078, 2020 WL 6821992, at \*1 (M.D. Pa. Nov. 21, 2020). Instead, Contestants filed an ex parte motion seeking to conduct endless depositions, without notice, over Thanksgiving week, all in the hopes of turning up *some* evidence of their far-fetched and baseless allegations. If Contestants want a license to go fishing this holiday week, they should ask the Department of Wildlife, not this Court.

This Court should not oblige. As explained in Defendants’ motion to dismiss, Contestants’ statement of contest, even when read in the most generous light, fails to state grounds upon which relief can be granted. It amounts to nothing more than “strained legal arguments without merit and speculative accusations . . . unsupported by evidence.” *Id.* Without more, this Court should not allow Contestants to burden the Court, Defendants, and Nevada’s over-burdened election administrators while Contestants root around for a shred of evidence to feed their conspiracy theories. Instead, the Court should address Defendants’ concurrently filed

1 motion to dismiss before allowing *any* discovery to move forward—and therefore deny this ex  
2 parte motion for discovery as both procedurally and substantively improper.<sup>1</sup>

### 3 ARGUMENT

#### 4 I. This Court should address the motion to dismiss before allowing discovery.

5 Concurrently with this opposition, Defendants have filed a motion to dismiss  
6 Contestants' statement of contest because it falls woefully short of stating with sufficient  
7 certainty the grounds on which they seek to overturn the election results. Because the statement's  
8 legal and factual deficiencies are readily apparent on the pleadings, this entire contest should be  
9 dismissed before Contestants are allowed to put Nevada's dedicated public servants and  
10 Contestants' political opponents through costly and disruptive discovery. *See Rodrigues v.*  
11 *Washinsky*, No. 55214, 2011 WL 4396711, at \*2 (Nev. Sept. 20, 2011) (affirming grant of  
12 motion to dismiss before allowing discovery where plaintiffs could not have prevailed); *Bailey v.*  
13 *Maningo*, No. 59018, 2013 WL 3314286, at \*1 (Nev. Apr. 12, 2013) (similar); *see also Harris v.*  
14 *Am. Gen. Fin. Servs. LLC*, No. 2:10-cv-01662-GMN-LRL, 2010 WL 9517401, at \*1 (D. Nev.  
15 Dec. 2, 2010) (collecting cases and concluding that “[s]tay of discovery is appropriate where a  
16 pending motion is potentially dispositive of the entire case”).

17 Nevada's contest laws provide very specific and well-defined grounds for contesting an  
18 election. A contestant may contest an election by showing:

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20 <sup>1</sup> Contestants fail to justify why their motion should be considered ex parte. Under this Court's  
21 local rules, the first paragraph of an ex parte motion “must state specific facts that show . . . [a]  
22 emergency that justifies the court proceeding without the other party being given notice and an  
23 opportunity to respond.” LCR 3.19(a). It should also include “[s]pecific facts showing what  
24 efforts have been made to notify the other party, or specific facts showing that justice requires  
25 the other party not be given notice.” *Id.* “All alleged facts must be supported by affidavit,  
26 declaration, or other admissible evidence.” *Id.* Contestants complied with none of these  
27 requirements. Nowhere in their motion do they explain why it must proceed ex parte, nor do they  
28 detail why they failed to so much as send an email to Defendants' counsel, who had already been  
served and entered their appearances in this case. The expedited nature of this contest does not  
*ipso facto* justify Contestants proceeding ex parte whenever they wish, particularly on a matter  
that would greatly prejudice Defendants by preventing their input on how discovery will  
proceed. Certainly the contest statutes themselves do not contemplate anything of the sort.

- 1 • that the prevailing candidate was not eligible for office;
- 2 • that election officials were guilty of intentional wrongdoing;
- 3 • that the prevailing candidate was guilty of manipulating the election; or
- 4 • that an outcome-dispositive error occurred.

5 See NRS 293.410(2). To ensure that a contest falls within these grounds, the statement of contest  
6 must allege the grounds for the contest “*with sufficient certainty* to inform the defendant of the  
7 charges the defendant is required to meet.” NRS 293.410(1) (emphasis added). Here, Contestants  
8 vaguely allege that election officials and individuals supporting President-elect Joe Biden  
9 committed intentional wrongdoing, but do not come close to putting forth allegations that could  
10 legally constitute malfeasance as defined by the statute. And they have not identified a sufficient  
11 number of illegal or improperly counted votes to overcome President-elect Biden’s 33,596-vote  
12 lead.

13 With this motion to conduct extensive discovery, Contestants have effectively  
14 acknowledged that their statement lacks the “sufficient certainty” required to permit a contest to  
15 proceed. Contestants likely hope to discover evidence that could form the proper basis of a  
16 contest. But that is not how election contests work. These are highly expedited proceedings, *see*  
17 NRS 293.413, that carry extraordinary consequences, *see* NRS 293.417. Thus, NRS 293.410  
18 essentially requires a contestant to come first with proof of concept, and to provide Defendants  
19 with notice of the claims in sufficiently specific detail. Otherwise, any unsuccessful candidate  
20 with an axe to grind could drag election officials, political opponents, the voters of Nevada,  
21 and—in a high-stakes election like this one—the entire country through an unnecessary and  
22 burdensome discovery process.

## 23 **II. Contestants’ motion is unsupported and unsupportable.**

24 In any event, Contestants have not shown good cause why their extraordinary request for  
25 additional depositions above the regular number should be granted, nor why they should be  
26 given leave to notice depositions within fewer than 14 days. *See* NRCP 30(b)(1), 26(b). Their  
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1 motion is devoid of any showings of why such depositions are necessary, which witnesses they  
2 would seek leave to examine, and why they cannot obtain the relevant information within the 10-  
3 deposition limit. Without those showings, this Court has little basis to consider the motion, let  
4 alone any basis to grant it. And without an explanation of the bases of Contestants' motion,  
5 Defendants cannot make the full response to the motion to which they are entitled, which may  
6 explain why Contestants sought improperly to file their motion on an ex parte basis.<sup>2</sup>

7 The Nevada Rules of Civil Procedure give structure to the discovery process for good  
8 reason, and a litigant cannot simply rely on claims of urgency to effectuate an end run around  
9 these carefully crafted rules. Nor should the timing of when Contestants seek to compel the  
10 testimony of more than a dozen witnesses be ignored; the second half of this coming week is a  
11 national holiday. This Court should not require these undisclosed deponents to upend their plans  
12 with less than 48 hours' notice, especially when Contestants have provided no justification for  
13 such disruption.

14 Finally, if this Court is inclined to grant Contestants' motion to any degree, Defendants  
15 request that Contestants be required to immediately produce any and all evidence—including  
16 documents, written statements, or communications in their possession, custody, or control that  
17 relate to their claims—and a list of likely witnesses *before* any depositions are taken. Because the  
18 statement of contest rests on such threadbare allegations, a review of Contestants' evidence is the  
19 only way for Defendants to be adequately apprised of the nature and basis of Contestants' claims  
20 and to prepare for depositions and the hearing.

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23 <sup>2</sup> None of the cases Contestants cite in support of their motion advances their cause. Both *MDB*  
24 *Trucking, LLC v. Versa Products Co., Inc.*, 136 Nev. Adv. Op. 72, 2020 WL 6530853 at \*1  
25 (Nev. Nov. 5, 2020), and *Silvestri v. General Motors Corp.*, 271 F.3d 583, 585 (4th Cir. 2001),  
26 hold that a court has inherent authority to sanction bad-faith discovery conduct on the part of  
27 litigants. While this may well be relevant to Contestants' motion, these cases do not support  
28 granting the requested relief. *Halverson v. Hardcastle*, 123 Nev. 245, 258–59, 163 P.3d 428, 438  
(2007), involving a chief judge's authority to discipline a district judge, is similarly unavailing.

1 **CONCLUSION**

2 Contestants might think that the rules do not apply to them: the rules governing the  
3 election, the rules governing the contest procedure, and even the ordinary rules governing  
4 discovery. But they do. Their request to this Court for carte blanche to flout these rules is  
5 unfounded and inappropriate, and should be denied.

6 **AFFIRMATION**

7 The undersigned does hereby affirm that the foregoing document does **not** contain the social  
8 security number of any person.

9 DATED this 23rd day of November, 2020.

10 **WOLF, RIFKIN, SHAPIRO,  
SCHULMAN & RABKIN, LLP**

11 By: /s/ Bradley S. Schrager  
12 Bradley S. Schrager, Esq., SBN 10217  
13 Daniel Bravo, Esq., SBN 13078  
14 3556 East Russell Road, Second Floor  
Las Vegas, Nevada 89120

15 Marc E. Elias, Esq.\*  
16 John M. Devaney, Esq.\*  
17 Henry J. Brewster, Esq.\*  
18 Courtney A. Elgart, Esq.\*  
19 Jyoti Jasrasaria, Esq.\*  
**PERKINS COIE LLP**  
700 Thirteenth Street NW, Suite 800  
Washington, D.C. 20005-3960

20 Kevin J. Hamilton, Esq.\*  
21 Abha Khanna, Esq.\*  
22 Jonathan P. Hawley, Esq.\*  
23 Reina A. Almon-Griffin, Esq.\*  
24 Nitika Arora, Esq.\*  
**PERKINS COIE LLP**  
1201 Third Avenue, Suite 4900  
Seattle, Washington 98101-3099

25 *Attorneys for Defendants*

26 *\*Pro hac vice submitted*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 23rd of November, 2020 a true and correct copy of  
3 DEFENDANTS' OPPOSITION TO CONTESTANTS' EX PARTE MOTION was served upon  
4 all parties via electronic mailing to the following:

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

8 Jesse R. Binnall (Pro Hac Forthcoming)  
9 HARVEY & BINNALL, PLLC  
10 [jbinnall@harveybinnall.com](mailto:jbinnall@harveybinnall.com)

11 *Attorneys for the Contestants*

12  
13 By: /s/ Danielle Fresquez  
14 Danielle Fresquez, an Employee of  
15 WOLF, RIFKIN, SHAPIRO, SCHULMAN &  
16 RABKIN, LLP  
17  
18  
19  
20  
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22  
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