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EIGHTH JUDICIAL DISTRICT COURT  
IN AND FOR CLARK COUNTY, STATE OF NEVADA

REPUBLICAN NATIONAL COMMITTEE,

Petitioner,

v.

CLARK COUNTY, *et al.*,

Respondents.

BRADLEY SCHRAGER, ESQ. (SBN  
10217)  
DANIEL BRAVO, ESQ. (SBN 13078)  
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Case No. A-22-858609-W

Dept. No. XVI

**PROPOSED INTERVENOR-  
RESPONDENTS' PROPOSED  
RESPONSE TO PETITIONER'S  
APPLICATION FOR WRIT OF  
MANDAMUS OR INJUNCTION**

## INTRODUCTION

Mere days before an election, the Republican National Committee (“RNC”) asks this Court for last minute and extraordinary relief—to order the Clark County Registrar to “conven[e] a signature verification board ‘represent[ing] all political parties as equally as possible.’” RNC Appl. at 19 (citing NRS § 293B.360(2)). But there is a big problem with this demand: there is no such thing as a “signature verification board” under Nevada law—the term is found nowhere in statute, regulation, or case law. That is because the personnel who assist county clerks with signature verification in Nevada do not serve on a “board” comprised of nominees from the various political parties—they are instead “employees in the office of the clerk.” NRS § 293.269927(3). These employees are not intended to be partisan appointees—they are ordinarily temporary hires meant to help the clerk’s permanent staff handle the deluge of mail ballots that counties must review during an election. Their task is clearly prescribed by statute and they answer to the relevant county clerk—here, the Clark County Registrar.

The RNC’s confusion appears to stem from its mistaken belief that employees who assist with signature verification are governed by NRS § 293B.360(2), which requires certain “election boards” to have a roughly balanced political composition of “officers.” But, again, those who help the clerk with manual signature verification do not serve on a “board” and are not “officers”—they are temporary employees. Section 293B.360(2) has no application to them. Indeed, just days ago the Nevada Supreme Court confirmed that a separate statute—NRS § 293.269927—“governs signature verification.” *ACLU of Nev. v. Nye County*, No. 85507, 2022 WL 14285458, at \*4 (Nev. Oct. 21, 2022). The RNC’s insistence to the contrary has no basis in Nevada law.

Even if the RNC’s application did not severely misread the relevant statutory scheme, its application for a last-minute writ of mandamus or a preliminary should still be denied for several reasons. For one, it has failed to show any irreparable harm from the Clark County Registrar’s administration of signature verification. Moreover, the Registrar is simply doing precisely what he did in the 2020 general election and 2022 primary election—hiring temporary staff to assist with an anticipated flood of mail ballots that will require manual signature verification. The RNC is well-aware of how the Registrar handled this issue in 2020, as it was subject to extensive post-

1 election litigation between the parties and their supporters. Yet the RNC offers no excuse for  
2 waiting nearly two full years to challenge these same procedures, undercutting any serious claim  
3 of irreparable harm.

4 The requested relief, however, which seeks to alter election administration rules at the  
5 eleventh hour, threatens to severely disrupt the election for Nevada voters and to prejudice the  
6 DSCC and DCCC (“Proposed Intervenor-Respondents”) and Nevada voters generally. Indeed, the  
7 DCCC and other Democratic Party entities and voters previously challenged Nevada’s signature  
8 verification rules in 2020, resulting in the legislature’s enactment of the new rules that the RNC  
9 seeks to sweep aside here. Because granting the RNC such relief threatens to harm both the public  
10 and the Proposed Intervenor-Respondents, the balance of equities supplies yet another strong  
11 reason weighing in favor of denying the RNC’s application.

## 12 **BACKGROUND**

### 13 **I. Nevada’s process for verifying a voter’s signature on a mail ballot**

14 Nevada permits all registered voters to cast a ballot by mail in every election. *See* Assembly  
15 Bill No. 321 (2021). To that end, for each election, “the county clerk shall prepare and distribute to  
16 each active registered voter in the county and each person who registers to vote or updates his or  
17 her voter registration information not later than the 14 days before the election a mail ballot for  
18 every election.” NRS § 293.26991(1).

19 When a voter returns a mail ballot to their county clerk’s office, “the clerk or an employee  
20 in the office of the clerk” is required to check the signature. *See generally id.* § 293.269927. This  
21 may be done “by electronic means” or “manually.” *Id.* § 293.269927(2) (electronic means); *id.* §  
22 293.269927(3) (manually). When performed by electronic means, the county clerk’s office must  
23 employ an “electronic device” that can “take a digital image of the signature used for the mail ballot  
24 and compare the digital image with the signatures of the voter from his or her application to register  
25 to vote or application to preregister to vote available in the records of the county clerk.” *Id.* §  
26 269927(2)(a). “If the electronic device does not match the signature of the voter, the signature shall  
27 be reviewed manually[.]” *Id.* § 293.269927(2)(b).

28 When manually verifying a mail ballot signature—either in the first instance or because an

1 electronic device could not match the signature—the “*clerk or employee* shall check the signature  
2 used for the mail ballot against all signatures of the voter available in the records of the clerk.” *Id.*  
3 § 293.269927(3)(a) (emphasis added). “*If at least two employees in the office of the clerk* believe  
4 there is a reasonable question of fact as to whether the signature used for the mail ballot matches  
5 the signature of the voter, the clerk shall contact the voter and ask the voter to confirm whether the  
6 signature used for the mail ballot belongs to the voter.” *Id.* § 293.269927(3)(b) (emphasis added).  
7 Once the clerk is satisfied “that the voter is entitled to cast the mail ballot, the clerk shall deposit  
8 the mail ballot in the proper ballot box or place the mail ballot, unopened, in a container that must  
9 be securely locked or under the control of the clerk at all times.” *Id.* § 293.269927(5).

10 Critically for purposes of the RNC’s application, § 293.269927(3) is clear that manual  
11 signature verification is performed by the “*clerk or employee*” and “*employees in the office of the*  
12 *clerk*”—**not** by any “election board” or partisan appointees. **Nothing** in § 293.269927 imposes any  
13 sort of partisan balancing requirement on who the county clerk hires as employees.

14 **II. Clark County’s process for verifying mail ballot signatures in the 2020 elections and**  
15 **its hiring of temporary employees for the 2022 midterm elections**

16 As described above, while county clerks may employ either electronic or manual means to  
17 review mail ballot signatures, those ballots that are not found to match by electronic means must  
18 subsequently be reviewed manually by the clerk or his employees.

19 Clark County first performs an electronic review. *See* Decl. of Jordan T. Smith, Esq. (Oct.  
20 27, 2022) ¶ 17 (“Smith Decl.”). To do this, the Clark County Registrar uses what is known as an  
21 “Agilis Ballot Sorting System,” technology that is also employed by the U.S. Postal Service and  
22 various financial institutions. *See* Order Granting Mot. to Dismiss Statement of Contest ¶¶ 3-7,  
23 *Law, et al. v. Whitmer, et al.*, Case No. 20 OC 00161 1B (Nev. Dist. Ct., Dec. 4, 2020) (attached  
24 hereto as Exhibit A).<sup>1</sup> In addition to sorting ballots, the Agilis machine has automatic signature  
25 verification software that takes a picture of the signature included on a mail ballot envelope. *Id.* ¶¶  
26 6-7; *Law, et al. v. Whitmer, et al.*, Tr. of Deposition of Joseph Gloria (Dec. 1, 2020) at 10:4-22  
27 (“Gloria Dep.”) (attached hereto as Exhibit B). It then compares the signature from the envelope to

28 <sup>1</sup> The district court’s order in this litigation was affirmed by the Nevada Supreme Court.  
*See Law. v. Whitmer*, 477 P.3d 1124, 2020 WL 7240299 (Nev. Dec. 8, 2020).

1 a comparator found in a voter's registration file and uses an algorithm to "score" the signature. *Id.*  
2 ¶ 7. Each user may select a "score" threshold for a signature on a scale of 1-100. *Id.* ¶¶ 7, 10.

3 During the 2020 elections, Clark County set its Agilis machine "score" threshold at 40. *See*  
4 Ex. A ¶ 9; Gloria Dep. at 22:4-6.<sup>2</sup> Scores below that threshold were flagged for manual review. To  
5 perform this manual review, permanent employees of the Clark County Registrar were "trained by  
6 a forensic signature expert and former FBI agent" and they "developed a training program for  
7 temporary staff based on this instruction." Ex. A ¶ 16 (emphasis added); *see also* Gloria Dep. at  
8 17:24-18:9; 70:1-7. These temporary employees "reviewed the signature against a reference  
9 signature on a computer screen." Ex. A ¶ 16. If they could not confirm a match, the "the signature  
10 was passed along for additional review and compared against the voter's entire history of  
11 signatures." *Id.* Finally, if still uncertain, the signature was reviewed by the Clark County Registrar  
12 of Voters "as a final check." *Id.* Voters whose signatures could still not be confirmed were then  
13 contacted pursuant to Nevada's statutory cure process. *Id.*

14 Under this system, "no ballot was rejected for signature mismatch by Clark County without  
15 first being reviewed by Clark County employees." Ex. A. ¶ 17 (emphasis added). A ballot could  
16 only be rejected if "at least two employees" agreed the signature on the ballot differed in "multiple,  
17 significant and obvious respects" from those available in the voter's registration file. *Id.*; *see also*  
18 NRS § 293.269927(3)(b) (describing same process).<sup>3</sup>

19 Because Clark County relied on relatively low-quality comparator signatures from the  
20 county's Department of Motor Vehicles, its Agilis machines only verified roughly 30 percent of  
21 signatures during the 2020 general election. *See* Ex. A ¶¶ 18-19. Accordingly, nearly 70 percent of  
22 mail ballots submitted in Clark County during the 2020 general election—tens of thousands of  
23 ballots—required manual verification by the clerk or clerk's office employees. *Id.* ¶ 18. The Clark

24 \_\_\_\_\_  
25 <sup>2</sup> The score of "40" is purely algorithmic. It does not, for example, suggest only a forty  
26 percent chance that the signatures match. *Id.* ¶ 10. Indeed, "[a]ny setting between a 15 and  
27 85 would produce substantially similar results." *Id.* ¶ 14.

28 <sup>3</sup> At the time of the 2020 elections, this signature verification scheme was governed by NRS  
§ 293.8874. That provision was repealed as part of Assembly Bill 321, which enacted the  
currently governing NRS § 293.269929. The two provisions are identical, however, with  
respect to who performs manual signature verification for mail ballots. *Compare* NRS §  
293.269929(3)(a)-(b) with NRS § 293.8874(1)(a)-(b).

1 County Registrar made clear during the *Law* litigation that the individuals performing this manual  
2 signature verification review were *temporary employees*.

3 Q. So 30 percent of these were accepted by the Agilis, and the other 70 percent  
4 I think you said were reviewed by hand; right?

5 A. It's still an automated process as far as the signatures coming across on a  
6 computer screen, but there are human beings that are making the matches  
7 at that point.

8 Q. And those human beings are *election personnel that are employed by your*  
9 *department*; correct?

10 A. *That's correct.*

11 Q. They received training in how to do that signature verification?

12 A. Yes, they do.

13 Q. Who does that training?

14 A. My permanent staff. We actually have a forensic signature expert that  
15 comes into the election department once a year to provide training. Based  
16 on that training we're provided by that vendor, *we turn around and develop*  
17 *our own training for the staff that are going to be responsible for making*  
18 *those signature matches*. There's always a permanent staffer who oversees  
19 the work of any of *these staffers that are doing the manual signature check*.

20 Ex. B at 17:10-18:9 (emphases added). While the Clark County Registrar's office had 38  
21 "[p]ermanent employees" at that time, "[d]uring the election cycle [it] ha[s] hundreds of temporary  
22 employees that are working in different divisions[.]" *Id.* at 6:8-15.

23 In anticipation of the large volume of mail ballots it will likely have to manually review  
24 during the forthcoming 2022 midterm elections, the Clark County clerk's office has again  
25 apparently made temporary hires to assist with signature review. *See, e.g.,* Smith Decl. ¶ 26; RNC  
26 Application at 16-17. Because these hires are temporary staff in the clerk's office—rather than  
27 partisan appointees—the clerk's office did not solicit them from political parties, but instead hired  
28 them from third-party staffing agencies without any regard to their political affiliation. *See* Smith  
Decl. ¶ 26. The majority of those hired—33 out of 64—have no partisan affiliation at all, the  
remainder included a mix of both Democrats and Republicans. *See* RNC Application, Exhibit 6. If  
anything, the temporary hires overrepresent *non-partisan voters*, as Clark County has a greater

1 number of actively registered Democratic voters than non-partisan or Republican voters.<sup>4</sup>

2  
3 **III. This litigation and the RNC's application for a writ of mandamus or a preliminary injunction**

4 The RNC filed this lawsuit on September 20, 2022. Its complaint raised only a single  
5 claim—to compel disclosure of certain documents from Clark County, the Clark County Election  
6 Department, and Joe P. Gloria—the Clark County Registrar for Voters—under Nevada's public  
7 records law. *See* Compl. ¶¶ 54-64; *see also* NRS § 239.011(2).<sup>5</sup> Nothing in the complaint mentions  
8 a purported “significant verification board” or even signature verification at all.

9 Because Clark County complied with the RNC's request and provided it documents on a  
10 rolling basis, the parties entered into a stipulation to stay the litigation on October 5, 2022. On  
11 October 18, 2022, Clark County provided the RNC with “a tentative breakdown of party affiliation  
12 for the manual signature verification room.” RNC Application, Exhibit 6. This breakdown showed  
13 that of the 64 temporary employees hired for manual signature verification, 33 happened to be non-  
14 partisan observers, along with 23 Democrats and 8 Republicans. *Id.* As the RNC admits, the Clark  
15 County Registrar did not seek out certain employees but “simply took what the staffing agency  
16 gave him.” Smith Decl. ¶ 26.

17 Apparently dissatisfied with the partisan preferences of these temporary hires, the RNC  
18 filed the instant application for a writ of mandamus or an injunction nine days later, on October 27,  
19 2022. The application appears to ask this Court to compel the Clark County Registrar to hire more  
20 Republican temporary staff. *See* RNC Application at 19. The RNC has yet to amend its original  
21 petition to assert any cause of action related to its assertion that the Registrar is required to hire  
22 additional employees of a particular political persuasion.

23 Proposed Intervenor-Respondents DSCC and DCCC filed a motion to intervene and  
24 proposed answer in tandem with this response, along with a motion for an order to shorten time.

25  
26 <sup>4</sup> *See* Nev. Sec'y of State's Off., *Voter Registration Figures (September 2022)*, <https://www.nvsos.gov/sos/home/showpublisheddocument/11106/638017913674000000>.

27 <sup>5</sup> The complaint, in one instance, errantly attributes this claim to NRS § 293—the statutory  
28 chapter governing elections, *see* Compl. at 11—but elsewhere recognizes that it in fact rests  
under Nevada's separate chapter governing public records laws, *see id.* ¶¶ 54-64.

1 That motion—which is not opposed—sets forth the significant interests the Proposed Intervenor-  
2 Respondents’ have in this matter, including preserving the signature verification rules the DCCC  
3 obtained through litigation in the 2020 election; avoiding the diversion of resources that changing  
4 election administration rules at the eleventh hour will require; and avoiding partisan disruption at  
5 polling sites and election offices.

### 6 **LEGAL STANDARD**

7 A writ of mandamus may be issued to “to compel the performance of an act which the law  
8 especially enjoins as a duty resulting from an office, trust or station.” NRS § 34.160.

9 Accordingly, “mandamus will not issue unless the petitioner can show that the respondent ‘has a  
10 clear, present legal duty to act.’” *Howell v. Ricci*, 197 P.3d 1044, 1049 (Nev. 2008) (quoting *Round*  
11 *Hill Gen. Imp. Dist. v. Newman*, 637 P.2d 534, 536 (Nev. 1981)). “The writ will not issue, however,  
12 if the petitioner has a plain, speedy and adequate remedy in the ordinary course of law.” *Mosley v.*  
13 *Nev. Comm’n on Jud. Discipline*, 22 P.3d 655, 658 (Nev. 2001). “Whether to consider a writ  
14 petition is solely within this court’s discretion, and the petitioner bears the burden of demonstrating  
15 why extraordinary relief is warranted.” *Gardner on Behalf of L.G. v. Eighth Jud. Dist. Ct. in & for*  
16 *Cnty. of Clark*, 405 P.3d 651, 653 (Nev. 2017).

17 A preliminary injunction “may be granted” in three instances:

- 18 1. “When it shall appear *by the complaint* that the plaintiff is entitled to the relief demanded,  
19 and such relief or any part thereof consists in restraining the commission or continuance of  
20 the act complained of, either for a limited period or perpetually;”
- 21 2. “When it shall appear *by the complaint* or affidavit that the commission or continuance of  
22 some act, during the litigation, would produce great or irreparable injury to the plaintiff;”
- 23 3. “When it shall appear, during the litigation, that the defendant is doing or threatens, or is  
24 about to do, or is procuring or suffering to be done, some act in violation of the plaintiff’s  
25 rights *respecting the subject of the action*, and tending to render the judgment ineffectual.”

26 NRS § 33.010(1)-(3) (emphases added). The district court may grant a preliminary injunction when  
27 “the moving party has shown a likelihood of success on the merits and that the nonmoving party’s  
28 conduct . . . would cause irreparable harm, for which there is no adequate legal remedy.” *Lab.*  
*Com’r of State of Nev. v. Littlefield*, 153 P.3d 26, 28 (Nev. 2007)). “Determining whether to grant  
or deny a preliminary injunction is within the district court’s sound discretion.” *Id.*



## ARGUMENT

### **I. The RNC has failed to show the Clark County Registrar has violated any legal duty and therefore has no likelihood of success on the merits or entitlement to mandamus relief.**

The RNC asks this Court—less than a week ahead of election day—to compel the Clark County Registrar to hire temporary employees who happen to be Republicans, purportedly because of a statutory duty to “represent all political parties as equally as possible” on a so-called “signature verification board.” The RNC’s request profoundly misunderstands Nevada election law on every level.

Simply put, nothing in Nevada law imposes a duty on the Clark County Registrar to appoint any number of partisan volunteers to assist him with signature verification, or to balance those appointees by partisan affiliation. To the contrary, the signature verification process for mail ballots is governed by NRS § 293.269927, which makes clear that it is “*the clerk or [his] employee*” who “shall check the signature used for the mail ballot against all signatures of the voter available in the records of the clerk.” NRS § 293.269927(3)(a) (emphasis added); *see also id.* § 293.269927(3)(b) (explaining it is “*employees in the office of the clerk*” who determine whether there is a question of fact about a signature). While the text itself is unambiguous that signature verification is performed by the clerk or his employees, the prefatory comments in Assembly Bill 321—which made permanent earlier temporary changes to the signature verification statutes enacted by Assembly Bill 4—confirm the matter. They explain that NRS § 293.269927 “authorize[s] *the county and city clerks,*” rather than any group of partisan appointees, “to review the signature of a voter manually or by electronic means.” Assembly Bill 321 (2021) at 2 (emphasis added).

Nothing in § 293.269927 requires a county clerk to ensure any sort of partisan balance amongst his or her employees. Indeed, it would likely be *illegal* for a county agency to inquire into a potential employee’s political affiliation to achieve a partisan balance: “NRS 288.270(1)(f) provides that discrimination against an employee by a local government employer or the employer’s designated representative for ‘political or personal reasons or affiliations’ constitutes a prohibited practice.” *Bisch v. Las Vegas Metro Police Dep’t*, 302 P.3d 1108, 1116 (Nev. 2013).

1 Contrary to the RNC’s claim, the temporary employees hired to manually verify mail ballot  
2 signatures are *not* appointed or hired under NRS § 293B.360. Nor do they serve on any “signature  
3 verification board” created under that provision. The Nevada Supreme Court confirmed this mere  
4 days ago, explaining that “NRS 293.285 (voting at polls) and **NRS 293.269927 (mail ballots)**  
5 ***govern signature verification.***” *ACLU of Nev.*, 2022 WL 14285458, at \*4 (emphasis added).

6 Section 293B.360 instead states that “the county clerk shall create a computer program and  
7 processing accuracy board” to “facilitate the processing and computation of votes cast at any  
8 election conducted under a mechanical voting system.” NRS § 293B.360(1). It further grants the  
9 clerk’s office authority to create additional election boards, such as a “central ballot inspection  
10 board,” an “absent ballot mailing precinct inspection board,” a “ballot duplicating board,” and a  
11 “ballot processing and packaging board.” *Id.* § 293B.360(1)(a)-(d). The provision says nothing  
12 about a so-called “signature verification board.”

13 The reason why is clear—in Nevada there is no such thing as a “signature verification  
14 board.” Tellingly, in its correspondence with the RNC, Clark County did not once characterize  
15 these temporary employees as a “board.” *See, e.g.*, RNC Application, Ex. 5 (referring to “the  
16 manual signature verification room roster”); *id.*, Ex. 6 (referring to the “manual signature  
17 verification room”). To be sure, § 293B.360 provides that the clerk may create “[s]uch additional  
18 boards or appoint such officers as the county clerk deems necessary for the expeditious processing  
19 of ballots.” NRS § 293B.360(1)(e). But the temporary employees who perform manual signature  
20 verification under NRS § 293.269927(3) are ***not*** members of a “board” or “officers”—they are  
21 “*employees in the office of the clerk.*” NRS § 293.269927(3)(b) (emphasis added). The RNC  
22 ignores this text, despite recognizing elsewhere in its application that NRS § 293.269927 governs  
23 signature review of mail ballots. *See* Smith Decl. ¶¶ 20-21. It insists—wrongly, and with no basis—  
24 that these employees simply *must* be a board of some sort because the registrar “has no other express  
25 statutory authority to create such a separate signature verification board at all.” RNC Application  
26 at 16. But that just proves the point—no express statutory authorization exists to create a signature  
27 verification board because such a board does not exist under Nevada law.

28 For that reason, the RNC’s claim that “NRS 293B.360 applies because Clark County

1 conducts mail voting elections under a mechanical voting system,” RNC Application at 15, is  
2 irrelevant. That provision applies only to *boards* comprised of *officers* created by the county clerk.  
3 It does *not* govern signature verification by employees. Rather, “NRS 293.269927 (mail ballots)  
4 govern[s] signature verification.” *ACLU of Nev.*, 2022 WL 14285458, at \*4 (Nev. Oct. 21, 2022).

5 The RNC’s request for extraordinary relief wilts in the face of the full set of relevant  
6 statutes. Because NRS § 293B.360 imposes no “present legal duty to act,” *Howell*, 197 P.3d at  
7 1049, on the Clark County Registrar with respect to signature verification, it supplies no basis for  
8 a writ of mandamus. *See Nev. Mining Ass’n v. Erdoes*, 26 P.3d 753, 756 (Nev. 2001) (“A writ  
9 of mandamus will not issue . . . to compel a public officer to perform an act that the officer  
10 has no legal duty or authority to perform.”). Similarly, the RNC’s fundamental misunderstanding  
11 of the statutory scheme governing signature verification in Nevada obliterates any chance of them  
12 prevailing on the merits of their application, and thus any entitlement to preliminary injunctive  
13 relief. *See Littlefield*, 153 P.3d at 28.<sup>6</sup>

14  
15 **II. This Court should decline extraordinary relief because the RNC has made no showing  
of irreparable harm and the equities strongly favor denying relief.**

16 Even apart from the RNC’s mangled reading of the statutory scheme, this Court should  
17 exercise its discretion to deny relief for a host of other reasons. *See Gardner on Behalf of L.G.*, 405  
18 P.3d at 653 (granting writ of mandamus is “solely within th[e] court’s discretion”); *Littlefield*, 153  
19 P.3d at 28 (committing grant of preliminary injunctive relief to “the district court’s sound  
20 discretion”).

21 To start, the RNC has made no showing of irreparable harm. It alleges its candidates and  
22 voters will “suffer irreparable injury if the signature verification board is not equally constituted as  
23 the law requires.” RNC Application at 17. But, again, there is no such thing as a “signature  
24 verification board,” let alone any law regarding its partisan composition. *Supra* Argument § 1.

25  
26 <sup>6</sup> The RNC’s request for a preliminary injunction also fails for the additional reason that it  
27 has not been shown “by the complaint”—which never mentions signature matching—and  
28 does not concern “the subject of the action” at issue—the RNC’s public record request, with  
which Clark County has complied. *See* NRS § 33.010(1)-(3) (setting out bases for  
preliminary injunctive relief); *see also* RNC Application, Exs. 4-6 (showing Clark County  
produced records that form basis of RNC’s application).

1 RNC's claim that "[l]ack of equal partisan representation may lead to either improper approval of  
2 mail ballot signatures, erroneous rejection of mail ballot signatures, or both" is similarly baseless.  
3 Verifying a voter's signature is not a partisan task. Indeed, there is no reason to believe that an  
4 employee verifying signatures has any idea who any given voter cast their ballot for—the voter's  
5 signature is affixed to the ballot return envelope, and the manual reviewer never sees the voter's  
6 actual cast ballot. *See* NRS §§ 293.269913(c), 293.269917(1)(c), 293.269933. Nevada law also  
7 spells out the standard for determining whether there is a "reasonable question of fact as to whether  
8 the signature used for the mail ballot matches the signature of the voter" and it is the clerk's  
9 ultimately decision whether to approve a ballot or to contact the voter to cure. *See id.* §  
10 293.269927(4)-(5). The RNC fails to explain why Republican—versus non-partisan or  
11 Democratic—employees are any more or less likely to approve or reject a signature.

12 Any claim to supposed irreparable harm is further undercut by the timing of the RNC's  
13 application for extraordinary relief. The Clark County Registrar appears to be administering manual  
14 signature verification precisely as he did in November 2020 and June 2022—by temporarily hiring  
15 employees to assist with the manual verification of signatures that cannot be confirmed by  
16 electronic means. The Clark County Registrar has never hidden that this is how he intended to  
17 administer signature verification—indeed, the process was closely scrutinized by extensive  
18 litigation in 2020. Despite surely being aware of the Clark County Registrar's processes from 2020,  
19 the RNC waited until less than two weeks before Election Day to demand complicated relief that,  
20 if granted, the Clark County Registrar would have mere days to implement—on top of his numerous  
21 other duties on the eve of an election. The supposed irreparable harm the RNC faces—and the  
22 disruption granting its requested relief would cause—"could have been avoided by a timely  
23 challenge." *Chattah v. Cegavske*, 517 P.3d 241, 2022 WL 4597416 (Nev. Sept. 29, 2022) (citing  
24 *Oakland Tribute, Inc. v. Chronicle Pub'g Co.*, 762 F.2d 1374, 1377 (9th Cir. 1985) (delay in  
25 seeking relief "implies a lack of urgency and irreparable harm"))).

26 Beyond the total lack of irreparable harm, the RNC's requested relief poses practical  
27 difficulties that are likely to prove disruptive this close to an election. As the district court found in  
28 *Law*, the Clark County Registrar has "developed a training program for temporary staff" based on

1 instruction the office’s permanent employees receive from “a forensic signature expert and former  
2 FBI agent.” Ex. A ¶ 16; *see also* Gloria Dep. at 17:24-18:13, 70:1-7. The RNC demands—at a  
3 hearing to be held six days before the election—that Clark County be required to solicit several  
4 dozen new employees; screen them for partisanship; ensure they are competent enough to serve as  
5 temporary election employees; and train them on signature matching techniques. All this must  
6 occur while the Clark County Registrar and his staff are *already* verifying mail ballot signatures—  
7 mail ballots were sent to voters beginning on October 19 and roughly 34,500 have already been  
8 returned in Clark County.<sup>7</sup> Even if such a demand was practical at this late hour—and it is clearly  
9 not—it would be unjustifiably disruptive to the Clark County Registrar’s administration of the  
10 ongoing election, which will require the office’s small number of permanent employees to perform  
11 and oversee numerous other functions unrelated to signature matching.

12 Even if the RNC’s request were possible, it would still not be appropriate relief and would  
13 subject the Clark County Registrar to a legal buzzsaw. It is likely illegal for the Registrar to, for  
14 example, solicit new employees but then reject some applicants because they are Democrats or non-  
15 partisan voters. *See Bisch*, 302 P.3d at 1116; *see also* NRS § 288.270(1)(f) (making it illegal for  
16 public employers to discriminate on the basis of political affiliation). The RNC’s proposed  
17 Tammany Hall-style solution—simply forcing the Registrar to hire employees off a list supplied  
18 by the RNC—is not appropriate. *See* Application at 2-3, 18; Smith Decl. ¶ 29. The Registrar is  
19 entitled to exercise his own discretion in choosing who he hires as an employee, and the RNC may  
20 not commandeer that discretion to install its own partisans through a barebones request for  
21 emergency relief.

22 In contrast to the RNC’s lack of irreparable harm, the Proposed Intervenor-Respondents  
23 and Nevada voters will be severely harmed if relief is granted, further tipping the equities against  
24 granting the application. As explained in the Proposed Intervenor-Respondents’ motion to  
25 intervene, both DSCC and DCCC have significant protectable interests that will be harmed if relief  
26 is granted. The DCCC previously litigated the rules governing signature verification for mail

27 <sup>7</sup> *See* Shari Phiel, Clark County Elections Staff Say 10.61% of Ballots Returned, The  
28 *Columbian* (Oct. 30, 2022), <https://www.columbian.com/news/2022/oct/30/clark-county-elections-staff-say-10-61-of-ballots-returned/>.

1 ballots, and the RNC’s application threatens to sweep aside the legislation that resulted in dismissal  
2 of that litigation by reassigning signature verification to a partisan election board. *See* Motion to  
3 Intervene at 6-7, 10.

4 Granting that relief will also change the rules of the election at the eleventh hour, requiring  
5 DSCC and DCCC to shift resources and staff attention to account for the consequences of the new  
6 election rules. *See* Motion to Intervene at 10-12. For example, those Democrats already hired to  
7 serve as temporary employees were not put forward by DSCC or DCCC but are simply ordinary  
8 citizens hired through third-party staffing agencies. *See* Smith Decl. ¶ 26. If the RNC is permitted  
9 to put forward its own roster of partisans to serve on a self-styled signature verification board, then  
10 both DSCC and DCCC will be required to marshal their own resources to recruit and organize their  
11 similar partisan signature verification appointees for counties across Nevada. They have not  
12 previously done so because such a partisan signature review process is not contemplated by Nevada  
13 law, as Clark County’s handling of the 2020 election shows. *See supra* at 4-7. The last minute need  
14 to do so will distract from other key objectives the Proposed Intervenor-Respondents are pursuing  
15 in the waning days of the election season.

16 Finally, the disruption that the RNC’s requested relief will cause will harm the public  
17 generally. As the U.S. Supreme Court has recognized: “When an election is close at hand, the rules  
18 of the road must be clear and settled. Late judicial tinkering with election laws can lead to disruption  
19 and to unanticipated and unfair consequences for candidates, political parties, and voters, among  
20 others.” *Merrill v. Milligan*, 142 S. Ct. 879, 880–81 (2022) (Kavanaugh, J., concurring). The RNC  
21 may not swoop in days before an election and demand that that Clark County rejigger its election  
22 process by judicial fiat to include a “signature verification board” that exists nowhere in law. Such  
23 last minute “judicial tinkering” invites unanticipated confusion and disruption that harms the  
24 public’s interest in fair and well-administered elections. *Id.*

25 ///

26 ///

27 ///

1 **CONCLUSION**

2 For these reasons, Proposed Intervenor DSCC and DCCC respectfully request that  
3 Petitioner's application for a writ of mandamus or an injunction be denied.

4  
5 Dated: October 31, 2022 Respectfully submitted,

6 /s/ Bradley S. Schrager

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24  
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26  
27  
28

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 31st day of October, 2022, a true and correct copy of the  
3 foregoing **PROPOSED INTERVENORS' PROPOSED RESPONSE TO PETITIONER'S**  
4 **APPLICATION FOR WRIT OF MANDAMUS OR INJUNCTION** was served by  
5 electronically filing with the Clerk of the Court using the Odyssey eFileNV system and serving all  
6 parties with an email address on record, pursuant to Administrative Order 1402 and Rule 9 of the  
7 N.E.F.C.R.

8  
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13  
14  
15 By /s/ Dannielle Fresquez

16 Dannielle Fresquez, an Employee of  
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# EXHIBIT A

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# EXHIBIT A

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AUDREY BOYATT

BY  CLERK  
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.



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

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

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

7 123. For the assistance requirement, the expert’s testimony must be (1) relevant and  
8 (2) reliable. *Id.* at 500, 189 P.3d at 651; *see also Perez v. State*, 129 Nev. 850, 858, 313 P.3d 862,  
9 867–68 (2013) (“Evidence is relevant when it tends ‘to make the existence of any fact that is of  
10 consequence to the determination of the action more or less probable.’” (quoting NRS 48.015));  
11 *Hallmark*, 124 Nev. at 500–01, 189 P.3d at 651–52 (“In determining whether an expert’s opinion  
12 is based upon reliable methodology, a district court should consider whether the opinion is  
13 (1) within a recognized field of expertise; (2) testable and has been tested; (3) published and  
14 subjected to peer review; (4) generally accepted in the scientific community . . . ; and (5) based  
15 more on particularized facts rather than assumption, conjecture, or generalization.” (footnotes  
16 omitted)).

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

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

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

## 25 **II. Issue Preclusion**

26 127. Under Nevada law, issue preclusion applies when (1) the issue decided in the prior  
27 litigation is identical to the issue in the current action; (2) the initial ruling was on the merits and  
28

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).

26 ///

27 ///

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.

26 ///

27 ///

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  
27  
28

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.

27 ///

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  
28



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  
27  
28

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  
20  
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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# EXHIBIT B

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# EXHIBIT B

Law, et al. vs Whitmer, et al.

Deposition of

**JOSEPH GLORIA**

*December 1, 2020*

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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 )Case No.:  
individual; EILEEN RICE, an )20 OC 00163 1B  
individual; SHAWN MEEHAN, an )Dept.: 1  
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. )  
\_\_\_\_\_ )

DEPOSITION OF JOSEPH GLORIA

Via Videoconference

Taken on Tuesday, December 1, 2020

By a Certified Stenographer

At 5:08 p.m.

Las Vegas, Nevada

Reported by: HOLLY LARSEN, CCR 680, CA CSR 12170

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2 (All appearing via videoconference)

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Also Present:

PEDER RUDLING, Exhibit Technician  
CATHERINE SMITH

I N D E X

WITNESS

PAGE

JOSEPH GLORIA

Examination by Mr. Hamilton

4, 101

Examination by Mr. Owens

65, 102

E X H I B I T S

(None)

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P R O C E E D I N G S

Whereupon,

JOSEPH GLORIA,

having been first duly sworn to testify to the  
truth, was examined, and testified as follows:

EXAMINATION

BY MR. HAMILTON:

Q. Good afternoon, Mr. Gloria. My name is  
Kevin Hamilton, and I represent the defendants in  
this case. Thank you for making time to answer some  
questions here.

Let's start with can you state your current  
job title?

A. I'm currently the Registrar of Voters in  
Clark County, Nevada.

Q. How long have you had that position?

A. Since June of 2013.

Q. Can you tell us about your educational  
background after high school?

A. I have a bachelor's degree in business  
administration and a master's degree in public  
administration.

Q. Where did you get those degrees from? What  
institution?

1           A.    My BA was with the University of Phoenix  
2           and my MPA was with the University of Nevada,  
3           Las Vegas.

4           Q.    Go Rebs?

5           A.    Yes.

6           Q.    Do you have any other professional licenses  
7           or certifications?

8           A.    No.

9           Q.    Are you a certified election/registration  
10          administrator?

11          A.    Oh, you know these answers better than me.  
12          Yep, I am. I am a CERA, certified  
13          election/registration administrator. I'm also a  
14          member of the EAC Standards Board.

15          Q.    What did you do before becoming the Clark  
16          County Registrar?

17          A.    I worked in elections my entire  
18          professional life. I started in 1992 in the state  
19          of New Mexico, Doña Ana County. In 1995 I applied  
20          for the technician job. They had purchased the same  
21          system here in Clark County that we were using in  
22          New Mexico, and I was fortunate enough to get the  
23          job, and I've been here ever since.

24          Q.    In various different roles, working your  
25          way up?



1           A.     Yes.   Slowly working my way up.

2           Q.     Is it fair to say you're fairly familiar  
3 with how elections are run in Clark County?

4           A.     Yes, that is fair to say.

5           Q.     Okay.   How many registered voters are there  
6 in Clark County?

7           A.     Right now we're at 1,275,000.

8           Q.     And how many employees are there in the  
9 Clark County Registrar's Office?

10          A.     Permanent employees I believe is up to 38.  
11 During the election cycle we have hundreds of  
12 temporary employees that are working in different  
13 divisions, and obviously on Election Day and during  
14 early voting we have thousands of temporary poll  
15 workers.

16          Q.     And do all of those 38 employees report  
17 directly to you, or is there an intermediate level  
18 of supervision?

19          A.     Yes.   We do have some mid-level  
20 supervisors.

21          Q.     And as a general level, can you describe  
22 what is your responsibility as the Clark County  
23 Registrar?

24          A.     To maintain the voter registration, deal  
25 with the legislative sessions, and be visionary as

1 far as what the future of the election department  
2 is, and obviously to maintain and uphold the  
3 integrity of the process and train staff internally  
4 so that we can have a future in elections. We do a  
5 lot of succession planning from within, employee  
6 training. We do a lot of succession planning here  
7 to make sure there's a good future for the people  
8 coming up through the ranks.

9 Q. At a general level as the Clark County  
10 Registrar, you're charged with managing the election  
11 process for the entire county?

12 A. That is correct.

13 Q. Is that important to you?

14 A. Very much so. It's all I've ever done is  
15 work in elections.

16 Q. Do you try and hold fair and transparent  
17 elections?

18 A. Absolutely. That is definitely the goal of  
19 the entire department, to make sure that we're  
20 working on a process that the general public can be  
21 confident in.

22 Q. Why is that important to you?

23 A. Well, once you lose the confidence of the  
24 general public, it's very hard to support elections.  
25 So it's definitely one of the top priorities of the

1 office.

2 Q. Is there other parts of your job, or is  
3 100 percent of it concerning elections?

4 A. I'm primarily focused just on elections. I  
5 do outreach as well. And, of course, dealing with  
6 the legislative session every two years, that's also  
7 a big part of it.

8 Q. In other parts of the country in running  
9 elections on Election Day, the various states rely  
10 on volunteers that come forward to man the polling  
11 places.

12 I know that this last election was largely  
13 by mail, but in the past, when we used to vote in  
14 person, is that how Clark County did it too? You  
15 had volunteer citizens that would come forward to  
16 help staff the polling places on Election Day?

17 A. Yes. We can't do it without help from the  
18 general public. We call them volunteers, but we do  
19 pay them for that service. And even though we sent  
20 mail ballots out to all active voters this election,  
21 we still had offered a full-area voting program, 35  
22 sites voting for 14 days and 125 Election Day vote  
23 centers. So --

24 Q. And in doing -- can you finish your  
25 sentence again? I'm sorry. I interrupted you.

1           A.     Just saying that we had 35 early voting  
2 sites for 14 days and 125 vote centers that we  
3 serviced, so that took a lot of volunteer work.

4           Q.     And do you appreciate those citizens who  
5 come forward to help run the machinery on Election  
6 Day to make sure that our democracy can actually  
7 work?

8           A.     Very much so. We can't do the job without  
9 them. It takes thousands of people to service what  
10 we provide to the voters on Election Day, and during  
11 the early voting period there's anywhere from 1,100  
12 to 1,300 people that are working for those 14 days  
13 for early voting.

14          Q.     In your experience in helping to train and  
15 supervise those citizen volunteers that come  
16 forward, do they try and do their best to be fair in  
17 administrating that election and running those  
18 polling places?

19          A.     I certainly hope so. That's definitely  
20 what we train them to do.

21          Q.     And that's your experience as well in  
22 supervising them; right?

23          A.     Yes, it is. We've got a large group of  
24 people who return, but as the result of a pandemic  
25 we had a lot of new workers that came out this year.

1 That's definitely something that we emphasize, that  
2 it's important what they're doing, and upholding the  
3 integrity of the process is important to us.

4 Q. One of the areas of focus in this lawsuit  
5 is the Clark County's use of the Agilis machine.  
6 Are you familiar with that machine?

7 A. Yes.

8 Q. And could you briefly describe what it is  
9 and what it's designed to do?

10 A. The Agilis is an automated  
11 mail-ballot-processing machine that we utilized for  
12 several steps of our process in bringing in the  
13 mail. It sorts the return-mail-ballot envelopes  
14 into precinct levels so that it helps us in batching  
15 all of our mail ballots to be processed.

16 It also does the first signature check,  
17 working with the database of signatures that we have  
18 in our voter registration system. It was a huge  
19 addition. I don't think that we would have been  
20 able to process manually, the way we've done in the  
21 past. We processed ten times more mail ballots this  
22 election than we ever had.

23 Q. As the Agilis machine sorts ballots does it  
24 take pictures of the envelopes and the signatures?

25 A. Yes, it does. It takes a digital image of



1 the outside of the return envelope where the  
2 signature is located.

3 Q. And so how many of these machines does  
4 Clark County have?

5 A. We have one.

6 Q. And how did Clark County use that machine  
7 during the general election?

8 A. During the election we used it to do just  
9 what I previously described. It was what we used to  
10 sort.

11 There were three processes in the Agilis  
12 machine, but the first one went through and checked  
13 the -- made the first check on the signatures with  
14 the database to determine a match there. During the  
15 course of the election, we saw that the approval  
16 rate on the signatures that we had on file was at  
17 about 30 percent. So that was also a great  
18 assistance to my staff in getting 30 percent of  
19 those mail ballots that were processed -- automated  
20 processed for the signatures. That was a big help  
21 to us in our process. But we still had to have a  
22 manual process that is also automated through the  
23 Agilis machine, and sending those signatures that  
24 don't match so that the manual process can start  
25 with human beings in the back.

1 Q. Okay. So if I heard you correctly,  
2 during -- we'll get into this in more detail, but in  
3 the general election, the Agilis machine was able to  
4 match about 30 percent of the ballots that came  
5 through; is that right?

6 A. Yes, that is correct.

7 Q. And the other 70 percent were -- how were  
8 those ballots treated?

9 A. We had to send them back for a manual  
10 signature check, and eventually made its way to a  
11 bipartisan board that checked those signatures  
12 against everything we had on file for any particular  
13 voter.

14 Q. And was this same process used for the June  
15 primary?

16 A. Partially. We didn't get delivery of the  
17 Agilis machine until we had already begun to process  
18 mail ballots. But during the early voting period we  
19 did put it to use and used that process as well.

20 Q. All right. So let's take a step back and  
21 talk about the initial procurement of that machine.

22 Do you know who manufactures that machine?

23 A. Runbeck, out of Phoenix, Arizona.

24 Q. And how did you learn about it?

25 A. We had had interactions with Runbeck at

1 election conference. Myself and my staff, we  
2 regularly attend Election Center conferences, where  
3 we have the opportunity to go through the display  
4 area where different vendors for different services  
5 have their systems up. We made contact with  
6 Runbeck. They offered to come out on-site and they  
7 talked to my staff. We asked them questions. But  
8 not being a heavy mail-ballot jurisdiction, it  
9 didn't look like we were going to get the funding in  
10 order to get the Agilis machine in for processing  
11 45,000 ballots. But we kept them in mind, so when  
12 the pandemic hit they were the first group that we  
13 called. Their machine is used in several large  
14 jurisdictions -- Houston, Cook County, Chicago,  
15 San Francisco, Utah -- several large jurisdictions,  
16 and they all gave good references. And based on the  
17 initial contact that we had with Runbeck, we felt  
18 that they were the best vendor to move with.  
19 Because we had to move quickly. We found out in  
20 late March that we were going to be going with an  
21 all-mail election that needed to be supported in May  
22 and June, so we went forward with the procurement.

23 Q. Did you talk with some of the other  
24 jurisdictions about their experience with the Agilis  
25 machine?

1           A.     We did. I had colleagues in that area that  
2 we had conversations with, and they had positive  
3 things to say about the machine and Runbeck.

4           Q.     Did you also discuss the possibility of  
5 purchasing the machine with the Nevada Secretary of  
6 State's Office?

7           A.     Absolutely. As a matter of fact, the  
8 Secretary of State provided us with funding so we  
9 were able to make that purchase. They were in  
10 complete support of our purchase of the Agilis  
11 system, knowing that we'd have to have some type of  
12 help in order to handle the number of mail ballots  
13 we were expecting.

14          Q.     Did the Secretary of State ever raise any  
15 concerns with you either about the purchase or the  
16 use of the Agilis machines?

17          A.     No. No, they did not.

18          Q.     Did they raise any concerns at any point  
19 about your use or how you were using the Agilis  
20 machines?

21          A.     They went through the processes with us. I  
22 mean, they are the chief election official in the  
23 state of Nevada. So we had discussions with them on  
24 how they were planning to use it, but they never  
25 expressed any concern with the fact we were planning

1 to make use of it. They paid for the system. So  
2 had they objected to use of the system, they  
3 wouldn't have given us the funding to make the  
4 purchase.

5 Q. I suppose that's true.

6 Let's talk about the signature verification  
7 function on that machine. What's your understanding  
8 of how the machine does automatic signature  
9 verification?

10 A. My understanding is that it bases the  
11 comparison with our latest signature on file based  
12 on a banking logarithm that I am told is commonly  
13 used nationwide to match those signatures. In the  
14 initial default setting they encourage new customers  
15 to run a test set of ballots through so we can make  
16 a determination as to where to put the setting.

17 Q. And did you do that?

18 A. Absolutely. We followed the directions  
19 from the vendor, had a test batch set of ballots run  
20 through the machine, and that's how we went about  
21 making a determination on what settings to use for  
22 Clark County.

23 Q. And did you have confidence that the  
24 matches that the machine were finding were actual  
25 matches?

1           A.     Yes, we did. Running through with the test  
2     deck, we made absolutely certain that it was passing  
3     signatures that were obvious passes. Because we  
4     knew we could still move forward with the manual  
5     check after that, so we didn't want to do anything  
6     that would hurt the integrity of the process. That  
7     was the entire reason for us to run those checks; to  
8     make that setting somewhere where we'd be very  
9     comfortable with the signature match.

10          Q.     Was that the standard you used; you set the  
11     machine so it would only accept signatures that were  
12     obvious matches?

13          A.     That's exactly what we did.

14          Q.     And how did you do that? Is there other  
15     settings that you can customize?

16          A.     There is a setting. The standard default  
17     setting is 50. And we had a test batch of ballots  
18     that the vendor provided for us using the data from  
19     our voter registration database. We ran those  
20     ballots through until we were comfortable with what  
21     the machine was accepting as a verified signature,  
22     and we ended up setting the machine at 40.

23          Q.     Did Runbeck recommend any particular  
24     threshold setting?

25          A.     No, they did not. They encouraged us and



1 provided the test deck that we used in order to do  
2 the testing to make that determination. The only  
3 thing that they provided was that 50 was the  
4 default.

5 Q. Okay. So is it fair to say you  
6 experimented with it to make sure that it was only  
7 accepting obvious matches, and that's how you set  
8 the machine?

9 A. Absolutely. That's exactly what we did.

10 Q. So 30 percent of these were accepted by the  
11 Agilis, and the other 70 percent I think you said  
12 were reviewed by hand; right?

13 A. It's still an automated process as far as  
14 the signatures coming across on a computer screen,  
15 but there are human beings that are making the  
16 matches at that point.

17 Q. And those human beings are election  
18 personnel that are employed by your department;  
19 correct?

20 A. That's correct.

21 Q. They received training in how to do that  
22 signature verification?

23 A. Yes, they do.

24 Q. Who does that training?

25 A. My permanent staff. We actually have a

1 forensic signature expert that comes into the  
2 election department once a year to provide training.  
3 Based on that training we're provided by that  
4 vendor, we turn around and develop our own training  
5 for the staff that are going to be responsible for  
6 making those signature matches. There's always a  
7 permanent staffer who oversees the work of any of  
8 these staffers that are doing the manual signature  
9 check.

10 Q. And that forensic examiner or forensic  
11 signature trainer is an ex-FBI agent; is that right?

12 A. That is correct. She is formerly with the  
13 FBI.

14 Q. Now, in the lawsuit the contestants allege  
15 that when the signatures were verified by the  
16 election officials and personnel they were not  
17 prepared or trained to accurately verify the  
18 signatures on the mail ballots. Is that, in your  
19 opinion, an accurate allegation, that your people  
20 were not appropriately trained?

21 MR. OWENS: Calls for expert opinion.

22 BY MR. HAMILTON:

23 Q. You can answer.

24 A. No, not in my opinion.

25 Q. Okay. In the lawsuit the contestants

1     allege that election personnel, quote, "were under  
2     immense pressure to push the votes through and were  
3     instructed to verify signature match so long as at  
4     least one letter matched the ballot envelope  
5     signature and the maintained exemplar appeared to  
6     match."

7             At least in your observation, were election  
8     personnel involved in the signature verification  
9     under pressure to push the votes through?

10            A.    No.  In fact, just the opposite is the  
11     case.  We regularly went through and indicated to  
12     them that whenever they were uncertain about a  
13     signature, that they should pass it on to the next  
14     stage.

15            We do have a cure process here in Nevada  
16     that's recently been defined in statute.  So if  
17     those signatures don't match, the voter has an  
18     opportunity to cure that ballot.

19            Also there's another step where we'll run  
20     those signatures by where we can look at the entire  
21     history of the signatures.  And as time provides, I  
22     am also the last check.  Those signatures come  
23     across my desk before we reject them.

24            So it's a long process and there's plenty  
25     of opportunity for staff with many years of

1 experience reviewing signatures to have a look at  
2 those envelopes. But ultimately with the cure  
3 process, the voter can always call in and provide  
4 the necessary information, whether it's answering  
5 challenge questions or filling out the affidavit and  
6 providing an ID to cure that ballot.

7 Q. Were any of your staff instructed to verify  
8 a signature match using just one letter?

9 A. No, sir.

10 MR. OWENS: Objection. Calls for hearsay.  
11 Lacks foundation. Calls for speculation.

12 BY MR. HAMILTON:

13 Q. Go ahead and repeat your answer.

14 A. No, sir.

15 Q. Do you know what percentage of ballots  
16 reviewed by human verification were rejected for  
17 signature verification reasons?

18 A. I don't have that number with me. I do  
19 know that we made a cure listing public, and it was  
20 on our website on a daily basis. But I don't have  
21 those numbers off the top of my head.

22 Q. Was the signature verification rejection  
23 rate abnormally high or low, or was it consistent  
24 with prior elections?

25 A. Again, I don't have those numbers off the

1 top of my head. I can't give you the correct answer  
2 there.

3 Q. You don't know whether it was in line with  
4 prior elections or not?

5 A. I do not.

6 Q. So let's talk about the June primary first.  
7 Did you receive an unusually large number of mail  
8 ballots in the June primary?

9 A. We definitely received a much larger number  
10 than we had received in the past. But the general  
11 was the real challenge.

12 Q. Okay. How did the Agilis machine perform  
13 during that period of time in the primary where you  
14 used it?

15 A. I don't have the statistics that I have for  
16 the general with me, but we didn't have any major  
17 issues with the Agilis and running it during the  
18 primary.

19 Q. Did you find it to be effective and  
20 helpful?

21 A. Definitely in the sorting. We had never  
22 had the advantage of having a sorter that pumped  
23 those ballots out by precinct, and it also made it  
24 much easier for us to back-chart our groups to be  
25 processed and looked at.

1 Q. Okay. And then I take it you used the  
2 machine again for the general election?

3 A. From start to finish, yes.

4 Q. And were you using the threshold setting of  
5 40 for the general election as well?

6 A. That is correct.

7 Q. And did you perform more testing after the  
8 June primary to confirm that setting was  
9 appropriate?

10 A. We ran tests again, yes.

11 Q. And did that percentage hold consistent,  
12 about 30 percent of the ballots being accepted by  
13 the Agilis machine and the rest being sent --

14 A. I don't have those numbers from the primary  
15 with me. But it was definitely about 30 percent for  
16 the general election.

17 Q. Good. Now, you said the Agilis machine  
18 uses the most recent signature on file to check to  
19 verify the signature; is that right?

20 A. That is correct.

21 Q. And where does the County get its  
22 collection of reference signatures?

23 A. They can come in on physical voter  
24 registration forms where we scan them into the  
25 system. A large number of them come in from the



1 Nevada DMV through the AVR or any transaction where  
2 voters go to the DMV. So they can also come in from  
3 mailers that we sent out and they send it back and  
4 signed it.

5 Q. And your office maintains a database for  
6 each voter of all of those signatures?

7 A. That is correct.

8 Q. And when you're trying to match signatures  
9 manually, are you looking at all of those signatures  
10 or just one?

11 A. We do have the ability to look at all of  
12 the signatures for the second pass that runs through  
13 on the manual check.

14 Q. So in a close case, that's what you would  
15 do? If you weren't sure using the most recent one,  
16 you might look back at other ones?

17 A. Yes, definitely.

18 Q. You mentioned the Department of Motor  
19 Vehicle signatures. Are those high-quality  
20 signatures or low-quality signatures?

21 A. Unfortunately, they are the low-quality.  
22 The dpi requirement on the Agilis is 200 dpi. A  
23 large number of the signatures you get from DMV are  
24 not at that level.

25 Q. "Dpi" is dots per square inch?

1           A.     Dots per inch.

2           Q.     Dots per inch. You said some of the DMV  
3 signatures are below 200 dpi?

4           A.     In fact, all of them are.

5           Q.     So what happens if the reference signature  
6 is below 200 dpi and the Agilis machine can't match  
7 the signature?

8           A.     I'm sorry. You kind of broke up there.  
9 Can you repeat that?

10          Q.     Sure. What happens -- you said that these  
11 DMV signatures were low quality and didn't reach the  
12 200-dpi threshold; right?

13                 Joe, can you hear me?

14          A.     Yes. That is correct. That is correct.

15          Q.     Good. So what happens when you have a  
16 poor-quality signature? Does that mean the Agilis  
17 machine kicks it out, or does it accept the  
18 signature with a low --

19          A.     No. If it's under the 200 dpi, it can't  
20 make an attempt to match that signature. That would  
21 go to the group of return envelopes that are  
22 manually checked for a signature match.

23          Q.     All right. Has the Secretary of State's  
24 Office raised any concerns about your use of the  
25 Agilis machine?

1           A.    No, sir.  Not that I'm aware of.

2           Q.    Have any other counties in Nevada raised  
3 concerns about the use of the Agilis machine?

4           A.    I'm not aware of any other county in Nevada  
5 utilizing the Agilis.  But, no, I have not had any  
6 calls from any other county with any concern.

7           Q.    Prior to your beginning to process these  
8 ballots this election cycle, did anyone raise  
9 concerns about the use of the Agilis machine?

10          A.    No, sir.  We did not receive any negative  
11 feedback on the use of the Agilis machine.

12          Q.    All right.  So I'd like to talk a little  
13 bit about in-person voting, if I could.

14                When a voter shows up in person, what  
15 happens when they first enter the polling place?

16          A.    At the polling places they're instructed to  
17 go into one of the check-in clerks, which is where  
18 we have our poll book, which is a laptop that signs  
19 the voters in.  Voters have to use the tablet to  
20 interact with the clerk, and that's where they are  
21 matched in the field.

22                As long as there's a match there, they get  
23 a voter card and proceed to the voting machine to  
24 vote.  What's new this year is same-day  
25 registration.  So we were also able to update

1 voters' records and also register them the same day  
2 in order for them to vote in person.

3 Q. And is the voting -- so they get a voting  
4 card that they take to the voting machine. Did I  
5 hear that right?

6 A. Correct.

7 Q. And the voting machine, is that connected  
8 to a printer?

9 A. Yes. The voter-verified paper audit trail.  
10 It is statutorily required to be attached to every  
11 voting machine.

12 Q. So the voter takes that voting card, and  
13 what do they do with it? They put it into the  
14 voting machine?

15 A. Yes. They insert it into the voting  
16 machine at the slot located at the bottom. The  
17 machine rates that ballot style and brings up the  
18 ballot for the voter to proceed with voting.

19 Q. Let me back up a little bit in the process.

20 You said the voter checks in on an  
21 electronic poll book. What's that program called?

22 A. That's VoteSafe. That's provided by our  
23 voter registration vendor, VOTEC.

24 Q. And that's looking up voter registration  
25 information from your voter registration database?

1           A.     That is correct. It does several checks  
2     there to make sure they haven't already voted. It  
3     brings up their record and allows the clerk to match  
4     the signature that we have on file with the  
5     signature they provide on the tablet.

6           Q.     In the lawsuit the contestants refer to  
7     something -- they say, quote, "the computer system  
8     used by kiosk workers to check voters in."

9                     To the best of your understanding, are they  
10    referring to this poll book?

11          A.     Yes.

12          Q.     Okay. And what's the voter registration  
13    database called?

14          A.     VMAX.

15          Q.     So then after they're checked in, the clerk  
16    gives the voter a voter card to use at the voting  
17    machine; right?

18          A.     That's correct.

19          Q.     That's a card with a smart chip embedded in  
20    it?

21          A.     Yes, that is correct.

22          Q.     Okay. And then what's the name of the  
23    machine that the voter uses to make their selections  
24    on?

25          A.     It's an ICX. It's a touchscreen voting

1 machine provided by Dominion Voting Systems.

2 Q. Are those state-certified?

3 A. They're Nevada state-certified.

4 Q. Does the voting machine have its own CPU,  
5 or central processing unit?

6 A. Yes, they do.

7 Q. Is the data stored anywhere other than in  
8 the CPU in the ICX voting machine?

9 A. Yes. It's also stored on the flash drive.

10 Q. Is that sometimes referred to as the  
11 cartridge?

12 A. Yes. That's exactly it.

13 Q. Is the ICX machine connected to any other  
14 machine?

15 A. The ICX is connected to the voter-verified  
16 paper audit trail. That's statutorily required. It  
17 gives the voter a second opportunity to verify that  
18 your choices were correctly marked on the machine.

19 Q. That's what you or I might call -- or  
20 non-election people might call a printer?

21 A. Yep.

22 Q. So the voter sticks the card in, uses the  
23 touchscreen to vote however they want to vote, and  
24 then the printer prints it out on paper?

25 A. On thermal paper, yes.



1 Q. Okay. And then what happens?

2 A. Once they've reviewed all of the printouts  
3 to verify the choices, they have an opportunity to  
4 either cast the ballot or make changes and go back  
5 to contest and change some of their selections.

6 Q. Okay. And then -- go ahead.

7 A. When they're finished with their vote, the  
8 machine thanks them for their vote and asks them to  
9 remove their card.

10 Q. Then what do they do with the card?

11 A. They turn it in at the exit and they get  
12 their "I Voted" sticker.

13 Q. What happens to that piece of paper, the  
14 audit trail?

15 A. The audit trail stays with the printer. So  
16 at the end of every day, our staff picks up all  
17 those printers to service them. They're stored in  
18 the warehouse in a secure facility, and then the new  
19 printer is put on for the next-day voting with blank  
20 paper.

21 Q. So the electronic voting machines, as I  
22 understand it, have two components: the ICX, which  
23 is sort of the touchscreen, and then the VVPAT,  
24 which is the printer?

25 A. Yes.

1 Q. So we can refer to the ICX as the voting  
2 machine and the VVPAT as the printer and that won't  
3 offend you?

4 A. Not at all.

5 Q. That will be clear?

6 Where, to your knowledge, are these  
7 machines manufactured?

8 A. I know the vendor, but I don't know exactly  
9 where they're manufactured.

10 Q. Okay. The vendor is Dominion?

11 A. That is correct. Dominion Voting Systems.

12 Q. Do you know how long Nevada has been using  
13 Dominion machines in its elections?

14 A. I think statewide they came across in 2018,  
15 I believe. I know that was the first time we went  
16 countywide with them. I believe the Secretary of  
17 State assisted the other counties do the same thing.  
18 With the exception of Carson City. They have  
19 another voting system.

20 Q. Does the Secretary of State certify those  
21 machines?

22 A. Yes, they do. And they're federally  
23 certified as well.

24 Q. Every version of those machines?

25 A. Yes. Every machine that is going to be

1 used in the state of Nevada has to be federally  
2 certified and certified by the Secretary of State.

3 Q. When was the last time the Secretary of  
4 State certified your voting machine?

5 A. Upon purchase.

6 Q. When was that?

7 A. That would have been in 2018.

8 Q. Did the Secretary of State recertify the  
9 voting machines in December of 2019?

10 A. I believe so. I don't know if that's a  
11 recertification or the acceptance of a new set of  
12 software.

13 Q. All right. But in any event, one way or  
14 the other the Secretary -- or the Secretary's Office  
15 reviewed your voting machines and the software and  
16 recertified it as recently as December 2019?

17 A. That is correct.

18 Q. Okay. And what does the certification  
19 process entail?

20 A. Well, we run the machines through some  
21 testing, some test scripts, vote simulations, and  
22 check the hash code to verify that the correct  
23 version of the software is being used that's been  
24 certified by the EAC and verified by NIST.

25 Q. Does the Secretary's Office use any

1 independent authorities to run the certification  
2 process?

3 A. I believe it's the Gaming Control Board  
4 that assists them in doing that.

5 Q. What else does the Gaming Control Board  
6 verify and certify?

7 A. As far as I know, gambling machines.

8 Q. That's sort of an important industry in the  
9 state of Nevada, isn't it?

10 A. Yes.

11 Q. All right. The -- I think you told me  
12 already that the machines and software used in the  
13 general election were certified by the Secretary;  
14 true?

15 A. That is correct.

16 Q. And those were certified to use for the  
17 election on November 3rd in 2020?

18 A. Yes, that is correct.

19 Q. Do you have any reason to question or  
20 believe that those voting machines were somehow  
21 not fit or improper or malfunctioning on  
22 November 3, 2020?

23 A. No, sir, I do not.

24 Q. All right. Are those machines regularly  
25 maintained by your office?

1           A.    Oh, yes. Throughout the year we have a  
2 permanent set of voting machine technicians that are  
3 responsible for maintaining and programming those  
4 machines for elections. Every year we have to go  
5 through in preparation for every election and make  
6 sure that they're functioning properly, pair them  
7 with a VVPAT and run them through some tests to make  
8 sure they are functioning.

9           Q.    Is there an audit of the machines done  
10 after every election?

11          A.    Yes. There's a statutory requirement for  
12 us to test 2 percent of the machines from a random  
13 sample to verify that the hash code has not changed  
14 and also that the voter-verified paper audit trail  
15 system is accurately recording the votes.

16          Q.    Has that audit already been done for the  
17 general election?

18          A.    Yes. And sent to the Secretary. They  
19 passed in both cases.

20          Q.    Any questions raised during that audit?

21          A.    No, sir.

22          Q.    All right. Let's talk a little bit -- I  
23 apologize for going backwards here. But in the  
24 poll book you said the first step is for the voters  
25 to check in, and they have a tablet they sign on

1     into; is that right?

2           A.     Yes.

3           Q.     Were there any issues with the poll book on  
4     Election Day?

5           A.     There were issues throughout the day with  
6     the poll book related to connectivity. It's not a  
7     perfect -- we're completely relying on connectivity,  
8     which is why we set up a large number of technicians  
9     to immediately respond. There is redundancy in the  
10    poll book so we can continue to process voters at  
11    all sites, whether it be early voting or Election  
12    Day.

13          Q.     Were there connectivity issues with the  
14    poll book registration on Election Day in the  
15    general election?

16          A.     Yes. We experienced those off and on  
17    throughout the day in different areas of the county.  
18    We've got a large number of technicians who are  
19    readily available and we send them out. In no  
20    instance did we have a situation where we couldn't  
21    correct the problem in 30 to 60 minutes.

22          Q.     Was the data in the poll book compromised  
23    by any issues on Election Day?

24          A.     No, not that we know of.

25          Q.     Were there any issues with the poll book

1     that could have compromised the accuracy of the  
2     tally of votes on the voting machine?

3         A.     No, sir.

4         Q.     Were there any issues with the poll book  
5     that could have prevented qualified voters from  
6     voting?

7         A.     No, sir.

8         Q.     Were there any issues with the poll book  
9     that might have allowed a person who is not a  
10    qualified elector to vote?

11        A.     Well, if they didn't come up as registered,  
12    we would have tried to register them. But they  
13    would have needed to have a Nevada ID with them in  
14    order to do that.

15        Q.     All right. Then the next step of the  
16    process is this voter card. I think you described  
17    how that is inserted into the voting machine before  
18    they make their votes. Do you recall that  
19    testimony?

20        A.     Yes, I do.

21        Q.     Is it possible for that machine to time  
22    out? I'm sorry, not the machine. The voting cards?

23        A.     Yes.

24        Q.     And how does that happen?

25        A.     Well, there's a predetermined default for



1     timeout on that card. And so if the time is set  
2     incorrectly on the voting machine or incorrectly on  
3     the poll book, there would be an opportunity for the  
4     card to be timed out when plugged into the machine.

5           Q.     Is that a security protocol, having a  
6     time-limited feature on that card?

7           A.     Yes, it is.

8           Q.     Can you explain that?

9           A.     Well, we don't want them to be permanently  
10    active. There should be a reasonable amount of time  
11    from when the voter signs in and we expect to see  
12    them in the machine voting. So I believe our  
13    default is set at 30 minutes.

14          Q.     If they don't actually insert the card into  
15    the voting machine within 30 minutes, then the card  
16    times out and becomes inoperable?

17          A.     The machine will reject the card. They  
18    have to call the team leader over to look at the  
19    status on the card.

20          Q.     If a voter begins the process of voting on  
21    the voting machine, could the timeout function  
22    interrupt the voting process while it's underway?

23          A.     No.

24          Q.     So the timeout function is after the card  
25    is issued to the voter and before they stick it in

1 the machine?

2 A. It will only time out at the initial  
3 plug-in of the card. The system will immediately  
4 recognize that the timestamp on the card is invalid  
5 and will not activate the machine. If the machine  
6 activates after reading the time on the smart card,  
7 it will not time out after that.

8 Q. Okay. So if in this lawsuit the  
9 contestants complain about voter cards having to be  
10 reactivated, what's the explanation for that? Why  
11 would the cards have to be reactivated?

12 A. There were a few small situations on  
13 Election Day where the poll book time was incorrect,  
14 so that may have happened. However, the majority of  
15 the time is when the card activator peripheral  
16 doesn't activate the card correctly, and so the  
17 machine rejects it, and they have to go back and get  
18 the card reactivated.

19 Q. In your experience, is that a big deal?

20 A. No, sir. It's readily -- it's usually a  
21 matter of just unplugging the USB connection and  
22 plugging it back in.

23 But, again, we purposely put more equipment  
24 out at the polls than we think we're going to need,  
25 so if we run into a situation where one of our

1 systems is down, we still have plenty of equipment  
2 there to process a large number of voters. And,  
3 again, we have a large number of technicians that  
4 are trained that respond to those issues and repair  
5 them throughout the day.

6 Q. All right. So the voter sticks the card in  
7 the voting machine, and then they're able to make  
8 their selections on the screen. That's the next  
9 step; right?

10 A. Yes, sir.

11 Q. Now, in this lawsuit the contestants allege  
12 that some voting machines would freeze, forcing  
13 voters to interrupt their voting process to have the  
14 machines rebooted or tended to by election personnel  
15 and have their individual voter cards reactivated.  
16 So were you familiar with -- were there electronic  
17 voting machines that froze during the course of the  
18 election?

19 A. In most occurrences it was a result of the  
20 printer either jamming or running out of paper.  
21 But, yes, it is something that occurs.

22 Q. And when that occurs, how do you fix that  
23 issue?

24 A. Well, we can check the status of the card  
25 to make sure that it was properly activated. If

1     it's still active, we can put that voter into  
2     another machine while we replace the printer on the  
3     machine that we're using. Or if it wasn't activated  
4     properly, we take it back to the kiosk and have it  
5     reactivated for that voter.

6           Q.     If the machine freezes in the middle of  
7     voting and you have to reboot it, is there a danger  
8     that the voter might be able to vote twice?

9           A.     That would only happen if the poll worker  
10    does not follow the instructions that are provided  
11    to them. Any time there's an issue with a machine  
12    and you have to take a look at the card, there's  
13    always instruction for them to check the status of  
14    the card. If the status of the card shows that the  
15    card has voted within the past four or five minutes,  
16    or even less than that actually, then the vote was  
17    cast despite the printer having an issue. So they  
18    would not be activated to vote again.

19          Q.     Can the machines be rebooted?

20          A.     Yes. They can be turned off and turned  
21    back on.

22          Q.     Is that a time-consuming process?

23          A.     Well, it's going to require a team leader  
24    card, because for security purposes you have to  
25    insert the card and enter the correct code in order

1 for that machine to come back up.

2 Q. And are your technicians and workers  
3 trained in how to reboot or fix frozen voting  
4 machines?

5 A. Yes. They can't even initiate the use of  
6 the machine in the morning without the use of the  
7 team leader card.

8 Q. Does any of this compromise the integrity  
9 of the system?

10 A. Absolutely not. It increases the integrity  
11 of the system because you need a password in order  
12 for them to get the machine powered up to be running  
13 for the day.

14 Q. Does any of it compromise the accuracy of  
15 the voter selection?

16 A. No, sir.

17 Q. All right. You said that after the voter  
18 makes his or her selections on the machine, the  
19 printer prints a receipt?

20 A. Yes, sir.

21 Q. And how does the voter review that  
22 printout?

23 A. It lights up. The ballot was so large this  
24 year that they actually had to review four or five  
25 of those printouts. But to the right, the printer

1 will light up and they can see the choices that they  
2 make. Of course this is the second opportunity for  
3 them to do this, because they can also review all of  
4 their selections on the voting machine screen before  
5 they print the record.

6 Q. And you may have already said this and I  
7 apologize, but why are those printouts created?

8 A. They're statutorily required.

9 Q. At the end of each day of voting, are those  
10 printouts used for reconciliation purposes?

11 A. No. They are recorded and maintained for  
12 anybody to go back and look at them. We also use  
13 2 percent of them to run our audit after the  
14 election. But those aren't normally used to tally  
15 any votes.

16 Q. The main purpose is to allow voters to  
17 confirm their selections are accurately recorded on  
18 the machine?

19 A. It gives them a second opportunity to check  
20 to make sure the machine is accurately recording  
21 their vote.

22 Q. All right. Were there any issues with  
23 those printouts?

24 A. There were paper jams. Again, printers are  
25 out of paper and we have to get them serviced,

1 replaced, or have the printer roll replaced.

2 Q. Is that something you didn't anticipate?

3 A. No. We anticipated it. As a matter of  
4 fact, we had extra help on hand in order to make  
5 sure that that was an efficient process.

6 Q. If the voter received a blank printout,  
7 then what was that voter supposed to do, or how was  
8 that voter supposed to deal with that?

9 A. Voter receipt? Are you referring to the  
10 printout, the VVPAT printout?

11 Q. Yes. I'm sorry.

12 A. Can you repeat that question? I apologize.

13 Q. It's fine. If a voter receives a blank  
14 printout from the machine, how do they fix that  
15 problem? What do they do?

16 A. Voters, any time they have any issue on the  
17 voting machine, should immediately contact the poll  
18 worker. We have monitors that stand behind those  
19 machines and work to assist the voters with any  
20 issue they have.

21 If the printer had actually malfunctioned,  
22 the green light that goes on when the machine is  
23 active and being voted begins to flash a red light.  
24 That also indicates to the monitor that that voter  
25 might be in need of assistance.



1           But the voter needs to take responsibility  
2   if they have any issue with the machine, and then  
3   we can have staff that's trained assist them to  
4   correct it.

5       Q.    I think you said this already, but the  
6   voter can review their selections both on the ICX  
7   review panel, the machine -- the touchscreen itself,  
8   as well as on the printed printout?

9       A.    That is correct.

10       Q.   So either one independently allows the  
11   voter to confirm their selections?

12       A.    That is correct.

13       Q.   All right. After the voter votes -- makes  
14   the selection, reviews the printout, and confirms  
15   and casts the ballot, where is that data stored?

16       A.    On the CPU and also on the flash drive, and  
17   of course on the printout as well.

18       Q.   And why is it stored in three different  
19   places?

20       A.    Redundancy. Should something happen to the  
21   cartridge in transport from the polling place to the  
22   tabulation center, we would also have redundant  
23   copies on the CPU. And ultimately we would never  
24   want to rely on that, but we could also refer to the  
25   paper roll.

1 Q. What physical security measures are in  
2 place to protect the CPU?

3 A. Well, the entire system is sealed. The  
4 seals that are placed on the system are recorded so  
5 that the team leader has an opportunity to verify  
6 those seals before they ever open it up for voting.

7 But the system itself, if you're not a  
8 technician and don't have the proper tools, you  
9 can't even gain access to the CPU or the hard drive,  
10 any of the components within the touchscreen.

11 Q. To access the CPU do you need a card and a  
12 password?

13 A. When you say "access," do you mean the  
14 memory or to physically access it inside of the  
15 tablet?

16 Q. Memory.

17 A. Yes.

18 Q. Yes, you need a specific card and a  
19 password?

20 A. Yes, you do.

21 Q. If you only have one of them, can you  
22 access the memory?

23 A. You could do it with either the team leader  
24 card or the technician card.

25 Q. But if you have neither card and only the

1 password, can you access the system?

2 A. No, sir.

3 Q. Or if you don't have the password -- well,  
4 if you have --

5 A. If you have the card and don't have the  
6 password, it won't work.

7 Q. Got to have both?

8 A. Yes, sir.

9 Q. What cyber security measures are in place  
10 to protect the CPU from overseas hacking or  
11 malicious interference?

12 A. The machines are actually standalone.  
13 There's no connection to the internet. But there's  
14 also encryption involved and checks and  
15 verifications that are done every time the cartridge  
16 is transferred from the machine to the tabulation  
17 system to be read for tally.

18 During the early voting period, there's  
19 physical security as well. As I mentioned, those  
20 votes are sealed, and they are also required to be  
21 transported in a transfer case that is sealed with  
22 two seals and transported by two workers back to the  
23 tabulation center. In the morning the warehouse  
24 team removes those from a secured vault, gives them  
25 back to those two team leaders, and they transport

1     them in that secure case back to the election  
2     location to be entered into the system. Again, they  
3     need their team leader card to get the machine up  
4     and running for the day.

5             There's considerable amount of physical and  
6     cyber security involved with the machines.

7             Q.     I think you answered this, but is the CPU  
8     connected to the Wi-Fi -- to Wi-Fi or the internet  
9     at any point ever?

10            A.     No, sir. That status is turned off on all  
11     of the touchscreens.

12            Q.     And what about the USB drive? How are  
13     those protected?

14            A.     Well, the USB drives will be behind a  
15     closed door that is sealed throughout the course of  
16     the day. At the end of the day, when they remove  
17     those from the machines, they are placed into a  
18     transfer case, a metal transfer case that is secured  
19     and sealed. Whenever that gets to the tabulation  
20     area, they open that case up, and there's a form  
21     inside to verify that the seals that were attached  
22     at the polling place are still intact and that the  
23     serial numbers still match. Those are stored in a  
24     secured facility, secured room, that requires two  
25     levels of access, alarm access, key access, and also

1 card key access to get into the room. So they're  
2 under high security when they're stored there.

3 And then when they return to the polling  
4 place again, they're sealed, and there's a  
5 certificate placed inside of the transfer case.  
6 When they get out on-site, the team leader is  
7 responsible for opening that up and verifying the  
8 seals still match and that these cartridges have  
9 been securely transported from one place to another.

10 Q. Do you record fingerprints for any of the  
11 election workers?

12 A. Fingerprints, no. But in the tabulation  
13 system we do utilize biometrics for our IT staff to  
14 sign in to the tabulation system.

15 Q. When you say "biometrics," do you mean  
16 fingerprints?

17 A. Yes.

18 Q. And is the data on the USB encrypted or  
19 unencrypted?

20 A. It's encrypted.

21 Q. Is that another security measure?

22 A. Yes, sir.

23 Q. All right. How confident are you that the  
24 physical and cyber security measures have prevented  
25 data tampering?

1           A.     Very.

2           Q.     Are there -- have you consulted with any  
3 other state or federal entities with respect to the  
4 election security procedures you put in place?

5           A.     We follow guidelines provided by CISA.

6                     We also work with the Secretary of State,  
7 who has taken it upon themselves to be very  
8 concerned with cyber security and all of our  
9 systems.

10                    We also have a dedicated staff within the  
11 County here whose complete focus is on cyber  
12 security and reviews everything we do. They also  
13 work with the poll books and the connectivity and  
14 security we have in place to prevent anybody from  
15 hacking into those systems as well.

16                    We have a very -- a very good team at  
17 several levels -- federal, state, and local -- to  
18 assist us with cyber security.

19           Q.     Do you work with the Department of Homeland  
20 Security as well?

21           A.     Usually through CISA. But yeah, I guess  
22 that's a subsidiary.

23           Q.     What is CISA?

24           A.     I don't know that acronym. They're very  
25 well known nationwide as a provider for guidance.

1     There was a gentleman who was recently fired  
2     unfortunately, Mr. Krebs. A very credible  
3     individual. He put a lot of work into making sure  
4     that elections were secure nationwide.

5           Q.     It's a part of the federal government?

6           A.     Yes.

7           Q.     Does your office have measures in place to  
8     monitor internet traffic coming in and out of the  
9     office?

10          A.     Yes.

11          Q.     And what is that?

12          A.     I'd rather not go into those. Those are  
13     security measures they asked me not to talk about.

14                 Our cyber security team is actively  
15     involved in monitoring all of the activity coming  
16     in, and they've isolated all of our activity onto  
17     one server as well to further protect the system.

18          Q.     And you mentioned just -- just a few more  
19     questions and we'll stop.

20                 You mentioned this post-election audit of  
21     the ICX and the printer. That audit was conducted  
22     after both the primary and the general in 2020; is  
23     that right?

24          A.     Yes, sir. That's required for every  
25     election. It's kind of tied into the certification



1 board activity that we do. That's a big effort that  
2 we do prior to early voting, prior to Election Day  
3 and after Election Day, where members of the general  
4 public -- in this year's election we had two  
5 Republicans and one Democrat on that board that come  
6 in and verify that our system is accurately  
7 tabulating votes. We run simulations through on all  
8 three of our tally types, which would be mail, early  
9 voting, and Election Day, and that group is an  
10 independent group that verifies that all of our  
11 systems are correctly working and tabulating.

12 Q. And the most recent audit of the general  
13 election was completed on November 16th?

14 A. I don't think that it happened that day.  
15 That was canvass day. It happened prior to the  
16 canvass because we needed it in order to report to  
17 the Secretary of State.

18 Q. Okay. And the audit for the 2020 said --  
19 the results of the audit showed that 100 percent of  
20 the time the electronically recorded results exactly  
21 matched the selections printed on the paper tape; is  
22 that correct?

23 A. That is correct. For the 2 percent sample,  
24 yes, that is exactly right.

25 Q. Fair to say the system passed the audit

1 with flying colors?

2 A. Yes.

3 MR. OWENS: Objection. Calls for  
4 speculation.

5 BY MR. HAMILTON:

6 Q. Now, does your office perform a  
7 reconciliation of poll book and voting machine data?

8 A. Poll book and -- we manage the voter  
9 registration rolls that make up the poll book data.

10 Q. Do you compare the data in the poll book  
11 with the data from the voting machine?

12 A. No. We can't compare. There needs to be  
13 separation there for privacy of the ballot.

14 Q. Is there nightly reconciliation?

15 A. You're talking about reconciliation, not --

16 Q. Yes. Yes.

17 A. Yes.

18 Q. What's that process?

19 A. We have to do our checkbook, so to speak.  
20 So after every day of early voting, we have numbers  
21 of people who have signed in by location by precinct  
22 through the poll book, which is run separately from  
23 the voting equipment. Then we also have turnout by  
24 precinct by location for all of the voting machines.  
25 That never changes. Whatever is read in will always

1 stay the same because we can't remove votes, with  
2 the exception of provisional ballots.

3 But on a daily basis, we compare the voter  
4 registration database counts through the poll book  
5 with our daily turnout for early voting so we can  
6 identify discrepancies, which occur on a daily  
7 basis.

8 Q. What causes discrepancies?

9 A. Human error. From time to time a machine  
10 malfunction. Very small numbers of errors do we  
11 normally find. We had over 900,000 voters, 975,000.  
12 We identified a little over 900 discrepancies in all  
13 three tally types.

14 It could be somebody who signs in to vote  
15 but doesn't vote. We call those fleeing votes. So  
16 then our Democracy Suite count will be down one from  
17 our poll book count because they signed in to vote  
18 but then didn't cast their ballot.

19 We could have human error with  
20 inadvertently duplicating a card.

21 Any number of those kinds of issues.

22 Q. You try and track those down by looking at  
23 the poll worker notes to try and figure out the  
24 answers for any discrepancies?

25 A. Yes, sir.

1 Q. And then those -- are those reported, or do  
2 you keep it secret?

3 A. No. I have to report them to the  
4 Secretary, and I also report them to canvass.

5 Q. How many people voted in the 2020 general  
6 election in Nevada?

7 A. I believe it was in the area of 974,000.

8 Q. Do you know how many people voted in all of  
9 Nevada?

10 A. Maybe 1.5, 1.6 million, I think.

11 Q. And how many unexplained discrepancies did  
12 you report for the general election?

13 A. A little over 900. I believe it was 910.

14 Q. Is that abnormal for an election of this  
15 size?

16 A. No. That was actually pretty good.

17 Q. Based on your 25 years of experience, did  
18 that number give you any concern?

19 A. No, it did not.

20 Q. Do you recall what Joe Biden's margin of  
21 victory in the presidential election was in Nevada?

22 A. No, I do not.

23 MR. OWENS: Objection. Calls for  
24 speculation.

25 THE WITNESS: I do not.

1 BY MR. HAMILTON:

2 Q. Do you know what the margin was in Clark  
3 County?

4 MR. OWENS: Same objection.

5 THE WITNESS: I don't memorize the margin  
6 of victories. There's too many contests.

7 BY MR. HAMILTON:

8 Q. What's a provisional ballot?

9 A. It would be a ballot for somebody who  
10 either same-day registered in person, online, or an  
11 update. Or it could be a HAVA provisional for  
12 somebody that we could not find in the system and  
13 also did not have the correct ID to same-day  
14 register. It's a ballot basically that is held in  
15 reserve electronically so we can make the  
16 determination after Election Day whether they're  
17 actually qualified to be a registered voter so that  
18 we can count the ballot.

19 Q. You said it's held in reserve  
20 electronically. How does that happen?

21 A. There's a tag number that's given to that  
22 vote. We can track the paperwork to that tag number  
23 to see how that voter either same-day registered or  
24 whether they voted HAVA provisional. And we'll do  
25 the research, our staff, during that canvass period

1 and determine whether that vote should count or not  
2 count. Then we can go back and indicate that in the  
3 system and have it pushed through and counted or  
4 held back.

5 Q. What are your employees trained to say to  
6 the voters when they're going to have to vote a  
7 provisional ballot?

8 A. Well, they get a documentation. Every  
9 single provisional voter is going to get a document  
10 that tells them why they voted provisionally. They  
11 will mark it either as SDRI, SDRO, or SDRU or HAVA  
12 provisional. So that documentation is provided to  
13 every single voter that votes provisionally. That's  
14 how we track it and link it to the tag.

15 Q. Is -- what do those acronyms that you just  
16 said stand for?

17 A. SDR is same-day registration. There are  
18 three types. There's in person, online, or update.

19 Q. Okay. In the contest plaintiffs claim that  
20 your staff routinely failed or sometimes failed to  
21 notify voters that their ballots were cast  
22 provisionally such that they didn't have an  
23 opportunity to cure defects.

24 Is that how they were trained?

25 A. Absolutely not. There's a set of paperwork

1 that has to be provided to every single provisional  
2 voter indicating to them that they either did one of  
3 those three types of SDR or that they voted HAVA  
4 provisionally. That's the only way we can track  
5 whether the voter provided everything they needed to  
6 provide for us to count it.

7 There were over 60,000 provisional ballots.  
8 The number of processed voters that didn't get that  
9 paperwork is somewhere in the area of 20. I don't  
10 see how they can make that claim that they weren't  
11 notified that they were voting provisionally.

12 Q. Were you aware of any provisional ballots  
13 being counted without actually resolving the  
14 underlying issues that --

15 A. No, I was not.

16 Q. Is that something you would ever allow?

17 A. Absolutely not. We have to follow the law  
18 on everything we do.

19 Q. Were there any ineligible voters who were  
20 allowed to cast ballots because of the failure or  
21 breakdown in the provisional voting process?

22 MR. OWENS: Objection. Calls for  
23 speculation.

24 THE WITNESS: Not that I know of.

25 ///



1 BY MR. HAMILTON:

2 Q. Were any lawful voters disenfranchised as a  
3 result of the provisional ballot process, as far as  
4 you know?

5 A. No, sir.

6 Q. The contest claims that there were  
7 in-person voters who were told that a mail ballot  
8 had already been received by them when in fact the  
9 voter had not submitted a mail ballot. Are you  
10 aware of any of those instances?

11 A. Any of those claims should really be  
12 brought to the attention of our office. We can  
13 easily look it up and make that determination.

14 There were a number of voters who showed up  
15 that we had indicated as having received a mail  
16 ballot for, so they were denied the ability to sign  
17 in in person and vote.

18 Q. Because the system showed that they  
19 received a mail ballot?

20 A. That is correct. And when the voter  
21 protested, we would look up the return envelope and  
22 check to see that the signature matched. Those  
23 situations would be brought directly to my  
24 attention, and I dealt with them.

25 Q. How many instances of that did you

1 experience in the 2020 general election?

2 A. That I personally looked into, it would be  
3 less than a hundred.

4 Q. What happens when a person presents  
5 themselves at a polling place without a valid  
6 Nevada ID?

7 A. Well, they're not required to have an ID if  
8 they're already registered. But if they're trying  
9 to take advantage of same-day registration, they  
10 must have a Nevada ID or driver's license.

11 Q. So let's assume that the voter is not  
12 registered and does not have a valid Nevada ID. Is  
13 there a policy about asking them to make an  
14 appointment to secure a DMV -- or a driver's  
15 license?

16 A. No. There's not even a guarantee to get  
17 into DMV.

18 Q. Right. So they either have a valid Nevada  
19 identification and are allowed to register to vote  
20 or they don't?

21 A. Well, if they really push the envelope and  
22 insist they're registered to vote, in some cases  
23 they are allowed to vote a HAVA provisional.

24 Q. A HAVA provisional, and by that you mean  
25 Help America Vote Act provisional ballot?

1           A.     Correct.

2           Q.     Okay.   Just a few final questions here.

3                   What does your office do if campaigns are  
4   engaging in electioneering activity too close to  
5   polling locations?

6           A.     We do our best to deal with those.   We ask  
7   the team leaders to make the first attempt because  
8   they're already there.   Most polling places were  
9   very busy both for early voting and Election Day, so  
10   they would put a call into the office, and we would  
11   send one of our admin rovers over to try to rectify  
12   the situation.

13                   In some cases what a lot of campaigners  
14   lose track of is that they're on private property.  
15   If that private-property owner has indicated to us  
16   that they don't want to allow electioneering or  
17   petitioning, they don't lose their rights as  
18   private-property owners because they allow me to  
19   vote there.

20          Q.     Is there a Nevada statute that prohibits  
21   electioneering activity within a certain number of  
22   feet of the polling place?

23          A.     Yes.   Within a hundred feet from the  
24   entrance of the facility.

25          Q.     So the employees that are running the

1 polling places are directed to monitor that  
2 activity?

3 A. If they're in a polling place that allows  
4 electioneering, yes. If they're at a site that's  
5 privately owned and they've indicated they don't  
6 want to allow it, they don't allow any  
7 electioneering.

8 Q. Let me ask you about polling observation.  
9 You have training programs and manuals on  
10 what is allowed for a citizen or campaigns to  
11 observe the polls?

12 A. As far as our poll workers, they are  
13 trained, and there's documentation that they use and  
14 follow. We also have some documentation provided to  
15 those observers that came into our facility to  
16 observe.

17 Q. If a poll worker -- I'm sorry, a poll  
18 observer believes they're being treated unfairly or  
19 not being allowed to observe, how are they supposed  
20 to raise those concerns?

21 A. To the team leader.

22 Q. And how are those supposed to be resolved  
23 or addressed?

24 A. Well, if the team leader continues to have  
25 an issue, they can call an admin rover who can go

1 out and also try to deal with the situation. In  
2 most -- not most -- all locations we had predefined  
3 exactly where observers could be allowed. We were  
4 under some restriction as a result of COVID and  
5 social distancing, so there was only a certain  
6 amount of observers we could allow to be in the  
7 polling place.

8 Q. Is it important to allow observation of the  
9 polling place?

10 A. Statutorily required.

11 Q. Is that -- do you try and administer that  
12 on an even-handed basis between the political  
13 parties?

14 A. Yes, absolutely. You have to try to be  
15 balanced in what you're doing. We tried to create  
16 enough spaces there so that we did everything we  
17 could to have a Democratic observer and Republican  
18 observer and just an observer as an independent. If  
19 not, then we tried to get them to work with each  
20 other to rotate.

21 It depended on how many observers were  
22 being allowed in the location. So that was on a  
23 case-by-case.

24 Q. And are those polling place observers as a  
25 general rule relatively well-behaved?

1           A.     Yes.   Generally.

2           Q.     Okay.   Last area and then I'll stop.

3                   Voter registration list maintenance.   Does  
4 your office have a process for maintaining the voter  
5 rolls?

6           A.     Yes.

7           Q.     Can you briefly explain that process?

8           A.     Leading into any election cycle, that being  
9 an even year, we begin with the ERIC process, which  
10 is the Electronic Registration Information Center.  
11 That's a group that is coordinated by the Secretary  
12 of State's Office.   They give us information on  
13 people who are registered in other states by  
14 comparing our state voter registration roll with  
15 other member states.   At this point in time I  
16 believe there are 30 states that are participating  
17 in ERIC.   They also provide us with information on  
18 deaths, any number of other areas, to help us keep  
19 the rolls clean.   So we use that.

20                   And leading into, again, the even year,  
21 ERIC is first and then the NCOA, the National Change  
22 of Address report, that we utilize so that we can  
23 identify those voters whom have moved, and then we  
24 send out a federally required notice to those voters  
25 to either tell us that we're incorrect, that they

1 still live at that address, or we've moved, please  
2 change us to this address, or yes, I have left, and  
3 I should no longer be registered to vote in Clark  
4 County.

5 If we do not receive that postcard back  
6 within 30 days, then those voters are placed on the  
7 inactive list. If they failed to vote for two  
8 federal elections, they're removed from the system.

9 Q. And would you ever remove a voter from the  
10 voter registration list simply because they appeared  
11 on the NCOA change-of-address list?

12 A. No. We're not allowed to do that according  
13 to the law. We have to notify them with the federal  
14 postcard, giving them an opportunity to update their  
15 address, say that our information is incorrect, they  
16 still do reside at that residence, or tell us that  
17 they're gone and they should be removed.

18 Q. And that's part of the Help America Vote  
19 Act?

20 A. Yes.

21 Q. Or HAVA as it's sometimes called?

22 A. It's that -- the statute goes back to NVRA,  
23 back to '93. But yes, it's also part of HAVA.

24 Q. Does your office continually check on  
25 instances of voters who have passed away?

1           A.    Yes.  We receive reports from the Secretary  
2   of State's Office.  We get reports, again, from  
3   ERIC.  They also use the Social Security  
4   Administration records to give us that information.  
5   We also take information from the general public who  
6   call us and let us know a loved one has passed or  
7   brother or sister.  We verify information and then  
8   remove those voters.

9           Q.    Under Nevada law, if a voter receives a  
10  mail ballot, votes the mail ballot, places it back  
11  in the United States mail, and then the next day  
12  passes away before Election Day, is that ballot  
13  counted or not?

14          A.    Yes, that ballot is to be counted.

15          Q.    Because it was placed in the mail and voted  
16  prior to the death?

17          A.    As long as we get information that leads us  
18  to believe that they died after they voted, then,  
19  yes, it's a good ballot.

20          Q.    Is there a process in place for challenges  
21  to be made to specific ballots?

22          A.    Yes, there are.  It has to be a voter that  
23  resides in that precinct who can challenge the vote.

24          Q.    And does your office receive those  
25  challenges or participate with respect to those



1 challenges?

2 A. We are the authorized agent for receiving  
3 those challenges, yes.

4 Q. Were there any in the general election?

5 A. None that I know of.

6 MR. HAMILTON: All right. Thank you. I  
7 really appreciate that this deposition was delayed,  
8 and I appreciate your patience in sitting through a  
9 long series of questions. Mr. Gloria, I know that  
10 Mr. Owens is going to have some questions for you.  
11 Do you want to take a short break before we go  
12 there?

13 THE WITNESS: I'm good. Let's keep going.

14 MR. OWENS: I need to take a real quick  
15 break, just a few minutes.

16 THE WITNESS: Then let's take a break.

17 (A break was taken.)

18

19 EXAMINATION

20 BY MR. OWENS:

21 Q. Mr. Gloria, counsel went over a lot of the  
22 topics I was going to cover, so that's good. It  
23 will shorten this up a lot. I'm going to do my very  
24 best to minimize duplication.

25 Let's talk about when a ballot comes in.

1 You talked about using the Agilis machine for a  
2 variety of things, amongst which it sorts it and  
3 does some other stuff, and then it runs through and  
4 scans for the signature verification; right?  
5 Generally that's what it does?

6 A. Yes, sir. The ballots are coming in  
7 through U.S. Mail and also through drop-off  
8 locations.

9 Q. Do you guys have a guest network at the  
10 facility where the Agilis machine is set up and run?  
11 A guest Wi-Fi network?

12 A. No, not that I know of.

13 Q. So no Wi-Fi there?

14 A. There's Wi-Fi in the building, but the  
15 Agilis system is not hooked up to it.

16 Q. I'm talking about -- that was not my  
17 question.

18 In the location where the Agilis machine  
19 sits and it runs, does that facility where the  
20 Agilis machine runs, does it have a guest Wi-Fi?

21 A. Yes. The entire facility does.

22 Q. Are any of the computers in the office  
23 there connected to the guest Wi-Fi?

24 A. Computers, not that I know of. What I know  
25 is connected, there are individuals who bring some

1 personal devices in, smart devices. Our cell phones  
2 are wirelessly connected.

3 Q. To the guest network?

4 A. Yes.

5 Q. When the Agilis machine is set up and doing  
6 its sorting, that's connected to the internet;  
7 correct?

8 A. I don't know if there's a hard connection,  
9 permanently attached. I know we give temporary  
10 access to the vendor, but I don't think it's  
11 permanently attached to the internet.

12 Q. When it's turned on and you're using it,  
13 it's attached to the internet; correct?

14 A. It's attached to the network of computers  
15 that are accepting the information, yes. But I  
16 think that they sneakernet it over. They would load  
17 it to a USB and take a file to another system so we  
18 can download and update our history on the voter  
19 when we see that a mail ballot has been received.

20 Q. When you're using the Agilis machine, is it  
21 set up for a super user?

22 A. I'm not familiar with that term.

23 Q. How do you control who has access to the  
24 Agilis machine?

25 A. I think it's similar to our tabulation and

1     that there is a sign-on for getting into the Agilis  
2     system.

3           Q.     Do you have video -- that's not the right  
4     word -- cameras taking video of the area where the  
5     Agilis machine is run?

6           A.     No.

7           Q.     Do you have cameras that record video of  
8     the areas where the tabulations are run?

9           A.     No.

10          Q.     Do you have cameras that record video of  
11     areas where the ballots are kept?

12          A.     No.

13          Q.     Do you have cameras that record video of  
14     any areas where any of the election materials or  
15     machines are kept?

16          A.     The perimeter of the facility we use the  
17     camera system.

18          Q.     On the exterior?

19          A.     Yes.

20          Q.     So you have no cameras set up on the  
21     interior of the facility where the election  
22     materials and machines are stored and are operated;  
23     correct?

24          A.     No, sir.

25          Q.     When a ballot comes in, I understand that

1 the envelope gets opened. So now we're talking  
2 mail-in ballots. Right? And the envelope gets  
3 opened. Who is looking at that? The first  
4 person --

5 A. Nobody looks inside the envelope until it  
6 goes to the counting room. That's a bipartisan  
7 group that is responsible for separating the return  
8 envelope from the actual ballot.

9 Q. And how is that set up? Is that set up  
10 where you have teams that receive ballots and they  
11 work through those?

12 A. The counting board receives ballots in  
13 batches.

14 Q. They're still in the envelope. The top of  
15 it is slit open, and you've got the ballot inside  
16 the envelope?

17 A. That is correct.

18 Q. Who is looking for IDs inside the  
19 envelopes? Is that the counting board?

20 A. Yes, it would be.

21 Q. Is there any point in the process where you  
22 look inside the envelope?

23 A. Me personally?

24 Q. Yes.

25 A. No, I do not.

1 Q. Earlier you were talking about security --  
2 actually, it may not have been related to that. It  
3 was talking about signatures and the training, and  
4 you indicated you have a former FBI agent who's on  
5 your staff?

6 A. Not on my staff. She's a vendor that comes  
7 in and trains my staff once a year.

8 Q. What company is that?

9 A. I'd have to provide you with that  
10 information.

11 THE WITNESS: Do you know, Kevin?

12 I'd have to get that information for you.

13 BY MR. OWENS:

14 Q. It sounds like it's the same individual  
15 coming in to train you. What is her name?

16 A. I don't know her name. I can get you that  
17 information.

18 Q. You talked about the system of reading  
19 signatures. The question was asked to you -- I may  
20 not be getting this a hundred percent correct, and  
21 the point is not to trip you up; it's to put this  
22 back into context -- were you aware of anybody  
23 working at a poll site who was told to push through  
24 signatures or to match signatures based upon a  
25 single letter in the name? Do you remember those

1 questions earlier?

2 A. That has nothing to do with mail ballots.  
3 You said at a poll site?

4 Q. I'm sorry, not a poll site. People  
5 involved in matching signatures, so the signature  
6 verification?

7 A. So the manual process?

8 Q. Yes.

9 A. I think your question was did anybody  
10 authorize to verify a signature with one letter on  
11 the manual checks back there? No. That's not how  
12 they're trained.

13 Q. What's that last part?

14 A. No, sir, that's not a part of our training.

15 Q. Right. So I understood your response to  
16 really be more indicative of the training that  
17 people receive versus whether or not that may have  
18 actually happened. Is that fair?

19 A. Yes. It's part of the -- it's not a part  
20 of our training, definitely not.

21 Q. If somebody was told to push through  
22 signatures, who would that come from, that  
23 instruction?

24 A. I can't answer that question. I'm not  
25 aware of anybody doing it.

1 Q. You indicated that there's multiple steps  
2 to the process. So if the machine, the Agilis  
3 machine, rejects a signature on a ballot, it then  
4 goes to human review; correct?

5 A. Yes.

6 Q. So then you have people who receive some  
7 training on handwriting, and they review the  
8 signatures. And if there's a signature that they  
9 don't approve or that they reject, it then goes to  
10 another person for review; correct?

11 A. Bipartisan group, yes.

12 Q. So if the first line of reviewers reject  
13 it, it goes to what you said, a bipartisan group?

14 A. That is correct. That has access to the  
15 entire library of signatures in the database.

16 Q. Does the first level of review not have  
17 access to all of the signatures?

18 A. No. They're reviewing the most recent  
19 signature as well.

20 Q. So similar to the Agilis machine only  
21 looking at the most recent signature, the first  
22 level of review by human eyes also only looks at the  
23 most recent signature; correct?

24 A. Yes, sir.

25 Q. Okay. So then the next level is what you



1 call the bipartisan group, and they have access to  
2 all signatures on file; correct?

3 A. That is correct. Along with a group of  
4 auditors that are permanent employees.

5 Q. Where is that collection of signatures  
6 kept?

7 A. In a database, in VMAX.

8 Q. You say in the database. That's a database  
9 that your facility holds?

10 A. That's correct. Each individual record for  
11 a voter has a history of their signatures.

12 Q. Is that updated on some periodic basis?

13 A. It's updated every time we get a new  
14 signature, whether it be from the DMV or a voter on  
15 a physical form.

16 Q. Is there some sort of automatic process  
17 that updates the signatures or includes the new  
18 signature? How does that work?

19 A. If it's given to us digitally, it's an  
20 automated process. If it's on a physical form, we  
21 actually have to scan that into the system.

22 Q. But that database is physically housed --  
23 strike that.

24 Is that database physically housed at your  
25 facility?

1           A.     No. The main database is in the ops  
2 center.

3           THE WITNESS: Isn't it? Yeah, at our main  
4 IT --

5           (Reporter clarification.)

6 BY MR. OWENS:

7           Q.     So that particular database is housed at  
8 the headquarters for IT for Clark County?

9           A.     That is correct.

10          Q.     So it goes to the bipartisan board for a  
11 subsequent review. If they don't approve it, what  
12 happens to the signature at that point?

13          A.     Those envelopes can get passed to me  
14 personally for review. Or obviously in the cure  
15 process the voter can actually contact us and  
16 provide what they need in order to cure the ballot,  
17 and then it is removed from the process altogether  
18 and sent to the counting board.

19          Q.     So once the bipartisan board looks at it,  
20 the next step is either it goes into the bucket for  
21 curing or it goes to you for review?

22          A.     Yes.

23          Q.     Could be both?

24          A.     Yeah.

25          Q.     There was some questions presented to you

1 regarding the cartridge, the machines -- now we  
2 shifted to -- or I shifted to in-person voting.

3 You said that the machines are password  
4 protected; correct?

5 A. Correct.

6 Q. Is the password "Vote"?

7 A. No, sir.

8 Q. And you said the cartridges are encrypted.  
9 Those are the --

10 A. Flash drives.

11 Q. Flash drives. There's the word.

12 What kind of encryption are on those? Do  
13 you know?

14 A. I do not.

15 Q. How do you know that they're encrypted?

16 A. Because it's gone through the certification  
17 test by the state and the federal government, and  
18 they verify it's encrypted.

19 Q. Let's pause there for a moment. You've  
20 said a couple times the machines are certified both  
21 by the state and the federal. What's the federal  
22 certification?

23 A. EAC, Election Assistance Commission. They  
24 are responsible to make sure all systems are  
25 certified at the federal level.

1 Q. Do they come to your facility and inspect  
2 the machines?

3 A. No.

4 Q. How do they certify the machine?

5 A. They send them to one of their approved  
6 laboratories for review.

7 Q. So your machines get shipped to some other  
8 location --

9 A. Not my physical machines. The system  
10 itself. The vendor enters into the federal  
11 certification process.

12 Q. I see. So one thing that I know will be  
13 helpful is we take turns talking, because the court  
14 reporter -- sometimes I think you're done and I  
15 start talking as well. So it's a two-way street. I  
16 know it will really help the court reporter. I know  
17 it's late, so I'm trying to move along and move  
18 quickly. I know you are too. I think it will help  
19 keep a better record.

20 So the software is -- and I think you said  
21 Dominion earlier. So the Dominion company sends  
22 their software to the federal agency who then  
23 certifies the software that's ultimately run on the  
24 ICX machine; is that correct?

25 A. Software and the system itself, the

1 hardware.

2 Q. There was a line of questioning about the  
3 state certification or the Secretary of State  
4 certifying the Dominion -- the ICX Dominion  
5 machines. And counsel had asked you something about  
6 December '19. You may or may not be aware of this.  
7 Earlier today Wayne Thorley had talked about  
8 something maybe in January or February, so early  
9 2020, verification. We're talking about the  
10 certification that happened sometime in maybe  
11 December to February -- (audio disruption).

12 Do you know whether or not the software  
13 being run on the ICX Dominion machines during the  
14 2020 general election was the same software that was  
15 certified earlier this year by the Secretary of  
16 State?

17 A. I know that we did a certification in the  
18 time span that you're talking about. But I think  
19 the Secretary also did something midyear for an  
20 upgrade to the software. We can't use the software  
21 unless the Secretary of State has certified.

22 Q. Do you know what version of the Dominion  
23 software was being run on the ICX machines during  
24 the 2020 general election?

25 A. I do not. But the reports were provided to

1 the Secretary. I can get you that information.

2 Q. If a version of the software was being run  
3 during the 2020 general election that wasn't the  
4 version of software that was certified by the  
5 Secretary of State, what does that mean?

6 A. That would be out of the ordinary. I don't  
7 believe that our software was uncertified.

8 Q. Sure. But what if -- help me understand --  
9 hypothetical, right, because you're unaware of this  
10 actually being the case. So there was a  
11 certification earlier in 2020, and the certification  
12 would have been for a certain software level.  
13 Right? Software Version 2 certified. And let's  
14 assume now that for some reason the software was  
15 updated to Version 3 for the 2020 general election.  
16 Does that create any problems or concerns in your  
17 mind?

18 A. I think that would be a question for the  
19 Secretary of State. I think you had a conversation  
20 with Wayne. He should have clearly indicated to you  
21 exactly what was required.

22 I know we provided all of the test data and  
23 everything that's required by the Secretary of  
24 State, they reviewed it, and we were passed for  
25 usage.

1 Q. Who is in charge of upgrading the software  
2 on the ICX machines?

3 A. That would be one of my technicians that  
4 goes through the process of upgrading software.

5 Q. So how -- how could that be possible?  
6 Again, it's a hypothetical. So how would that be  
7 possible, for a version of the software to be on the  
8 machine but that wasn't the version that was  
9 certified previously by the Secretary of State? How  
10 could that possibly happen?

11 A. I couldn't tell you. As far as I know, we  
12 are running the software that was approved by the  
13 Secretary of State, so I don't understand the  
14 hypothetical, to be honest with you.

15 Q. There was some questioning about same-day  
16 registration, and at least to me it's pretty clear  
17 in your testimony that in order to register on the  
18 same day as the election -- I'm sorry, the same day  
19 you're going to vote you have to have a valid Nevada  
20 driver's license?

21 A. Or ID.

22 Q. Or ID?

23 A. Yes. Or I believe a tribal card, but we  
24 don't have many of those instances down here.

25 Q. I was going to say a state-issued, but the

1 tribal card is not state-issued, that's  
2 federal-issued, but that also suffices.

3 So a valid state-issued ID or a tribal  
4 card; correct?

5 A. Yes.

6 Q. Do you do anything -- so let's say somebody  
7 presents and they have an ID, a driver's license.  
8 Do you -- when I say "you," this is now the  
9 collective you. Do you do anything to confirm  
10 whether or not that person is an actual citizen of  
11 the United States before they're allowed to vote?

12 A. Yes. They sign an affidavit claiming that  
13 they are a U.S. citizen.

14 Q. And what do you do with those affidavits?

15 A. They're stored in the system.

16 Q. You don't run a check, though, to confirm  
17 whether or not the individuals that claim to be a  
18 U.S. citizen actually were?

19 A. There's no database that I'm aware of to  
20 make that check.

21 Q. Do you have any understanding as to whether  
22 or not in the state of Nevada an individual can  
23 present to the DMV with a green card and obtain a  
24 driver's license?

25 A. The Secretary of State indicated to us that



1 they had worked very closely with Nevada DMV to  
2 prevent that from happening.

3 Q. To prevent what from happening? For a  
4 noncitizen to get a driver's license?

5 A. Well, we do AVR now. As a result of  
6 automatic voter registration, which began January of  
7 this year, if they run through that process, they  
8 were supposed to have had a process in place to  
9 identify those with a DAC card and wouldn't have  
10 allowed them to register to vote.

11 Again, that would be a question for the  
12 Secretary, not me.

13 Q. So in your explanation it sounds like the  
14 DMV might have a system set up to prevent somebody  
15 from registering to vote at the DMV at the time they  
16 get their ID if, in fact, they can't show that  
17 they're a U.S. citizen. Am I understanding your  
18 testimony there?

19 A. Yeah. I think it would be questions best  
20 answered by the Secretary. We take direction from  
21 them on these.

22 Q. There was some questioning about  
23 provisional ballots. I think you indicated there  
24 were approximately 60,000 provisional ballots issued  
25 this year in the general election. Am I

1 understanding that testimony?

2 A. Yes, sir.

3 Q. You don't specifically know the outcome of  
4 those ballots? And any given ballot of course you  
5 wouldn't know about, but generally the outcome of  
6 those 60,000 ballots and how many of those were  
7 cured; is that correct?

8 A. Curing has nothing to do with provisional.  
9 The cure relates to a mail ballot. So the  
10 provisionals that you're referring to, those are  
11 numbers that are very easily put together. I can't  
12 provide those to you.

13 Q. There was a question about same-day  
14 registration, whether or not people were allowed to  
15 use the existence of an appointment with the DMV to  
16 get a license to suffice for not having a Nevada  
17 license. Do you remember that question from  
18 earlier?

19 A. I do.

20 Q. Before that question were you aware of or  
21 familiar with that scenario?

22 A. I was not aware of us giving that  
23 instruction to any of our poll workers. Now, that  
24 voter very well could have gone to DMV and gotten an  
25 ID and come back and same-day registered. But they

1 were not given instructions to go ahead and cast  
2 their ballot and come back with an ID from DMV.  
3 That's not our policy and not what we would instruct  
4 the workers to do.

5 Q. I appreciate you clarifying the policy.  
6 But in fairness, you can't sit there and say that  
7 voters weren't told to do that. Is that fair?

8 A. Not that I'm aware of, sir. That's all  
9 that I can tell you. There were 125 vote centers  
10 and 35 early voting sites. Obviously I can't be at  
11 all of them at the same time.

12 Q. And certainly no one expects that. That's  
13 the point I want to clarify. I understand the  
14 policy. I was curious if you had been made aware of  
15 anybody being told that; that the poll workers were  
16 telling people trying to do same-day registration to  
17 simply go and call and make an appointment with the  
18 DMV and that would suffice. You're unaware of that  
19 happening; is that correct?

20 A. Just to clarify your question, I want to  
21 make sure that I understand what you're saying.  
22 They very well could have instructed a voter to go  
23 to the DMV, get a license, and come back and  
24 same-day register. That would not have been bad  
25 advice. But I don't have any reports of any of my

1 staff telling them to same-day register right now,  
2 go to DMV, get an ID, and bring it back to us. That  
3 would be completely -- that's not even a rational  
4 way for us to try to service voters. No, as I said  
5 before, I'm not aware of any of those reports.

6 Q. There was some questioning about voter roll  
7 management and some questions about deceased voters,  
8 and you indicated that you get information from  
9 ERIC, and I think the NCOA also gives you  
10 information relative to deceased voters; is that  
11 correct?

12 A. No. All of our information comes from the  
13 Secretary of State through ERIC or also through the  
14 Social Security Administration report that they get.  
15 And we also can get information from the general  
16 public calling to report that my wife has died, my  
17 husband has died, my father, or my mom. But all of  
18 those reports come through them, and anything else  
19 we deal with would be from the general public.

20 Q. What is your policy on updating the voter  
21 rolls relative to deceased persons?

22 A. Well, once we get to the point where we  
23 send out mail ballots it gets to be a little bit  
24 different. There's a 90-day hold on changing  
25 anything in the voter registration rolls according

1 to state law. But with deaths, we do immediately  
2 remove those people if we haven't sent out mail  
3 ballots. That's something we regularly update  
4 throughout the site.

5 Q. What procedures or -- how did you handle --  
6 maybe this is a better way to ask it. How did you  
7 handle mail-in ballots that were returned during the  
8 primary here in 2020?

9 A. How did we handle them?

10 Q. Yeah. So let me ask it a little bit  
11 better.

12 Do you know whether or not mail-in ballots  
13 were returned by the U.S. Postal Service during the  
14 2020 primary?

15 A. Oh, yes, sir. We were instructed to send  
16 ballots to inactive voters, so that resulted in a  
17 large number of returned ballots.

18 Q. Who instructed you to send ballots to  
19 inactive voters?

20 A. It was a directive that was given as a  
21 result of legal action, I believe.

22 Q. Can you help me understand that? What does  
23 that mean, "legal action"?

24 A. You know, that was direction that was given  
25 to me by my supervisors, and that's what I moved

1 forward on.

2 Q. So the mailing out ballots to -- let me  
3 back up.

4 You were told during the primary to mail  
5 out ballots to everybody, including inactive voters;  
6 correct?

7 A. Yes.

8 Q. Some of those ballots, whether inactive or  
9 whatever, just some of the mail-in ballots were  
10 returned to you; correct?

11 A. Yes.

12 Q. What, if anything, did you do, your  
13 department do, to make revisions or updates to the  
14 voter rolls based upon those returned ballots?

15 A. Well, we did identify those records, and  
16 through our NVRA process we made an attempt to --  
17 no. Let me back up. Those were already inactive  
18 voters.

19 You know, I'd have to get some information  
20 from members of my staff to answer that correctly.

21 Q. Who would be that person?

22 A. Somebody on my registration staff  
23 primarily, yeah.

24 Q. What was your surrender ballot change  
25 policy for the 2020 general election?

1           A.    What is the surrender ballot -- change  
2 policy, you said?

3           Q.    Yes.

4           A.    Well, the surrender ballot would occur when  
5 somebody brings that in to vote in person. So I  
6 don't know what you mean by a "change policy."

7           Q.    So if somebody brought in their mail-in  
8 ballot to vote in person, would you --

9           A.    Surrender.

10          Q.    -- would the mail-in ballot then be  
11 spoiled?

12          A.    Yes, sir.

13          Q.    And what would that be? The ballot would  
14 be taken from the voter and marked a certain way or  
15 put into a certain bag? Something like that?

16          A.    Yes. And returned to the warehouse.

17          Q.    Is that the policy that's supposed to have  
18 been used throughout the election process for the  
19 2020 general?

20          A.    Yes. All surrendered ballots should have  
21 been returned back to the election warehouse  
22 facility.

23          Q.    Do you know that that happened? I take  
24 that back. Strike that.

25                   Did that policy change at any point during

1 the election process?

2 A. Not that I know of.

3 Q. How does it work when there's a provisional  
4 voter that votes in the wrong district? Are there  
5 safeguards to deal with that? Is that not supposed  
6 to happen?

7 A. Well, with the same-day registration  
8 provision, that should not happen very often. But  
9 there are situations where we do indicate that they  
10 voted in the wrong district.

11 Q. And what happens to that provisional  
12 ballot?

13 A. It doesn't get counted.

14 Q. I think you mentioned something about this  
15 or maybe it's just in my head because I was going to  
16 ask you a question about it. There was something  
17 about votes before -- like the time on the vote is  
18 before the poll even opened. Are you aware of  
19 anything like that?

20 A. No. Ask your question though, and I'll try  
21 to answer it.

22 Q. Yeah. So I think there's -- I understand  
23 that there's some voting records that show that  
24 people cast their votes at like 6:20 in the morning.  
25 I think that's before the polls would normally open.



1           Are you familiar with anything like that?

2           A.    I can certainly get that information, but I  
3   am not aware of it.

4           Q.    How does it work with a first-time voter  
5   that does a mail-in ballot and doesn't have an ID in  
6   there?

7           A.    They're notified in the envelope that we  
8   send out to them with the ballot that they have to  
9   require -- they have to provide ID.  It's on the  
10   send-out envelope.

11          Q.    Sorry.  I told you I might jump on you, and  
12   I apologize there.

13                So that ballot would enter the curing  
14   process?

15          A.    Not if they provided an ID.

16          Q.    Right.  If it came in without an ID and  
17   they're a first-time voter, that would then go to  
18   the curing process?

19          A.    No, not the cure process.  We'd send them a  
20   notification that they didn't provide the ID, and  
21   they have to get it in by 5:00 p.m. on the Friday  
22   after Election Day.

23          Q.    How is that different than the curing  
24   process?

25          A.    The cure process is when somebody doesn't

1 sign their ballot on the return envelope or the  
2 signature does not match. So that's different.

3 Q. Are you aware of any instances where  
4 mail-in ballots were received before mail-in ballots  
5 were actually mailed out to voters?

6 A. No, I am not.

7 Q. We chatted a little bit about cleaning up  
8 the voter rolls and the deceased voters. A moment  
9 ago you told me that you were instructed to mail out  
10 ballots to even inactive voters. What additional  
11 steps, if any, has your department taken this year  
12 to clean up the voter rolls?

13 A. Well, we went through the process that I  
14 previously described. Leading into an even year we  
15 always start with ERIC, the NCOA. Then there's  
16 another cleanup when we send out registration cards  
17 to all voters in January leading up to the 90-day  
18 close before elections, when we can no longer take  
19 activity.

20 I also mentioned previously we still act on  
21 reports of deceased voters past the 90-day to remove  
22 those people from the records if we got confirmation  
23 that they have passed.

24 Is there another area that you were --

25 Q. No. And I understand that you were

1 instructed to mail out ballots to inactive voters.  
2 Prior to this year -- I guess previously the State  
3 only mailed out ballots to people that asked for  
4 them; correct?

5 A. Well, the counties -- the State doesn't say  
6 anything.

7 Q. The County. I'm sorry.

8 A. We would have sent it out to somebody who  
9 put it in a mail ballot request or a UOCAVA request,  
10 overseas ballots, and the Secretary of State also  
11 has a program called EASE, where those overseas  
12 voters can actually ask for an electronic ballot  
13 that is sent to them and in some cases can be turned  
14 around in as quickly as 24 hours.

15 Q. Do you own any Biden-Harris paraphernalia?

16 A. No, I do not.

17 Q. You don't own a Biden-Harris pin, like a  
18 lapel pin?

19 A. Sir, I'm the Registrar of Voters. I would  
20 never. It doesn't make sense for me to have any of  
21 that kind of information for either side.

22 Q. So you've never worn a Biden-Harris lapel  
23 pin to work?

24 A. No, sir.

25 Q. You've never worn it to a polling location?

1           A.    No, sir. Absolutely not then. But, no, I  
2 never have. I don't. That's something I stopped  
3 doing back in 1992.

4           Q.    You didn't have a Biden-Harris pin back in  
5 1992, did you?

6           A.    No, sir. I did not.

7           Q.    Were there -- I was going to use the word  
8 Dominion people. Were there individuals employed by  
9 the Dominion Systems company at the poll sites  
10 during in-person voting?

11          A.    Yes. Absolutely. They did a tremendous  
12 job of making sure that our printers did not run out  
13 of paper.

14          Q.    You just jumped the gun on me. I was going  
15 to ask you what they were doing there.

16          A.    Yeah. That's what they did.

17          Q.    So their job was just to make sure to --  
18 what? Tear open the boxes and put new paper in the  
19 printer?

20          A.    Basically, yeah. Because the ballot was so  
21 large this year, we were concerned about that  
22 impacting the flow of voters at all sites. So  
23 working with our vendor and also hiring our own  
24 staff, we did a pretty good job of covering that.  
25 There were very few instances where we had a

1 situation where the printer slowed down the voter.  
2 It worked out very well.

3 Q. Did the Dominion employees do anything at  
4 the voting sites other than refill the paper into  
5 the printers?

6 A. They could have taken instruction from the  
7 team leader to monitor machines or do anything that  
8 needed to be done. Be a line monitor. If there was  
9 no paper to replace, they needed something to do.

10 I think they also assigned them to clean  
11 machines. With the pandemic, we were working hard  
12 to keep everything disinfected at the sign-in area  
13 and also at the voting machines.

14 So yeah, they were instructed by the team  
15 leader to do other tasks.

16 Q. I think you mentioned this earlier, but we  
17 didn't get to the last part. You talked about the  
18 printing machines might break or might jam?

19 A. They don't break, but they jam.

20 Q. Maybe the paper breaks or something so the  
21 machine doesn't break or the paper breaks or they  
22 jam?

23 A. The most common occurrence was them running  
24 out of paper. They actually run quite well. We  
25 don't have too many paper jams. The paper jams come

1 early in the cycle when the people who are changing  
2 the paper aren't as familiar with that operation.  
3 But after the first, second day, those types of  
4 issues usually go away and it's just the printer  
5 running out of paper.

6 Q. Have you seen a deposition subpoena in this  
7 case?

8 A. I think my civil DA sent me something,  
9 yeah.

10 Q. The document --

11 A. I'm sorry. This case -- I've got about six  
12 of them going on. You know, I lose track. I'm  
13 pretty sure I did receive something. I rely on my  
14 legal representative to give me that information,  
15 and I'm always where I need to be.

16 Q. Well, Joe, when you start talking about a  
17 bunch of cases, I don't feel as special now.

18 MR. HAMILTON: Did you feel special before?

19 MR. OWENS: My effort at a little humor  
20 late --

21 BY MR. OWENS:

22 Q. Joe, I appreciate your time.

23 You think you saw one relative to this. Do  
24 you recall it having categories of documents?

25 A. I'm sorry. I don't, sir. I know that I've

1 reviewed many materials on public information  
2 requests and information they expected me to be  
3 prepared to answer. But there's been so many of  
4 them, sir, I have to be honest, I can't keep track  
5 of them anymore. I just do my best to answer as  
6 honestly as I can.

7 Q. Did you bring any documents to your  
8 deposition today?

9 A. No, sir.

10 Q. Were you asked by anybody to bring any  
11 documents?

12 A. No, not that I remember. I was dealing  
13 with observers in my warehouse. I didn't have much  
14 time to get from here to there, to be honest with  
15 you.

16 Q. Did you -- other than your counsel, did you  
17 talk to anybody about your deposition today?

18 A. No, sir. Other than staff, letting them  
19 know where I was going.

20 Q. But other than your counsel, you didn't  
21 have any conversations with anybody specifically  
22 about what your testimony might include here during  
23 this deposition?

24 A. As a matter of fact, we did have a phone  
25 call.

1 Q. Who is "we"?

2 A. My civil DA representative.

3 Q. Anybody else?

4 A. Yes. I believe we were talking to  
5 representatives from the other side of the case, I  
6 believe.

7 Q. The Biden camp?

8 A. Is that what they're called?

9 MR. HAMILTON: Actually, we aren't  
10 representing the Biden --

11 BY MR. OWENS:

12 Q. I'm sorry. The defendants?

13 A. The defendants.

14 Q. When did you have that conversation?

15 A. Prior to getting on for the deposition -- I  
16 think it was about 3:30, 4 o'clock.

17 Q. So today?

18 A. Yes, sir.

19 Q. And did you have any conversation with any  
20 representatives from the defendants prior to this  
21 afternoon?

22 A. Yes. They asked questions of me similar to  
23 what you're doing now.

24 Q. Right. So this afternoon you talked to  
25 them. Did you have any conversations with them



1 before today?

2 A. Yes, we did.

3 Q. When was that?

4 A. It would have been last week sometime. I  
5 think it was Tuesday.

6 Q. So you had conversations with them last  
7 Tuesday about similar stuff that we've been talking  
8 about tonight?

9 A. Yes, sir.

10 Q. Were you in town this weekend, this last  
11 weekend?

12 A. I was in and out of town this weekend.

13 Q. Were you aware that somebody was trying to  
14 serve you with a subpoena?

15 A. I found out today. They were trying real  
16 hard I understand.

17 Q. So today you were made aware that somebody  
18 was trying to serve you with a subpoena over the  
19 weekend?

20 A. Well, I had family at home that said that  
21 somebody had come by.

22 Q. You weren't trying to avoid service of a  
23 subpoena over the weekend, were you?

24 A. No, sir. They know where I work. That's  
25 where they would find me. I wasn't obligated to

1 stay home all weekend. I was in and out all  
2 weekend.

3 Q. Do you guys lock the front door, lock the  
4 doors at the facility where you work because of the  
5 pandemic?

6 A. Yes, sir. As a matter of fact, we were  
7 given instructions to do that starting last Tuesday.

8 Q. So only last Tuesday did you start locking  
9 the doors to your facility?

10 A. No. We lock facilities when we're outside  
11 of business hours and we're continuing to work,  
12 which we did a whole lot of this past election  
13 cycle.

14 Q. How about during business hours? So  
15 locking doors during business hours started this  
16 last Tuesday?

17 A. Recently. But we've been given  
18 instructions in the past year more than once to  
19 close to the general public.

20 Q. So let me ask you a question here, and I'm  
21 going to pose a big one, and then I'm going to give  
22 you an example to focus this in.

23 How do you prevent a person from voting  
24 twice? Let me give you a hypothetical. A female  
25 who registers to vote, lives in Las Vegas, registers

1 to vote. Years later -- and she votes, does her  
2 civil duty. Years later she gets married and  
3 changes her last name. Goes into the DMV and signs  
4 for her new driver's license, takes her picture, and  
5 has a new signature.

6 What do you do to ensure that that person  
7 doesn't get to vote twice?

8 A. The record should come over and we should  
9 be able to verify with her old one as an update. So  
10 that would be written over. But in some cases they  
11 don't update their voter registration record, but  
12 they indicate at the polling place they recently  
13 remarried, and they sign their new name. As long as  
14 the signature still looks the same in format,  
15 they're still processed to vote.

16 Q. In that scenario is that a provisional  
17 ballot?

18 A. Provisional is brand-new this year to SDR.  
19 So yes, if they had come in to update their  
20 information, they would have voted provisionally.

21 Q. There was some questions about polling  
22 books at the polling centers.

23 A. The electronic poll books?

24 Q. Yes, sir. Do you use a stylus to sign the  
25 poll book? Is that electronic or manual?

1           A.    No. I wouldn't call it a stylus. It's a  
2 special pen that was provided by the vendor with a  
3 metal screen end on it that's used.

4           Q.    So people aren't supposed to use their  
5 finger to sign?

6           A.    They could if they were more comfortable  
7 doing it that way. But we don't encourage them to  
8 do so.

9           Q.    I was asking you some questions about  
10 surrender ballots, and we talked about the  
11 procedures. What happens to the surrender ballots  
12 when they were taken from the polling center?

13          A.    They're returned to the election warehouse,  
14 the election center.

15          Q.    And what do you do with them at the  
16 warehouse?

17          A.    We gather them into a single location for  
18 storage.

19          Q.    And are they stored for a certain period of  
20 time? Like what happens when they go into storage?

21          A.    I believe we still have them in our  
22 possession.

23          Q.    You still have them in your possession for  
24 2020. So at some point do you destroy them? What's  
25 the life cycle of the surrendered ballots from the

1 2020 general election?

2 A. Election materials are required, according  
3 to statute, to be held for 22 months after the  
4 election.

5 Q. And then are they destroyed?

6 A. Yes, sir.

7 MR. OWENS: Mr. Hamilton, do you have any  
8 questions? I may have a couple. I'm just trying to  
9 review my notes. It may take me a couple of  
10 minutes. If you don't have any, I'll just sit  
11 quietly and finish reviewing them. Otherwise I  
12 would pass him to you.

13 MR. HAMILTON: I don't have many.

14

15 FURTHER EXAMINATION

16 BY MR. HAMILTON:

17 Q. I'll just ask this. Mr. Gloria, you were  
18 asked about mail-in ballots to inactive voters for  
19 the primary. Do you recall that?

20 A. Yes, I do.

21 Q. For the general, ballots were only mailed  
22 to active voters; isn't that true?

23 A. That is correct.

24 MR. HAMILTON: That's all I have.

25 MR. OWENS: You went way too fast there.

1 Give me one second to finish reviewing my notes.

2

3

FURTHER EXAMINATION

4

BY MR. OWENS:

5

Q. Mr. Gloria, a couple quick ones left.

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I understand that on Election Day the ballot-logging system broke down. I might be using the wrong words. I'm not using very technical words saying it broke down, but do you know what I'm talking about?

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A. Sorry. I don't. Are you referring to mail or in-person voting or the poll book? I don't know what you're referring to by "ballot-logging system."

Q. Well, you only log ballots -- well, do you only log ballots using the Agilis system?

A. No. We log ballots as people sign in every day for in-person voting, early voting and Election Day. We have to save that data, transfer it to all of the system.

But you're asking if we had a failure on Election Day that I know of. We had trouble in the morning opening up the polls, but they were connectivity issues that we dealt with. That's the only thing that I can think of.

Q. Earlier you had talked about your IT staff

1 and that amongst the security protocols, access to  
2 certain things were limited to biometric readings  
3 that only your IT staff could access. Do you  
4 remember talking about that?

5 A. I do. That would be in the tabulation  
6 room.

7 Q. Right. What type of background checks do  
8 you guys run on the people that have biometric  
9 access to the tabulation room?

10 A. There's a standard set of background checks  
11 that are required for all permanent employees. They  
12 go through the same set that everybody else goes  
13 through as a County employee.

14 Q. So nothing more, nothing less than any  
15 other County employee?

16 A. No.

17 Q. I'm going to give you a hypothetical, and  
18 then we'll wrap out what we're talking about.

19 A homeless person appears on Election Day  
20 to vote. Would they be allowed to vote?

21 A. Well, you're leaving a lot of information  
22 out there, sir. Are they currently registered, or  
23 are they trying to register for the first time?

24 Q. I'm sorry. So they're showing up for the  
25 first time to vote and they say, I have an ID but

1 I'm homeless.

2 A. So they are registered?

3 Q. Yeah. Or let's say they're --

4 A. They don't need an ID to register -- to  
5 vote.

6 Q. Right. I apologize. I didn't listen to  
7 your question, which is what I asked you to do  
8 earlier to me.

9 They're not registered to vote. That's why  
10 they're showing up to register. So let's say  
11 they -- homeless can be somebody from out of state.

12 So they show up. They have an out-of-state  
13 ID. What's the process they're put through?

14 A. If it's in the voting period, early voting,  
15 the opportunity for them to register without a  
16 Nevada ID has passed. So they would have to have a  
17 Nevada driver's license or ID.

18 Q. So during early voting what would that look  
19 like?

20 A. Well, that's past the deadline for them to  
21 register without an ID, which would be in person. I  
22 believe that was October 6th. They'd have to come  
23 in or through the mail. They have other  
24 opportunities besides a Nevada ID to provide  
25 documentation so that they can be registered. But



1     once we start voting, all of those deadlines have  
2     passed. They have to register online, which  
3     requires a Nevada ID, or in person, which requires a  
4     Nevada ID. So they wouldn't be able to register to  
5     vote if they showed up during the early voting  
6     period, regardless of whether they're homeless or  
7     not.

8           Q.     Somebody who registers online and then  
9     shows up, how do you handle their signature?

10          A.     Depends on the day on which they registered  
11     online. If it was before October 16th, they would  
12     have been able to come in and vote or even receive a  
13     mail ballot. But after that date, they would have  
14     had to show an ID, their Nevada ID, along with  
15     registering online

16          Q.     And then would the signature comparison be  
17     to what's on their ID?

18          A.     We should have some type of signature in  
19     the system depending on how they -- oh, you mean the  
20     person who's registering in person? Yeah, it would  
21     have to be something on their ID to verify.

22                 MR. OWENS: Thank you, Mr. Gloria. I don't  
23     have any further questions.

24                 THE WITNESS: Thank you.

25                 MS. MILLER: Mr. Owens, are you doing the

1 deposition of Kathy Smith as well?

2 MR. OWENS: I might be. Is she there?

3 MR. HAMILTON: Can I just make a suggestion  
4 that we go off the record?

5 MR. OWENS: Off the record.

6 (Proceedings concluded at 7:27 p.m.)  
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CERTIFICATE OF REPORTER

STATE OF NEVADA     )  
                                      )SS  
COUNTY OF CLARK    )

I, Holly Larsen, a duly certified court reporter  
licensed in and for the State of Nevada, do hereby  
certify:

That I reported the taking of the  
deposition of the witness, Joseph Gloria, at the  
time and place aforesaid;

That prior to being examined, the witness was by  
me duly sworn to testify to the truth, the whole  
truth, and nothing but the truth;

That I thereafter transcribed my shorthand  
notes into typewriting and that the typewritten  
transcript of said deposition is a complete, true,  
and accurate record of testimony provided by the  
witness at said time to the best of my ability.

I further certify (1) that I am not a  
relative or employee of counsel of any of the  
parties; nor a relative or employee of the parties  
involved in said action; nor a person financially  
interested in the action; nor do I have any other  
relationship with any of the parties or with counsel  
of any of the parties involved in the action that  
may reasonably cause my impartiality to be  
questioned; and (2) that transcript review pursuant  
to NRCP 30(e) was requested.

IN WITNESS HEREOF, I have hereunto set my  
hand in the County of Clark, State of Nevada, this  
1st day of December, 2020.

*Holly Larsen*

HOLLY LARSEN, CCR NO. 680

ERRATA SHEET

I declare under penalty of perjury that I have read  
the foregoing \_\_\_\_\_ pages of my testimony, taken on  
\_\_\_\_\_ (date) at \_\_\_\_\_ (city),  
\_\_\_\_\_ (state), and that the same is a true  
record of the testimony given by me at the time and  
place herein above set forth, with the following  
exceptions:

Page	Line	Should read:	Reason for change:
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<hr/> <p style="text-align: center;"><b>1</b></p> <hr/> <p><b>1,100</b> 9:11</p> <p><b>1,275,000</b> 6:7</p> <p><b>1,300</b> 9:12</p> <p><b>1.5</b> 53:10</p> <p><b>1.6</b> 53:10</p> <p><b>100</b> 8:3 50:19</p> <p><b>125</b> 8:22 9:2 83:9</p> <p><b>14</b> 8:22 9:2,12</p> <p><b>16th</b> 50:13 105:11</p> <p><b>19</b> 77:6</p> <p><b>1992</b> 5:18 92:3,5</p> <p><b>1995</b> 5:19</p> <hr/> <p style="text-align: center;"><b>2</b></p> <hr/> <p><b>2</b> 33:12 41:13 50:23 78:13</p> <p><b>20</b> 56:9</p> <p><b>200</b> 23:22 24:3,6,19</p> <p><b>200-dpi</b> 24:12</p> <p><b>2013</b> 4:18</p> <p><b>2018</b> 30:14 31:7</p> <p><b>2019</b> 31:9,16</p>	<p><b>2020</b> 32:17,22 49:22 50:18 53:5 58:1 77:9,14,24 78:3, 11,15 85:8,14 86:25 87:19 100:24 101:1</p> <p><b>22</b> 101:3</p> <p><b>24</b> 91:14</p> <p><b>25</b> 53:17</p> <hr/> <p style="text-align: center;"><b>3</b></p> <hr/> <p><b>3</b> 32:22 78:15</p> <p><b>30</b> 11:17,18 12:4 17:10 22:12,15 34:21 36:13,15 62:16 63:6</p> <p><b>35</b> 8:21 9:1 83:10</p> <p><b>38</b> 6:10,16</p> <p><b>3:30</b> 96:16</p> <p><b>3rd</b> 32:17</p> <hr/> <p style="text-align: center;"><b>4</b></p> <hr/> <p><b>4</b> 96:16</p> <p><b>40</b> 16:22 22:5</p> <p><b>45,000</b> 13:11</p> <hr/> <p style="text-align: center;"><b>5</b></p> <hr/> <p><b>50</b> 16:17 17:3</p> <p><b>5:00</b> 89:21</p>	<hr/> <p style="text-align: center;"><b>6</b></p> <hr/> <p><b>60</b> 34:21</p> <p><b>60,000</b> 56:7 81:24 82:6</p> <p><b>6:20</b> 88:24</p> <p><b>6th</b> 104:22</p> <hr/> <p style="text-align: center;"><b>7</b></p> <hr/> <p><b>70</b> 12:7 17:11</p> <hr/> <p style="text-align: center;"><b>9</b></p> <hr/> <p><b>90-day</b> 84:24 90:17,21</p> <p><b>900</b> 52:12 53:13</p> <p><b>900,000</b> 52:11</p> <p><b>910</b> 53:13</p> <p><b>93</b> 63:23</p> <p><b>974,000</b> 53:7</p> <p><b>975,000</b> 52:11</p> <hr/> <p style="text-align: center;"><b>A</b></p> <hr/> <p><b>ability</b> 23:11 57:16</p> <p><b>able</b> 10:20 12:3 14:9 25:25 38:7 39:8 99:9 105:4,12</p> <p><b>abnormal</b> 53:14</p> <p><b>abnormally</b> 20:23</p>	<p><b>about</b> 4:19 11:17 12:4, 21,24 13:24 14:3, 15,19 15:6,20 19:12 21:6 22:12, 15 24:24 25:3,9, 13 37:9 46:12 49:13 51:15 58:13 60:8 65:25 66:1, 16 70:1,3,18 77:2, 5,7,9,18 79:15 81:22 82:5,13 84:6,7 88:14,16, 17 90:7 92:21 93:17 94:11,16 95:17,22 96:16 97:7,8 98:14 99:21 100:9,10 101:18 102:10,25 103:4,18</p> <p><b>absolutely</b> 7:18 14:7 15:18 16:2 17:9 40:10 55:25 56:17 61:14 92:1,11</p> <p><b>accept</b> 16:11 24:17</p> <p><b>acceptance</b> 31:11</p> <p><b>accepted</b> 17:10 22:12</p> <p><b>accepting</b> 16:21 17:7 67:15</p> <p><b>access</b> 44:9,11,13,14,22 45:1 46:25 47:1 67:10,23 72:14,17 73:1 103:1,3,9</p> <p><b>according</b> 63:12 84:25 101:2</p> <p><b>accuracy</b> 35:1 40:14</p> <p><b>accurate</b> 18:19</p> <p><b>accurately</b> 18:17 33:15 41:17,20 50:6</p> <p><b>acronym</b> 48:24</p>	<p><b>acronyms</b> 55:15</p> <p><b>across</b> 17:14 19:23 30:14</p> <p><b>act</b> 58:25 63:19 90:20</p> <p><b>action</b> 85:21,23</p> <p><b>activate</b> 37:5,16</p> <p><b>activated</b> 38:25 39:3,18</p> <p><b>activates</b> 37:6</p> <p><b>activator</b> 37:15</p> <p><b>active</b> 8:20 36:10 39:1 42:23 101:22</p> <p><b>actively</b> 49:14</p> <p><b>activity</b> 49:15,16 50:1 59:4,21 60:2 90:19</p> <p><b>actual</b> 15:24 69:8 80:10</p> <p><b>actually</b> 9:6 17:25 36:14 39:16 40:24 42:21 45:12 53:16 54:17 56:13 70:2 71:18 73:21 74:15 78:10 80:18 90:5 91:12 93:24 96:9</p> <p><b>addition</b> 10:19</p> <p><b>additional</b> 90:10</p> <p><b>address</b> 62:22 63:1,2,15</p> <p><b>addressed</b> 60:23</p> <p><b>admin</b> 59:11 60:25</p>
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