IN THE SUPREME COURT OF THE STATE OF NEVADA

STATE OF NEVADA, Appellant, vs. JAMES WALTER DEGRAFFENREID III, DUWARD JAMES HINDLE III, JESSE REED LAW, MICHAEL JAMES MCDONALD, SHAWN MICHAEL MEEHAN, EILEEN A. RICE, Respondents.	**CASE NO.** 89064 **Dist. Court No.** C-23-379122-1 C-23-379122-2 C-23-379122-3 C-23-379122-4 C-23-379122-5 C-23-379122-6 **REPLY IN SUPPORT OF MOTION FOR EXPEDITED CONSIDERATION OF APPEAL**

I. Introduction

The State's proposed schedule gave the GOP Electors 28 days to file their brief. Motion at 10. But they agree to follow the default rule of 30 days. Response at 11. Unless they are really concerned about those two days, the response serves other purposes: setting up litigation of other issues and painting the State's prosecution a partisan inquisition.

But if litigating the State's mere reference to tolling principles is "for another day," Response at 10 n.6, so too is a detour into arguments about the duty to disclose exculpatory evidence. And it is unavoidable that this

case touches the political process. But the GOP Electors caused that.[1] And they are wrong to suggest that the State seeks resolution of this appeal on any basis other than application of the law. Response at 9. Good cause exists regardless of the result of this appeal. Motion at 9.

Putting those frolics aside, the arguments below prove two points: (1) the GOP Electors are wrong that the State created the time crunch, and (2) they misunderstand the State's deterrence argument.

II. Argument

A. Preserving the forgery charge serves as good cause.

The GOP Electors confuse the issue. And they make no argument responsive to the State's position on preserving the charge for uttering forged instrument: forgery. They say the State created the need for expedited treatment by obtaining the indictment "just before the applicable statute of limitations ran." Response at 8. That argument

[1] The GOP Electors make much of the Attorney General's legislative testimony, but the State trusts that this Court can see the distinction between a statement "that existing law 'did not directly address the conduct in question'" and a "concession that Respondents' acts were not criminal." Reply at 2 n.1. The GOP Electors can twist the Attorney General's words all they like, but those efforts will never unwind what they did: create imposter documents and pass them off to government officials with the intent that the documents be accepted as genuine. This case may have a political tone, but driven by partisanship this case is not.

addresses the wrong charge.

True, the indictment issued just before expiration of the statute of limitations for *offering false instrument for filing or recording*. But the State seeks preservation of the charge for *uttering forged instrument: forgery*. The only reason it is still possible to pursue *that* charge in another venue is that the State *did not* seek a last-minute indictment. So the GOP Electors' argument falls flat. And they otherwise waived any response to the relevant issue. They identify it but never address it. Response at 2.

In any event, the State has shown good cause. The State didn't need a lesson on NRAP 31(a)(1). Response at 11. The *initial* due date for an answering brief isn't a concern. The State's concern is twofold. First, the motion informed the Court of the potential harm to the State—a potential for harm the GOP Electors do not deny. Without the motion, however, this Court likely would have remained unaware of that potential harm.

Second, six months passed between arraignment and the order for dismissal with the State accommodating the GOP Electors' numerous scheduling requests. But the only "State-created" delay the response identifies is the date of the indictment. Response at 8. So once again, the GOP Electors' argument about State-created delay falls flat.

This all said, the State accepts the GOP Electors' agreement to follow the default rules. Response at 11. But the Court should still order that no extensions of time will be permitted absent a motion showing extraordinary circumstances. The GOP Electors are collectively represented by six competent attorneys. There is no reason they need *extra* time, especially given their representation that this case involves a "straightforward application of case law." Response at 1.

B. Deterrence also serves as good cause.

The GOP Electors misread the deterrence argument. Deterrence comes in two forms—specific and general. Specific deterrence seeks prevention of recidivism; general deterrence seeks crime prevention generally. DETERRENCE, *Black's Law Dictionary* (12th ed. 2024).

The GOP Electors treat the State's argument as one of specific deterrence, suggesting the State wants to "send a deterrent message to Respondents." Response at 9. And Black's Law Dictionary defines specific deterrence consistent with the GOP Electors' explanation that specific deterrence results from convictions and sentences. *Id.*

Although Black's Law Dictionary also defines general deterrence as being about convictions and sentences, *id*., this Court's decisions instruct that general deterrence is achievable in other ways. For instance, the felony-murder rule generally deters the commission of violent felonies. *Cortinas v. State*, 124 Nev. 1013, 1019, 195 P.3d 315, 319 (2008).

So the GOP Electors are wrong to say only convictions and sentences achieve deterrence. General deterrence is not so limited. And the State's argument sounds in general deterrence. The State argued that "a swift reversal that reinstates the indictment is likely to have a deterrent effect on *any person* considering similar conduct during the upcoming election." Motion at 9 (emphasis added). So the State's argument does not target the GOP Electors—well, unless they are planning a repeat performance.

What remains, beyond irrelevant supposition about "other infirmities" in the State's case, is an argument that deterrence is unnecessary because recent federal legislation requires that the Governor issue the certificate of ascertainment. Response at 10. If that were really a barrier, we wouldn't be here. The prior law required the same. *See, e.g.*, *Harris v. Florida Elections Comm'n*, 235 F.3d 578, 579 n.3 (11th Cir. 2000) ("The Governor's duty to transmit the certificate of ascertainment is a

duty based on federal law governed by 3 U.S.C. § 6.") And the GOP Electors should know this—after all, they requested an amendment to the certificate the Governor issued in 2020. Exhibit 3 at 95-100.

III. Conclusion

There is good cause to expedite consideration of this appeal.

RESPECTFULLY SUBMITTED this 26th day of August, 2024.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Nevada Attorney General's Office, and pursuant to NRAP 25(b) and NEFCR 9 I electronically filed the foregoing **REPLY IN SUPPORT OF MOTION FOR EXPEDITED CONSIDERATION OF APPEAL** with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing System (Eflex) on August 26, 2024. Participants in the case who are registered with Eflex as users will be served by the Eflex system.

I further certify that a copy of the same, along with a true and correct copy, was mailed First Class Mail via United States Postal Service to:

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/s/ *Amanda White*
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