

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

STATE OF NEVADA,  
Appellant

vs.

JAMES WALTER DEGRAFFENREID III,  
DURWARD JAMES HINDLE III, JESSE  
REED LAW, MICHAEL JAMES  
MCDONALD, SHAWN MICHAEL  
MEEHAN, AND EILEEN A. RICE,  
Respondents.

CASE NO.: 89064

Electronically Filed  
Aug 26 2024 11:18 AM  
Elizabeth A. Brown  
Clerk of Supreme Court

**RESPONDENTS' EXHIBITS TO JOINT RESPONSE TO STATE'S  
MOTION TO EXPEDITE**

Defendants hereby submit the exhibits to their Joint Response to the State's Motion to Expedite, which were inadvertently omitted from the corrected response submitted on August 23, 2024.

DATED this 26<sup>th</sup> day of August, 2024.

*/s/ Richard A. Wright*

Richard A. Wright

**WRIGHT MARSH, LEVY**

300 S. Fourth St., Ste 701

Las Vegas, NV 89101

*Counsel for Michael James McDonald*

*/s/ Monti Jordana Levy*

Monti Jordana Levy

**WRIGHT MARSH, LEVY**

300 S. Fourth St., Ste 701

Las Vegas, NV 89101

*Counsel for Eileen A. Rice*

/s/ Margaret A. McLetchie

Margaret A. McLetchie

**MCLETTCHIE LAW**

602 South Tenth St.

Las Vegas, Nevada 89101

*Counsel for Jesse Reed Law*

/s/ Brian R. Hardy

Brian R. Hardy

**MARQUIS AURBACH**

10001 Park Run Drive

Las Vegas, Nevada 89145

*Counsel for Durward James Hindle, III*

/s/ Sigal Chattah

Sigal Chattah

**CHATTAH LAW GROUP**

5875 S. Rainbow Blvd. #204

Las Vegas, Nevada 89118

*Counsel for Shawn Michael Meehan*

/s/ George P. Kelesis

George P. Kelesis

**COOK & KELESIS, LTD**

517 S 9th Street

Las Vegas, NV 89101

*Counsel for James Walter Degraffenreid, III*

**RESPONDENTS' EXHIBITS TO JOINT RESPONSE TO STATE'S  
MOTION TO EXPEDITE**

**INDEX OF EXHIBITS**

<b>Exhibit</b>	<b>Description of Exhibit</b>
<b>A</b>	Proffer Video of Kenneth Chesebro (to be submitted via thumb drive).
<b>B</b>	December 11, 2020, Email from Kenneth Chesebro to Trump Campaign
<b>C</b>	December 8, 2020, Email from Kenneth Chesebro to Judge Troupis
<b>D</b>	December 11, 2020, Email from James DeGraffenreid to Kenneth Chesebro
<b>E</b>	Video interview of Debra Kempf (to be submitted via thumb drive)

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **RESPONDENTS' EXHIBITS TO JOINT RESPONSE TO STATE'S MOTION TO EXPEDITE** was filed electronically with the Nevada Supreme Court on the 26<sup>th</sup> day of August, 2024. Electronic service of the foregoing document shall be made in accordance with the Master Service List.

*/s/ Leo S. Wolpert*  
\_\_\_\_\_  
Employee of McLetchie Law

# **EXHIBIT A**

**(Proffer Video of Kenneth  
Chesebro -- to be submitted  
via thumb drive)**

# **EXHIBIT B**

**December 11, 2020, Email from  
Kenneth Chesebro to Trump  
Campaign**

**Re: [EXTERNAL]Re: Electors**

Kenneth Chesebro <kenchesebro@msn.com>

Fri 12/11/2020 9:54 AM

To: Joshua Findlay <jfindlay@donaldtrump.com>; Justin Clark <jclark@donaldtrump.com>

Cc: Matthew Morgan <mmorgan@donaldtrump.com>; Jason Miller <jmiller@donaldtrump.com>; Nick Trainer <ntrainer@donaldtrump.com>; Boris Epshteyn <bepshteyn@donaldtrump.com>

Josh,

Good to know you're heading this up.

Want to make 100% sure you have my update of last night -- see below.

Also, at 9:01 today, **Jim DeGraffenried of NV** e-mailed me, asking Jesse Binnall (jbinnall@harveybinnall.com), by way of copying him, to update me on the NV litigation.

Matt's concern, which I passed on to Mayor Guiliani, is that if there's no litigation pending in Nevada on Dec. 14, the rationale for electors voting explaining in the Jim Troupis draft press release doesn't apply.

However, it seems plausible for Nevada to seek cert. in the Supreme Court on the same basis on which Jack Wilenchik apparently plans to seek cert. from the AZ Sup. Ct. dismissal: the courts rushed to judgment to meet the "safe harbor" date, which was a denial of due process for no legitimate reason (because the "safe harbor" date is irrelevant in a situation like this, and also because the Electoral Count Act in which it is contained is unconstitutional).

The NV party struck the due process theme in its statement on the decision:  
<https://nevadagop.org/nevada-gops-statement-on-the-nevada-supreme-courts-ruling/>

So perhaps there is a plan to file for cert. from the Nevada decision. Presumably that effort would be incredibly uphill, but it would tend to reduce the concern Matt expressed.

That's all I had to add.

Ken

---

**From:** Joshua Findlay <jfindlay@donaldtrump.com>

**Sent:** Friday, December 11, 2020 9:44 AM

**To:** Kenneth Chesebro <kenchesebro@msn.com>; Justin Clark <jclark@donaldtrump.com>

**Cc:** Matthew Morgan <mmorgan@donaldtrump.com>; Jason Miller <jmiller@donaldtrump.com>; Nick Trainer <ntrainer@donaldtrump.com>; Boris Epshteyn <bepshteyn@donaldtrump.com>

**Subject:** Re: [EXTERNAL]Re: Electors

Hi Ken,

Great to be connected with you. I am preparing an update of what the campaign is doing in the states, along with some draft documents. I should have it to you this morning.

Thanks,

Josh

---

**From:** Kenneth Chesebro <kenchesebro@msn.com>  
**Sent:** Friday, December 11, 2020 9:42 AM  
**To:** Justin Clark <jclark@donaldtrump.com>  
**Cc:** Matthew Morgan <mmorgan@donaldtrump.com>; Jason Miller <jmiller@donaldtrump.com>; Nick Trainer <ntrainer@donaldtrump.com>; Boris Epshteyn <bepshteyn@donaldtrump.com>; Joshua Findlay <jfindlay@donaldtrump.com>  
**Subject:** Re: [EXTERNAL]Re: Electors

Great! His Georgia connection is especially helpful!

I will forward him my update of 2 a.m., and add one newer update.

I am reachable at 617-895-6196 today except for 3 hours starting at 5:30 (flying to Madison).

Ken

---

**From:** Justin Clark <jclark@donaldtrump.com>  
**Sent:** Friday, December 11, 2020 9:13 AM  
**To:** Kenneth Chesebro <kenchesebro@msn.com>  
**Cc:** Matthew Morgan <mmorgan@donaldtrump.com>; Jason Miller <jmiller@donaldtrump.com>; Nick Trainer <ntrainer@donaldtrump.com>; Boris Epshteyn <bepshteyn@donaldtrump.com>; Joshua Findlay <jfindlay@donaldtrump.com>  
**Subject:** Re: [EXTERNAL]Re: Electors

+ Josh Findlay

Ken - Josh has been running point on our contacts with electors. He can provide an update and hand off what he has to you this morning.

On Dec 10, 2020, at 7:46 PM, Kenneth Chesebro <kenchesebro@msn.com> wrote:

Here's the attachment from Dec. 9.

---

**From:** Kenneth Chesebro <kenchesebro@msn.com>  
**Sent:** Thursday, December 10, 2020 7:41 PM  
**To:** Matthew Morgan <mmorgan@donaldtrump.com>; Justin Clark <jclark@donaldtrump.com>  
**Cc:** Jason Miller <jmiller@donaldtrump.com>; Nick Trainer <ntrainer@donaldtrump.com>; Boris Epshteyn <bepshteyn@donaldtrump.com>  
**Subject:** Re: [EXTERNAL]Re: Electors



Hi, I just read an e-mail from Jim DeGraffenreid in Nevada.

He says Nevada is on board, and welcomes whatever documentation I can forward to help.

I would suggest we tentatively put in place plans to have the Nevada electors vote -- only 6 electors involved -- while you consult with the Mayor and others who are the ultimate decisionmakers. Presumably they'll be willing to pull the plug at the last minute, if that's best overall.

I totally get your point that the credibility of the electors voting on Dec. 14 might be diminished by electors voting in a state that doesn't meet the stated rationale, so I could see a strategic decision being made either way on Nevada, or even Arizona.

As Obama would say, that's a decision above my pay grade! lol  
<http://blogs.reuters.com/talesfromthetrail/2008/08/16/obama-says-pointed-abortion-query-above-his-pay-grade/>

Ken

---

**From:** Kenneth Chesebro <kenchesebro@msn.com>  
**Sent:** Thursday, December 10, 2020 7:37 PM  
**To:** Matthew Morgan <mmorgan@donaldtrump.com>; Justin Clark <jclark@donaldtrump.com>  
**Cc:** Jason Miller <jmiller@donaldtrump.com>; Nick Trainer <ntrainer@donaldtrump.com>; Boris Epshteyn <bepshteyn@donaldtrump.com>  
**Subject:** Re: [EXTERNAL]Re: Electors

Very good point.

As to **Nevada**, I'm not familiar with litigation there. If there's no realistic prospect of relief there -- including no plausible cert. petition to the U.S. Supreme Court -- I would suggest dropping Nevada.

Because combining the lack of litigation with state procedures for conducting an Electoral College vote, it looks pretty hopeless -- see p. 4 of my Dec. 9 memo (attached): Nevada doesn't allow electors to simply send in votes; it requires the Secretary of State to preside, and only allow electors to cast votes for the popular vote winner.

This was intended to prevent "faithless electors," but the plain language seems to bar what the Kennedy electors did in 1960.

So I would totally understand not having the Nevada electors vote.

Though, on principle, I believe the Electoral Count Act is not binding on the current Congress, and I would love to see a motion during the electoral vote count in Congress to disallow the Nevada votes due to massive voting irregularities.

In other words, the Nevada electors not voting on Dec. 14 merely means the state can't be flipped -- it doesn't prevent a challenge to the electoral votes going in Biden's column.

As to **Arizona**, I believe there's a live, valid challenge there, at least based on my talk a couple of days ago with Jack Wilenchik.

Apparently he had a solid case, and if you could extrapolate his very limited discovery Trump & Pence would win the state, but the trial court cut off discovery and held an abbreviated hearing in a such to meet the "safe harbor" date. And the AZ Supreme Court affirmed. Jack seems sharp, and I liked his briefing. I haven't studied the filings, but he said he plans to seek U.S. Supreme Court review, and he may have a good claim that the state courts denied procedural due process in rushing to judgment to meet the "safe harbor" date -- which makes no sense, because as noted figures like Justice Ginsburg and Prof. Tribe have made clear, Jan. 6 is the only real deadline.

I'm not passing on the merits of that litigation. Apparently the AZ Supreme Court is quite conservative, so maybe it was justified in rejecting the lawsuit. But I wouldn't rule out AZ without further analysis.

So I'd be inclined to have the AZ electors vote, based on the pendency of the cert. petition. And also on the President's view that what happened in AZ is very difficult to explain as legitimate.

Ken

---

**From:** Matthew Morgan <mmorgan@donaldtrump.com>  
**Sent:** Thursday, December 10, 2020 6:53 PM  
**To:** Kenneth Chesebro <kenchesebro@msn.com>; Justin Clark <jclark@donaldtrump.com>  
**Cc:** Jason Miller <jmiller@donaldtrump.com>; Nick Trainer <ntrainer@donaldtrump.com>; Boris Epshteyn <bepshteyn@donaldtrump.com>  
**Subject:** Re: [EXTERNAL]Re: Electors

Ken,

Looks like you've got a great handle on things. One question I can see coming down the stretch: How do you propose we answer forthcoming press questions on why our electors are voting in Arizona and Nevada? Jim's statement below seems to rely on the existence of an ongoing case/controversy as the justification for the electors voting on Monday. That is supported by the Hawaii precedent, which had a pending contest/recount in existence on the 3 USC 7 electoral college date.

To my knowledge, neither the Campaign nor unaffiliated entities have a pending case or controversy within Arizona and Nevada. So the Comms team will need a way to explain why those electors are voting on Monday.

The others fit well within the Hawaii precedent: Wisconsin and Georgia have election contests before state courts. Pennsylvania and Michigan are at issue in the Texas Supreme Court action (which the President is seeking intervention).

As always I defer to the communicators, but just wanted to flag a forthcoming messaging piece.

Thank you,

Matt Morgan

---

**From:** Kenneth Chesebro <kenchesebro@msn.com>  
**Date:** Thursday, December 10, 2020 at 5:30 PM  
**To:** Justin Clark <jclark@donaldtrump.com>  
**Cc:** Jason Miller <jmiller@donaldtrump.com>, Nick Trainer <ntrainer@donaldtrump.com>, Boris Epshteyn <bepshteyn@donaldtrump.com>, Matthew Morgan <mmorgan@donaldtrump.com>  
**Subject:** Re: [EXTERNAL]Re: Electors

Quick heads up -- Jim Troupis has put together a tentative draft statement he would release only AFTER filing the petition seeking review in the WI Supreme Court, in which he'll be agreeing with the Wisconsin Elections Commission that the real deadline for resolving litigation is January 6.

Here it is, in case there are any concerns about it -- earliest it could go out would be Friday evening.

Perhaps a similar statement could issue in some of the other states.

#### Proposed Jim Troupis Statement on Electors Meeting

"As the legal proceedings arising from the November 3 presidential election continue to work their way through the Wisconsin court system, I have advised the Republican Party of Wisconsin to convene a separate Republican electors' meeting and have the Trump-Pence electors cast their votes at the Wisconsin State Capitol on December 14.

Of course, there is precedent for such a meeting. Democrat electors pledged to John F. Kennedy convened in Hawaii in 1960, at the same time as Republicans, even though the Governor had certified Richard Nixon as the winner. In the end, the state's electoral votes were ultimately awarded to President Kennedy, even though he did not win the state until 11 days after his electors cast their votes.

The legitimacy and good sense of two sets of electors meeting on December 14 to cast competing votes for President and Vice President, with the conflict to be later sorted out by the courts and Congress, was pointed out by prominent Democrat activists Larry Lessig and Van Jones in an essay published last month [on CNN.com](#).

Given that the results in Wisconsin are still in doubt, with legal arguments that have yet to be decided, just as the Democrat electors met in Hawaii in 1960 while awaiting a final resolution of that State's vote, so too the Republican electors should meet this year on December 14 as we await a final resolution in Wisconsin."

---

**From:** Justin Clark <jclark@donaldtrump.com>  
**Sent:** Thursday, December 10, 2020 5:26 PM

**To:** Kenneth Chesebro <kenchesebro@msn.com>  
**Cc:** Jason Miller <jmiller@donaldtrump.com>; Nick Trainer <ntrainer@donaldtrump.com>; Boris Epshteyn <bepshteyn@donaldtrump.com>; Matthew Morgan <mmorgan@donaldtrump.com>  
**Subject:** Re: [EXTERNAL]Re: Electors

Go get em Ken!

On Dec 10, 2020, at 5:24 PM, Kenneth Chesebro <kenchesebro@msn.com> wrote:

Oh, fantastic. Good to have all this.

---

**From:** Jason Miller <jmiller@donaldtrump.com>  
**Sent:** Thursday, December 10, 2020 5:23 PM  
**To:** Nick Trainer <ntrainer@donaldtrump.com>  
**Cc:** Kenneth Chesebro <kenchesebro@msn.com>; Boris Epshteyn <bepshteyn@donaldtrump.com>; Justin Clark <jclark@donaldtrump.com>; Matthew Morgan <mmorgan@donaldtrump.com>  
**Subject:** Re: Electors

Thank you!

> On Dec 10, 2020, at 5:22 PM, Nick Trainer <ntrainer@donaldtrump.com> wrote:

>

>

> Here are the six w contact

>

> <Elector List-.xlsx>

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<2020-12-09 Chesebro memo on Dec 14 requirements for electoral votes.pdf>

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# **EXHIBIT C**

**December 8, 2020, Email from  
Kenneth Chesebro to Judge  
Troupis**

## Privileged and confidential -- additional thoughts re electors voting on Dec. 14

Kenneth Chesebro <kenchesebro@msn.com>

Tue 12/8/2020 1:15 AM

To: Judge Troupis <judgetroupis@gmail.com>

Hi, Jim, nice of you to call me. And I'm glad you like my idea regarding how leverage might be exerted in January to force serious review in Congress of election fraud in various States.

Several more notes, staying away from the specifics of how it might play out in January:

### 1. Court challenges pending on Jan. 6 really not necessary.

In my memo I mentioned that a key element of the strategy I've sketched would depend on litigation (either in state or federal court) pending in the six contested states on January 6.

I'm glad you pressed me on that, for example, could abuses in Georgia be examined even if no litigation were pending. On reflection, I think having the electors send in alternate slates of votes on Dec. 14 can pay huge dividends **even if there is no litigation pending on Jan. 6**, and based on final litigation in the States, Biden is still above 270 electoral votes (or, at minimum, is still ahead of Trump, with perhaps one of more States up in the air).

The reason is that constitutionally speaking, there is no barrier to Congress (here, we're talking the Senate, assuming it's still controlled by Republicans) deliberating on which electoral slate to count, even if one electoral slate is endorsed by the governor, after all litigation is final -- indeed, even if that slate met the Dec. 8 "safe harbor" deadline.

The reason is that the Constitution doesn't specify what it means to "count" the electoral votes, and everyone agrees there is some level of judgment in counting -- here, at minimum, judgment about whether the election was conducted in the "Manner" directed by the state legislature.

Thus, as Professor Tribe has put it ([here](#)), Congress has the "ability, under the Twelfth Amendment, to determine which set of [a state's] electoral votes to count." 115 Harv. L. Rev. at 277.

This can involve looking at what actually happened in the election, not just at what the governors or courts said happened. Going **behind** the governors' certificates is exactly what the Democrats sought to do in the Hayes-Tilden contest of 1876-77, when the Republican governors of three States certified, somewhat dubiously in at least one instance, that Hayes had won the States. The Democrats naturally preferred the electoral slates that had been certified by Democrats in the States.

There's nothing in the Constitution (setting aside legislation; see next point) to prevent the Senate now, if it wishes, from holding hearings, with testimony, to decide if the election was stolen in one or more States, before voting on which slate of electors should be counted -- again, even if Trump lost all the legal cases, and none are still pending. The Senate could decide if it wished that the court proceedings were too cursory, and/or the judges involved used procedural tactics to avoid the merits, so that independent examination is required.

### 2. Democrats' main weapon is the Electoral Count Act.

Democrats' playbook for January 6 depends entirely on the script set out in the Electoral Count Act, under which, after the certificates are opened, the tellers are supposed to tally up the votes and, as to

any contested States, the two Houses may deliberate for only two hours before definitively voting on whether to accept as valid, and count, a slate.

Under this scheme, Trump and Pence would be denied the opportunity for the presentation of any evidence (for example, live testimony) regarding the fraud in the election -- only limited debate would be allowed. Of course, preventing any sustained public inquiry into the election is key for the Democrats.

If the Electoral Count Act could be pushed aside, the Democrats would have to contend with unlimited debate in the Senate, which would be ended only with 60 votes for cloture -- giving Senators who support Trump plenty of leverage to insist on sustained inquiry into the evidence of fraud in both the election and in the canvassing. I mean, what would happen to 10 Republican senators who refused to allow an examination of what happened in the election?

### 3. The Electoral Count Act is not binding

The vulnerability for Democrats is that the Electoral Count Act is **not legally binding**. The scholarly consensus is that, for multiple reasons, it is difficult to imagine the Supreme Court ruling that in counting electoral votes, Congress must limit itself to debating for only 2 hours per contested State, or that Congress must accept as valid a particular State's electoral votes just because the State's governor certified them. See sources in footnote 4 of my Nov. 18 memo, [here](#); [see also](#) Prof. Tribe's argument ([here](#)) that how to count electoral votes is inherently a "political question," on which the Supreme Court should not intrude. 115 Harv. L. Rev. 276-87.

### 4. Procedural leverage: a practical way around the Electoral College Act

The problem for Republicans, however, is that the Electoral Count Act is, in ordinary circumstances, **politically** binding. Many of the legislators who enacted it assumed it wasn't constitutional, but they hoped that it would set ground rules for counting electoral votes that would prevent another crisis such as the one that occurred in 1876-77, in which the two Houses of Congress were controlled by different parties, and there was no clear way of resolving the partisan conflict.

At minimum, politically the Act is viewed as setting up a special rule for each House governing the counting of electoral votes, which would take a majority vote to displace.

Conventional wisdom would say that we are stuck with the Electoral College Act, and the Democrats' script, because:

(1) there is no way that all Senate Republicans would vote in lockstep to jettison the Electoral Count Act - some obviously despise Trump, and others appear to believe that the election was fair; and

(2) there is no way that pro-Trump Republicans could convince the Supreme Court to invalidate the Electoral Count Act (in part because of the "political question" doctrine discussed by Tribe).

That's where the tactic we discussed might come into play. It would create leverage that could turn the tables on Democrats, by holding up the count unless and until they either got an order from the Supreme Court blocking the tactic (unlikely) or else agreed to extended debate. It would be impossible for the count to continue with the ordinary procedure under the Electoral Count Act.

### 5. Objection to extended delay



Any effort to extend scrutiny of the election returns past January 6 would be met with the objection that the process of electing the President might not be complete before January 20. But that is no reason to avoid taking the time necessary to ensure that the electoral votes of particular states are not tainted by fraud. The Constitution provides an orderly means of ensuring that there is no gap in the executive branch. If Democrats refused to agree to a reasonable amount of time for Congress to investigate and vote on the six States being contested, and the dispute dragged on, on January 20 Nancy Pelosi (upon resigning as Speaker) would become Acting President -- unless, of course, before then the Senate decided to resolve the impasse by electing Pence as Vice President, so that on January 20 he would become Acting President.

The above is more extensive than I had intended, but I hope that despite the excess verbiage, some of it is helpful.

Ken

Kenneth Chesebro  
25 Northern Avenue, # 1509  
Boston, MA 02210  
(617) 895-6196  
kenchesebro@msn.com  
(Admitted in CA, FL, IL, MA, NJ, NY, and TX)

<https://www.linkedin.com/in/ken-chesebro>

# **EXHIBIT D**

**December 11, 2020, Email  
from James DeGraffenreid to  
Kenneth Chesebro**



Jim DeGraffenreid &lt;jim@nevadagop.org&gt;

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## URGENT -- Trump-Pence campaign asked me to contact you to coordinate Dec. 14 voting by Nevada electors

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Jim DeGraffenreid &lt;jim@nevadagop.org&gt;

Fri, Dec 11, 2020 at 6:00 AM

To: Kenneth Chesebro [REDACTED]

Cc: Jesse Binnall [REDACTED]

Hi, Ken,

Forwarding your question on the lawsuit to our lead attorney, Jesse Binnall, copied on this email, as he is most up to date on the situation with our state level case in Nevada.

On Fri, Dec 11, 2020, 01:20 Kenneth Chesebro <[REDACTED]> wrote:

Thanks for passing this along.

No, the COA need not be attached to the electoral votes -- the purpose of having the electoral votes sent in to Congress is to provide the opportunity to debate the election irregularities in Congress, and to keep alive the possibility that the votes could be flipped to Trump and Biden.

In that connection, can you tell me whether all court challenges Nevada are final? I'm wondering if there will an effort to seek Supreme Court review of this decision:

<https://thehill.com/homenews/administration/529382-nevada-supreme-court-rejects-trump-campaign-appeal-affirms-biden-win>

Thanks again!

---

**From:** Jim DeGraffenreid <jim@nevadagop.org>

**Sent:** Friday, December 11, 2020 1:13 AM

**To:** Kenneth Chesebro <[REDACTED]>

**Subject:** Re: URGENT -- Trump-Pence campaign asked me to contact you to coordinate Dec. 14 voting by Nevada electors

Thank you for this information.

We were provided with a Certificate of Ascertainment - we had to have it corrected, as the SOS and Governor initially listed our alternates instead of our electors. Attached a copy - of course, it shows us with less votes than the Biden electors.

Should we use this COA for anything?

On Thu, Dec 10, 2020, 23:18 Kenneth Chesebro <[REDACTED]> wrote:

Wonderful to hear!

Thank you for getting back to me so quickly, despite your hectic schedule.

I spoke this evening with Mayor Giuliani, who is focused on doing everything possible to ensure that that all the Trump-Pence electors vote on Dec. 14. He was glad to hear of your agreement with this strategy.

As background, I attach my Nov. 18 memo explaining the upside of this strategy, and, my Dec. 9 memo on the logistics, including the issues raised by state-law provisions regarding the Electoral College.

You'll note that page 4 of the Dec. 9 memo mentions a concern regarding Nevada law, about the role of the Secretary of State. It may well be that the electoral vote needs to proceed without the participation of the Secretary of State, on

# **EXHIBIT E**

**(Audio interview of  
Debra Kempf - to be  
submitted via thumb  
drive)**