#### 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, MICAHEL JAMES MCDONALD, SHAWN MICHAEL MEEHAN, EILEEN A. RICE, **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 Electronically Filed Sep 10 2024 12:39 PM Elizabeth A. Brown Clerk of Supreme Court

Respondents.

#### APPELLANT APPENDIX Volume 2 of 5

AARON D. FORD Attorney General JEFFREY M. CONNER Chief Deputy Solicitor General Nevada Bar No. 11543 100 North Carson Street Carson City, Nevada 89701-4717 Telephone: (775) 684-1100 jconner@ag.nv.gov Attorney for Appellant

1 2 3 4 5 6 7	COOK & KELESIS, LTD. 517 South Ninth Street Las Vegas, Nevada 89101 Phone: (702) 737-7702 Fax: (702) 737-7712 E-mail: <u>law@bckltd.com</u> Attorney for Defendant/Petitioner James Walter Degraffenreid, III	Electronically Filed 1/29/2024 3:58 PM Steven D. Grierson CLERK OF THE COURT
8	DISTRICT CO	JURT
9	CLARK COUNTY,	NEVADA
10		
11		SE NO. : C-23-379122-1 PT. NO. : XVIII
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13		
14	Defendant	
15		ABEAS CORPUS AND
16 17	JOINDER IN MEMORANDUM OF P	DINTS AND AUITHORITIES
18		TH JUDICIAL DISTRICT COURT OF HE COUNTY OF CLARK:
19 20	TO: SHERIFF OF CLARK COUNTY, KEVIN M	CMAHILL, AND HIS COUNSEL, SON
21	COMES NOW, the Defendant/Petitioner, Jam	es Walter Degraffenreid, III, by and through
22	his attorney, George P. Kelesis, Esq. of Cook & Keles	sis, Ltd., and states:
23	1. That Attorney for Petitioner is a duly quality	fied and licensed attorney, practicing in Las
24	Vegas, State of Nevada;	
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27	Sheriff of Clark County, currently not in custody, und	ler Indictment before this Court;
28	3	

1	4. That said constructive restraint of Petitioner's liberty is unlawful because the State of	
2	Nevada failed to present exculpatory evidence in violation of Nevada law, and failed to present	
3	sufficient evidence to establish probable cause to sustain the charges in the Indictment;	
4	5. That Petitioner consents that if this Petition is not decided within 15 days before the date	
5	set for trial, the Court may, without notice or hearing, continue the trial to such date as it designates;	
6	Petitioner has previously waived his right to speedy trial;	
7	6. That Petitioner consents that if any party appeals the Court's ruling and the appeal is not	
8	determined before the date set for trial, the trial date shall be vacated and the trial postponed unless	
9	the Court otherwise orders;	
10	7. That Petitioner's trial is scheduled for March 11, 2024, in Department XVIII, of the	
11	above-entitled Court, with Calendar Call scheduled for March 4, 2024;	
12	8. That no other Petition for Writ of Habeas Corpus has heretofore been filed on behalf of	
13	Petitioner in this case;	
14	WHEREFORE, Petitioner prays that this Honorable Court direct the County Clerk to issue	
15	a Writ of Habeas Corpus directed to the Sheriff of Clark County, Nevada instructing said Sheriff to	
16	produce the body of the Petitioner before the Court.	
17	DATED this 29 <sup>th</sup> day of January, 2024.	
18	COOK & KELESIS, LTD.	
19		
20	By:	
21	Nevada Bar No. 000069 517 South Ninth Street	
22	Las Vegas, Nevada 89101 Attorneys for Defendant/Petitioner James Walter Degraffenreid, III	
23	James Walter Degraffenreid, III	
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	Page 2 of 6	
	APP 0249	
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1	NOTICE OF MOTION	
2	TO: THE STATE OF NEVADA, Plaintiff:	
3	PLEASE TAKE NOTICE that the undersigned will bring the foregoing PETITION FOR	
4	WRIT OF HABEAS CORPUS on for hearing before the above-entitled Court on the day of	
5	, 2024, at the hour ofa.m./p.m., or as soon thereafter as counsel may be heard	
6	on this matter.	
7	DATED this 29th day of January, 2024.	
8	COOK & KELESIS, LTD.	
9	A	
10	By:GEORGE P. KELESIS, ESQ.	
11	Xevada Bar No. 000069	
12	Las Vegas, Nevada 89101 Attorneys for Defendant/Petitioner James Walter Degraffenreid, III	
13	James Walter Degraffenreid, III	
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	Page 3 of 6	

1	AFFIDAVIT OF COUNSEL
2	STATE OF NEVADA ) ss:
3	COUNTY OF CLARK )
4	GEORGE P. KELESIS, ESQ., being first duly sworn, according to law, upon oath,
5	deposes and says:
6	1. AFFIANT is counsel for Defendant/Petitioner, James Walter Degraffenreid, III, in the
7	above-entitled matter;
8	2. AFFIANT has read the foregoing Petition and knows the contents thereof; that the
9	same is true of his own knowledge, except as to those matters therein stated upon information
10	and belief, and as to those matters he believes them to be true;
11	3. Defendant/Petitioner, James W. Degraffenried, has authorized affiant to make the
12	foregoing application for relief.
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14	GEORGE P. KELESIS, ESQ.
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16	STATE OF NEVADA )
17	) ss: COUNTY OF CLARK )
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19	SIGNED and SWORN to before me this 29 day of Vanuary, 2024 by
20	George P. Kelesis
21	Kurrin D. Muster
22	NOTARY PUBLIC in and for the
23	STATE OF NEVADA, COUNTY OF CLARK
24	
25	SHERRILL DIANE GROTHEER
26	No. 99-58061-1 My Appt. Exp. Aug. 22, 2027
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	Page 4 of 6
	APP 0251

1	MEMORANDUM OF POINTS AND AUTHORITIES
2	I. JOINDER
3	Defendant/Petitioner James Walter Degraffenreid, III hereby joins and adopts the
4	arguments contained within the Petitions for Writ of Habeas Corpus (pre-trial) which have been
5	filed and/or will be filed on behalf of any of the other five named defendants in this matter that
6	may relate to the charges against him.
7	II. JOINT MEMORANDUM
8	Defendants Michael McDonald, Jesse Law, and Eileen Rice have filed contemporaneously
9	with this Petition, a joint MEMORANDUM OF POINTS AND AUTHORITIES in support of their
10	Petitions for Writ of Habeas Corpus. Mr. Degraffenreid hereby incorporates all assertions of facts
11	and the arguments contained within that Joint Memorandum and respectfully requests that this
12	Honorable Court grant his Petition.
13	DATED this 29th day of January, 2024.
14	COOK & KELESIS, LTD.
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16	By:
17	Nevada Bar No. 000069 \$17-South Ninth Street
18	Las Vegas, Nevada 89101 Attorneys for Defendant/Petitioner
19	James Walter Degraffenreid, III
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	Page 5 of 6
	APP 0252

1	CERTIFICATE OF SERVICE		
2	I, the undersigned, declare under penalty of perjury, that on January 29, 2024 I caused to be		
3	served a true and correct copy of the foregoing Petition for Writ of Habeas Corpus by		
4	submitting to the Eighth Judicial District Court, for electronic filing in accordance with NRCP 5(b),		
5	NEFCR Administrative Order 14-2 and NEFCR 9(e) and service upon the Court's Service List for		
6	the above-referenced case.		
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9	An employee of COOK & KELESIS, LTD.		
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	Page 6 of 6		

APP 0253

1	1/29/2024 5:40 PM Steven D. Grierson CLERK OF THE COURT
1	Brian R. Hardy, Esq.
2	Nevada Bar No. 10068 Harry L. Arnold, Esq.
3	Nevada Bar No. 15866 10001 Park Run Drive
4	Las Vegas, Nevada 89145 Telephone: (702) 382-0711
5	Facsimile: (702) 382-5816 bhardy@maclaw.com
6	harnold@maclaw.com Attorneys for Durward J. Hindle, III
7	DISTRICT COURT
8	
9	CLARK COUNTY, NEVADA
10	THE STATE OF NEVADA,
11	vs. Plaintiff, Case No.: C-23-379122-2 Dept. No.: XVIII
12	MICHAEL JAMES MCDONALD, JAMES
13	WALTER DEGRAFFENREID III, JESSE REED LAW, DURWARD JAMES HINDLE III,
14	SHAWN MICHAEL MEEHAN, and EILEEN A. RICE,
15	Defendants.
16	DEFENDANT DURWARD JAMES HINDLE III'S PETITION FOR WRIT OF HABEAS
17	CORPUS AND JOINDER IN MEMORANDUM OF POINTS AND AUTHORITIES
18	TO: THE HONORABLE JUDGE OF THE EIGHTH JUDICIAL DISTRICT COURT OF
19	THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK:
20	TO: SHERIFF OF CLARK COUNTY, KEVIN MCMAHILL, AND HIS COUNSEL,
21	DISTRICT ATTORNEY STEVEN B. WOLFSON
22	COMES NOW, the Defendant/Petitioner, DURWARD JAMES HINDLE III, by and
23	through his attorneys, BRIAN R. HARDY, ESQ. and HARRY L. ARNOLD, ESQ., of
24	MARQUIS AURBACH, and states:
25	1. That Attorneys for Petitioner are duly qualified and licensed attorneys, practicing
26	in Las Vegas, State of Nevada;
27	2. That Petitioner makes application for a Writ of Habeas Corpus;
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	Page 1 of 6 MAC:14221-013 5361145_2
	APP 0254

MARQUIS AURBACH 10001 Park Run Drive Las Vegas, Nevada 89145 (702) 382-0711 FAX: (702) 382-5816

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**Electronically Filed** 

3. That Petitioner is restrained of his liberty in the constructive custody of Kevin McMahill, Sheriff of Clark County, currently not in custody, under Indictment before this Court;

4. That said constructive restraint of Petitioner's liberty is unlawful because the State of Nevada failed to present exculpatory evidence in violation of Nevada law; and failed to present sufficient evidence to establish probable cause to sustain the charges in the Indictment;

5. That Petitioner consents that if this Petition is not decided within 15 days before the date set for trial, the Court may, without notice or hearing, continue the trial to such date as it designates; Petitioner has previously waived his right to speedy trial;

6. That Petitioner consents that if any party appeals the Court's ruling and the appeal is not determined before the date set for trial, the trial date shall be vacated and the trial postponed unless the Court otherwise orders;

7. That Petitioner's trial is scheduled for March 11, 2024, in Department XVIII, of the above-entitled Court, with Calendar Call scheduled for March 4, 2024;

8. That no other Petition for Writ of Habeas Corpus has heretofore been filed on behalf of Petitioner in this case;

WHEREFORE, Petitioner prays that this Honorable Court direct the County Clerk toissue a Writ of Habeas Corpus directed to the Sheriff of Clark County, Nevada instructing saidSheriff to produce the body of the Petitioner before the Court.

Dated this 29<sup>th</sup> day of January, 2024.

#### MARQUIS AURBACH

By Brian R. Hardy, Esq. Nevada Bar No. 10068 Harry L. Arnold, Esq. Nevada Bar No. 15866 10001 Park Run Drive Las Vegas, Nevada 89145 Attorney(s) for Durward J. Hindle, III

MAC:14221-013 5361145\_2

APP 0255

MARQUIS AURBACH 10001 Park Run Drive Las Vegas, Nevada 89145 (702) 382-0711 FAX: (702) 382-5816 1

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1	NOTICE OF MOTION
2	TO: THE STATE OF NEVADA, Plaintiff:
3	PLEASE TAKE NOTICE that the undersigned will bring the foregoing PETITION FOR
4	WRIT OF HABEAS CORPUS on for hearing before the above-entitled Court on the day
5	of, 2024, at the hour of a.m./p.m., or as soon thereafter as counsel may be
6	heard on this matter.
7	Dated this 29 <sup>th</sup> day of January, 2024.
8	MARQUIS AURBACH
9	
10	$By \longrightarrow \mathcal{K} + \mathcal{T}$
11	Brian R. Hardy, Esq. Nevada Bar No. 10068
12	Harry L. Arnold, Esq. Nevada Bar No. 15866
13	10001 Park Run Drive Las Vegas, Nevada 89145
14	Attorney(s) for Durward J. Hindle, III
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	Page 3 of 6

MARQUIS AURBACH 10001 Park Run Drive Las Vegas, Nevada 89145 (702) 382-0711 FAX: (702) 382-5816

#### **UNSWORN DECLARATION OF COUNSEL PURSUANT TO NRS 53 ET. SEQ.**

BRIAN R. HARDY, ESQ., declares as follows<sup>1</sup>:

1. The undersigned is counsel for Defendant/Petitioner, DURWARD JAMES HINDLE III, in the above-entitled matter;

2. The undersigned has read the foregoing Petition and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein stated upon information and belief, and as to those matters he believes them to be true;

3. Defendant/Petitioner, DURWARD JAMES HINDLE III, has authorized the undersigned to make the foregoing application for relief.

4. I declare under the penalty of perjury that the foregoing is true and correct.

Executed on January 29, 2024.

BRIAN R. HARDY, ESQ.

<sup>1</sup> The instant unsworn declaration is provided in lieu of an affidavit pursuant to NRS 53.045.

MAC:14221-013 5361145\_2

APP 0257

MARQUIS AURBACH 10001 Park Run Drive Las Vegas, Nevada 89145 (702) 382-0711 FAX: (702) 382-5816

# MARQUIS AURBACH Las Vegas, Nevada 89145 (702) 382-0711 FAX: (702) 382-5816 0001 Park Run Drive

Defendants Michael contemporaneously with this Petition, a joint MEMORANDUM OF POINTS AND AUTHORITIES in support of their Petitions for Writ of Habeas Corpus. Mr. Hindle III hereby incorporates all assertions of facts and the arguments contained within that Joint Memorandum

and respectfully requests that this Honorable Court grant his Petition.

Dated this 29th day of January, 2024.

#### MARQUIS AURBACH

By

Brian R. Hardy, Esq. Nevada Bar No. 10068 Harry L. Arnold, Esq. Nevada Bar No. 15866 10001 Park Run Drive Las Vegas, Nevada 89145 Attorney(s) for Durward J. Hindle, III

Eileen Rice have

filed

I. JOINDER

**MEMORANDUM OF POINTS AND AUTHORITIES** 

Defendant/Petitioner DURWARD JAMES HINDLE III hereby joins and adopts the arguments contained within the Petitions for Writ of Habeas Corpus (pre-trial) which have been filed and/or will be filed on behalf of any of the other five named defendants in this matter that may relate to the charges against him.

#### **II. JOINT MEMORANDUM**

McDonald, Jesse Law, and

Page 5 of 6

MAC:14221-013 5361145 2



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1	CERTIFICATE OF SERVICE
2 3	I hereby certify that the foregoing <b>DEFENDANT DURWARD JAMES HINDLE III'S</b>
3 4	PETITION FOR WRIT OF HABEAS CORPUS AND JOINDER IN MEMORANDUM OF
4	POINTS AND AUTHORITIES was submitted electronically for filing and/or service with the
6	Eighth Judicial District Court on the 29th day of January, 2024. Electronic service of the
7	foregoing document shall be made in accordance with the E-Service List as follows: <sup>2</sup>
8	Office of the Attorney General
9	555 E. Washington Ave, Suite 3900 Las Vegas, NV 89101 <u>mburris@ag.nv.gov</u>
10	tdibari@ag.nv.gov AEngler@ag.nv.gov
11	<u>rholm@ag.nv.gov</u> jross@ag.nv.gov
12	<u>htew@ag.nv.gov</u> <u>Attorney for the State of Nevada, Plaintiff</u>
13	media@ournevadajudges.com
14	<u>inculate/ournevadajudges.com</u>
15	
16	/s/ C. Hatfield An employee of Marquis Aurbach
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27	<sup>2</sup> Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System
28	consents to electronic service in accordance with NRCP $5(b)(2)(D)$ .
	Page 6 of 6 MAC:14221-013 5361145_2

MARQUIS AURBACH 10001 Park Run Drive Las Vegas, Nevada 89145 (702) 382-0711 FAX: (702) 382-5816

APP 0260 Case Number: C-23-379122-3		
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2. That Petitioner makes application for a Writ of Habeas Corpus.		25
in Las Vegas, State of Nevada;		24
1. That Attorney for Petitioner is a duly qualified and licensed attorney, practicing		23
of record, Margaret A. McLetchie, of McLetchie Law, and states:		22
COMES NOW, the Defendant/Petitioner, JESSE LAW, by and through his counsel		21
TO: SHERIFF OF CLARK COUNTY, KEVIN MCMAHILL, AND HIS COUNSEL, DISTRICT ATTORNEY STEVEN B. WOLFSON		19 20
OF CLARK:		18
TO: THE HONORABLE JUDGE OF THE EIGHTH JUDICIAL DISTRICT	7	с 17
		LAS 702)728-53
PETITION FOR WRIT OF HABEAS CORPIES AND MEMORANDUM OF	1	s Vegas, 300 (T) /
Hearing Time:	+	TENTH ST NV 8910 (702)425- GATION.CC
Defendant. Hearing Date:		l 8220 (F) РМ
JESSE LAW, Individual [HEARING REQUESTED]		11
vs. WRIT PETITION		10
Plaintiff. DEPT. NO.: XVIII	•	9
STATE OF NEVADA CASE NO.: C-23-379122-3		8
CLARK COUNTY, NEVADA	7	
EIGHTH JIIDICIAL DISTRICT COURT	6	•
Counsel for Defendant Jesse Law	5 Counse	( )

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3. That Petitioner is restrained of his liberty in the constructive custody of Kevin McMahill, Sheriff of Clark County, currently not in custody, under Indictment before this Court;

4. That said constructive restraint of Petitioner's liberty is unlawful because the State of Nevada failed to present exculpatory evidence in violation of Nevada law; and failed to present sufficient evidence to establish probable cause to sustain the charges in the Indictment;

5. That Petitioner consents that if this Petition is not decided within 15 days before the date set for trial, the Court may, without notice or hearing, continue the trial to such date as it designates; Petitioner has previously waived his right to speedy trial;

6. That Petitioner consents that if any party appeals the Court's ruling and the appeal is not determined before the date set for trial, the trial date shall be vacated and the trial postponed unless the Court otherwise orders;

7. That Petitioner's trial is scheduled for March 11, 2024, in Department XVIII, of the above-entitled Court, with Calendar Call scheduled for March 4, 2024;

8. That no other Petition for Writ of Habeas Corpus has heretofore been filed on behalf of Petitioner in this case;

WHEREFORE, Petitioner prays that this Honorable Court direct the County Clerk to issue a Writ of Habeas Corpus directed to the Sheriff of Clark County, Nevada instructing said Sheriff to produce the body of the Petitioner before the Court.

DATED this 29<sup>th</sup> day of January, 2024.

<u>/s/ Margaret A. McLetchie</u> MARGARET A. MCLETCHIE Nevada Bar No. 10931 **MCLETCHIE LAW** Attorney for Defendant Jesse Law

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	1 2 3 4 5 6 7 8 9	NOTICE OF HEARING         TO: THE STATE OF NEVADA, Plaintiff:         PLEASE TAKE NOTICE that the undersigned will bring the foregoing PETITION         FOR WRIT OF HABEAS CORPUS on for hearing before the above-entitled Court on the        , 2024, at the hour of a.m./p.m., or as soon thereafter         as counsel may be heard on this matter.         DATED this 29th day of January, 2024.
MCLETCHIE LAW ATTORNEYS AT LAW 6. SOUTH FIRTH ST. LAS VEAS, NV 89101 (702)728-5300 (T) / (702)425-8220 (F) WWW.NVLITIGATION.COM	<ul> <li>9</li> <li>10</li> <li>11</li> <li>12</li> <li>13</li> <li>14</li> <li>15</li> <li>16</li> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> <li>27</li> </ul>	/s/ Margaret A. McLetchie MARGARET A. MCLETCHIE Nevada Bar No. 10931 MCLETCHIE LAW 602 South Tenth Street Las Vegas, Nevada 89101 Telephone: (702) 728-5300 Fax: (702) 425-8220 Email: maggie@nvlitigation.com Attorney for Defendant Jesse Law
	28	3 APP 0262

	1	DECLARATION OF COUNSEL		
	2	I, MARGARET A. MCLETCHIE, ESQ. hereby declare as follows:		
	3	1. I am counsel for Defendant/Petitioner, JESSE LAW, in the above-entitled		
	4	matter;		
	5	2. I have read the foregoing Petition and know the contents thereof; that the		
	6	same is true of my own knowledge, except as to those matters therein stated upon information		
	7	and belief, and as to those matters I believes them to be true;		
	8	3. Defendant/Petitioner, JESSE LAW, has authorized me to make the		
	9	foregoing application for relief.		
1	0			
1	1	I declare under penalty of perjury that the foregoing is true and correct.		
1	2	DATED this 29 <sup>th</sup> day of January, 2024.		
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1	5	<u>/s/ Margaret A. McLetchie</u> MARGARET A. MCLETCHIE, ESQ.		
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MCLETCHIE LAW ATTORNEYS AT LAW 602 SOUTH TENTH ST. LAS VEGAS, NO 9101 (702)728-5300 (T) / (702)425-8220 (F) WWW.NVLITIGATION.COM

#### **MEMORANDUM OF POINTS AND AUTHORITIES**

#### I. JOINDER

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Defendant/Petitioner JESSE LAW hereby joins and adopts the arguments contained within the Petitions for Writ of Habeas Corpus (pre-trial) which have been filed and/or will be filed on behalf of any of the other 5 named defendants in this matter that may relate to the charges against him.

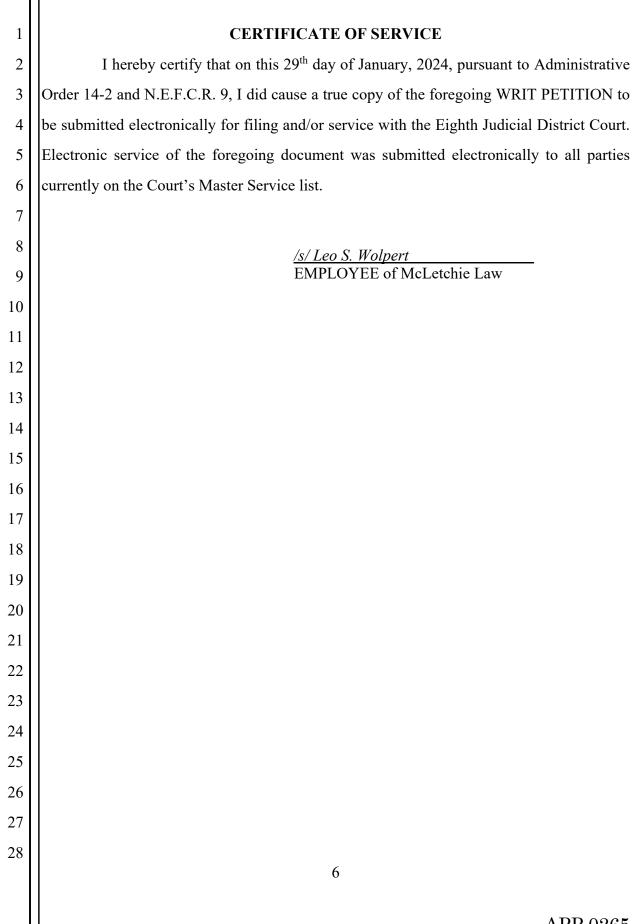
#### II. JOINT MEMORANDUM

Defendants Michael McDonald, Jesse Law, and Eileen Rice have filed contemporaneously with this Petition, a joint MEMORANDUM OF POINTS AND AUTHORITIES in support of their Petitions for Writ of Habeas Corpus. Mr. Law hereby incorporates all assertions of facts and the arguments contained within that Joint Memorandum and respectfully requests that this Honorable Court grant his Petition.

Respectfully submitted this 29<sup>th</sup> day of January, 2024.

<u>/s/ Margaret A. McLetchie</u> MARGARET A. MCLETCHIE Nevada Bar No. 10931 **MCLETCHIE LAW** 602 South Tenth Street Las Vegas, Nevada 89101 Telephone: (702) 728-5300 Fax: (702) 425-8220 Email: maggie@nvlitigation.com Attorney for Defendant Jesse Law

MCLETCHIE LAV ATTORNEYS AT LAW 602 SOUTH TENTH ST. LAS VEGAS, NV 89101 (702)728-5300 (T) / (702)425-8220 (F) WWW.NVLITIGATION.COM



1 2 3 4 5 6	PET RICHARD A. WRIGHT, ESQUIRE Nevada Bar No. 886 WRIGHT MARSH & LEVY 300 S. Fourth Street Suite 701 Las Vegas, NV 89101 Phone: (702) 382-4004 Fax: (702) 382-4004 Attorney for Michael James McDonald	
7	DISTRICT COURT	
8	CLARK COUNTY, NEVADA	
9	THE STATE OF NEVADA.	
10	Plaintiff, ) CASE NO.: C-23-379122-4	
11	) DEPT NO.: XVIII vs.	
12	JAMES WALTER DEGRAFFENREID, III, )	
13	DURWARD JAMES HINDLE III, ) JESSE REED LAW, )	
14	MICHAEL JAMES MCDONALD, ) SHAWN MICHAEL MEEHAN, and )	
15	EILEEN A. RICE,	
16	Defendant.	
17 18	PETITION FOR WRIT OF HABEAS CORPUS AND MEMORANDUM OF POINTS AND AUTHORITIES	
19	TO: THE HONORABLE JUDGE OF THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK:	
20 21	TO: SHERIFF OF CLARK COUNTY, KEVIN MCMAHILL, AND HIS COUNSEL, DISTRICT ATTORNEY STEVEN B. WOLFSON	
22	COMES NOW, the Defendant/Petitioner, MICHAEL MCDONALD, by and through his	
23	attorney, RICHARD A. WRIGHT, ESQUIRE, of WRIGHT MARSH & LEVY, and states:	
24	1. That Attorney for Petitioner is a duly qualified and licensed attorney, practicing in	
25	Las Vegas, State of Nevada;	
26	2. That Petitioner makes application for a Writ of Habeas Corpus;	
27	3. That Petitioner is restrained of his liberty in the constructive custody of Kevin	
28	McMahill, Sheriff of Clark County, currently not in custody, under Indictment before this Court;	
	APP 0266	

Case Number: C-23-379122-4

4. That said constructive restraint of Petitioner's liberty is unlawful because the State
 of Nevada failed to present exculpatory evidence in violation of Nevada law; and failed to present
 sufficient evidence to establish probable cause to sustain the charges in the Indictment;

5. That Petitioner consents that if this Petition is not decided within 15 days before the date set for trial, the Court may, without notice or hearing, continue the trial to such date as it designates; Petitioner has previously waived his right to speedy trial;

6. That Petitioner consents that if any party appeals the Court's ruling and the appeal is not determined before the date set for trial, the trial date shall be vacated and the trial postponed unless the Court otherwise orders;

7. That Petitioner's trial is scheduled for March 11, 2024, in Department XVIII, of the above-entitled Court, with Calendar Call scheduled for March 4, 2024;

8. That no other Petition for Writ of Habeas Corpus has heretofore been filed on behalf
8 of Petitioner in this case;

WHEREFORE, Petitioner prays that this Honorable Court direct the County Clerk to issue a Writ of Habeas Corpus directed to the Sheriff of Clark County, Nevada instructing said Sheriff to produce the body of the Petitioner before the Court.

DATED this 29th of January, 2024

WRIGHT MARSH Bγ

RICHARDA. WRIGHT, ESQUIRE Attorney for Defendant MICHAEL MCDONALD

1	NOTICE OF MOTION		
2	TO: THE STATE OF NEVADA, Plaintiff:		
3	PLEASE TAKE NOTICE that the undersigned will bring the foregoing PETITION FOR		
4	WRIT OF HABEAS CORPUS on for hearing before the above-entitled Court on the day of		
5	, 2024, at the hour ofa.m./p.m., or as soon thereafter as counsel may be		
6	heard on this matter.		
7	DATED this 29th day of January, 2024.		
8	WRIGHT MARSH & LEVY		
9	By		
10	RICHARD A. WRIGHT, ESQUIRE		
11	300 S. Fourth Street Suite 701		
12	Las Vegas, NV 89101 Attorney for Defendant		
13	MICHAEL MCDONALD		
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	APP 0268		

1	AFFIDAVIT OF COUNSEL	
2	STATE OF NEVADA ) ) ss:	
3	COUNTY OF CLARK	
4	RICHARD A. WRIGHT, ESQUIRE, being first duly sworn, according to law, upon oath,	
5	deposes and says:	
6	1. AFFIANT is counsel for Defendant/Petitioner, MICHAEL MCDONALD, in the	
7	above-entitled matter;	
8	2. AFFIANT has read the foregoing Petition and knows the contents thereof; that the	
9	same is true of his own knowledge, except as to those matters therein stated upon information and	
10	belief, and as to those matters he believes them to be true;	
11	3. Defendant/Petitioner, MICHAEL MCDONALD, has authorized AFFIANT to make	
12	the foregoing application for relief.	
13	Malat	
14	RICHARDA WRIGHT	
15		
16	STATE OF NEVADA )	
17	COUNTY OF CLARK ) ss:	
18		
19	SIGNED and SWORN to (or affirmed) before me this 29th day of January, 2024 by RICHARD A. WRIGHT.	
20	$A \rightarrow A \rightarrow$	
21	NOTARY PUBLIC	
22		
23	DEBRA K. CAROSELLI Notery Public, State of Nevada	
24	No. 93-0213-1 My Appt. Exp. Oct. 27, 2025	
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## MEMORANDUM OF POINTS AND AUTHORITIES I. JOINDER Defendant/Petitioner MICHAEL MCDONALD hereby joins and adopts the arguments contained within the Petitions for Writ of Habeas Corpus (pre-trial) which have been filed and/or will be filed on behalf of any of the other 5 named defendants in this matter that may relate to the charges against him. II. JOINT MEMORANDUM Defendants Michael McDonald, Jesse Law, and Eileen Rice have filed contemporaneously with this Petition, a joint MEMORANDUM OF POINTS AND AUTHORITIES in support of their Petitions for Writ of Habeas Corpus. Mr. McDonald hereby incorporates all assertions of facts and the arguments contained within that Joint Memorandum and respectfully requests that this Honorable Court grant his Petition. Respectfully Submitted, WRIGHT MARSH & LEVY By WRIGHT. ESOUIRE RICHARD 300 S. Fourth Street Suite 701 Las Vegas, NV 89101 Attorney for Defendant MICHAEL MCDONALD 5

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Electronically Filed 1/29/2024 7:43 PM Steven D. Grierson CLERK OF THE COURT

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SIGAL CHATTAH ESQ.	
Nevada Bar No.: 8264 CHATTAH LAW GROUP	
5875 S. Rainbow Blvd #204	
Las Vegas, Nevada 89118 Tel: (702) 360-6200	
Fax:(702) 796-643-6292	
Chattahlaw@gmail.com	
Attorney for Defendant Shawn Michael Meehan	
EIGHTH JUDICIAL D	ISTRICT COURT
CLARK COUNTY, NEVADA	
THE STATE OF NEVADA,	CASE NO.: C-23-379122-5
Plaintiff,	Dept. No.: XVIII
v.	DATE OF HEARING:
MICHAEL JAMES MCDONALD, JAMES	DATE OF HEARING.
WALTER DEGRAFFENREID III, JESSE REED LAW, DURWARD JAMES HINDLE III, <b>SHAWN</b> MICHAEL MEEHAN, and EILEEN A. RICE,	TIME OF HEARING:
Defendants.	
PRETRIAL PETITION FOR WRIT OF HABE POINTS AND AU	
TO: THE HONORABLE JUDGE OF THE I	EIGHTH JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA, IN AND FOR THE CO	OUNTY OF CLARK:
TO: SHERIFF OF CLARK COUNTY, KEV	IN MCMAHILL, AND HIS COUNSEL,
DISTRICT ATTORNEY STEVEN B. WOLFSON	
COMES NOW, Defendant/Petitioner, SHAWN MEEHAN, by and through his attorney,	
SIGAL CHATTAH, ESQ., of CHATTAH LAW GROUP, and states:	

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1. That Attorney for Petitioner, SIGAL CHATTAH, ESQ. is a duly qualified and licensed attorney, practicing in Las Vegas, State of Nevada;

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That Petitioner makes application for a Writ of Habeas Corpus;

That Petitioner is restrained of his liberty in the constructive custody of Kevin
 McMahill, Sheriff of Clark County, currently not in custody, under Indictment before this Court;

4. That said constructive restraint of Petitioner's liberty is unlawful because the State of Nevada failed to present exculpatory evidence in violation of Nevada law; and failed to present sufficient evidence to establish probable cause to sustain the charges in the Indictment;

<sup>9</sup> 5. That Petitioner consents that if this Petition is not decided within 15 days before
 <sup>10</sup> the date set for trial, the Court may, without notice or hearing, continue the trial to such date as it
 <sup>11</sup> designates; Petitioner has previously waived his right to speedy trial;

6. That Petitioner consents that if any party appeals the Court's ruling and the appealis not determined before the date set for trial, the trial date shall be vacated and the trialpostponed unless the Court otherwise orders;

<sup>15</sup> 7. That Petitioner's trial is scheduled for March 11, 2024, in Department XVIII, of
 <sup>16</sup> the above-entitled Court, with Calendar Call scheduled for March 4, 2024;

8. That no other Petition for Writ of Habeas Corpus has heretofore been filed on
 behalf of Petitioner in this case;

WHEREFORE, Petitioner prays that this Honorable Court direct the County Clerk to issue a Writ of Habeas Corpus directed to the Sheriff of Clark County, Nevada instructing said Sheriff to produce the body of the Petitioner before the Court.

DATED this <u>29th</u> of January, 2024. CHATTAH LAW GROUP

<u>Is</u>/Sigal Chattah

SIGAL CHATTAH, ESQ. Nevada State Bar No.: 8264 CHATTAH LAW GROUP 5875 S. Rainbow Blvd #204 Las Vegas, Nevada 89118 Tel: (702) 360-6200 Fax: (702) 643-6292

1	UNSWORN DECLARATION OF COUNSEL PURSUANT TO NRS 53 ET. SEQ.		
2	I, SIGAL CHATTAH, ESQ., declares as follows :		
3	1. The undersigned am counsel for Defendant/Petitioner, SHAWN MICHAEL MEEHAN,		
4	in the above-entitled matter;		
5	2. The undersigned has read the foregoing Petition and knows the contents thereof; that the		
6	same is true of her own knowledge, except as to those matters therein stated upon information		
7	and belief, and as to those matters she believes them to be true;		
8	3. Defendant/Petitioner, SHAWN MICHAEL MEEHAM, has authorized the undersigned to		
9	make the foregoing application for relief.		
10	4. I declare under the penalty of perjury that the foregoing is true and correct. Executed on		
11	DATED this 29 <sup>th</sup> day of January, 2024.		
12	/s/ Sigal Chattah		
13	SIGAL CHATTAH, ESQ.		
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#### **MEMORANDUM OF POINTS AND AUTHORITIES**

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#### PROCEDURAL HISTORY/CHARGES

On December 6, 2023, the State of Nevada through its Attorney General, Aaron D. Ford, filed an Indictment in this court charging Mr. McDonald, Mr. Law, and Ms. Rice, along with James Walter DeGraffenreid III, ("Mr. DeGraffenreid"), Durward James Hindle III ("Mr. Hindle"), and Shawn Michael Meehan ("Mr. Meehan") with one count of Offering False Instrument for Filing or Record, and one count of Uttering Forged Instruments: Forgery.

The Indictment was filed pursuant to a True Bill returned by the Grand Jury empaneled in the Clark County District Court on December 5, 2023, following testimony the Grand Jury received on November 14, 2023, November 28, 2023, and December 5, 2023.

On December 18, 2023, all six defendants appeared in this Court via audio/visual transmission and entered pleas of "Not Guilty." All six defendants waived their right to a speedy trial, and trial is set to commence on March 11, 2024.

#### A. GRAND JURY TESTIMONY

#### 1. Miriam Vincent

On November 14, 2023, Miriam Vincent ("Ms. Vincent") testified. Ms. Vincent testified that she works for the Office of the Federal Register, which is part of the National Archives and Records Administration as the acting director of Legal Affairs and Policy. [Grand Jury Transcript Volume I "GJT I" 10].

Ms. Vincent testified that her office publishes the daily Federal Register and has been delegated duties that are assigned by the archivist including administrating the Electoral College and the Constitutional Amendment process. [GJT I 11-12].

<sup>23</sup> Ms. Vincent testified that the National Archives and Records Administration collects,
 <sup>24</sup> stores and maintains all permanent federal records for the Federal government including
 <sup>25</sup> presidential documents and documents related to the Electoral College. [GJT I 12].

Ms. Vincent testified that her office receives paper Certificates of Ascertainment and Vote that are secured in a safe at the Office of the Federal Register. [GJT I 14]. After one to three years those certificates are moved to the National Archives holding where they are stored with all of the other permanent federal records from the Electoral College. [Id.]. Following the 2020 presidential election, the archives received documents from the Nevada Secretary of State related to that election. [GJT I 15]. The Certificate of Ascertainment, Certificate of Vote and Certificate of Final Determination were received and are stored in the archives. [GJT I 15].

Ms. Vincent testified that another set of documents was received following the 2020 presidential election which purported to include Nevada's Certificate of Vote. [GJT I 21]. On December 22, 2020, Ms. Vincent's office received the forms located in Grand Jury Exhibit 4 and determined the forms were non-official certificates; they did not come from the State of Nevada though they purported to vote for Donald Trump and Mike Pence for President and Vice President. [GJT I 21-22].

When these documents were received, they were scanned and made available to the State of Nevada and the National Archives and Record Administration and the Office of the Inspector General, then they were stored as administrative records related to the Electoral College, but not permanent records in the Electoral College Presidential Documents. [GJT I 22].

This second set of documents were not stored in the same manner as the official documents because they were not official state records pertaining to the Electoral College; they did not come from the State of Nevada, did not have the State seal and did not match the signatures of the voters who were appointed by the State of Nevada. [GJT I 23-24]. The names contained in the signatures of the second set of documents are the six defendants named in this case. [GJT I 24].

The documents were mailed to 700 Pennsylvania Avenue Northwest, Washington D.C., which is an address for the archives. [GJT I 26]. The return address included the name Michael J.

McDonald and the address 840 South Rancho Drive, 4-800, Las Vegas, Nevada. [Id.]. The postmark date on the document is December 14, 2020. [Id.].

Ms. Vincent testified that the documents were determined to be unofficial because they did not come from a State office; they were not from the Secretary of State's office, the governor's office, or an office within the State Legislature. The documents did not have the original Certificate of Ascertainment as required by the statute, and the names of the purported electors did not match the names of the electors who were formally pointed to as electors in the Certificate of Ascertainment and confirmed with the Certificate of Final Determination. [GJT I 28]. On November 28, 2023, the following witnesses testified before the Grand Jury: Todd Grosz; and, Kenneth Chesebro.

#### 2. Todd Grosz

Todd Grosz ("Mr. Grosz") testified that he is a criminal investigator with the Nevada Attorney General's Office in the general fraud unit and he was assigned an investigation regarding the submission of Alternate Elector Certificates for the 2020 presidential election. [Grand Jury Transcript Volume II "GJT II" 7-8].

Mr. Grosz testified that he issued a subpoena to Right Side Broadcasting who produced a video of footage that was shot in Carson City on December 14th, 2020, depicting the six Nevada Republican nominees executing their ballots for the Electoral College election for President and Vice President. [GJT II 9].

Mr. Grosz testified that two videos were produced by Right Side Broadcasting, one that was over an hour long that he considered the raw footage, and the edited version which was 38 minutes, 48 seconds. [GJT II 10]. Only the edited version was provided as an exhibit to the grand jury.

Mr. Grosz testified that he was able to identify the 6 Republican electors on the video as Michael J. McDonald, James DeGraffenreid, Durward James Hindle, III, Jesse Law, Shawn Meehan and Eileen Rice. [GJT II 12].

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It is significant to note that on December 5, 2023, Mr. Grosz testified that the U.S. District Court, District of Nevada received documents purporting to include information from the 2020 presidential election. [GJT III 40].

Mr. Grosz reviewed Grand Jury Exhibit 20 and testified that it contains the documents that were executed by members of the Nevada Republican party that were mailed to the U.S. District Court District of Nevada for the federal courthouse in Las Vegas. [GJT III 41].

Mr. Grosz testified that Grand Jury Exhibit 21 contains a copy of an envelope that was mailed by the Republican party with an address in Las Vegas to the U.S. District Court, District of Nevada in Las Vegas. [GJT III 42].

Mr. Grosz testified the documents received by the District Court and those received by the Archivist from the Nevada Republican Party were identical. [GJT III 43-44].

Mr. Grosz issued a search warrant to Google in order to obtain subscriber information for four different email accounts and the emails that were sent and received from those email accounts in order to gain information and document conversations regarding the production and execution of the elector ballots. [GJT III 44]. The four email addresses were associated with Jesse Law, Shawn Meehan, Michael McDonald, and Durward James 1It appears from the Exhibits that it is actually referring to Bates number 52 included within Grand Jury Exhibit 20. Hindle. [GJT III 44-45].

22 Through subscriber information, Mr. Grosz testified that he was able to verify the identity of the emails for Mr. McDonald, Mr. Law, and Mr. Meehan through either dates of birth or telephone numbers provided in the subscriber information. [GJT III 46-47]. Mr. Grosz testified that he was able to determine that Mr. Hindle used djhthree@gmail.com because there was an

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email where he ordered a retail product and it was shipped to him at the address contained on his driver's license. [GJT III 47-48].

Mr. Grosz testified that he was able to determine that Mr. DeGraffenreid was the sender of emails associated with jim@nevadagop.org. [GJT III 48-49]. Mr. Grosz determined that Eileen Rice was associated with the email Tahoerice@charter.net. [GJT III 50]. Mr. Grosz testified regarding an email chain from Mr. DeGraffenreid to Mr. Hindle and the other four Nevada Republican electors and a couple of other individuals which is contained in Grand Jury Exhibit 28. [GJT III 50].

Mr. Grosz testified that the email chain appears to discuss the documents that were being produced including who would be printing and preparing the documents. [GJT III 50-51]. Mr.
Grosz testified that Grand Jury Exhibit 29 contains an email chain from Mr. DeGraffenreid to private@bernardkerik.com with attachments including elector process instructions, December, 2020, USPS receipt, Nevada, December 14th, 2020, cover memo for electoral votes, December 14th, 2020, tracking forms, elector mailings, December 14th, 2020, vice presidential elector certificate and ballots, December 14th 2020, presidential elector certificate and ballots, December 14th, 2020, and addressed outer envelopes, December 14th, 2020. [GJT III 51-52].

Mr. Grosz identified documents containing copies of mailing receipts and a credit card
receipt for specific tracking numbers.[GJT III 52-53]. Mr. Grosz identified Grand Jury Exhibit
30 as an email chain from Jesse Bernal (sic) to Mr. DeGraffenried with Mr. Hindle, Mr. Law,
and Mr. McDonald copied to it. The email chain begins with Mr. Chesebro emailing Mr.
DeGraffenreid explaining that Mayor Giuliani and others of the Trump/Pence campaign asked
Mr. Chesebro to reach out to Mr. DeGraffenreid regarding the execution of the elector
documents on Monday, December 14th. [GJT III 54].

<sup>4</sup> Mr. Grosz identified Mr. Bernal (sic) as the attorney who represented the six Nevada <sup>5</sup> electors in their legal challenges through the Nevada court system. [GJT III 54-55]. Mr. Grosz

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identified Grand Jury Exhibit 31 as an email chain from Jessica Hanson to the six Republican electors on December 9th, 2020, with two other individuals copied that informed the recipients that the Nevada Supreme Court had denied their appeal. [GJT III 55].

Mr. Grosz testified that Grand Jury Exhibit 34 was another email chain with some of the Republican Electors and others from December 17th, 2020, which discusses the ballots that had been cast and asking what they should do next. [GJT 56]. Exhibit 34 contains emails that included Mr. DeGraffenreid, Mr. Meehan, and Mr. Hindle. [GJT III 56-57].

Mr. Grosz testified that Exhibit 22 is an Order of Affirmance from the Nevada Supreme Court, which was filed on December 8th, 2020, that "ended the legal challenges at that point that were made by the Republican electors." [GJT III 57-62].

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#### Kenneth Chesebro

Kenneth Chesebro ("Mr. Chesebro") testified that he or his attorney received a Marcum notice indicating that the Nevada Attorney General was seeking an Indictment against him, and he ultimately entered into a cooperation agreement whereby he would not be prosecuted if he provided truthful testimony against the others in the proposed Indictment. [GJT II 24].

Mr. Chesebro testified that he graduated from law school in 1986 and is licensed to practice in New York, California, Florida, Texas, New Jersey, and Illinois. [GJT II 25].

Mr. Chesebro testified that around November 10, 2020, he was contacted by someone in the Trump campaign, James Troupis, an attorney in Wisconsin who wanted help with litigation there. [GJT II 26].

Mr. Chesebro testified that the Trump campaign had decided to file for a recount in Wisconsin and they litigated in the trial court and then filed an appeal to the Wisconsin Supreme Court regarding the results of the elections. [GJT II 27]. The Wisconsin appeal was lost on December 14th, and after that Mr. Chesebro submitted a brief to the United States Supreme Court asking it to review the case. [Id.].

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Mr. Chesebro wrote a seven page memo to Mr. Troupis on November 18, 2020, which discussed and advised that under federal law, the Trump campaign's electors from Wisconsin would need to send their electoral votes to Washington on December 14th if there would be any hope that those would be counted on January 6th when congress convened. [GJT II 28].

Mr. Chesebro's memo explained that even if the Trump campaign has not won the state on December 14th, the votes needed to be sent in because if Trump won a week or two later, congress could not constitutionally count the votes if the paperwork from the electors had not been sent in on time. [GJT II 29]. Mr. Chesebro emphasized in his memo that sending the electoral votes in was extremely important to focus on; if they wanted to litigate the Wisconsin case and take it as far as it would go, it was very important that they file the paperwork on time. [Id.]

On December 9, 2020, Mr. Chesebro sent a five-page memo to Mr. Troupis. [GJT II 29]. This memo was for anybody that was dealing with the same issue and discussed that there were requirements that would need to be met in any state where there was litigation going on, and the memo was laying out what would need to be done to meet the legal requirements. [GJT II 31].

This memo discussed the 6 electoral votes for the state of Nevada and stated in part, "Nevada is an extremely problematic State because it requires the meeting of the electors to be overseen by the Secretary of State, who is only supposed to permit electoral votes for the winner of the popular vote in Nevada." [GJT II 32].

A lawyer with the Trump campaign, Justin Clark, asked Mr. Chesebro to review draft documents that were done in Wisconsin and ones from the Trump campaign and put it into a draft form that could be sent out to other states that were thinking about doing this so that they would understand how to do the same in their state. [GJT II 32-33]. Mr. Chesebro sent an introductory email to Mr. DeGraffenreid, Mr. McDonald, and Mr. Law, and then he sent the draft documents just to Mr. DeGraffenreid. [GJT II 33-34].

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Mr. Chesebro told Mr. DeGraffenreid that he was asked by the Trump campaign to request that they assemble and have alternate electors vote on December 14th to preserve the ability to win the litigation and have the votes counted on January 6th. [GJT II 34]. On December 10th, Mr. Chesebro emailed Mr. DeGraffenreid a couple of preliminary draft documents, and on December 11th Mr. Chesebro sent him seven documents that he drafted. [GJT II 34-35].

The documents Mr. Chesebro sent to Mr. DeGraffenreid included an overview memo explaining how things work and various drafts of documents, ballots and a certificate announcing the final result for president or vice president, and a cover memo that would be sent with the packages to the various people that under federal law are supposed to receive copies. [GJT II 35]. Mr. Chesebro stated that he asked Mr. DeGraffenreid whether there was any pending litigation in Nevada connected to the election and he received no response. [GJT II 35-36].

Mr. Chesebro testified that pending litigation was a significant fact to him because the point of the alternate elector plan that they came up with in Wisconsin was that it gave them three extra weeks to try to win the lawsuit. If there was not a lawsuit then there was no need for the alternate electors because they would not be able to file and win a new lawsuit prior to January 6th. [GJT II 36].

Mr. Chesebro testified that the electors in Pennsylvania expressed concern to him about the wording that was in the documents supplied by him from the Trump campaign that said that they were the duly elected and qualified electors and they believe that they could be investigated and prosecuted for filing something that was false. [GJT II 37]. Based on the Pennsylvania electors' concern, Mr. Chesebro drafted some language and sent it to Pennsylvania and told the individuals from the Trump campaign (the general counsel and the person coordinating the alternate electors in all of the states) that the new language should be used in the other states as well. [GJT II 38]. The Nevada electors did not express concerns. [GJT II 39].

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Mr. Chesebro testified that he believed that on January 6th Congress might determine that it did not really matter that the alternate electors did not cast their votes in the presence of the Secretary of State. He stated in his memo that Nevada was problematic because the statute had that requirement, but he still thought that a person could argue in theory that it [the alternate electors voting] could be done because the purpose of the statute was to insure that the electors honored their commitment to vote for the candidate they were a delegate for (didn't switch their votes); that was not what we were doing by having the alternate electors mail in their ballots. [GJT II 47].

On December 5, 2023, the following witnesses testified: Warren Heister "Mr. Heister"; Mr. Grosz; and, Mark Wlaschin "Mr. Wlaschin."

4. Warren Heister

Mr. Heister testified that he works as a United States Postal Inspector and his area of responsibility is Northern Nevada and Northeast California. [Grand Jury Transcripts Volume III "GJT III" 7-8]. Mr. Heister testified that he works in the Reno domicile and his supervisor is located in Las Vegas. [GJT III 9-10]

Mr. Heister testified that the post office had different types of mailings including first class, express, tracking certified, registered mail, etc. [GJT III 11]. Certified mail is an add-on service to first class mail and is what most businesses and government agencies use to document mailing to show their efforts to contact someone. [GJT III 11-12]. Certified mail attaches a tracking number to a letter so it can be tracked through the mail system. [GJT III 12].

Other services include return receipts which require a signature from the person it is being delivered to, and the receipt is returned to the addressee so they know that a piece of mail was received by a person who signed for it. [GJT III 12-13].

Restrictive delivery that can be added which would prevent anyone else from signing for it except for the specific person. [GJT III 13]. A hand-to-hand transfer requires everyone to sign for the mail for each leg of the trip all the way until delivery and includes electronic scans as well. [Id.].

Things that are usually sent domestic registered are valuables, important documents, and things that people want to know that it is going to get there and not thrown on a machine for automation to process and potentially get lost in the processing. [Id.]

Mr. Heister testified that someone from the Nevada Attorney General's office reached out to him over a year ago for assistance with this case and they were seeking information on some tracking numbers. [GJT III 15-16]. Mr. Heister looked at the tracking numbers and requested help from one of his analysts to provide him with information regarding the tracking numbers. [GJT III 16].

Mr. Heister testified that the documents he produced (Grand Jury Exhibit 21) contained information regarding the tracking numbers he was provided in this investigation. [GJT III 19-20]. The transactions with the tracking numbers occurred on December 14, 2020, and were paid for with a Mastercard. [GJT III 20]. The transactions involved four mail pieces that were conducted at the same time; one was a large envelope with a certified and return receipt; another was a first-class large envelope with a certified and return receipt; and two packages with registered insurance on them. [GJT III 22].

Mr. Heister testified that the return addresses on mail pieces do not always match where they are mailed from. [GJT III 27]. Exhibit 21 page 80 was sent to and delivered to Washington D.C. in the 20408 zip code. [GJT III 28]. Mr. Heister reviewed Grand Jury Exhibit 20 and testified that it was delivered to Las Vegas in the 89101 zip code with a return receipt that was also a Las Vegas address. [GJT III 29-31].

Exhibit 21 has the word "refused" on it which means that the letter carrier attempted to deliver the mail piece and the person who was there refused to accept delivery of it, so it was returned to the sender at a Las Vegas address in the 89106 zip code. [GJT III 31-32].

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#### 5. Mark Wlaschin

Mr. Wlaschin testified that he helps the Secretary of State execute and enforce federal and state laws related to elections. [GJT III 65]. At the time of the 2020 presidential election, Barbara Cegavske was the Secretary of State in Nevada. [GJT III 66]. During the 2020 election, the electors were required to meet across the country on December 14th. [GJT III 67].

Mr. Wlaschin gave an overview of how votes occurred and were counted during the 2020 election. [GJT III 67-71]. Mr. Wlaschin testified that the meeting of the Electoral College was required to take place across the country on December 14, 2020. [GJT III 72].

The nominees for presidential elector are individuals identified by the major parties who, if their candidate wins, would be the ones who ultimately cast the electoral votes during the Electoral College. [GJT III 73]. The prevailing party of the popular vote's electors are the ones who become the qualified electors for the State of Nevada. [GJT III 74].

The Certificate of Ascertainment is a document that is required by federal law that lists the electors from the parties as well as the number of popular votes that those individuals received. [Id.]

Once the Certificate of Ascertainment is completed, it is submitted to four places: the Secretary of State; the Chief District Court Judge in the District of Nevada; the Archivist of the United States in Washington D.C.; and, the President of the U.S. Senate who is the Vice President of the United States. [GJT III 75].

The Certificates of Ascertainment have to be created not later than six days before the meeting of the Electoral College, which would have been December 8, 2020, and they, along with the Certificate of Votes are affirmed by the individuals who sign it who received the popular votes and who are the appropriate electors to cast their votes for the President of the United States.[Id.]

In Nevada, the Office of the Secretary of State works with the Governor's office to have the Certificate of Ascertainment documents drafted and signed by the Governor and the Secretary of State and that office sends the documents in.[GJT III 76].

The Certificate of Ascertainment for the 2020 election was submitted with the Democratic party electors receiving the highest number of popular votes.[GJT III 77]. The six Democratic electors were the duly qualified electors for the State of Nevada in the 2020 election. [GJT III 78]. Governor Sisolak and Secretary of State Barbara Cegavske signed the document on December 2, 2020. [Id.]

The Republican elector nominees were James DeGraffenreid, Durward James Hindle, III, Jesse Law, Michael McDonald, Shawn Meehan, and Eileen Rice. [Id.]

Mr. Wlaschin testified that there was a lawsuit filed by the Republican electors regarding the results of the 2020 Presidential election which was decided by the Nevada Supreme Court on December 8, 2020. [GJT III 80].

In order to submit everything to the President of the Senate, all existing litigation has to be concluded prior to what is considered a safe harbor day, which means that if there are questions about who had actually won the election and a need for a recount, that needs to be resolved at the state level, and the order from the Supreme Court clarified from the state Supreme Court that any question about who won was done. [GJT III 81-82].

The meeting of the Electoral College is about a 15-minute long meeting which starts with a roll call to identify the electors, then there is an oath taken by the electors pursuant to NRS 298, which states that they are going to vote for the individuals who have received the popular vote, then the electors receive an oath of office, the votes are tallied and the ballots are signed. [GJT III 82-83].

The Secretary of State is required to preside over the meeting pursuant to NRS 298.075.
 [GJT III 83]. The electors have to sign several documents at the meeting of the Electoral College

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including the pledge that they will be faithful electors, the oath, and the Certificate of Votes with seven copies that are prepared by the Office of the Secretary of State. [GJT III 83-84].

Mr. Wlaschin was shown Grand Jury Exhibit 5 and identified page 22 as the Certificate of Vote that his office prepared for the 2020 presidential election. [GJT III 84-85]. He identified page 25 as the certificate of final determination of contests concerning presidential electors that his office along with the Governor's Office prepares that is to confirm that any litigation that was related to the election had been concluded. [GJT III 86-87].

The election division mails the documents to the Secretary of State's Office, the Chief Judge of the District Court, the Archives, and the President of the U.S. Senate. [GJT III 87-88]. At some point, Mr. Wlaschin learned that the Republican elector nominees sent their own Certificate of Votes to the four locations and the Secretary of State received documents from them that he reviewed. [GJT III 89].

Mr. Wlaschin stated that the documents received from the Republican party were in a letter sized mail envelope that had a number of "bizarro documents." [GJT III 90]. They looked like they were put together in "like ten minutes" as opposed to an official document. [Id.] The name of the sender on the envelope was Mr. McDonald. [GJT III 90-91].

In response to receiving the documents, Mr. Wlaschin contacted the Archives to make them aware that they would be receiving these documents. [GJT III 91]. After discussing the documents with the Secretary of State, she asked Mr. Wlaschin to draft a letter and return the documents to the sender and sent it back. [GJT III 91-92].

Mr. Wlaschin contacted the Senate and the Archives and advised them to ignore the documents and that the correct documents are the ones that have the Secretary of State's name on them. [GJT III 92]. Mr. Wlaschin identified Exhibit 24 as the letter he drafted to send to Mr. McDonald along with the return of the documents from the Republican party. [GJT III 93].

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That letter advised Mr. McDonald that the documents he submitted did not meet the statutory requirement for filing with their office. [GJT III 93-94]. The Secretary of State's office did not make or retain a copy of the documents received from the Republican party because they determined that because they were "essentially invalid" they did not need to have a copy of them. [GJT III 94]. Exhibit 4, pages 2-20 are similar copies of the documents received and returned by the Secretary of State's office. [GJT III 95].

Following the election and after the Secretary of State's office drafted the Certificate of
Ascertainment, Mr. Hindle emailed Mr. Wlaschin regarding the list of electors because Mr.
Wlaschin had made an error on the Certificate of Ascertainment for the Republican party and put
the alternates and not the primaries on the Certificate that was signed by the Governor and the
Secretary of State.

Grand Jury Exhibit 19 is the email from Mr. Hindle regarding the Certificate of Ascertainment and copied to the email are Mr. DeGraffenreid, "McDonaldnv", Jessica Hanson, Jesse Law, and Shawn Meehan. [GJT III 96-97]. The email asking that the names of the Republican electors be corrected struck Mr. Wlaschin as odd because while he had made an error on the form, they did not win, so it seemed moot to have their names on the Certificate of Ascertainment properly. [GJT III 99].

Mr. Wlaschin testified that his office thoroughly investigated around 4-5,000 allegations of fraud related to the 2020 election and they determined that there were less than 200 identified that were worthy of criminal investigation. [GJT III 101].

# B. FACTS NOT INTRODUCED IN THE TESTIMONY BEFORE THE GRAND JURY

The Attorney General's Office was aware of information that it learned during its investigation or that was provided by counsel for the defendants that was not presented at the Grand Jury proceedings. Counsel for the defendants provided a letter dated December 1, 2023,

which outlined exculpatory evidence and information that the defense requested and the Attorney General was statutorily required to present to the Grand Jury.

The letter explained in part that at the time of the vote of the electors on December 14, 2020, the time within which to challenge the Order of Affirmance by the Nevada Supreme Court in the United States Supreme Court had not run. [See Letter (attached without exhibits) attached as Exhibit A].

The letter further explains that there was precedent for alternate electors related to the 1960 Presidential Election in Hawaii. This information was not presented to the grand jury.

Mr. Grosz testified that he obtained video from Right Side Broadcasting that included the voting by the Republican electors that took place on December 14, 2020. [GJT II 10]. Mr. Grosz testified that he obtained two videos: one containing the raw footage that was over an hour long; and one which he referred to as the edited version that was 38 minutes, 48 seconds.

The Attorney General's Office only presented the edited version of the video to the grand jury rather than the entirety of the footage. Included in the raw footage was an interview with Mr. Law where he discussed the purpose of the Republican electors' vote, stating, "We want to pull this right back into the courts...." (See raw video at 1:09:00)<sup>1</sup>

This statement did not appear in the edited video presented to the grand jury. Prior to the grand jury proceedings, the Nevada Attorney General's Office conducted a recorded proffer session with Mr.Chesebro<sup>2</sup>.

This proffer session included many exculpatory statements that were not presented to the grand jury. During the proffer, Mr. Chesebro described legal challenges taking place in Wisconsin, and explained a legal challenge that was won in the Wisconsin court in July, 2021 related to the 2020 Presidential election. (Exhibit B proffer part 2- 5:45). Mr. Chesebro explained

- <sup>1</sup> The video will be included on a thumb drive as Exhibit B and will be provided to the court with the instant Joint Memorandum of Points and Authorities
  - <sup>2</sup> The proffer session was broken down into 5 video clips which will be included on the thumb drive with Exhibit B

that there was precedent for alternate electors voting as this was the procedure that took place in the Hawaii 1960 election involving Kennedy and Nixon.

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Mr. Chesebro discusses many times during the recorded proffer that he believed that the Trump campaign might have beyond January 6th to win litigation based on a disagreement about the meaning of the 12th Amendment to the United States Constitution.

He explained that the Senate could cause a test case to go to the United States Supreme Court that could cause a delay in the counting of the electoral votes. (See e.g. Exhibit B part 2 at 19:53, part 4, 46:00).

Mr. Chesebro discusses his conversations with individuals from the Trump campaign including Justin Clark, Mike Roman, Boris Epshteyn, Rudy Giuliani, Josh Findlay, Judge
Troupis, and Matt Morgan regarding Nevada and whether Nevada Republican electors should vote absent a current legal challenge; however, no Nevada electors were involved in these discussions, and Mr. Chesebro never informed the Nevada electors that they should not vote if there is no ongoing legal challenge. (See Exhibit B part 2 43:00).

Mr. Chesebro (at part 2 1:04) discussed his response to an email about Jesse Binnall's legal challenge in Nevada and he was wondering if he was "planning on filing a cert petition."

While Mr. Chesebro discussed that if there was no challenge in Nevada there was no reason to vote with the Trump campaign, he never informed the Nevada electors of this information. (Part 2 1:04-1:08).

Mr. Chesebro discussed at length in his proffer the conditional language that he added to the Certificate of Votes for the Republican electors in Pennsylvania and New Mexico<sup>3</sup>. He explained that the Pennsylvania electors were concerned so he drafted the conditional language. He suggested to the Trump campaign that the language should also be added to the other

<sup>3</sup> The Certificate of Votes for Nevada that Mr. Chesebro provided to Nevada stated, "we, the undersigned, being the duly elected and qualified Electors...." The Certificate of Votes Mr. Chesebro provided to Pennsylvania and New Mexico stated, "We, the undersigned, on the understanding that it might later be determined that we are the duly elected and qualified Electors...."

states, but was told not to inform the Nevada electors of his suggested use of the conditional language, and Mike Roman (from the Trump Campaign) told him not to and said, "fuck those guys." (Exhibit B part 2 1:08:48; 1:11:00; 1:16:00; part 3 51:39).

Mr. Chesebro was asked to prepare documents for New Mexico right after he added the Pennsylvania conditional language, so he included that language in New Mexico, not because anyone asked for it, but because he had just done it for Pennsylvania, (Exhibit B part 2 1:13:00).

Mr. Chesebro never communicated the concerns which prompted the use of the conditional language to the Nevada electors. (Exhibit B part 2 1:16; part 3 51:39). Mr. Chesebro stated that he was giving the electors legal information, not legal advice.

He stated that he had no duty to look out for the Nevada electors; he was just telling them what the Trump campaign wanted them to know. He had no authority to contact the electors or look out for them because then he might be going against the advice of his actual client. (Exhibit B part 4 1:00).

None of the information about using the conditional language was shared with the electors from Nevada.

#### II. LEGAL STANDARD

In habeas corpus proceedings brought by one indicted in a crime, the court can only inquire into whether there exists any substantial evidence which, if true, would support a verdict of conviction. *Ex Parte Stearns, 68 Nev. 155, 159, 227 P.2d 971, 973 (1951), overruled in part on other grounds by Shelby v. District Court, 82 Nev. 213, 418 P.2d 132 (1966).* 

The court may not resolve a substantial conflict in the evidence because that is the exclusive function of the jury. *Id.* In assessing whether there is sufficient independent evidence of the corpus delicti, a reviewing court should assume the truth of the state's evidence and all reasonable inferences from it in a light most favorable to the state. *See State v. Aten, 130 Wash.* 2d 640, 927 P.2d 210, 219 (1996).

Probable cause to bind a defendant over for trial may be based on slight, even marginal, evidence because it does not involve a determination of guilt or innocence of an accused. *Sheriff v. Middleton, 112 Nev. 956 at 961, 921 P.2d at 286 (1996).* 

In *Graves v. Sheriff, 88 Nev. 436, 498 P.2d 1324, 1326 (1972),* the Supreme Court stated "[P]robable cause requires that the evidence be weighed toward guilt, though there may be room for doubt. The facts must be such as would lead a person of ordinary caution and prudence to believe and conscientiously entertain a strong suspicion. *Id. at 438.* 

The same standard that applies to probable cause for guilt applies to proof of the *corpus delicti. Middleton, 112 Nev. at 961-62, 921 P.2d at 285.* The first question to be determined is what evidence may be considered in determining whether the *corpus delicti* has been shown. It has long been established that the corpus delicti must be demonstrated by evidence independent of the confessions or admissions of the defendant. *Id. at 962, 921 P.2d at 286; In Re Kelly, 28 Nev. 491, 498, 83 P. 223, 225 (1905).* 

In *Midldleton*, the Court stated "[O]nce the state presents independent evidence that the offense has been committed, admissions and confessions may then be used to corroborate the independent proof. *Citing to Myatt v. State, 101 Nev. 761, 763, 710 P.2d 720 (1985).* However, all other relevant evidence may be considered. The corpus delicti may be established by purely direct evidence, partly direct and partly circumstantial evidence, or entirely circumstantial evidence. *Middleton at 962.* 

# III. LEGAL ARGUMENT

#### A. THE GRAND JURY IMPANELED IN CLARK COUNTY LACKED JURISDICTION TO RETURN A TRUE BILL IN THIS CASE

In Nevada, there are territorial limits to a grand jury's jurisdiction; a "grand jury may inquire into all public offenses triable in the district court or in a Justice Court, committed within

the territorial jurisdiction of the district court for which it is impaneled." NRS 172.105(Emphasis added).

The Nevada Supreme Court has held that the term "territorial jurisdiction" is a term of art that incorporates state statutes governing venue and, thus, the statute empowers a grand jury to inquire into an offense so long as the district court that empaneled the grand jury may appropriately adjudicate the defendant's guilt for that particular offense. *Martinez Guzman v. Second Judicial District Court in and for County of Washoe*, 136 Nev. 103,460 P.3d 443 (2020).

In other words, the grand jury for each district can only investigate and return true bills for cases where venue is proper under the Nevada statutes in the district wherein it is empaneled. Here, the grand jury lacked the jurisdiction to consider the offenses alleged in the Indictment. Mr. Meehan has filed contemporaneously with his Petition and this Joint Memorandum of Points and Authorities, a Motion to Dismiss and hereby incorporates the arguments contained in that motion.

### B. INSUFFICIENT EVIDENCE WAS PRESENTED TO ESTABLISH PROBABLE CAUSE FOR THE OFFENSES ALLEGED IN THE INDICTMENT

The evidence presented to the Grand Jury was not sufficient to establish probable cause to believe that the defendants committed the offenses of Offering False Instrument for Filing or Record, and Uttering Forged Instruments: Forgery.

Before a defendant may be held to answer in District Court, the State is required to establish by "substantial and competent evidence" that there is probable cause to believe that an offense has been committed and that the defendant committed it. *Sheriff v. Medberry*, 96 Nev. 202, 204, 606 P.2d 181, 182 (1980); NRS 172.155. Mr. Meehan understands that the finding of probable cause to support a criminal charge may be based on "slight or even marginal evidence...because it does not involve a determination of the guilt or innocence of the accused." *Sheriff v. Hodes*, 96 Nev. 184, 186, 606 P.2d 178, 180(1980). "To commit an accused for trial,

the State is not required to negate all inferences which might explain his conduct, but to present enough evidence to support a reasonable inference that the accused committed the offense." *Kinsey v. Sheriff*, 87 Nev. 361, 363, 487 P.2d 340, 341(1971).

An inference is unreasonable if it is so remote as to be unwarranted. *State v. Von Brincken*, 86 Nev. 769, 773, 476 P.2d 733, 735 (1970). Although the Court has stated that probable cause may be based on slight or marginal evidence, probable cause also requires that the evidence be weighed toward guilt. *Sheriff v. Dhadda*, 115 Nev. 175, 180, 980 P.2d 1062, 1065 (1999).

In the instant case, the evidence presented was not weighed toward guilt to sustain the charges contained in the Indictment against the defendant.

1. Insufficient Evidence was Presented to Establish Probable Cause That Defendants Committed the Offense of Offering False Instrument for Filing or Record (Count I) Under Count I, Defendants were indicted for a violation of NRS 239.330 (Offering False Document for Filing or Record), a Category "C" Felony.

The indictment claims that defendants "did knowingly procure or offer a false or forged instrument to be filed, registered or recorded in a public office, which instrument, if genuine, might be filed, registered or recorded in a public office under any law of this State or of the United States," namely the "false or forged instrument titled, 'CERTIFICATE OF THE VOTES OF THE 2020 ELECTORS FROM NEVADA.'" The State failed to establish multiple elements. NRS 239.330 requires that a person knowingly offers a false or forged document.

As for falsity, the State failed to provide any evidence of falsity. Further, the State did not provide evidence that the document "if genuine, might be filed, registered or recorded in a public office under any law of this State or of the United States." NRS 239.330(1). The State failed to establish probable cause that Defendant knowingly procured or offered a false or forged instrument to be filed.

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The State did not present any evidence that any Defendant had knowledge that the statements contained in the Certificate of Vote submitted by the Republican party were false. First, each of the Defendants was nominated as a delegate at the Nevada Republican State Convention as a Presidential Elector (See Exhibit C, presented in Grand Jury Exhibit 27 bates GJ 000050).

Second, at the time the vote took place, the party still had time to challenge the decision of the Nevada Supreme Court, and no evidence was presented that any of the defendants had knowledge that there would be no further judicial challenges. Additionally, the State failed to show that the document, if genuine, could be filed, registered or recorded in a public office. Indeed-and further showing that there was no intent to deceive-the Certificate had numerous flaws that meant it could not, "if genuine," have been filed. First, because as Ms. Vincent testified at the grand jury, the document could not have been filed because it did not comply with the Electoral Count Act of 1887 (See GJT I 18). Second, the document did not include the seal of the State of Nevada. Third, the Certificate was not signed by the Secretary of State and the Governor. Fourth, it did not match the Certificate of Ascertainment. Evidencing the lack of intent to defraud or trick anyone, the Defendants did not try to create a certificate that could have been mistaken for a real one.

In *State v. Price*, 94 Wash. 2d 810, 819, 620 P.2d 994, 999 (1980), the Washington Supreme court analyzed a parallel statute, RCW 40.16.030, which provides:

Every person who shall knowingly procure or offer any false or forged instrument to be filed, registered, or recorded in any public office, which instrument, if genuine, might be filed, registered or recorded in such office under any law of this state or of the United States, shall be punished by imprisonment in a state correctional facility for not more than five years, or by a fine of not more than five thousand dollars, or by both.

That court held that an instrument only falls within the reach of that forged filing statute if the document:

is required or permitted by statute or valid regulation to be filed, registered, or recorded in a public office if (1) the claimed falsity relates to a material fact represented in the instrument; and (2a) the information contained in the document is of such a nature that the government is required or permitted by law, statute or valid regulation to act in reliance thereon; or (2b) the information contained in the document materially affects significant rights or duties of third persons, when this effect is reasonably contemplated by the express or implied intent of the statute or valid regulation which requires the filing, registration, or recording of the document.

94 Wash. 2d at 819, 620 P.2d at 999.

Here, of course, the State did not accept the Certificate as real, and it was not required to under the law due to its obvious defects.

While "false" and "forged"<sup>4</sup> in NRS 239.330 should not be interpreted as synonymous7 and while it is not an element of the crime that the State actually be defrauded, the requirement that the forgery or falsity must be of such a nature that "if genuine, [the forged or falsified document] might be filed, registered or recorded in a public office" must also be given meaning.<sup>5</sup>

Thus, the falsity must be of such a nature that, if genuine, it could be filed, registered or recorded. *Generes v. Justice Court*, 106 Cal. App. 3d 678, 681, 165 Cal. Rptr. 222, 224 (1980), addresses a similar crime. That case involved an allegation that the defendant willfully, unlawfully, and knowingly procured and offered to be filed, registered, and recorded in the county recorder's office a false grant deed, and the California court held that nobody needed to be actually defrauded. However, the Court noted "[t]he crime is complete when the deed has been prepared so that upon its face it will have the effect of defrauding one who acts upon it as genuine." Id. (internal citation and quotation marks omitted).

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<sup>5</sup> "Effect must be given, if possible, to every word of a statute." Id.

<sup>&</sup>lt;sup>4</sup> Zweifel v. State, 89 Nev. 242, 243, 510 P.3d 872, 873 (1973).

1	Here, upon its face, nobody could act upon the Certificate; it could not have fooled	
2	anyone, was not intended to, and in fact did not fool anyone.	
3	2. Insufficient Evidence Was Presented to Establish Probable Cause That the Defendents Committed the Offense of Uttering Forged Instruments, Forger	
4	<b>Defendants Committed the Offense of Uttering Forged Instruments: Forgery</b> (Count II)	
5	a. Count II Fails Because the Certificate was not Forged	
6	Under count II, the defendants were indicted for a violation of NRS 205.110	
7	(Uttering Forged Documents; Forgery), a Category D Felony. The Indictment claims that the defendants: knowing the same to be forged or altered, and with	
8	intent to defraud, uttered, offered disposed of or put off as true, or had in his possession with intent so to utter, offer, dispose of or put off, a forged writing,	
9	instrument or other thing, the false making, forging or altering of which is punishable as forgery, to wit:	
10	punishable as forgery, to wit.	
11	The Defendants uttered, offered, disposed of or put off as true a forged writing, instrument or other thing titled, "CERTIFICATE OF THE VOTES OF THE 2020	
12	ELECTORS FROM NEVADA" to the President of the United States Senate, and/or the Archivist of the United States, and/or the Nevada Secretary of State,	
13	and/or the Chief Judge of the District Court for the District of Nevada, with the	
14	intent to defraud, the Defendants being criminally liable under one or more of the following principles of criminal liability, to wit: (1) by directly committing this	
15	crime; and/or (2) pursuant to a conspiracy to commit this crime, with the intent that this crime be committed.	
16	The statute, NRS 205.110 ("Uttering forged instruments: Forgery") provides:	
17	Every person who, knowing the same to be forged or altered, and with intent to	
18	defraud, shall utter, offer, dispose of or put off as true, or have in his or her possession with intent so to utter, offer, dispose of or put off any forged writing,	
19	instrument or other thing, the false making, forging or altering of which is punishable as forgery, shall be guilty of forgery the same as if the person had	
20	forged the same.	
21	NRS 205.090 provides "A person who falsely makes, alters, forges or counterfeits any	
22	record, or other authentic matter of a public nature with the intent to damage or defraud any	
23	person, body politic or corporate is guilty of forgery" In essence, NRS 205.100 extends	
24	the crime of forgery to persons who utter forged documents, even if they did not forge the	
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document themselves. NRS 205.085(2) supplies the following definition for the words "forge," "forgery," "forged," and "forging:"

...false making, "counterfeiting" and the alteration, erasure or obliteration of a genuine instrument in whole or in part, the false making or counterfeiting of the signature of a party or witness, real or fictitious, and the placing or connecting together with intent to defraud, of different parts or the whole of several genuine instruments.

Thus, Count II has at its core forgery, and requires that defendants knowingly offered a forged document or conspired to do so, with the specific intent to defraud. Count II necessarily fails because none of the conduct at issue is forgery. That is so because the signatures on the Certificate itself are genuine. It is black letter law that forgery cannot be said to have been committed under such circumstances, when the maker of the document is indeed the signer, regardless of the accuracy of the content of the document. Indeed, as detailed below, numerous authorities draw a distinction between offering a forged document and offering a genuinely executed document that contains false information.

These authorities make plain that the latter is not "forgery." As the United Supreme Court has observed, the question of forgery turns on the genuineness of the execution of the document, rather than on a misrepresentation of facts in a document. *Gilbert v. U.S.*, 370 U.S. 650, 658, 82 S. Ct. 1399, 8 L. Ed. 2d 750 (1962) (stating that "where the 'falsity lies in the representation of facts, not in the genuineness of execution,' it is not forgery") (quoting *Marteney v. U.S.*, 216 F.2d 760, 763-64 (10th Cir. 1954)).

The Nevada Supreme Court has likewise explained:

...the essence of forgery is the making of a false writing. 'It is an indispensable requirement of forgery that the writing be false. It may have been false in its inception or may have been made so by subsequent tampering with what was originally genuine; but it must be a false writing. In this connection it is essential to distinguish between a false instrument and false statements in an instrument. No amount of misstatement of fact and no amount of fraud will make a false

instrument out of what purports to be the very instrument which it is in fact and in law.'

Winston v. Warden, Nev. State Prison, 86 Nev. 33, 34, 464 P.2d 30, 31 (1970) (citing and quoting from Perkins on Criminal Law, p. 296 (Foundation Press 1957)) (emphasis added); also citing *DeRose v. People*, 171 P. 359, 360 (Colo. 1918); *Marteney v. United States*, 216 F.2d 760, 763-64 (10th Cir. 1954); cases collected, Annot., 41 A.L.R. 229.)

In *Winston* the defendant signed his true signature to a check but had insufficient funds; the court concluded the signing of the check was not forgery because the instrument was genuine, notwithstanding false statements it contained. Id. at 35, 464 P.2d at 31. Here, likewise, the signatures are all genuine and the Certificate is not forged.

In *Bratcher v. City of Las Vegas*, 113 Nev. 502, 510, 937 P.2d 485, 490-91 (1997), a civil case, a property owner contended developers had committed forgery by signing a petition representing they owned a property they had sold to her. Relying on *Winston* and examining NRS 205.090, the Supreme Court held "the forgery statute is inapplicable because forgery involves a false document, not mere misstatements of fact within a document."

Other states have also made clear the distinction between a forged document and a document containing false statements. See, e.g., *State v. Smith*, No. 44087-3-II, 2014 Wash. App. LEXIS 763, at \*6-7 (Ct. App. Apr. 1, 2014) ("Even if Smith was not authorized to fill out the daily cash reports in any manner she chose, the State presented insufficient proof of forgery because the daily cash report itself was genuine; i.e., Smith was the maker of the report."); see also *State v. Esquivel*, 71 Wn. App. 868, 870, 863 P.2d 113 (1993) ("Forgery does not involve the making of false entries in an otherwise genuine document.") *State v. Mark*, 94 Wn.2d 520, 523, 618 P.2d 73 (1980) ("A misrepresentation of fact, so long as it does not purport to be the act of someone other than the maker, does not constitute forgery."); *Dexter Horton Nat'l Bank v. U* 

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*S. Fid. & Guar. Co.*, 149 Wash. 343, 348, 270 P. 799 (1928) ("When the crime is charged to be the false making of a writing, there must be the making of a writing which falsely purports to be the writing of another."); accord *State v. Marshall*, 25 Wn. App. 240, 242, 606 P.2d 278 (1980) (genuine Medicaid reimbursement forms containing false information did not support forgery conviction).

As enthusiastic as he is to prosecute the defendants and while the Attorney General may disagree with the content of the Certificate, the Certificate cannot be considered a forged document. None of the defendants were trying to pass off their Certificate as anything other than what they stated it to be. Indeed, they made clear to the world what they were doing in a televised ceremony. Thus, this is not forgery and Count II must be dismissed.

#### b. The State Presented Insufficient Evidence of Intent

Even putting aside the central problem that even if a document contains false information, that alone does not constitute forgery, the state presented insufficient evidence of intent to support Count II.

In order to sustain the Indictment the State needs to show that the defendants uttered, offered, disposed of or put off as true a forged writing with the intent to defraud. No evidence was presented showing that any of the defendants ever possessed the requisite intent to defraud.

To the contrary, the evidence presented showed that the defendants/signers of the Certificate, submitted a document showing that as Republican electors (who were elected at Nevada's Republican Convention) they were selecting then President Trump and then Vice-President Pence as their nominees in the event that later challenges were successful.

This is demonstrated by Grand Jury Exhibit 27 (Bates numbered GJ 000195) which is an
 email exchange between Mr. DeGraffenried and Mr. Chesebro which states in part, "the purpose

of having the electoral votes sent 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...." (See Exhibit D).

It is further demonstrated in the video of the December 14, 2020 Carson City Ceremony by the interview of James Marchant, an Alternate Presidential Elector for the Nevada Republican Party, who explained the purpose of the provisional ballots as follows: "We're going to be prepared, just in case, once this works its way through courts or whatever remedies President Trump comes up with, or his team...." [Grand Jury Exhibit 6A at 3:50].

Mr. Marchant further expounded on the 1960 Nixon and Kennedy precedent. Mr. Meehan also made it clear in a Wall Street Journal interview stating, "We're preserving our right while there's ongoing litigation." See Exhibit E, which was included in the defendants' exculpatory evidence submission and which the State failed to present to the grand jury.

The Attorney General of New Mexico conducted an investigation into its Republican alternate electors and determined that no crime occurred. This was based in part on the conditional language that was added by Mr. Chesebro (see Final Report from New Mexico Attorney General (attached as Exhibit F). Mr. Chesebro, in his proffer, stated that he just happened to add the language to the New Mexico paperwork, the intent by the electors in New Mexico was the same as the electors in Nevada– the intent was not to defraud– the intent was to preserve their votes in case there was a determination at a later date either in the courts or in Congress that Trump had in fact won the election.

Mr. Chesebro's unsolicited addition of the conditional language did not change the intent of the New Mexico electors. The electors here as the electors in New Mexico did not have the intent to defraud; therefore, Count II should be dismissed.

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C.

# THE STATE FAILED TO PRESENT EXCULPATORY EVIDENCE AND PRESENTED FALSE OR MISLEADING TESTIMONY

NRS 172.145 provides in relevant part: If the district attorney is aware of any evidence which will explain away the charge, the district attorney shall submit it to the grand jury. "Exculpatory evidence" is defined as evidence that will explain away the charge, and the prosecutor is required to disclose all such evidence to the grand jury. *King v. State*, 116 Nev. 349, 359, 998 P.2d 1172, 1178 rehearing denied (2000).

The State presented testimony from Mr. Chesebro which it knew was contradicted by information given during Mr. Chesebro's proffer. This information not only confused the grand jury, it misled them to believe things that were completely untrue that the Attorney General knew were untrue.

The Attorney General was apprised by counsel representing the defendants when they were served with Marcum notices that exculpatory information existed. Much of this information given to the Attorney General by counsel for the defendants was provided to the Grand Jury in the exhibits, but none of it was presented during the testimony.

One key fact that the Attorney General established through Mr. Chesebro is that all litigation had concluded in Nevada and that there was no reason then for the Republican electors to cast votes. This was untrue.

While the Nevada Supreme Court had denied the appeal regarding the election, the parties still had time within which to file a Petition for Writ of Certiorari to the United States Supreme Court. United States Supreme Court Rule 13(1) provides that an appeal to the United States Supreme Court can be filed within 90 days after the entry of judgment.

When the Republican electors met on December 14, 2020, they were within that 90-day period. This information was directly provided to the Attorney General's office (See Exhibit A).

-31-

The grand jury was led to believe, based on the testimony of Mr. Chesebro and Mr. Grosz that there could be no further legal challenges in Nevada. Mr. Chesebro, along with other attorneys, filed a Petition for Writ of Certiorari from Wisconsin to the United States Supreme Court on December 29, 2020 (See Exhibit G).

Mr. Chesebro clearly knew that there was still time to file a challenge in Nevada, yet the grand jury was misled by both his testimony and the testimony of Mr. Grosz (who is not an attorney) that there could not be any further legal challenges.

The Attorney General elicited testimony from its own investigator Mr. Grosz regarding the legal challenges in Nevada to the 2020 election. Mr. Grosz testified that the Order of Affirmance from the Nevada Supreme Court "affirmed the lower court ruling and would have ended the legal challenges at that point that were made by the Republican electors." (GJT III 62emphasis added).

First, there was no showing that the investigator had first had knowledge regarding the legal challenges. Second, the Attorney General knew at the time of the testimony that the legal team for the Republican party was still discussing in December, 2020, what the next steps would be in the legal challenges, and further knew that the party still had time to file a Petition for Writ of Certiorari to the United States Supreme Court.

The Order from the Nevada Supreme Court did not necessarily end the legal challenges that could have been made. The grand jury was misled into believing that no further challenges could be made to the Nevada Election.

The intent of the defendants was described by Mr. Law during the raw footage of the video obtained from Right Side Broadcasting Network that was only provided to the grand jury in an edited format. Mr. Law's statement that, "We want to pull this right back into the courts...."

was not presented and should have been pursuant to NRS 47.120<sup>6</sup> as it shows the defendants' intent and is, therefore, exculpatory.

Additionally, Mr. Chesebro gave false information to the grand jury that the Attorney General knew was false. Mr. Chesebro testified that he asked Mr. DeGraffenreid whether all court challenges in Nevada were final and that he received no response (GJT II 35-36). This testimony was false; Mr. DeGraffenreid responded to Mr. Chesebro that he had forwarded the question to the party's lead attorney, Jesse Binnall as the attorney would be more knowledgeable as to the status of the litigation in Nevada.

While this email was buried in an exhibit provided to the Grand Jury, the Attorney
General allowed the grand jury to believe that there was no response to Mr. Chesebro's question
on pending litigation. Because the State failed to present evidence which was exculpatory and
would have shown the lack of intent to defraud, the Indictment should be dismissed.

# IV. JOINDER

Defendant/Petitioner Shawn Meehan hereby joins and adopts the arguments contained within the Petitions for Writ of Habeas Corpus (pre-trial) which have been filed and/or will be filed on behalf of any of the other 5 named defendants in this matter that may relate to the charges against him.<sup>7</sup>

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<sup>&</sup>lt;sup>6</sup> NRS 47.120 provides in part: "When any part of a writing or recorded statement is introduced by a party, the party may be required at that time to introduce any other part of it which is relevant to the part introduced" <sup>7</sup> Petitioner Meehan hereby incorporates by reference each and every Exhibit submitted on behalf of the Defendants in the Joint Memorandum of Points and Authorities on file herein.

1	V. CONCLUSION
2	Based on the above, Defendant Shawn Meehan respectfully request that this Honorable
3	Court grant his Petitions for Writ of Habeas Corpus and dismiss the Indictment against him.
4	DATED this 29 <sup>th</sup> day of January, 2024.
5	
6	CHATTAH LAW GROUP
7	/s/ Sigal Chattah
8	SIGAL CHATTAH, ESQ. Nevada Bar No.: 8264
9	CHATTAH LAW GORUP
10	5875 S. Rainbow Blvd. #204 Las Vegas, Nevada 89118
11	Attorney for Defendant Shawn Meehan
12	CERTIFICATE OF ELECTRONIC SERVICE
13	I hereby certify that service of the above and forgoing Petition was served via electronic
14	e-filing to the Clark County District Attorney's Office at motions@clarkcountyda.com on this
15	<u></u>
16	By: <u>/s/ Sigal Chattah</u>
17	An employee of Chattah Law Group
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	-31-

1/29/2024 4:10 PM Steven D. Grierson CLERK OF THE COUR 1 PET MONTI JORDANA LEVY 2 Nevada Bar No. 8158 WRIGHT MARSH & LEVY 3 300 S. Fourth St., Ste. 701 Las Vegas, Nevada 89101 A (702) 382-4004 mlevy@wmllawlv.com 5 Attorney for Defendant EILEEN RICE 6 DISTRICT COURT 7 CLARK COUNTY, NEVADA 8 STATE OF NEVADA. 9 Plaintiff. 10 vs. CASE NO. : C-23-379122-6 DEPT. NO.: XVIII 11 EILEEN RICE, Date of Hearing: 12 Time of Hearing: Defendant. 13 14 PETITION FOR WRIT OF HABEAS CORPUS AND MEMORANDUM OF POINTS AND AUTHORITIES 15 THE HONORABLE JUDGE OF THE EIGHTH JUDICIAL DISTRICT TO: 16 COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK: 17 TO: SHERIFF OF CLARK COUNTY, KEVIN MCMAHILL, AND HIS 18 COUNSEL, DISTRICT ATTORNEY STEVEN B. WOLFSON 19 COMES NOW, the Defendant/Petitioner, EILEEN RICE, by and 20 through her attorney, MONTI JORDANA LEVY, ESQ., of WRIGHT MARSH 21 & LEVY, and states: 22 1. That Attorney for Petitioner is a duly qualified and 23 licensed attorney, practicing in Las Vegas, State of Nevada; 24 2. That Petitioner makes application for a Writ of Habeas 25 Corpus; 26 3. That Petitioner is restrained of her liberty in the 27 constructive custody of Kevin McMahill, Sheriff of Clark County, 28 currently not in custody, under Indictment before this Court;

APP 0305

**Electronically Filed** 

4. That said constructive restraint of Petitioner's liberty is unlawful because the State of Nevada failed to present exculpatory evidence in violation of Nevada law, and failed to present sufficient evidence to establish probable cause to sustain the charges in the Indictment;

5. That Petitioner consents that if this Petition is not decided within 15 days before the date set for trial, the Court may, without notice or hearing, continue the trial to such date as it designates; Petitioner has previously waived her right to speedy trial;

11 6. That Petitioner consents that if any party appeals the 12 Court's ruling and the appeal is not determined before the date 13 set for trial, the trial date shall be vacated and the trial 14 postponed unless the Court otherwise orders;

7. That Petitioner's trial is scheduled for March 11,
2024, in Department XVIII, of the above-entitled Court, with
Calendar Call scheduled for March 4, 2024;

8. That no other Petition for Writ of Habeas Corpus has
 heretofore been filed on behalf of Petitioner in this case;
 WHEREFORE, Petitioner prays that this Honorable Court
 direct the County Clerk to issue a Writ of Habeas Corpus
 directed to the Sheriff of Clark County, Nevada instructing said
 Sheriff to produce the body of the Petitioner before the Court.
 DATED this 29<sup>7h</sup> day of January, 2024.

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MONTI JORDANA LEV Nevada Bar No. 8158 Attorney for Defendant EILEEN RICE

-2-

1	NOTICE OF MOTION
2	TO: THE STATE OF NEVADA, Plaintiff:
3	PLEASE TAKE NOTICE that the undersigned will bring the
4	foregoing PETITION FOR WRIT OF HABEAS CORPUS on for hearing
5	before the above-entitled Court on the day of
6	, 2024, at the hour of a.m./p.m., or as soon
7	thereafter as counsel may be heard on this matter.
8	DATED this 29 <sup>th</sup> day of January, 2024.
9	
10	MONTI JORDANA (LEVY
11	Nevada Bar No. 8158 WRIGHT MARSH & LEVY
12	300 S. Fourth St. Ste. 701
13	Las Vegas, Nevada 89101 (702) 382-4004 Mlauwûrmllawlu gam
14	Mlevy@wmllawlv.com Attorney for Defendant EILEEN RICE
15	EILEN RICE
16	
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	-3- ADD 0207

1	AFFIDAVIT OF COUNSEL
2	STATE OF NEVADA
3	) ss: County of Clark )
4 5	MONTI JORDANA LEVY, ESQ., being first duly sworn, according
5	to law, upon oath, deposes and says:
7	1. AFFIANT is counsel for Defendant/Petitioner, EILEEN
, 8	RICE, in the above-entitled matter;
9	2. AFFIANT has read the foregoing Petition and knows the
10	contents thereof; that the same is true of her own knowledge,
11	except as to those matters therein stated upon information and
12	belief, and as to those matters she believes them to be true;
13	3. Defendant/Petitioner, EILEEN RICE, has authorized
14	AFFIANT to make the foregoing application for relief.
15	Malfordan
16 17	WONII JORDANA DEVI, ESQ.
18	STATE OF NEVADA )
19	) ss: COUNTY OF CLARK )
20	
21	SIGNED and SWORN to (or affirmed) before me
22	this 29th day of January 2024.
23	BY: MONTI JORDADA LEVY
24	Delus K. Caroult
25	NOTARY PUBLIC
26	DEBRA K. CAROSELLI Notary Public, State of Nevada No. 93-0213-1
27	My Appt. Exp. Oct. 27, 2025
28	

1	MEMORANDUM OF POINTS AND AUTHORITIES
2	I. JOINDER
3	Defendant/Petitioner EILEEN RICE hereby joins and adopts
4	the arguments contained within the Petitions for Writ of Habeas
5	Corpus (pre-trial) which have been filed and/or will be filed on
6	behalf of any of the other 5 named defendants in this matter
7	that may relate to the charges against her.
8	II. JOINT MEMORANDUM
9	Defendants Michael McDonald, Jesse Law, and Eileen Rice
10	have filed contemporaneously with this Petition, a joint
11	MEMORANDUM OF POINTS AND AUTHORITIES in support of their
12	Petitions for Writ of Habeas Corpus. Ms. Rice hereby
13	incorporates all assertions of facts and the arguments contained
14	within that Joint Memorandum and respectfully requests that this
15	Honorable Court grant her Petition.
16	
17	Respectfully Submitted,
18	
19	MONTI JORDANA LEVY
20	Nevada Bar No. 8158 WRIGHT MARSH & LEVY
21	300 S. Fourth St., Ste. 701 Las Vegas, Nevada 89101
22	(702) 382-4004 mlevy@wmllawlv.com
23	Attorney for Defendant EILEEN RICE
24	
25	
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Electronically Filed 1/29/2024 4:10 PM Steven D. Grierson CLERK OF THE COURT

1	CLERK OF THE COURT
2	RICHARD A. WRIGHT, ESQ. Nevada Bar No. 886
3	WRIGHT MARSH & LEVY 300 S. Fourth ST., Ste 701
4	Las Vegas, NV 89101 Phone: (702) 382-4004
5	Fax: (702) 382-4800 rick@wmllawlv.com
6	Attorney for Michael James McDonald
7	MARGARET A. MCLETCHIE Nevada Bar No. 10931
8	MCLETCHIE LAW 602 South Tenth St.
9	Las Vegas, Nevada 89101 Telephone: (702) 728-5300
10	Fax: (702) 425-8220 Email: maggie@nvlitigation.com
11	Counsel for Defendant Jesse Law
12	MONTI JORDANA LEVY, ESQ. Nevada Bar No. 8158
13	WRIGHT MARSH & LEVY 300 S. Fourth St., Ste. 701
14	Las Vegas, Nevada 89101 (702) 382-4004
15	mlevy@wmllawlv.com Attorney for Eileen Rice
16	DISTRICT COURT
17	CLARK COUNTY, NEVADA
18	STATE OF NEVADA, )
19	) Plaintiff, )
20	) ) CASE NO.: C-23-379122-4
21	) C-23-379122-3 MICHAEL JAMES MCDONALD, ) C-23-379122-6
22	JESSE REED LAW, ) EILEEN RICE, ) DEPT No.: XVIII
23	)
24	Defendants. ))
25	JOINT MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
26	DEFENDANTS' PETITIONS FOR WRIT OF HABEAS CORPUS
27	COMES NOW, Defendants, MICHAEL JAMES MCDONALD, JESSE REED
28	LAW, and EILEEN RICE, by and through their attorneys, RICHARD A

1	WRIGHT, MARGARET MCLETCHIE, and MONTI JORDANA LEVY, ESQ., and
2	hereby submit their JOINT MEMORANDUM OF POINTS AND AUTHORITIES
3	in support of their PETITIONS FOR WRIT OF HABEAS CORPUS filed
4	contemporaneously to this Memorandum.
5	Dated this 29 <sup>th</sup> day of January, 2024.
6	
7	<u>/s/ RICHARD A. WRIGHT</u> RICHARD A. WRIGHT, ESQ.
8	Nevada Bar No. 886 WRIGHT MARSH & LEVY
9	300 S. Fourth ST., Ste 701 Las Vegas, NV 89101
10	Phone: (702) 382-4004 Fax: (702) 382-4800
11	rick@wmllawlv.com Attorney for Michael James McDonald
12	
13	<u>/s/ MARGARET A. MCLETCHIE</u> MARGARET A. MCLETCHIE Novedo Dom No. 10021
14	Nevada Bar No. 10931 MCLETCHIE LAW
15	602 South Tenth St. Las Vegas, Nevada 89101 Malarhara: (702) 728 5200
16	Telephone: (702) 728-5300 Fax: (702) 425-8220 Email: maggie@nvlitigation.com
17	Counsel for Defendant Jesse Law
18	/S/ MONTI JORDANA LEVY
19	MONTI JORDANA LEVI MONTI JORDANA LEVY, ESQ. Nevada Bar No. 8158
20	WRIGHT MARSH & LEVY 300 S. Fourth St., Ste. 701
21	Las Vegas, Nevada 89101 (702) 382-4004
22	mlevy@wmllawlv.com Attorney for Eileen Rice
23	Accorney for Effeen Kice
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	-2- APP 0311

1	MEMORANDUM OF POINTS AND AUTHORITIES
2	I. JOINDER
3	Defendants, MICHAEL JAMES MCDONALD ("Mr. McDonald"), JESSE
4	REED LAW ("Mr. Law"), and EILEEN RICE ("Ms. Rice") hereby join
5	and adopt the arguments contained within the Petitions for Writ
6	of Habeas Corpus (pre-trial) which have been filed and/or will
7	be filed on behalf of any of the other 3 named defendants in
8	this matter that may relate to the charges against them.
9	II. INTRODUCTION
10	Attorney General Ford publicly stated that Nevada law does
11	not punish the conduct at issue in this case. Last legislative
12	session, he testified in favor of a bill designed to make the
13	conduct at issue illegal and create harsh punishments for it,
14	plainly stating his view that existing law "did not directly
15	address the conduct in question." <sup>1</sup> Then, just before the
16	applicable statute of limitations expired, the State suddenly
17	convened a grand jury, which resulted in the indictment of the
18	six defendants for purported violations of NRS 239.330 (a
19	violation contained in Nevada's Public Records Law Chapter) and
20	NRS 205.110 (a violation contained in Nevada's Property Crimes
21	Chapter).
22	However, the grand jury was calculatedly impaneled in Clark
23	County-while grand juries in Clark County might be more likely
24	to return a true bill in a case like this, they only have
25	
26	Jacob Solis and Gabby Birenbaum, "AG Ford: 'Nothing changed'
27	ahead of decision to charge Nevada fake electors, December 12, 2023, the Nev. Indep. (Dec. 12, 2023 5:09 PM)
~ ~	bttpa.//thenewadaindependent com/antiale/ag ford nothing

<sup>28</sup> https://thenevadaindependent.com/article/ag-ford-nothingchangedahead-of-decision-to-charge-nevada-fake-electors (last visited Jan. 26, 2024).

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jurisdiction over "crimes committed within the territorial jurisdiction of the district court for which it is impaneled." NRS 172.105. Thus, as more fully detailed in the Motion to Dismiss, the indictment must be dismissed for lack of jurisdiction.

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Even if the grand jury had jurisdiction, the charges still 6 cannot stand. NRS 239.330 and NRS 205.110, the statutes under 7 which the defendants were indicted, do not address the conduct at issue. Instead, the charges are an effort to harshly punish defendants by trying to fit a square peg in a round hole. With 10 regard to Count I (NRS 239.330), the State failed to present 11 sufficient evidence of any knowing falsity, or any evidence that 12 the Certificate "if genuine, might be filed, registered or 13 recorded in a public office under any law of this State or of 14 the United States," an element of NRS 239.330(1) that cannot be 15 ignored. With regard to Count II, not only is there insufficient 16 evidence of the requisite intent to defraud, the charge fails as 17 a matter of law because the document is genuine, i.e., the 18 signatures are genuine. As case law makes plain, there is a 19 distinction between offering a forged document and offering a 20 genuine document that contains false information and the latter 21 is not "forgery." 22

Even if the charges were applicable and the grand jury had 23 jurisdiction, the Indictment must be dismissed for yet another 24 reason: the State failed to provide exculpatory evidence. One of 25 its investigators testified that the legal challenges were all 2.6 "ended" [GJT III 62]. The State knew this to be untrue; yet Mr. 27 Law's publicly announced statement that "[w]e want to pull this 2.8

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right back into the courts...." was not presented to the grand jury.

For all these reasons, as much as it would like to, the State cannot punish the defendants.

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#### III. PROCEDURAL BACKGROUND

On December 6, 2023, the State of Nevada through its Attorney General, Aaron D. Ford, filed an Indictment in this court charging Mr. McDonald, Mr. Law, and Ms. Rice, along with James Walter DeGraffenreid III, ("Mr. DeGraffenreid"), Durward James Hindle III ("Mr. Hindle"), and Shawn Michael Meehan ("Mr. Meehan") with one count of Offering False Instrument for Filing or Record, and one count of Uttering Forged Instruments: Forgery.

The Indictment was filed pursuant to a True Bill returned by the Grand Jury empaneled in the Clark County District Court on December 5, 2023, following testimony the Grand Jury received on November 14, 2023, November 28, 2023, and December 5, 2023.

On December 18, 2023, all six defendants appeared in this Court via audio/visual transmission and entered pleas of "Not Guilty." All six defendants waived their right to a speedy trial, and trial is set to commence on March 11, 2024.

#### IV. GRAND JURY TESTIMONY

On November 14, 2023, Miriam Vincent ("Ms. Vincent") testified. Ms. Vincent testified that she works for the Office of the Federal Register, which is part of the National Archives and Records Administration as the acting director of Legal

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Affairs and Policy. [Grand Jury Transcript Volume I "GJT I" 10]. 1 Ms. Vincent testified that her office publishes the daily Federal 2 3 Register and has been delegated duties that are assigned by the archivist including administrating the Electoral College and the 4 Constitutional Amendment process. [GJT I 11-12]. Ms. Vincent 5 testified that the National Archives and Records Administration 6 collects, stores and maintains all permanent federal records for 7 the Federal government including presidential documents and 8 documents related to the Electoral College. [GJT I 12]. Ms. 9 10 Vincent testified that her office receives paper Certificates of Ascertainment and Vote that are secured in a safe at the Office 11 of the Federal Register. [GJT I 14]. After one to three years 12 those certificates are moved to the National Archives holding 13 14 where they are stored with all of the other permanent federal 15 records from the Electoral College. [Id.]. Following the 2020 presidential election, the archives received documents from the 16 Nevada Secretary of State related to that election. [GJT I 15]. 17 The Certificate of Ascertainment, Certificate of Vote and 18 Certificate of Final Determination were received and are stored 19 20 in the archives. [GJT I 15].

Ms. Vincent testified that another set of documents was received following the 2020 presidential election which purported to include Nevada's Certificate of Vote. [GJT I 21]. On December 22, 2020, Ms. Vincent's office received the forms located in Grand Jury Exhibit 4 and determined the forms were non-official certificates; they did not come from the State of

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Nevada though they purported to vote for Donald Trump and Mike 1 Pence for President and Vice President. [GJT I 21-22]. When 2 3 these documents were received, they were scanned and made available to the State of Nevada and the National Archives and 4 Record Administration and the Office of the Inspector General, 5 then they were stored as administrative records related to the 6 Electoral College, but not permanent records in the Electoral 7 College Presidential Documents. [GJT I 22]. This second set of 8 documents was not stored in the same manner as the official 9 10 documents because the documents were not official state records pertaining to the Electoral College; they did not come from the 11 State of Nevada, did not have the State seal and did not match 12 the signatures of the voters who were appointed by the State of 13 14 Nevada. [GJT I 23-24]. The names contained in the signatures of 15 the second set of documents are the six defendants named in this case. [GJT I 24]. The documents were mailed to 700 Pennsylvania 16 Avenue Northwest, Washington D.C., which is an address for the 17 archives. [GJT I 26]. The return address included the name 18 Michael J. McDonald and the address 840 South Rancho Drive, 19 20 4-800, Las Vegas, Nevada. [Id.]. The postmark date on the document is December 14, 2020. [Id.]. Ms. Vincent testified that 21 the documents were determined to be unofficial because they did 22 not come from a State office; they were not from the Secretary of 23 State's office, the governor's office, or an office within the 24 25 State Legislature. The documents did not have the original Certificate of Ascertainment as required by the statute, and the 26

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names of the purported electors did not match the names of the electors who were formally pointed to as electors in the Certificate of Ascertainment and confirmed with the Certificate of Final Determination. [GJT I 28].

On November 28, 2023, the following witnesses testified 5 before the Grand Jury: Todd Grosz; and, Kenneth Chesebro. 6 Todd Grosz ("Mr. Grosz") testified that he is a criminal investigator 7 with the Nevada Attorney General's Office in the general fraud 8 unit and he was assigned an investigation regarding the 9 10 submission of Alternate Elector Certificates for the 2020 presidential election. [Grand Jury Transcript Volume II "GJT II" 11 7-8]. Mr. Grosz testified that he issued a subpoena to Right 12 Side Broadcasting who produced a video of footage that was shot 13 14 in Carson City on December 14th, 2020, depicting the six Nevada 15 Republican nominees executing their ballots for the Electoral College election for President and Vice President. [GJT II 9]. 16 17 Mr. Grosz testified that two videos were produced by Right Side Broadcasting, one that was over an hour long that he considered 18 the raw footage, and the edited version which was 38 minutes, 48 19 20 seconds. [GJT II 10]. Only the edited version was provided as an exhibit to the grand jury. Mr. Grosz testified that he was able 21 22 to identify the 6 Republican electors on the video as Michael J. McDonald, James DeGraffenreid, Durward James Hindle, III, Jesse 23 Law, Shawn Meehan and Eileen Rice. [GJT II 12]. 24

Kenneth Chesebro ("Mr. Chesebro") testified that he or hisattorney received a Marcum notice indicating that the Nevada

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Attorney General was seeking an Indictment against him, and he 1 ultimately entered into a cooperation agreement whereby he would 2 3 not be prosecuted if he provided truthful testimony against the others in the proposed Indictment. [GJT II 24]. Mr. Chesebro 4 testified that he graduated from law school in 1986 and is 5 licensed to practice in New York, California, Florida, Texas, New 6 Jersey, and Illinois. [GJT II 25]. Mr. Chesebro testified that 7 around November 10, 2020, he was contacted by someone in the 8 Trump campaign, James Troupis, an attorney in Wisconsin who 9 10 wanted help with litigation there. [GJT II 26]. Mr. Chesebro testified that the Trump campaign had decided to file for a 11 recount in Wisconsin and they litigated in the trial court and 12 then filed an appeal to the Wisconsin Supreme Court regarding the 13 results of the elections. [GJT II 27]. The Wisconsin appeal was 14 15 lost on December 14th, and after that Mr. Chesebro submitted a 16 brief to the United States Supreme Court asking it to review the 17 case. [Id.]. Mr. Chesebro wrote a seven page memo to Mr. Troupis on November 18, 2020, which discussed and advised that under 18 19 federal law, the Trump campaign's electors from Wisconsin would 20 need to send their electoral votes to Washington on December 14th if there would be any hope that those would be counted on January 21 6th when Congress convened. [GJT II 28]. Mr. Chesebro's memo 22 explained that even if the Trump campaign has not won the state 23 on December 14th, the votes needed to be sent in because if Trump 24 25 won a week or two later, Congress could not constitutionally count the votes if the paperwork from the electors had not been 26

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sent in on time. [GJT II 29]. Mr. Chesebro emphasized in his memo that sending the electoral votes in was extremely important to focus on; if they wanted to litigate the Wisconsin case and take it as far as it would go, it was very important that they file the paperwork on time. [Id.]

On December 9, 2020, Mr. Chesebro sent a five-page memo to 6 Mr. Troupis. [GJT II 29]. This memo was for anybody that was 7 dealing with the same issue and discussed that there were 8 requirements that would need to be met in any state where there 9 10 was litigation going on, and the memo was laying out what would need to be done to meet the legal requirements. [GJT II 31]. 11 This memo discussed the 6 electoral votes for the state of Nevada 12 and stated in part, "Nevada is an extremely problematic State 13 14 because it requires the meeting of the electors to be overseen by 15 the Secretary of State, who is only supposed to permit electoral votes for the winner of the popular vote in Nevada." [GJT II 32]. 16

A lawyer with the Trump campaign, Justin Clark, asked Mr. 17 Chesebro to review draft documents that were done in Wisconsin 18 and ones from the Trump campaign and put it into a draft form 19 20 that could be sent out to other states that were thinking about doing this so that they would understand how to conduct the 21 22 voting of alternate electors in their state. [GJT II 32-33]. Mr. Chesebro sent an introductory email to Mr. DeGraffenreid, Mr. 23 McDonald, and Mr. Law, and then he sent the draft documents just 24 25 to Mr. DeGraffenreid. [GJT II 33-34]. Mr. Chesebro told Mr. DeGraffenreid that he was asked by the Trump campaign to request 26

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that they assemble and have alternate electors vote on December 1 14th to preserve the ability to win the litigation and have the 2 3 votes counted on January 6th. [GJT II 34]. On December 10th, Mr. Chesebro emailed Mr. DeGraffenreid a couple of preliminary draft 4 documents, and on December 11th Mr. Chesebro sent him seven 5 documents that he drafted. [GJT II 34-35]. The documents Mr. 6 Chesebro sent to Mr. DeGraffenreid included an overview memo 7 explaining how things work and various drafts of documents, 8 ballots and a certificate announcing the final result for 9 10 president or vice president, and a cover memo that would be sent with the packages to the various people who, under federal law, 11 are supposed to receive copies. [GJT II 35]. Mr. Chesebro stated 12 that he asked Mr. DeGraffenreid whether there was any pending 13 14 litigation in Nevada connected to the election and he received no 15 response. [GJT II 35-36]. Mr. Chesebro testified that pending litigation was a significant fact to him because the point of the 16 17 alternate elector plan that they came up with in Wisconsin was that it gave them three extra weeks to try to win the lawsuit. 18 [GJT II 36]. If there was not a lawsuit then there was no need 19 20 for the alternate electors because they would not be able to file and win a new lawsuit prior to January 6th. [ID.] Mr. Chesebro 21 22 testified that the electors in Pennsylvania expressed concern to 23 him about the wording that was in the documents supplied by him from the Trump campaign that said that they were the duly elected 24 25 and qualified electors and they believe that they could be investigated and prosecuted for filing something that was false. 26

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APP 0320

[GJT II 37]. Based on the Pennsylvania electors' concern, Mr. Chesebro drafted some language and sent it to Pennsylvania and told the individuals from the Trump campaign (the general counsel and the person coordinating the alternate electors in all of the states) that the new language should be used in the other states as well. [GJT II 38]. The Nevada electors did not express concerns. [GJT II 39].

Mr. Chesebro testified that he believed that on January 6th 8 Congress might determine that it did not really matter that the 9 10 alternate electors did not cast their votes in the presence of the Secretary of State. [GJT II 47]. He stated in his memo that 11 Nevada was problematic because the statute had that requirement, 12 but he still thought that a person could argue in theory that it 13 [the alternate electors voting] could be done because the purpose 14 15 of the statute was to insure that the electors honored their 16 commitment to vote for the candidate they were a delegate for 17 (didn't switch their votes); that was not what we were doing by having the alternate electors mail in their ballots. [Id.] 18

On December 5, 2023, the following witnesses testified:
Warren Heister "Mr. Heister"; Mr. Grosz; and, Mark Wlaschin "Mr.
Wlaschin."

Mr. Heister testified that he works as a United States Postal Inspector and his area of responsibility is Northern Nevada and Northeast California. [Grand Jury Transcripts Volume III "GJT III" 8]. Mr. Heister testified that he works in the Reno domicile and his supervisor is located in Las Vegas. [GJT

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III 9-10]. Mr. Heister testified that the post office has 1 different types of mailings including first class, express, 2 3 tracking certified, registered mail, etc. [GJT III 11]. Certified mail is an add-on service to first class mail and is what most 4 businesses and government agencies use to document mailing to 5 show their efforts to contact someone. [GJT III 11-12]. 6 Certified mail attaches a tracking number to a letter so it can 7 be tracked through the mail system. [GJT III 12]. Other services 8 include return receipts which require a signature from the person 9 10 it is being delivered to, and the receipt is returned to the sender so they know that a piece of mail was received by a person 11 who signed for it. [GJT III 12-13]. Restrictive delivery can be 12 added which would prevent anyone else from signing for it except 13 14 for the specific person. [GJT III 13]. A hand-to-hand transfer 15 requires each handler to sign for the mail for each leg of the trip all the way until delivery and includes electronic scans as 16 well. [Id.] Things that are usually sent domestic registered are 17 valuables, important documents, and things that people want to 18 know that it is going to get there and not thrown on a machine 19 20 for automation to process and potentially get lost in the processing. [GJT III 13-14]. Mr. Heister testified that someone 21 22 from the Nevada Attorney General's office reached out to him over a year ago for assistance with this case and they were seeking 23 information on some tracking numbers. [GJT III 15-16]. Mr. 24 25 Heister looked at the tracking numbers and requested help from one of his analysts to provide him with information regarding the 26 27

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tracking numbers. [GJT III 16]. Mr. Heister testified that the 1 documents he produced (Grand Jury Exhibit 21) contained 2 3 information regarding the tracking numbers he was provided in this investigation. [GJT III 19-20]. The transactions with the 4 tracking numbers occurred on December 14, 2020, and were paid for 5 with a Mastercard. [GJT III 20]. The transactions involved four 6 mail pieces that were conducted at the same time; one was a large 7 envelope with a certified and return receipt; another was a first 8 class large envelope with a certified and return receipt; and two 9 10 packages with registered insurance on them. [GJT III 22]. Mr. Heister testified that the return addresses on mail pieces do not 11 always match where they are mailed from. [GJT III 27]. Exhibit 21 12 page 80 was sent to and delivered to Washington D.C. in the 20408 13 14 zip code. [GJT III 28]. Mr. Heister reviewed Grand Jury Exhibit 15 20 and testified that it was delivered to Las Vegas in the 89101 zipcode with a return receipt that was also a Las Vegas address. 16 17 [GJT III 29-31]. Exhibit 21 has the word "refused" on it which means that the letter carrier attempted to deliver the mail piece 18 and the person who was there refused to accept delivery of it, so 19 20 it was returned to the sender at a Las Vegas address in the 89106 zip code. [GJT III 31-32]. 21

Mr. Grosz testified that the U.S. District Court, District of Nevada received documents purporting to include information from the 2020 presidential election. [GJT III 40]. Mr. Grosz reviewed Grand Jury Exhibit 20 and testified that it contains the documents that were executed by members of the Nevada Republican

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party that were mailed to the U.S. District Court District of 1 Nevada for the federal courthouse in Las Veqas. [GJT III 41]. 2 Mr. Grosz testified that Grand Jury Exhibit 52<sup>2</sup> contains a copy 3 of an envelope that was mailed by the Republican party with an 4 address in Las Vegas to the U.S. District Court, District of 5 Nevada in Las Vegas. [GJT III 42]. Mr. Grosz testified the 6 documents received by the District Court and those 7 received by the Archivist from the Nevada Republican Party were 8 identical. [GJT III 43-44]. 9

10 Mr. Grosz issued a search warrant to Google in order to obtain subscriber information for four different email accounts 11 and the emails that were sent and received from those email 12 accounts in order to gain information and document conversations 13 14 regarding the production and execution of the elector ballots. 15 [GJT III 44]. The four email addresses were associated with Jesse Law, Shawn Meehan, Michael McDonald, and Durward James 16 Hindle. [GJT III 44-45]. Through subscriber information, Mr. 17 Grosz testified that he was able to verify the identity of the 18 emails for Mr. McDonald, Mr. Law, and Mr. Meehan through either 19 20 dates of birth or telephone numbers provided in the subscriber information. [GJT III 46-47]. Mr. Grosz testified that he was 21 22 able to determine that Mr. Hindle used djhthree@gmail.com because there was an email where he ordered a retail product and it was 23 shipped to him at the address contained on his driver's license. 24

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<sup>&</sup>lt;sup>2</sup>It appears from the Exhibits that it is actually referring to Bates number 52 included within Grand Jury Exhibit 20.

[GJT III 47-48]. Mr. Grosz testified that he was able to 1 determine that Mr. DeGraffenreid was the sender of emails 2 3 associated with jim@nevadagop.org. [GJT III 48-49]. Mr. Grosz determined that Eileen Rice was associated with the email 4 Tahoerice@charter.net. [GJT III 50]. Mr. Grosz testified 5 regarding an email chain from Mr. DeGraffenreid to Mr. Hindle and 6 the other four Nevada Republican electors and a couple of other 7 individuals which is contained in Grand Jury Exhibit 28. [GJT III 8 50]. Mr. Grosz testified that the email chain appears to discuss 9 10 the documents that were being produced including who would be printing and preparing the documents. [GJT III 50-51]. Mr. Grosz 11 testified that Grand Jury Exhibit 29 contains an email chain from 12 Mr. DeGraffenreid to private@bernardkerik.com with attachments 13 14 including elector process instructions, December, 2020, USPS 15 receipt, Nevada, December 14th, 2020, cover memo for electoral votes, December 14th, 2020, tracking forms, elector mailings, 16 December 14th, 2020, vice presidential elector certificate and 17 ballots, December 14th 2020, presidential elector certificate and 18 ballots, December 14th, 2020, and addressed outer envelopes, 19 20 December 14th, 2020. [GJT III 51-52]. Mr. Grosz identified documents containing copies of mailing receipts and a credit card 21 22 receipt for specific tracking numbers.[GJT III 52-53]. Mr. Grosz identified Grand Jury Exhibit 30 as an email chain from Jesse 23 Bernal (sic) to Mr. DeGraffenried with Mr. Hindle, Mr. Law, and 24 25 Mr. McDonald copied to it. The email chain begins with Mr. 26 Chesebro emailing Mr. DeGraffenreid explaining that Mayor

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Giuliani and others of the Trump/Pence campaign asked Mr.
Chesebro to reach out to Mr. DeGraffenreid regarding the
execution of the elector documents on Monday, December 14th. [GJT
III 54]. Mr. Grosz identified Mr. Bernal (sic) as the attorney
who represented the six Nevada electors in their legal challenges
through the Nevada court system. [GJT III 54-55].

Mr. Grosz identified Grand Jury Exhibit 31 as an email chain 7 from Jessica Hanson to the six Republican electors on December 8 9th, 2020, with two other individuals copied that informed the 9 10 recipients that the Nevada Supreme Court had denied their appeal. [GJT III 55]. Mr. Grosz testified that Grand Jury Exhibit 34 was 11 another email chain with some of the Republican Electors and 12 others from December 17th, 2020, which discusses the ballots that 13 14 had been cast and asking what they should do next. [GJT 56]. 15 Exhibit 34 contains emails that included Mr. DeGraffenreid, Mr. Meehan, and Mr. Hindle. [GJT III 56-57]. 16

Mr. Grosz testified that Exhibit 22 is an Order of Affirmance from the Nevada Supreme Court, which was filed on December 8th, 2020, that "ended the legal challenges at that point that were made by the Republican electors." [GJT III 57-62].

Mr. Wlaschin testified that he is the Deputy Secretary of State for elections with the Nevada Secretary of State. [GJT III 64-65]. Mr. Wlaschin testified that he helps the Secretary of State execute and enforce federal and state laws related to elections. [GJT III 65]. At the time of the 2020 presidential

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election, Barbara Cegavske was the Secretary of State in Nevada. 1 [GJT III 66]. During the 2020 election, the electors were 2 3 required to meet across the country on December 14th. [GJT III 67]. Mr. Wlaschin gave an overview of how votes occurred and 4 were counted during the 2020 election. [GJT III 67-71]. Mr. 5 Wlaschin testified that the meeting of the Electoral College was 6 required to take place across the country on December 14, 2020. 7 [GJT III 72]. The nominees for presidential elector are 8 individuals identified by the major parties who, if their 9 10 candidate wins, would be the ones who ultimately cast the electoral votes during the Electoral College. [GJT III 73]. 11 The prevailing party of the popular vote's electors are the ones who 12 become the qualified electors for the State of Nevada. [GJT III 13 14 74]. The Certificate of Ascertainment is a document that is 15 required by federal law that lists the electors from the parties 16 as well as the number of popular votes that those individuals received. [Id.] Once the Certificate of Ascertainment is 17 completed, it is submitted to four places: the Secretary of 18 State; the Chief District Court Judge in the District of Nevada; 19 20 the Archivist of the United States in Washington D.C.; and, the President of the U.S. Senate who is the Vice President of the 21 United States. [GJT III 75]. The Certificates of Ascertainment 22 have to be created not later than six days before the meeting of 23 the Electoral College, which would have been December 8, 2020, 24 25 and they, along with the Certificate of Votes are affirmed by the 26 individuals who sign it who received the popular votes and who

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are the appropriate electors to cast their votes for the 1 President of the United States. [Id.] In Nevada, the Office of the 2 3 Secretary of State works with the Governor's office to have the Certificate of Ascertainment documents drafted and signed by the 4 Governor and the Secretary of State and that office sends the 5 documents in.[GJT III 76]. The Certificate of Ascertainment for 6 the 2020 election was submitted with the Democratic party 7 electors receiving the highest number of popular votes.[GJT III 8 77]. The six Democratic electors were the duly qualified electors 9 10 for the State of Nevada in the 2020 election. [GJT III 78]. Governor Sisolak and Secretary of State Barbara Cegavske signed 11 the document on December 2, 2020. [Id.] The Republican elector 12 nominees were James DeGraffenreid, Durward James Hindle, III, 13 14 Jesse Law, Michael McDonald, Shawn Meehan, and Eileen Rice. [Id.] 15 Mr. Wlaschin testified that there was a lawsuit filed by the Republican electors regarding the results of the 2020 16 17 Presidential election which was decided by the Nevada Supreme Court on December 8, 2020. [GJT III 80]. In order to submit 18 everything to the President of the Senate, all existing 19 20 litigation has to be concluded prior to what is considered a safe harbor day, which means that if there are questions about who had 21 actually won the election and a need for a recount, that needs to 22 23 be resolved at the state level, and the order from the Supreme 24 Court clarified that any question about who won was complete. 25 [GJT III 81-82]. 26 27 18 28

The meeting of the Electoral College is about a 15-minute 1 long meeting which starts with a roll call to identify the 2 3 electors, then there is an oath taken by the electors pursuant to NRS 298, which states that they are going to vote for the 4 individuals who have received the popular vote, then the electors 5 receive an oath of office, the votes are tallied and the ballots 6 are signed. [GJT III 82-83]. The Secretary of State is required 7 to preside over the meeting pursuant to NRS 298.075. [GJT III 8 83]. The electors have to sign several documents at the meeting 9 10 of the Electoral College including the pledge that they will be faithful electors, the oath, and the Certificate of Votes with 11 seven copies that are prepared by the Office of the Secretary of 12 State. [GJT III 83-84]. Mr. Wlaschin was shown Grand Jury 13 14 Exhibit 5 and identified page 22 as the Certificate of Vote that 15 his office prepared for the 2020 presidential election. [GJT III 16 84-85]. He identified page 25 as the certificate of final 17 determination of contests concerning presidential electors that his office along with the Governor's Office prepares that is to 18 confirm that any litigation that was related to the election had 19 20 been concluded. [GJT III 86-87]. The election division mails the documents to the Secretary of State's Office, the Chief Judge of 21 22 the District Court, the Archives, and the President of the U.S. Senate. [GJT III 87-88]. At some point, Mr. Wlaschin learned 23 that the Republican elector nominees sent their own Certificate 24 25 of Votes to the four locations and the Secretary of State received documents from them that he reviewed. [GJT III 89]. 26 Mr. 27

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Wlaschin stated that the documents received from the Republican 1 party were in a letter sized mail envelope that had a number of 2 "bizarro documents." [GJT III 90]. They looked like they were 3 put together in "like ten minutes" as opposed to an official 4 document. [Id.] The name of the sender on the envelope was Mr. 5 McDonald. [GJT III 90-91]. In response to receiving the 6 documents, Mr. Wlaschin contacted the Archives to make them aware 7 that they would be receiving these documents. [GJT III 91]. 8 After discussing the documents with the Secretary of State, she 9 asked Mr. Wlaschin to draft a letter and return the documents to 10 the sender and sent it back. [GJT III 91-92]. Mr. Wlaschin 11 contacted the Senate and the Archives and advised them to ignore 12 the documents and that the correct documents are the ones that 13 14 have the Secretary of State's name on them. [GJT III 92]. Mr. 15 Wlaschin identified Exhibit 24 as the letter he drafted to send to Mr. McDonald along with the return of the documents from the 16 17 Republican party. [GJT III 93]. That letter advised Mr. McDonald that the documents he submitted did not meet the statutory 18 requirement for filing with their office. [GJT III 93-94]. The 19 20 Secretary of State's office did not make or retain a copy of the documents received from the Republican party because they 21 22 determined that because they were "essentially invalid" they did not need to have a copy of them. [GJT III 94]. Exhibit 4, pages 23 2-20 are similar copies of the documents received and returned by 24 25 the Secretary of State's office. [GJT III 95]. Following the election and after the Secretary of State's office drafted the 26

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Certificate of Ascertainment, Mr. Hindle emailed Mr. Wlaschin 1 regarding the list of electors because Mr. Wlaschin had made an 2 error on the Certificate of Ascertainment for the Republican 3 party and put the alternates and not the primaries on the 4 Certificate that was signed by the Governor and the Secretary of 5 State. Grand Jury Exhibit 19 is the email from Mr. Hindle 6 regarding the Certificate of Ascertainment and copied to the 7 email are Mr. DeGraffenreid, "McDonaldnv", Jessica Hanson, Jesse 8 Law, and Shawn Meehan. [GJT III 96-97]. The email asking that 9 10 the names of the Republican electors be corrected struck Mr. Wlaschin as odd because while he had made an error on the form, 11 they did not win, so it seemed moot to have their names on the 12 Certificate of Ascertainment properly. [GJT III 99]. Mr. 13 14 Wlaschin testified that his office thoroughly investigated around 15 4-5,000 allegations of fraud related to the 2020 election and they determined that there were less than 200 identified that 16 were worthy of criminal investigation. [GJT III 101]. 17

18 V. FACTS NOT INTRODUCED IN THE TESTIMONY BEFORE THE GRAND JURY 19 The Attorney General's Office was aware of information that 20 it learned during its investigation or that was provided by 21 counsel for the defendants that was not presented at the Grand 22 Jury proceedings.

Counsel for the defendants provided a letter dated December 1, 2023, which outlined exculpatory evidence and information that the defense requested and the Attorney General was statutorily required to present to the Grand Jury. The letter explained in

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part that at the time of the vote of the electors on December 14, 1 2020, the time within which to challenge the Order of Affirmance 2 by the Nevada Supreme Court in the United States Supreme Court 3 had not run. [See Letter (attached without exhibits) attached as 4 Exhibit A]. The letter further explains that there was precedent 5 for alternate electors related to the 1960 Presidential Election 6 in Hawaii. This information was not presented to the grand jury. 7 Mr. Grosz testified that he obtained video from Right Side 8 Broadcasting that included the voting by the Republican electors 9 10 that took place on December 14, 2020. [GJT II 10]. Mr. Grosz testified that he obtained two videos: one containing the raw 11 footage that was over an hour long; and one which he referred to 12 as the edited version that was 38 minutes, 48 seconds. 13 The 14 Attorney General's Office only presented the edited version of 15 the video to the grand jury rather than the entirety of the footage. Included in the raw footage was an interview with Mr. 16 Law where he discussed the purpose of the Republican electors' 17 vote, stating, "We want to pull this right back 18 into the courts...." (See raw video at  $1:09:00)^3$ This statement 19 20 did not appear in the edited video presented to the grand jury. Prior to the grand jury proceedings, the Nevada Attorney 21 22 General's Office conducted a recorded proffer session with Mr.

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<sup>&</sup>lt;sup>3</sup>The video will be included on a thumb drive as Exhibit B and will be provided to the court with the instant Joint Memorandum of Points and Authorities

Chesebro<sup>4</sup>. This proffer session included many exculpatroy
 statements that were not presented to the grand jury.

During the proffer, Mr. Chesebro described legal challenges taking place in Wisconsin, and explained a legal challenge that was won in the Wisconsin court in July, 2021 related to the 2020 Presidential election. (Exhibit B proffer part 2- 5:45). Mr. Chesebro explained that there was precedent for alternate electors voting as this was the procedure that took place in the Hawaii 1960 election involving Kennedy and Nixon.

10 Mr. Chesebro discusses many times during the recorded proffer that he believed that the Trump campaign might have 11 beyond January 6th to win litigation based on a disagreement 12 about the meaning of the 12<sup>th</sup> Amendment to the United States 13 14 Constitution. He explained that the Senate could cause a test 15 case to go to the United States Supreme Court that could cause a delay in the counting of the electoral votes. (See e.g. Exhibit 16 B part 2 at 19:53, part 4, 46:00). 17

Mr. Chesebro discusses his conversations with individuals from the Trump campaign including Justin Clark, Mike Roman, Boris Epshteyn, Rudy Giuliani, Josh Findlay, Judge Troupis, and Matt Morgan regarding Nevada and whether Nevada Republican electors should vote absent a current legal challenge; however, no Nevada electors were involved in these discussions, and Mr. Chesebro never informed the Nevada electors that they should not vote if

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<sup>&</sup>lt;sup>4</sup>The proffer session was broken down into 5 video clips which will be included on the thumb drive with Exhibit B

there is no ongoing legal challenge. (See Exhibit B part 2 1 43:00). Mr. Chesebro (at part 2 1:04) discussed his response to 2 3 an email about Jesse Binnall's legal challenge in Nevada and he was wondering if he was "planning on filing a cert petition." 4 While Mr. Chesebro discussed that if there was no challenge in 5 Nevada there was no reason to vote with the Trump campaign, he 6 never informed the Nevada electors of this information. (Part 2 7 1:04-1:08). 8

Mr. Chesebro discussed at length in his proffer the 9 conditional language that he added to the Certificate of Votes 10 for the Republican electors in Pennsylvania and New Mexico<sup>5</sup>. He 11 explained that the Pennsylvania electors were concerned so he 12 drafted the conditional language. He suggested to the Trump 13 14 campaign that the language should also be added to the other 15 states, but was told not to inform the Nevada electors of his suggested use of the conditional language, and Mike Roman (from 16 the Trump Campaign) told him not to and said, "fuck those guys." 17 (Exhibit B part 2 1:08:48; 1:11:00; 1:16:00; part 3 51:39). Mr. 18 Chesebro was asked to prepare documents for New Mexico right 19 20 after he added the Pennsylvania conditional language, so he included that language in New Mexico, not because anyone asked 21 22 for it, but because he had just done it for Pennsylvania,

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<sup>&</sup>lt;sup>5</sup>The Certificate of Votes for Nevada that Mr. Chesebro provided to Nevada stated, "we, the undersigned, being the duly elected and qualified Electors..." The Certificate of Votes Mr. Chesebro provided to Pennsylvania and New Mexico stated, "We, the undersigned, on the understanding that it might later be determined that we are the duly elected and qualified Electors..."

1	(Exhibit B part 2 1:13:00). Mr. Chesebro never communicated the				
2	concerns which prompted the use of the conditional language to				
3	the Nevada electors. (Exhibit B part 2 1:16; part 3 51:39). Mr.				
4	Chesebro stated that he was giving the electors legal				
5	information, not legal advice. He stated that he had no duty to				
6	look out for the Nevada electors; he was just telling them what				
7	the Trump campaign wanted them to know. He had no authority to				
8	contact the electors or look out for them because then he might				
9	be going against the advice of his actual client. (Exhibit B				
10	part 4 1:00). None of the information about using the				
11	conditional language was shared with the electors from Nevada.				
12	VI. ARGUMENT				
13	A. THE GRAND JURY IMPANELED IN CLARK COUNTY LACKED JURISDICTION TO RETURN A TRUE BILL IN THIS CASE				
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15	In Nevada, there are territorial limits to a grand jury's				
16	jurisdiction; a "grand jury may inquire into all public offenses				
17	triable in the district court or in a Justice Court, committed				
18	within the territorial jurisdiction of the district court for				
19	which it is impaneled." NRS 172.105(Emphasis added).				
20	The Nevada Supreme Court has held that the term "territorial				
21	jurisdiction" is a term of art that incorporates state statutes				
22	governing venue and, thus, the statute empowers a grand jury to				
23	inquire into an offense so long as the district court that				
24	empaneled the grand jury may appropriately adjudicate the				
25	defendant's guilt for that particular offense. <u>Martinez Guzman</u>				
26	v. Second Judicial District Court in and for County of Washoe,				
20	136 Nev. 103,460 P.3d 443 (2020). In other words, the grand jury				
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28	$APP \ 0335$				

for each district can only investigate and return true bills for 1 cases where venue is proper under the Nevada statutes in the 2 district wherein it is empaneled. Here, the grand jury lacked 3 the jurisdiction to consider the offenses alleged in the 4 Indictment. 5

Ms. Rice has filed contemporaneously with her Petition and 6 this Joint Memorandum of Points and Authorities, a Motion to 7 Dismiss and hereby incorporates the arguments contained in that 8 motion. 9

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#### в. INSUFFICIENT EVIDENCE WAS PRESENTED TO ESTABLISH PROBABLE CAUSE FOR THE OFFENSES ALLEGED IN THE INDICTMENT

The evidence presented to the Grand Jury was not sufficient to establish probable cause to believe that the defendants 13 committed the offenses of Offering False Instrument for Filing or Record, and Uttering Forged Instruments: Forgery.

Before a defendant may be held to answer in District Court, 16 the State is required to establish by "substantial and competent 17 evidence" that there is probable cause to believe that an offense has been committed and that the defendant committed it. Sheriff v. Medberry, 96 Nev. 202, 204, 606 P.2d 181, 182 (1980); NRS 172.155.

Mr. McDonald, Mr. Law, and Ms. Rice understand that the 22 finding of probable cause to support a criminal charge may be 23 based on "slight or even marginal evidence...because it does not 24 involve a determination of the guilt or innocence of the 25 Sheriff v. Hodes, 96 Nev. 184, 186, 606 P.2d 178, accused." 26 180(1980). "To commit an accused for trial, the State is not 27

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required to negate all inferences which might explain his conduct, but to present enough evidence to support a reasonable inference that the accused committed the offense." <u>Kinsey v.</u> <u>Sheriff</u>, 87 Nev. 361, 363, 487 P.2d 340, 341(1971). An inference is unreasonable if it is so remote as to be unwarranted. <u>State</u> <u>v. Von Brincken</u>, 86 Nev. 769, 773, 476 P.2d 733, 735 (1970).

Although the Court has stated that probable cause may be
based on slight or marginal evidence, probable cause also
requires that the evidence be weighed toward guilt. <u>Sheriff v.</u>
Dhadda, 115 Nev. 175, 180, 980 P.2d 1062, 1065 (1999).

In the instant case, the evidence presented was not weighed toward guilt to sustain the charges contained in the Indictment against the defendants.

#### 1. <u>Insufficient Evidence was Presented to Establish</u> <u>Probable Cause That Defendants Committed the Offense of</u> <u>Offering False Instrument for Filing or Record (Count</u> <u>I)</u>

Under Count I, Defendants were indicted for a violation of 17 NRS 239.330 (Offering False Document for Filing or Record), a 18 Category "C" Felony. The indictment claims that each of the 19 defendants "did knowingly procure or offer a false or forged 20 instrument to be filed, registered or recorded in a public 21 office, which instrument, if genuine, might be filed, registered 22 or recorded in a public office under any law of this State or of 23 the United States," namely the "false or forged instrument 24 titled, 'CERTIFICATE OF THE VOTES OF THE 2020 ELECTORS FROM 25 NEVADA.'" The State failed to establish multiple elements. NRS 26 239.330 requires that a person knowingly offers a false or forged 27

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document<sup>6</sup>. As for falsity, the State failed to provide any evidence of falsity. Further, the State did not provide evidence that the document "if genuine, might be filed, registered or recorded in a public office under any law of this State or of the United States." NRS 239.330(1).

The State failed to establish probable cause that Defendants 6 knowingly procured or offered a false or forged instrument to be 7 filed. The State did not present any evidence that any Defendant 8 had knowledge that the statements contained in the Certificate of 9 10 Vote submitted by the Republican party were false. First, each of the Defendants was nominated as a delegate at the Nevada 11 Republican State Convention as a Presidential Elector (See 12 Exhibit C, presented in Grand Jury Exhibit 27 bates GJ 000050). 13 14 Second, at the time the vote took place, the party still had time 15 to challenge the decision of the Nevada Supreme Court, and no evidence was presented that any of the defendants had knowledge 16 that there would be no further judicial challenges. 17

Additionally, the State failed to show that the document, if genuine, could be filed, registered or recorded in a public office. Indeed-and further showing that there was no intent to deceive-the Certificate had numerous flaws that meant it could not, "if genuine," have been filed. First, because as Ms. Vincent testified at the grand jury, the document could not have been filed because it did not comply with the Electoral Count Act of

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<sup>&</sup>lt;sup>6</sup>As set forth below in subsection 2a, as a matter of law, the instrument was not forged.

1887 (See GJT I 18). Second, the document did not include the 1 2 seal of the State of Nevada. Third, the Certificate was not 3 signed by the Secretary of State and the Governor. Fourth, it did not match the Certificate of Ascertainment. Evidencing the lack 4 of intent to defraud or trick anyone, the Defendants did not try 5 to create a certificate that could have been mistaken for a real 6 7 one. In <u>State v. Price</u>, 94 Wash. 2d 810, 819, 620 P.2d 994, 999 8 (1980), the Washington Supreme court analyzed a parallel statute, 9 RCW 40.16.030, which provides: 10 Every person who shall knowingly procure 11 or offer any false or forged instrument to be filed, registered, or recorded in 12 any public office, which instrument, if 13 genuine, might be filed, registered or recorded in such office under any law of this state or of the United States, 14 shall be punished by imprisonment in a state correctional facility for not more 15 than five years, or by a fine of not more than five thousand dollars, or by 16 both. 17 That court held that an instrument only falls within the reach of 18 that forged filing statute if the document: 19 is required or permitted by statute or valid regulation to be filed, 20 registered, or recorded in a public office if (1) the claimed falsity 21 relates to a material fact represented 22 in the instrument; and (2a) the information contained in the document is of such a nature that the government is 23 required or permitted by law, statute or 24 valid regulation to act in reliance thereon; or (2b) the information 25 contained in the document materially affects significant rights or duties of third persons, when this effect is 26 reasonably contemplated by the express 27 29 28 APP 0339

or implied intent of the statute or valid regulation which requires the filing, registration, or recording of the document.

94 Wash. 2d at 819, 620 P.2d at 999. Here, of course, the State did not accept the Certificate as real, and it was not required to under the law due to its obvious defects.

While "false" and "forged" in NRS 239.330 should not be interpreted as synonymous<sup>7</sup> and while it is not an element of the crime that the State actually be defrauded, the requirement that the forgery or falsity must be of such a nature that "if genuine, [the forged or falsified document] might be filed, registered or recorded in a public office" must also be given meaning.<sup>8</sup>

Thus, the falsity must be of such a nature that, if genuine, it could be filed, registered or recorded. <u>Generes v. Justice</u> <u>Court</u>, 106 Cal. App. 3d 678, 681, 165 Cal. Rptr. 222, 224 (1980), addresses a similar crime. That case involved an allegation that the defendant willfully, unlawfully, and knowingly procured and offered to be filed, registered, and recorded in the county recorder's office a false grant deed, and the California court held that nobody needed to be actually defrauded. However, the Court noted "[t]he crime is complete when the deed has been prepared so that upon its face it will have the effect of defrauding one who acts upon it as genuine." <u>Id</u>. (internal

<sup>7</sup><u>Zweifel v. State</u>, 89 Nev. 242, 243, 510 P.3d 872, 873 (1973).
<sup>8</sup>"Effect must be given, if possible, to every word of a statute."
<u>Id</u>.

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citation and quotation marks omitted). Here, upon its face, 1 2 nobody could act upon the Certificate; it could not have fooled 3 anyone, was not intended to, and in fact did not fool anyone. 2. Insufficient Evidence Was Presented to Establish 4 Probable Cause That the Defendants Committed the Offense of Uttering Forged Instruments: Forgery (Count 5 II) 6 Count II Fails Because the Certificate was not a. 7 Forged Under count II, the defendants were indicted for a violation 8 of NRS 205.110 (Uttering Forged Documents; Forgery), a Category D 9 Felony. The Indictment claims that the defendants: 10 11 knowing the same to be forged or altered, and with intent to defraud, 12 uttered, offered disposed of or put off as true, or had in his possession with 13 intent so to utter, offer, dispose of or put off, a forged writing, instrument or 14 other thing, the false making, forging or altering of which is punishable as forgery, to wit: 15 The Defendants uttered, offered, 16 disposed of or put off as true a forged writing, instrument or other thing 17 titled, "CERTIFICATE OF THE VOTES OF THE 2020 ELECTORS FROM NEVADA" to the 18 President of the United States Senate, and/or the Archivist of the United 19 States, and/or the Nevada Secretary of 20 State, and/or the Chief Judge of the District Court for the District of Nevada, with the intent to defraud, the 21 Defendants being criminally liable under 22 one or more of the following principles of criminal liability, to wit: ( 1) by directly committing this crime; and/or 23 (2) pursuant to a conspiracy to commit this crime, with the intent that this 24 crime be committed. 25 The statute, NRS 205.110 ("Uttering forged instruments: 26 Forgery") provides: 27 31 28 APP 0341

1 2	Every person who, knowing the same to be forged or altered, and with intent to defraud, shall utter, offer, dispose of					
3	or put off as true, or have in his or her possession with intent so to utter, offer, dispose of or put off any forged writing, instrument or other thing, the					
4						
5	false making, forging or altering of which is punishable as forgery, shall be guilty of forgery the same as if the person had forged the same.					
6						
7	NRS 205.090 provides "A person who falsely makes, alters,					
8	forges or counterfeits any record, or other authentic matter of a					
9	public nature with the intent to damage or defraud any					
10	person, body politic or corporate is guilty of forgery					
11	" In essence, NRS 205.100 extends the crime of forgery to					
12	persons who utter forged documents, even if they did not forge					
13	the document themselves. NRS 205.085(2) supplies the following					
14	definition for the words "forge," "forgery," "forged," and					
15	"forging:"					
16	false making, "counterfeiting" and the					
17	alteration, erasure or obliteration of a genuine instrument in whole or in part,					
18	the false making or counterfeiting of the signature of a party or witness,					
19	real or fictitious, and the placing or connecting together with intent to					
20	defraud, of different parts or the whole of several genuine instruments.					
21	Thus, Count II has at its core forgery, and requires that					
22	defendants knowingly offered a forged document or conspired to do					
23	so, with the specific intent to defraud.					
24	Count II necessarily fails because none of the conduct at					
25	issue is forgery. That is so because the signatures on the					
26	Certificate itself are genuine. It is black letter law that					
27						
28	32 APP 0342					
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1	forgery cannot be said to have been committed under such				
2	circumstances, when the maker of the document is indeed the				
3	signer, regardless of the accuracy of the content of the				
4	document. Indeed, as detailed below, numerous authorities draw a				
5	distinction between offering a forged document and offering a				
6	genuinely executed document that contains false information.				
7	These authorities make plain that the latter is not "forgery."				
8	As the United Supreme Court has observed, the question of				
9	forgery turns on the genuineness of the execution of the				
10	document, rather than on a misrepresentation of facts in a				
11	document. <u>Gilbert v. U.S.</u> , 370 U.S. 650, 658, 82 S. Ct. 1399, 8				
12	L. Ed. 2d 750 (1962) (stating that "where the `falsity lies in				
13	the representation of facts, not in the genuineness of				
14	execution,' it is not forgery") (quoting <u>Marteney v. U.S.</u> , 216				
15	F.2d 760, 763-64 (10th Cir. 1954)).				
16	The Nevada Supreme Court has likewise explained:				
17	the essence of forgery is the making of				
18	a false writing. 'It is an indispensable requirement of forgery that the writing				
19	be false. It may have been false in its inception or may have been made so by				
20	subsequent tampering with what was originally genuine; but it must be a				
21	false writing. In this connection it is essential to distinguish between a false				
22	instrument and false statements in an instrument. No amount of misstatement of				
23	fact and no amount of fraud will make a false instrument out of what purports to				
24	be the very instrument which it is in fact and in law.'				
25	Winston v. Warden, Nev. State Prison, 86 Nev. 33, 34, 464 P.2d				
26	30, 31 (1970) (citing and quoting from Perkins on Criminal Law,				
27					
28	33 APP 0343				
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p. 296 (Foundation Press 1957)) (emphasis added); also citing 1 DeRose v. People, 171 P. 359, 360 (Colo. 1918); Marteney v. 2 <u>United States</u>, 216 F.2d 760, 763-64 (10<sup>th</sup> Cir. 1954); cases 3 collected, Annot., 41 A.L.R. 229.) In Winston the defendant 4 signed his true signature to a check but had insufficient funds; 5 the court concluded the signing of the check was not forgery 6 because the instrument was genuine, notwithstanding false 7 statements it contained. Id. at 35, 464 P.2d at 31. Here, 8 likewise, the signatures are all genuine and the Certificate is 9 10 not forged.

In <u>Bratcher v. City of Las Veqas</u>, 113 Nev. 502, 510, 937 P.2d 485, 490-91 (1997), a civil case, a property owner contended developers had committed forgery by signing a petition representing they owned a property they had sold to her. Relying on <u>Winston</u> and examining NRS 205.090, the Supreme Court held "the forgery statute is inapplicable because forgery involves a false document, not mere misstatements of fact within a document."

Other states have also made clear the distinction between a 18 forged document and a document containing false statements. See, 19 20 e.g., State v. Smith, No. 44087-3-II, 2014 Wash. App. LEXIS 763, at \*6-7 (Ct. App. Apr. 1, 2014) ("Even if Smith was not 21 22 authorized to fill out the daily cash reports in any manner she 23 chose, the State presented insufficient proof of forgery because the daily cash report itself was genuine; i.e., Smith was the 24 25 maker of the report."); see also State v. Esquivel, 71 Wn. App. 868, 870, 863 P.2d 113 (1993) ("Forgery does not involve the 26

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making of false entries in an otherwise genuine document.") State 1 v. Mark, 94 Wn.2d 520, 523, 618 P.2d 73 (1980) ("A 2 misrepresentation of fact, so long as it does not purport to be 3 the act of someone other than the maker, does not constitute 4 forgery."); Dexter Horton Nat'l Bank v. U S. Fid. & Guar. Co., 5 149 Wash. 343, 348, 270 P. 799 (1928) ("When the crime is charged 6 to be the false making of a writing, there must be the making of 7 a writing which falsely purports to be the writing of another."); 8 accord State v. Marshall, 25 Wn. App. 240, 242, 606 P.2d 278 9 10 (1980) (genuine Medicaid reimbursement forms containing false information did not support forgery conviction). 11

As enthusiastic as he is to prosecute the defendants and 12 while the Attorney General may disagree with the content of the 13 14 Certificate, the Certificate cannot be considered a forged 15 document. None of the defendants were trying to pass off their Certificate as anything other than what they stated it to be. 16 Indeed, they made clear to the world what they were doing in a 17 televised ceremony. Thus, this is not forgery and Count II must 18 be dismissed. 19

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#### b. The State Presented Insufficient Evidence of Intent

Even putting aside the central problem that even if a document contains false information, that alone does not constitute forgery, the state presented insufficient evidence of intent to support Count II.

In order to sustain the Indictment the State needs to show that the defendants uttered, offered, disposed of or put off as

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true a forged writing with the intent to defraud. No evidence was 1 presented showing that any of the defendants ever possessed the 2 3 requisite intent to defraud. To the contrary, the evidence presented showed that the defendants/signers of the Certificate, 4 submitted a document showing that as Republican electors (who 5 were elected at Nevada's Republican Convention) they were 6 selecting then President Trump and then Vice-President Pence as 7 their nominees in the event that later challenges were 8 successful. This is demonstrated by Grand Jury Exhibit 27 (Bates 9 10 numbered GJ 000195) which is an email exchange between Mr. DeGraffenried and Mr. Chesebro which states in part, "the purpose 11 of having the electoral votes sent to Congress is to provide the 12 opportunity to debate the election irregularities in Congress, 13 14 and to keep alive the possibility that the votes could be 15 flipped...." (See Exhibit D). It is further demonstrated in the video of the December 14, 2020 Carson City Ceremony by the 16 17 interview of James Marchant, an Alternate Presidential Elector for the Nevada Republican Party, who explained the purpose of the 18 provisional ballots as follows: "We're going to be prepared, just 19 20 in case, once this works its way through courts or whatever remedies President Trump comes up with, or his team...." [Grand 21 Jury Exhibit 6A at 3:50]. Mr. Marchant further expounded on the 22 1960 Nixon and Kennedy precedent. Mr. Meehan also made it clear 23 in a Wall Street Journal interview stating, "We're preserving our 24 25 right while there's ongoing litigation." See Exhibit E, which was 26 27

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included in the defendants' exculpatory evideence submission and which the State failed to present to the grand jury.

3 The Attorney General of New Mexico conducted an investigation into its Republican alternate electors and 4 determined that no crime occurred. This was based in part on the 5 conditional language that was added by Mr. Chesebro (see Final 6 Report from New Mexico Attorney General (attached as Exhibit F). 7 Mr. Chesebro, in his proffer, stated that he just happened to add 8 the language to the New Mexico paperwork, the intent by the 9 10 electors in New Mexico was the same as the electors in Nevadathe intent was not to defraud- the intent was to preserve their 11 votes in case there was a determination at a later date either in 12 the courts or in Congress that Trump had in fact won the 13 election. Mr. Chesebro's unsolicited addition of the conditional 14 language did not change the intent of the New Mexico electors. 15 The electors here as the electors in New Mexico did not have the 16 intent to defraud; therefore, Count II should be dismissed. 17

### C. THE STATE FAILED TO PRESENT EXCULPATORY EVIDENCE AND PRESENTED FALSE OR MISLEADING TESTIMONY

NRS 172.145 provides in relevant part:

If the district attorney is aware of any evidence which will explain away the charge, the district attorney shall submit it to the grand jury.

23 "Exculpatory evidence" is defined as evidence that will 24 explain away the charge, and the prosecutor is required to 25 disclose all such evidence to the grand jury. <u>King v. State</u>, 116 26 Nev. 349, 359, 998 P.2d 1172, 1178 rehearing denied (2000).

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APP 0347

The State presented testimony from Mr. Chesebro which it 1 knew was contradicted by information given during Mr. Chesebro's 2 3 proffer. This information not only confused the grand jury, it misled them to believe things that were completely untrue that 4 the Attorney General knew were untrue. The Attorney General was 5 apprised by counsel representing the defendants when they were 6 served with Marcum notices that exculpatory information existed. 7 Much of this information given to the Attorney General by counsel 8 for the defendants was provided to the Grand Jury in the 9 10 exhibits, but none of it was presented during the testimony. One key fact that the Attorney General established through Mr. 11 Chesebro is that all litigation had concluded in Nevada and that 12 there was no reason then for the Republican electors to cast 13 14 votes. This was untrue. While the Nevada Supreme Court had 15 denied the appeal regarding the election, the parties still had time within which to file a Petition for Writ of Certiorari to 16 17 the United States Supreme Court. United States Supreme Court Rule 13(1) provides that an appeal to the United States Supreme Court 18 can be filed within 90 days after the entry of judgment. When the 19 20 Republican electors met on December 14, 2020, they were within that 90 day period. This information was directly provided to 21 the Attorney General's office (See Exhibit A). 2.2

The grand jury was led to believe, based on the testimony of Mr. Chesebro and Mr. Grosz that there could be no further legal challenges in Nevada. Mr. Chesebro, along with other attorneys, filed a Petition for Writ of Certiorari from Wisconsin to the

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United States Supreme Court on December 29, 2020 (See Exhibit G).
Mr. Chesebro clearly knew that there was still time to file a
challenge in Nevada, yet the grand jury was misled by both his
testimony and the testimony of Mr. Grosz (who is not an attorney)
that there could not be any further legal challenges.

The Attorney General elicited testimony from its own 6 investigator Mr. Grosz regarding the legal challenges in Nevada 7 to the 2020 election. Mr. Grosz testified that the Order of 8 Affirmance from the Nevada Supreme Court "affirmed the lower 9 10 court ruling and would have ended the legal challenges at that point that were made by the Republican electors." (GJT III 62-11 emphasis added). First, there was no showing that the 12 investigator had first had knowledge regarding the legal 13 14 challenges. Second, the Attorney General knew at the time of the 15 testimony that the legal team for the Republican party was still discussing in December, 2020, what the next steps would be in the 16 17 legal challenges, and further knew that the party still had time to file a Petition for Writ of Certiorari to the United States 18 Supreme Court. The Order from the Nevada Supreme Court did not 19 20 necessarily end the legal challenges that could have been made. The grand jury was misled into believing that no further 21 challenges could be made to the Nevada Election. 2.2

The intent of the defendants was described by Mr. Law during the raw footage of the video obtained from Right Side Broadcasting Network that was only provided to the grand jury in an edited format. Mr. Law's statement that, "We want to pull

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1 this right back into the courts...." was not presented and should 2 have been pursuant to NRS 47.120<sup>9</sup> as it shows the defendants' 3 intent and is, therefore, exculpatory.

Additionally, Mr. Chesebro gave false information to the 4 grand jury that the Attorney General knew was false. Mr. 5 Chesebro testified that he asked Mr. DeGraffenreid whether all 6 court challenges in Nevada were final and that he received no 7 response (GJT II 35-36). This testimony was false; Mr. 8 DeGraffenreid responded to Mr. Chesebro that he had forwarded the 9 10 question to the party's lead attorney, Jesse Binnall as the attorney would be more knowledgeable as to the status of the 11 litigation in Nevada. While this email was buried in an exhibit 12 provided to the Grand Jury, the Attorney General allowed the 13 14 grand jury to believe that there was no response to Mr. 15 Chesebro's question on pending litigation.

Because the State failed to present evidence which was exculpatory and would have shown the lack of intent to defraud, the Indictment should be dismissed.

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9NRS 47.120 provides in part: "When any part of a writing or recorded statement is introduced by a party, the party may be required at that time to introduce any other part of it which is relevant to the part introduced"

1	VII. CONCLUSION					
2	Based on the above, Mr. McDonald, Mr. Law, and Ms. Rice					
3	respectfully request that this Honorable Court grant their					
4	Petitions for Writ of Habeas Corpus and dismiss the Indictment					
5	against them.					
6	Respectfully Submitted,					
7						
8	/s/ RICHARD A. WRIGHT					
9	RICHARD A. WRIGHT, ESQ. Nevada Bar No. 886					
10	WRIGHT MARSH & LEVY 300 S. Fourth ST., Ste 701					
11	Las Vegas, NV 89101 Phone: (702) 382-4004					
12	Fax: (702) 382-4800 rick@wmllawlv.com					
13	Attorney for Michael James McDonald					
14	/s/ MARGARET A. MCLETCHIE					
15	MARGARET A. MCLETCHIE Nevada Bar No. 10931					
16	MCLETCHIE LAW 602 South Tenth St.					
17	Las Vegas, Nevada 89101 Telephone: (702) 728-5300					
18	Fax: (702) 425-8220 Email: maggie@nvlitigation.com					
19	Counsel for Defendant Jesse Law					
20	/S/ MONTI JORDANA LEVY					
21	MONTI JORDANA LEVY, ESQ. Nevada Bar No. 8158					
22	WRIGHT MARSH & LEVY 300 S. Fourth St., Ste. 701					
23	Las Vegas, Nevada 89101 (702) 382-4004					
24	mlevy@wmllawlv.com Attorney for Eileen Rice					
25						
26						
27						
28	41 ADD 0251					
	APP 0351					

# EXHIBIT A

## **EXHIBIT A**



DIRECT LINE: (702)207-6097 DIRECT FAX: (702) 382-5816 EMAIL: BHARDY@MACLAW.COM

December 1, 2023

Via email to <u>TGrosz@ag.nv.gov</u>, <u>aengler@ag.nv.gov</u>, <u>mrashbrook@ag.nv.gov</u> and via Certified Mail to:

State of Nevada, Office of the Attorney General Attn: Chief Deputy Attorney General, Alissa C. Engler 555 E. Washington Avenue, Suite 3900 Las Vegas, Nevada 89101

Re: Exculpatory Evidence to be Presented to Grand Jury Notices of Intent to Seek Indictment <u>Our File No. 14221-10</u>

Dear Chief Deputy Attorney General Alissa C. Engler:

As you are aware, this firm, along with George Kelesis and Richard Wright, represent Michael McDonald ("McDonald"), James W. DeGraffenreid ("DeGraffenreid"), Jesse R. Law ("Law"), Shawn M. Meehan ("Meehan"), Durward J. Hindle III ("Hindle"), and Eileen A. Rice ("Rice") (collectively the "Clients"), and we are in receipt of the Notices of Intent to Seek Indictment.

We and the Clients have undertaken a search of the information in their possession and control for "evidence which tends to explain away" the alleged crimes, and we request this evidence and the instant letter with accompanying documents be presented to the Grand Jury.

The enclosed evidence demonstrates that the public casting of provisional ballots on December 14, 2020 was based upon a good faith belief that doing so was a necessary next step as part of ongoing litigation to challenge the 2020 election results. To enable the grand jurors to appreciate and evaluate the relevance of the enclosed evidence in their determination of whether there is sufficient evidence to establish probable cause that the Clients had the requisite mens rea (criminal intent) for the alleged crimes, we request that the grand jurors receive the Proposed Instruction included as **Appendix A**.

Following the 2020 Presidential Election, the Clients filed an action in the First Judicial District Court in Carson City, Nevada styled as *Law et. al. v. Whitmer et. al.*, Case No. 20-OC-00163-1B. Following an evidentiary hearing on the action wherein the district court dismissed the matter, the Clients filed an appeal to the Nevada Supreme Court as *Law et. al. v. Whitmer et. al.*, Case No.

PHILLIP S. AURBACH AVECE M. HIGBEE SCOTT A MARQUIS CRAIG R. ANDERSON TERRY A. MOORE GERALDINE TOMICH NICHOLAS D. CROSBY TYE S HANSEEN DAVID G. ALLEMAN CODY S MOUNTEER CHAD F. CLEMENT CHRISTIAN T, BALDUCCI BRIAN R. HARDY JORDAN B. PEEL JARED M. MOSER JACKIE V. NICHOLS

Collin M. Jayne Alexander K. Calaway Hayden R. D. Smith Nicholas J. Klein Harry L. Arnold Jordan W. Montet Nicholas M. Adams W Reese Levins Baxter L. Wilde Kaden P. Killpack Jake P. Mantin

LANCE C. EARL WILLIAM P. WRIGHT JENNIFER L. MICHELI OF COUNSEL

RETIRED/INACTIVE ALBERT G MARQUIS FOUNDER JOHN M. SACCO OF COUNSEL Chief Deputy Attorney General Alissa C. Engler Page 2

82178 on December 7, 2020. Within 24 hours, the Nevada Supreme Court affirmed the district court determination which then permitted the Clients to pursue a final appeal of the matter to the United States Supreme Court. Pursuant to United States Supreme Court Rule 13(1), the Clients had "90 days after entry of the judgment" to file their appeal to the United States Supreme Court or until March 8, 2021.

The enclosed evidence, including media releases and public statements, establishes that the provisional ballots were cast upon the advice of legal counsel to preserve their rights in the event of a potential appeal to the United States Supreme Court. Had the provisional ballots not been cast, there potentially would have been no available remedy or feasible path for the United States Supreme Court to grant the requested relief. The Supreme Court would have likely held the issue to be moot and/or not practical for adjudication (similar to *Bush v. Gore* decision during the 2000 presidential election). The enclosed evidence demonstrates that the rationale for casting the provisional ballots in conjunction with an ongoing litigation strategy (which itself had related precedent in the form of the Hawaii electors during the 1960 election), was believed to be a necessary predicate.

### KEY EXCULPATORY EVIDENCE

Set forth below are assorted documents that best encapsulate and demonstrate the reason the provisional ballots were cast. To view particular documents, which are attached hereto as **Appendix B**, please reference the corresponding bates number range set forth below.

Appendix No.	Date	Description	Bates Number
B-1	12/9/2020	Email Informing the Clients that "Legal is regrouping and we should have an update on the next steps" (sent prior to Dec. 14 <sup>th</sup> casting of provisional ballots)	DEGRAFFENREID 000766 - 000773
B-2	12/10/2020	Email from Legal Counsel to the Clients informing them there are "two memos explaining the rationale for the electors voting on Monday" (sent prior to the Dec. 14 <sup>th</sup> casting of provisional ballots)	DEGRAFFENREID 000774 - 000775
B-3	12/17/2020	Email from Jim DeGraffenreid (cc'ing the Clients) explaining that "We voted specifically so that our votes would be there to be considered in the event we are successful in a court case" (sent after the Dec. 14 <sup>th</sup> casting of	DEGRAFFENREID 0001290 - 0001292

Chief Deputy Attorney General Alissa C. Engler Page 3

		provisional ballots)	
B-4	12/28/2020	Sample News Article Describing the Clients' intent in casting the provisional ballots ("We're preserving our right while there's ongoing litigation.") (published after the Dec. 14 <sup>th</sup> casting of provisional ballots)	CLIENTS 000001-000005

### **RELEVANT COURT DOCUMENTS**

With respect to the aforementioned litigation that the Clients prosecuted, and to provide critical context for the circumstances in which the provisional ballots were cast, below is a timeline of said litigation (to view particular documents, which are attached hereto as Appendix C, please reference the corresponding bates number range set forth below).

Appendix No.	Date	Description	Bates Number
C-1	11/17/2020	Statement of Contest of the November 3, 2020 Presidential Election Pursuant to NRS 293.407 and NRS 293.410	MCDONALD000001- 000021
C-2	12/3/2020	First Judicial District Court Minutes	MCDONALD000193
C-3	12/4/2020	Order Granting Motion to Dismiss Statement of Contest	MCDONALD000022- 000056
C-4	12/7/2020	Notice of Appeal	MCDONALD000057- 000101
C-5	12/7/2020	Defendants-Appellees' Motion for Summary Affirmance	MCDONALD000200- 000209
C-6	12/7/2020	Emergency Motion Under NRAP 27(e) to Expedite Appeal	MCDONALD000219- 000299
C-7	12/8/2020	Defendants-Respondents Response to Contestants-Appellants' Emergency Motion Under NRAP 27(e) to Expedite Appeal	MCDONALD000302- 000308

C-8	12/8/2020	Appellants' Opposition to Defendants-Appellees' Motion for Summary Affirmance by December 8, 2020	MCDONALD000309- 000320
C-9	12/8/2020	Appellants' Supplemental Briefing Pursuant to Order Directing Supplemental Briefing December 8, 2020	MCDONALD000340- 000379
C-10	12/8/2020	Defendants-Respondents' Supplemental Brief	MCDONALD000380- 000410
C-11	12/8/2020	Order of Affirmance	MCDONALD000411- 000415

The above documents and communications set forth in Appendices B and C are authenticated via the Declaration from Brian R. Hardy, Esq. attached hereto.

We appreciate your consideration and professionalism in this matter. As always, if you have any questions, concerns, or wish to discuss this matter further, please feel free to contact the undersigned directly.

Sincerely,

MARQUIS AURBACH

\_K.++2)

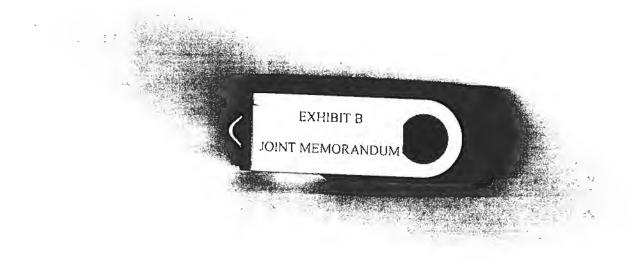
Brian R. Hardy, Esq.

BRH:ns Enclosures: As Stated

MAC:14221-010 5298742\_1 12/1/2023 10.47 AM

## EXHIBIT B

## EXHIBIT B



## EXHIBIT C

# EXHIBIT C



2810 W. Charleston Blvd, Suite 69 Las Vegas, NV 89102 www.nevadagop.org (702) 586-2000

ŧ

Barbara K. Cegavske Secretary of State State of Nevada 101 N. Carson St Carson City, NV 89701

Dear Mrs. Cegavske,

For your records the following individuals were nominated by the delegates of the Nevada Republican State Convention as the Presidential Electors for the Republican Party for the 2020 election of President and Vice-President of the United States:

Michael J. McDonald 840 S. Rancho Drive Suite 4-800 Las Vegas, NV 89106

James DeGraffenreid 965 Tillman Lane Gardnerville, NV 89460

Deward James Hindle III PO Box 122 Virginia City, NV 89440 Jesse Law 2662 Thornview St Las Vegas, NV 89135

Eileen Rice P.O. Box 11602 Zephyr Cove, NV 89448

Shawn Meehan 2975 Santa Maria Minden, NV 89423

Please record these names as the 2020 nominees of the Republican Party for Presidential Elector. We certify the foregoing to be a true and correct list of the electors chosen at the Republican State Convention.

10

Michael J. McDonaid Chairman Nevada Republican Party

Jessica Hanson Executive Director Nevada Republican Party

## EXHIBIT D

## **EXHIBIT D**

1/30/22, 3:47 PM

Nevada Republican Party Mail - URGENT - Trump-Pance campaign saked me to contact you to coordinate Dec. 14 voting by Ne...



Jim DeGreffenreid <jim@nevadagop.org>

Fri, Dec 11, 2020 at 6:00 AM

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

Jim DeGraffenreid <jim@nevadagop.org> To: Kenneth Chesebro Cc: Jesse Binnall

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 <

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 finel? I'm wondering if there will an effort to seek Supreme Court review of this decision:

https://ihehili.com/homenews/administration/529382-nevada-supreme-court-rejects-trump-campaign-appeal-affirmsbidan-win

Thanks again!

From: Jim DeGraffenreid <jim@nevadagop.org> Sent: Friday, December <u>11, 2020</u> 1:13 AM

To: Kenneth Chesebro <

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 itsted 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	•	wrote:
Wonderful to hear!		ļ

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

I spoke this evening with Mayor Gulliani, who is focused on doing everything possible to ensure that that all the Trump-Pence electors vote on Dec. 14. He was gliad 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 lasues 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 vota needs to proceed without the participation of the Secretary of State, on

https://mail.google.com/mail/u/1/?ik=5c58c4df95&view=pt&search=ail&permmsgid=msg-a%3Ar-2120348843584690830&dsqt=1&simpl=msg-a%3Ar-2... 1/3 UPGRAFFENREID 000778
DEGRAFFENREID 000778

## EXHIBIT E

## EXHIBIT E

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https://www.wsj.com/articles/republican-electors-cast-unofficial-ballots-setting-up-congressional-clash-11609164000

### ELECTION 2020

# Republican Electors Cast Unofficial Ballots, Setting Up Congressional Clash

Pro-Trump electors pin hopes on House. Senate counting their alternative votes la tactic constitutional

scholars say is unlikely to work



Republican state electors signed ballots in Carson City, Nev., on Dec. 14. PHOTO: DAVID HIEBERT

*By <u>Deanna Paul</u>* Dec. 28, 2020 9:00 am ET



Listen to this article 6 minutes

When Nevada Democrats gathered on Dec. 14 <u>to cast Electoral College votes</u> for <u>Joe Biden</u>, the winner of the state's presidential election, Shawn Meehan and his fellow Silver State Republicans held their own meeting and voted for President Trump.

Mr. Meehan was among pro-Trump electors to cast symbolic ballots for the president in at least seven states he lost, hoping Congress will accept their votes—and not those cast by electors for Mr. Biden—on Jan. 6, when it officially counts the Electoral College votes.



### 12/28/2020

"Trump won, and we have a duty to cast our votes," said Mr. Meehan, 54 years old, a retired veteran of the U.S. Air Force. "We're preserving our right while there's ongoing litigation."

Election-law scholars and historians say the effort is political theater and the votes hold no legal weight because they weren't certified by state officials. Alexander Keyssar, professor of history and social policy at the Harvard Kennedy School, compared the GOP meetings to playing dress up.

"The slate might appear to be valid, but it isn't being put forth by any governmental or legislative body," said Mr. Keyssar, who has written books about the Electoral College.

When Americans vote for president, they are actually <u>voting for a slate of electors</u> who have pledged to support the candidate in the Electoral College, the official mechanism for choosing a president. Each state is given a number of electors based on its population. A candidate must win a certified popular vote in a state or, in some cases, a congressional district, for his or her slate to be recognized in Congress. Mr. Biden won the Electoral College, 306 to 232.

Some Trump supporters say the elections in swing states Mr. Biden won were so problematic that Congress should disregard the results and award the votes to Mr. Trump's electors. Many of the pro-Trump electors acknowledge that something would have to break Mr. Trump's way in the next week-and-a-half—a favorable court ruling or a federal investigation—to make their votes meaningful or shift the official results in Mr. Trump's favor.



A member of Arizona's Electoral College in Phoenix on Dec. 14. PHOTO: POOL/REUTERS

https://www.wsj.com/articles/republican-electors-cast-unofficial-ballots-setting-up-congressional-clash-11609164000?mod=searchresults\_pos1&page=1



Former Attorney General William Barr and other federal and state officials have said there was <u>no evidence of voter fraud widespread enough to affect the election</u>. The Trump campaign and other Republicans <u>have lost multiple election challenges</u> in several swing states.

Several Republican members of Congress have signaled they will support the 11th-hour attempt to undercut Mr. Biden's victory at Congress's Jan. 6 joint session, which Vice President Mike Pence oversees. Members of Congress can raise objections to one or more slates of electors. If one representative and one senator object together, both chambers deliberate separately and vote on whether to accept it. The process could happen multiple times until Congress ascertains Mr. Biden has won at least 270 electoral votes, the threshold needed to win.

Mr. Biden has adequate support to prevail. The Democrats control the House and top Republicans who now control the Senate have discouraged any last-minute challenge to Mr. Biden's electoral votes or supporting alternate electors.

The Biden transition team didn't immediately respond to a request for comment. In a Dec. 14 speech after the Electoral College vote, Mr. Biden denounced Mr. Trump's ongoing efforts to overturn the election.

"President Trump was denied no course of action he wanted to take," Mr. Biden said. "Respecting the will of the people is at the heart of our democracy, even if we find those results hard to accept."

The Trump campaign didn't respond to a request for comment. The White House declined to comment.

Trump senior adviser Stephen Miller, in a Dec. 14 Fox News interview, promised to fight for the pro-Trump slates. "We'll make sure that those results are sent up side by side to Congress," he said.

State Republican parties and the Trump campaign helped organize the alternate Electoral College meetings in six states: Wisconsin, Arizona, Pennsylvania, Georgia, New Mexico and Nevada.

In Michigan, the Republican Party's state leaders were largely absent from a meeting where electors voted, according to Marian Sheridan, a Republican elector. Trump

campaign attorney Shawn Flynn gave the group instructions and was responsible for sending the paperwork to Congress, she said.

"We're not replacing the electors in Michigan. We're supplying an additional list should things get shaken up," said Ms. Sheridan.

### SHARE YOUR THOUGHTS

What do you think will be the legacy of the post-election actions by GOP electors? Join the conversation below.

The Republican effort highlights doubts some Americans feel about the election results. Despite assurances from state and federal officials that it was a clean election, 77% of Republicans said Mr. Biden's win "was due to fraud," according to <u>a poll conducted last</u> <u>month</u> by Monmouth University Polling Institute. Meanwhile, Democrat and independent voters' confidence in the election increased from 68% to 90% and 56% to 60%, respectively, pre-election to postelection.

"There's enough evidence out there to put in the minds of 74 million Americans that this election was stolen," said Anthony Kern, a Republican member of the Arizona House of Representatives and state elector, referring to the number of votes Mr. Trump received across the country.

For guidance, Republicans have pointed to the 1960 presidential election, the last time a state had rival elector submissions.

After a close race in Hawaii, state officials certified Richard Nixon as the winner and Republican electors cast votes at the Electoral College and submitted them to Congress. A subsequent recount showed John F. Kennedy had won and Democrats submitted their own vote.

Mr. Nixon, then the vice president, suggested Congress accept the Kennedy electors at the joint session "in order not to delay the further count of the electoral vote," but said the decision wasn't meant to establish a precedent. Hawaii's three electoral votes weren't significant enough to change the race's outcome. No member of Congress objected and the Kennedy slate was accepted.

,

"President Trump's plan is supposed to replicate that, but it is not supposed to be a cognizable strategy," said Edward Foley, an election-law professor at Ohio State University's Moritz College of Law. "You can't retroactively change who the electors of the state are after they vote."

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APP 0369

## EXHIBIT F

EXHIBIT F

Investigation of New Mexico's False Electoral Votes in the 2020 Presidential Election: Findings & Recommended Legislative Reforms

# **Final Report**

January 5, 2024



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### EXECUTIVE SUMMARY

Our Nation's democracy depends on the fairness and integrity of our elections. In 2020, individuals from seven states in which Joseph R. Biden prevailed in the presidential election, including New Mexico, submitted false certificates of electoral votes to Congress purporting to cast ballots for Donald J. Trump. These fake elector certificates were part of a broader scheme, organized by President Trump's associates, to overturn the results of the election and subvert the will of the people. Given the threat the false certificates posed to the Nation's democratic election process, the Federal Government and the states launched criminal investigations into the fake elector scheme.

The previous administration at the New Mexico Attorney General's Office (NMAGO) referred New Mexico's false certificate to federal authorities for investigation. With Attorney General Raúl Torrez taking office at the beginning of 2023 and with no determination having been made in relation to the federal referral, the NMAGO conducted a comprehensive investigation into the unresolved question of whether any state crimes occurred in association with the formation, execution, and submission of the false certificate of electoral votes. Investigators reviewed thousands of pages of documents relating to the scheme in New Mexico and the parallel schemes in the six other states. NMAGO investigators also interviewed the five New Mexico fake electors and many other individuals connected to the false certificate. The investigation revealed that Trump's team and campaign provided the fake certificate, along with instructions for completing and submitting the document, to five electors designated by the Republican Party of New Mexico. However, unlike the documents the campaign sent to other states declaring the fake electors to be the actual electors of their states, the New Mexico document purported to certify electoral votes only if the signatories were later determined to be the legitimate electors for New Mexico.

The fake electors acted with reckless disregard, and their actions were misleading and dangerous. But under existing law, this conditional language prevents the filing of criminal charges against the fake electors and others associated with New Mexico's false certificate for two reasons. First, New Mexico's Election Code lacks a provision that would make it a crime to submit false electoral votes. Second, there is insufficient evidence that the false certificate was prepared and submitted with an intent to defraud in support of a charge of forgery.

Given the extraordinary threat that this type of misconduct poses to our democracy, it is essential that the New Mexico legislature amend the election code to provide clear legal authority for prosecuting similar misconduct in the future and enhance the security of the electoral process. As such, this report concludes with a proposal for two specific legislative reforms that would make it a crime in New Mexico to submit a false certificate of electoral votes and close the gap in current law that allows conditional language to insulate this dangerous conduct from prosecution under current law.

### I. FACTUAL AND LEGAL BACKGROUND

### A. The Legitimate Presidential Elector Process

New Mexico's Election Code operates in conjunction with the federal Electoral Count Act and the United States Constitution to establish the procedures for electing the President and the Vice President of the United States. Under New Mexico law, gualified political parties nominate presidential electors from the voters of the party. NMSA 1978, § 1-15-3 (A) (2017). The United States Constitution provides that the number of electors for each state shall be equal to the state's representation in Congress, U.S. Const. art. II, § 1, meaning that New Mexico presently has five elector nominees for each qualified political party. A vote for the pair of presidential and vice-presidential nominees "shall be a vote for the presidential electors of the political party by which the nominees were named." NMSA 1978, § 1-15-4(B) (2019). The popular vote controls the election of the nominees: "[P]residential elector nominees of the party whose nominees for president and vice president receive the highest number of votes at the general election shall be the elected presidential electors for this state, and each shall be granted a certificate of election by the state canvassing board." Section 1-15-4(C).

Before the 2020 general election, six qualified political parties in New Mexico, including the Democratic Party and the Republican Party, nominated five of their voters to serve as presidential electors should the party's pair of candidates prevail in the popular vote. These individuals were presidential elector nominees subject to becoming "elected presidential electors" if their party won the popular vote. On November 3, 2020, Donald J. Trump lost the 2020 presidential general election in

New Mexico to Joseph R. Biden by a significant margin. When New Mexico voters chose Biden and Kamala Harris to be the President and Vice President of the United States, the Democratic Party's nominees became the elected presidential electors for New Mexico. These five elected presidential electors had the mandatory duty, subject to prosecution for a fourth-degree felony, to cast their ballots in the Electoral College "for the candidates of the political party which nominated them as presidential electors," NMSA 1978, § 1·15·9 (1969), meaning Joseph R. Biden for President and Kamala Harris for Vice President.

On November 24, 2020, Governor Michelle Lujan Grisham and Secretary of State Maggie Toulouse-Oliver issued New Mexico's official Certificate of Ascertainment certifying the election results as validated by the State Canvassing Board. Pursuant to state and federal law, New Mexico's five electoral votes were thereafter pledged to then President-elect Joe Biden and then Vice President-elect Kamala Harris.

By federal law, "[t]he electors of President and Vice President of each State shall meet and give their votes on the first Tuesday after the second Wednesday in December next following their appointment at such place in each State in accordance with the laws of the State enacted prior to election day." 3 U.S.C. § 7. On December 14, 2020, New Mexico's electors complied with state and federal law by meeting at noon at the office of the Secretary of State, casting their ballots for Biden for President and Harris for Vice President, and transmitting their ballots under seal to the President of the Senate. *See* U.S. Const. amend. XII; NMSA 1978, § 1-158 (1977) ("The presidential electors of the state shall meet at noon in the office of the secretary of state on the day fixed by the laws of the United States .....").

### **B.** The Fake Elector Certification

At the same time as the legitimate electors' meeting on December 14, the Republican Party's nominees met at the State Capitol, a location other than that specified by statute for the elector meeting. The five nominees were Harvey Yates, Deborah Maestas, Jewll Powdrell, Rosie Tripp, and Guadalupe Garcia. Yates was out of the state on December 14. As a result, the other nominees replaced him with Anissa Ford-Tinnin, the outgoing Executive Director of the Republican Party of New Mexico. At the Capitol, these five individuals signed the following document:

## CERTIFICATE OF THE VOTES OF THE 2020 ELECTORS FROM NEW MEXICO

#### \*\*\*\*\*\*\*

WE. THE UNDERSIGNED, on the understanding that it might later be determined that we are the duly elected and qualified Electors for President and Vice President of the United States of America from the State of New Mexico, do hereby certify the following:

- (A) That we convened and organized at the State Capitol, in Santa Fe, New Mexico at 12'00 noon on the 14th day of December, 2020, to perform the duties enjoined upon us?
- (B) That being so assembled and duly organized, we proceeded to vote by ballot, and balloted first for President and then for Vice President by distinct ballots' and
- (C) That the following are two distinct lists, one, of all the votes for President: and the other, of all the votes for Vice President, so cast as aforesaid:

#### FOR PRESIDENT

Names of the Persons Voted For	Number of Votes
DONALD J. TRUMP of the State of Florida	5

#### FOR VICE PRESIDENT

Names of the Persons Voted For	Number of Votes
MICHAEL R. PENCE of the State of Indiana	5

IN WITNESS WHEREOF, we, the undersigned, have hereunto, at the Capitol, in Santa Fe, in the State of New Mexico, on this 14th day of December, 2020. subscribed our respective names.

va poware WLL POWDRELL, Chairperson

DEBORAH W. MAESTAS, Secretary

ff 1-Jnn

ANISSA FORD-TINNE

The incoming Executive Director of the Republican Party of New Mexico, Nike Kern, attended the meeting with her husband. She video recorded the fake electors' meeting on her phone. Kern provided a copy of the ten-minute video to NMAGO investigators.

After the fake electors signed the certificate, Kern and her husband mailed the certificate to the President of the United States Senate and the National Archives. This certificate of votes never had any validity under New Mexico or federal law because the State Canvassing Board did not issue a certificate of election to the signatories and the Governor of New Mexico did not issue a certificate of ascertainment of these individuals' appointment as electors. See § 1-15-4(C); 3 U.S.C. § 5.

### C. The Trump Campaign Contacts New Mexico's Fake Electors

The NMAGO's investigation included a thorough review of the Final Report from the Select Committee to Investigate the January 6<sup>th</sup> Attack on the United States Capitol, indictments in other jurisdictions, depositions, transcripts, and correspondence. Investigators also interviewed Powdrell, Maestas, Garcia, Tripp, Ford Tinnin, Yates, Kern, Kern's husband, Republican Party of New Mexico Chairman Steve Pearce, and Joshua Findlay, a Trump campaign attorney who participated in the fake elector effort.

In their interviews, the fake electors described their first involvement with the plan to submit an alternate certificate of electoral votes. Ford-Tinnin was not one of the original elector nominees, but on December 12, 2020, she was contacted in her executive director capacity by Thomas Lane, the Trump campaign's operations director for New Mexico. At that time, Ford-Tinnin was aware that Rudy Giuliani and his team planned to file a lawsuit in New Mexico alleging fraudulent voting and asking a court to vacate the certificate of electoral votes for Biden and Harris. In a text exchange between Lane and Ford-Tinnin on the evening of December 12, Lane suggested that the Republican elector nominees meet on December 14 to complete an alternate certification of votes as a placeholder in the event it was needed due to the lawsuit. Ford-Tinnin told NMAGO investigators she had the understanding that the certification would serve as a contingency in case the election results were overturned.

After Ford-Tinnin provided Lane with the contact information of the Republican elector nominees, Lane emailed them, along with Ford-Tinnin, Kern, and Pearce, inviting them to attend a Zoom meeting in the afternoon on December 13. Shortly after the meeting, Lane emailed the following documents to the same group of individuals: instructions on how to cast electoral votes in New Mexico, a draft press release, a form to be used to fill any elector vacancies, ballots for President and Vice President, and a draft certificate of votes that had the same wording ultimately submitted by the fake electors, including the qualifying language.

Unbeknownst to the New Mexico contingent, the Trump campaign had sent a similar packet of documents to Republican Party executives in Arizona, Georgia, Michigan, Nevada, Pennsylvania, and Wisconsin several days earlier, on December 10. Unlike New Mexico's certificate, the draft certificates sent to the other states did not contain any qualifying language. This conditional language arose later in response to an exchange between the Trump campaign and Pennsylvania's fake elector contingent.

On December 12, 2020, the same day the Trump campaign first contacted the New Mexico contingent through Lane's text exchange with Ford-Tinnin, the Pennsylvania elector nominees had a phone conversation with Giuliani and Kenneth Chesebro, an attorney brought into the Trump campaign after the election as a legal advisor. During this conference call, the elector nominees expressed their apprehension about signing a certificate in which they would be declaring themselves to be legitimate electors. Giuliani assured them that their certificates would be used only if litigation challenging the results of the election were to be successful. Based on these concerns, however, Chesebro proposed conditional language for the Pennsylvania certificate.

In fact, Chesebro had been the architect of the January 6 scheme of having an alternate slate of electors, and only three days earlier, Chesebro had drafted a memorandum in which he said that the alternate elector certificates would be needed "so that the votes might be eligible to be counted if later recognized (by a court, the state legislature, or Congress) as the valid ones that actually count in the presidential election." During the evening on December 12, Chesebro sent an email to Mike Roman, who had been the Trump campaign's national director of election day operations and who was leading the Giuliani team's effort to get alternate electors in place by December 14. In the email, Chesebro proposed that the Pennsylvania elector nominees use conditional language certifying their votes "on the understanding that it might later be determined" that they are the proper electors, consistent with his memorandum.

As that night passed into the early morning hours, at 12:28 a.m., Chesebro sent Roman and Findlay a separate email with the documents for the New Mexico fake electors, and his draft certification of the votes for New Mexico included the conditional language he had developed for Pennsylvania's fake electors. The documents were then sent to Lane for him to forward to the New Mexico contingent, and these are the documents Lane emailed to the New Mexico group shortly after

their Zoom meeting on the afternoon of December 13. New Mexico's fake electors, however, had no knowledge of the Pennsylvania developments or Chesebro's memorandum. They were simply presented with a draft certificate that already included the conditional language, together with Lane's placeholder justification.

In fact, at that point, New Mexico's role had barely been under consideration by the Trump campaign. As late as 4:56 p.m. on December 12, 2020, Roman emailed his staff about tracking the fake elector operation and left New Mexico off his list of the states to track. By 9:30 p.m., a campaign attorney, Christina Bobb, sent an email to Roman about the other states and added that the campaign had reached out to the Republican Party of New Mexico "to ask if they can throw this together by Monday." The video recording of the fake electors at the State Capitol confirms an overall lack of knowledge and preparation on their part; Powdrell, named as Chairman by the other fake electors, continually needed to ask Kern's husband for instructions on what to do. The video indicates that the other fake electors seemed equally unprepared and unfamiliar with the process orchestrated by the Trump campaign.

Given the lack of knowledge by New Mexico's fake electors about Pennsylvania's concerns and the source of the conditional language, it is not surprising that they were also unaware of an evolution in Chesebro's alternate elector scheme at the time they completed and submitted their invalid certification of the votes on December 14. As documented by the Final Report from the Select Committee to Investigate the January 6th Attack on the United States Capitol, Chesebro prepared a memorandum on December 13, the same day the fake elector documents were sent to the New Mexico contingent, in which he advanced a "President of the Senate" strategy that would have the President of the United States Senate (Vice President Mike Pence) unilaterally decide how to resolve conflicting slates of electors. This plan advocated the violation of the Electoral Count Act and the obstruction of the counting of electoral votes during the Joint Session of Congress on January 6, 2021.

New Mexico's fake electors told NMAGO investigators they did not know about any intent to use their certificate for unlawful or insurrectionist purposes. Ford Tinnin told investigators that the fake electors "just thought, they're going to send the papers to the people that need them. If the election is overturned, they'll take the electoral votes and they'll go do what they have to with them." Maestas used the phrase "just in case" five times to explain why she signed the certificate. Garcia remembers that he relied on assertions that the certification would only be operative if the election was overturned. Tripp "just assumed that the Trump campaign felt like New Mexico might come into play. And that would be our job as electors, is to go to Santa Fe and cast our votes. And, in the event that there was a question, at least our votes would count." Powdrell believed the votes would be a moot subject if the election were not overturned.

Other members of the New Mexico contingent held the same beliefs. Pearce told investigators the electoral votes served a "preservation" purpose in case the Trump campaign's lawsuit in New Mexico was successful. He repeated six times throughout the interview the importance of casting the electoral votes on the correct date at the risk of making a successful lawsuit moot.

Documents prepared contemporaneously with the signing of the certificate corroborate these individuals' statements. A proposed press statement from the Republican Party of New Mexico stated as follows: "Today was the only day for GOP electors to vote, and we are making sure we address this if problems are uncovered. If we didn't take the vote, then it wouldn't matter what problems arose." Similarly, in the minutes of a meeting on December 15, Kern wrote that the certificate was necessary in case "significant anomalies are found here in NM like they have been found in other states" and that, without the certificate, "there may be no recourse." The video recording of the signing of the certificate also does not indicate any knowledge of a plan to use the document for an unlawful purpose; as noted above, it instead indicates that these individuals had little understanding of the process and the steps the campaign wanted them to follow.

The New Mexico contingent was also largely unaware of the role of the Vice President in the January 6th certification proceeding. Ford-Tinnin, Garcia, and Kern told investigators they had never heard the theory that the Vice President, as President of the Senate, could unilaterally choose between competing or alternate electors. Tripp had heard of this theory but only in the aftermath of January 6<sup>th</sup>. Powdrell believed the Vice President's role was "not to make a judgment call one way or the other, but to actually present the votes." Yates, the elector nominee who was replaced on December 14 because he was out of the state, disagreed that the Vice President could exercise this unilateral authority. To a person, the New Mexico contingent believed that the alternate certificate of votes would have no legal effect without a successful legal challenge to the election results in New Mexico, and the NMAGO's interviews and review of documents and communications revealed no evidence to the contrary.

### D. The Chesebro Plan Gains Momentum after December 14

Just as the fake electors in New Mexico were unaware of Chesebro's new theory about the Vice President's authority on January 6, they also could not have known on December 14 of subsequent developments with this theory. On December 23, 2020, John Eastman, a Trump advisor, prepared a memorandum in which he argued that the President of the Senate could simply refuse to count the electoral votes from the seven states with alternate certificates. Under this scenario, Vice President Pence either "gavels" Trump as having been re-elected or sends the election to the House of Representatives to choose the President by ballot as provided in the Twelfth Amendment when no candidate receives a majority of electoral votes. On January 3, 2021, Eastman added another option under which Vice President Pence could send the competing electoral votes back to the states' legislatures for resolution. Chesebro supported Eastman's arguments. These memoranda are discussed in the Final Report from the Select Committee to Investigate the January 6th Attack on the United States Capitol, and as the Select Committee observed, these arguments would have required Vice President Pence to violate the Electoral Count Act. President Trump, however, adopted Eastman's

plan, and he and Eastman met with Vice President Pence to pressure him to reject the seven states' electoral votes or remand the votes to the states' legislatures. During this meeting, Eastman acknowledged both that the plan would violate the Electoral Count Act and that the alternate elector certificates had no validity because they had not been accompanied by any certificate of ascertainment by the states.

Although these plans largely solidified after the fake electors sent their certificates, the NMAGO investigation has not revealed any evidence suggesting that the New Mexico contingent became aware of these plans before January 6. The fake electors in New Mexico had no contact with Eastman about these plans, and it does not appear that any member of the Trump campaign contacted them to inform them of the theories advanced by Eastman and Chesebro about the authority of the President of the Senate on January 6.

### E. Criminal Charges and Actions in Other States

The NMAGO investigation revealed that six other states, Arizona, Georgia, Michigan, Nevada, Pennsylvania, and Wisconsin, were part of the Trump team's fake elector plan from its inception. New Mexico, it seems, was somewhat of an afterthought in the campaign's national scheme. As noted above, the Trump campaign provided certificates to the other states on December 10. These certificates did not contain qualifying language and included language of the signatories declaring themselves to be their state's legitimate electors. The fake

electors in Arizona, Georgia, Michigan, Nevada, and Wisconsin signed the certificates as originally drafted.

In Georgia, Fulton County District Attorney Fani Willis secured a grand jury indictment against three fake electors, Chesebro, and others in relation to the fake elector scheme, in addition to separate charges related to election subversion against former President Trump and a number of co-defendants. The fake elector scheme charges include impersonating a public officer, forgery, false statements and writings, and conspiracy. Chesebro pleaded guilty to conspiracy to commit filing false documents.

Michigan Attorney General Dana Nessel charged sixteen fake electors. The charges included forgery, uttering and publishing false or forged records or instruments, election law forgery, and conspiracy.

Nevada Attorney General Aaron Ford secured a grand jury indictment against six fake electors. They are charged with offering a false instrument for filing and uttering a forged instrument. In 2023, the Nevada Legislature passed a statute specifically making it a crime to create or serve in a false slate of presidential electors or to conspire to do so, but Governor Joe Lombardo vetoed the bill.

Arizona Attorney General Kris Mayes has publicly acknowledged an ongoing investigation. Arizona's fake electors broadcast their signing of the certification and publicly called on Vice President Pence to count their illegitimate votes instead of the legitimate votes of the actual Arizona electors on January 6.

In Wisconsin, a civil lawsuit against the fake electors resulted in a settlement. Under the agreement, the fake electors admitted their actions were part of an unlawful attempt to overturn the 2020 presidential election results.

Pennsylvania's fake electors submitted a document to the President of the Senate titled, "Certificate of the Votes of the 2020 Electors from Pennsylvania." However, consistent with the concerns they articulated to Giuliani and Chesebro, their certificate included qualifying language. It certified their vote "on the understanding that if, as a result of a final non-appealable Court Order or other proceeding prescribed by law, [they] are ultimately recognized as being the duly elected and qualified Electors for President and Vice President of the United States of America from the State of Pennsylvania." This language differed from the language proposed by Chesebro for both Pennsylvania and New Mexico in its requirement of a court order or equivalent legal declaration of the signatories being valid electors. Pennsylvania Governor Josh Shapiro, while serving as Attorney General, indicated publicly that, although the fake electors' actions were intentionally misleading and damaging to the Nation's democracy, the certificate with the conditional language would not meet the legal standard for forgery in Pennsylvania.

### II. ANALYSIS OF NEW MEXICO'S CRIMINAL LAWS

NMAGO prosecutors examined the New Mexico Criminal and Election Codes to determine whether the fake electors, executives in the Republican Party of New Mexico, or members of Trump's team and campaign committed a crime under state law through the drafting, execution, and transmission of the false certificate of votes. Although the Election Code contains several election-specific crimes, there are no provisions of the Election Code that apply to the conduct here. New Mexico has no equivalent to Georgia's impersonating a public officer or Michigan's election law forgery. In addition, New Mexico's crime of falsely voting with knowledge of not being a qualified elector, NMSA 1978, § 1-20-8(A) (2011), does not apply to the ballot process for elected presidential electors. The Legislature expressly defined a "qualified elector" as "any resident of this state who is qualified to vote under the provisions of the constitution of New Mexico and the constitution of the United States and includes any qualified resident." NMSA 1978, § 1-1-4(A) (2019). In other words, a "qualified elector" is "a voter." Section 1.1.4(B). False voting under Section 1-20-8(A) therefore applies only to individuals falsely voting in an election without being a qualified voter. The fake electors were qualified voters and did not violate this statute.

The Election Code proscribes falsifying election documents, including the preparing or submitting of a false election document. NMSA 1978, § 1-20-9(E) (2009). However, this crime does not apply to a certificate of electoral votes. It

instead expressly applies only to "any false certificate of nomination, registration record or election return." *Id.* 

Turning to the Criminal Code, the crime of fraud does not apply because it requires the misappropriation or taking of property having some value. NMSA 1978, § 30-16-6 (2007); *State v. Lee*, 2009-NMCA-075, ¶ 13, 213 P.3d 509. The fake electors did not misappropriate property having a dollar value.

The general crime of forgery is the one that most closely aligns with the conduct of the fake electors, as indicated by the forgery-related charges in Georgia, Michigan, and Nevada. However, the NMAGO's investigation found that the fake electors' conduct, while meeting two of the elements of forgery, does not satisfy the element of an intent to defraud.

New Mexico defines forgery in relevant part as "falsely making or altering any signature to, or any part of, any writing purporting to have any legal efficacy with intent to injure or defraud." NMSA 1978, § 30-16-10(A) (2006). This crime has three essential elements: (1) falsely making or altering a signature to, or any part of, a writing; (2) the writing purports to have legal efficacy; and (3) the individual acted with an intent to injure or defraud.

With respect to the first element, "[t]he crime of 'forgery' consists in the act of making the false instrument with an intent to defraud." *State v. Smith*, 1927-NMSC-012, ¶ 24, 252 P. 1003. "Though a forgery . . . requires a lie, it must be a lie about the document itself; the lie must relate to the genuineness of the document." *State v. Baca*, 1997-NMSC-018, ¶ 5, 934 P.2d 1053. The Republican elector

nominees made a certificate of electoral votes even though they had no authority to create the document and even though the document was not a genuine certification of electoral votes supported by a certificate of ascertainment. There is sufficient evidence to establish this element.

For the purposes of the second element of forgery, legal efficacy can apply to commercial and public documents. A non-commercial document purports to have legal efficacy if (1) it must be filed or recorded by law or is necessary or convenient to the discharge of a public official's duties, (2) it could be made the foundation of liability on its face, and (3) it is good and valid to serve the purpose for which it was created. *State v. Martinez*, 2008·NMCA·058, ¶¶ 7, 9, 183 P.3d 935. This test looks at the instrument the false document purports to be. For example, New Mexico courts have held that a fingerprint card, a traffic citation, an I·9 form, a W·4 form, a social security card, and a resident alien card have legal efficacy under this test. *Id.* ¶¶ 7-11; *State v. Sandoval*, 2007·NMCA-103, ¶¶ 13-17, 166 P.3d 473.

As indicated by its title, format, and content, and by the timing and location of its execution and its submission to the President of the United States Senate, the fake electors purported to make a certification of electoral votes for the offices of President and Vice President of the United States from the New Mexico presidential electors. A certificate of electoral votes is required to be filed by law, Section 1.15.8; 3 U.S.C. § 9, it is a source of liability on its face in its use to elect the President and the Vice President, and it is good and valid to serve that purpose. By falsely making this document, the fake electors interfered with the purposes the document serves and undermined confidence in the integrity of such documents. The certificate met the second element of forgery by purporting to have legal efficacy, whether as casting ballots for New Mexico's electoral votes or as a placeholder for those votes in case the Republican nominees were later declared to be the duly elected and qualified electors for New Mexico.

The final element of forgery is an intent to injure or defraud. However, this element does not require an intent to cause economic harm; it instead refers to an intent to cheat or deceive. UJI 14-1643 committee cmt. The State is not required to prove an intent to cheat or deceive a specific person. *Id.* 

After a comprehensive investigation and a thorough examination of the facts, the NMAGO found that the fake electors' conduct did not meet this final element of forgery. The fake electors received and signed a document that had qualifying language that communicated they were not, at that time, New Mexico's legitimate presidential electors. They knew that a lawsuit challenging New Mexico's election results would be filed close in time to their execution of the certificate, and Lane told Ford-Tinnin this document would be used only if the litigation were to be successful. The totality of the evidence does not establish that the fake electors intended to deceive the President of the Senate into thinking that they were the actual electors from New Mexico and using their votes in place of New Mexico's actual electors without a court ruling overturning the election results. In other words, the evidence does not support an intent to defraud. Because proof of an

essential element of forgery is missing, these individuals cannot be charged with the crime.

The fact that there was no substantive crime of forgery does not foreclose the commission of an initiatory crime like conspiracy or solicitation. Conspiracy is the agreement to commit a felony and requires an intent that the felony be committed. NMSA 1978, § 30-28-2 (1979). A person who "solicits, commands, requests, induces, employs or otherwise attempts to promote or facilitate another person to engage in conduct constituting a felony" with the intent that the felony be committed is guilty of solicitation. NMSA 1978, § 30-28-3 (1979).

The NMAGO has found that there was no initiatory crime in New Mexico. As described above, there was a scheme at the national level to overturn the legitimate results of the election. To advance this scheme, members of Trump's team and campaign sent draft certifications of electoral votes to Republican Party executives in seven states with the intent that the certifications be completed by elector nominees that were not the actual presidential electors for those states. They further intended for the certificates to be completed in the manner provided by law and to be sent to the President of the Senate to be counted, to nullify the actual electoral votes, or to disrupt or delay the electoral college process. In five other states and Pennsylvania, those draft certificates included language declaring the individuals to be the duly elected and qualified electors of their states. If such a document had been sent to New Mexico party executives or the New Mexico fake electors, those who drafted and transmitted the documents may have been guilty of

solicitation of forgery under New Mexico law because they would have been asking the fake electors to submit a false certificate with an intent to defraud. However, the fake electors never received a draft with this false declaration. They instead received a draft with conditional language, and Lane, a member of Trump's campaign, conveyed that the document served as a contingency in case the lawsuit in New Mexico succeeded. Moreover, any agreement to commit a felony by national actors did not include New Mexico actors or take place in New Mexico. There is thus insufficient evidence to establish a solicitation or conspiracy in this state.

### III. CONCLUSION AND RECOMMENDED LEGISLATIVE REFORM

Building upon extensive investigations of the January 6 scheme by the Federal Government and several other states, the NMAGO's investigators determined that New Mexico is uniquely situated among the seven states that were part of a national scheme. New Mexico's fake electors did not receive a draft certification until after it had been modified to include conditional language to assuage the concerns of Pennsylvania's fake electors. This conditional language, combined with the New Mexico fake electors' understanding of how the document would be used, prevents a prosecution for the violation of New Mexico law.

This conclusion, however, does not change the fact that former President Trump and his team attempted to use this certificate unlawfully to disrupt the electoral college process and overturn the legitimate results of the election. As Governor Shapiro observed, the fake electors' preparation and submission of a false certificate was misleading. Their conduct endangered a lawful and orderly transition of power and posed the threat of contributing to a coup d'etat. Although the conduct was not criminal under current law, it is the type of dangerous conduct that should be criminalized to protect the integrity of state and national elections. For this reason, New Mexico should strengthen its election laws.

More specifically, New Mexico's Election Code can be strengthened by amending the crime of falsifying election documents in Section 1.20.9 and by creating a new crime of falsely acting as a presidential elector like the one passed by the Nevada Legislature. In Section 1.20.9, the required mental state of knowingly

falsifying an election document would adequately separate criminal from innocent conduct; knowledge of falsity poses a significant risk of interfering with the election process and should be proscribed without the additional requirement of an intent to deceive or mislead. Section 1.20.9 also should be expanded to include a broader range of documents required to be filed in an election. Even with these changes to Section 1.20.9, however, New Mexico should have a separate crime of falsely acting as a presidential elector because of the gravity and risk of harm posed by an attempt to disrupt a presidential election. Further, the statute should foreclose the use of conditional language to defeat criminal liability. The NMAGO offers the following two proposed election integrity statutes:

#### 1-20-9. Falsifying election documents.

Falsifying election documents consists of performing any of the following acts willfully and with knowledge [and intent to deceive or mislead any voter, precinct board [election board], canvassing board or other election official]:

A. printing, causing to be printed, distributing or displaying false or misleading instructions pertaining to voting or the conduct of the election;

B. printing, causing to be printed, distributing or displaying any official ballot, sample ballot, facsimile diagram or pretended ballot that includes the name of any person not entitled by law to be on the ballot, or omits the name of any person entitled by law to be on the ballot, or otherwise contains false or misleading information or headings; C. defacing, altering, forging, making false entries in or changing in any way a certificate of nomination, registration record, [<del>or</del>] election return <u>or other election</u> <u>document</u> required by or prepared and issued pursuant to the Election Code [Chapter 1 NMSA 1978];

D. suppressing any certificate of nomination, registration record or election return required by or prepared and issued pursuant to the Election Code;

E. preparing or submitting any false certificate of nomination, registration record,  $[\Theta r]$  election return or other election document required to be filed by law or upon which an election official is required to rely as part of the official's election duties; or

F. knowingly falsifying any information on a nominating petition <u>or other</u> <u>election document required to be filed by law or upon which an election official is</u> required to rely as part of the official's election duties.

Whoever falsifies election documents is guilty of a fourth-degree felony.

### [A New Section of Article 20 of Chapter 1] Falsely Acting as a Presidential Elector.

A. Falsely acting as a presidential elector consists of a person knowingly representing to an election official or in an election document that the person is an elector for the state for the offices of president and vice president of the United States without receiving a certificate of election by the state canvassing board pursuant to Section 1-15-4 NMSA 1978.

B. It shall not be a defense, justification or excuse for the violation of this section that the representation is accompanied by the conditional occurrence of some event in the future.

C. The attorney general and the district attorney in the county of jurisdiction have concurrent jurisdiction to enforce the provisions of this section.

Whoever falsely acts as a presidential elector is guilty of a second-degree felony.

# EXHIBIT G

# EXHIBIT G

No. 20-\_\_\_\_

## IN THE Supreme Court of the United States

DONALD J. TRUMP, ET AL.,

Petitione**rs**,

υ.

JOSEPH R. BIDEN, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

### PETITION FOR A WRIT OF CERTIORARI

R. GEORGE BURNETT CONWAY, OLEJNICZAK & JERRY 231 S. Adams Street Green Bay, WI 54305 gb@lcojlaw.com

KENNETH CHESEBRO 25 Northern Avenue Boston, MA 02210 kenchesebro@msn.com JAMES R. TROUPIS Counsel of Record TROUPIS LAW OFFICE 4126 Timber Lane Cross Plains, WI 53528 (608) 305-4889 judgetroupis@gmail.com

Counsel for Petitioners

December 29, 2020

		Electronically Filed 1/29/2024 4:18 PM Steven D. Grierson CLERK OF THE COURT
1	MDSM	Aten S. Anno
2	MONTI JORDANA LEVY, ESQ. Nevada Bar No. 8158 WRIGHT MARSH & LEVY	
4	300 S. Fourth St., Ste. 701 Las Vegas, Nevada 89101 (702) 382-4004	
5	mlevy@wmllawlv.com Attorney for Defendant	
6	EILEEN RICE DISTR	ICT COURT
7	CLARK CO	JNTY, NEVADA
8	STATE OF NEVADA,	, 
9	Plaintiff,	
10	VS.	CASE NO. : C-23-379122-6
11	EILEEN RICE,	DEPT. NO.: XVIII
12		HEARING REQUESTED
13	Defendant.	
14	MOTION	TO DISMISS
15	COMES NOW, Defendant EILH	EEN RICE, by and through her
16	attorney, MONTI JORDANA LEVY, H	ESQ., of WRIGHT MARSH & LEVY, and
17	hereby moves this court for an	order dismissing the case as the
18	Grand Jury empaneled by the Eig	hth Judicial District Court,
19	Clark County Nevada, lacked jur	risdiction to return a True Bill
20	in the above entitled case and	the venue is improper.
21	This Motion is made and ba	ased on the papers and pleadings
22	on file, the Memorandum of Poir	its and Authorities attached
23	hereto, and argument of counsel	. at the hearing on this matter.
24	Dated this 29 <sup>th</sup> day of Jan	Jary, 2024.
25	_/s/ N	Monti Jordana Levy
26		JORDANA LEVY, ESQ. a Bar No. 8158
27		MARSH & LEVY Fourth St., Ste. 701
28	(702)	egas, Nevada 89101 382-4004 ney for Defendant N RICE
		APP 0401

**Electronically Filed** 

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1	
2	NOTICE OF MOTION
3	TO: THE STATE OF NEVADA, Plaintiff:
4	. PLEASE TAKE NOTICE that the undersigned will bring the
5	foregoing MOTION TO DISMISS on for hearing before the above-
6	entitled Court on the day of, 2024, at the
7	hour of a.m./p.m., or as soon thereafter as counsel may be
8	heard on this matter.
9	DATED this 29th day of January, 2024.
10	/a/ Monti Tordana Torra
11	<u>/s/ Monti Jordana Levy</u> MONTI JORDANA LEVY, ESQ. Nauada Bar Na 2152
12	Nevada Bar No. 8158 WRIGHT MARSH & LEVY 200 G. Farsth Str. 201
13	300 S. Fourth St., Ste. 701 Las Vegas, Nevada 89101 (702) 202 4004
14	(702) 382-4004 mlevy@wmllawlv.com
15	Attorney for Defendant EILEEN RICE
16	
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1	MEMORANDUM OF POINTS AND AUTHORITIES
2	I. INDTRODUCTION
3	Eileen Rice ("Ms. Rice") is charged with two felony offenses
4	in the above entitled court for conduct which took place wholly
5	in other counties. Because Clark County is not the appropriate
6	venue to hear the charges, the Clark County Grand Jury lacked the
7	authority to return a True Bill in this case; therefore, Ms. Rice
8	respectfully requests that the charges be dismissed.
9	II. PROCEDURAL HISTORY
10	On December 6, 2023, the State of Nevada through its
11	Attorney General, Aaron D. Ford, filed an Indictment in this
12	court charging Ms. Rice along with Michael James McDonald ("Mr.
13	McDonald"), James Walter DeGraffenreid III, ("Mr.
14	DeGraffenreid"), Jesse Reed Law ("Mr. Law"), Durward James Hindle
15	III ("Mr. Hindle"), and Shawn Michael Meehan ("Mr. Meehan") with
16	one count of Offering False Instrument for Filing or Record, and
17	one count of Uttering Forged Instruments: Forgery.
18	The Indictment was filed pursuant to a True Bill returned by
19	the Grand Jury empaneled in the Clark County District Court on
20	December 5, 2023, following testimony the Grand Jury received on
21	November 14, 2023, November 28, 2023, and December 5, 2023.
22	On December 18, 2023, all six defendants appeared in this
23	Court via audio/visual transmission and entered pleas of "Not
24	Guilty." All six defendants waived their right to a speedy
25	trial, and trial is set to commence on March 11, 2024.
26	III. STATEMENT OF FACTS
27	The Indictment alleges in count I that on or between
28	December 8, 2020 through December 22, 2020, within the County of

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1 Clark, State of Nevada, the defendants knowingly offered a false 2 or forged instrument titled, "CERTIFICATE OF THE VOTES OF THE 3 2020 ELECTORS FROM NEVADA" to be filed, registered or recorded in the office of the President of the United States Senate, and/or 4 5 the Archivist of the United States, and/or the Nevada Secretary 6 of State, and/or the Chief Judge of the District Court for the 7 District of Nevada by either directly committing the offense, and/or pursuant to a conspiracy to commit the offense. 8

9 Count II alleges that the defendants uttered, offered, 10 disposed of or put off as true a forged writing, instrument or 11 other thing titled, "CERTIFICATE OF THE VOTES OF THE 2020 12 ELECTORS FROM NEVADA" to the President of the United States 13 Senate, and/or the Archivist of the United States, and/or the 14 Nevada Secretary of State, and/or the Chief Judge of the District Court for the District of Nevada, with the intent to defraud, by 15 16 either directly committing the offense or pursuant to a 17 conspiracy to commit the offense.

18 According to the testimony and exhibits presented before the 19 Grand Jury, Ms. Rice is a resident of Douglas County, Nevada. On 20 or about the 14<sup>th</sup> day of December, 2020, the defendants met in 21 Carson City, Nevada, and signed ballots as Republican electors 22 for Donald Trump and Michael Pence. These documents were mailed 23 from Douglas County, Nevada to the Archivist in Washington D.C., 24 the Chief Judge of the United States District Court in Las Vegas, 25 Nevada, the Secretary of State in Carson City, Nevada, and the 26 President of the United States Senate in Washington D.C. with a 27 return address for Michael McDonald in Las Vegas, Nevada. While 28 the letters all contained a return address for Mr. McDonald in

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1 Las Vegas, Nevada, the letters were actually mailed from the 2 post-office located in Minden, Nevada, which is in Douglas 3 County. The signing and mailing of the documents all occurred outside of Clark County, Nevada. 4 IV. ARGUMENT 5 6 Α. THE GRAND JURY EMPANELED IN AND FOR THE COUNTY OF CLARK LACKED JURISDICTION TO RETURN A TRUE BILL IN THIS CASE 7 NRS 172.105 provides: 8 The grand jury may inquire into all g public offenses triable in the district court or in a Justice Court, committed 10 within the territorial jurisdiction of the district court for which it is 11 impaneled. 12 The Nevada Supreme Court has held that the term "territorial 13 jurisdiction" is a term of art that incorporates state statutes 14 governing venue and, thus, the statute empowers a grand jury to 15 inquire into an offense so long as the district court that 16 empaneled the grand jury may appropriately adjudicate the defendant's guilt for that particular offense. Martinez Guzman 17 v. Second Judicial District Court in and for County of Washoe, 18 136 Nev. 103,460 P.3d 443 (2020). In other words, the grand jury 19 20 for each district can only investigate and return true bills for 21 cases where venue is proper under the Nevada statutes in the 22 district wherein it is empaneled. 23 Because the alleged offenses here occurred in either Carson 24 City (where the documents were executed) or in Douglas County 25 (where the documents were mailed), the offenses are triable only 26 within one of those two judicial districts pursuant to Nevada's 27 venue statute (see subsection B below). The grand jury that heard evidence and returned a true bill in this case is empaneled 28

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by the Eighth Judicial District Court and can only hear cases 2 triable within Clark County. 3 VENUE IS IMPROPER IN CLARK COUNTY AS ANY ACTS WHICH COULD Β. CONSTITUTE THE OFFENSES ALLEGED IN THIS CASE OCCURRED IN 4 OTHER JURISDICTIONS 5 NRS 171.030 provides: 6 When a public offense is committed in part in one county and in part in 7 another or the acts or effects thereof constituting or requisite to the consummation of the offense occur in two 8 or more counties, the venue is in either 9 county. 10The Nevada Legislature has carved out additional venue 11 provisions for certain offenses'; however the crimes with which 12 Ms. Rice is charged do not fit into any of those statutes. 13 When no specific venue statute applies for the offense 14 charged, the general rule is that "'each county will have 15 independent jurisdiction over a criminal offender for the conduct 16 17 'For example: NRS 200.540 provides in part,"Every person publishing a libel in this state may be proceeded against in any 18 county where such libelous matter was published or circulated"; NRS 205.08345 provides in part, "In any prosecution for a violation 19 of this section, the violation shall be deemed to have been committed and may be prosecuted in any jurisdiction in this State 20 in which any theft committed by any participant in the organized retail theft was committed, regardless of whether the defendant was 21 ever physically present in that jurisdiction"; NRS 171.060 states 22 in part, "When property taken in one county by burglary, robbery, larceny or embezzlement has been brought into another, the venue of 23 the offense is in either county;" NRS 205.060 provides in part, "Whenever any burglary pursuant to this section is committed on a 24 vessel, vehicle, vehicle trailer, semitrailer, house trailer, airplane, glider, boat or railroad car, in motion or in rest, in 25 this State, and it cannot with reasonable certainty be ascertained in what county the crime was committed, the offender may be 26 arrested and tried in any county through which the vessel, vehicle, vehicle trailer, semitrailer, house trailer, airplane, glider, boat 27 or railroad car traveled during the time the burglary was committed." 28

occurring in that county.'" <u>Martinez Guzman v. Second Judicial</u>
 <u>District Court</u>, 137 Nev. 599, 602, 496 P.3d 572,575 (2021)
 <u>guoting Zebe v. State</u>, 112 Nev. 1482, 1484-85, 929 P.2d 927, 929
 (1996). Because there is no specific venue statutes for the
 offenses charged in this case, the general rule applies.

6 Here, the documents that are the subject of the charges were 7 executed in Carson City and mailed from Douglas County, the fact 8 that a return address for Las Vegas was used or that one of the 9 documents was mistakenly mailed to an address in Las Vegas', does 10 not change the fact that all of the acts constituting the alleged 11 offenses took place outside of Clark County.

12 In State v. Pray, the Nevada Supreme Court held that while 13 the crime of larceny is an exception to the common law rule that 14 an indictment must be found in the county where the crime was 15 committed, in the absence of a specific venue statute, the venue for the crime of receiving stolen goods is in the county where 16 17 they are received, and not in the county where they are stolen, nor the one to which they are subsequently taken. State v. Pray, 18 19 30 Nev. 206, 94 F. 218 (1908) (overruled on other grounds). Like 20 in Pray where the offense was consummated when the goods were 21 received with the unlawful intent specified in the statute, here, 22 any offense was consummated when the documents were mailed from 23 Douglas County. No acts took place in Clark County; therefore, venue for these alleged offenses under NRS 171.030 would be in 24 25 either Carson City or Douglas County.

<sup>&</sup>lt;sup>27</sup> <sup>2</sup>Chief U.S. District Court Judge Miranda M. Du is actually located in Reno Nevada at 400 S. Virginia Street, Reno, Nevada 89501 not at the Las Vegas Courthouse.

"Neither formation of intent alone nor preparatory acts
 alone are sufficient to make venue proper in a charging county."
 <u>Martinez Guzman</u>, 137 Nev. at 603, 496 P.3d at 576. Even if the
 State could show that intent or a preparatory act was committed
 in Clark County, the offenses were committed outside of Clark
 County; therefore, venue here is improper.

7

C. MS. RICE IS ENTITLED TO HAVE THE JURY POOL FROM THE LOCATION WHERE THE OFFENSE IS ALLEGED TO HAVE TAKEN PLACE UNDER THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION

9 The constitutional guarantee of a fair trial includes the 10 right to "an impartial jury of the State and district wherein the 11 crime shall have been committed." U.S. Const. amend. VI. This provision in the constitution is the Vicinage Clause, which is a 12 13 separate right from the Venue Clause, which is found in Article 14 III, §2, cl.3. See, Smith v. United States, 599 U.S. 15 (2023), see also, The Place of Trial of Criminal Cases: 16 Constitutional Vicinage and Venue, 43 Mich. L. Rev. 59 (1944). The venue is the place where the trial is to be held, which is 17 18 separate from the vicinage, which is the place from where jurors 19 are to be drawn. See, A Jury of Your Peers: Venue, Vicinage, and 20 Buffer Juries, The Jury Expert, 20 (3), 49-52 (September 2008). 21 In 22 Smith, the United States Supreme Court stated that the Vincinage 23 Clause: 24 'Reinforce[s]' the coverage of the Venue Clause because, in protecting the right 25 to a jury drawn from the place where a crime occurred, it functionally 26 prescribes the place where a trial must be held. 27 Smith, 599 U.S. \_\_\_\_ (2023). 28

The Court explained that the Vicinage Clause differs from Venue because it concerns the jury composition, not the place where the trial should be and it specifies that the jury must be drawn from "the State and district where the crime shall have been committed." <u>Smith</u>, 599 U.S. (2023) (Emphasis in original).

7 In order for Ms. Rice to have a fair trial by a jury of her 8 peers as guaranteed by the Sixth Amendment, the trial (and thus 9 where the jury pool is drawn) must take place in either Carson 10 City (First Judicial District Court) or Douglas County (Ninth 11 Judicial District Court). Ms. Rice has no connection to Clark 12 County, Nevada, and there is no cognizable reason why she should 13 be tried here.

14Although in State v. Steward, 74 Nev. 65, 323 P.2d 23 15 (1958), the Nevada Supreme Court held that there is no 16 constitutional guarantee in the Nevada Constitution that a crime 17 be tried in the county or territorial jurisdiction within which the offense was committed, its holding is limited to whether or 18 not venue or in transitu statutes violate the state constitution. 19 20 That case did not hold that any court in Nevada has jurisdiction 21 over any offense occurring outside its district. Nevada's venue 22 statute provides in this case that venue (and vicinage) are 23 proper in either Carson City or Douglas County.

24

#### V. CONCLUSION

Because the Clark County Grand Jury only has the power to hear cases triable in its court, it lacked jurisdiction to return a true bill in this case. Further, the alleged offenses were complete upon the mailing of the documents in Douglas County, and

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1	the documents were executed in Carson City; therefore, venue is
2	only proper in one of those two districts. Additionally, Ms.
3	Rice would be denied a trial by her peers as guaranteed in the
4	United States Constitution if she were subjected to trial in
5	Clark County. Ms. Rice respectfully requests that this Honorable
6	Court grant her motion to dismiss.
7	Respectfully Submitted,
8	<u>/s/ Monti Jordana Levy</u> MONTI JORDANA LEVY, ESQ.
9	Nevada Bar No. 8158 WRIGHT MARSH & LEVY
10	300 S. Fourth St., Ste. 701 Las Vegas, Nevada 89101
11	(702) 382-4004 mlevy@wmllawlv.com
12	Attorney for Defendant EILEEN RICE
13	EILEEN RICE
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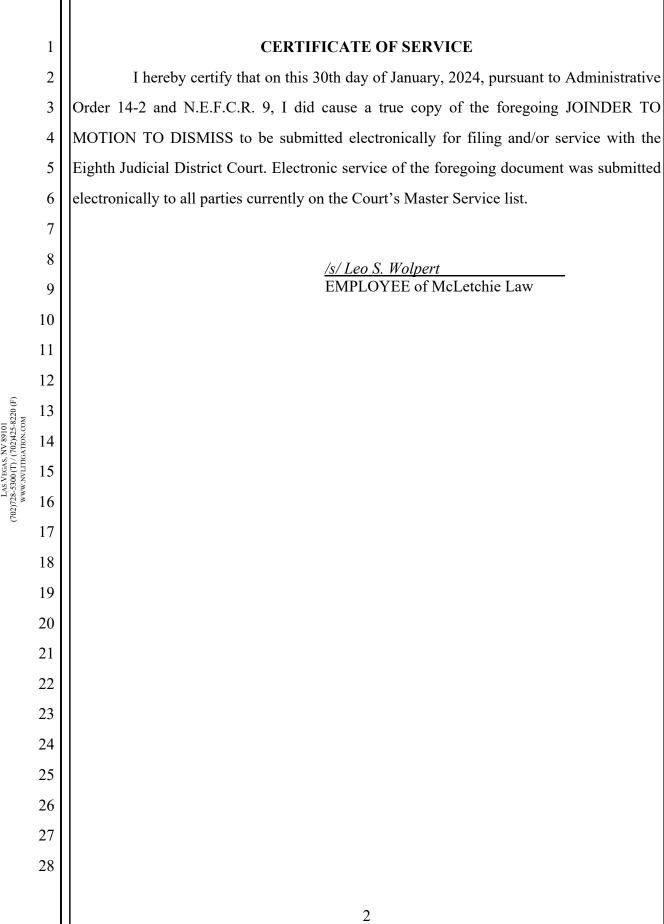
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<b>MOT</b> SIGAL CHATTAH, ESQ.	200-00
Nevada Bar No.: 8264	
CHATTAH LAW GROUP	
5875 S. Rainbow Blvd. #204 Las Vegas, Nevada 89118	
Tel: (702) 360-6200	
Fax:(702) 643-6292 Attorney for Defendant	
Shawn Michael Meehan	
EIGHTH JUDICIAL DIS	STRICT COURT
CLARK COUNTY	' NEVADA
****	
THE STATE OF NEVADA,	CASE NO.: C-23-379122-5
Plaintiff,	
v.	Dept. No.: XVIII
· -	
MICHAEL JAMES MCDONALD, JAMES	
WALTER DEGRAFFENREID III, JESSE REED LAW, DURWARD JAMES HINDLE III, <b>SHAWN</b>	
MICHAEL MEEHAN, and EILEEN A. RICE,	
Defendants.	
Derendunts.	
SHAWN MICHAEL MEEHAN'S JOINI	DER TO MOTION TO DISMISS
COMES NOW Defendant, SHAWN MICHA	EL MEEHAN by and through his counsel
	LAW GROUP, and hereby submits his
of record, SIGAL CHATTAH, ESQ. of CHATTAH	
of record, SIGAL CHATTAH, ESQ. of CHATTAH	("Motion") filed on January 29, 2024.
joinder to EILEEN RICE'S MOTION TO DISMISS	· · ·
joinder to EILEEN RICE'S MOTION TO DISMISS This Joinder is based on the pleadings and pa	· · ·
joinder to EILEEN RICE'S MOTION TO DISMISS	pers on file and any argument the Court ma

1	reference the citations, authorities and arguments stated therein as though fully set forth herein.
2	DATED this 29th day of January, 2024.
3	CHATTAH LAW GROUP
4	/s/Sigal Chattah
5	SIGAL CHATTAH, ESQ. Nevada Bar No. 8264
6	CHATTAH LAW GROUP 5875 S. Rainbow Blvd., #204
7	Las Vegas, NV 89118 Tel: (702) 360-6200
8	Fax:(702) 643-6292
9	Attorney for Defendant
10	
11	CEDTIEICATE OF ELECTRONIC SEDVICE
12	CERTIFICATE OF ELECTRONIC SERVICE
13	I hereby certify that service of the above and forgoing Joinder to Motion was served via
14	electronic e-filing to the Clark County District Attorney's Office at motions@clarkcountyda.com
15	on this <u>29th</u> day of January, 2024
	By: <u>/s/ Sigal Chattah</u>
16	An employee of Chattah Law Group
17	
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25	
	-2- APP 0412

1 2 3 4 5 6 7 8	JMOT George P. Kelesis Nevada Bar No. 0069 COOK & KELESIS, LTD. 517 S 9 <sup>th</sup> Street Las Vegas, NV 89101 Telephone: (702) 737-7702 Facsimile: (702) 382-5816 Email: law@bckltd.com Attorney for James Walter DeGraffenreid, III	Electronically Filed 1/30/2024 8:08 AM Steven D. Grierson CLERK OF THE COURT
9	DISTRIC	T COURT
10	CLARK COU	NTY, NEVADA
11		
12	THE STATE OF NEVADA,	
13	Plaintiff,	Case No.: C-23-379122-1
14	VS.	Dept. No.: XVIII
15	MICHAEL JAMES MCDONALD, JAMES WALTER DEGRAFFENREID IIII, JESSE	
16	REED LAW, DURWARD JAMES HINDLE III, SHAWN MICHAEL MEEHAN, and EILEEN A. RICE,	Hearing Date:March 4, 2024Hearing Time:9:30 AM
17	Defendants.	
18 19		
19 20		
20	JAMES WALTER DE JOINDER IN MO	GRAFFENREID, III'S FION TO DISMISS
21	James Walter DeGraffenreid, III, by and	through his counsel of record, George P. Kelesis,
23		reby joins in Defendant Eileen Rice's Motion to
24	Dismiss ("Motion") filed on January 29, 2024 an	nd set for hearing on March 4, 2024 at the hour of
25	9:30 AM.	
26		
27		
28		
		APP 0413
19	Case Number: C-23-379	

1	Defendent De Croffenneidhersheredente endineernemeter herrefenenes ell foste entherrities
1	Defendant DeGraffenreid hereby adopts and incorporates by reference all facts, authorities,
2	and arguments stated in said Motion as though fully set forth herein, and is based on the pleadings
3	and papers on file and any argument the Court may entertain at the time of the hearing in this matter.
4	DATED this 30th day of January, 2024.
5	COOK & KELESIS, LTD.
6	
7	By: /s George P. Kelesis
8	George P. Kelesis, Esq. Nevada Bar No. 10068 517 S 9 <sup>th</sup> Street
9	Las Vegas, Nevada 89101
10	Attorney for James Walter DeGraffenreid, IIII
11	
12	
13	
14	
15	CERTIFICATE OF SERVICE
16	The undersigned, declare under penalty of perjury, that on January 30, 2024 I caused to be
17	served a true and correct copy of the foregoing <b>Joinder in Motion to Dismiss</b> by submitting to the
18	Eighth Judicial District Court, for electronic filing in accordance with NRCP 5(b), NEFCR
19	Administrative Order 14-2 and NEFCR 9(e) and service upon the Court's Service List for the above-
20	referenced case.
21	
22	
23	/s Sherrill D. Grotheer
24	An employee of COOK & KELESIS, LTD.
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	Page 2 of 2
	APP 0414
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APP 0415 Case Number: C-23-379122-3		Attorney for Defendant Jesse Law	Fax: (702) 425-8220	Las Vegas, Nevada 89101 Telephone: (702) 728-5300			<u>s/ Margaret A. McLetchie</u> MARGARET A. MCLETCHIE		Respectfully submitted this 30 <sup>th</sup> day of January, 2024.	authorities and arguments stated in the Motion as though fully set forth herein.	JESSE LAW expressly adopts and incorporates by reference the factual assertions, citations,	on behalf of Defendant Eileen Rice in Case No. C-23-379122-6 (the "Motion"). Defendant	McLetchie of McLetchie Law, hereby joins the January 29, 2024, Motion to Dismiss filed	Defendant/Petitioner JESSE LAW, by and through his counsel, Margaret A,	Hearing Time:	Defendant. Hearing Date:	JESSE LAW, Individual [HEARING REQUESTED]	vs.	Plaintiff	STATE OF NEVADA   CASE NO.: C-23-379122-3	EIGHTH JUDICIAL DISTRICT COURT CLARK COUNTY, NEVADA	Counsel for Defendant Jesse Law



## APP 0416

ATTORNEYS AT LAW 602 SOUTH TENTH ST. Las Vegas, NV 89101 (702)728-5300 (T) / (702)425-8220 (F)

		Electronically Filed 1/31/2024 10:01 AM Steven D. Grierson
1	<b>Marquis Aurbach</b> Brian R. Hardy, Esq.	CLERK OF THE COURT
2	Nevada Bar No. 10068	LTTI-O-CO-CO-CO-CO-CO-CO-CO-CO-CO-CO-CO-CO-C
3	Harry L. Arnold, Esq. Nevada Bar No. 15866	
4	10001 Park Run Drive Las Vegas, Nevada 89145	
5	Telephone: (702) 382-0711 Facsimile: (702) 382-5816	
6	bhardy@maclaw.com harnold@maclaw.com	
7	Attorneys for Durward J. Hindle, III	
8	DISTRICT	
9	CLARK COUN	TY, NEVADA
10	THE STATE OF NEVADA,	
11	Plaintiff, vs.	Case No.: C-23-379122-2 Dept. No.: XVIII
12	MICHAEL JAMES MCDONALD, JAMES	Heaving Date: March 4 2024
13	WALTER DEGRAFFENREID III, JESSE REED LAW, <b>DURWARD JAMES HINDLE</b>	Hearing Date:March 4, 2024Hearing Time:9:30 AM
14	<b>III,</b> SHAWN MICHAEL MEEHAN, and EILEEN A. RICE,	
15	Defendants.	
16	DEFENDANT DURWAR	D JAMES HINDLE III'S
17	JOINDER IN MOT	ION TO DISMISS
18	Defendant/Petitioner, DURWARD JAMI	ES HINDLE III, by and through his attorneys,
19	BRIAN R. HARDY, ESQ. and HARRY L. ARN	
20	fully joins the January 29, 2024 Motion to Dism	
21	Case No. C-23-379122-6 (the "Motion"), which	
22	of 9:30 AM.	
23		
24	///	
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26	///	
27	///	
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	Page 1	of 3 MAC:14221-013 5361202_1
		APP 0417

Case Number: C-23-379122-2

MARQUIS AURBACH 10001 Park Run Drive Las Vegas, Nevada 89145 (702) 382-0711 FAX: (702) 382-5816

1	Defendent DUWARD JAMES HINDLE III expressly edents and incorporates by
1 2	Defendant DUWARD JAMES HINDLE III expressly adopts and incorporates by reference the factual assertions, citations, authorities and arguments stated in the Motion as
2	though fully set forth herein.
4	Dated this 31 <sup>st</sup> day of January, 2024.
5	Duced this 51° day of building, 2021.
6	MARQUIS AURBACH
7	
8	By <u>/s/ Brian R. Hardy</u> Brian R. Hardy, Esq. Nevada Bar No. 10068
9	Nevada Bar No. 10068 Harry L. Arnold, Esq. Nevada Bar No. 15866
10	10001 Park Run Drive
11	Las Vegas, Nevada 89145 Attorney(s) for Durward J. Hindle, III
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28	Dage 2 of 2
	Page 2 of 3 MAC:14221-013 5361202_1

CERTIFICATE OF SERVICE	
I hereby certify that the foregoing <b>DEFENDANT DURW</b>	ARD JAMES HINDLE III
JOINDER IN MOTION TO DISMISS was submitted electron	ically for filing and/or servi
with the Eighth Judicial District Court on the 31st day of January	y, 2024. Electronic service
the foregoing document shall be made in accordance with the E-Se	rvice List as follows: <sup>1</sup>
Office of the Attorney General 555 E. Washington Ave, Suite 3900 Las Vegas, NV 89101 <u>mburris@ag.nv.gov</u> tdibari@ag.nv.gov <u>AEngler@ag.nv.gov</u> <u>rholm@ag.nv.gov</u> jross@ag.nv.gov <u>htew@ag.nv.gov</u>	
media@ournevadajudges.com	
/s/ C. Hatfield An employee of Marc	uus Aurbach
<sup>1</sup> Pursuant to EDCR 8.05(a), each party who submits an E-Filed docum consents to electronic service in accordance with NRCP $5(b)(2)(D)$ .	nent through the E-Filing Syst
Page 3 of 3	MAC:14221-013 536120

MARQUIS AURBACH 10001 Park Run Drive Las Vegas, Nevada 89145 (702) 382-0711 FAX: (702) 382-5816

1 2 3 4 5 6 7 8		DISTRICT (		Electronically Filed 1/31/2024 3:50 PM Steven D. Grierson CLERK OF THE COURT	Letter.
9	CLAR	K COUNT	Y, NEVADA		
<ol> <li>10</li> <li>11</li> <li>12</li> <li>13</li> <li>14</li> <li>15</li> <li>16</li> <li>17</li> <li>18</li> <li>19</li> </ol>	THE STATE OF NEVADA, Plaintiff, vs. MICHAEL JAMES MCDONALD, Defendant. Defendant/Petitioner, MICHAEL WRIGHT, ESQUIRE, of WRIGHT MA to Dismiss filed on behalf of Defendant Defendant Michael McDonald expressly	RSH & LE Eileen Ric	VY, hereby joins the Janua ce in Case No. C-23-37912	N TO DISMISS orney, RICHARD A. ary 29, 2024, Motion 22-6 (the "Motion").	
20	citations, authorities and arguments stated in the Motion as though fully set forth herein.				
21	Respectfully submitted this 31st day of January, 2024.				
22		WRIC	GHT MARSH & LEVY		
23		By	IUINI		
24 25		At	CHÀRD & WRIGHT, ES torney for Defendant ICHAEL MCDONALD	QUIRE	
25		IVI	ICHAEL MCDONALD		
20					
28					

### **<u>CERTIFICATE OF SERVICE</u>**

I hereby certify that on this 31st day of January, 2024, pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing JOINDER TO MOTION TO DISMISS to be submitted electronically for filing and/or service with the Eighth Judicial District Court. Electronic service of the foregoing document was submitted electronically to all parties currently on the Court's Master Service list.

> /s/ Debbie Caroselli An Employee of Wright Marsh & Levy

1	<b>RWHC</b> AARON D. FORD	Electronically Filed 2/8/2024 3:00 PM Steven D. Grierson CLERK OF THE COURT			
2	Attorney General ALISSA ENGLER (Bar No. 11940)				
3	Chief Deputy Attorney General MATTHEW J. RASHBROOK (Bar No. 12477) Special Prosecutor Office of the Attorney General 555 E. Washington Ave., Ste. 3900 Las Vegas, Nevada 89101-1068 P: 702 486-3420 F: 702 486-0660 Attorneys for the State of Nevada DISTRICT COURT CLARK COUNTY, NEVADA				
4					
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11		Case No. C-23-379122-1			
12	STATE OF NEVADA,	Dept. No. XVIII			
13	Plaintiff/Respondent,				
14	VS.				
15	JAMES WALTER DEGRAFFENREID, III,				
16	Defendant/Petitioner.				
17	<b>RETURN AND RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS (PRE-TRIAL)</b> COMES NOW, KEVIN MCMAHILL, Sheriff of Clark County, Nevada, Respondent, through				
18					
19	his counsel, AARON D. FORD, Attorney General, through ALISSA ENGLER, Chief Deputy Attorney				
20	General in response to the Petition for Writ of Habeas Corpus filed by Petitioners Michael J. McDonald,				
21	Jess Reed Law and Eileen A. Rice in the above-entitled Court, and states as follows:				
22	Respondent denies paragraphs 3 and 4 on pages one and two of Petitioners' Petition. The				
23	remainder of the assertions included on pages one and two of the Petitioners' Petition do not require				
24	admission or denial. The Petitioner is in the constructive custody of KEVIN MCMAHILL, Clark County				
25	Sheriff, respondent herein, pursuant to a Criminal Indictment filed on December 6, 2023, and				
26	incorporated by reference herein.				
27					
- '					

WHEREFORE, Respondent prays that the Writ of Habeas Corpus be discharged, and the Petition be dismissed.

DATED this 8<sup>th</sup> day of February, 2024.

Submitted by:

AARON D. FORD Attorney General

By: <u>/s/ Alissa Engler</u> ALISSA ENGLER (Bar No. 11940) Chief Deputy Attorney General

### **MEMORANDUM OF POINTS AND AUTHORITIES**

## I. INTRODUCTION

On December 14, 2020, Petitioners, Michael J. McDonald (hereinafter "MCDONALD"), James Walter DeGraffenreid III (hereinafter "DEGRAFFENREID"), Jesse Reed Law (hereinafter "LAW"), Duward James Hindle III (hereinafter "HINDLE"), Shawn Michael Meehan (hereinafter "MEEHAN"), and Eileen A. Rice (hereinafter "RICE"), collectively referred to throughout as ("Petitioners"), stood outside on the steps of the Legislative Building in Carson City, Nevada, to participate in a prearranged meeting to sign, certify and cast what Petitioners titled as "Certificate of the Votes of the 2020 Electors from Nevada." The Petitioners broadcast this fraudulent vote to the world via Right Side Broadcasting, which posted the video on Facebook and other social media platforms. *See Exhibit 6A – Grand Jury Transcript (GJT) Volume 2, November 28, 2023, at 9:4-16.* 

This meeting on the steps of the Nevada Legislature was but a moment in a longer process of coordination—a conspiracy—by Petitioners via telephone communications, text messages, social media platforms and emails. Petitioners coordinated their strategy surrounding the operation of the meeting and drafting of the certificates with representatives of then President Donald Trump's re-election campaign, members of the Nevada Republican Party, and other individuals from states where the presidential election margins were expected to be close or highly contested.

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Petitioners executed the documents in Carson City, Nevada on December 14, 2020. Petitioners traveled from diverse locations throughout Nevada to attend the meeting in Carson City, including Las Vegas, Henderson, Minden, Virginia City, Zephyr Cove and Gardnerville.

By executing the documents, Petitioners falsely held themselves out to be "duly elected and qualified Electors for President and Vice President of the Unites States of America from the State of Nevada," as was written on the Certificates and stated in the meeting. See Exhibit 4. After Petitioners signed the documents, DeGraffenreid drove more than ten miles to Douglas County. From Douglas County, he mailed the Certificates to the Nevada Secretary of State in Carson City, the U.S. District Court for the District of Nevada in Las Vegas, and the Archivist of the United States and the President of the Senate, both in Washington D.C. The U.S. Postal Service then delivered envelopes containing the forged certificates to these public offices across Nevada and the United States and thereby offered them for filing or recording.

II.

### **PROCEDURAL HISTORY**

On December 6, 2023, the State of Nevada charged Petitioners by way of Indictment with the following: one (1) count of Offering False Instrument For Filing Or Record, a category "C" Felony in violation of NRS 239.330 and one (1) count of Uttering Forged Instruments: Forgery, a category "D" Felony in violation of NRS 205.110. On December 18, 2023, Petitioners pleaded not guilty and waived their right to a speedy trial within sixty (60) days. Calendar Call is set for March 4, 2023, and Jury Trial is scheduled to commence on March 11, 2023.

On January 29, 2024, McDonald, Rice and Law filed the instant Petition for Writ of Habeas Corpus and Joint Memorandum of Points and Authorities ("Petition"). On January 29, 2024, Hindle, Meehan and DeGraffenreid filed Joinders. Rice also filed a contemporaneous Motion to Dismiss on January 29, 2024, which all other Petitioners joined in separate filings. The State responds as follows.

#### III. FACTUAL HISTORY

### a. Electoral College Process

The Office of the Federal Register is part of the National Archives and Records Administration. GJT Vol 1, at 10:9-11. The National Archives and Records Administration collects, stores, and maintains all permanent federal records for the federal government which includes presidential documents,

documents related to the Electoral College, and documents that federal agencies produce. GJT Vol 1, 12:11-16. Miriam Vincent is the Acting Director of Legal Affairs and Policy for the Office of the Federal Register. GJT Vol 1, 10:12-22. Among other duties assigned by the Archivist, The Office of the Federal Register administers the Electoral College. GJT Vol 1, 10:20 – 11:7. The Office of the Federal Register receives Certificates of Ascertainment and Vote from all 50 states and the District of Columbia each election cycle, stores them in a safe for a period of time (generally more than a year but less than three years), and then forwards those to the National Archives where they become part of the official permanent public federal records collection. GJT Vol 1, 12:20 - 14:21. The Certificate of Ascertainment is a document required by federal law that lists the electors from the major parties as well as the number of votes received. Grand Jury Transcript (GJT) Volume 3, December 5, 2023 at 74:22-25. The Certificate of Ascertainment is combined with the Certificate of Vote to show and affirm by the individuals who sign it, who received the popular votes and therefore who are the appropriate electors to cast their votes for the President of the United States. GJT Vol 3 at 75:12-18. When Certificates of Vote and Ascertainment are received by the National Archives, attorneys in the Office of the Federal Register review them to determine whether they meet the requirements under the Electoral Count Act. GJT Vol 1, 17:11 – 18:15.

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During presidential elections, the Nevada Secretary of State executes and enforces federal and state laws related to elections, which includes candidate filing through the final transmittal of information to the President of the Senate. *GJT Vol 3 at 65:18-66:11*. In 2020, Barbara Cegavske was the Nevada Secretary of State. *GJT Vol 3, at 66:19-21*. Mark Wlaschin is the Deputy Secretary of State for Elections, and in that role, he works directly with the Secretary of State to execute and enforce laws relating to elections. *Id.* One such law is The Uniform Faithful Electors Statute, which is codified in NRS 298, and the intent of the statute is to ensure that the presidential electors cast their votes for whoever won the popular vote in the state. *GJT Vol 3 at 72:24-73:5*. A nominee for presidential elector is an individual identified by the major parties that have a presidential candidate on the ballot, and the prevailing party of the popular vote are the nominees that become the qualified electors for the State of Nevada. *GJT Vol 3 at 73:11-74:6*. At the conclusion of a presidential election, the Nevada Secretary of State receives the election results from each of the 17 counties and provides the results to the Nevada Supreme Court for

the Court to canvass the general election on the fourth Tuesday in November. *GJT Vol 3 at 68:18-23;* 69:16-71:25.

Once the results are certified, the Certificate of Ascertainment is completed and sent to four places: the Nevada Secretary of State, the Chief Judge of the U.S. District Court for the District of Nevada - Hon. Miranda Du, the Archivist of the United States, and the President of the U.S. Senate. GJT Vol 3 at 75:3-9. The Certificate of Ascertainment must be created no later than six days before the meeting of the Electoral College, also known as the 'safe harbor day' under the Electoral Count Act. GJT Vol 3 at 75:19-25; 81:1-82:1; GJ Exhibit 22. In Nevada, the Office of the Secretary of State works with the Governor's Office to have the Certificate of Ascertainment drafted and signed by the Governor and the Secretary of State, and the Secretary of State sends the documents. GJT Vol 3 at 76:3-10. The Certificate of Ascertainment and the Certificate of Vote are prepared exclusively by the Secretary of State, specifically Mr. Wlaschin and his staff. GJT Vol 3 at 76:11-77:3; GJT Vol 3 at 84:4-21; GJ Exhibit 5. Per Nevada law, the Nevada Secretary of State must preside over the meeting of the Nevada Electoral College to ensure the electors sign the Certificate of Vote for the candidate who won the popular vote. GJT Vol 3 at 83:1-84:3. Following the meeting of the Electoral College, the Nevada Secretary of State will compile the Certificate of Ascertainment, Certificate of Vote and a Certificate of Final Determination of Contests concerning Presidential Electors and seven copies to the Secretary of State, Chief Judge of the U.S. District Court, the Archivist of the United States, and the President of the U.S. Senate. GJT Vol 3 at 83:21-84:3 86:14-89:12.

### b. 2020 Presidential Election

Election day was November 3, 2020. *GJ Exhibit* 22. Joseph R. Biden for President of the United States and Kamala D. Harris for Vice-President of the United States received the highest number of popular votes in the State of Nevada. *GJ Exhibit 24; GJT Vol 3 at 94:5-12*. The Nevada Supreme Court canvass certifying the results of the election occurred on November 24, 2020.<sup>1</sup> *GJT Vol 3 at 68:18-23*. Following the canvass required by NRS 293.395(2), the Governor of Nevada transmitted the Certificate of Ascertainment to the National Archives on December 2, 2020, which certified the Democratic Party

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<sup>&</sup>lt;sup>1</sup> Mr. Wlaschin testified that the canvass occurred on the 4<sup>th</sup> Tuesday of November, which he believed was the 23<sup>rd</sup> of November. The 4<sup>th</sup> Tuesday in November 2020 was November 24.

Electors received the highest number of votes cast for presidential electors in the 2020 General Election. *GJ Exhibit 22; GJT Vol 3 at 78:10-17.* According to the Certificate of Ascertainment, the Democratic electors received 703,486 votes, a margin of victory of 33,596 over the Republican elector nominees. *GJT Vol 3 at 77:8-21.* The Certificate of Ascertainment was completed by the safe harbor date, which was December 8, 2020. *GJT Vol 3 at 75:19-25.* On December 8, 2020, the National Archives received a Certificate of Ascertainment from the Nevada Secretary of State. *GJT Vol 1, 16:19 – 17:5.* 

On November 17, 2020, the last day allowed by Nevada law to contest the election, Petitioners as Contestants filed a Statement of Contest Challenging the results of the 2020 presidential election in Nevada. *GJ Exhibit 22; GJT Vol 3 at 57:15-25* The Statement sought an order from the First Judicial District Court of the State of Nevada declaring President Donald Trump the winner in Nevada and certifying Contestants as the State's duly elected presidential electors. *Id.* Alternatively, the Statement sought an order holding President-elect Joe Biden's victory in Nevada be declared null and void and that the November 3 election "be annulled and no candidate for elector for the office of President of the United States of American be certified from the State of Nevada." *Id.* On December 3, 2020, the First Judicial District Court held a hearing on the Statement of Contest where each party was able to present evidence. *Id. see also GJT Vol 2, November 28, 2023 at 9:20-11:18, 17:19; GJ Exhibit 6A.*<sup>2</sup> On December 4, 2020, the Honorable District Court Judge James Todd Russell issued an Order Granting Motion to Dismiss Statement of Contest. *GJ Exhibit 22.* The Petitioners through their counsel filed an appeal with the Nevada Supreme Court on December 7, 2020. *Id.* Following an expedited briefing schedule, the Nevada

"Despite our earlier order asking appellants to identify specific findings with which they take issue, appellants have not pointed to any unsupported factual findings, and we have identified none. The clerk of this court shall issue the remittitur forthwith."

GJT Vol 3 at 61:17-25; GJ Exhibit 22.

After receiving a copy of the Order of Affirmance concluding the election contest, the Nevada Secretary of State planned the meeting of the Electoral College with the Democratic party's identified electors. *GJT Vol 3 at 82:4-14*. The meeting of the Nevada Electoral College for the 2020 Presidential

<sup>&</sup>lt;sup>2</sup> Petitioner Law was interviewed as part of the recording and acknowledged Petitioners had the opportunity to present evidence to the court in support of their claims, but stated he was disappointed with the legal process in Nevada. *Minutes* 32:05-35:36.

Election was held on the morning of December 14, 2020, and presided over by then Nevada Secretary of State Barbara Cegavske. *GJT Vol 3 at 72:3-4.* Following the meeting of the Electoral College, Mr. Wlaschin and his staff compiled the Certificate of Ascertainment, Certificate of Vote and the Certificate of Final Determination of Contests concerning Presidential Electors and sent seven copies each to the Secretary of State, Chief Judge of the U.S. District Court for the District of Nevada, the Archivist of the United States, and the President of the U.S. Senate. *GJT Vol 3 at 83:21-84:3 86:14-89:12.* In 2020, the true and accurate copy of the Certificate of Vote for the Nevada 2020 presidential election contained the state seal, was signed by the Democratic electors, and the signatures matched the names on the Certificate of Ascertainment. *GJT Vol 3 at 85:8-86:11; Exhibit 5.* 

On December 17, 2020, the National Archives received a Certificate of Ascertainment paired with a Certificate of Vote from the Nevada Secretary of State. *GJT Vol 1 at 15:1 - 17:5; GJ Exhibit 5.* The National Archives received a Certificate of Final Determination from the Nevada Secretary of State; this document affirms that there are no remaining unresolved legal controversies regarding the election, and that the electors indicated on the Certificate of Ascertainment were the individuals appointed at the meeting of the electors. *GJT Vol 1 at 19:15 – 20:13; GJT Vol 3 at 86:14-87:7.* 

#### c. Fraudulent Activity

Around November 10, 2020, James Troupis contacted Kenneth Chesebro and asked that he do some legal work related to election challenges in Wisconsin. *GJT Vol 2 at 26:11 - 27:18*. Subsequently, Chesebro drafted a series of memoranda in connection with his work and on behalf of the Trump 2020 campaign. *GJT Vol 2 at 27:19-23*. In a November 18, 2020 memorandum, Chesebro suggested that in order to have votes counted for Donald Trump, in the event the Wisconsin election litigation were resolved in Trump's favor, Trump electors would have to cast ballots by December 14, 2020, in order to comply with federal statutory requirements. *GJT Vol 2 at 28:13 – 29:15*.

Subsequently, Chesebro drafted a memo describing the requirements under various federal and state laws, that would have to be observed by Trump electors from states with ongoing litigation. *GJT Vol 2 at 30:1-31:15*. Eventually, Chesebro, at the request of then Trump 2020 deputy campaign manager Justin Clark, drafted voting documents based on those used in Wisconsin, for electors in other states to review and adapt for use in the electors' respective states. *GJT Vol 2 at 32:10 - 33:13*. On December 10

and 11, 2020, Chesebro forwarded those draft documents to James DeGraffenreid, Michael McDonald, and Jesse Law. GJT Vol 2 at 33:14-21, 34:13 - 35:3, GJ Exhibit 27. The documents Chesebro provided to DeGraffenreid, McDonald and Law consisted of a memorandum, and drafts of ballots, certificate announcing result of voting for president and vice president, and a cover letter to be provided with the executed certificates. GJT Vol 2 at 35:4-20.

Chesebro asked DeGraffenreid whether there was litigation pending in Nevada connected to the election, but he did not receive a response. GJT Vol 2 at 35:21 - 36:4. Chesebro's view was that the existence of pending litigation was the only reason to cast alternate elector votes. GJT Vol 2 at 36:5-15. After Chesebro sent the draft documents, DeGraffenried circulated the documents for editing to McDonald, Law, Meehan, Hindle and Rice via e-mail, with the final edits made on December 13, 2020. GJ Exhibit 28. The Documents were titled "CERTIFICATE OF THE VOTES OF THE 2020 ELECTORS FROM NEVADA," wherein the Petitioners declare themselves "the duly elected and qualified Electors for President and Vice President of the United States of America from the State of Nevada." GJ Exhibit 4 and Exhibit 6A. Despite the denial of their election contest by the Nevada Supreme Court, the Petitioners, who reside in several locations throughout Nevada, including Las Vegas and Henderson, met in Carson City, Nevada, on December 14, 2020, to execute the documents. GJ Exhibits 6A, 13-18. Law printed and provided copies of the documents to McDonald, DeGraffenreid, Meehan, Hindle and Rice. GJ Exhibit 28. The Petitioners signed and executed the documents. GJ Exhibit 29.

The Petitioners broadcast the vote nationally via Right Side Broadcasting, which posted the video on Facebook and other social media platforms. GJ Exhibit 6A; GJT Vol 2 at 9:4-16. In response to a subpoena, Right Side Broadcasting produced two videos, one edited version totaling 38 minutes, 46 second in length, and one raw footage that was a little over an hour in length, which depicted "the six Nevada Republican nominee electors executing their ballots for the Electoral College election of the U.S president and vice president," in Carson City on December 14, 2020. See GJT Vol 2 at 9:4-10:25. Petitioners were identified as the individuals depicted in the video by comparing the individuals in the Right Side Broadcasting video to the certified copies of the Petitioners Nevada Driver's License records. 26 GJT Vol 2 at 9:1-3, 12:4-13:1; GJ Exhibits 7-18.

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Following the meeting, DeGraffenreid mailed the completed documents from Minden, Nevada, with a return mailing address of Michael J. McDonald, Nevada Republican Party at 840 S. Rancho Dr. 4-800, Las Vegas Nevada 89106. See GJ Exhibit 4, Exhibit 21 and Exhibit 29; GJT Vol 1 at 26:4-21. The four mailings were paid for at the same time by the same person with one payment method, all payments processed on December 14, 2020, at exactly 4:16:02 PM. See GJT Vol 3 at 23; Exhibit 21. They were postmarked December 14, 2020. GJT Vol 1 at 26:4-21; GJ Exhibit 21.

The documents purporting to cast Nevada's electoral votes for Donald J. Trump and Michael R. Pence were sent to following locations by Petitioners: (1) Archivist of the United States, 700 Pennsylvania Avenue NW, Washington D.C., 20408; (2) President of the Senate, United States Senate, Washington D.C. 20510; (3) Secretary of State, State of Nevada, 101 N. Carson St., Suite 3, Carson City, Nevada 89701; and (4) Honorable Miranda M. Du, Chief Judge, U.S. District Court, District of Nevada, Lloyd D. George Courthouse, 333 Las Vegas Blvd South, Las Vegas, N.V. 89101. GJ Exhibit 4, 20, 21 and 29; *GJT Vol 1 at 26:4-21.* 

On December 15, 2020, the Nevada Secretary of State received the forged electoral votes sent by 14 Petitioners. GJ Exhibit 21; GJT 89-94. After consulting with the Secretary of State, who was in Las Vegas, Mr. Wlaschin returned the documents to sender, along with a letter that stated the following: 16

"Enclosed please find documents received December 15, 2020 purporting to be votes of the Nevada Electors in the December 14, 2020 vote of the Electoral College. Please be advised that on December 14, 2020, the lawful Nevada Electors who were identified on the official Certificate of Ascertainment cast their ballots for President of the United States and Vice-president of the United States pursuant to federal and state law in a meeting conducted by the Nevada Secretary of State.

Nevada law requires that all electors cast their ballots for the winner of the popular votes in Nevada. As such the lawful electors cast their ballots for Joseph R. Biden for President of the United States and for Kamala D. Harris for Vice-President of the United States, in accordance with Nevada Law and the results of the 2020 General Election as certified by the Nevada Supreme Court on November 24, 2020.

We are returning these documents as they do not meet the statutory requirement for filing with our office."

26 GJ Exhibit 24, GJT Vol 3 at 93:20-94:15.

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On December 16, 2020, the U.S. District Court received the forged electoral votes sent by

28 Petitioners. See Exhibit 21. On December 21, 2020, the President of the United States Senate received the forged electoral votes sent by Petitioners. *GJ Exhibit 20 and 21; GJT Vol 3 at 53.* On December 22, 2020, the National Archives received the forged electoral votes for Donald Trump and Mike Pence, for President and Vice President. *GJT Vol 1 at 21:19 – 22:12. Grand Jury Exhibit 4.* These appeared to be signed by Michael McDonald, James DeGraffenreid, Durward James Hindle III, Jesse Law, Shawn Meehan, and Eileen Rice. *GJT Vol 1 at 24:8-14, 25:24.* These documents stated the signatories were, "the duly elected and qualified Electors for President and Vice President of the United States of America from the State of Nevada." *GJT Vol 1 at 24:22 – 25:2, 25:9-14.* 

#### IV. LEGAL ARGUMENT

NRS 34.500 sets forth a number of grounds upon which a court may grant a petition for habeas corpus, including (i) lack of probable cause, and (ii) "the process is defective in some matter of substance required by law, rendering it void." In the present Petition, Petitioners make the following arguments:

1. The grand jury impaneled in Clark County lacked jurisdiction to return a true bill in this case;

2. Insufficient evidence was presented to establish probable cause for the offense alleged in the Indictment;

3. The State failed to present exculpatory evidence and presented false or misleading testimony.

For the following reasons, the Petitioners' arguments fail, and the State respectfully requests the Court deny their Petition.

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## A. <u>Clark County is a Proper Venue for this Case and the grand jury therefore had</u> jurisdiction to return a true bill.

"The grand jury may inquire into all public offenses triable in the district court or in a Justice Court, committed within the territorial jurisdiction of the district court for which it is impaneled." NRS 172.105.

Pursuant to NRS 171.030, "When a public offense is committed in part in one county and in part in another or the acts or effects thereof constituting or requisite to the consummation of the offense occur in two or more counties, **the venue is in either county**." **(Emphasis added.)** Venue does not involve an element of the crime or relate to guilt or innocence; the State need only prove venue by a preponderance of the evidence. *McNamara v. State*, 132 Nev. 606, 615-616, 377 P.3d 106, 113 (2016). Venue may be established by circumstantial evidence. *James v. State*, 105 Nev. 873, 875, 784 P.2d 965, 967 (1989). "Where there is evidence of a preparatory act plus intent in that county, an act requisite to the consummation of the charged offense occurred there, and a grand jury may indict a defendant of that offense." *Martinez Guzman v. Second Judicial District Court in and For County of Washoe*, 137 Nev. 599, 605, 496 P.3d 572, 577 (2021). In the instant case, venue is proper in several counties of the state, including Clark County.

First and foremost, Petitioners sent one of four completed forged documents to Chief Judge Miranda Du by mailing it to the federal courthouse in Las Vegas, Nevada, and contrary to Petitioners argument that the acts were completed upon placing the document in the mail, the offering or uttering is not completed until it reached the intended destination.

Secondly, as outlined in more detail in the State's Opposition to Defendant Rice's Motion to Dismiss, the State has provided sufficient facts for this Court to find that under *Martinez-Guzman*, Petitioners had both the requisite intent and performed preparatory acts in Clark County.

Additionally, these offenses trigger the "or effects" language of NRS 171.030 in a way that was not at issue in *Martinez-Guzman*. The State has alleged these crimes were committed as a conspiracy amongst the Petitioners. Petitioners McDonald and Law were participating in the drafting and revision process, and there is evidence that they were in Clark County when they did those acts because they reside in Las Vegas and Henderson, respectively. Additionally, they formed their intent to offer these documents during the planning and preparation stages. Thus, venue is proper wherever one or more members of the conspiracy committed acts contributing to the crime.

The State has filed, contemporaneous to this Response, an Opposition to Defendant Rice's Motion to Dismiss and hereby incorporates the arguments contained in the Opposition as though they were fully set forth herein.

#### B. <u>The State Presented Sufficient Evidence to Establish Probable Cause for Counts</u> <u>I and II of the Criminal Indictment.</u>

"A criminal defendant may be bound over for trial if the evidence adduced is sufficient to establish probable cause that a crime has been committed and the defendant has committed it." *Sheriff, Clark Cnty.* 

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v. Lyons, 96 Nev. 298, 299, 607 P.2d 590, 591 (1980) (State v. von Brincken, 86 Nev. 769, 476 P.2d 733  $(1970).^{3}$ 

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The State only has to present enough evidence to support a reasonable inference that the accused committed the crime and does not need to negate all possible inferences as to doubt. See Lamb v. Holsten, 85 Nev. 566, 568, 459 P.2d 771, 772 (1969); Johnson v. State, 82 Nev. 338, 341, 418 P.2d 495, 496 (1966).

Further, the State may present a case based solely on circumstantial evidence. See Howard v. Sheriff, 93 Nev. 30, 31, 559 P.2d 827, 827 (1977).

Finally, the Nevada Supreme Court has explicitly held that a probable cause hearing is "not a substitute for trial," and that the "full and complete exploration of all facets of the case" should be reserved for trial. Marcum v. Sheriff, 85 Nev. 175, 178, 451 P.2d 845, 847 (1969); see also, Robertson v. Sheriff, 85 Nev. 681, 683, 462 P.2d 528, 529 (1969). A pretrial writ of habeas corpus "will issue when the evidence is insufficient to establish probable cause to believe that the accused committed the charged offense." Sheriff, Clark Cnty. v. Badillo, 95 Nev. 593, 594, 600 P.2d 221, 222 (1979) (citing Williams v. Sheriff, 92 Nev. 543, 554 P.2d 732 (1976)).

The State presented ample evidence to the Grand Jury of the falsity of the documents offered and uttered by the Petitioners. The Grand Jury correctly returned a true bill, and these Petitioners must, therefore, be held to answer to these charges.

> 1. The State presented sufficient evidence to establish probable cause that the Petitioners committed the crime of Offering False Instrument for Filing or Record (Count I).

Under NRS § 239.330, "a person who knowingly procures or offers any false or forged instrument to be filed, registered or recorded in any public office, which instrument, if genuine, might be filed, registered or recorded in a public office under any law of this State or of the United States."

Petitioners assert that the State failed to present sufficient evidence to establish probable cause on three points. First, Petitioners argue that the State failed to provide evidence of falsity. Second, Petitioners

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<sup>26</sup> <sup>3</sup> The magistrate may order an accused to answer the charges filed against him or her upon a finding that a public offense has been committed, and slight or marginal evidence that the defendant committed the crime. See, Sheriff v. Hodes, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980); Beasley v. Lamb, 79 Nev. 78, 80, 378 P.2d 524, 525 (1963); State v. Fuchs, 78 Nev. 63, 65, 368 P.2d 869, 869 (1962).

argue that the State did not present evidence of knowledge of falsity. And third, Petitioners argue that errors in the documents show that the State failed to prove that the documents would have been accepted as genuine.

All three arguments fail; the State presented evidence sufficient to establish probable cause on the necessary elements under the statute: (1) the instrument included a false statement of fact, (2) Petitioners knew that statement of fact to be false at the time they offered the instrument, and (3) a Certificate of Vote is an instrument that, "if genuine, might be filed, registered or recorded in a public office under any law of this State or of the United States."

a. The State presented evidence establishing probable cause that the Petitioners knew the statement that they were the "duly elected and qualified Electors for the State of Nevada for President and Vice President of the United States of America from the State of Nevada" was false at the time the offered the Certificate for filing.

To establish that an instrument is "false," the State only need establish that the instrument contained a false statement of fact. *Zweifel v. State*, 89 Nev. 242, 243, 510 P.2d 872, 873 (1973). The State presented evidence to the grand jury that easily meets this standard.

Petitioners asserted in a document they titled "CERTIFICATE OF THE VOTES OF THE 2020 ELECTORS FROM NEVADA" that they were the "duly elected and qualified Electors for the State of Nevada for President and Vice President of the United States of America from the State of Nevada[.]" *GJ Exhibit 4, GJ 000002.*<sup>4</sup> The passages quoted above are false statements of fact, and the State presented evidence proving such to the Grand Jury. In fact, Defendants admit they were not "Presidential Electors" (Petition 28:6-17), Defendants were elector *nominees*: a nominee for presidential elector is an individual identified by the major parties that have a presidential candidate on the ballot, and the prevailing party of the popular vote are the nominees that become the qualified electors for the State of Nevada. *GJT Vol 3 at 73:11-74:6*.

In Nevada, a person becomes a presidential elector only if they are a nominee, and the candidate from their party then wins the election: "[T]he nominees for presidential elector whose candidates for President and Vice President receive the highest number of votes in this State at the general election are the presidential electors." NRS § 298.065(1) At the conclusion of a presidential election, the Nevada

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The evidence that proves these documents are also properly termed a forgery is discussed *infra* in section 2(a).

Secretary of State receives the election results from each of the 17 counties and provides the results to the Nevada Supreme Court for the Court to canvass the general election on the fourth Tuesday in November. *GJT Vol 3 at 68:18-23; 69:16-71:25*. In the 2020 Presidential Election, Joseph R. Biden for President of the United States and Kamala D. Harris for Vice-President of the United States received the highest number of popular votes in the State of Nevada. *GJ Exhibit 24; GJT Vol 3 at 94:5-12*. The Nevada Supreme Court canvass certifying the results of the election occurred on November 24, 2020. *GJT Vol 3 at 68:18-23*.

The Petitioners were each a party to the election contest and eventual appeal therefrom, in which the Nevada Supreme Court finally resolved the matter of who had won the 2020 Presidential Election on December 8, 2020. *See Law v. Whitmer*,136 Nev. 840, 477 P.3d 1124 (Nev., Dec. 8, 2020) (unpublished table decision). *GJ Exhibit 24*. And the Nevada Supreme Court ordered that the clerk issue the remittitur forthwith, which evidences the conclusion of the state appeal and made the order of affirmance a final, enforceable judgment in the absence of a stay. *GJ Exhibit 24*; *see also Branch Banking &Trust Co. v. Gerrard*, 134 Nev. 871, 874, 432 P.3d 736, 739 (2018).

The question of who won the 2020 Presidential Election in Nevada is not a matter of opinion. The Nevada Supreme Court is the body empowered to determine the answer to that question both by virtue of the fact that it is charged with canvassing the election results, and because it is the court of last resort for election contests in this state. Following the canvass and following the conclusion of the last appeal from Defendants' election contest, the Nevada Supreme Court returned the same answer: Joseph R. Biden and Kamala D. Harris had won the popular vote for President and Vice-President of the United States in Nevada. Defendants' fervent belief or hope that President Trump had won the election is not relevant, no matter how genuinely held.

The assertion that Petitioners had a right to appeal the decision of the Nevada Supreme Court is of no consequence for two reasons. First, consistent with *Branch Banking*, if Petitioners actually thought they had some basis to challenge the Nevada Supreme Court's ruling, merely filing a timely petition for writ of certiorari would have had no legal effect on the finality of the Nevada Supreme Court's judgment resolving the election contest. As the Nevada Supreme Court noted in *Branch Banking*, filing a timely petition for writ of certiorari does not render the judgment nonfinal. 134 Nev. 875-76, 432 P.3d at 740

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(quoting *Glick v. Ballentine Produce, Inc.*, 397 F.2d 590, 594 (8th Cir. 1968). To avoid enforceability of
 the Nevada Supreme Court's final judgment, Petitioners needed to seek an emergency stay from the
 Supreme Court of the United States as occurred in *Bush v. Gore*, 531 U.S. 98, 100 (2000), where the
 Court granted an emergency application for stay and treated that application as a petition for writ of
 certiorari. But Petitioners did not.

Petitioners' failure to seek a stay from the U.S. Supreme Court dovetails with the second reason.
Pursuant to the governing law, the State court's determination is conclusive. Specifically, Section 2 of
the Electoral Count Act of 1887 states:

"That if any State shall have provided, by laws enacted prior to the day fixed for the appointment of the electors, for its final determination of any controversy or contest concerning the appointment of all or any of the electors of such State, by judicial or other methods or procedures, and such determination shall have been made at least six days before the time fixed for the meeting of the electors, such determination made pursuant to such law existing on said day, and made at least six days prior to the said time of the meeting of the electors, shall be conclusive, and shall govern in the count of the electoral votes as provided in the Constitution, and as hereinafter regulated, so far as the ascertainment of the electors appointed by such State is concerned."

On December 14, 2020, the Petitioners all signed a document that stated, "WE, THE UNDERSIGNED, being the duly elected and qualified Electors for the State of Nevada for President and Vice President of the United States of America from the State of Nevada," before certifying their actions on that day. *GJ Exhibit 4* at 2 (emphasis in original). Petitioners held themselves out as "being" Nevada's electors. And they made that statement in the present tense at a time when such a statement of fact was false. The suggestion that a future change to their status may someday occur and that such a change would make that statement true retroactively is unfounded and of no moment. If anything, Petitioners' acknowledgement that a future change in status was necessary to make their statement true proves that the statement was false at the time the Petitioners made it.

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b. The State presented evidence establishing probable cause that the Petitioners knew that the instrument they offered included false statements of fact.

The foregoing also sufficiently demonstrates Petitioners' *knowledge* of falsity. The Nevada Supreme Court resolved the Petitioners' contest to the election results, affirming the First Judicial District Court's order dismissing Petitioners' contest on December 8, 2020. And over the ensuing six days—although they could have—Petitioners sought no relief from that ruling in the U.S. Supreme Court. Yet

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Petitioners executed a document that included factual representations that conflicted with the Nevada Supreme Court's controlling order of affirmance. The Nevada Supreme Court's final resolution of Petitioners' election contest under state law, which each Petitioner knew of, proves that each Petitioner had actual knowledge of the falsity of the claims they made in writing six (6) days later.<sup>5</sup>

Further, Defendants' assertion that they lacked the requisite intent because there were numerous ways in which the Certificate they offered was deficient under relevant statutes, and they "did not try to create a certificate that could have been mistaken for a real one," *Petition, 29:5-7*, amounts to an argument that because the Defendants were not especially skilled forgers, they can't properly be convicted of these charges. To say the least, the argument is unconvincing. NRS § 239.330 is clear, it is the <u>offer</u> to file a false or forged instrument which is criminal: "[A] person who knowingly procures or offers any false or forged instrument to be filed . . . which instrument, if genuine, might be filed . . . is guilty of a category C felony[.]" In making this argument, Petitioners cite *Generes v. Justice Court*, 106 Cal.App.3d 678, 682, 165 Cal.Rptr. 222, 224-225 (Cal. Ct. App. 1980) (citations omitted), however, Petitioners minimize the importance of the holding, which was "it is not necessary to constitute a completed offense that anyone actually be defrauded."

The fact is, the Petitioners intended to pass their documents off as the Certificates of Votes for Nevada. Otherwise, why would they have gone through the trouble of signing numerous copies and sending them to the same government entities that are required to review and process the certificates under state and federal law. As presented to the Grand Jury, the Petitioners communicated several times pre-and-post signing that they had hoped their Certificates would be considered by the Vice President on January 6, 2021. DeGraffenried stated in an email on December 17, 2020, that McDonald, Meehan and Hindle were cc'd on, that, "We sent out GOP Electoral votes directly to the Senate, as well as other places where they are required to go. The next step is that they will be opened on Jan 6<sup>th</sup> in the Senate, along with the ones sent by the SOS for the Dems..." *GJ Exhibit 34*. At the time the Petitioners created, executed, and sent these certificates, they were not the duly elected and qualified electors for the State of Nevada. Their statement to the contrary was a false statement of fact under NRS § 239.330. They

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<sup>&</sup>lt;sup>5</sup> Jessica Hanson sent an email to the six Petitioners on December 9, 2020, informing them that the Nevada Supreme Court denied their appeal. This is email is further evidence that the six defendants knew there was not a case in controversy when they signed the Certificates on December 14, 2020. *See GJT Volume 3, December 5, 2023, at 55.* 

offered these certificates without any contingency language or disclaimers. They offered these documents after their election contest litigation had ended. Ample evidence of all this was presented to the grand jury, along with evidence of the Petitioners' knowledge of the facts that made their statement false.

#### c. <u>The Genuine Versions of These Instruments are "Filed, Registered, or</u> <u>Recorded."</u>

The genuine Certificate of Vote is drafted by the Nevada Secretary of State and is relied upon to determine which candidate becomes the President of the United States. It gives meaning to Americans' right to vote, it memorializes the legal duty of presidential electors to vote faithfully, and ultimately creates both the opportunity and obligation for one candidate to serve as President. To suggest that this is anything other than a monumentally important instrument within our system of government, and indeed our society as a whole, is deeply unserious. Still, Petitioners suggest that their forged and false "Certificate of the Votes of the 2020 Electors from Nevada" was never intended to be taken seriously, and therefore no trial should occur to determine whether these documents would correctly be viewed as having the serious effect of instruments such as fishing licenses, commercial lien filings, or an application for a loan from the state. *See, State v. Price*, 94 Wash. 2d 810, 620 P.2d 994 (WA 1980); *People v. Gruber*, 2006 WL 2709616 (CA CoA 5<sup>th</sup> 2006) (unreported); *Lewis v. State*, 32 Ariz. 182 (AZ 1927).<sup>6</sup>

Petitioners misread the statute. There is no qualitative threshold in the statute requiring that the false or forged document be good enough to be accepted as genuine. But even if there were, it is hard to believe the Petitioners claims that there is no evidence of their intent that the documents to be accepted as genuine when it is evident from watching the video that extensive planning went into the executing of these forged documents. The six defendants traveled from different regions of Nevada to one location in Carson City in order to cast their electoral "ballots" for U.S. president and vice president. They planned the date, arranged for Right Side Broadcasting's participation, and designed the makeshift outdoor

<sup>&</sup>lt;sup>6</sup> See, also People v. Powers, 117 Cal.App.4<sup>th</sup> 291, 11 Cal.Rptr.3d 619: "As noted in People v. Parks (1992) 7 Cal.App.4th 883, 887, 9 Cal.Rptr.2d 450, the Legislative purpose of section 115 is to safeguard the integrity of official records. Nothing in the statute suggests that real property records alone are worthy of protection. Under current jurisprudence, a variety of legally significant documents have been held to be instruments under section 115, including a temporary restraining order falsified to expand its requirements and a community work referral form falsified to show completion of a condition of probation. (People v. Parks, supra, 7 Cal.App.4th at p. 885, 9 Cal.Rptr.2d 450; People v. Tate (1997) 55 Cal.App.4th 663, 667, 64 Cal.Rptr.2d 206.) While this court once followed Fraser in holding that a false affidavit of voter registration was not an instrument under section 115, People v. Fox (1977) 73 Cal.App.3d 178, 140 Cal.Rptr. 615, more recent authority has demonstrated that the limited definition of instrument articulated in Fraser is incorrect and should not be perpetuated."

meeting room with a table, chairs, and a U.S. flag on what appears to be a 6-foot brass pole with a faux black marble wall as a backdrop. See Exhibit 6A – Grand Jury Transcript (GJT) Volume 2, November 28, 2023. Most notable were the multiple certificates they each executed with their signaturesdocuments that were specifically designed, drafted and printed for the meeting on December 14, 2020, to subsequently be securely mailed to various public offices across Nevada and the United States for filing or recording. These documents are referred to during the meeting as "ballots" or "certificates," the design of which and strategy related thereto are discussed in detail through Kenneth Chesebro's grand jury testimony. GJT Volume 2, November 28, 2023, at 32-40.

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Petitioners further torture the obvious language and meaning of NRS § 239.330 and suggest that what controls is not whether the actual, genuine, Certificate of Vote is filed, registered, or recorded, but rather, whether the false and forged version of their creation could have been filed if it was more convincing. This is a circular argument. The obvious reading of the statute is the correct one: the determinative fact is whether the genuine Certificate of Vote is filed, registered, or recorded under state or federal law. The relevant consideration is not whether the creation of Defendants' was accepted, but whether the instrument they impersonated could correctly be filed. People v. Harrold, 24 P. 106, 107 (Cal. 1890). The evidence put before the Grand Jurors proved the true Certificate of Vote is such an instrument.

Under the Electoral Count Act, as it was written at the time of the 2020 election, States were obligated to prepare seven copies of the Certificates of Ascertainment and Vote and forward the copies to a number of governmental entities. This requirement acts as a failsafe system—it should be noted that the ECA was enacted in 1887, when mail deliveries were not as reliable as they are today-with redundancy built into the process so that if the copy bound for the President of the Senate did not arrive, the Archivist would have a copy that could serve as a backup, and if that copy was lost, then the copy in the Federal District Court could serve as a backup, and so on. These instruments were required to be filed by those governmental entities pursuant to law.

As was put before the Grand Jury, the Office of the Federal Register receives Certificates of 26 Ascertainment and Vote from all 50 states and the District of Columbia each election cycle, stores them in a safe for a period of time (generally more than a year but less than three years), and then forwards 28

those to the National Archives where they become part of the official permanent public federal records collection. GJT Vol 1, 12:20 - 14:21. The fact that The National Archives and the Nevada Secretary of State rejected Petitioners submission is not indicative either that they are neither false, nor a forgery, nor that the genuine documents aren't filed, registered or recorded—rather, it is evidence that governmental systems put in place to ensure the safety and accuracy of our electoral process worked.

Moreover, Mr. Wlaschin testified that, at the direction of the Secretary of State, he contacted the Senate and the Archives to advise them of the transmission of Petitioners false documents, and to clarify that the ones sent by the Nevada Secretary of State, with the state seal, are the correct documents. GJT Vol 3 at 92:13-25. In the absence of his warning, it is entirely possible Petitioners documents would have been accepted, and a far worse result could have followed.

These are exactly the type of records which our government must be able to rely upon, and which stands to affect the rights or duties of third parties. State v. Price, 94 Wash. 2d at 819, 620 P.2d at 999. The falsehood contained in this document was the material fact that this document has to offer truthfully-it is the very thing that people refer to this document to learn or verify. The foundation of our government, indeed our system of government, is threatened by false or forged versions of these instruments. The language in NRS § 239.330 and NRS § 205.110 (as outlined below), builds in the possibility that your efforts in offering or uttering false or forged instruments will not be successful, and in fact, whether the recipient was defrauded does not negate the intent of the Petitioners, or render their actions anything other than criminal. Thus, Defendants must be held to answer these charges.

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#### 2. The State presented sufficient evidence to establish probable cause that the Petitioners committed the crime of Uttering Forged Instruments: Forgery (Count II).

In Count II, the State has charged Petitioners with uttering a forged instrument in violation of

NRS § 205.110. Under NRS § 205.110,

Every person who, knowing the same to be forged or altered, and with intent to defraud, shall utter, offer, dispose of or put off as true, or have in his or her possession with intent so to utter, offer, dispose of or put off any forged writing, instrument or other thing, the false making, forging or altering of which is punishable as forgery, shall be guilty of forgery the same as if the person had forged the same.

Petitioners assert that the State failed to present sufficient evidence on Count II for two reasons. First, they argue that the State failed to present evidence establishing that Certificate of Vote they signed is a genuine document, not a forgery, because they signed it with their own signatures. Second, they argue that the State failed to present evidence of intent. Petitioners' arguments fail because the State presented evidence that Petitioners executed and offered a document that they intended to be accepted by various federal and state government officials as an official Certificate of Vote from the State of Nevada, but Petitioners knew it was not the genuine Certificate of Vote that had been prepared by the Nevada Secretary of State.

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#### a. <u>The "Certificate Of The Votes Of The 2020 Electors From Nevada"</u> is a forgery.

"In general, forgery is the false making, with the intent to defraud, of a document *which is not what it purports to be*, as distinct from a document which is genuine but nevertheless contains a term or representation known to be false." *U.S. v. Price*, 655 F.2d 958, 960 (9th Cir. 1981) (emphasis added). Defendants created and executed a document they titled "CERTIFICATE OF THE VOTES OF THE 2020 ELECTORS FROM NEVADA[.]" That document was a forgery, notwithstanding Petitioners' true signatures having been affixed to it. The fact that Petitioners signed their true names to the document does not alter the basic fact that the document is not what it purports to be, that Petitioners were at all relevant times aware it was not what they purported it to be, and that Petitioners uttered the document to several governmental entities and officers with the intent to defraud those recipients.

In fact, Petitioners knew their documents were forged instruments as evident in the conversation 19 outlined in GJ Exhibit 19, which is a set of e-mails between Petitioners and Mark Wlaschin, Deputy 20 Secretary of State for Elections, wherein Petitioners are requesting Mr. Wlaschin amend the Certificate 21 of Ascertainment. Those e-mail exchanges occurred in November, over 2 weeks before the Petitioners 22 met on the steps of the legislature and executed their forged documents. All Petitioners were included in 23 that e-mail exchange. This clearly shows the Petitioners knowledge that the Secretary of State is the 24 entity responsible for creating and submitting these documents to the appropriate government entities. 25 Mr. Wlaschin testified that he thought the request was "odd" given the request was made by Petitioners 26 who had not won the popular vote. GJT Vol 3 at 99:10-100:5. 27

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Whether a defendant alters a genuine document, combines portions of several genuine documents to create one which is deceptive, creates a replica document, merely possesses such a document made by another, or then attempts to pass it off as genuine with the intent to defraud the recipient of that document, he has committed the crime of uttering. Petitioners' argument amounts to an assertion that their forged document is something genuine because they signed their names to it. That does not comport with common sense or with the law.

A document, even one created by the government and being what it purports to be, may be falsely made if it contains materially false information, if the one tendering it is aware of the false basis upon which it is created. Moskal v. U.S., 498 U.S. 103, 109, 111 S.Ct. 461, 465-66 (1990). In Moskal, the defendant participated in a car title-washing scheme, in which he and confederates obtained titles in Pennsylvania, rolled back the odometers on vehicles, and had those vehicles re-titled in Virginia with the fraudulent mileage indicated. The United States Supreme Court found they were properly convicted of receiving falsely made securities, finding that the Virginia titles, although genuinely issued by the appropriate state authorities, were falsely made because they contained the incorrect mileage statements provided by the defendants.

"Short of construing 'falsely made' in this way, we are at a loss to give any meaning to this phrase independent of the other terms in [the statute] such as 'forged' or 'counterfeited.'" Id., at 109, 466. "By seeking to exclude from [the statute]'s scope any security that is 'genuine' or valid, Moskal essentially equates 'falsely made' with 'forged' or counterfeited.' His construction therefore violates the established principle that a court should give effect, if possible, to every clause and word of a statute." Id., quoting U.S. v. Menasche, 348 U.S. 528, 538-39, 75 S.Ct. 513, 519-20 (1955). "This Court has never required that every permissible application of a statute be expressly referred to in its legislative history." Id., at 111, at 467. "Although 'criminal statutes are to be construed strictly . . . this does not mean that every criminal statute must be given the narrowest possible meaning in complete disregard of the purpose of the legislature." Id. at 113, at 468, McIlroy v. U.S., 455 U.S. 642, 658, 102 S.Ct. 1332, 1341 (1982) quoting U.S. v. Bramblett, 348 U.S. 503, 509-510, 75 S.Ct. 504, 508 (1955).

Here, the Nevada Legislature has offered a definition of what constitutes a forgery, and despite Petitioners attempts, it must not be limited to one they argue excludes the document they created, 28

executed, and uttered. Petitioners attempt to reduce the definition of forgery to one that would exclude their document should not be rewarded because Nevada law is clear: forgery includes a counterfeit, a falsely made document, one with a signature which is falsely made or counterfeit, one which was previously genuine but has been altered, and so on. *See* NRS § 205.085(2). The suggestion that the document created and uttered by Petitioners is genuine, is an absurdity. The genuine Certificate of Vote is the one created by the Nevada Secretary of State. *GJT Vol 3 at 76:11-77:3; GJT Vol 3 at 84:4-21; GJ Exhibit 5.* Petitioners' creation could variously be termed a counterfeit, or a falsely made document, but by whichever name, it is the kind of thing included by the Legislature in NRS 205.085(2) and is therefore a forgery. The possession of such a thing, with the intent to pass it, and to thereby defraud the recipient, is made a Category D felony under NRS § 205.110.

The Petitioners cite *Winston*; however, that case is inapposite. The Nevada Supreme Court in that case reviewed a document which was what it purported to be: a check drafted by that defendant. The falsity in *Winston* was the promise implied by a check—that the signer is authorized to endorse such a check, and that it will be honored when presented for payment. In other words, the document endorsed by Winston *was what it purported to be*: a check he was authorized to sign. It was therefore a genuine document containing a false statement. Winston therefore did not commit forgery, he likely committed the crime now proscribed in NRS § 205.130—"Issuance of a check or draft without sufficient money[.]" Petitioners herein attempt to stretch the *Winston* decision beyond recognition, to a degree where any item to which one signs their true name could not be called a forgery. By contrast, Defendants herein created a document which *was not what it purported to be*. *U.S. v. Price*, 655 F.2d 958, 960 (9<sup>th</sup> Cir. 1981). It is therefore a falsely made document, or by another name, a forgery.

Of course, a common fact pattern for a forgery conviction is one in which a Defendant signs a check that he is not authorized to sign—in other words, the Defendant impersonates the signature of the individual authorized to sign such a check (or in another common instance, fills in an amount payable that the authorized signatory did not approve of). But countless other fact patterns also constitute forgery, whether because a document is 'forged' in the classic sense of having a signature impersonated, or because the document itself is false or otherwise forged. *See, e.g., Bayot v. Nevada*, 128 Nev. 882, 381 P.3d 593(2012) (unpublished table decision) (affirming conviction for forgery when Defendant possessed

counterfeit currency); Moskal v. U.S., 498 U.S. 103, 111 S.Ct. 461 (1990) (affirming conviction for transporting 'falsely made' securities under 18 U.S.C. § 2314-the falsely made securities were genuine vehicle titles issued by the correct Virginia authority but which contained false odometer readings provided by Defendant and his co-conspirator); U.S. v. Price, 655 F.2d 958 (9th Cir. 1981) (affirming conviction for transporting forged checks, when Defendant signed his name to the check of a fictitious person with the same name as Defendant); U.S. v. Serpico, 148 F.2d 95 (2<sup>nd</sup> Cir. 1945) and Carney v. U.S., 163 F.2d 784 (9th Cir. 1947) (In each of which Defendants counterfeited gasoline ration coupons, in violation of 18 U.S.C. §494 ("Whoever falsely makes, alters, forges, or counterfeits ... or other writing for the purpose of defrauding the United States;")).

The State presented ample evidence of all these facts to the Grand Jury, the Grand Jury correctly returned a true bill as to the charge of Uttering a Forged Instrument. Petitioners must now be held to stand trial on that charge.

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#### b. Intent is a question of fact for the trier of fact to decide.

Petitioners next argue that the State failed to present evidence of their intent to defraud. The grand jurors were instructed that "where one in possession of a forged instrument seeks to pass it, it is permissible to infer, for the purpose of establishing probable cause, that he or she acted with the fraudulent intent necessary to support a charge of forgery." Patin v. Sheriff, 92 Nev. 673, 675 (1976). See GJ Exhibit 2A. The state presented sufficient evidence that the Petitioners were in possession of a forged instrument, i.e. the "CERTIFICATE OF THE VOTES OF THE 2020 ELECTORS FROM NEVADA," wherein they falsely claimed they were the "duly elected and qualified Electors for the State of Nevada" and uttered the same to the governmental entities. For purposes of determining probable cause, the grand jury could infer that the Petitioners had the fraudulent intent necessary to support the charge of NRS § 205.110. Additionally, the issue of intent is a question of fact for the trier of fact to decide.

The intent of the Petitioners is clear in the Right Side Broadcasting video. See GJ Exhibit 6A 24 Throughout the video, the Petitioners refer to themselves as the electoral voters, not Republican electoral voter nominees. The Petitioners neither refer to themselves as "alternate" electors, nor in any way imply 26 the proceedings are merely symbolic or isolated to a demonstration of free speech. Rather, the event is serious and incorporates elements typically associated with a formal meeting, such as an agenda, call to 28

order, invocation, pledge of allegiance, singing of the U.S. National Anthem, roll call, taking of oaths, election of officers, distribution of member packets, conducting votes, signing documents before witnesses and adjournment. Additionally, there were no disclaimers on the forged certificates to indicate the Petitioners were executing the documents as a form of protest, symbolically, or in case of future lawsuits. Instead, it was evident the Petitioners signed and offered the forged certificates because they wanted to be the "duly elected and qualified Electors for President and Vice President of the United States of America from the State of Nevada."

The Petitioners further argue that they did not have the requisite intent because the New Mexico Attorney General found no crime had occurred in their state related to the same conduct. This is entirely a red herring. The conduct that occurred by individuals in other states does not transfer "non intent" to the Petitioners. The court should give this argument no consideration.

#### C. <u>The State presented sufficient exculpatory evidence and did not present false or</u> <u>misleading testimony.</u>

#### 1. Proper and non-duplicative exculpatory evidence was presented.

The Petitioners allege that "counsel for the defendants provided a letter dated December 1, 2023, which outlined exculpatory evidence and information that the defense requested and the Attorney General was statutorily required to present to the Grand Jury." *See Joint Memorandum of Points and Authorities In Support Of Defendants' Petitions for Writ of Habeas Corpus, page 21, lines 23-26.* The Petitioners further allege "this information was not presented to the grand jury." *Id at 22, line 7.* This statement is factually inaccurate.

NRS 172.135(2) provides, in pertinent part: "Except as otherwise provided in this subsection, the grand jury can receive none but legal evidence, and the best evidence in degree, to the exclusion of hearsay or secondary evidence." Exculpatory evidence is defined as evidence that will explain away the charge, and the prosecutor is required to disclose all such evidence to the grand jury. *King v. State,* 116 Nev. 349, 359, 998 P.2d 1172, 1178 (2000). NRS 172.145(2) provides: "If the district attorney is aware of any evidence which will explain away the charge, the district attorney shall submit it to the grand jury." "By its terms, NRS 172.145(2) requires that the district attorney be "aware" of evidence "which will explain away the charge" before the duty to submit the evidence of the grand jury arises." *Mayo*.

*Eighth Judicial District Court of the State in and for County of Clark*, 132 Nev. Adv. Op 79, 384 P.3d 486, 489 (2016). "To be "aware" of something is to "hav[e] knowledge or cognizance" of it." *Id.* "The district attorney or his or her deputy must appreciate the exculpatory value of the evidence to-be "aware" of it for purposes of NRS 172.145(2)." *Id.* 

NRS 172.155(1) explains that a "grand jury ought to find an indictment when all the evidence before [it], taken together, establishes probable cause to believe that an offense has been committed and that the defendant has committed it." *Schuster v. Eighth Judicial Dist. Court ex rel. County of Clark*, 123 Nev. 187, 192, 160 P.3d 873 (2007). *Citing Sheriff v. Dhadda*, 115 Nev. 175, 180, 980 P.2d 1062, 1065 (1999). "The finding of probable cause "does not involve a determination of the guilt or innocence of an accused," and this court has consistently held that to secure an indictment, the State is not required to negate all inferences which might explain away an accused's conduct." *Id.* See Also; *Sheriff v. Hodes*, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980) (citations omitted). *E.g., Sheriff v. Shade*, 109 Nev. 826, 828–29, 858 P.2d 840, 842 (1993); *Sheriff v. Miley*, 99 Nev. 377, 379, 663 P.2d 343, 344 (1983); *Kinsey v. Sheriff*, 87 Nev. 361, 363, 487 P.2d 340, 341 (1971).

In *Schuster*, the court held "although Nevada law requires the State to present exculpatory evidence to a grand jury, requiring the State to also instruct a grand jury on the legal significance of exculpatory evidence simply does not comport with the traditional investigative, accusatory role of a grand jury." *Schuster*, 123 Nev. at 193-194. It further stated, "the full presentation and credibility of an accused's defense are matters reserved for the adversarial process of trial." *Id*.

To the extent that Petitioners are alleging the State was required to provide the grand jurors with the Letter attached as *Exhibit A* to their Petition, the Letter is not legal evidence, and it would have been improper for the State to present. If they are alleging the State did not present the evidence that was attached to their Letter, this is also incorrect.

First, the Petitioners asked that the State provide the grand jury with an instruction regarding intent, which the State did so and can be found in *GJ Exhibit 2A*. Secondly, the Petitioners asked the State to provide the grand jury with three (3) e-mail exchanges that they allege justified their actions. Although

the State did not agree that the evidence was exculpatory, out of an abundance of caution, the State provided those e-mails as *GJ Exhibits 30, 31* and *34*.<sup>7</sup>

The Petitioners also requested the State provide the grand jury with the entire pleading file for the election contest litigation.<sup>8</sup> Pleadings from a court proceeding are generally not legal evidence because they contain arguments from counsel; however, certified court Orders can be offered as evidence. The State provided the grand jury a copy of the Order of Affirmance which included as attached the Order Granting Motion to Dismiss Statement of Contest and Order of Affirmance as *Exhibit 22*. To the extent that the Petitioners were seeking admission of the court proceedings to provide the grand jurors with their claims of election/voter fraud, those concerns were addressed in the Orders provided in *GJ Exhibit 22*, the e-mails provided by Petitioners in *Exhibits 31* and *34*, and the numerous statements made by McDonald and Law, and Republican Alternate Elector Nominee, James Marchant, in the Right Side Broadcasting video.

Additionally, Mr. Marchant discussed the justification for submitting their votes based on the 1960 Presidential Election during that video, which the Grand Jurors reviewed.<sup>9</sup> All alleged exculpatory evidence not provided was presented in other forms to the grand jury.

It should be noted that Petitioners view or opinion of the evidence is not relevant to the conduct in this case because at the time the Petitioners declared themselves the duly qualified electors for the State of Nevada, the Nevada Supreme Court had ruled against them, and the election contest was over. That statement was false at the time they made it, regardless of their claims that litigation was ongoing.

<sup>8</sup> Several of the pleadings provided were duplicative.

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<sup>&</sup>lt;sup>7</sup> The Petitioners did not provide a proper Custodian of Records Affidavit for the e-mails, or any of the documentation provided in their December 1, 2020, Letter, instead attempting to use an unsworn Declaration of Attorney Brian R. Hardy, Esq. as the source of authentication for e-mails he did not author, nor was not a percipient witness to. As a result, the State located the same e-mails provided by Petitioners in their Google, LLC production and used those e-mail chains as the exhibits because they were supported by a proper NRS 53.045 COR Declaration (*See GJ Exhibit 23*).

Petitioners also provided a News Article that allegedly contained a quote from Petitioner Meehan; however, proper authentication was not provided for this article and therefore was not admissible. Additionally, the statements made by Petitioner Meehan were echoed by others in the Right Side Broadcasting video.

<sup>&</sup>lt;sup>9</sup> Mr. Marchant stated to the reporter on the Right-Side Broadcasting video that "We believe Donald Trump won Nevada and we are going to be prepared just in case once this works its way through the courts or whatever remedies President Trump comes up with and his team. And we're going to have our electors present on January 6<sup>th</sup>, I believe, for Vice President Pence." *See GJ Exhibit 6A, beginning at 3.50 minutes.* Marchant further likens this effort of putting forth Certificates for Donald J

Trump and Mike Pence to the 1960 election of John F. Kennedy. *Id* 

Lastly, to the extent that there was exculpatory evidence not presented, that alone is not dispositive because the State is not required to provide cumulative evidence.

#### 2. The evidence presented was not false or misleading.

Petitioners allege that the State presented false or misleading testimony. However, even if the Court finds that some of the statements made were inadmissible evidence, Nevada has found that "a grand jury indictment will be sustained where the state submits sufficient legal evidence to establish probable cause, even though inadmissible evidence may have been offered." *Detloff v. State*, 120 Nev. 588, 590, 97 P.3d 586 (2004). In the *Detloff* case, the prosecutor admitted into evidence family photographs of the victims, funeral program, false testimony, and statements concerning the retention of counsel in lieu of contacting police. *Id.* Despite these admissions, the court rejected Dettloff's argument that the court erred in denying his Petition. The Court relied on the idea that the "district court may grant a pretrial petition for writ of habeas corpus where the prosecution acted in "a willful or consciously indifferent manner with regard to a defendant's procedural rights, or where the grand jury indicted the defendant on criminal charges without probable cause," and neither reason applied in Dettloff's case. *Id.* 

This court has held that "it is not mandatory for the prosecuting attorney to instruct the grand jury on the law." *Schuster*, 123 Nev. at 187, 192. *See* also *Phillips v. Sheriff*, 93 Nev. 309, 312, 565 P. 2d 330, 332 (1977) (the cases impose no requirement upon the prosecuting attorney to offer gratuitous explanations of every legal matter that may or may not become relevant to the further prosecution of the case).

As to Mr. Chesebro's testimony, it seems more than likely that his answer was not false testimony when he stated he'd had no response to his inquiry as to further litigation – rather, he simply omitted the word "meaningful."

Further, and as Petitioners acknowledge, *Petition at 40:8-15*, the State provided Mr. Chesebro's testimony, and the e-mails which appear to conflict with his testimony to the grand jurors, who having considered it all, returned a true bill.

///

1	V. CONCLUSION
2	Based upon the foregoing, the State respectfully request this Court deny Petitioners Petition for
3	Writ of Habeas Corpus.
4	DATED this 8 <sup>th</sup> day of February, 2024.
5	
6	Submitted by:
7	AARON D. FORD Attorney General
8	Automey General
9	By: <u>/s/ Alissa Engler</u> ALISSA ENGLER
10	Chief Deputy Attorney General
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1	CERTIFICATE OF SERVICE
2	I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that
3	on February 8, 2024, I filed the RETURN AND RESPONSE TO PETITION FOR WRIT OF
4	HABEAS CORPUS (PRE-TRIAL) via this Court's electronic filing system. The following parties are
5	registered with this Court's EFS and will be served electronically.
6	George Kelesis, Esq. 517 S. 9 <sup>th</sup> Street
7	Las Vegas, NV 89101
8	Gkelesis@bckltd.com Attorney for James Degraffenreid
9	Brian Hardy, Esq. 10001 Park Run Drive
10	Las Vegas, NV 89145 Bhardy@maclaw.com
11	Attorney for Durward Hindle, III
12	Richard Wright, Esq. 300 S. Fourth Street, Ste. 701
13	Las Vegas, NV 89101 Rick@wmllawlv.com
14	Attorney for Michael James McDonald
15	Monti Jordana Levy, Esq. 300 S. Fourth Street, Ste. 701
16	Las Vegas, NV 89101 Mlevy@wmllawlv.com
17	Attorney for Eileen Rice
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19	Las Vegas, NV 89118 Chattahlaw@gmail.com
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21	Margaret A. McLetchie, Esq. 602 S. Tenth St.
22	Las Vegas, NV 89101 Maggie@nvlitigation.com
23	Attorney for Jesse Law
24	
25	By: <u>/s/ R. Holm</u>
26	An employee of the Office of the Attorney General
27	
28	

1 2 3 4 5 6 7 8	OPPM AARON D. FORD Attorney General ALISSA ENGLER (Bar No. 11940) Chief Deputy Attorney General MATTHEW J. RASHBROOK (BAR No. 12477) Special Prosecutor State of Nevada Office of the Attorney General 555 E. Washington Ave., Ste. 3900 Las Vegas, Nevada 89101-1068 P: 702 486-3420 F: 702 486-0660 Attorneys for the State of Nevada	2/8/ Ste	ctronically Filed /2024 3:02 PM ven D. Grierson ERK OF THE COURT
9	DISTRIC	CT COURT	
10	CLARK COU	NTY, NEVADA	
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12	STATE OF NEVADA,	Case No. C-23-379122-1	
13	Plaintiff,	Dept. No. XVIII	
14	vs.		
15	JAMES WALTER DEGRAFFENREID,		
16	Defendant.		
17		1	
18	OPPOSITION TO DEFEND		_
19	AARON D. FORD, Attorney General for	•	
20	Attorney General, ALISSA C. ENGLER, in the nar		
21	files this OPPOSITION TO DEFENDANTS' MO		
22	Opposition upon the pleadings and papers on file, the	-	Points and Authorities,
23	and any oral argument at hearing permitted by the	Court.	
24	DATED this 8 <sup>th</sup> day of February, 2024.		
25	AARO	itted by: DN D. FORD	
26		ney General	
27 28	A	/ Alissa Engler LISSA ENGLER (Bar No. 119 hief Deputy Attorney General	940)
	Page	1 of 15	APP 0451
	Case Number: C-2	3-379122-1	

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#### **MEMORANDUM OF POINTS AND AUTHORITIES**

#### I. PROCEDURAL HISTORY

On December 6, 2023, Defendants, Michael J. McDonald, (hereinafter "MCDONALD"), James Walter DeGraffenreid III, (hereinafter "DEGRAFFENREID"), Jesse Reed Law, (hereinafter "LAW"), Duward James Hindle III, (hereinafter "HINDLE"), Shawn Michael Meehan, (hereinafter "MEEHAN"), and Eileen A. Rice, (hereinafter "RICE"), collectively referred to throughout as ("DEFENDANTS") were charged by way of Indictment with the following: one (1) count of Offering False Instrument For Filing Or Record, a category "C" Felony in violation of NRS 239.330 and one (1) count of Uttering Forged Instruments: Forgery, a category "D" Felony in violation of NRS 205.110. On December 18, 2023, Defendants pleaded not guilty and waived their right to a speedy trial within sixty (60) days. Calendar Call is set for March 4, 2023, and Jury Trial is scheduled to commence on March 11, 2023.

On January 29, 2023, Defendant Rice filed a Motion to Dismiss on January 29, 2024, which all other Defendants joined in separate filings. The State responds as follows.

#### II. FACTUAL HISTORY

Around November 10, 2020, James Troupis contacted Kenneth Chesebro and asked that he do some legal work related to election challenges in Wisconsin. *GJT Vol 2 at 26:11 - 27:18*. Subsequently, Chesebro drafted a series of memoranda in connection with his work and on behalf of the Trump 2020 campaign. *GJT Vol 2 at 27:19-23*. In a November 18, 2020, memorandum, Chesebro suggested that in order to have votes counted for Donald Trump, in the event the Wisconsin election litigation were resolved in Trump's favor, Trump electors would have to cast ballots by December 14, 2020, in order to comply with federal statutory requirements. *GJT Vol 2 at 28:13 – 29:15*.

Subsequently, Chesebro drafted a memo describing the requirements under various federal and state laws, that would have to be observed by Trump electors from states with ongoing litigation. *GJT Vol 2 at 30:1-31:15*. Eventually, Chesebro, at the request of then Trump 2020 deputy campaign manager Justin Clark, drafted voting documents based on those used in Wisconsin, for electors in other states to review and adapt for use in the electors' respective states. *GJT Vol 2 at 32:10 - 33:13*. On December 10 and 11, 2020, Chesebro forwarded those draft documents to Defendants DeGraffenreid, McDonald, and Law. *GJT Vol 2 at 33:14-21, 34:13 - 35:3, GJ Exhibit 27*. The documents Chesebro provided to

Defendants DeGraffenreid, McDonald and Law consisted of a memorandum, and drafts of ballots, certificate announcing result of voting for president and vice president, and a cover letter to be provided with the executed certificates. *GJT Vol 2 at 35:4-20*.

Chesebro asked Defendant DeGraffenreid whether there was litigation pending in Nevada connected to the election, but he did not receive a response. GJT Vol 2 at 35:21-36:4. Chesebro's view was that the existence of pending litigation was the only reason to cast alternate elector votes. GJT Vol 2 at 36:5-15. After Chesebro sent the draft documents, Defendant DeGraffenried circulated the documents for editing to Defendants McDonald, Law, Meehan, Hindle and Rice via e-mail, with the final edits made on December 13, 2020. GJ Exhibit 28. The Documents were titled "CERTIFICATE OF THE VOTES OF THE 2020 ELECTORS FROM NEVADA," wherein the Defendants declare themselves "the duly elected and qualified Electors for President and Vice President of the United States of America from the State of Nevada." GJ Exhibit 4 and Exhibit 6A. Throughout the dates of December 9 through the afternoon of December 13, 2020, Defendant McDonald was physically located in Clark County, Nevada and made numerous phone calls to co-defendants DeGraffenreid and Law. Opposition Exhibit 1 (McDonald phone records). Similarly, Law was in Clark County December 9 through December 10, and during that interval made several phone calls to co-Defendant McDonald. Opposition Exhibit 2 (Law phone records). These phone calls were interspersed during the timeframe in which the co-Defendants were also exchanging emails with proposed draft language and revisions of the false or forged documents they eventually offered for filing and uttered. Opposition Exhibits 1 and 2, GJ Exhibit 28.

Despite the denial of their election contest by the Nevada Supreme Court, the Defendants, who reside in several locations throughout Nevada, including Las Vegas and Henderson, met in Carson City, Nevada, on December 14, 2020, to execute the documents. *GJ Exhibits 6A, 13-18*. Defendant Law printed and provided copies of the documents to Defendants McDonald, DeGraffenreid, Meehan, Hindle and Rice. *GJ Exhibit 28*. The Defendants signed and executed the documents. *GJ Exhibit 29*.

The Defendants broadcast the vote nationally via Right Side Broadcasting, which posted the video on Facebook and other social media platforms. *GJ Exhibit 6A; GJT Vol 2 at 9:4-16*. In response to a subpoena, Right Side Broadcasting produced two videos, one edited version totaling 38 minutes, 46 second in length, and one raw footage that was a little over an hour in length, which depicted "the six

Nevada Republican nominee electors executing their ballots for the Electoral College election of the U.S president and vice president," in Carson City on December 14, 2020. See *GJT Vol 2 at 9:4-10:25*.
Defendants were identified as the individuals depicted in the video by comparing the individuals in the Right-Side Broadcasting video to the certified copies of the Defendants Nevada Driver's License records. *GJT Vol 2 at 9:1-3, 12:4-13:1; GJ Exhibits 7-18*.

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Following the meeting, Defendant DeGraffenreid mailed the completed documents from Minden, Nevada, with a return mailing address of Michael J. McDonald, Nevada Republican Party at 840 S. Rancho Dr. 4-800, Las Vegas Nevada 89106. *See GJ Exhibit 4, Exhibit 21 and Exhibit 29; GJT Vol 1 at 26:4-21*. The four mailings were paid for at the same time by the same person with one payment method, all payments processed on December 14, 2020, at exactly 4:16:02 PM. *See GJT Vol 3 at 23; Exhibit 21*. They were postmarked December 14, 2020. *GJT Vol 1 at 26:4-21; GJ Exhibit 21*.

The documents purporting to cast Nevada's electoral votes for Donald J. Trump and Michael R. Pence were sent to following locations by Defendants: (1) Archivist of the United States,700 Pennsylvania Avenue NW, Washington D.C., 20408; (2) President of the Senate, United States Senate, Washington D.C. 20510; (3) Secretary of State, State of Nevada, 101 N. Carson St., Suite 3, Carson City, Nevada 89701; and (4) Honorable Miranda M. Du, Chief Judge, U.S. District Court, District of Nevada, Lloyd D. George Courthouse, 333 Las Vegas Blvd South, Las Vegas, N.V. 89101. *GJ Exhibit 4, 20, 21 and 29; GJT Vol 1 at 26:4-21*.

On December 15, 2020, the Nevada Secretary of State received the forged electoral votes sent by Defendants. *GJ Exhibit 21; GJT 89-94*. After consulting with the Secretary of State, who was in Las Vegas, Mr. Wlaschin returned the documents to sender, along with a letter that stated the following:

"Enclosed please find documents received December 15, 2020 purporting to be votes of the Nevada Electors in the December 14, 2020 vote of the Electoral College. Please be advised that on December 14, 2020, the lawful Nevada Electors who were identified on the official Certificate of Ascertainment cast their ballots for President of the United States and Vice-president of the United States pursuant to federal and state law in a meeting conducted by the Nevada Secretary of State.

Nevada law requires that all electors cast their ballots for the winner of the popular votes in Nevada. As such the lawful electors cast their ballots for Joseph R. Biden for President of the United States and for Kamala D. Harris for Vice-President of the United States, in accordance with Nevada Law and the results of the 2020 General Election as certified by the Nevada Supreme Court on November 24, 2020.

We are returning these documents as they do not meet the statutory requirement for filing with our office."

GJ Exhibit 24, GJT Vol 3 at 93:20-94:15.

On December 16, 2020, the U.S. District Court in Las Vegas received the forged electoral votes sent by Defendants. *See Exhibit 21*. On December 21, 2020, the President of the United States Senate received the forged electoral votes sent by Defendants. *GJ Exhibit 20 and 21; GJT Vol 3 at 53*. On December 22, 2020, the National Archives received the forged electoral votes for Donald Trump and Mike Pence, for President and Vice President. *GJT Vol 1 at 21:19 – 22:12. Grand Jury Exhibit 4.* These appeared to be signed by Michael McDonald, James DeGraffenreid, Durward James Hindle III, Jesse Law, Shawn Meehan, and Eileen Rice. *GJT Vol 1 at 24:8-14, 25:24.* These documents stated the signatories were, "the duly elected and qualified Electors for President and Vice President of the United States of America from the State of Nevada." *GJT Vol 1 at 24:22 – 25:2, 25:9-14.* 

#### III. LEGAL ARGUMENT

Defendants allege throughout their Motion to Dismiss that "because the alleged offense here occurred in either Carson City (where the documents were executed) or in Douglas County (where the documents were mailed), the offenses are triable only within one of those two judicial districts pursuant to Nevada's venue statute." *See Motion to Dismiss, pg. 5.* Defendants further argue, "the grand jury that heard the evidence and returned a true bill in this case is empaneled by the Eighth Judicial District Court and can only hear cases triable within Clark County. *Id.* For reasons set forth below, this Court should deny Defendants' Motion to Dismiss.

## A. <u>The Grand Jury empaneled in Clark County, Nevada had jurisdiction to return</u> <u>a true bill.</u>

Under NRS 172.105, "The grand jury may inquire into all public offenses triable in the district court or in a Justice Court, committed within the territorial jurisdiction of the district court for which it is impaneled." "Territorial jurisdiction" under NRS 172.105 is tied to our existing statutes governing the proper court where a criminal case may be pursued, and thus the statute empowers a grand jury to inquire into an offense so long as the district court that empaneled the grand jury may appropriately adjudicate

the defendant's guilt for that offense. *Martinez Guzman vs. Second Judicial Dist. Ct.*, 136 Nev. 103, 104, 460 P.3d 443, 445 (2020).

Pursuant to NRS 171.030, "When a public offense is committed in part in one county and in part in another or the acts of effects thereof constituting or requisite to the consummation of the offense occur in two or more counties, **the venue is in either county**." **(Emphasis added.)** Venue does not involve an element of the crime or relate to guilt or innocence; the State need only prove venue by a preponderance of the evidence. *McNamara v. State*, 132 Nev. 606, 615-616, 377 P.3d 106, 113 (2016). Venue may be established by circumstantial evidence. *James v. State*, 105 Nev. 873, 875, 784 P.2d 965, 967 (1989). "Where there is evidence of a preparatory act plus intent in that county, an act requisite to the consummation of the charged offense occurred there, and a grand jury may indict a defendant of that offense." *Martinez Guzman* at 605, 577.

In the instant case, Venue is proper in several counties of the state, including Clark County. The state has alleged as to Count II, that the Defendants "uttered, offered, disposed of or put off as true a forged writing, instrument or other thing titled, "CERTIFICATE OF THE VOTES OF THE 2020 ELECTORS FROM NEVADA" to the President of the United States..., with the intent to defraud." Therefore, the Defendants suggestion that the acts were completed once they dropped the envelopes into the mail in Minden, is simply not true because the charges under NRS 239.300 and NRS 205.110 both require that a false or forged instrument be offered or uttered, respectively—in other words, that they be delivered to the recipients' defendants addressed them to.

Additionally, the State has alleged these crimes were committed as a conspiracy, and venue is proper wherever some portions of the conspiracy occurred. Defendants McDonald and Law, both Clark County residents, were participating in the drafting and revision process of the false or forged instruments. Circumstantial evidence was presented to the Grand Jury tending to prove that they were in Clark County when they did those acts because they reside in Las Vegas and Henderson, respectively.

On December 8, 2020, the Nevada Supreme Court ruled against Defendants and determined, finally, that Joseph R. Biden had won the Presidential Election in Nevada. Once that ruling was issued, Defendants undeniably had knowledge that they were not the presidential electors for Nevada. Still, in

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the days following the Nevada Supreme Court's ruling, Defendants took steps to draft, revise and execute an instrument claiming the contrary to be true—that Donald Trump had won the election, and that they were therefore the presidential electors for Nevada. These actions, taken after the ruling of the Nevada Supreme Court, evidence Defendants' intent to commit the crimes alleged. And they are also "preparatory acts" that, when combined with said intent, satisfy the *Martinez Guzman* definition for "acts" under NRS 171.030. Additionally, the phone records attached to this Opposition prove that McDonald and Law participated in the conspiracy during the relevant dates of December 9, 2020, through December 13, 2020, while they were in Clark County. Thus, jurisdiction was proper in Clark County.

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#### B. Venue is proper in Clark County.

"When a public offense is committed in part in one county and in part in another or the acts or effects thereof constituting or requisite to the consummation of the offense occur in two or more counties, the venue is in either county." NRS 171.030

The actions of Defendants began variously in Clark, Douglas, and Storey Counties, when the Defendants began a conspiracy and started planning their crimes by drafting and revising the false or forged instruments they later printed, executed, offered for filing, and uttered. They continued in Washoe County, where Defendant Law printed the instruments, then to Carson City where all Defendants met to execute the instruments, before returning to Douglas County, where, by use of the U.S. Mail, Defendant DeGraffenreid mailed the instruments, before finally concluding in Washington D.C., Carson City, and Clark County, where the instruments were delivered by the U.S. Mail and thereby offered for filing and uttered.

Venue is proper in Clark County under at least three theories: (1) the acts constituting the crime occurred in more than one county, of which one was Clark County; (2) preparatory acts occurred and intent was formed in Clark County; and (3) some of the effects of the acts of Defendant which constitute or are requisite to the consummation of these offenses occurred in Clark County.

The result in any case is the same: venue is proper in Clark County.

1. <u>These Crimes were Committed in Multiple Counties and Venue is Proper in</u> <u>any of them.</u>

In Walker v. State, the Nevada Supreme Court considered these facts: Walker was hitchhiking

near Elko, was picked up, and at some point along the route from Elko to Reno, killed the person who 1 had picked him up. The Nevada Supreme Court held: 2 3 "With the uncertainty existing in this case, resulting from the finding of the body in Washoe County as well as the pawning of the victim's jewelry therein, the jury could have 4 determined that the homicide took place in Washoe County as alleged. Even if it determined that the acts resulting in the death were committed in part in one county, and 5 in part in another, or in two or more counties, of which Washoe County was one, then, under NRS 171.030, venue was properly laid in Washoe County. The killing was 6 admittedly committed by appellant, and 'the acts or effects thereof constituting or requisite to the consummation of the offense' could have occurred in two or more counties, one of 7 which was Washoe County. 8 Under the present state of our statutory law, with the evidence which developed in this case known to the prosecuting attorney at the time the information was filed, it would 9 have been impossible for him to allege with any degree of certainty that the offense took place in any specific county, and he would be faced with the same dilemma if the judgment 10 is reversed and the case remanded for a new trial." 11 78 Nev. 463, 472, 376 P.2d 137, 141 (1962). Similarly here, the State could have correctly elected to file 12 in numerous judicial districts, no one county contained the entirety of the preparing, conspiring, 13 execution, and consummation of the crime. 14 NRS 171.015 deals with crimes in which the actions of defendants occur outside the state, but the 15 effects are directed into Nevada: "If the defendant consummated it in this State, through the intervention 16 of an innocent or guilty agent, or any other means proceeding directly from the defendant, in such case 17 the jurisdiction is in the county in which the offense is consummated." While this statute is not directly applicable to this matter, the statute is nonetheless instructive. The actions of Defendants herein, using 18 19 an innocent agent, took place, in part, in Clark County. Defendants engaged in the U.S. Mail to cause a delivery in Clark County.<sup>1</sup> These actions must be understood to have "proceed[ed] directly from the 20

21 || defendant[s.]"

The crimes alleged herein have been committed in multiple counties, of which, Clark County is

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<sup>&</sup>lt;sup>1</sup> Defendants appear to downplay this fact, characterizing it as a "mistake" because the chambers for the Chief Judge of the District of Nevada—Hon. Miranda Du—are in Reno. Motion to Dismiss at 7. But assuming Judge Du was located in Reno, that does not change the fact that the Defendants "offered" and "uttered" the false and forged documents by mailing them to Judge Du at the Las Vegas courthouse. And that fact means "acts or effects" of the charged offenses were consummated in Clark County. But even if Judge Du's location in Reno were relevant, by the same logic it would then be relevant that Nevada Secretary of State Barbara Cegavske was in Las Vegas when she was informed about the documents that Defendants had sent to the Secretary of State's Carson City office. So, the result ends up the same if this Court considers venue to be controlled by where the intended recipient was actually located, rather than where the Defendants mailed the documents—either way "acts or effects" of the offense were still consummated in Clark County, making the Eighth Judicial District Court a proper venue under NRS 171.030. *GJT Vol 3 at 89:24-90:1, 91:5-6.* 

one. Venue in the Eighth Judicial District is therefore correct.

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2. <u>Defendants Committed Preparatory Acts While Having the Intent to Commit</u> <u>These Crimes, in Clark County.</u>

Venue is appropriate in Clark County for all Defendants, notwithstanding that only some of the 4 Defendants committed acts in Clark County. As outlined in State v. Wilcox, 105 Nev. 434, 436, 776 P.2d 5 549, 550 (1989), "[a]lthough respondent may not have committed any acts in Nevada in furtherance of 6 the conspiracy, he became subject to prosecution in this state when his co-conspirators carried out their 7 criminal design in Nevada." The facts of Wilcox are: 8 9 "Ralph Wilcox, was charged by information with one count of conspiracy to cheat at gambling. Thereafter, respondent filed a motion in the district court to dismiss the 10 information for lack of jurisdiction. He contended that the crime of conspiracy was completed in Arizona, where the agreement was made, and that only Arizona could 11 prosecute the crime. The district court agreed with this contention, and granted the motion to dismiss. 12 Appellant, the State of Nevada, contends that Nevada has jurisdiction to prosecute 13 respondent for a conspiracy conceived in Arizona, where other members of the conspiracy performed acts in Nevada in furtherance of the conspiracy. We agree. 14 [...] 15 Although [Wilcox] may not have committed any acts in Nevada in furtherance of the 16 conspiracy, he became subject to prosecution in this state when his co-conspirators carried out their criminal design in Nevada." 17 Id. at 435, at 549-50. 18 19 The evidence adduced before the grand jury and attached to this Opposition illustrates that at least 20 two of the defendants-McDonald and Law-were physically present in Clark County during the time 21 after the Nevada Supreme Court affirmed the dismissal of their election contest, and before they traveled 22 to Carson City to execute their false and forged instruments. During the interval from late December 8, 23 2020, through the morning and early afternoon of December 13, 2020, Defendant McDonald made 24 numerous phone calls to his co-Defendants. During this same time period, Defendants were exchanging 25 emails with Kenneth Chesebro, and among themselves, drafting and revising the documents they would eventually execute in a "unofficial ceremony" outside the Legislature in Carson City. 26 27 Additionally, during the interval between December 9 and December 10, 2020, Defendant Law

was in Clark County, and made numerous phone calls to his co-Defendant McDonald. Defendants had

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the requisite intent to commit these crimes while in Clark County because as alleged in the Indictment, these crimes were committed pursuant to a conspiracy. Defendants McDonald and Law committed acts in Clark County to accomplish the goals of the conspiracy, and, as outlined above, some of the effects necessary to the consummation of these crimes happened in Clark County. All Defendants joined the conspiracy to commit offering a false instrument for filing or record and uttering a forged instrument, and therefore, all Defendants are required to stand trial in any venue where some portion of the acts or effects requisite to the crime occurred.

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Moreover, as to intent, after the Nevada Supreme Court affirmed the District Court's ruling in a December 8, 2020, opinion, Defendants knew that they were not the duly-qualified electors from Nevada. When they prepared, executed, uttered and offered false or forged instruments stating that they were Nevada's electors, they evidenced an intent to defraud the recipients of those instruments. "Where one in possession of a forged instrument seeks to pass it, it is permissible to infer, for the purpose of establishing probable cause, that he or she acted with the fraudulent intent necessary to support a charge of forgery." *Patin v. Sheriff*, 92 Nev. 673, 675 (1976). All of this is significant circumstantial evidence that preparatory acts and intent existed simultaneously in no less than two Defendants physically present in Clark County in the days leading up to December 14, 2020. The State has proven venue is appropriate in Clark County, and this matter should proceed to trial in the Eighth Judicial District Court accordingly.

# 3. <u>Venue is Proper in Clark County Because "the acts or effects thereof</u> constituting or requisite to the consummation of the offense" Occurred in <u>Clark County</u>

As discussed throughout, under NRS 171.030, "When a public offense is committed in part in one county and in part in another or the acts of effects thereof constituting or requisite to the consummation of the offense occur in two or more counties, the venue is in either county." Tellingly, Defendants refer only to their overt acts—and at that, only portions of them—throughout the Motion Dismiss, and do not mention that the effects of their actions, the necessary consummation of the offense, undeniably occurred in Clark County.

Defendants suggest that once they dropped the envelopes into the mail in Minden, Nevada, the crime—if any—was complete. This is simply not true—as pleaded in the Indictment herein, the charges under NRS 239.300 and NRS 205.110 both require that a false or forged instrument be offered or uttered, respectively—in other words, that they be delivered to the recipients' defendants addressed them to.<sup>2</sup>

"[I]f the perjurious act be deemed to have been committed partly in Bronx County, in which the oath was administered, and partly in Westchester County, in which the perjurious instrument was delivered and uttered, the jurisdiction is in either County." *People v. Gould*, 246 N.Y.S.2d 758 (County Court, Westchester County, NY) (1964). Here, similarly, the crime is not complete until the false or forged instruments were rendered to the locations at which they were offered and uttered. As such, because the false or forged instruments were delivered to Chief Judge Du at the Lloyd D. George Courthouse, 333 South Las Vegas Boulevard—a location in Clark County—"acts or effects . . . requisite to the consummation of the offense" occurred in Clark County, and venue is therefore proper in the Eighth Judicial District Court.

Consider the classic law school hypothetical: a person stands in California and shoots a gun. The bullet flies across the border and strikes dead a victim in Nevada. Defendants would have this Court believe that no Nevada court would be a proper venue for the hypothetical murder trial—that the State of Nevada would be defenseless against such an act, that only in California could such a defendant be properly charged, and only then and there charged with unlawful discharge of a firearm. Defendants' argument is equivalent to an argument that the crime of murder was complete as soon as a murderer pulls the trigger of his gun. Of course, such an argument fails—no murder has occurred until death is occasioned, as that is the "effect . . . requisite to consummation of" murder. NRS 171.030.

In *Walker v. State*, discussed *supra* at B(1), the Nevada Supreme Court considered these facts: Walker was hitchhiking near Elko, was picked up by a passing driver, and at some point along the route from Elko to Reno, killed the person who had picked him up. The Nevada Supreme Court held that venue was properly found in Washoe county, where the deceased was discovered: "[W]ith the evidence which developed in this case known to the prosecuting attorney at the time the information was filed, it would have been impossible for him to allege with any degree of certainty that the offense took place in any specific county[.]" 78 Nev. 463, 472, 376 P.2d 137, 141 (1962).

<sup>&</sup>lt;sup>2</sup> NB: Defendants claim, *Motion to Dismiss* at 7:9, fn. 2, that the envelope addressed to Chief Judge Du's chambers in Las Vegas was in error, because she is "located" in Reno. To the extent, if any, Defendants' argument is that venue may not lie in the Eighth Judicial District as a result, it should be kept well in mind that Secretary of State Cegavske was located in Las Vegas, and Defendants' election to mail copies to her office in Carson City was likely a similar error.

Similarly, herein no one county contained the entirety of the preparing, conspiring, execution, and consummation of the crime. Defendants live in Storey County, Douglas County, and Clark County. "[T]he acts or effects . . . constituting or requisite to the consummation of the offense," occurred—at minimum—in Clark County, Washoe County, Douglas County, and Carson City. Venue would be proper in any of those District Courts, and the State has chosen to prosecute this matter in the Eighth Judicial District, as it is entitled to do under NRS 171.030.

Extended to its logical conclusion, Defendants' argument suggests that anyone who commits their crime while physically situating themselves outside Nevada is free to victimize the State or its residents and that Nevada would be defenseless to protect itself and its citizens by prosecuting those who stayed outside the state's physical borders. Such an absurd result must not be entertained or invited.<sup>3</sup>

Here, NRS 171.015 is instructive: "If the defendant consummated [his crime] in this State, through the intervention of an innocent or guilty agent, or any other means proceeding directly from the defendant, in such case the jurisdiction is in the county in which the offense is consummated." The analogy then, is that Defendants herein, through an innocent agent—the U.S.P.S.—and by means proceeding directly from the defendants, did cause these offenses to be consummated in Clark County.

Venue is proper wherever "the acts or effects thereof constituting or requisite to the consummation of the offense occurred." Where the acts or effects are "committed in part in one county and in part in another . . . the venue is in either county." NRS 171.030. The controlling law here is simple: Defendants offered and uttered false and forged instruments in Clark County, so the State can elect to initiate this matter in Clark County and has unfettered discretion in choosing to do so. Notwithstanding that venue would be proper in other counties also, venue lies in Clark County.

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#### C. Vicinage Clause does not apply.

"The vicinage clause of the Sixth Amendment guarantees an accused 'the right to a ... jury of the ... district wherein the crime shall have been committed, which district shall have been previously ascertained by law.' U.S. Const. amend. VI." *Stevenson v. Lewis*, 384 F.3d 1069, 1071 (9th Cir. 2004).

However, as the Ninth Circuit has said, "The Supreme Court has not decided whether the Fourteenth Amendment incorporated the Sixth Amendment's vicinage right. Neither have we. The only

 $<sup>^{3}\,</sup>$  Indeed, the Legislature has ensured no such absurdity will occur. NRS 171.015.

circuits to squarely address the issue have concluded that the Fourteenth Amendment did not extend federal vicinage protection to the states." *Id.*, citing *Caudill v. Scott*, 857 F.2d 344, 345-46 (6th Cir. 1988); *Cook v. Morrill*, 783 F.2d 593, 94-96 (5th Cir. 1986); *Zicarelli v. Dietz*, 633 F.2d 312, 320-26 (3rd Cir. 1980).

In *State v. Steward*, the Nevada Supreme Court determined that Nevada's venue statute regarding *in transitu* crimes, NRS 171.040, does not offend the State's Constitution: "Not only was the common law of England with reference to venue materially modified by statute at the time of the adoption of our constitution but the same was, in the absence of constitutional prohibition, subject to the inherent right of the legislature to make modifications pertaining to place of trial." *State v. Steward*, 74 Nev. 65, 73, 323 P.2d 23, 26-27 (1958).

NRS 171.030 does not offend the Constitution of the State of Nevada or the Sixth Amendment. Although Article I, Section 3 Nevada Constitution preserves the right to trial by jury, there is no mention of vicinage in that provision or any other provision of the Nevada Constitution or Nevada's statutes governing the place of trail. The Vicinage Clause of the Sixth Amendment has never been incorporated against the states by any circuit court, let alone the United States Supreme Court.

Moreover, as discussed above, venue and jurisdiction are both correct in the Eighth Judicial District Court, as acts and effects necessary to the consummation of the crimes alleged occurred in Clark County. As such, notwithstanding the absence of controlling authority holding that Nevada must comply with the Sixth Amendment's Vicinage Clause, there could be no argument that vicinage required the trial be held anywhere else—for all the reasons explained above, the trial will be held in the county where some of the acts and effects necessary to the consummation occurred, so the right of vicinage will be satisfied.

IV.

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#### CONCLUSION

The Clark County Grand Jury may inquire into any matter for which the Eighth Judicial District Court is an appropriate venue. Whether because preparatory acts and the intent to commit these crimes existed in Clark County, because acts in furtherance of the conspiracy took place in Clark County, or because the effects necessary to the consummation of the crime happened in Clark County, venue is appropriate in the Eighth Judicial District, and the Clark County Grand Jury therefore had jurisdiction to

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1	inquire into and return a true bill in this matter. That other acts or effects necessary to the consummation
2	of these crimes happened in other venues is of no moment in determining whether venue is appropriate
3	in the Eighth Judicial District.
4	Based upon the foregoing, the State respectfully request this Court deny Defendants' Motion to
5	Dismiss.
6	DATED this 8 <sup>th</sup> day of February 2024.
7	
8	Submitted by:
9	AARON D. FORD
10	Attorney General
11	By: <u>/s/ Alissa Engler</u>
12	ALISSA ENGLER Chief Deputy Attorney General
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1	CERTIFICATE OF SERVICE
2	I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that
3	on February 8, 2024, I filed the OPPOSITION TO DEFENDANTS MOTION TO DISMISS via this
4	Court's electronic filing system. The following parties are registered with this Court's EFS and will be
5	served electronically.
6	Mr. George Kelesis, Esq.
7	517 S. 9 <sup>th</sup> Street Las Vegas, NV 89101
8	<u>Gkelesis@bckltd.com</u> Attorney for James Degraffenreid
9	Brian Hardy, Esq.
10	10001 Park Run Drive Las Vegas, NV 89145 Bhardy@maclaw.com
11	Attorney for Durward Hindle, III
12	Richard Wright, Esq. 300 S. Fourth Street, Ste. 701
13	Las Vegas, NV 89101 Rick@wmllawlv.com
14	Attorney for Michael James McDonald
15	Monti Jordana Levy, Esq. 300 S. Fourth Street, Ste. 701
16	Las Vegas, NV 89101 Mlevy@wmllawlv.com
17	Attorney for Eileen Rice
18	Sigal Chattah, Esq. 5875 S. Rainbow Blvd., #204
19	Las Vegas, NV 89118 Chattahlaw@gmail.com
20	Attorney for Shawn Meehan
21	Margaret A. McLetchie, Esq. 602 S. Tenth St.
22	Las Vegas, NV 89101 Maggie@nvlitigation.com
23	Attorney for Jesse Law
24	By: /s/ R. Holm
25	An employee of the Office of
26	the Attorney General
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1 2 3 4 5 6 7 8	MSRC AARON D. FORD Attorney General ALISSA ENGLER (Bar No. 11940) Chief Deputy Attorney General MATTHEW J. RASHBROOK (Bar No. 12477) Special Prosecutor Office of the Attorney General 555 E. Washington Ave., Ste. 3900 Las Vegas, Nevada 89101-1068 P: 702 486-3420 F: 702 486-0660 Attorneys for the State of Nevada DISTRIC	2/8 Ste	ctronically Filed /2024 3:07 PM ven D. Grierson ERK OF THE COURT
9	CLARK COU	NTY, NEVADA	
10	STATE OF NEVADA	Case No. C-23-379122-1	
11	Plaintiff,	Dept. No. XVIII	
12	v.	HEARING NOT REQUES	FFD
13	WALTER DEGRAFFENREID, III,	ILEAKING NOT REQUES	
14 15	Defendant.		
16 17 18 19	<b>STATE'S MOTION FOR LEAVE TO</b> AARON D. FORD, Attorney General for th General, Alissa C. Engler, hereby move for leave	e State of Nevada, through his (	Chief Deputy Attorney
20	Opposition to Motion to Dismiss. This Motion is b	based upon the following Memo	orandum of Points and
21	Authorities, and all papers and pleadings on file he	erein.	
22	///		
23	///		
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	Pag	e 1 of 5	APP 0466
	Case Number: C-	23-379122-1	0.200

#### **MEMORANDUM OF POINTS AND AUTHORITIES**

### I. INTRODUCTION

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On December 6, 2023, Defendants, Michael J. McDonald, (hereinafter "MCDONALD"), James Walter DeGraffenreid III, (hereinafter "DEGRAFFENREID"), Jesse Reed Law, (hereinafter "LAW"), Duward James Hindle III, (hereinafter "HINDLE"), Shawn Michael Meehan, (hereinafter "MEEHAN"), and Eileen A. Rice, (hereinafter "RICE"), collectively referred to throughout as ("DEFENDANTS") were charged by way of Indictment with the following: one (1) count of Offering False Instrument For Filing Or Record, a category "C" Felony in violation of NRS 239.330 and one (1) count of Uttering Forged Instruments: Forgery, a category "D" Felony in violation of NRS 205.110. On December 18, 2023, Defendants pleaded not guilty and waived their right to a speedy trial within sixty (60) days. Calendar Call is set for March 4, 2023, and Jury Trial is scheduled to commence on March 11, 2023.

On January 29, 2023, Defendant Rice filed a Motion to Dismiss on January 29, 2024, which all other Defendants joined in separate filings. The State has filed its Opposition to Defendants Motion to Dismiss, and attached to the Opposition are cell phone records of Defendant McDonald and Law, the content of which contains personal identifying information.

#### LEGAL ARGUMENT

Pursuant to 239B.030, "except as otherwise provided in subsections 2,3, and 8, a person shall not include and a governmental agency shall not require a person to include any personal information about a person on any document that is recorded, filed or otherwise submitted to the governmental agency..." Nevada Rule for Sealing and Redacting Court Records 3(1) states:

Any person may request that the court seal or redact court records for a case that is subject to these rules by filing a written motion, or the court may, upon its own motion, initiate proceedings to seal or redact a court record. A motion to seal or redact a court record must disclose, in its title and document code, that sealing or redaction is being sought. The motion must be served on all parties to the action in accordance with NRCP 5.

The rule also permits sealing when it is justified or required by another identified compelling circumstance. Courts in Nevada have recognized that, while the public has a strong interest in its ability to inspect and copy public records and documents, their right to do so is not absolute. *Howard v. State*, 128 Nev. 736, 291 P.3d 137, (2012) (discussing Nevada's laws for sealing a record in a civil matter to

1	deterr	nine how to seal records in a criminal matter). A party asking to curtail the public's access to a
2	public	c record must show the public's interest is "outweighed by a significant competing interest." Id. at
3	744, 2	291 P.3d at 142.
4		Here, the phone records of Defendants McDonald and Law contain sensitive information and is
5	confic	dential pursuant to Nevada law. Accordingly, the State's motion to file the report under seal should
6	be gra	anted.
7	III.	CONCLUSION
8		State's motion for leave to file Opposition to Motion to Dismiss Exhibits 1 and 2 under seal should
9	be gra	anted.
10		DATED this 8th day of February, 2024.
11		AARON D. FORD Attorney General
12		Automey General
13		By: <u>/s/ Alissa C. Engler</u> Alissa C. Engler (Bar No. 11940)
14		Chief Deputy Attorney General
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1	CERTIFICATE OF SERVICE
2	I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that
3	on February 8, 2024, I electronically filed the foregoing STATE'S MOTION FOR LEAVE TO FILE
4	EXHIBITS 1 AND 2 UNDER SEAL, via this Court's electronic filing system. Parties who are
5	registered with this Court's electronic filing system will be served electronically.
6	Mr. George Kelesis, Esq.
7	517 S. 9 <sup>th</sup> Street Las Vegas, NV 89101
8	Gkelesis@bckltd.com Attorney for James Degraffenreid
9	Brian Hardy, Esq.
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11	Bhardy@maclaw.com Attorney for Durward Hindle, III
12	Richard Wright, Esq.
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14	Rick@wmllawlv.com Attorney for Michael James McDonald
15	Monti Jordana Levy, Esq.
16	300 S. Fourth Street, Ste. 701 Las Vegas, NV 89101
17	Mlevy@wmllawlv.com Attorney for Eileen Rice
18	Sigal Chattah, Esq.
19	5875 S. Rainbow Blvd., #204 Las Vegas, NV 89118
20	Chattahlaw@gmail.com Attorney for Shawn Meehan
21	Margaret A. McLetchie, Esq.
22	602 S. Tenth St. Las Vegas, NV 89101
23	Maggie@nvlitigation.com Attorney for Jesse Law
24	
25	By: <u>/s/ R. Holm</u>
26	An employee of the Office of the Attorney General
27	
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1 2 3 4 5 6 7 8	NOTC AARON D. FORD Attorney General ALISSA ENGLER (Bar No. 11940) Chief Deputy Attorney General MATTHEW J. RASHBROOK (BAR No. 12477) Special Prosecutor State of Nevada Office of the Attorney General 555 E. Washington Ave., Ste. 3900 Las Vegas, Nevada 89101-1068 P: 702 486-3420 F: 702 486-0660 Attorneys for the State of Nevada	Electronic 2/8/2024 3 Steven D. CLERK O	8:10 PM
9	DISTRIC	CT COURT	
10	CLARK COU	JNTY, NEVADA	
11		1	
12	STATE OF NEVADA,	Case No. C-23-379122-1	
13	Plaintiff,	Dept. No. XVIII	
14	VS.		
15	JAMES WALTER DEGRAFFENREID,		
16	Defendant.		
17			
18	PLAINTIFF'S NOTICE OF	UNDER SEAL SUBMISSION	
19	Respondent, AARON D. FORD, Attorney	General for the State of Nevada, by an	nd through Chief
20	Deputy Attorney General, ALISSA C. ENGLER,	hereby notify Defendant that Ex	whibits 1 and 2
21	have been submitted under seal in support o	f their Opposition to Defendant's M	otion to Dismiss.
22	DATED this 8th day of February, 2024.		
23		Submitted by: AARON D. FORD	
24		Attorney General	
25	Ву	/: /s/ Alissa Engler ALISSA ENGLER (Bar No. 11940	<u>n</u>
26		Chief Deputy Attorney General	<i>''</i>
27			
28			
	Page	e 1 of 2 AI	PP 0471
	Case Number: C-2	23-379122-1	

1	CERTIFICATE OF SERVICE
2	I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that
3	on February 8, 2024, I electronically filed the foregoing Plaintiff's Notice of Under Seal Filing, via this
4	Court's electronic filing system. Parties who are registered with this Court's electronic filing system will
5	be served electronically.
6	Mr. George Kelesis, Esq.
7	517 S. 9 <sup>th</sup> Street Las Vegas, NV 89101
8	Gkelesis@bckltd.com Attorney for James Degraffenreid
9	Brian Hardy, Esq.
10	10001 Park Run Drive Las Vegas, NV 89145
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