

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,

Respondents.

CASE NO. 89064

Dist. Court No.

C-23-379122-1

C-23-379122-2

C-23-379122-3

C-23-379122-4

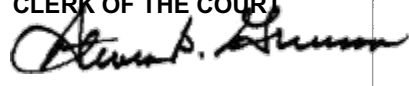
C-23-379122-5

C-23-379122-6

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**APPELLANT APPENDIX
Volume 3 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



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ROPP
RICHARD A. WRIGHT, ESQ.
Nevada Bar No. 886
WRIGHT MARSH & LEVY
300 S. Fourth ST., Ste 701
Las Vegas, NV 89101
Phone: (702) 382-4004
Fax: (702) 382-4800
rick@wmlllawlv.com
Attorney for Michael James McDonald

MARGARET A. MCLETCHIE
Nevada Bar No. 10931
MCLETCHIE LAW
602 South Tenth St.
Las Vegas, Nevada 89101
Telephone: (702) 728-5300
Fax: (702) 425-8220
Email: maggie@nvlitigation.com
Attorney for Defendant Jesse Law

MONTI JORDANA LEVY, ESQ.
Nevada Bar No. 8158
WRIGHT MARSH & LEVY
300 S. Fourth St., Ste. 701
Las Vegas, Nevada 89101
(702) 382-4004
mlevy@wmlllawlv.com
Attorney for Eileen Rice

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
MICHAEL JAMES MCDONALD,)
JESSE REED LAW,)
EILEEN RICE,)
)
Defendants.)

CASE NO.: C-23-379122-4
C-23-379122-3
C-23-379122-6

DEPT No.: XVIII

Date of Hearing: 3/4/2024
Time of Hearing: 9:30 am

JOINT REPLY TO OPPOSITION TO MOTION TO DISMISS

COMES NOW, Defendants MICHAEL JAMES MCDONALD, JESSE REED
LAW, and EILEEN RICE, by and through their attorneys, RICHARD A.

1
2 WRIGHT, MARGARET MCLEATCHIE, and MONTI JORDANA LEVY, and hereby
3 submit their joint REPLY to the States's Opposition to Ms.
4 Rice's Motion to Dismiss.

5 This Reply is made and based on the papers and pleadings on
6 file, the Memorandum of Points and Authorities attached hereto,
7 and argument of counsel at the hearing on this matter.

8 Dated this 13th day of February, 2024.

9
10 /s/ RICHARD A. WRIGHT
11 RICHARD A. WRIGHT, ESQ.
12 Nevada Bar No. 886
13 WRIGHT MARSH & LEVY
14 300 S. Fourth ST., Ste 701
15 Las Vegas, NV 89101
16 Phone: (702) 382-4004
17 Fax: (702) 382-4800
18 rick@wmllawlv.com
19 Attorney for Michael James McDonald

20 /s/ MARGARET A. MCLEATCHIE
21 MARGARET A. MCLEATCHIE
22 Nevada Bar No. 10931
23 MCLEATCHIE LAW
24 602 South Tenth St.
25 Las Vegas, Nevada 89101
26 Telephone: (702) 728-5300
27 Fax: (702) 425-8220
28 Email: maggie@nvlitigation.com
Attorney for Defendant Jesse Law

29 /S/ MONTI JORDANA LEVY
30 MONTI JORDANA LEVY, ESQ.
31 Nevada Bar No. 8158
32 WRIGHT MARSH & LEVY
33 300 S. Fourth St., Ste. 701
34 Las Vegas, Nevada 89101
35 (702) 382-4004
36 mlevy@wmllawlv.com
37 Attorney for Eileen Rice

1
2 MEMORANDUM OF POINTS AND AUTHORITIES

3 I. INTRODUCTION

4 In its peculiar quest to create tenable venue in Clark
5 County, the State claims it has "...unfettered discretion in
6 choosing to do so" (State's Opposition ("Opp.", p. 13, lines 1-
7 2¹), yet the State fails to point to evidence establishing that
8 the grand jury in Clark County had jurisdiction. Instead, in a
9 transparent effort to distract, the State exaggerates Defendants'
10 arguments to create bogeyman scenarios² which the defendants
11 never argued. The defendants are not arguing that venue or
12 jurisdiction is nonexistent or unascertainable or that they are
13 not subject to prosecution in Nevada; they simply argue that the
14 venue (and therefore the ability to indict) does not lie in Clark
15 County.

16 II. THE FACTS (THE LACK OF EVIDENCE)

17 A. Lack of Evidence Relating to Alleged Conspiratorial
18 Intent in Clark County.

19 Using phone records (**Exhibits 1 and 2 to Opp.**) to support
20 the contention, the State alleges that between December 9, 2020,
21 and December 13, 2020, Mr. McDonald and Mr. Law were located in

22
23 ¹The State filed Oppositions for each of the 6 defendants;
24 however, the documents do not all have the same page numbering.
The references herein to page numbers and line numbers are from the
Opposition filed in Ms. Rice's case number.

25 ²The State's brief argues, "Extended to its logical conclusion,
26 Defendants' argument suggests that anyone who commits their crime
27 while physically situating themselves outside Nevada is free to
28 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." (See State's Opp., pg
12, lines 14-18).

1
2 Clark County. Mr. Law was in fact not present in Nevada for much
3 of that time frame. Mr. Law was traveling outside of Clark
4 County from December 11, 2020 until the evening of December 14,
5 2020. (See Exhibit 2 to Opp.).

6 The State essentially relies on the fact that emails were
7 sent and Mr. Law and Mr. McDonald engaged in phone communications
8 from Clark County around that same time, claiming they were
9 "interspersed" to somehow concoct intent. This effort to connect
10 the dots between flimsy pieces of evidence fails.

11 With regard to the emails, relying largely on emails **from**
12 Chesebro³, the State alleges that Mr. Law and Mr. McDonald were
13 participating in the drafting and revision process of the
14 documents at issue (Opp., p. 9: lines 1-2). But none of these
15 emails were from either Mr. McDonald or Mr. Law; the evidence
16 presented to the grand jury showed that Mr. Chesebro drafted the
17 documents and the only editing later occurred outside of Clark
18 County by Mr. DeGraffenreid. (Opp, pp. 8-10). Indeed, Mr. Law and
19 Mr. McDonald are not even mentioned in the emails, other than a
20 few times. First, there is a reference in a December 14, 2020,
21 email to Mr. Law printing documents (GJ Exhibit 28 at GJ000198)
22 but Mr. Law was not even in Clark County that date (Exhibit 2 to
23 Opp.) so that email is not evidence of intent by Mr. Law in Clark
24 County. Second, there is a December 13, 2024, email listing Mr.
25 McDonald as chairman (but not that he asked for any such change)

26
27 ³Opp. p. 2:16-3:21 at p. 2:18 ("Chesebro drafted..."); pp.19-20
28 ("Chesebro suggested..."); p.2:23 ("Chesebro drafted..."); pp.
25-("Chesebro... drafted.."; p.2:28 ("Chesebro forwarded"); p. 3:5
("Chesbro asked Defendant DeGraffenreid ... but he did not receive a
response).

1 (Grand Jury GJ000198). There is no evidence that Mr. McDonald
2 viewed that email or that he did so while in Clark County⁴.
3
4 The emails cited to by the State show a discussion that neither
5 Mr. Law nor Mr. McDonald participated in (other than they were
6 copied on the emails); the only emails and responses contained in
7 GJ Exhibit 28 are from Mr. DeGraffenreid, Mr. Meehan, and Mr.
8 Hindle (all who reside outside of Clark County) (See Exhibit A).
9 The emails that Mr. McDonald and Mr. Law were copied on do not
10 show any criminal intent or act by Mr. McDonald or Mr. Law, let
11 alone when they were in Clark County. To overcome this
12 reality-that Mr. McDonald and Mr. Law did not participate in any
13 of the drafting evidenced by the emails-the State makes much of
14 the fact there were phone calls made between them and Mr.
15 DeGraffenreid. But zero evidence has been presented showing the
16 substance of these phone calls other than the State's
17 speculation. There was nothing unusual about these individuals,
18 all part of Nevada Republican Party leadership, speaking to each
19 other between those dates.

20 The first time the evidence shows Defendants engaged in any
21 acts relating to the documents at issue was when they "met in
22 **Carson City, Nevada**, on December 14, 2020, to execute the
23 documents"; "Defendant Law printed and provided copies of the
24 documents to Defendants McDonald, DeGraffenreid, Meehan, Hindle
25 and Rice"; and "Defendants signed and executed the documents."

26 ⁴The emails regarding edits to the documents were sent on
27 December 13-14, 2020 (Exhibit 28 to Grand Jury: relevant portions
28 containing the emails from Exhibit 28 are attached hereto as
Exhibit A). Mr. McDonald was traveling outside of Clark County
beginning the afternoon of December 13, 2020 (See Exhibit 1 to
Opp.).

1
2 (Opp., p. 3, 23-26.) The fact that Defendants "reside in several
3 locations throughout Nevada, including Las Vegas and Henderson"
4 (Opp. pp. 22-23) does not show that any intent or act occurred in
5 Clark County.

6 **B. Lack of Evidence Relating to Any Alleged Conspiratorial
7 Act in Clark County**

8 The State, throughout its Opposition, discusses the mailing
9 that was sent to Chief Judge Mirandu Du of the United States
10 District Court for the District of Nevada at an address in Las
11 Vegas. What the State failed to include in its opposition (and
12 failed to present to the grand jury), was the fact that, while
13 received in Las Vegas, this document was not delivered to Judge
14 Du in Las Vegas, but rather it was forwarded unopened to Judge
15 Du's Chambers in Reno.

16 The State has failed to include, either in its Opposition or
17 in its presentation to the Grand Jury, the contents of its
18 interview with Debra Kempf ("Ms. Kempf"), the Clerk of the U.S.
19 District Court for the State of Nevada. Ms. Kempf is located in
20 Reno and discussed during her recorded interview the process for
21 sorting and receiving mail.⁵ If a document is received by the
22 clerk's office addressed to a judge, it is forwarded to that
23 judge's chambers unopened unless it is clearly related to a case
24 with a case number. (See Exhibit B). If mail is received in Las
25 Vegas and is addressed to Judge Du (the then Chief Judge of the
26 U.S. District Court for the District of Nevada) it is re-routed
27 to her in Reno. (See Exhibit B at 6:03).

28 ⁵Because the statement has not been transcribed, it will be
provided in electronic format to the court as Exhibit B to this
Reply.

1
2 When asked if the documents related to the electoral college
3 are filed, registered, or recorded by the Court, Ms. Kempf stated
4 that the documents are not filed or recorded; they are only
5 stored in a vault at the court. (Exhibit B at 6:27). Ms. Kempf
6 was asked about documents received by certified mail from Michael
7 McDonald. (Exhibit B at 7:45). Ms. Kempf stated that the mailing
8 was re-routed by either inter-office mail or brought up to Reno
9 by someone and then delivered, unopened, to Judge Du's chambers
10 in Reno. (Exhibit B at 14:35.)⁶

11 The mailing from Mr. McDonald was then put in the vault; the
12 outer envelope was opened by Judge Du's chambers (in Reno), but
13 the inner envelopes containing the signed documents were not
14 opened by the Court until they received a call from the Attorney
15 General's Office. (Exhibit B at 15:50).

16 **III. ARGUMENT**

17 **A. The State Misapplies the Applicable Legal Standard.**

18 The State ignores the central underpinnings of the Nevada
19 Supreme Court's holdings in Guzman v. Second Judicial Dist.
20 Court, 136 Nev. 10, 460 P.3d 443 (2020) ("Guzman I") and Guzman
21 v. Second Judicial Dist. Court, 496 P.3d 572, 580 (Nev. 2021)
22 ("Guzman II"). In Guzman I, the Nevada Supreme Court rejected the

23
24 ⁶The State in its Opposition argues, "...because the false or
25 forged instruments were delivered to Chief Judge Du at the Lloyd D.
26 George Courthouse, 333 South Las Vegas Boulevard- a location in
27 Clark County- 'acts or effects...requisite to the consummation of
28 the offense' occurred in Clark County..." The State is attempting
to mislead the court with that argument as Chief Judge Du is not
located in Clark County, her mail was not opened in Clark County,
and it was re-routed to her chambers in Reno, Nevada, as is all
mail received for her in Las Vegas.

1
2 implicit position that the State takes here, i.e. that it has
3 "unfettered discretion" to decide venue; the Court also made
4 clear that a grand jury's "territorial jurisdiction...depends on
5 whether the *necessary connections*, as identified in Nevada's
6 statutes, to the location of the court exist." And in Guzman II,
7 136 Nev. at 111, 460 P.3d at 450, the Nevada Supreme Court
8 reiterated that "[w]e decline to hand-wave, solely for
9 convenience's sake, around the principle that crimes should be
10 tried where they are committed in the absence of a statutory
11 exception" (id.), where the State decided to impanel a grand jury
12 in a county that had nothing to do with the crimes committed for
13 politics' sake.

14 In Guzman II, the Nevada Supreme Court further defined the
15 limits of a grand jury's jurisdiction, explaining "neither intent
16 nor a supposedly preparatory act, standing alone, is sufficient
17 to make venue proper in a charging county." Id. at 527. While
18 venue may nonetheless lie if "intent is coupled with an act in
19 furtherance of that intent", there must be nonspeculative
20 evidence of both intent and an act in that County. Id. The State
21 fails to meet this standard; indeed, it fails to meet the less
22 stringent standard articulated in Guzman I ("territorial
23 jurisdiction ... depends on whether the *necessary connections*, as
24 identified in Nevada's statutes, to the location of the court
25 exist").

26 ///

27 ///

28

1
2 **B. The State Misapprehends Its Evidentiary Burden.**

3 Further, while the State notes in passing that it must
4 establish venue by a preponderance of the evidence (citing
5 McNamara v. State, 132 Nev. 606, 615-616, 377 P.3d 106, 113
6 (2016)), it elides its evidentiary burden in two respects. First,
7 in its arguments, the State repeatedly relies on merely what the
8 State has alleged (see, e.g., p. 11:5 (relying on what was
9 "pleaded in the Indictment")). Allegations, of course, are not
10 evidence; the question is whether the State presented sufficient
11 evidence to the grand jury.

12 Second, the State ignores a central holding of Guzman II:
13 while the State notes the evidence supporting venue may be
14 circumstantial⁷, **bare speculation** does not suffice. Guzman II,
15 496 P.3d at 580. Thus, "it is not enough to present evidence that
16 may have allowed the grand jury to speculate that intent could
17 possibly have been formed in the charging county, or that an
18 action in the charging county may have been preparatory for the
19 disputed charge." Id.

20 Here, the only purported evidence the State has produced to
21 support venue in Clark County is exactly the type of speculation
22 the Nevada Supreme Court expressly rejected in Guzman II. While a
23 Clark County grand jury was more likely to return a true bill for
24 the State (especially when, curiously, the elected Attorney
25 General himself appeared not to act as counsel but to sway the
26 jurors, stating "I am your Attorney General"), there is no actual

27 _____
28 ⁷James v. State, 105 Nev. 873, 875, 784 P.2d 965, 967 (1989)
 predates Guzman I and II.

1 evidence that either a preparatory act occurred in Clark County
2 or that there was intent in Clark County, let alone both.
3 Instead, all the State puts forward in its Opposition are its own
4 allegations and bare speculation.
5

6 **C. The State Fails to Establish that the Requisite Intent
7 Was Formed, Let Alone in Clark County**

8 The State must establish by a preponderance of the evidence
9 that Defendant has criminal intent in Clark County.

10 The State cannot infer from the mere fact the Supreme Court
11 rejected the defendants' challenge on December 8, 2020, that
12 Defendants ever formed the intent to defraud, let alone that they
13 did so while in Clark County. Nor does the fact that Defendants
14 were sent certain emails and communicated with their Party
15 colleagues around the same time establish intent.

16 **1. The State Cannot Presume Intent Was Formed from
17 the Fact the Nevada Supreme Court Ruled Against
18 Defendants' Legal Challenge.**

19 The fact that the Nevada Supreme Court's December 8, 2020,
20 ruling was binding does not support the assumption that
21 Defendants, when they sent in the Certificate, intended to
22 defraud. The point the State misses is that, despite the finality
23 of the ruling, Defendants had a right-fully protected by the
24 Federal and Nevada Constitutions-to continue to challenge that
25 decision, just like they had the right to the televise the
26 ceremony the State complains about. See U.S. Const. Amend. 1
27 ("Congress shall make no law ... abridging ... the right of the
28 people ... to petition the Government for a redress of
grievances."); Nev. Const. Art. 1, § 10 ("The people shall have
the right freely to assemble together to consult for the common

1 good, to instruct their representatives and to petition the
2 Legislature for redress of Grievances").

3
4 Instead of trying to trick anyone with their Certificate,
5 the Defendants were exercising their First Amendment rights not
6 only to criticize and challenge Nevada's election process but
7 also to preserve their rights, also protected by the First
8 Amendment, to petition the courts and seek other avenues to
9 address their concerns about Nevada's purported election
10 irregularities. While the State has made much of the fact that
11 Chesebro's 12/9/20 memo said Nevada law was "problematic," the
12 reality is that "because it requires the meeting of the electors
13 to be overseen by the Secretary of State, who is only supposed to
14 permit electoral votes for the winner of the popular vote in
15 Nevada," it was unclear how, even if a subsequent decision from
16 the Supreme Court or an act of Congress determined Trump should
17 have been declared the winner in Nevada, that could have any
18 effect without their having fulfilled the procedural requirement
19 of executing the certificate on December 14th.

20 As Chesebro explained, "Nevada is an extremely problematic
21 State because it requires the meeting of the electors to be
22 overseen by the Secretary of State..." Clearly, a certificate is
23 required under Nevada law, and Defendants could not comply with
24 all the statutory requirements and get the Secretary of State to
25 sign off. However, Chesebro advised them, "If there were a vote
26 in Congress to take Nevada away from Biden and Harris presumably
27 along with it would come a vote to overlook this procedural
28 detail." And, as detailed above, when presenting evidence to the

1
2 grand jury, the State-despite being fully aware of the fact (See
3 Letter provided to AG from Defense: Attached as Exhibit C),
4 failed to explain that defendants had 90 days to appeal the
5 Nevada Supreme Court's decision.

6 Defendants submitted their Certificate-even though they
7 could not comply with all the statutory requirements-both to
8 publicize their continued disagreement with Nevada officials'
9 determination regarding the election and to do the best they
10 could under the law as it stands to preserve their rights to
11 continue to challenge the outcome. Nevada law does not have any
12 mechanism or procedure to address a situation where an election
13 result is still being challenged-that is what is problematic. The
14 Defendants were entitled to nonetheless try to comply with the
15 certificate requirement and create and submit a provisional
16 certificate.

17 Thus, the State cannot infer intent from the mere fact the
18 Nevada Supreme Court ruled against Defendants, let alone that
19 intent was formed in Clark County. Yet the State argues "as to
20 intent, after the Nevada Supreme Court affirmed the District
21 Court's ruling in a December 8, 2020, opinion, Defendants knew
22 that they were not the duly-qualified electors from Nevada."
23 (Opp. pp. 13-15.) Relatedly, in the Return to the Writ, the State
24 claims "Defendants' fervent belief or hope that President Trump
25 had won the election is not relevant, no matter how genuinely
26 held" (p. 14:21-22).

1
2 But Defendants had First Amendment rights to both believe
3 that they were in fact, duly elected and to continue to challenge
4 the election results even though they lost at the Nevada Supreme
5 Court; intent is relevant to each of the charges at issue and
6 cannot be inferred from the Defendants' disagreement with the
7 Attorney General or the Nevada Supreme Court. NRS 205.090 even
8 requires specific intent; it provides "A person who falsely
9 makes, alters, forges or counterfeits any record, or other
10 authentic matter of a public nature . . . with the intent to
11 damage or defraud any person, body politic or corporate . . . is
12 guilty of forgery" NRS 239.330 requires that Defendants
13 at least knowingly offer false or forged documents.

14 While committing fraud or knowingly submitting false or
15 forged documents for filing is punishable, the State ignores that
16 disagreeing with the Nevada Supreme Court's decision and even
17 stating false facts are protected by the First Amendment. See
18 United States v. Alvarez, 567 U.S. 709, 132 S. Ct. 2537, 183 L.
19 Ed. 2d 574 (2012).

20 In that case, a majority of the Justices agreed that the
21 Stolen Valor Act, which prohibits an individual from falsely
22 representing that they have received "any decoration or medal
23 authorized by Congress for the Armed Forces of the United
24 States," violated the First Amendment. 567 U.S. at 716, 729-30
25 (plurality opinion) (Kennedy, J., joined by Roberts, C.J.,
26 Ginsburg, J., and Sotomayor, J.); id. at 730 (Breyer, J.
27 concurring in the judgment, joined by Kagan, J.). There, the
28 Stolen Valor Act prohibited false statements. Central to Justice

1 Breyer's reasoning in his concurrence was avoiding the very
2 result we see embodied in this case: criminalizing false
3 statements on politically controversial topics "provides a weapon
4 to a government broadly empowered to prosecute falsity without
5 more" and cautioned that unpopular groups "may fear that the
6 government will use that weapon selectively" and "would risk
7 political and selective prosecutions, noting "in political
8 contexts, ... the risk of censorious selectivity by prosecutors is
9 ... high" (id. at 734).⁸

10
11 **2. The State Cannot Presume Intent from the Alleged
Prior Presence in Clark County of Two Defendants.**

12 The State essentially contends that merely because some
13 defendants-Mr. McDonald and Mr. Law-were physically present in
14

15 ⁸While, in United States v. Trump, No. 23-257 (TSC), 2023 U.S.
16 Dist. LEXIS 215162, at *8 (D.D.C. Dec. 1, 2023), the Court rejected
17 First Amendment arguments made on a motion to dismiss challenging
18 a federal indictment. However, those charges-- Conspiracy to
19 Defraud the United States, in violation of 18 U.S.C. § 371;
20 Conspiracy to Obstruct an Official Proceeding, in violation of 18
21 U.S.C. § 1512(k); Obstruction of, and Attempt to Obstruct, an
22 Official Proceeding, in violation of 18 U.S.C. §§ 1512(c)(2), 2;
23 and, Conspiracy Against Rights, in violation of 18 U.S.C. §
24 241-pertain to different allegations and have many elements not
25 present here. Here, the only conduct the State alleges is criminal
26 is essentially submitting the Certificate, which again was an
27 integral part of Defendants' efforts to publicize their
28 disagreement with Nevada officials' determinations regarding the
election-and their efforts to continue to exercise their rights to
petition for redress of grievances. Further, in determining that
Trump's First Amendment challenge to his federal indictment was
flawed, that court noted that Trump "fail[ed] to identify any
protected acts or speech that the statutes might render
impermissible under the Government's interpretation." United States
v. Trump, No. 23-257 (TSC), 2023 U.S. Dist. LEXIS 215162, at *56
(D.D.C. Dec. 1, 2023) (citing United States v. Hansen, 599 U.S.
762, 769-70, 143 S. Ct. 1932, 216 L. Ed. 2d 692 (2023)). But here,
if the State were permitted to criminalize the conduct, it would
have been impossible for Defendants to continue to challenge the
results of the election.

1
2 Clark County after the Supreme Court rejected their legal
3 challenge but before they traveled to Northern Nevada to execute
4 their certificate, there is sufficient circumstantial evidence of
5 intent (Opp., p. 9:20-25 ("The evidence adduced before the grand
6 jury and attached to this Opposition illustrates that at least
7 two of the defendants-McDonald and Law-were physically present in
8 Clark County during the time after the Nevada Supreme Court
9 affirmed the dismissal of their election contest, and before they
10 traveled to Carson City to execute their false and forged
11 instruments.")) Likewise, the mere fact that persons who were
12 part of Republican Party leadership communicated by phone does
13 not establish intent (Opp., p. 9:24-25 ("During the interval from
14 late December 8, 2020, through the morning and early afternoon of
15 December 13, 2020, Defendant McDonald made numerous phone calls
16 to his co-Defendants."))

17 The purported evidence does not suffice. Indeed, in Guzman
18 II, the Nevada Supreme Court rejected this very type of
19 speculation. For example, it found that Washoe County was not a
20 proper venue for a burglary in another county where "the grand
21 jury was not presented with evidence that the stolen items were
22 in the vehicle when [the defendant] went to Washoe County." 496
23 Nev. at 579. In that case, "[t]he only evidence the State
24 point[ed] to in support of this argument" was the circumstantial
25 evidence the defendant "drove the same car" in Washoe County
26 after the items were stolen but before they were later found in
27 the same car. Id. The Court "conclude[d] that the mere
28 possibility that the property found in Martinez Guzman's car at

1 the time of arrest was transported everywhere inside the car for
2 days after it was stolen is insufficient to show proof by a
3 preponderance of the evidence." Id. (holding "the district court
4 manifestly abused its discretion in concluding that venue was
5 proper on this basis"). Thus, the Court found there was
6 "insufficient evidence that property taken from Douglas County
7 had been brought into Washoe County to justify venue there under
8 NRS 171.060." Id. at 579.

9
10 In that case, the defendant (on January 3-4, 2019)
11 burglarized a home in Washoe county (and stole the gun and
12 ammunition that he went on to use in the subsequent crimes); he
13 then went on to commit murders and burglaries in other counties
14 but then returned to Washoe on January 15, to the same house he
15 burglarized on January 3-4, and committed further burglary and
16 two murders. 496 P. 3d at 574. He then was arrested on January 19
17 and confessed to the crimes and using the same car for all of
18 them (and again used the weapons he stole in Washoe). Id. The
19 Supreme Court found that none of the crimes other than the
20 murders and burglaries in Washoe itself could be tried there (id.
21 at 579) and expressly rejected the idea that NRS 171.030
22 conferred jurisdiction. (Id. at 574).

23 Here, the State's evidence to tie the alleged crimes to
24 Clark County is even thinner than the evidence tying the burglary
25 charge to Washoe County in Guzman II; all the State points to is
26 two Defendants' mere presence in Clark County and the fact that
27 Defendants who routinely communicated placed calls to each other.
28 If it was speculative to assume the stolen property that was in

1 the car before it was in Washoe County and was subsequently in
2 the same car at the time of arrest must have also been in car
3 when it was in Washoe between those times, it is even more
4 speculative to assume Mr. McDonald and/or Mr. Law formed any
5 criminal intent when in Clark County based on the sole fact that
6 they were in Clark County after December 8, but before the
7 alleged crime was committed.
8

9 **3. The State Cannot Presume Intent from the Mere Fact**
10 **Defendants Communicated with Each Other and Were**
11 **Sent Emails.**

12 As detailed above, there is zero evidence that Mr. McDonald
13 or Mr. Law participated in any drafting or revising of documents
14 while in Clark County.

15 Indeed, the very emails the State points to (Opp., p. 9,
16 line 25-28; p. 3, lines 1-13) show that neither Mr. McDonald nor
17 Mr. Law (who, again, was not even in Clark County for much of
18 this time), had anything to do with drafting or revising any
19 documents; they did not even send the emails at issue and no
20 evidence was presented to the grand jury that they even saw the
21 emails while in Clark County.

22 Relying on the fact that Mr. McDonald and Mr. Law made phone
23 calls to other Defendants during this period and when in Clark
24 County does not fill the gaps and show, as the State imagines,
25 that they participated in the drafting and circulating of
26 anything. All the phone records the State attached to its
27 Opposition show is that members of Republican Party leadership
28 communicated; the State has not established anything about the
content of those communications.

1
2 At the end of the day, despite the State's contortions and
3 effort to rely on the fact that McDonald and Law were present in
4 Clark County, to some degree, between December 8 and December 14,
5 there was no evidence presented showing that Mr. McDonald or Mr.
6 Law **while in Clark County** edited or drafted any of the documents
7 alleged to be forged or fraudulent. The mere fact they received
8 emails or exchanged phone calls while they were purportedly in
9 Clark County and other people sent emails does not show they
10 participated in any alleged conspiratorial acts in Clark County.

11 Again, the Nevada Supreme Court rejected even less
12 speculative temporal evidence in Guzman II, as discussed above.
13 If even evidence that stolen property was in the same car both
14 before and after it was in Washoe fails to establish venue under
15 NRS 171.060, merely being present in Clark County, being sent
16 emails, and speaking to other members of Republican Party
17 leadership must certainly fall within the category of "bare
18 speculation" that is insufficient to establish venue under NRS
19 171.030. Indeed, while intent in this case could have been formed
20 in Clark County just as the intent could have been formed in
21 Washoe for the crimes committed in other counties in Guzman II
22 (id. at 578) that supposition is based on bare speculation that
23 does not suffice. Indeed, in Guzman II while the defendant later
24 used weapons stolen in Washoe to perpetrate the crimes in the
25 other counties, because "there [was] no evidence that Martinez
26 Guzman took the firearm in preparation for the burglaries and
27 murder in Douglas County," Washoe did not have jurisdiction
28 pursuant to NRS 171.030. Id.

1
2 **D. No Act Occurred in Clark County**

3 The law also requires that an actual act in furtherance of
4 the crime occurred in Clark County, as the State concedes. But
5 the State does not establish that such an act occurred here, let
6 alone by a preponderance of the evidence.

7 **1. Nothing was Delievered to Any Addressee in Clark**
8 **County**

9 The State argues "the charges under NRS 239.300 and NRS
10 205.110 both require that a false or forged instrument be offered
11 or uttered, respectively-in other words, that they be delivered
12 to the recipients[] defendants addressed them to." (Opp., p.
13 11:5-8.) However, as a factual matter, the Certificate was not
14 "delivered to the recipients[] defendants addressed them to"
15 (Opp., p. 11). Nothing was delivered to Judge Du in Clark County,
16 as she was the only Clark County addressee.

17 As detailed above, while Defendants erroneously sent a copy
18 of the Certificate to Judge Mirandu Du in Clark County, the
19 Certificate was never "delivered" to Judge Du in Clark County.
20 Instead, while the State hid these facts from the grand jury, the
21 envelope, unopened, was forwarded to Judge Du's correct address
22 in Reno. Thus, contrary to the State's claim, nothing was
23 "offered or uttered" in Clark County (Opp., p. 8, fn. 1).
24 Accordingly, no act pertinent to NRS 239.330(1) occurred in Clark
25 County; that statute provides that "a person who knowingly
26 procures or offers any false or forged instrument to be filed,
27 registered or recorded in any public office, which instrument, if
28 genuine, might be filed, registered or recorded in a public
office under any law of this State or of the United States, is

1 guilty of a category C felony." Indeed, even if genuine, no
2 Certificate could have been filed in a public office in Clark
3 County. Likewise, none of the acts relating to NRS 205.110⁹
4 occurred in Clark County for the same reason: nothing was uttered
5 here.

6
7 The State's reliance on People v. Gould, 41 Misc. 2d 875,
8 878, 246 N.Y.S.2d 758, 761 (Cnty. Ct. 1964) is misplaced; the
9 case supports dismissal. In that case, the alleged false document
10 was not only actually delivered, it "was filed in the local
11 office of the Rent Commission in [the County exercising
12 jurisdiction]." Thus, because "[t]he making of ... a certificate is
13 deemed complete ... from the time when it is delivered by the
14 defendant to any other person with intent that it be uttered or
15 published as true" (id. at 878; 761), the County where the
16 certificate was delivered and then filed had jurisdiction.

17 The Gould court further explained:

18 It appears from the minutes that
19 delivery of the perjured application was
20 in Westchester County at the White
21 Plains office of the Rent Commission,
22 where obviously it was intended to be
23 uttered as true and to induce favorable
24 action by the commission.

25 41 Misc. 2d at 878, 246 N.Y.S.2d at 761-62. Here, by contrast,
26 the Certificate was never delivered to any other person in Clark
27
28

25 ⁹"Every person who, knowing the same to be forged or altered, and
26 with intent to defraud, shall utter, offer, dispose of or put off
27 as true, or have in his or her possession with intent so to utter,
28 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."

1 County, and no action was intended to be induced in Clark County,
2 which is not the seat of government in Nevada (or the United
3 States).
4

5 Nothing was uttered or delivered in Clark County; no other
6 act was alleged to have occurred in Clark County; thus, venue
7 does not lie in Clark County. Compare Bell v. State, 284 Ga. 790,
8 793, 671 S.E.2d 815, 819 (2009) (citation omitted) ("Uttering or
9 delivering the writing being an essential element of forgery in
10 the first degree, the offense is not completed until the writing
11 is uttered or delivered, and venue lies in the county in which
12 the unauthorized writing was uttered.")

13 While it was indeed a mistake to send mail to Judge Du in
14 Clark County at all, as the state notes (Opp., p. 8, fn 1), the
15 point is that the Certificate was not delivered to Judge Du in
16 Clark County at all; the Las Vegas address was a mere pitstop
17 from which the mail was forwarded to the correct address.

18 The State cannot, as it bizarrely suggests, imagine that the
19 Certificate was delivered to the Secretary of State because she
20 "was in Las Vegas when she was informed about the documents that
21 Defendants had sent to the Secretary of State's Carson City
22 office" (id.)¹⁰ In fact, if the Indictment here rested only on
23 the mailing to Judge Du in Las Vegas, no charge could lie. Cf.
24 Bell v. State, 284 Ga. 790, 793, 671 S.E.2d 815, 819 (2009)

25
26 ¹⁰Indeed, by the State's logic, the Certificate was never actually
27 delivered to Judge Du anywhere, let alone Clark County: while this
28 is yet another fact that was kept secret from the grand jury, even
when the Certificate was actually delivered to Judge Du's chambers,
it was not even opened and was merely stored in a vault....until
the Attorney General's office caused it to be opened.

1 ("Uttering or delivering the writing being an essential element
2 of forgery in the first degree, the offense is not completed
3 until the writing is uttered or delivered, and venue lies in the
4 county in which the unauthorized writing was uttered.")
5

6 In this case, while the State failed to disclose this key
7 fact to the grand jury, the Court should not ignore the reality
8 that the Certificate was never delivered to Judge Du in Clark
9 County at all. The fact the State failed to disclose such
10 evidence to the grand jury of course further supports the
11 arguments contained in Defendants' Writ. It also shows the State
12 knew that the arguments in favor of venue in Clark County were so
13 thin that it had to misrepresent what actually happened.

14 At the end of the day, like the rest of the State's case,
15 the State's arguments that venue is proper in Clark County are
16 all a house of cards. Despite the State's effort to hide the
17 truth from the grand jury, the facts now before this Court show
18 that the State's claim that "the false or forged instruments were
19 delivered to Chief Judge Du at the Lloyd D. George Courthouse,
20 333 South Las Vegas Boulevard-a location in Clark County" (Opp.,
21 p. 11:14-15) is patently false.

22 Besides the false factual assertion that the Certificate was
23 delivered to Judge Du in Clark County and a case that does not
24 even support its position, all the State relies on to support its
25 claim that an act should be deemed to have occurred in Clark
26 County is not law or fact but instead a bogeyman that is not only
27 irrelevant but does not help its case.
28

1
2 Specifically, the State relies on a purported "classic law
3 school hypothetical" (Opp., p. 11:18)¹¹ and laments that if the
4 Court accepts Defendant's position and "A person stands in
5 California and shoots a gun" killing a victim in Nevada, "the
6 State of Nevada would be defenseless against such an act." (Opp.,
7 p. 11:18-25.) This hypothetical is not only inapplicable, it also
8 does not help the State's position. The State itself concedes
9 that merely addressing the envelope to Clark County does not
10 suffice (just as merely shooting a gun in California does not a
11 murder in Nevada make); instead, it argues that the Certificate
12 was delivered to Judge Du in Clark County, when it was not. In
13 contrast, in the State's hypothetical, the bullet actually hits a
14 victim in Nevada. The Certificate, in contrast, was never
15 delivered to Judge Du in Clark County; it was rerouted to Reno.¹²

16 Moreover, the State's argument is without any substance at
17 all and, like the rest of what it says, lacks legal support. The
18 State claims "no murder has occurred until death is occasioned,
19 as that is the 'effect...requisite to consummation of' murder"
20 (Opp., p. 11, lines 23-25). This is also an inaccurate statement
21 of the law. See, Cranford v. Warden, 88 Nev. 376, 498 P.2d 377

22
23 ¹¹A hypothetical is of course not law. Cf. Edwards v. Emperor's
24 Garden Rest., 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38
25 (2006) (explaining that the court need not consider an argument
that is not cogently argued or lacks the support of relevant
authority).

26 ¹²Relatedly, because the certificate was never delivered to or
27 uttered in Clark County, the State's claim that the crime was
28 consummated here rings hollow, and its effort to analogize to NRS
171.030, addressing crimes commenced out of state and completed in
Nevada, entirely fails.

1 (1972) (holding that the crime of murder was complete in Humboldt
2 County (where injury occurred) despite the fact that the victim
3 was removed to a hospital in Washoe County, where he died); see
4 also, NRS 200.110 which provides in relevant part:

5
6 1. If the injury be inflicted in one
7 county, and the party die within another
8 county, or without the State, **the**
9 **accused shall be tried in the county**
10 **where the act was done, or the cause of**
11 **death administered.** (Emphasis added).

12 Thus, the State's effort to claim it will not be able to properly
13 prosecute crimes if Defendants' argument is accepted (Opp., p.11,
14 line 20) entirely fails.

15 Setting aside the other problems with the charges here, if a
16 crime really was at issue, the State was not "defenseless" or
17 without power to prosecute anything; it just was not free to
18 ignore the statutory limitations on venue and to ignore the
19 Nevada Supreme Court's holding in Guzman II.

20 On a related note, this is not like Walker v. State, 78 Nev.
21 463, 472, 376 P.2d 137, 141 (1962), a case that predates Guzman
22 II. There, the court had to be flexible in evaluating venue in
23 order for any jurisdiction to have venue at all. There, it was
24 unknown when the defendant committed a crime that he had
25 confessed to. Walker, 78 Nev. at 471. Thus, "[w]ith the evidence
26 which developed in this case known to the prosecuting attorney at
27 the time the information was filed, it would have been impossible
28 for him to allege with any degree of certainty that the offense
took place in any specific county[.]" Id.

1
2 Here, there is no such mystery. The State could have
3 impaneled a grand jury anywhere any act in furtherance of the
4 alleged crimes and intent are actually evidenced, such as the
5 First Judicial District where the Defendants met and executed
6 documents (Opp. p.3, lines 23-24.) Indeed, the State is likely
7 correct that it could have chosen jurisdictions in which to seek
8 an indictment of Defendants. But, while the State cynically chose
9 Clark County in the hopes of getting a more politically
10 sympathetic jury, Clark County was not one of those
11 jurisdictions, and the State's discretion was not as unfettered
12 as it claims.

13 **E. The State's Effort to Ignore the Importance of**
14 **Territorial Limits Fails.**

15 To support its false claim that it "ha[d] unfettered
16 discretion in choosing" where to initiate this case, the State
17 spills much ink arguing that vicinage is not constitutionally
18 required (Opp., p. 13:3-23 (Section C ("The Vicinage Clause does
19 not apply.")). Defendants recognize that whether they are afforded
20 the protection of the vicinage clause of the 6th Amendment to the
21 United States Constitution is an open question because the United
22 States Supreme Court has not determined whether the vicinage
23 provision is incorporated into the 14th Amendment and thereby
24 applicable to the states. Recognizing that it is an open
25 question, Defendants contend that if there is ever a case which
26 calls for the vicinage clause protections to be afforded to the
27 accused it would be this case in which, if the court accepted the
28 State's interpretation of the venue statute (and the lack of a
venue provision in the Nevada Constitution), these defendants,

1 four of whom reside in Northern Nevada where they openly
2 participated in the alleged criminal ceremony creating an
3 alternative elector slate, will be deprived of the very rights
4 the vicinage clause was intended to protect. As explained in
5 U.S. v. Reed, 773 F.2d 477, 480 (2d Cir. 1985), "the concept of a
6 right to trial in the vicinage was so highly regarded as to
7 appear twice in the Constitution.... [T]he basic policy of the
8 Sixth Amendment would be best served by holding trial where the
9 witnesses and relevant circumstances surrounding the contested
10 issues could be gathered." (Internal quotations and citations
11 omitted).

12 The State entirely misses the point: whether
13 constitutionally required or not, "[p]roper venue in a criminal
14 case is an essential part of a free and good government." United
15 States v. Petlechkov, 922 F.3d 762, 766 (6th Cir. 2019) (citation
16 and internal quotation marks omitted). Even the dissent in Guzman
17 II recognized that venue was not without reason or limit. 496
18 P.3d at 580 (J. Pickering, dissent).

19 At the end of the day, it is irrelevant whether the Vicinage
20 Clause applies; in Nevada, there are express statutory limits on
21 jurisdiction designed to ensure that criminal cases are tried
22 where the crimes at issue occurred. And, in Guzman II, the Nevada
23 Supreme Court made crystal clear that these limits have meaning.
24 Here, the Attorney General, in his apparent overzealousness with
25 regard to punishing Defendants, ignored these limits in the hopes
26 of securing an indictment despite the fatal and obvious flaws in
27 the State's case. (As further briefed in the Writ, even then, the
28

1 State failed to provide a full and accurate picture to the grand
2 jury. Indeed, even with regard to jurisdiction, the State failed
3 to disclose key facts that make the ties to Clark County even
4 flimsier than what the grand jury had before it.)
5

6 The reality is that this case has nothing to do with Clark
7 County. Imagining that mere presence in Clark County after the
8 Nevada Supreme Court's decision and before the alleged crime and
9 the mere fact that Defendants happened to communicate with each
10 other around the same time show intent is nothing more than bare
11 speculation. Thus, there is no evidence of intent in Clark
12 County. Nor is there evidence of an act in Clark County: an
13 envelope was addressed to an incorrect Clark County address and
14 forwarded, but nothing was uttered or delivered to anyone here.
15 Compare People v. Gould, 41 Misc. 2d 875, 878, 246 N.Y.S.2d 758,
16 761 (Cnty. Ct. 1964).
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1
2 **IV. CONCLUSION**

3 The evidence presented to the grand jury did not establish
4 by a preponderance of the evidence that venue is proper in Clark
5 County; indeed, the State has not established either intent or
6 "an act in furtherance of that intent," let alone both as
7 required. Guzman II 496 P.3d at 577 (Nev. 2021). Ms. Rice, Mr.
8 McDonald, and Mr. Law respectfully request that this honorable
9 Court grant Ms. Rice's Motion to Dismiss, which Mr. Law (and the
10 other Defendants) joined.

11 Respectfully Submitted,

12 /s/ RICHARD A. WRIGHT
13 RICHARD A. WRIGHT, ESQ.
14 Nevada Bar No. 886
15 WRIGHT MARSH & LEVY
16 300 S. Fourth ST., Ste 701
17 Las Vegas, NV 89101
18 Phone: (702) 382-4004
19 Fax: (702) 382-4800
20 rick@wmllawlv.com
21 Attorney for Michael James McDonald

22 /s/ MARGARET A. MCLETCHE
23 MARGARET A. MCLETCHE
24 Nevada Bar No. 10931
25 MCLETCHE LAW
26 602 South Tenth St.
27 Las Vegas, Nevada 89101
28 Telephone: (702) 728-5300
Email: maggie@nvlitigation.com
Attorney for Defendant Jesse Law

29 /S/ MONTI JORDANA LEVY
30 MONTI JORDANA LEVY, ESQ.
31 Nevada Bar No. 8158
32 WRIGHT MARSH & LEVY
33 300 S. Fourth St., Ste. 701
34 Las Vegas, Nevada 89101
35 (702) 382-4004
36 mlevy@wmllawlv.com
37 Attorney for Eileen Rice

EXHIBIT A

EXHIBIT A

Re: Corrected elector forms for tomorrow

Subject: Re: Corrected elector forms for tomorrow

From: Jim DeGraffenreid <jim@nevadagop.org>

Date: 12/13/2020, 9:44 PM

To: D James Hindle <djhthree@gmail.com>

CC: Shawn Meehan <airlifter2@gmail.com>, Michael McDonald <mcdonaldnv@gmail.com>, Jessica Hanson <jessica.hanson@nevadagop.org>, Wesley Rice <tahoerice@charter.net>, Jesse Law <jesse.law@gmail.com>, Jeremy Hughes - Political <JHughes@gop.com>

Jesse Law has offered to print all the documents. Final versions are attached. Nobody but Jesse needs to print....thank you!

Jim DeGraffenreid

National Committeeman

Nevada Republican Party

jim@nevadagop.org

On Mon, Dec 14, 2020 at 12:39 AM D James Hindle <djhthree@gmail.com> wrote:

Jim are you printing out hard copies? I was going to. Jessie L was also going to print based on your previous doc versions. Sounds like you are doing some edits. So hope you're planning on printing.

D. James Hindle III

Virginia City, NV

T: 775-847-0796

M: 206-399-5588

E: djhthree@gmail.com

On Dec 13, 2020, at 21:18, Jim DeGraffenreid <jim@nevadagop.org> wrote:

Agreed...the language is very clear. I will make that change.

On Sun, Dec 13, 2020, 20:45 Shawn Meehan <airlifter2@gmail.com> wrote:

Question,

12th Amendment says to prepare distinct ballots and distinct lists. The ballots you sent are separate (distinct), individual sheets of paper / ballots. The lists (two) are on one sheet of paper. Should they also, being required to be "distinct" also be two separate sheets of paper?

As we're paying attention to details here, such could be important.

Shawn

"The electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in **distinct ballots** the person voted for as Vice-President, and they shall make **distinct lists** of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate...."

— 12th Amendment

On December 13, 2020, at 4:22 AM, Jim DeGraffenreid <jim@nevadagop.org> wrote:

Attached are the corrected elector ballots and forms for tomorrow - primarily I changed "Arizona" to "Nevada" everywhere it appeared, and corrected Chairman of the College to Michael J.

Please advise of any other needed changes.

Jim DeGraffenreid
National Committeeman
Nevada Republican Party
jim@nevadagop.org

<Cover Memo for Electoral Votes.docx><Individual Vice Presidential Ballots for Electors.docx><NV Certificate of the Votes of Trump-Pence electors.docx><Individual Presidential Ballots Electors.docx><COA Nevada 2020.pdf><Vacancy Certification Dec 14 2020.docx>

Attachments:

Cover Memo for Electoral Votes.docx	21.4 kB
NV Certificate of the Vote for President Dec 14 2020.docx	24.5 kB
Individual Presidential Ballots Electors.docx	64.0 kB
NV Certificate of the Vote for Vice President Dec 14 2020.docx	24.5 kB
Individual Vice Presidential Ballots for Electors.docx	64.3 kB
Vacancy Certification Dec 14 2020.docx	21.9 kB

EXHIBIT B

EXHIBIT B



EXHIBIT B
JOINT REPLY
C-23-379122-6

EXHIBIT C

EXHIBIT C



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

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

December 1, 2023

*Via email to TGrosz@ag.nv.gov, aengler@ag.nv.gov, mrashbrook@ag.nv.gov
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
Our File No. 14221-10

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.

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 th 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 th 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 th casting of	DEGRAFFENREID 0001290 - 0001292

		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 th 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

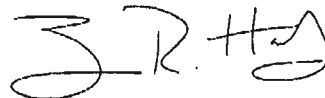
C-8	12/8/2020	Appellants' Opposition to Defendants-Appellees' Motion for Summary Affirmance by December 8, 2020	MCDONALD000309-000320
C-9	12/8/2020	Appellants' Supplemental Briefing Pursuant to Order Directing Supplemental Briefing December 8, 2020	MCDONALD000340-000379
C-10	12/8/2020	Defendants-Respondents'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

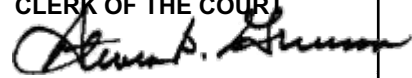
MARQUIS AURBACH



Brian R. Hardy, Esq.

BRH:ns
Enclosures: As Stated

MAC:14221-010 5298742_1 12/1/2023 10:47 AM



1 JMOT
George P. Kelesis
2 Nevada Bar No. 0069
COOK & KELESIS, LTD.
3 517 S 9th Street
Las Vegas, NV 89101
4 Telephone: (702) 737-7702
Facsimile: (702) 382-5816
5 Email: law@bckltd.com
Attorney for James Walter DeGraffenreid, III

6
7
8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10
11
12 THE STATE OF NEVADA,
13 Plaintiff,

14 vs.

15 MICHAEL JAMES MCDONALD, JAMES
WALTER DEGRAFFENREID III, JESSE
16 REED LAW, DURWARD JAMES HINDLE
III, SHAWN MICHAEL MEEHAN, and
17 EILEEN A. RICE,

18 Defendants.

Case No.: C-23-379122-1
Dept. No.: XVIII

Hearing Date: March 4, 2024
Hearing Time: 9:30 AM

19
20
21 **JAMES WALTER DEGRAFFENREID, III'S**
JOINDER IN JOINT REPLY TO OPPOSITION TO MOTION TO DISMISS

22 James Walter DeGraffenreid, III, by and through his counsel of record, George P. Kelesis,
23 Esq. of the law firm of Cook & Kelesis, Ltd. hereby joins in Defendants Michael James McDonald,
24 Jesse Reed Law, and Eileen Rice's Joint Reply to the Motion to Dismiss ("Reply") filed on February
25 13, 2024 and set for hearing on March 4, 2024 at the hour of 9:30 AM.

26
27
28
APP 0511

1 Defendant DeGraffenreid hereby adopts and incorporates by reference all facts, authorities,
2 and arguments stated in said Reply as though fully set forth herein, and is based on the pleadings and
3 papers on file and any argument the Court may entertain at the time of the hearing in this matter.

4 DATED this _____ day of February, 2024.

5 COOK & KELESIS, LTD.

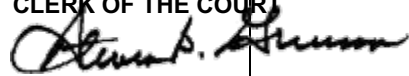
6
7 By: _____

8 George P. Kelesis, Esq.
9 Nevada Bar No. 10068
10 517 S 9th Street
11 Las Vegas, Nevada 89101
12 *Attorney for James Walter DeGraffenreid, III*

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 **Joinder in Joint Reply to Opposition to Motion**
18 **to Dismiss** by submitting to the Eighth Judicial District Court, for electronic filing in accordance
19 with NRCP 5(b), NEFCR Administrative Order 14-2 and NEFCR 9(e) and service upon the Court's
20 Service List for the above-referenced case.

21
22
23 
24 _____
25 An employee of COOK & KELESIS, LTD.
26
27
28



MOT

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) 643-6292
Attorney for Defendant
Shawn Michael Meehan

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY NEVADA**

THE STATE OF NEVADA,

Plaintiff,

v.

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

Defendants.

CASE NO.: C-23-379122-5

Dept. No.: XVIII

**DEFENDANT SHAWN MICHAEL MEEHAN’S JOINDER TO REPLY TO
OPPOSITION TO MOTION TO DISMISS**

COMES NOW Defendant, SHAWN MICHAEL MEEHAN by and through his counsel of record, SIGAL CHATTAH, ESQ. of CHATTAH LAW GROUP, and hereby submits his joinder to EILEEN RICE *Et Al*’s JOINT REPLY TO OPPOSITION TO MOTION TO DISMISS (“Motion”) filed on February 13, 2024.

This Joinder is based on the pleadings and papers on file and any argument the Court may entertain at the time of the hearing on this matter.

1 Defendant SHAWN MICHAEL MEEHAN expressly adopts and incorporates by
2 reference the citations, authorities and arguments stated therein as though fully set forth herein.

3 DATED this 14th day of February, 2024.

4 CHATTAH LAW GROUP

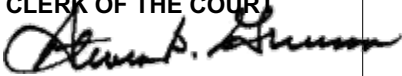
5 /s/Sigal Chattah
6 SIGAL CHATTAH, ESQ.
7 Nevada Bar No. 8264
8 CHATTAH LAW GROUP
9 5875 S. Rainbow Blvd., #204
10 Las Vegas, NV 89118
11 Tel: (702) 360-6200
12 Fax:(702) 643-6292
13 Attorney for Defendant
14 *Shawn Michael Meehan*

15 CERTIFICATE OF ELECTRONIC SERVICE

16 I hereby certify that service of the above and forgoing Joinder to Reply to Opposition to
17 Motion was served via electronic e-filing on all registered parties this 14th day of February,
18 2024.

19 By: /s/ Sigal Chattah

20 An employee of Chattah Law Group



Marquis Aurbach
Brian R. Hardy, Esq.
Nevada Bar No. 10068
Harry L. Arnold, Esq.
Nevada Bar No. 15866
10001 Park Run Drive
Las Vegas, Nevada 89145
Telephone: (702) 382-0711
Facsimile: (702) 382-5816
bhardy@maclaw.com
harnold@maclaw.com
Attorneys for Durward J. Hindle, III

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

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

Defendants.

Case No.: C-23-379122-2
Dept. No.: XVIII

Hearing Date: March 4, 2024
Hearing Time: 9:30 AM

**DEFENDANT DURWARD JAMES HINDLE III'S
JOINDER TO JOINT REPLY TO OPPOSITION TO MOTION TO DISMISS**

Defendant/Petitioner, DURWARD JAMES HINDLE III, by and through his attorneys,
BRIAN R. HARDY, ESQ. and HARRY L. ARNOLD, ESQ., of MARQUIS AURBACH, hereby
fully joins the February 13, 2024 Joint Reply to Opposition to Motion to Dismiss filed on behalf
of Defendant Michael James McDonald in Case No. C-23-379122-4, Defendant Jesse Reed Law
in Case No. C-23-379122-3 and Defendant Eileen Rice in Case No. C-23-379122-6 (the
“Reply”), which is set for hearing on March 4, 2024 at the hour of 9:30 AM.

///

///

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

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1 Defendant DUWARD JAMES HINDLE III expressly adopts and incorporates by
2 reference the factual assertions, citations, authorities and arguments stated in the Reply as though
3 fully set forth herein.

4 Dated this 16th day of February, 2024.

5
6 MARQUIS AURBACH

7
8 By /s/ Brian R. Hardy
9 Brian R. Hardy, Esq.
10 Nevada Bar No. 10068
11 Harry L. Arnold, Esq.
12 Nevada Bar No. 15866
13 10001 Park Run Drive
14 Las Vegas, Nevada 89145
15 Attorney(s) for Durward J. Hindle, III
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEFENDANT DURWARD JAMES HINDLE III'S JOINDER TO JOINT REPLY TO OPPOSITION TO MOTION TO DISMISS** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 16th day of February, 2024. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

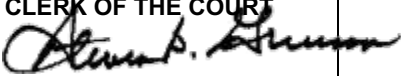
Office of the Attorney General
555 E. Washington Ave, Suite 3900
Las Vegas, NV 89101
mburris@ag.nv.gov
tdibari@ag.nv.gov
AEngler@ag.nv.gov
rholm@ag.nv.gov
jross@ag.nv.gov
htew@ag.nv.gov

Attorney for the State of Nevada, Plaintiff

media@ournevadajudges.com

/s/ C. Hatfield
An employee of Marquis Aurbach

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).



1 TRAN

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DISTRICT COURT

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CLARK COUNTY, NEVADA

7

STATE OF NEVADA,)

8

Plaintiff (s),)

CASE NO. C-23-379122-1

9

vs.)

C-23-379122-2

10

JAMES WALTER DEGRAFFENREID, III,)

C-23-379122-3

DURWARD JAMES HINDLE, III)

C-23-379122-4

11

JESSE REED LAW,)

C-23-379122-5

MICHAEL JAMES MCDONALD,)

DEPT. XVIII

12

SHAWN MICHAEL MEEHAN,)

C-23-379122-6

EILEEN A. RICE)

Transcript of Proceedings

13

Defendant (s).

14

15

BEFORE THE HONORABLE MARY KAY HOLTHUS, DISTRICT COURT JUDGE

16

MONDAY, MARCH 4, 2024

17

**PETITION FOR WRIT OF HABEAS CORPUS AND JOINDER IN MEMORANDUM OF
POINTS AND AUTHORITIES/JAMES WALTER DEGRAFFENREID, III'S JOINDER
IN MOTION TO DISMISS**

18

19

[All Defendant's Present via BlueJeans]

20

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SEE NEXT PAGE FOR APPEARANCES

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RECORDED BY: YVETTE SISON, COURT RECORDER

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APPEARANCES

FOR THE STATE: ALISSA ENGLER, ESQ.
MATTHEW RASHBROOK, ESQ.
Office of the Attorney General

FOR THE DEFENDANT (s): GEORGE KELESIS, ESQ.
For: James Degraffenreid
BRIAN HARDY, ESQ.
For: Durward Hindle, III
RICHARD WRIGHT, ESQ.
For: Michael McDonald
MONTI JORDAN, ESQ.
For: Eileen Rice
SIGAL CHATTAH, ESQ.
For: Shawn Meehan
MARGARET A. MCLETTCHIE, ESQ.
For: Jesse Law

1 **LAS VEGAS, NEVADA, MONDAY, MARCH 4, 2024 AT 9:39 A.M.**

2
3 THE COURT CLERK: Page 12, State of Nevada versus
4 James Degraffenreid, C379122-1; page 13, State of Nevada versus
5 Duward Hindle, C379122-2; page 14, State of Nevada versus Jesse
6 Law, C379122-3; page 15, State of Nevada versus Michael
7 McDonald, C379122-4; page 16 State of Nevada versus Shawn
8 Meehan, C379122-5; page 17, State of Nevada versus Eileen Rice,
9 C379122-6.

10 THE COURT: All right, appearances for the record.

11 MS. ENGLER: Good Morning, Your Honor, Alissa Engler
12 and Matthew Rashbrook for the State.

13 THE COURT: Good Morning.

14 MS. LEVY: Good Morning, Your Honor, Monti Levy for
15 Eileen Rice.

16 MR. WRIGHT: Richard Wright for Mr. McDonald.

17 MS. CHATTAH: Sigal Chattah for Shawn Meehan.

18 MS. MCLETCHIE: Maggie McLetchie for Jesse Law.

19 MR. HARDY: Brian Hardy on behalf of Jim Hindle.

20 MR. WRIGHT: I'm also here for Mr. Kelesis, who's on
21 the phone from the hospital; he represents Mr. Degraffenreid.

22 MS. LEVY: And all six are on Zoom, Your Honor.

23 THE COURT: Got them. All right this is the time set
24 for calendar call, and we have petitions. I think we discussed
25 ahead of time moving those. You guys needed more time, and we

1 were in trial this week. So, has everybody agreed on a date
2 certain -- I don't know, date certain, I don't even know what
3 that means.

4 MS. ENGLER: Yes, Your Honor. We have agreed to set
5 the motion to dismiss and the pretrial writ hearing for April
6 22nd. Given the potential length of the argument, even a half
7 hour, does the Court prefer to maybe set it at the end of her
8 calendar?

9 THE COURT: it doesn't make any difference to me, but
10 if you all would prefer not to sit through the front half of the
11 calendar because I'm not going to put at the beginning --

12 MS. ENGLER: Right.

13 THE COURT: -- and you want to put it later, so that
14 you don't have to sit here long, that's fine.

15 MS. ENGLER: Okay, if we can do a 10:30 set then, Your
16 Honor, if that works.

17 THE COURT: Okay, you probably want 11.

18 MS. ENGLER: Eleven?

19 THE COURT: Around here, yes.

20 MS. ENGLER: Yes, that's fine.

21 MS. LEVY: And then, Your Honor, on behalf of Ms.
22 Rice, we filed a motion to continue the trial, but it's
23 unopposed.

24 THE COURT: Okay.

25 MS. LEVY: So -- and I -- we've talked to Your Honor's

1 court staff and were given some potential stacks. Everyone's
2 conferred and what we're going to request is middle of the
3 January stack.

4 THE COURT: Next year?

5 MS. LEVY: Yes, January 2025, the middle of the stack.
6 It'll probably be approximately three weeks, if it goes.

7 THE COURT: All right. Well, if she gave you that
8 date. We have sooner if anybody wants them.

9 MS. ENGLER: Your Honor, the State's ready, but we
10 know -- there was a stack coming up in just a couple of months,
11 and then the next one was October, November. I'm not sure of
12 the availability of counsel, but they mentioned January, and so
13 we are fine with that if that's what's convenient for them.

14 THE COURT: All right. If everybody is good, I'm
15 good. Do you know what date it is? You said three weeks?

16 MS. LEVY: Yes, Your Honor.

17 MS. ENGLER: It could be less, but given the amount of
18 Defendants --

19 [Colloquy - the Court and the clerk]

20 THE COURT: We could do the 6th, you think?

21 THE COURT CLERK: January 6 at 1 p.m.

22 MS. LEVY: Could we do maybe a week or two later?

23 THE COURT: How far does that stack go?

24 THE COURT CLERK: It goes through February 7th.

25 THE COURT: Okay. Probably go a week later.

1 THE COURT CLERK: All right; January 21st, that's a
2 short week.

3 MS. LEVY: Okay, that works for the -- thank you, Your
4 Honor.

5 THE COURT: Hold please.

6 [Colloquy - the Court]

7 THE COURT: How about January 13th?

8 MS. LEVY: That works.

9 THE COURT: And that gives a little extra time,
10 because there's a holiday in there.

11 MS. LEVY: Okay.

12 THE COURT CLERK: Calendar call January 6th at 9:30.

13 MS. LEVY: Okay; and then motions are April 22nd at
14 11:00.

15 MS. ENGLER: Very good. Thank you, Your Honor.

16 MS. LEVY: Thank you.

17 MR. WRIGHT: Thank you, Your Honor.

18 THE COURT: Thank you. Have a good day.

19 The Proceedings Concluded at 9:45 a.m.

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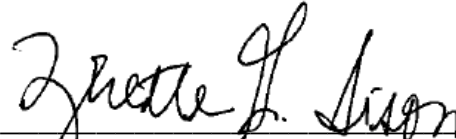
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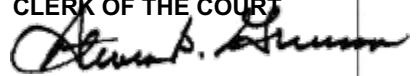
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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Yvette G. Sison
Court Recorder/Transcriber



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MOT
RICHARD A. WRIGHT, ESQ.
Nevada Bar No. 886
WRIGHT MARSH & LEVY
300 S. Fourth ST., Ste 701
Las Vegas, NV 89101
Phone: (702) 382-4004
Fax: (702) 382-4800
rick@wmllawlv.com
Attorney for Michael James McDonald

MARGARET A. MCLETCHIE
Nevada Bar No. 10931
MCLETCHIE LAW
602 South Tenth St.
Las Vegas, Nevada 89101
Telephone: (702) 728-5300
Fax: (702) 425-8220
Email: maggie@nvlitigation.com
Attorney for Defendant Jesse Law

MONTI JORDANA LEVY, ESQ.
Nevada Bar No. 8158
WRIGHT MARSH & LEVY
300 S. Fourth St., Ste. 701
Las Vegas, Nevada 89101
(702) 382-4004
mlevy@wmllawlv.com
Attorney for Eileen Rice

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA,)	
)	
Plaintiff,)	
)	
vs.	)	CASE NO.: C-23-379122-4
	)	C-23-379122-3
MICHAEL JAMES MCDONALD,	)	C-23-379122-6
JESSE REED LAW,)	
EILEEN RICE,	)	DEPT No.: XVIII
)	
Defendants.)	
)	

JOINT MOTION FOR LEAVE TO FILE REPLY TO STATE'S RETURN AND
RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS (PRE-TRIAL)

COMES NOW, Defendants MICHAEL JAMES MCDONALD, JESSE REED
LAW, and EILEEN RICE, by and through their attorneys, RICHARD A.

1 WRIGHT, MARGARET A. MCLETCHE, and MONTI JORDANA LEVY, and
2 hereby moves this Honorable Court for an order allowing them to
3 file a Reply to the State's Return and Response to Petition for
4 Writ of Habeas Corpus (Pre-Trial).

5 This Motion is made and based on the papers and pleadings
6 on file, the Memorandum of Points and Authorities and
7 Declaration of Counsel attached hereto, and argument of counsel
8 at the hearing on this matter.

9 Dated this 15th day of April, 2024.

10
11 /s/ RICHARD A. WRIGHT
12 RICHARD A. WRIGHT, ESQ.
13 Nevada Bar No. 886
14 WRIGHT MARSH & LEVY
15 300 S. Fourth ST., Ste 701
16 Las Vegas, NV 89101
17 Phone: (702) 382-4004
18 Fax: (702) 382-4800
19 rick@wmllawlv.com
20 Attorney for Michael James McDonald

21 /s/ MARGARET A. MCLETCHE
22 MARGARET A. MCLETCHE
23 Nevada Bar No. 10931
24 MCLETCHE LAW
25 602 South Tenth St.
26 Las Vegas, Nevada 89101
27 Telephone: (702) 728-5300
28 Fax: (702) 425-8220
Email: maggie@nvlitigation.com
Attorney for Defendant Jesse Law

29 /S/ MONTI JORDANA LEVY
30 MONTI JORDANA LEVY, ESQ.
31 Nevada Bar No. 8158
32 WRIGHT MARSH & LEVY
33 300 S. Fourth St., Ste. 701
34 Las Vegas, Nevada 89101
35 (702) 382-4004
36 mlevy@wmllawlv.com
37 Attorney for Eileen Rice

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NOTICE OF MOTION

TO: THE STATE OF NEVADA, Plaintiff:

PLEASE TAKE NOTICE that the undersigned will bring the foregoing JOINT MOTION FOR LEAVE TO FILE REPLY TO STATE'S RETURN AND RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS (PRE-TRIAL) on for hearing before the above-entitled Court on the _____ day of _____, 2024, at the hour of _____ a.m./p.m., or as soon thereafter as counsel may be heard on this matter.

DATED this 15th day of April, 2024.

/s/ RICHARD A. WRIGHT
RICHARD A. WRIGHT, ESQ.
Nevada Bar No. 886
WRIGHT MARSH & LEVY
300 S. Fourth ST., Ste 701
Las Vegas, NV 89101
Phone: (702) 382-4004
Fax: (702) 382-4800
rick@wmllawlv.com
Attorney for Michael James McDonald

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

/S/ MONTI JORDANA LEVY
MONTI JORDANA LEVY, ESQ.
Nevada Bar No. 8158
WRIGHT MARSH & LEVY
300 S. Fourth St., Ste. 701
Las Vegas, Nevada 89101
(702) 382-4004
mlevy@wmllawlv.com
Attorney for Eileen Rice

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MEMORANDUM OF POINTS AND AUTHORITIES

The defendants in the instant case filed their Petitions for Writ of Habeas Corpus (pre-trial) on January 29, 2024. The State filed its Response on February 8, 2024. After multiple requests for additional discovery, on March 15, 2024, the State produced One Thousand Two Hundred Twenty Four (1,224) pages of new discovery which included documents it had in its possession from Kenneth Chesebro prior to the presentation of evidence to the Clark County Grand Jury. The documents include exculpatory evidence that the State did not previously provide to defense counsel and did not present to the Grand Jury. Because defense counsel was unaware of the evidence at the time the Petitions were filed, leave of court is requested to address those items by way of a Reply.

ARGUMENT

The Nevada Rules of Criminal Practice (N.R.Cr.P) provide the time lines for filing pretrial petitions for writ of habeas corpus. N.R.Cr.P 9(3) states in part:

All points and authorities in support of the petition for writ of habeas corpus shall be served and filed at the time of the filing of the petition. The prosecutor shall serve and file a return and a response to the petitioner's points and authorities within 10 days from the receipt of a petition for a writ of habeas corpus based on alleged want of probable cause or otherwise challenging the court's rights or jurisdiction to proceed to the trial of a criminal charge.

///
///

1
2 The rules are silent with respect to replies to the State's
3 response; however, the rules do not explicitly prohibit the
4 filing of a Reply. N.R.Cr.P 1 provides in part:

5 These rules govern all criminal actions
6 in the district courts of the State of
7 Nevada. The purpose of these criminal
8 rules is to provide uniformity in
9 practice among the various district
10 courts. These rules supersede and
11 replace any local district court rules
12 concerning criminal actions. They are
13 intended to provide for the just and
14 fair administration of criminal actions.
15 They shall be cited as "N.R.Cr.P."

16 Because the State failed to provide the discovery containing
17 additional exculpatory evidence it had in its possession at the
18 time of the Grand Jury presentation, the defense was unable to
19 include argument with respect to that exculpatory evidence.
20 Consistent with N.R.Cr.P 1, the silence should not be interpreted
21 as barring a reply in this case; permitting a reply furthers "the
22 just and fair administration of criminal actions." The
23 defendants hereby respectfully request leave of court to file a
24 Reply (proposed Reply attached hereto as Exhibit A).

25 Respectfully Submitted,

26 /s/ RICHARD A. WRIGHT
27 RICHARD A. WRIGHT, ESQ.
28 Nevada Bar No. 886
WRIGHT MARSH & LEVY
300 S. Fourth ST., Ste 701
Las Vegas, NV 89101
Phone: (702) 382-4004
Fax: (702) 382-4800
rick@wmlawlv.com
Attorney for Michael James McDonald

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/s/ MARGARET A. MCLETCHE
MARGARET A. MCLETCHE
Nevada Bar No. 10931
MCLETCHE LAW
602 South Tenth St.
Las Vegas, Nevada 89101
Telephone: (702) 728-5300
Fax: (702) 425-8220
Email: maggie@nvlitigation.com
Attorney for Defendant Jesse Law

/S/ MONTI JORDANA LEVY
MONTI JORDANA LEVY, ESQ.
Nevada Bar No. 8158
WRIGHT MARSH & LEVY
300 S. Fourth St., Ste. 701
Las Vegas, Nevada 89101
(702) 382-4004
mlevy@wmllawlv.com
Attorney for Eileen Rice

1
2 DECLARATION OF COUNSEL

3 I, Monti Jordana Levy, Esq., hereby declare as follows:

4 1. I am the retained counsel for Eileen Rice, one of the
5 six defendants in the instant matter.

6 2. Beginning on March 5, 2024, I requested from the
7 Attorney General's Office information it received from witness
8 Kenneth Chesebro that we were not provided in earlier discovery
9 productions.

10 3. After multiple requests by myself, Margaret McLetchie
11 (counsel for Defendant Law) and Richard Wright (counsel for
12 Defendant McDonald), on March 15, 2024, the Attorney General's
13 Office provided One Thousand Two Hundred Twenty Four (1,224)
14 pages of documents it received from Kenneth Chesebro.

15 4. The documents provided on March 15, 2024, included
16 exculpatory evidence that was not previously disclosed to defense
17 counsel and was not presented to the Grand Jury during the
18 presentation of the evidence in the instant case.

19
20 I declare under penalty of perjury that the information
21 included in this Declaration is true and correct.

22
23 
24 _____
25 MONTI JORDANA LEVY, ESQ.
26
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EXHIBIT A

EXHIBIT A

APP 0532

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RPLY

RICHARD A. WRIGHT, ESQ.
Nevada Bar No. 886
WRIGHT MARSH & LEVY
300 S. Fourth ST., Ste 701
Las Vegas, NV 89101
Phone: (702) 382-4004
Fax: (702) 382-4800
rick@wmllawlv.com
Attorney for Michael James McDonald

MARGARET A. MCLETCHIE
Nevada Bar No. 10931
MCLETCHIE LAW
602 South Tenth St.
Las Vegas, Nevada 89101
Telephone: (702) 728-5300
Fax: (702) 425-8220
Email: maggie@nvlitigation.com
Attorney for Defendant Jesse Law

MONTI JORDANA LEVY, ESQ.
Nevada Bar No. 8158
WRIGHT MARSH & LEVY
300 S. Fourth St., Ste. 701
Las Vegas, Nevada 89101
(702) 382-4004
mlevy@wmllawlv.com
Attorney for Eileen Rice

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA,)	
)	
Plaintiff,)	
)	
vs.	)	CASE NO.: C-23-379122-4
	)	C-23-379122-3
MICHAEL JAMES MCDONALD,	)	C-23-379122-6
JESSE REED LAW,)	
EILEEN RICE,	)	DEPT No.: XVIII
)	
Defendants.)	
)	

JOINT REPLY TO STATE'S RETURN AND RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS (PRE-TRIAL)

COMES NOW, Defendants MICHAEL JAMES MCDONALD, JESSE REED LAW, and EILEEN RICE, by and through their attorneys, RICHARD A.

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WRIGHT, MARGARET A. MCLETTCHIE, and MONTI JORDANA LEVY, and
hereby files their Reply to the State's Return and Response to
Petition for Writ of Habeas Corpus.

This Reply is made and based on the papers and pleadings on
file, the Memorandum of Points and Authorities attached hereto,
and argument of counsel at the hearing on this matter.

Dated this 15th day of April, 2024.

/s/ RICHARD A. WRIGHT
RICHARD A. WRIGHT, ESQ.
Nevada Bar No. 886
WRIGHT MARSH & LEVY
300 S. Fourth ST., Ste 701
Las Vegas, NV 89101
Phone: (702) 382-4004
Fax: (702) 382-4800
rick@wmllawlv.com
Attorney for Michael James McDonald

/s/ MARGARET A. MCLETTCHIE
MARGARET A. MCLETTCHIE
Nevada Bar No. 10931
MCLETTCHIE LAW
602 South Tenth St.
Las Vegas, Nevada 89101
Telephone: (702) 728-5300
Fax: (702) 425-8220
Email: maggie@nvlitigation.com
Attorney for Defendant Jesse Law

/S/ MONTI JORDANA LEVY
MONTI JORDANA LEVY, ESQ.
Nevada Bar No. 8158
WRIGHT MARSH & LEVY
300 S. Fourth St., Ste. 701
Las Vegas, Nevada 89101
(702) 382-4004
mlevy@wmllawlv.com
Attorney for Eileen Rice

1
2 MEMORANDUM OF POINTS AND AUTHORITIES

3 As discussed in the Joint Memorandum in Support of
4 Defendants' Petitions for Writ of Habeas Corpus, the State
5 possessed exculpatory evidence which it failed to present to the
6 Grand Jury in violation of NRS 172.145(2). Since the petitions
7 for writ were filed, the defendants have uncovered the fact that
8 the State had even more exculpatory evidence in its possession
9 (the "Additional Exculpatory Evidence").¹ Specifically,
10 Defendants became aware in early March of 2024, that the State
11 possessed emails and text messages from Kenneth Chesebro that it
12 did not turn over in prior discovery and did not present to the
13 Grand Jury despite the fact that the State had the exculpatory
14 evidence in its possession. After multiple requests and more than
15 two weeks, the State provided these items to the defense. After
16 reviewing the information, the defense has located exculpatory
17 evidence that should have been presented to the Grand Jury.

18 First, the State had in its possession an email from Kenneth
19 Chesebro dated December 11, 2020, addressed to various members of
20 the Trump campaign: Joshua Findlay; Justin Clark; Matthew Morgan;
21 Jason Miller; Nick Trainer; and Boris Epshteyn which discusses
22 whether Nevada had litigation pending in December, 2020, prior to
23 the ceremony held by the Republican Electors on December 14,
24 2020. In this email Mr. Chesebro, commenting on the Nevada
25 Supreme Court rejecting the Trump campaign appeal on December 8,

26 ¹Not only did the State also fail to present the Additional
27 Exculpatory Evidence to the Grand Jury, as detailed in the Motion
28 for Leave to file this Reply, the State delayed even providing all
the records it had in its possession and it was only after dogged
efforts by Defendants that the State finally produced the records
at issue in this Reply.

1 2020, opines, "it seems plausible for Nevada to seek cert. in the
2 Supreme Court on the same basis on which Jack Wilenchick
3 apparently plans to seek cert. from the AZ Sup. Ct.
4 Dismissal...." [See Exhibit A]. The email further states,
5 "[P]erhaps there is a plan to file for cert. from the Nevada
6 decision." [Id.] This information was withheld from the Grand
7 Jury. The Grand Jury was (mis)led to believe that the Nevada
8 Supreme Court decision on December 8, 2020, ended any potential
9 challenge to the election. [GJT III 62, 81-82]. The Grand Jury
10 was never informed that a Certiorari Petition to the United
11 States Supreme Court was still a plausible avenue by which the
12 election could have been challenged as Mr. Chesebro stated in the
13 email.

14
15 Second, the State also possessed an email from Kenneth
16 Chesebro to "Judge" Troupis dated December 8, 2020, where he
17 discusses the alternate electors and explains that, "Court
18 challenges pending on Jan. 6 really not necessary." Mr. Chesebro
19 says, "I think having the electors send in alternate slates of
20 votes on Dec. 14 can pay huge dividends **even if there is no**
21 **litigation pending on Jan. 6....**" [See Exhibit B (emphasis in
22 original)]. This email contradicts the testimony of Mr. Chesebro
23 before the Grand Jury. Mr. Chesebro testified that pending
24 litigation was absolutely necessary for there to be any reason
25 for the contingent electors to vote. [GJT II 44-46].

26 The Nevada Supreme Courts has made clear that a district
27 attorney violates NRS 172.145(2) if he fails to present to the
28 grand jury evidence that has a tendency to explain away the
charge. Sheriff v. Frank, 103 Nev. 160, 165, 734 P.2d 1241, 1244

1 (1987).² While "[t]he determination of whether particular
2 evidence is exculpatory is generally left to the discretion of
3 the district court.," that determination is not unfettered;
4 where, as a matter of law, the evidence is exculpatory, the
5 Nevada Supreme Court will reverse a decision not to dismiss a
6 grand jury indictment. Ostman v. Eighth Judicial Dist. Court, 107
7 Nev. 563, 564-65, 816 P.2d 458, 459 (1991). In Ostman, the
8 Supreme Court evaluated whether the statement at issue "had a
9 tendency to explain away the charge;" because the Court found it
10 did, it dismissed the indictment and reversed a district court
11 denial of a request to dismiss a grand jury indictment.³
12

13 ²While the State claims that all the exculpatory evidence in this
14 case is cumulative, not only is that not the case, neither the
15 applicable statute nor case law provide the exception the State
16 imagines. In any case, it certainly cannot be said that evidence
that shows the State's star witness was lying can be ignored as
cumulative.

17 ³The Additional Exculpatory Evidence also reinforces the reality
18 that all the Defendants did was -consistent with Mr. Chesebro's
19 direction and national plan (see, e.g., Joint Motion, pp.
20 9-10)-preserve their rights to challenge the outcome by submitting
their alternative ballots. The First Amendment, the protections of
which extend to both free speech and to petition the government,
protects these actions (see. e.g., 2/13/24 Joint Reply In Support
21 of Motion to Dismiss, at p.11:4-14:10.) On this point, the State's
claim in its Response is telling. It claims:

22 It should be noted that Petitioners view
23 or opinion of the evidence is not
24 relevant to the conduct in this case
25 because at the time the Petitioners
26 declared themselves the duly qualified
27 electors for the State of Nevada, the
28 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.

1
2 The grand jury indictment cannot stand:

3 It is fundamentally unfair to require
4 one to stand trial unless he is
5 committed upon a criminal charge with
6 reasonable or probable cause. No one
7 would suggest that an accused person
8 should be tried for a public offense if
9 there exists no reasonable or probable
10 cause for trial. Our Constitution and
11 Statute recognize this principle of
12 fairness and provide for its protection
13 by the writ of habeas corpus. Nev.
14 Const. Art. 1, § 5, commands that the
15 writ of habeas corpus shall not be
16 suspended unless, in cases of rebellion
17 or invasion, the public safety may
18 require its suspension; and NRS
19 34.500(7) explicitly authorizes
20 discharge from custody or restraint if
21 one is not committed upon a criminal
22 charge with reasonable or probable
23 cause.

24 Shelby v. Sixth Judicial Dist. Court, 82 Nev. 204, 207-08, 414
25 P.2d 942, 943-44 (1966). Like the exculpatory evidence detailed
26 in the Joint Memorandum, the additional exculpatory evidence
27 should have been presented to the Grand Jury. Integral to the
28 State's presentation to the grand jury was the contention that
29 Defendants were not pursuing any challenge to the result of the
30 election, and Chesebro's testimony was key to that picture
31 presented to the grand jury.⁴

32
33 _____
34 What the State ignores is that it is not free to punish even false
35 speech that disagrees with the State's determination regarding the
36 outcome of the election, and it is certainly not free to prohibit
37 Defendants from pursuing a step that was necessary if they wanted
38 to challenge the outcome of the election.

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1 Based upon the arguments in the Joint Memorandum filed on behalf
2 of Mr. McDonald, Mr. Law, and Ms. Rice, as well as the additional
3 exculpatory evidence that was not provided to the Grand Jury, the
4 defendants' Petitions for Writ of Habeas Corpus should be
5 granted.
6

7 Respectfully Submitted,

8
9 /s/ RICHARD A. WRIGHT
10 RICHARD A. WRIGHT, ESQ.
11 Nevada Bar No. 886
12 WRIGHT MARSH & LEVY
13 300 S. Fourth ST., Ste 701
14 Las Vegas, NV 89101
15 Phone: (702) 382-4004
16 Fax: (702) 382-4800
17 rick@wmllawlv.com
18 Attorney for Michael James McDonald

19 /s/ MARGARET A. MCLETCHIE
20 MARGARET A. MCLETCHIE
21 Nevada Bar No. 10931
22 MCLETCHIE LAW
23 602 South Tenth St.
24 Las Vegas, Nevada 89101
25 Telephone: (702) 728-5300
26 Fax: (702) 425-8220
27 Email: maggie@nvlitigation.com
28 Attorney for Defendant Jesse Law

/S/ MONTI JORDANA LEVY
MONTI JORDANA LEVY, ESQ.
Nevada Bar No. 8158
WRIGHT MARSH & LEVY
300 S. Fourth St., Ste. 701
Las Vegas, Nevada 89101
(702) 382-4004
mlevy@wmllawlv.com
Attorney for Eileen Rice

26 and hide its own malfeasance, the key fact the State presented to
27 the grand jury-that there were no avenues to challenge the
28 election-was not only false but the State and its counsel knew it,
yet it failed to present evidence in the State's possession
impeaching Mr. Chesebro.

EXHIBIT A

EXHIBIT A

APP 0540

Re: [EXTERNAL]Re: Electors

Kenneth Chesebro <kenchesebro@msn.com>

Fri 12/11/2020 9:54 AM

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

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

Josh,

Good to know you're heading this up.

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

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

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

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

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

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

That's all I had to add.

Ken

From: Joshua Findlay <jfindlay@donaldtrump.com>

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

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

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

Subject: Re: [EXTERNAL]Re: Electors

Hi Ken,

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

Thanks,

Josh

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

Great! His Georgia connection is especially helpful!

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

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

Ken

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

+ Josh Findlay

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

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

Here's the attachment from Dec. 9.

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

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

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

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

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

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

Ken

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

Very good point.

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

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

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

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

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

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

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

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

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

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

Ken

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

Ken,

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

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

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

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

Thank you,

Matt Morgan

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

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

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

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

Proposed Jim Troupis Statement on Electors Meeting

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

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

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

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

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

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

Go get em Ken!

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

Oh, fantastic. Good to have all this.

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

Thank you!

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

>
 >
 > Here are the six w contact
 >
 > <Elector List-.xlsx>

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

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EXHIBIT B

EXHIBIT B

APP 0548

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

Kenneth Chesebro <kenchesebro@msn.com>

Tue 12/8/2020 1:15 AM

To: Judge Troupis <judgetroupis@gmail.com>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. The Electoral Count Act is not binding

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

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

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

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

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

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

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

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

5. Objection to extended delay

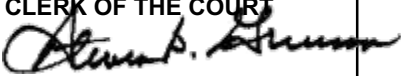
Any effort to extend scrutiny of the election returns past January 6 would be met with the objection that the process of electing the President might not be complete before January 20. But that is no reason to avoid taking the time necessary to ensure that the electoral votes of particular states are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

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

Ken

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

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



1 JMOT
George P. Kelesis
2 Nevada Bar No. 0069
COOK & KELESIS, LTD.
3 517 S 9th Street
Las Vegas, NV 89101
4 Telephone: (702) 737-7702
Facsimile: (702) 382-5816
5 Email: law@bckltd.com
Attorney for James Walter DeGraffenreid, III

6
7
8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10
11
12 THE STATE OF NEVADA,
13
14 Plaintiff,
15
16 vs.
17 MICHAEL JAMES MCDONALD, JAMES
WALTER DEGRAFFENREID III, JESSE
18 REED LAW, DURWARD JAMES HINDLE
III, SHAWN MICHAEL MEEHAN, and
EILEEN A. RICE,
19
20 Defendants.

Case No.: C-23-379122-1
Dept. No.: XVIII

Hearing Date: April 22, 2024
Hearing Time: 9:30 AM

21 **JAMES WALTER DEGRAFFENREID, III'S JOINDER TO JOINT**
MOTION FOR LEAVE TO FILE REPLY TO STATE'S RETURN AND
RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS (PRE-TRIAL)

22 James Walter DeGraffenreid, III, by and through his counsel of record, George P. Kelesis,
23 Esq. of the law firm of Cook & Kelesis, Ltd. hereby joins in Defendants Michael James McDonald,
24 Jesse Reed Law, and Eileen Rice's Joint Motion for Leave to File Reply to State's Return and
25 Response to Petition for Writ of Habeas Corpus (Pre-Trial) ("Motion") filed on April 15, 2024 and
26 set for hearing on April 22, 2024 at the hour of 9:30 AM.
27
28

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 15th day of April, 2024.

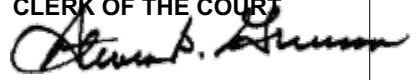
5 COOK & KELESIS, LTD.

6
7 By: /s/ George P. Kelesis
8 George P. Kelesis, Esq.
9 Nevada Bar No. 10068
10 517 S 9th Street
11 Las Vegas, Nevada 89101
12 *Attorney for James Walter DeGraffenreid, III*

13 **CERTIFICATE OF SERVICE**

14 The undersigned, declare under penalty of perjury, that on April 15, 2024, I caused to be
15 served a true and correct copy of the foregoing **JOINDER TO JOINT MOTION FOR LEAVE**
16 **TO FILE REPLY TO STATE'S RETURN AND RESPONSE TO PETITION FOR WRIT OF**
17 **HABEAS CORPUS (PRE-TRIAL)** by submitting to the Eighth Judicial District Court, for
18 electronic filing in accordance with NRCP 5(b), NEFCR Administrative Order 14-2 and NEFCR
19 9(e) and service upon the Court's Service List for the above-referenced case.

20
21 /s/ Shannon J. Fagin
22 An employee of COOK & KELESIS, LTD.



1 **Marquis Aurbach**
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
8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 THE STATE OF NEVADA,

11 Plaintiff,

Case No.: C-23-379122-2

12 vs.

13 Dept. No.: XVIII

14 MICHAEL JAMES MCDONALD, JAMES
WALTER DEGRAFFENREID III, JESSE
15 REED LAW, **DURWARD JAMES HINDLE
III**, SHAWN MICHAEL MEEHAN, and
EILEEN A. RICE,
16 Defendants.

17 **DEFENDANT DURWARD JAMES HINDLE III'S JOINDER TO JOINT MOTION FOR**
LEAVE TO FILE REPLY TO STATE'S RETURN AND RESPONSE TO PETITION
18 **FOR WRIT OF HABEAS CORPUS (PRE-TRIAL)**

19 Defendant/Petitioner, DURWARD JAMES HINDLE III, by and through his attorneys,
20 BRIAN R. HARDY, ESQ. and HARRY L. ARNOLD, ESQ., of MARQUIS AURBACH, hereby
21 fully joins the April 15, 2024 Joint Motion for Leave to File Reply to State's Return and
22 Response to Petition for Writ of Habeas Corpus (Pre-Trial) filed on behalf of Defendants Eileen
23 Rice, Michael McDonald, and Jesse Law in Case Nos. C-23-379122-3, C-23-379122-4, and C-
24 23-379122-6 (the "Motion"), which is set for hearing on April 29, 2024 at the hour of 9:30 AM.

25
26 ///

27
28 ///

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

1 Defendant DUWARD JAMES HINDLE III expressly adopts and incorporates by
2 reference the factual assertions, citations, authorities and arguments stated in the Motion as
3 though fully set forth herein.

4 Dated this 16th day of April, 2024.

5
6 MARQUIS AURBACH

7
8 By /s/ Brian R. Hardy
9 Brian R. Hardy, Esq.
10 Nevada Bar No. 10068
11 Harry L. Arnold, Esq.
12 Nevada Bar No. 15866
13 10001 Park Run Drive
14 Las Vegas, Nevada 89145
15 Attorney(s) for Durward J. Hindle, III
16
17
18
19
20
21
22
23
24
25
26
27
28

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

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **JOINDER TO JOINT MOTION FOR LEAVE TO FILE REPLY TO STATE'S RETURN AND RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS (PRE-TRIAL)** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 16th day of April, 2024. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

Office of the Attorney General
555 E. Washington Ave, Suite 3900
Las Vegas, NV 89101

mburris@ag.nv.gov

tdibari@ag.nv.gov

AEngler@ag.nv.gov

rholm@ag.nv.gov

jross@ag.nv.gov

htew@ag.nv.gov

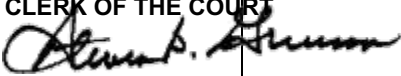
Attorney for the State of Nevada, Plaintiff

media@ournevadajudges.com

/s/ C. Hatfield

An employee of Marquis Aurbach

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).



JOIN

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) 643-6292
Attorney for Defendant
Shawn Michael Meehan

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY NEVADA**

THE STATE OF NEVADA,

Plaintiff,

v.

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

Defendants.

CASE NO.: C-23-379122-5

Dept. No.: XVIII

**DEFENDANT SHAWN MICHAEL MEEHAN’S JOINDER TO JOINT MOTION FOR
LEAVE TO FILE REPLY TO STATE’S RETURN AND RESPONSE TO PETITION
FOR WRIT OF HABEAS CORPUS (PRE-TRIAL)**

COMES NOW, Defendant, SHAWN MICHAEL MEEHAN by and through his counsel
of record, SIGAL CHATTAH, ESQ. of CHATTAH LAW GROUP, and hereby submits his
Joinder to EILEEN RICE *Et Al*’s JOINT MOTION FOR LEAVE TO FILE REPLY TO
STATE’S RETURN AND RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS
(PRE-TRIAL) (“Motion”) filed on April 15, 2024.

1 This Joinder is based on the pleadings and papers on file and any argument the Court may
2 entertain at the time of the hearing on this matter.

3 Defendant SHAWN MICHAEL MEEHAN expressly adopts and incorporates by
4 reference the citations, authorities and arguments stated therein as though fully set forth herein.

5 DATED this 16th day of April, 2024.

6 CHATTAH LAW GROUP

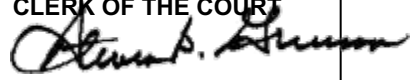
7 /s/Sigal Chattah
8 SIGAL CHATTAH, ESQ.
9 Nevada Bar No. 8264
10 CHATTAH LAW GROUP
11 5875 S. Rainbow Blvd., #204
12 Las Vegas, NV 89118
13 Tel: (702) 360-6200
14 Fax:(702) 643-6292
15 Attorney for Defendant
16 *Shawn Michael Meehan*

17 CERTIFICATE OF ELECTRONIC SERVICE

18 I hereby certify that service of the above and forgoing Joinder to Motion was served via
19 electronic e-filing on all registered parties this 16th day of April, 2024.

20 By: /s/ Sigal Chattah

21 An employee of Chattah Law Group



1 **OPPM**

2 AARON D. FORD

Attorney General

3 ALISSA ENGLER (Bar No. 11940)

Chief Deputy Attorney General

4 MATTHEW J. RASHBROOK (BAR No. 12477)

Special Prosecutor

State of Nevada

5 Office of the Attorney General

555 E. Washington Ave., Ste. 3900

6 Las Vegas, Nevada 89101-1068

P: 702 486-3420

7 F: 702 486-0660

Attorneys for the State of Nevada

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10
11 STATE OF NEVADA,

12 Plaintiff,

13 vs.

14 JAMES WALTER DEGRAFFENREID,

15 Defendant.

Case No. C-23-379122-1

Dept. No. XVIII

16
17 **OPPOSITION TO DEFENDANTS' MOTION FOR LEAVE TO FILE REPLY**

18 AARON D. FORD, Attorney General for the State of Nevada, by and through Chief Deputy
19 Attorney General, ALISSA C. ENGLER, in the name and by the authority of the State of Nevada, hereby
20 files this OPPOSITION TO DEFENDANTS' MOTION FOR LEAVE TO FILE REPLY. The State
21 makes and bases this Opposition upon the pleadings and papers on file, the following Memorandum of
22 Points and Authorities, and any oral argument at hearing permitted by the Court.

23 DATED this 30th day of April, 2024.

24 Submitted by:

AARON D. FORD

Attorney General

25
26 By: /s/ Alissa Engler

ALISSA ENGLER (Bar No. 11940)

Chief Deputy Attorney General

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. PROCEDURAL HISTORY**

3 On December 6, 2023, Defendants, Michael J. McDonald, (hereinafter “MCDONALD”), James
4 Walter DeGraffenreid III, (hereinafter “DEGRAFFENREID”), Jesse Reed Law, (hereinafter “LAW”),
5 Duward James Hindle III, (hereinafter “HINDLE”), Shawn Michael Meehan, (hereinafter “MEEHAN”),
6 and Eileen A. Rice, (hereinafter “RICE”), collectively referred to throughout as (“DEFENDANTS”)
7 were charged by way of Indictment with the following: one (1) count of Offering False Instrument For
8 Filing Or Record, a category “C” Felony in violation of NRS 239.330 and one (1) count of Uttering
9 Forged Instruments: Forgery, a category “D” Felony in violation of NRS 205.110. On December 18,
10 2023, Defendants pleaded not guilty and waived their right to a speedy trial within sixty (60) days. A
11 Jury Trial was scheduled to commence on March 11, 2023.

12 Later, on December 18, 2023, counsel for Defendant McDonald requested an extension of the
13 deadline to file any pre-trial writ, but could not specify what length of time would be required of other
14 counsel.

15 On January 4, 2024, counsel for Mr. McDonald requested, on behalf of all Defendants, a 30-day
16 extension of the deadline for filing pre-trial writs. The State indicated it could agree to a two-week
17 extension, and the parties filed a stipulation in this Court indicating the same.

18 On January 16, 2024, counsel for Mr. Law requested a further extension of three weeks, citing
19 the State’s failure to make hard drives available to Defendants – notwithstanding the Defendants were
20 already in possession of all materials on the hard drives, notwithstanding the State had agreed to produce
21 drives as it generated them which offer was refused by counsel. The State agreed to a further one-week
22 extension, and a stipulation indicating the same was filed in this Court.

23 Shortly after filing their Writs, Defendants indicated that they would move to continue the trial
24 date. Again, the State agreed to accommodate the various calendars of counsel. Having conferred with
25 counsel and the Court regarding the earliest availability of all, the present January 13, 2025, date was
26 agreed upon.

27 Several weeks later, on April 15, 2024, Defendants filed “Joint Motion for Leave to File Reply to
28 State’s Return and Response to Petition for Writ of Habeas Corpus (Pre-Trial).

1 The State opposes the Defendants’ motion because it is procedurally infirm in that it is both
2 untimely and the request itself lacks a basis in law. The Defendants request further contains inaccurate
3 information about the State’s production of discovery, which the State has provided to Defendants at
4 regular intervals and far in advance of trial.

5 **II. FACTUAL HISTORY**

6 On December 21, 2023 – three days after the arraignment of these Defendants – the State
7 produced approximately 19,000 pages of discovery. On January 18, 2024, the State produced a second
8 round of discovery, consisting largely of the emails of Defendants seized pursuant to lawful search
9 warrants. These materials have been in the possession of Defendants at all times, and Defendants have
10 made no effort at any time to observe their responsibility under the law to provide reciprocal discovery.
11 On February 8, 2024, the State made a third production of discovery.

12 On March 5, 2024, counsel for Defendant Rice inquired if the State had produced all relevant
13 documents referenced during the interview of Kenneth Chesebro. On March 7, 2024, the undersigned
14 told counsel for Defendant Rice that she was looking into their request and would get back to them at a
15 later date. Mr. Chesebro, through his counsel, had provided multiple productions, with the most recent
16 production in February 2024, after the parties filed their briefing on the Pre-Trial Writ and Motion to
17 Dismiss.

18 Following a review of the new disclosures by Mr. Chesebro, on March 15, 2024, the State made
19 a fourth production of discovery. Counsel for defense still had questions regarding the Chesebro
20 disclosures, so in an effort to make plain to Defendants what was in the possession of the State, and when,
21 on March 20, 2024, the State made a fifth production of discovery consisting of 504 pages of documents
22 provided by Chesebro to the State prior to grand jury. The State’s review makes clear that a portion of
23 these were previously provided in the first production of discovery.

24 On March 20, 2024, the trial of these Defendants was 299 days away. *Cf.* § NRS 174.285
25 (requiring discovery be provided not less than 30 days before trial, or as is otherwise reasonable.)

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1 **III. LEGAL ARGUMENT**

2 Defendants argue to this Court that there is no prohibition in the law or Rules of Criminal
3 Procedure against filing a reply in support of their writs. The truthful and accurate statement of the law
4 is that there is no provision in the rules and statutes allowing such a filing.

5 “The starting point for determining legislative intent is the statute’s plain meaning; when a statute
6 ‘is clear on its face, a court can not go beyond the statute in determining legislative intent.’” *State v.*
7 *Lucero*, 127 Nev. 92, 95 (2011), *quoting Robert E. v. Justice Court*, 99 Nev. 443, 445 (1983). Further,
8 “without an explicit grant of authority, we presume the omission to be deliberate.” *McNeill v. State*, 132
9 Nev. 551, 556 (2016), *citing Sheriff v. Andrews*, 128 Nev. 544, 547-48 (2012). Here, not only do the
10 Defendants lack a legal basis for their request, such a request is not customarily practiced or allowed by
11 courts. In addition, the substance of their motion diverges from the subject matter of the writ. Instead of
12 addressing the evidence, Defendants appear to deflect from the evidence of their criminal conduct by
13 giving this Honorable Court erroneous information about the discovery process and communications
14 between parties.

15 The reality is the State has produced more than 20,000 pages of documents, in addition to
16 gigabytes of data. Of that, the largest part was rendered to Defendants before the (several times extended)
17 deadline for the filing of pre-trial Writs. There is no basis in law for the filing of a Reply, let alone one
18 so late in time, or one which adds nothing of merit to the arguments presented in the underlying Pre-Trial
19 Writ.

20 This Court should refuse to grant leave to file the Reply.

21 **A. An analysis of the substance of their argument demonstrates the emails referred**
22 **to in Defendants’ Motion are not exculpatory.**

23 Even seen in the light most favorable to Defendants – in other words, assuming, arguendo, the
24 farcical arguments they advance regarding the truthfulness of the testimony of Mr. Chesebro– the
25 documents referred to in Defendants’ Motion still do not amount to anything more than impeachment
26 evidence for a *petit* jury to consider at trial:

27 And in any event, our review of the grand jury transcripts provided with
28 the petition reveals slight or marginal evidence as required for a finding of
 probable cause. *Sheriff v. Hodes*. 96 Nev. 184, 186, 606 P.2d 178, 180

1 (1980) (“The finding of probable cause may be based on slight, even
2 ‘marginal’ evidence.” (quoting *Perkins v. Sheriff*, 92 Nev. 180, 181, 547
3 P.2d 312, 312 (1976)); see also *Sheriff v. Burcham*, 124 Nev. 1247, —
4 , 198 P.3d 326, 333 (2008) (explaining that the State need only present
5 sufficient evidence to the grand jury “to support a reasonable inference”
6 “that the defendant committed the crime charged” (quoting *Hodes*, 96
7 Nev. at 186, 606 P.2d at 180)). Second, Sutton has not demonstrated that
8 the State failed to present exculpatory evidence in violation of NRS
9 172.145(2), which requires the prosecutor to present “any evidence which
10 will explain away the charge” if the prosecutor is aware of the evidence. In
11 particular, the allegedly exculpatory evidence primarily concerns prior
12 inconsistent statements by the alleged victim and another grand
13 jury witness and impeachment evidence involving a witness' intoxication
14 at the time of the incident. Such evidence, however, does not have a
15 tendency to “explain away the charge” as contemplated by NRS
16 172.145(2). *Lav v. State*. 110 Nev. 1189, 1198, 886 P.2d 448, 453 (1994).
17 And Sutton fails to explain the circumstances surrounding his alleged
18 denial of wrongdoing or how his denial tended to explain away the charges
19 in this case. Cf. *Ostman v. District Court*, 107 Nev. 563, 816 P.2d 458
20 (1991) (holding that where only witness to testify before grand jury was
21 the victim, who was the defendant's girlfriend, failure to present
22 defendant's statement to police that sexual conduct with victim was
23 consensual violated NRS 172.145(2)). Accordingly, we conclude that
24 Sutton has not demonstrated that the district court manifestly abused its
25 discretion or exceeded its jurisdiction in denying his pretrial habeas
26 petition on this ground. See NRS 34.160; NRS 34.320; *Round Hill Gen.*
27 *Imp. Dist. v. Newman*, 97 Nev. 601, 603–04, 637 P.2d 534, 536 (1981).”

15 *Sutton v. Eighth Jud. Dist. Ct. of State*, 126 Nev. 761, 367 P.3d 825 (2010).

16 In *Lav v. State*, this court stated that a prosecutor must disclose all
17 exculpatory evidence (evidence that “will explain away the charge”) to a
18 grand jury. 110 Nev. 1189, 1197, 886 P.2d 448, 453 (1994) (quoting NRS
172.145). Evidence that impeaches a witness's credibility is generally not
19 considered exculpatory. See *id.* at 1198, 886 P.2d 448, 886 P.2d at 453–54.

19 It is well-settled that only evidence which “will explain away the charge” is exculpatory.
20 Impeachment evidence is not exculpatory evidence. It is a matter for the trier of fact to consider in
21 evaluating how to weigh the evidence and determine guilt.

22 Similarly, to the extent that Defendants are suggesting Chesebro’s advice to them is relevant to
23 their guilt because he acted as their attorney, that is also a matter for consideration by the trier of fact –
24 in other words, not a matter appropriately resolved at this stage of the proceedings. *Adler v. State*, 95
25 Nev. 339, 346 (1979) (“[R]eliance on advice of counsel ‘is not regarded as a separate and distinct defense,
26 but rather as a circumstance indicating good faith which the trier of fact is entitled to consider on the
27 issue of fraudulent intent.” Quoting *Bisno v. U.S.*, 299 F.2d 711, 719 (9th Cir. 1961); *U.S. v. Powell*, 513
28 F.2d 1249 (8th Cir. 1975).

1 “No one can willfully and knowingly violate the law and be insulated from the consequences by
2 claiming that he followed the advice of counsel.” *Adler v. State*, 95 Nev. 339, 346 (1979), *citing*
3 *Williamson v. U.S.*, 207 U.S. 425, 28 S.Ct. 163, 52 L.Ed. 278 (1908).

4 Further, to whatever extent Defendants intend to raise any advice that Mr. Chesebro or other
5 attorneys purportedly offered them, Defendants have their own disclosure obligations under NRS §
6 174.245 that they have so far failed to honor.

7 **IV. CONCLUSION**

8 There is no basis in law which allows the filing of the Reply proposed by Defendants. Further,
9 and in any event, the arguments raised in the proposed Reply have no merit. The State has complied in
10 all respects with its obligations under the law to timely provide discovery to Defendants, and complied
11 in all respects with its obligation to provide exculpatory evidence to the grand jury.

12 The Court should deny Defendants’ Motion for Leave to File a Reply.

13 DATED this 30th day of April, 2024.

14
15 Submitted by:

16 AARON D. FORD
17 Attorney General

18 By: /s/ Alissa Engler
19 ALISSA ENGLER
20 Chief Deputy Attorney General
21
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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 April 30, 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. 9th Street
8 Las Vegas, NV 89101
9 Gkelesis@bckltd.com
10 Attorney for James Degraffenreid

11 Brian Hardy, Esq.
12 10001 Park Run Drive
13 Las Vegas, NV 89145
14 Bhardy@maclaw.com
15 Attorney for Durward Hindle, III

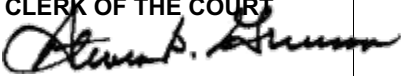
16 Richard Wright, Esq.
17 300 S. Fourth Street, Ste. 701
18 Las Vegas, NV 89101
19 Rick@wmllawlv.com
20 Attorney for Michael James McDonald

21 Monti Jordana Levy, Esq.
22 300 S. Fourth Street, Ste. 701
23 Las Vegas, NV 89101
24 Mlevy@wmllawlv.com
25 Attorney for Eileen Rice

26 Sigal Chattah, Esq.
27 5875 S. Rainbow Blvd., #204
28 Las Vegas, NV 89118
Chattahlaw@gmail.com
Attorney for Shawn Meehan

Margaret A. McLetchie, Esq.
602 S. Tenth St.
Las Vegas, NV 89101
Maggie@nvlitigation.com
Attorney for Jesse Law

By: /s/ R. Holm
An employee of the Office of
the Attorney General



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ROPP
RICHARD A. WRIGHT, ESQ.
Nevada Bar No. 886
WRIGHT MARSH & LEVY
300 S. Fourth ST., Ste 701
Las Vegas, NV 89101
Phone: (702) 382-4004
Fax: (702) 382-4800
rick@wmlllawlv.com
Attorney for Michael James McDonald

MARGARET A. MCLETCHIE
Nevada Bar No. 10931
MCLETCHIE LAW
602 South Tenth St.
Las Vegas, Nevada 89101
Telephone: (702) 728-5300
Fax: (702) 425-8220
Email: maggie@nvlitigation.com
Attorney for Defendant Jesse Law

MONTI JORDANA LEVY, ESQ.
Nevada Bar No. 8158
WRIGHT MARSH & LEVY
300 S. Fourth St., Ste. 701
Las Vegas, Nevada 89101
(702) 382-4004
mlevy@wmlllawlv.com
Attorney for Eileen Rice

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA,)
)
Plaintiff,)
)
vs.) CASE NO.: C-23-379122-4
) C-23-379122-3
MICHAEL JAMES MCDONALD,) C-23-379122-6
JESSE REED LAW,)
EILEEN RICE,) DEPT No.: XVIII
)
)
Defendants.)
)

JOINT REPLY TO OPPOSITION TO DEFENDANTS' MOTION FOR LEAVE TO FILE REPLY

COMES NOW, Defendants MICHAEL JAMES MCDONALD, JESSE REED LAW, and EILEEN RICE, by and through their attorneys, RICHARD A.

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WRIGHT, MARGARET A. MCLETCHE, and MONTI JORDANA LEVY, and submits their Reply to Opposition to Defendants' Motion for Leave to File Reply.

This Reply is made and based on the papers and pleadings on file, the Memorandum of Points and Authorities and Declaration of Counsel attached hereto, and argument of counsel at the hearing on this matter.

Dated this 7th day of May, 2024.

/s/ RICHARD A. WRIGHT
RICHARD A. WRIGHT, ESQ.
Nevada Bar No. 886
WRIGHT MARSH & LEVY
300 S. Fourth ST., Ste 701
Las Vegas, NV 89101
Phone: (702) 382-4004
Fax: (702) 382-4800
rick@wmllawlv.com
Attorney for Michael James McDonald

/s/ MARGARET A. MCLETCHE
MARGARET A. MCLETCHE
Nevada Bar No. 10931
MCLETCHE LAW
602 South Tenth St.
Las Vegas, Nevada 89101
Telephone: (702) 728-5300
Fax: (702) 425-8220
Email: maggie@nvlitigation.com
Attorney for Defendant Jesse Law

/S/ MONTI JORDANA LEVY
MONTI JORDANA LEVY, ESQ.
Nevada Bar No. 8158
WRIGHT MARSH & LEVY
300 S. Fourth St., Ste. 701
Las Vegas, Nevada 89101
(702) 382-4004
mlevy@wmllawlv.com
Attorney for Eileen Rice

1
2 MEMORANDUM OF POINTS AND AUTHORITIES

3 **I. THE COURT SHOULD ALLOW THE DEFENSE TO FILE THE REPLY BECAUSE**
4 **THE STATE POSSESSED THE EMAILS PRIOR TO THE GRAND JURY**
5 **PRESENTATION AND DID NOT PROVIDE THEM TO THE DEFENSE PRIOR**
6 **TO THE PETITIONS BEING FILED**

7 The State, in its Opposition, discusses multiple productions
8 of discovery it provided to the defense, including approximately
9 19,000 pages of discovery on December 21, 2023. [See State's
10 Opposition, page 3, lines 6-7.] The State fails to mention that
11 although the State had possession of Kenneth Chesebro's emails
12 prior to that date, **those emails were not produced to the defense**
13 **until March 15, 2024.** Along with the filing of the Petitions for
14 Writ of Habeas Corpus, the court was provided with a thumbdrive
15 containing the video proffer of Kenneth Chesebro which took place
16 on November 27, 2023. During that proffer, Mr. Chesebro
17 references his emails and phone records that had been provided to
18 the State. [See Proffer video part 2, 46:13-49:45]. During the
19 proffer, the Chief Deputy AG reads from an email of Chesebro's
20 that was not provided until March 15, 2024. [Proffer Video part
21 2, 46:50]. So, while the State did provide thousands of pages of
22 discovery to the defense prior to the Petitions for Writ of
23 Habeas Corpus being filed, it failed to turn over discovery it
24 had in its possession making it impossible for the defense to
25 have included it in the original Petition.

26 **II. THE EMAILS CONTAIN EXCULPATORY EVIDENCE**

27 The State's argument regarding the exculpatory nature of the
28 evidence should be disregarded as it relies heavily upon a 2010
unpublished order from the Nevada Supreme Court in violation of
NRAP 36(c) (3). The State on pages 4 and 5 of its Opposition

1 quoted at length from the 2010 unpublished order of Sutton v.
2 Eighth Jud. Dist. Ct., No. 57289, 2010 WL 5549223 (Nev. S.Ct.
3 Dec. 20, 2010 Unpublished Disposition)¹
4

5 NRAP 36(c)(3) states:

6 **A party may cite for its persuasive**
7 **value, if any, an unpublished**
8 **disposition issued by the Supreme Court**
9 **on or after January 1, 2016.** When citing
10 such an unpublished disposition, the
11 party must cite an electronic database,
12 if available, and the docket number and
13 date filed in the Supreme Court (with
14 the notation "unpublished disposition").
A party citing such an unpublished
disposition must serve a copy of it on
any party not represented by counsel.
Except to establish issue or claim
preclusion or law of the case as
permitted by subsection (2), unpublished
dispositions issued by the Court of
Appeals may not be cited in any Nevada
court for any purpose.

15 NRAP 36(c)(3) (emphasis added).

16 No unpublished orders prior to January 1, 2016 can be cited
17 for any purpose. Not only did the State cite to an unpublished
18 order in violation of NRAP 36, it attempted to mask that fact by
19 citing to the Nevada and Pacific report as opposed to the
20 electronic database as required by Rule 36, and further did not
21 include the notation "unpublished disposition." Even if it had
22 included the correct citation and notation, the State is
23 prohibited from citing to an unpublished disposition from 2010².

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26 The State cited to the case as Sutton v. Eighth Jud. Dist. Ct. of
27 State, 126 Nev. 761, 367 P.3d 825 (2010) in an attempt to mask the
28 fact from the court and the defense that this was an unpublished
disposition.

2

Additionally, the State quoted from an unpublished disposition from

1
2 Even were this court to overlook the clear violation of NRAP
3 36, the State's claims that the evidence contained merely
4 impeachment evidence is not accurate. The existence of the
5 potential for further judicial review of the election results
6 would negate the requisite intent for the offenses charged in
7 this case. Nothing is more relevant and crucial to determine the
8 state of mind (intent) of the defendant alternate electors than
9 evidence about their belief and understanding that there is a
10 legitimate purpose for their December votes. It isn't, as the
11 State suggests, merely a reliance on counsel's advice; rather,
12 the emails explain that Mr. Chesebro, who had drafted the
13 documents and was orchestrating the Nevada alternate slate, did
14 not believe that pending litigation was a requirement for the
15 alternate electors to vote and that there actually was a
16 potential for further litigation regarding the election results.
17 That information could "explain away the charge" and provide the
18 legitimacy for the alternate elector ballots. The State hid this
19 information from the Grand Jury (and the defense) even though it
20 had the information in its possession prior to the presentment of
21 the case to the Grand Jury.

22 **III. CONCLUSION**

23 There is no express prohibition on allowing the defense to
24 file a Reply to a Return to a Petition for Writ of Habeas Corpus
25 (pre-trial) contained in the statutes; however, even if there

26 2013 without even listing a citation for the case. State's
27 Opposition page 5 lines 16-18 contains a quote that comes from
28 Monroe v. State, No. 58171, 2013 WL 5476619 (September 26, 2013, NV.
S.Ct. Unpublished Disposition). Not only can this case also not be
cited to, the State gave no indication that it was quoting from
this unpublished order in violation of NRAP 36.

1 were, good cause has been shown to allow a Reply in this case as
2 the defense did not have possession of the emails prior to the
3 deadline for the Petitions. The Court should permit the Reply to
4 be filed.

5 Respectfully Submitted,

6
7
8 /s/ RICHARD A. WRIGHT
RICHARD A. WRIGHT, ESQ.
9 Nevada Bar No. 886
WRIGHT MARSH & LEVY
10 300 S. Fourth ST., Ste 701
Las Vegas, NV 89101
11 Phone: (702) 382-4004
Fax: (702) 382-4800
rick@wmllawlv.com
12 Attorney for Michael James McDonald

13
14 /s/ MARGARET A. MCLETCHIE
MARGARET A. MCLETCHIE
15 Nevada Bar No. 10931
MCLETCHIE LAW
16 602 South Tenth St.
Las Vegas, Nevada 89101
17 Telephone: (702) 728-5300
Fax: (702) 425-8220
18 Email: maggie@nvlitigation.com
Attorney for Defendant Jesse Law

19
20 /S/ MONTI JORDANA LEVY
MONTI JORDANA LEVY, ESQ.
21 Nevada Bar No. 8158
WRIGHT MARSH & LEVY
22 300 S. Fourth St., Ste. 701
Las Vegas, Nevada 89101
23 (702) 382-4004
mlevy@wmllawlv.com
24 Attorney for Eileen Rice

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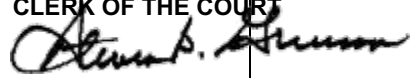
CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that service of the above JOINT REPLY TO
OPPOSITION TO DEFENDANTS' MOTION FOR LEAVE TO FILE REPLY was
served via the Court's electronic filing system to:

Alissa Engler
Chief Deputy Attorney General
Criminal Prosecution Division
Office of the Nevada Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101
T: (702) 486-5706
F: (702) 486-3768
aengler@ag.nv.gov

Dated this 7th day of May, 2024.

/s/ Debbie Caroselli
An employee of Wright Marsh & Levy



MOT

1 SIGAL CHATTAH, ESQ.
Nevada Bar No.: 8264
2 CHATTAH LAW GROUP
5875 S. Rainbow Blvd. #204
3 Las Vegas, Nevada 89118
Tel: (702) 360-6200
4 Fax:(702) 643-6292
Attorney for Defendant
5 *Shawn Michael Meehan*

6
7 **EIGHTH JUDICIAL DISTRICT COURT**
8 **CLARK COUNTY NEVADA**

9 *****

10
11 THE STATE OF NEVADA,

12 Plaintiff,

13 v.

14 MICHAEL JAMES MCDONALD, JAMES
15 WALTER DEGRAFFENREID III, JESSE REED
16 LAW, DURWARD JAMES HINDLE III, SHAWN
MICHAEL MEEHAN, and EILEEN A. RICE,

17 Defendants.

CASE NO.: C-23-379122-5

Dept. No.: XVIII

18 **SHAWN MICHAEL MEEHAN'S JOINDER TO REPLY TO OPPOSITION TO**
19 **MOTION FOR LEAVE**

20 COMES NOW Defendant, SHAWN MICHAEL MEEHAN by and through his counsel
21 of record, SIGAL CHATTAH, ESQ. of CHATTAH LAW GROUP, and hereby submits his
22 joinder to JOINT REPLY TO OPPOSITION TO DEFENDANTS' MOTION FOR LEAVE TO
23 FILE REPLY filed on May 7, 2024.

24 This Joinder is based on the pleadings and papers on file and any argument the Court may
25 entertain at the time of the hearing on this matter.

1 Defendant SHAWN MICHAEL MEEHAN expressly adopts and incorporates by
2 reference the citations, authorities and arguments stated therein as though fully set forth herein.

3 DATED this 7th day of May, 2024.

4 CHATTAH LAW GROUP

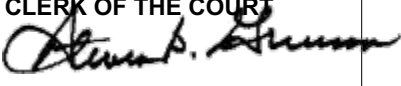
5 /s/Sigal Chattah
6 SIGAL CHATTAH, ESQ.
7 Nevada Bar No. 8264
8 CHATTAH LAW GROUP
9 5875 S. Rainbow Blvd., #204
10 Las Vegas, NV 89118
11 Tel: (702) 360-6200
12 Fax:(702) 643-6292
13 Attorney for Defendant

14 CERTIFICATE OF ELECTRONIC SERVICE

15 I hereby certify that service of the above and forgoing Joinder to Reply was served via
16 electronic e-filing to the registered parties on this 7th day of May, 2024

17 By: /s/ Sigal Chattah

18 An employee of Chattah Law Group



Marquis Aurbach
Brian R. Hardy, Esq.
Nevada Bar No. 10068
Harry L. Arnold, Esq.
Nevada Bar No. 15866
10001 Park Run Drive
Las Vegas, Nevada 89145
Telephone: (702) 382-0711
Facsimile: (702) 382-5816
bhardy@maclaw.com
harnold@maclaw.com
Attorneys for Durward J. Hindle, III

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

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

Defendants.

Case No.: C-23-379122-2
Dept. No.: XVIII

**DEFENDANT DURWARD JAMES HINDLE III'S JOINDER TO JOINT REPLY TO
OPPOSITION TO DEFENDANTS' MOTION FOR LEAVE TO FILE REPLY**

Defendant/Petitioner, DURWARD JAMES HINDLE III, by and through his attorneys,
BRIAN R. HARDY, ESQ. and HARRY L. ARNOLD, ESQ., of MARQUIS AURBACH, hereby
fully joins the May 7, 2024 Joint Reply to Opposition to Defendants' Motion for Leave to File
Reply filed on behalf of Defendants Eileen Rice, Michael McDonald, and Jesse Law in Case
Nos. C-23-379122-3, C-23-379122-4, and C-23-379122-6 (the "Reply"), which is set for hearing
on May 15, 2024 at the hour of 9:30 AM.

///

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

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1 Defendant DUWARD JAMES HINDLE III expressly adopts and incorporates by
2 reference the factual assertions, citations, authorities and arguments stated in the Reply as though
3 fully set forth herein.

4 Dated this 8th day of May, 2024.

5
6 MARQUIS AURBACH

7
8 By /s/ Brian R. Hardy
9 Brian R. Hardy, Esq.
10 Nevada Bar No. 10068
11 Harry L. Arnold, Esq.
12 Nevada Bar No. 15866
13 10001 Park Run Drive
14 Las Vegas, Nevada 89145
15 Attorney(s) for Durward J. Hindle, III
16
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MARQUIS AURBACH
10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

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CERTIFICATE OF SERVICE

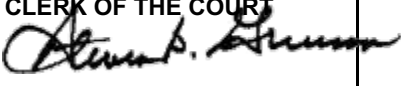
I hereby certify that the foregoing **DEFENDANT DURWARD JAMES HINDLE III'S JOINDER TO JOINT REPLY TO OPPOSITION TO DEFENDANTS' MOTION FOR LEAVE TO FILE REPLY** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 8th day of May, 2024. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

Office of the Attorney General
555 E. Washington Ave, Suite 3900
Las Vegas, NV 89101
mburris@ag.nv.gov
tdibari@ag.nv.gov
AEngler@ag.nv.gov
rholm@ag.nv.gov
jross@ag.nv.gov
htew@ag.nv.gov
Attorney for the State of Nevada, Plaintiff

media@ournevadajudges.com

/s/ C. Hatfield
An employee of Marquis Aurbach

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).



1 JMOT
George P. Kelesis
2 Nevada Bar No. 0069
COOK & KELESIS, LTD.
3 517 S 9th Street
Las Vegas, NV 89101
4 Telephone: (702) 737-7702
Facsimile: (702) 382-5816
5 Email: law@bckltd.com
Attorney for James Walter DeGraffenreid, III

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9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11
12 THE STATE OF NEVADA,
13
14 Plaintiff,
15
16 vs.
17 MICHAEL JAMES MCDONALD, JAMES
WALTER DEGRAFFENREID III, JESSE
18 REED LAW, DURWARD JAMES HINDLE
III, SHAWN MICHAEL MEEHAN, and
EILEEN A. RICE,
19 Defendants.

Case No.: C-23-379122-1
Dept. No.: XVIII

Hearing Date: April 22, 2024
Hearing Time: 9:30 AM

20
21 **JAMES WALTER DEGRAFFENREID, III'S JOINDER TO**
JOINT REPLY TO OPPOSITION TO DEFENDANT'S
22 **MOTION FOR LEAVE TO FILE REPLY**

23 James Walter DeGraffenreid, III, by and through his counsel of record, George P. Kelesis,
24 Esq. of the law firm of Cook & Kelesis, Ltd. hereby joins in Defendants Michael James McDonald,
25 Jesse Reed Law, and Eileen Rice's Joint Reply to Opposition to Defendants' Motion for Leave to
26 File Reply ("Reply") filed on May 7, 2024.
27
28

1 Defendant DeGraffenreid hereby adopts and incorporates by reference all facts, authorities, and
2 arguments stated in said Reply as though fully set forth herein, and is based on the pleadings and
3 papers on file and any argument the Court may entertain at the time of the hearing in this matter.

4 DATED this 8th day of May, 2024.

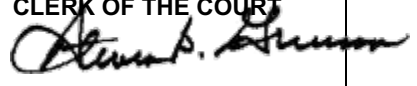
5 COOK & KELESIS, LTD.

6
7 By: /s/ George P. Kelesis
8 George P. Kelesis, Esq.
9 Nevada Bar No. 10068
10 517 S 9th Street
11 Las Vegas, Nevada 89101
12 *Attorney for James Walter DeGraffenreid, III*

13 **CERTIFICATE OF SERVICE**

14 The undersigned, declare under penalty of perjury, that on May 8, 2024, I caused to be served
15 a true and correct copy of the foregoing JOINDER TO REPLY TO OPPOSITION TO MOTION
16 FOR LEAVE TO FILE REPLY by submitting to the Eighth Judicial District Court, for electronic
17 filing in accordance with NRCP 5(b), NEFCR Administrative Order 14-2 and NEFCR 9(e) and
18 service upon the Court's Service List for the above-referenced case.

19
20 /s/ Sherrill D Grotheer
21 An employee of COOK & KELESIS, LTD.



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TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA,)	
)	CASE NO. C-23-379122-1
Plaintiff (s),	)	C-23-379122-2
vs.	)	C-23-379122-3
	)	C-23-379122-4
JAMES WALTER DEGRAFFENREID, III,	)	C-23-379122-5
DURWARD JAMES HINDLE, III	)	C-23-379122-6
JESSE REED LAW,)	
MICHAEL JAMES MCDONALD,	)	DEPT. XVIII
SHAWN MICHAEL MEEHAN,)	
EILEEN A. RICE)	

Transcript of Proceedings

Defendant (s).

BEFORE THE HONORABLE MARY KAY HOLTHUS, DISTRICT COURT JUDGE
WEDNESDAY, MAY 15, 2024

**PETITION FOR WRIT OF HABEAS CORPUS AND JOINDER IN MEMORANDUM OF
POINTS AND AUTHORITIES/JAMES WALTER DEGRAFFENREID, III'S JOINDER
IN MOTION TO DISMISS/JAMES WALTER DEGRAFFENREID, III'S JOINDER
TO JOINT MOTION FOR LEAVE TO FILE REPLY TO STATE'S RETURN AND
RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS (PRETRIAL)**

[Parties Present via BlueJeans]

SEE NEXT PAGE FOR APPEARANCES

RECORDED BY: YVETTE SISON, COURT RECORDER

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APPEARANCES

FOR THE STATE: AARON FORD, ESQ.
 ALISSA ENGLER, ESQ.
 MATTHEW RASHBROOK, ESQ.
 Office of the Attorney General

FOR THE DEFENDANT (s): GEORGE KELESIS, ESQ.
 For: James Degraffenreid
 BRIAN HARDY, ESQ.
 For: Durward Hindle, III
 RICHARD WRIGHT, ESQ.
 For: Michael McDonald
 MONTI JORDAN, ESQ.
 For: Eileen Rice
 SIGAL CHATTAH, ESQ.
 For: Shawn Meehan
 MARGARET A. MCLETTCHIE, ESQ.
 For: Jesse Law

1 **LAS VEGAS, NEVADA, WEDNESDAY, MAY 15, 2024 9:35 A.M.**

2
3 THE COURT CLERK: Page 15, James Degraffenreid,
4 C379122-1; page 16, State of Nevada versus Duward Hindle,
5 C379122-2; page 17, State of Nevada versus Jesse Law, C379122-3;
6 page 18, State of Nevada versus Michael McDonald, C379122-4;
7 page 19, State of Nevada versus Shawn Meehan, C379122-5; page
8 20, State of Nevada versus Eileen Rice, C379122-6.

9 MS. ENGLER: Good Morning, Your Honor, Alissa Engler,
10 bar #11940 with Matthew Rashbrook and Attorney General Ford, on
11 behalf of the State.

12 THE COURT: Good Morning.

13 MR. WRIGHT: Good Morning, Your Honor, Richard Wright
14 on behalf of Mr. McDonald, he's on Zoom.

15 MS. LEVY: Good Morning, Your Honor, Monti Levy for
16 Eileen Rice. I would request that her presence be waived for
17 today.

18 THE COURT: Any objection?

19 MS. ENGLER: No, Your Honor.

20 MS. MCLETTCHIE: Good Morning, Your Honor, Maggie
21 McLetchie for Jesse Law, who is on Zoom.

22 MS. CHATTAH: Sigal Chattah, bar #8264, on behalf of
23 Shawn Meehan, who's also on Zoom.

24 MR. HARDY: Brian Hardy on behalf of Jim Hindle, who
25 is also on Zoom.

1 THE COURT: Okay.

2 MR. KELESIS: Also, Your Honor, George Kelesis; I'm on
3 the telephone for Mr. Degraffenreid.

4 THE COURT: All right, is that everybody?

5 MR. WRIGHT: Mr. Kelesis is on Zoom for Mr.
6 Degraffenreid.

7 THE COURT: Yes, is that everybody then?

8 MS. LEVY: Yes, Your Honor.

9 THE COURT: This is Defendant's petitioner's motion
10 for leave to file a reply.

11 MR. WRIGHT: Yes, Your Honor.

12 THE COURT: Anything to add? What do you want to say,
13 go ahead.

14 MR. WRIGHT: Only that, all we are simply trying to
15 add in is documents that were in the possession of the State
16 that we did not have at the time we filed our writ, which we
17 contend are exculpatory and should've been presented or simply
18 wanting to reply because we did not have them at the time.

19 THE COURT: Seems reasonable right?

20 MS. ENGLER: Just -- Your Honor, the fact that the
21 statutes don't allow for a reply when we look at 34.700, the
22 language is clear. It gives a time for a writ and a response,
23 and that's it.

24 THE COURT: But there's nothing specifically not
25 allowing a reply is there? I mean what's the harm, more

1 information? If they received information they needed that was
2 relevant to their motion or petition, what's the harm in
3 allowing them to file a reply?

4 MS. ENGLER: Because -- the State's position is, that
5 the statute is clear, and that there is no leave for it, and the
6 burden of the reply is slight or marginal evidence; has the
7 State met it's burden of probable cause, and what they're trying
8 to bring in, these two additional emails, are not exculpatory
9 and they're not relevant to the determination or probable cause.

10 THE COURT: I'm not saying it's -- it's -- what's the
11 word?

12 MR. WRIGHT: Exculpatory.

13 THE COURT: Well I'm not making -- I'm not making a
14 decision as to the --

15 MS. ENGLER: The petition.

16 THE COURT: -- the petition itself or it's impact or
17 whether it's relevant or not relevant. All I'm saying is, it
18 seems fair to let them file it, and for me to read it. I don't
19 see the downside with that.

20 MS. ENGLER: All -- the statute doesn't allow for it.
21 It doesn't specifically say it; when we're looking at
22 interpretation, we have to look at the clear meaning of the
23 statute. That's the State's position, and I'll submit it to
24 Your Honor.

25 THE COURT: I mean, generally, I can ask for

1 supplemental anyway and allow it, I think, which brings me to --
2 so, I'm going to grant it. I don't know of any reason that I
3 can't. I don't know, does that mean you want to reply to the
4 reply? Are you --

5 MS. ENGLER: We essentially --

6 THE COURT: -- I know there's no authority for that
7 either.

8 MS. ENGLER: -- no -- Your Honor --

9 THE COURT: But, I let you, I'm going to let them.

10 MS. ENGLER: -- Your Honor, we -- in our response, we
11 essentially argued our position on the exculpatory evidence --

12 THE COURT: Okay.

13 MS. ENGLER: -- in there, so we can submit it on our
14 briefing as well. So, no additional briefing will be needed.

15 THE COURT: Okay, sounds good. I have a question for
16 the State.

17 MS. ENGLER: Yes.

18 THE COURT: I haven't seen something like this. This
19 one -- this is different for me --

20 MS. ENGLER: Okay.

21 THE COURT: -- and there's so much, and at least the
22 initial motion to dismiss boils down to the jurisdiction --

23 MS. ENGLER: Right.

24 THE COURT: -- and what. I'm going to ask you to do a
25 supplemental and just streamline for me what ties -- what

1 actions occurred in Clark County that warrants us being in Clark
2 -- not everything else --

3 MS. ENGLER: Okay.

4 THE COURT: -- just the actual facts that were
5 presented to the Grand Jury, the statement -- whatever --
6 whatever it is, exhibits and everything so I -- because I can't
7 -- I mean, let's face it, the majority of this happened
8 elsewhere, the way I'm reading it.

9 MS. ENGLER: Well, it happened all over this --

10 THE COURT: It says, did here in Clark County, Nevada.
11 I'm just trying to figure out what exactly was here, if you
12 could do that for me, I would appreciate it.

13 MS. ENGLER: -- sure.

14 THE COURT: All right.

15 MS. ENGLER: When would you like that briefing?

16 THE COURT: Whenever you can get -- we don't have
17 trial until January right, so.

18 MS. ENGLER: We don't, but our preference is to have
19 these motions heard as soon as possible. So, we can get that
20 briefing to you as soon as Your Honor would like so that we can
21 get something on calendar for hearing.

22 THE COURT: No, I agree because my guess is whatever I
23 do, one of you is going to appeal it. So, if we can get -- up
24 to the Supreme Court faster I suppose.

25 MR. WRIGHT: May we reply to that?

1 THE COURT: To what?

2 MR. WRIGHT: Their brief.

3 THE COURT: To their brief, in opposition to your
4 ability to reply?

5 MS. LEVY: No, the supplement.

6 THE COURT: Oh, oh, well you can reply to the extent
7 that if she says Exhibit A, picture of one of the Defendants
8 here in Clark County doing something, wasn't presented to the
9 Grand Jury, you can correct the record.

10 MR. WRIGHT: Okay.

11 THE COURT: I'm not looking for more argument guys,
12 I'm looking for the facts. What exactly occurred here to give
13 us jurisdiction here; that's all I want. I don't want anything
14 else.

15 MS. LEVY: Understand.

16 THE COURT: I got a lot of other stuff. I just need
17 the facts, okay. So, how much time do you want?

18 MS. ENGLER: We can have it to you by next week.

19 THE COURT: Okay. Seven days, ten days?

20 MS. ENGLER: Seven days is fine; yeah, we can have it
21 by seven days. And if the Court wants to set a hearing, we'll
22 get it to you and defense in plenty of time.

23 THE COURT: I'm in a trial. I'll be in for the next
24 three weeks, so no rush. I don't know I'm going to get to it
25 right away, so if you want more than seven days take it, because

1 I probably won't get to it.

2 MS. ENGLER: Okay.

3 THE COURT: Or do you want to work backwards from the
4 hearing date?

5 MS. ENGLER: Yeah, I mean that makes sense; if we just
6 can get a hearing date. Seven days, two weeks. Two weeks is
7 fine; I think we'll be able to get it done in two weeks, so our
8 preference is just to get the hearing date in.

9 THE COURT: What are you looking at?

10 MS. ENGLER: Your Honor, when we first started meeting
11 and conferring based on the dates that was sent by your
12 chambers, we had all come to an agreement of June 10th, which was
13 on your Monday, Wednesday schedule --

14 THE COURT: Okay.

15 MS. ENGLER: -- but I think we were told that that
16 date might not be available for the Court after we selected it,
17 so.

18 THE COURT: The Monday, no; the Wednesday we could do,
19 right?

20 [Colloquy - the Court and the law clerk]

21 THE COURT: I can do June 12th.

22 MS. LEVY: Well, Your Honor, if they get -- if they're
23 having two weeks to respond, I just want to make sure that we
24 have enough time to respond to theirs.

25 THE COURT: We're gonna work backwards.

1 MS. LEVY: Okay.

2 THE COURT: So everybody gets something.

3 MS. LEVY: All right, so June --

4 MS. ENGLER: Your Honor, I'm not here on June 12th, I
5 apologize.

6 THE COURT: Okay. The 17th or 19th?

7 MS. ENGLER: Either of those days are fine with the
8 State.

9 MS. LEVY: The 19th is a holiday.

10 MS. ENGLER: Oh that's right, the 19th is a holiday.

11 THE COURT: The 17th?

12 MS. ENGLER: That's fine with the State.

13 MS. CHATTAH: I'm not; Your Honor, I've got an ENE
14 [phonetics] up in Washoe on the 17th.

15 THE COURT: Can you Zoom in?

16 MS. CHATTAH: I'm sorry?

17 THE COURT: Can you just Zoom in here for a minute
18 while we get I done?

19 MS. CHATTAH: Sure, as long as it's after 9-ish. So,
20 I would assume two hours.

21 THE COURT: Yes, we can -- we can --

22 MS. ENGLER: The State's fine if the Court wants to
23 set it on an 11 o'clock schedule.

24 MS. MCLETCHIE: Your Honor, I have a conflict on June
25 17th that I had actually moved to accommodate a prior hearing and

1 schedule in this matter, and I can't move it again.

2 THE COURT: How about -- how about the 18th, we can do
3 it at the end of the civil calendar.

4 THE LAW CLERK: Yes.

5 THE COURT: The 18th at 11?

6 MS. ENGLER: That's fine.

7 MS. MCLETCHIE: Thank you.

8 MS. CHATTAH: Yes.

9 MR. FORD: Your Honor, I have a pardon's board meeting
10 that day, and so I would have to be excused from the hearing
11 that day.

12 THE COURT: Are you asking me to move it so you can be
13 here, or excusing you from --

14 MR. FORD: No, I'd like this motion heard as quickly
15 as possible, and so if I'm going to hang it up, I will move out
16 of the way, and so the 18th --

17 THE COURT: And we can fudge the time. I have my --
18 my civil calendar starts at 10, we'll probably plan you guys at
19 11, but if everybody wants noon or 1:00, as far as I know, we
20 should be able to accommodate that.

21 MR. FORD: The pardon board meetings usually last
22 until 2:00, and so.

23 THE COURT: All right, you tell me. Should I set it
24 the 18th at 11?

25 MR. FORD: The 18th at 11; we'll take the 18th at 11,

1 Your Honor.

2 MS. ENGLER: That's fine.

3 THE COURT: Yes?

4 MS. CHATTAH: Yes, Your Honor, thank you.

5 THE COURT: Sold. And now, working back, I need
6 anything -- we're going to have -- well, let's see --

7 [Colloquy - the Court and the law clerk]

8 THE COURT: -- all right, let's go -- I want to do two
9 weeks, one week, two weeks on the hearing date. Does that work?

10 [Colloquy - the Court and the court clerk]

11 THE COURT: All right, that's what we're going to do.
12 It's going to be two weeks -- I'm only giving you a week because
13 you're not doing anything other than correcting the record, and
14 then we get time to look at everything and pull it all together.

15 THE COURT CLERK: So, for the response, it will be May
16 29th, the reply will be June 5th --

17 THE COURT: Supplemental. It's a supplemental --

18 THE COURT CLERK: Supplemental --

19 MS. MCLETCHIE: And to be clear, Your Honor, this is
20 Maggie McLetchie, for the record; the -- neither brief is to
21 include legal argument, just facts in both?

22 THE COURT: -- correct.

23 MS. ENGLER: And citations and then exhibits, if
24 necessary.

25 THE COURT: Yes, citations to the Grand Jury --

1 MS. MCLEATCHIE: Understood, thank you.

2 THE COURT: -- but yeah, no this is -- this is just --
3 I want it all in one place. I want to know --

4 MS. LEVY: Yes, Your Honor.

5 THE COURT: -- what I got.

6 MS. LEVY: Very good.

7 THE COURT: Supplemental for the State, two weeks;
8 opposition and reply -- what do you want me to call it, you want
9 me to call it a reply?

10 [Colloquy - the Court and the court clerk]

11 THE COURT CLERK: -- and then the hearing will be June
12 18th at 11 a.m.

13 MS. LEVY: Thank you, Your Honor.

14 MS. ENGLER: Thank you.

15 MS. MCLEATCHIE: Thank you.

16 THE COURT: Thank you. Have a good day everybody.

17 MS. ENGLER: Good luck with your trial.

18 The Proceedings Concluded at 9:47 a.m.

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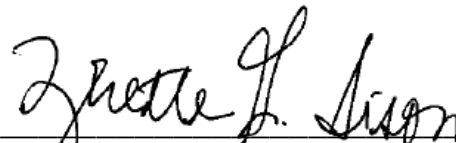
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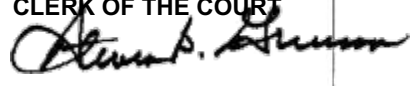
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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Yvette G. Sison
Court Recorder/Transcriber



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RPLY
RICHARD A. WRIGHT, ESQ.
Nevada Bar No. 886
WRIGHT MARSH & LEVY
300 S. Fourth ST., Ste 701
Las Vegas, NV 89101
Phone: (702) 382-4004
Fax: (702) 382-4800
rick@wmllawlv.com
Attorney for Michael James McDonald

MARGARET A. MCLETCHIE
Nevada Bar No. 10931
MCLETCHIE LAW
602 South Tenth St.
Las Vegas, Nevada 89101
Telephone: (702) 728-5300
Fax: (702) 425-8220
Email: maggie@nvlitigation.com
Attorney for Defendant Jesse Law

MONTI JORDANA LEVY, ESQ.
Nevada Bar No. 8158
WRIGHT MARSH & LEVY
300 S. Fourth St., Ste. 701
Las Vegas, Nevada 89101
(702) 382-4004
mlevy@wmllawlv.com
Attorney for Eileen Rice

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
MICHAEL JAMES MCDONALD,)
JESSE REED LAW,)
EILEEN RICE,)
)
Defendants.)
)

CASE NO.: C-23-379122-4
C-23-379122-3
C-23-379122-6

DEPT No.: XVIII

JOINT REPLY TO STATE'S RETURN AND RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS (PRE-TRIAL)

COMES NOW, Defendants MICHAEL JAMES MCDONALD, JESSE REED LAW, and EILEEN RICE, by and through their attorneys, RICHARD A.

1
2 WRIGHT, MARGARET A. MCLETCHE, and MONTI JORDANA LEVY, and
3 hereby files their Reply to the State's Return and Response to
4 Petition for Writ of Habeas Corpus.

5 This Reply is made and based on the papers and pleadings on
6 file, the Memorandum of Points and Authorities attached hereto,
7 and argument of counsel at the hearing on this matter.

8 Dated this 15th day of April, 2024.

9
10 /s/ RICHARD A. WRIGHT
11 RICHARD A. WRIGHT, ESQ.
12 Nevada Bar No. 886
13 WRIGHT MARSH & LEVY
14 300 S. Fourth ST., Ste 701
15 Las Vegas, NV 89101
16 Phone: (702) 382-4004
17 Fax: (702) 382-4800
18 rick@wmllawlv.com
19 Attorney for Michael James McDonald

20
21 /s/ MARGARET A. MCLETCHE
22 MARGARET A. MCLETCHE
23 Nevada Bar No. 10931
24 MCLETCHE LAW
25 602 South Tenth St.
26 Las Vegas, Nevada 89101
27 Telephone: (702) 728-5300
28 Fax: (702) 425-8220
Email: maggie@nvlitigation.com
Attorney for Defendant Jesse Law

29
30 /S/ MONTI JORDANA LEVY
31 MONTI JORDANA LEVY, ESQ.
32 Nevada Bar No. 8158
33 WRIGHT MARSH & LEVY
34 300 S. Fourth St., Ste. 701
35 Las Vegas, Nevada 89101
36 (702) 382-4004
37 mlevy@wmllawlv.com
38 Attorney for Eileen Rice

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MEMORANDUM OF POINTS AND AUTHORITIES

As discussed in the Joint Memorandum in Support of Defendants' Petitions for Writ of Habeas Corpus, the State possessed exculpatory evidence which it failed to present to the Grand Jury in violation of NRS 172.145(2). Since the petitions for writ were filed, the defendants have uncovered the fact that the State had even more exculpatory evidence in its possession (the "Additional Exculpatory Evidence").¹ Specifically, Defendants became aware in early March of 2024, that the State possessed emails and text messages from Kenneth Chesebro that it did not turn over in prior discovery and did not present to the Grand Jury despite the fact that the State had the exculpatory evidence in its possession. After multiple requests and more than two weeks, the State provided these items to the defense. After reviewing the information, the defense has located exculpatory evidence that should have been presented to the Grand Jury.

First, the State had in its possession an email from Kenneth Chesebro dated December 11, 2020, addressed to various members of the Trump campaign: Joshua Findlay; Justin Clark; Matthew Morgan; Jason Miller; Nick Trainer; and Boris Epshteyn which discusses whether Nevada had litigation pending in December, 2020, prior to the ceremony held by the Republican Electors on December 14, 2020. In this email Mr. Chesebro, commenting on the Nevada Supreme Court rejecting the Trump campaign appeal on December 8,

¹Not only did the State also fail to present the Additional Exculpatory Evidence to the Grand Jury, as detailed in the Motion for Leave to file this Reply, the State delayed even providing all the records it had in its possession and it was only after dogged efforts by Defendants that the State finally produced the records at issue in this Reply.

1 2020, opines, "it seems plausible for Nevada to seek cert. in the
2 Supreme Court on the same basis on which Jack Wilenchick
3 apparently plans to seek cert. from the AZ Sup. Ct.
4 Dismissal...." [See Exhibit A]. The email further states,
5 "[P]erhaps there is a plan to file for cert. from the Nevada
6 decision." [Id.] This information was withheld from the Grand
7 Jury. The Grand Jury was (mis)led to believe that the Nevada
8 Supreme Court decision on December 8, 2020, ended any potential
9 challenge to the election. [GJT III 62, 81-82]. The Grand Jury
10 was never informed that a Certiorari Petition to the United
11 States Supreme Court was still a plausible avenue by which the
12 election could have been challenged as Mr. Chesebro stated in the
13 email.

14
15 Second, the State also possessed an email from Kenneth
16 Chesebro to "Judge" Troupis dated December 8, 2020, where he
17 discusses the alternate electors and explains that, "Court
18 challenges pending on Jan. 6 really not necessary." Mr. Chesebro
19 says, "I think having the electors send in alternate slates of
20 votes on Dec. 14 can pay huge dividends **even if there is no**
21 **litigation pending on Jan. 6....**" [See Exhibit B (emphasis in
22 original)]. This email contradicts the testimony of Mr. Chesebro
23 before the Grand Jury. Mr. Chesebro testified that pending
24 litigation was absolutely necessary for there to be any reason
25 for the contingent electors to vote. [GJT II 44-46].

26 The Nevada Supreme Courts has made clear that a district
27 attorney violates NRS 172.145(2) if he fails to present to the
28 grand jury evidence that has a tendency to explain away the
charge. Sheriff v. Frank, 103 Nev. 160, 165, 734 P.2d 1241, 1244

1 (1987).² While "[t]he determination of whether particular
2 evidence is exculpatory is generally left to the discretion of
3 the district court.," that determination is not unfettered;
4 where, as a matter of law, the evidence is exculpatory, the
5 Nevada Supreme Court will reverse a decision not to dismiss a
6 grand jury indictment. Ostman v. Eighth Judicial Dist. Court, 107
7 Nev. 563, 564-65, 816 P.2d 458, 459 (1991). In Ostman, the
8 Supreme Court evaluated whether the statement at issue "had a
9 tendency to explain away the charge;" because the Court found it
10 did, it dismissed the indictment and reversed a district court
11 denial of a request to dismiss a grand jury indictment.³
12

13 ²While the State claims that all the exculpatory evidence in this
14 case is cumulative, not only is that not the case, neither the
15 applicable statute nor case law provide the exception the State
16 imagines. In any case, it certainly cannot be said that evidence
that shows the State's star witness was lying can be ignored as
cumulative.

17 ³The Additional Exculpatory Evidence also reinforces the reality
18 that all the Defendants did was -consistent with Mr. Chesebro's
19 direction and national plan (see, e.g., Joint Motion, pp.
20 9-10)-preserve their rights to challenge the outcome by submitting
their alternative ballots. The First Amendment, the protections of
which extend to both free speech and to petition the government,
protects these actions (see, e.g., 2/13/24 Joint Reply In Support
21 of Motion to Dismiss, at p.11:4-14:10.) On this point, the State's
claim in its Response is telling. It claims:

22 It should be noted that Petitioners view
23 or opinion of the evidence is not
24 relevant to the conduct in this case
25 because at the time the Petitioners
26 declared themselves the duly qualified
27 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.

1
2 The grand jury indictment cannot stand:

3 It is fundamentally unfair to require
4 one to stand trial unless he is
5 committed upon a criminal charge with
6 reasonable or probable cause. No one
7 would suggest that an accused person
8 should be tried for a public offense if
9 there exists no reasonable or probable
10 cause for trial. Our Constitution and
11 Statute recognize this principle of
12 fairness and provide for its protection
13 by the writ of habeas corpus. Nev.
14 Const. Art. 1, § 5, commands that the
15 writ of habeas corpus shall not be
16 suspended unless, in cases of rebellion
17 or invasion, the public safety may
18 require its suspension; and NRS
19 34.500(7) explicitly authorizes
20 discharge from custody or restraint if
21 one is not committed upon a criminal
22 charge with reasonable or probable
23 cause.

24 Shelby v. Sixth Judicial Dist. Court, 82 Nev. 204, 207-08, 414
25 P.2d 942, 943-44 (1966). Like the exculpatory evidence detailed
26 in the Joint Memorandum, the additional exculpatory evidence
27 should have been presented to the Grand Jury. Integral to the
28 State's presentation to the grand jury was the contention that
29 Defendants were not pursuing any challenge to the result of the
30 election, and Chesebro's testimony was key to that picture
31 presented to the grand jury.⁴

32 What the State ignores is that it is not free to punish even false
33 speech that disagrees with the State's determination regarding the
34 outcome of the election, and it is certainly not free to prohibit
35 Defendants from pursuing a step that was necessary if they wanted
36 to challenge the outcome of the election.

37 ⁴After knowingly allowing him to perjure himself, the State tries
38 in its Response to rewrite Mr. Chesebro's testimony, cutely
39 claiming "it seems more than likely that his answer was not false
40 testimony when he stated he'd had no response to his inquiry as to
41 further litigation - rather, he simply omitted the word
42 'meaningful.'" Despite trying to rewrite Mr. Chesebro's testimony

1 Based upon the arguments in the Joint Memorandum filed on behalf
2 of Mr. McDonald, Mr. Law, and Ms. Rice, as well as the additional
3 exculpatory evidence that was not provided to the Grand Jury, the
4 defendants' Petitions for Writ of Habeas Corpus should be
5 granted.
6

7 Respectfully Submitted,

8
9 /s/ RICHARD A. WRIGHT
10 RICHARD A. WRIGHT, ESQ.
11 Nevada Bar No. 886
12 WRIGHT MARSH & LEVY
13 300 S. Fourth ST., Ste 701
14 Las Vegas, NV 89101
15 Phone: (702) 382-4004
16 Fax: (702) 382-4800
17 rick@wmllawlv.com
18 Attorney for Michael James McDonald
19

20
21 /s/ MARGARET A. MCLETCHE
22 MARGARET A. MCLETCHE
23 Nevada Bar No. 10931
24 MCLETCHE LAW
25 602 South Tenth St.
26 Las Vegas, Nevada 89101
27 Telephone: (702) 728-5300
28 Fax: (702) 425-8220
Email: maggie@nvlitigation.com
Attorney for Defendant Jesse Law

29
30 /s/ MONTI JORDANA LEVY
31 MONTI JORDANA LEVY, ESQ.
32 Nevada Bar No. 8158
33 WRIGHT MARSH & LEVY
34 300 S. Fourth St., Ste. 701
35 Las Vegas, Nevada 89101
36 (702) 382-4004
37 mlevy@wmllawlv.com
38 Attorney for Eileen Rice

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EXHIBIT A

EXHIBIT A

APP 0601

Re: [EXTERNAL]Re: Electors

Kenneth Chesebro <kenchesebro@msn.com>

Fri 12/11/2020 9:54 AM

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

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

Josh,

Good to know you're heading this up.

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

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

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

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

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

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

That's all I had to add.

Ken

From: Joshua Findlay <jfindlay@donaldtrump.com>

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

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

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

Subject: Re: [EXTERNAL]Re: Electors

Hi Ken,

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

Thanks,

Josh

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

Great! His Georgia connection is especially helpful!

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

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

Ken

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

+ Josh Findlay

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

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

Here's the attachment from Dec. 9.

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

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

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

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

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

As Obama would say, that's a decision above my pay grade! lol

<http://blogs.reuters.com/talesfromthetrail/2008/08/16/obama-says-pointed-abortion-query-above-his-pay-grade/>

Ken

From: Kenneth Chesebro <kenchesebro@msn.com>

Sent: Thursday, December 10, 2020 7:37 PM

To: Matthew Morgan <mmorgan@donaldtrump.com>; Justin Clark <jclark@donaldtrump.com>

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

Subject: Re: [EXTERNAL]Re: Electors

Very good point.

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

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

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

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

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

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

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

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

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

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

Ken

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

Ken,

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

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

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

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

Thank you,

Matt Morgan

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

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

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

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

Proposed Jim Troupis Statement on Electors Meeting

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

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

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

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

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

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

Go get em Ken!

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

Oh, fantastic. Good to have all this.

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

Thank you!

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

>

>

> Here are the six w contact

>

> <Elector List-.xlsx>

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

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EXHIBIT B

EXHIBIT B

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

Kenneth Chesebro <kenchesebro@msn.com>

Tue 12/8/2020 1:15 AM

To: Judge Troupis <judgetroupis@gmail.com>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. The Electoral Count Act is not binding

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

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

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

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

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

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

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

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

5. Objection to extended delay

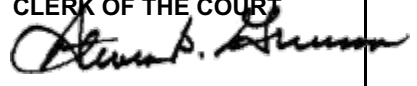
Any effort to extend scrutiny of the election returns past January 6 would be met with the objection that the process of electing the President might not be complete before January 20. But that is no reason to avoid taking the time necessary to ensure that the electoral votes of particular states are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

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

Ken

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

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



1 JMOT
George P. Kelesis
2 Nevada Bar No. 0069
COOK & KELESIS, LTD.
3 517 S 9th Street
Las Vegas, NV 89101
4 Telephone: (702) 737-7702
Facsimile: (702) 382-5816
5 Email: law@bckltd.com
Attorney for James Walter DeGraffenreid, III

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8
9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11
12 THE STATE OF NEVADA,
13 Plaintiff,

14 vs.

15 MICHAEL JAMES MCDONALD, JAMES
WALTER DEGRAFFENREID III, JESSE
16 REED LAW, DURWARD JAMES HINDLE
III, SHAWN MICHAEL MEEHAN, and
17 EILEEN A. RICE,

18 Defendants.

Case No.: C-23-379122-1
Dept. No.: XVIII

Hearing Date: June 18, 2024
Hearing Time: 11:00 AM

19
20 **JAMES WALTER DEGRAFFENREID, III'S JOINDER TO**
JOINT REPLY TO STATE'S RETURN AND RESPONSE TO
21 **PETITION FOR WRIT OF HABEAS CORPUS**

22 James Walter DeGraffenreid, III, by and through his counsel of record, George P. Kelesis,
23 Esq. of the law firm of Cook & Kelesis, Ltd. hereby joins in Defendants Michael James McDonald,
24 Jesse Reed Law, and Eileen Rice's Joint Reply to State's Return and Response to Petition for Writ
25 of Habeas Corpus ("Reply") filed on May 15, 2024.
26
27
28

1 Defendant DeGraffenreid hereby adopts and incorporates by reference all facts, authorities, and
2 arguments stated in said Reply as though fully set forth herein, and is based on the pleadings and
3 papers on file and any argument the Court may entertain at the time of the hearing in this matter.

4 DATED this 15th day of May, 2024.

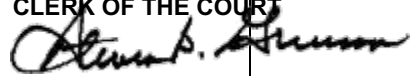
5 COOK & KELESIS, LTD.

6
7 By: /s/ George P. Kelesis
8 George P. Kelesis, Esq.
9 Nevada Bar No. 10068
10 517 S 9th Street
11 Las Vegas, Nevada 89101
12 *Attorney for James Walter DeGraffenreid, III*

13 **CERTIFICATE OF SERVICE**

14 The undersigned, declare under penalty of perjury, that on May 8, 2024, I caused to be served
15 a true and correct copy of the foregoing **Joinder to Joint Reply to State's Return and Response**
16 **to Petition for Writ of Habeas Corpus** by submitting to the Eighth Judicial District Court, for
17 electronic filing in accordance with NRCP 5(b), NEFCR Administrative Order 14-2 and NEFCR
18 9(e) and service upon the Court's Service List for the above-referenced case.

19
20 /s/ Sherrill D Grotheer
21 An employee of COOK & KELESIS, LTD.



JOIN

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) 643-6292
Attorney for Defendant
Shawn Michael Meehan

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY NEVADA**

THE STATE OF NEVADA,

Plaintiff,

v.

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

Defendants.

CASE NO.: C-23-379122-5

Dept. No.: XVIII

**SHAWN MICHAEL MEEHAN'S JOINDER TO JOINT REPLY TO STATE'S RETURN
AND RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS**

COMES NOW Defendant, SHAWN MICHAEL MEEHAN by and through his counsel
of record, SIGAL CHATTAH, ESQ. of CHATTAH LAW GROUP, and hereby submits his
Joinder to Joint Reply to State's Return and Response to Petition for Writ of Habeas Corpus (Pre-
Trial) filed on May 15, 2024.

This Joinder is based on the pleadings and papers on file and any argument the Court may
entertain at the time of the hearing on this matter.

1 Defendant SHAWN MICHAEL MEEHAN expressly adopts and incorporates by
2 reference the citations, authorities and arguments stated therein as though fully set forth herein.

3 DATED this 17th day of May, 2024.

4 CHATTAH LAW GROUP

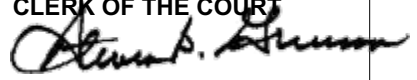
5 /s/Sigal Chattah
6 SIGAL CHATTAH, ESQ.
7 Nevada Bar No. 8264
8 CHATTAH LAW GROUP
9 5875 S. Rainbow Blvd., #204
10 Las Vegas, NV 89118
11 Tel: (702) 360-6200
12 Fax:(702) 643-6292
13 Attorney for Defendant

14 CERTIFICATE OF ELECTRONIC SERVICE

15 I hereby certify that service of the above and forgoing Joinder to Reply was served via
16 electronic e-filing to the registered parties on this 17th day of May, 2024

17 By: /s/ Sigal Chattah

18 An employee of Chattah Law Group



Marquis Aurbach
Brian R. Hardy, Esq.
Nevada Bar No. 10068
Harry L. Arnold, Esq.
Nevada Bar No. 15866
10001 Park Run Drive
Las Vegas, Nevada 89145
Telephone: (702) 382-0711
Facsimile: (702) 382-5816
bhardy@maclaw.com
harnold@maclaw.com
Attorneys for Durward J. Hindle, III

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

Case No.: C-23-379122-2

Dept. No.: XVIII

MICHAEL JAMES MCDONALD, JAMES
WALTER DEGRAFFENREID III, JESSE
REED LAW, **DURWARD JAMES HINDLE
III**, SHAWN MICHAEL MEEHAN, and
EILEEN A. RICE,
Defendants.

**DEFENDANT DURWARD JAMES HINDLE III'S JOINDER TO JOINT REPLY TO
STATE'S RETURN AND RESPONSE TO PETITION FOR WRIT OF HABEAS
CORPUS**

Defendant/Petitioner, DURWARD JAMES HINDLE III, by and through his attorneys,
BRIAN R. HARDY, ESQ. and HARRY L. ARNOLD, ESQ., of MARQUIS AURBACH, hereby
fully joins the May 15, 2024 Joint Reply to State's Return and Response to Petition for Writ of
Habeas Corpus filed on behalf of Defendants Eileen Rice, Michael McDonald, and Jesse Law in
Case Nos. C-23-379122-3, C-23-379122-4, and C-23-379122-6 (the "Reply"), which is set for
hearing on June 18, 2024 at the hour of 11:00 a.m.

///

///

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

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

1 Defendant DURWARD JAMES HINDLE III expressly adopts and incorporates by
2 reference the factual assertions, citations, authorities and arguments stated in the Reply as though
3 fully set forth herein.

4 Dated this 22nd day of May, 2024.

5
6 MARQUIS AURBACH

7
8 By /s/ Brian R. Hardy
9 Brian R. Hardy, Esq.
10 Nevada Bar No. 10068
11 Harry L. Arnold, Esq.
12 Nevada Bar No. 15866
13 10001 Park Run Drive
14 Las Vegas, Nevada 89145
15 Attorney(s) for Durward J. Hindle, III
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEFENDANT DURWARD JAMES HINDLE III'S JOINDER TO JOINT REPLY TO STATE'S RETURN AND RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 22nd day of May, 2024. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

Office of the Attorney General
555 E. Washington Ave, Suite 3900
Las Vegas, NV 89101
mburris@ag.nv.gov
tdibari@ag.nv.gov
AEngler@ag.nv.gov
rholm@ag.nv.gov
jross@ag.nv.gov
htew@ag.nv.gov
Attorney for the State of Nevada, Plaintiff

media@ournevadajudges.com

/s/ C. Hatfield
An employee of Marquis Aurbach

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).



1 **SUPP**

2 AARON D. FORD

Attorney General

3 ALISSA ENGLER (Bar No. 11940)

Chief Deputy Attorney General

4 MATTHEW J. RASHBROOK (BAR No. 12477)

Special Prosecutor

State of Nevada

5 Office of the Attorney General

555 E. Washington Ave., Ste. 3900

6 Las Vegas, Nevada 89101-1068

P: 702 486-3420

7 F: 702 486-0660

Attorneys for the State of Nevada

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11
12 STATE OF NEVADA,

13 Plaintiff,

14 vs.

15 JAMES WALTER DEGRAFFENREID,

16 Defendant.

Case No. C-23-379122-1

Dept. No. XVIII

17
18 **SUPPLEMENT TO OPPOSITION TO DEFENDANTS' MOTION TO DISMISS**

19 AARON D. FORD, Attorney General for the State of Nevada, by and through Chief Deputy
20 Attorney General, ALISSA C. ENGLER, in the name and by the authority of the State of Nevada, hereby
21 files this SUPPLEMENT TO OPPOSITION TO DEFENDANTS' MOTION TO DISMISS. The State
22 makes and bases this Supplement to Opposition upon the pleadings and papers on file, the following
23 Memorandum of Points and Authorities, and any oral argument at hearing permitted by the Court.

24 DATED this 29th day of May, 2024.

25 Submitted by:

AARON D. FORD

Attorney General

27 By: /s/ Alissa Engler

ALISSA ENGLER (Bar No. 11940)

Chief Deputy Attorney General

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. FACTUAL SUMMARY**

3 On May 15, 2024, the Court requested the State file a Supplemental Brief outlining the facts that
4 support the Clark County Grand Jury had jurisdiction to inquire into the conduct and ultimately return an
5 indictment. The below outlines the facts as requested by the Court:

- 6 • Defendant and Co-Conspirator, Michael J. McDonald resides in Las Vegas, Clark County,
7 Nevada.
 - 8 ○ *GJ Exhibit 14 – Certified DMV Records for Michael J. McDonald*
 - 9 ○ *GJT Vol 2 at 13:19-14:1*
- 10 • Defendant and Co-Conspirator, Jesse Reed Law resides in Henderson, Clark County, Nevada.
 - 11 ○ *GJ Exhibit 18 – Certified DMV Records for Jesse Reed Law*
 - 12 ○ *GJT Vol 2 at 16:3:10*
- 13 • The Nevada Republican Party’s headquarters are located at 2810 W. Charleston Blvd, Suite
14 69, Las Vegas, NV 89102.
 - 15 ○ *GJ Exhibit 19 – E-mail correspondence between Defendants and Co-Conspirators*
16 *Duward Hindle, James DeGraffenreid, Michael J. McDonald, Shawn Meehan, Jesse*
17 *Reed Law and Eileen Rice to Mark Wlaschin and Nevada Secretary of State dated*
18 *November 30, 2020 (pages 49-50)*
- 19 • The Nevada Republican Party’s mailing address is 840 S. Rancho Drive, 4-800, Las Vegas,
20 NV 89106.
 - 21 ○ *GJ Exhibit 29 – E-mail correspondence from Defendant DeGraffenreid to*
22 *private@bernardkeric.com dated December 14, 2020, with attachments, including*
23 *certified and registered mail receipts and photographs of mailing envelopes (page*
24 *000227, page 000243)*

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- 1 • The documents purporting to cast Nevada’s electoral votes for Donald J. Trump and Michael
2 R. Pence were sent to 4 locations by Defendants, including to Honorable Miranda M. Du,
3 Chief Judge, U.S. District Court, District of Nevada, Lloyd D. George Courthouse, 333 Las
4 Vegas Blvd South, Las Vegas, N.V. 89101.
- 5 ○ *GJ Exhibit 20 – Certified Records from U.S. District Court, District of Nevada*
6 *(GJ000052-53)*
 - 7 ○ *GJ Exhibit 21 – USPS Records (Tracking number ending in 8645 and 5797)*
 - 8 ○ *GJ Exhibit 29 - E-mail correspondence from Defendant DeGraffenreid to*
9 *private@bernardkeric.com dated December 14, 2020, with attachments, including*
10 *certified and registered mail receipts and photographs of mailing envelopes*
11 *(GJ000227, GJ000243-244)*
 - 12 ○ *GJT Vol 3 at 30:11-31:5 (Testimony of Warren Heister, United States Postal*
13 *Inspector)*
- 14 • On December 16, 2020, the U.S. District Court, in Las Vegas received the forged electoral
15 votes sent by Defendants.
- 16 ○ *GJ Exhibit 21 - USPS Records (Tracking number ending in 8645 and 5797)*
 - 17 ○ *GJT Vol 3 at 30:11-31:5 (Testimony of Warren Heister, United States Postal*
18 *Inspector)*
- 19 • The documents purporting to cast Nevada’s electoral votes for Donald J. Trump and Michael
20 R. Pence sent to the U.S. District Court, District of Nevada were processed through a USPS
21 Facility located in Las Vegas, Nevada.
- 22 ○ *GJ Exhibit 21 – USPS Records (Tracking number ending in 8645 and 5797)*
- 23 • Defendant DeGraffenreid mailed the completed documents from Minden, Nevada, with a
24 return mailing address of Michael J. McDonald, Nevada Republican Party at 840 S. Rancho
25 Dr. 4-800, Las Vegas Nevada 89106.
- 26 ○ *GJ Exhibit 4 – Certified records from Office of the Federal Registrar*
 - 27 ○ *GJ Exhibit 21 – USPS Records*
- 28

- 1 ○ *GJ Exhibit 29 - E-mail correspondence from Defendant DeGraffenreid to*
2 *private@bernardkeric.com dated December 14, 2020, with attachments, including*
3 *certified and registered mail receipts and photographs of mailing envelopes*
4 *(GJ000227, GJ000243-244)*
- 5 ○ *GJT Vol 1 at 26:4-21 (Testimony of Miriam Vincent, Acting Director of Legal Affairs*
6 *and Policy for the Office of the Federal Registrar)*
- 7 ○ *GJT Vol 3 at 20:16-17, 30:20-31:5 (Testimony of Warren Heister, United States*
8 *Postal Inspector)*
- 9 • The domestic return receipt for the documents purporting to cast Nevada’s electoral votes for
10 Donald J. Trump and Michael R. Pence sent to the Nevada Secretary of State were processed
11 through a USPS Facility located in Las Vegas, Nevada.
- 12 ○ *GJ Exhibit 21 – USPS Records (Tracking number ending in 5872)*
- 13 • Nevada Secretary of State, Barbara Cegavske, was in Las Vegas at the time the forged
14 documents were received by the Nevada Secretary of State.
- 15 ○ *GJT Vol 3 at 89:24-90:1 (Testimony of Mark Wlaschin, Deputy Secretary of State for*
16 *Elections)*
- 17 • Following receipt of the forged documents on December 15, 2020, Mark Wlaschin, at the
18 direction of the Secretary of State, Barbara Cegavske, returned the documents to Michael J.
19 McDonald, Nevada Republican Party at 840 S. Rancho Dr. 4-800, Las Vegas Nevada 89106.
- 20 ○ *GJ Exhibit 24 – Letter from Nevada Secretary of State to Michal J. McDonald dated*
21 *December 15, 2020, returning forged documents to sender*
- 22 ○ *GJ Exhibit 21 – USPS Records*
- 23 ○ *GJT Vol. 3 at 31:12-32:3 (Testimony of Warren Heister, United States Postal*
24 *Inspector).*
- 25 ○ *GJT Vol 3 at 89:24-94:20 (Testimony of Mark Wlaschin, Deputy Secretary of State*
26 *for Elections)*
- 27 • On December 10 and 11, 2020, unindicted Co-Conspirator Kenneth Chesebro forwarded draft
28 documents to Defendants and Co-Conspirators, Michael J. McDonald and Jesse Reed Law,

1 which consisted of a memorandum, draft ballots, certificate announcing result of voting for
2 president and vice president, and a cover letter to be provided with the executed certificates.

- 3 ○ *GJT Vol 2 at 33:14-21, 34:13 – 35:30 (Testimony of Kenneth Chesebro)*
- 4 ○ *GJ Exhibit 27 – E-mail Correspondence between Defendant James DeGraffenreid and*
5 *Kenneth Chesebro dated December 10 and 11, 2020.*

- 6 • Defendant James DeGraffenried circulated the draft documents for editing to Defendants and
7 Co-Conspirators Michael J. McDonald and Jesse Reed Law via e-mail, with the final edits
8 made on December 13, 2020.

- 9 ○ *GJ Exhibit 28 – Email Correspondence between Defendants and Co-Conspirators*
10 *DeGraffenried, McDonald, Law, Hindle, Shawn Meehan and Eileen Rice dated*
11 *December 13 and 14, 2020.*

- 12 • On November 29, 2020, and November 30, 2020, Defendants and Co-Conspirators James
13 DeGraffenried and Duward Hindle, corresponded via e-mail and phone with the Nevada
14 Secretary of State and Deputy Secretary of State for Elections, Mark Wlaschin to amend the
15 Certificate of Ascertainment to reflect the Defendants as the correct GOP electors.

- 16 ○ *GJ Exhibit 19 – E-mail correspondence between Defendants and Co-Conspirators*
17 *Duward Hindle, James DeGraffenreid, Michael J. McDonald, Shawn Meehan, Jesse*
18 *Reed Law and Eileen Rice to Mark Wlaschin and Nevada Secretary of State dated*
19 *November 30, 2020*

- 20 ○ *GJT Vol 3 at 96:18-100:12 (Testimony of Mark Wlaschin, Deputy Secretary of State*
21 *for Elections)*

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II. CONCLUSION

The above-listed facts establish the Clark County Grand Jury had jurisdiction to inquire into the conduct and ultimately return an indictment against the Defendants.

DATED this 29th day of May, 2024.

Submitted by:

AARON D. FORD
Attorney General

By: /s/ Alissa Engler
ALISSA ENGLER
Chief Deputy Attorney General

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 May 29, 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. 9th Street
8 Las Vegas, NV 89101
9 Gkelesis@bckltd.com
10 Attorney for James Degraffenreid

11 Brian Hardy, Esq.
12 10001 Park Run Drive
13 Las Vegas, NV 89145
14 Bhardy@maclaw.com
15 Attorney for Durward Hindle, III

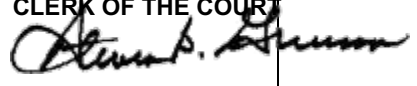
16 Richard Wright, Esq.
17 300 S. Fourth Street, Ste. 701
18 Las Vegas, NV 89101
19 Rick@wmllawlv.com
20 Attorney for Michael James McDonald

21 Monti Jordana Levy, Esq.
22 300 S. Fourth Street, Ste. 701
23 Las Vegas, NV 89101
24 Mlevy@wmllawlv.com
25 Attorney for Eileen Rice

26 Sigal Chattah, Esq.
27 5875 S. Rainbow Blvd., #204
28 Las Vegas, NV 89118
Chattahlaw@gmail.com
Attorney for Shawn Meehan

Margaret A. McLetchie, Esq.
602 S. Tenth St.
Las Vegas, NV 89101
Maggie@nvlitigation.com
Attorney for Jesse Law

By: /s/ R. Holm
An employee of the Office of
the Attorney General



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DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,
Plaintiff,
vs.
JAMES DEGRAFFENREID, II;
DURWARD HINDLE, III; JESSE
LAW; MICHAEL MCDONALD;
SHAWN MEEHAN; and EILEEN
RICE,
Defendants.

CASE 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

DEPT. XVIII

BEFORE THE HONORABLE MARY KAY HOLTHUS,
DISTRICT COURT JUDGE
FRIDAY, JUNE 21, 2024

**RECORDER'S TRANSCRIPT OF PROCEEDINGS:
ALL PENDING MOTIONS**

APPEARANCES ON PAGE TWO:

RECORDED BY: YVETTE SISON, COURT RECORDER

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APPEARANCES:

For the State:	AARON D. FORD, ESQ. Attorney General
	ALISSA C. ENGLER, ESQ. Chief Deputy Attorney General
	MATTHEW J. RASHBROOK, ESQ. Special Counsel
For Defendant Degraffenreid:	GEORGE P. KELESIS, ESQ.
For Defendant Hindle:	BRIAN R. HARDY, ESQ.
For Defendant Law:	MARGARET A. MCLETCHIE, ESQ.
For Defendant McDonald:	RICHARD ALLEN WRIGHT, ESQ.
For Defendant Meehan:	SIGAL CHATTAH, ESQ.
For Defendant Rice:	MONTI JORDANA LEVY, ESQ.

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Las Vegas, Nevada; Friday, June 21, 2024

[Proceeding commenced at 10:32 a.m.]

THE COURT CLERK: State of Nevada versus James Degraffenreid, C-23-379122-1. State of Nevada versus Durward Hindle, C379122-2. State of Nevada versus Jesse Law, C379122-3. State of Nevada versus Michael McDonald, C379122-4. State of Nevada versus Shawn Meehan, C379122-5. State of Nevada versus Eileen Rice, C379122-6.

THE COURT: All right. It makes sense to start with the motion to dismiss, hey?

So, let's start. I've read everything, I got your supplement. I -- how do -- do you want me to kind of give you my sense, first?

MS. ENGLER: That's fine.

MS. MCLEATCHIE: I'm sorry, we're having a hard time hearing you over here, Your Honor.

THE COURT: That's a you. What do you got? Can you hear me now?

[Colloquy between the Court and the Court Recorder]

MS. MCLEATCHIE: Does the Court want appearances for the record?

THE COURT: Can you hear me now?

MS. MCLEATCHIE: Yeah.

MR. FORD: Yes.

THE COURT: You all right?

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MR. FORD: Yes.

[Colloquy between counsel]

THE COURT: What I said was my -- obviously, we'll start with the motion to dismiss because --

MR. WRIGHT: Yes, Your Honor.

THE COURT: -- that makes the most sense.

MR. WRIGHT: Could I argue from here?

THE COURT: You may argue from anywhere you like.

MR. WRIGHT: Thank you.

MS. MCLETCHE: Your Honor, would you like us to make our appearances for the record?

THE COURT: Sure.

MS. MCLETCHE: Maggie Mcletchie for Defendant Jesse Law.

MS. LEVY: Good morning, Your Honor, Monti Levy for Eileen Rice who is present on Zoom.

MS. CHATTAH: Sigal Chattah for Defendant Shawn Meehan who's also present on Zoom.

MR. HARDY: Brian Hardy for Jim Hindle who's present on Zoom.

MR. KELESIS: George Kelesis, Your Honor, for Mr. Degraffenreid. He's on Zoom, as well.

MS. MCLETCHE: And I didn't say so, but Mr. Law is also on Zoom.

MR. WRIGHT: And Richard Wright for Mr. McDonald who's

1 present by Zoom.

2 THE COURT: Okay.

3 MR. FORD: Aaron Ford on behalf of the State of Nevada.

4 MR. RASHBROOK: Matthew Rashbrook for the State.

5 MS. ENGLER: Alissa Engler for the State.

6 MR. WRIGHT: Your Honor, on the motion to dismiss based
7 upon lack of venue in this court, as the Court knows, meaning
8 jurisdiction for the Grand Jury to have returned this Indictment, I'd like to
9 start -- before getting to the Clark County contacts in the case, I'd like to
10 talk about the *Guzman* cases, which in our opinion controls the decision
11 in this case. Because I think the Court will see that the *Guzman* cases
12 had powerful, countervailing interests that were involved regarding the
13 location of the trial, which does not exist in this case.

14 In the first *Guzman* case, just factually what occurred, as the
15 Court will recall, is you have a -- during a two-week period in 2019, you
16 had a crime spree between Carson City, Washoe County, Douglas
17 County. You had a burglary that took place by Mr. Guzman allegedly.
18 And in that burglary in Washoe County, he stole a gun and other
19 property.

20 There -- shortly thereafter, in Douglas County, he used that
21 gun which he had stolen in Washoe County to commit alleged, all of this
22 is alleged, but to commit murders in Douglas County. Two murders and
23 two burglaries. He then returned to Washoe County to the same home
24 he had burglarized and committed two murders and further burglary.

25 The district attorneys of Douglas County and Washoe County

1 got together and presented the case in Washoe County. They made no
2 secret of their intentions. They joined together and brought an
3 Indictment in Washoe County charging the offenses in Douglas County
4 and Washoe County. And they contended that the four crimes, two
5 murders, two burglaries, that without question happened in Douglas
6 County, could be tried by joinder in Washoe County. Guzman's
7 attorneys moved to dismiss before Douglas County counts saying there
8 is no venue, no jurisdiction for the Grand Jury in Washoe County to have
9 indicted him.

10 The district attorney responded that grand juries have
11 statewide territorial jurisdiction so that any grand jury in any county has
12 the authority to indict for any offense committed within the State of
13 Nevada. District Court accepted that argument, it was appealed to the
14 Supreme Court, and the Supreme Court in *Guzman I*, ruled on what the
15 territorial limits of the Grand Jury within the statute means. And the
16 Supreme Court said, it's not statewide jurisdiction, even though a District
17 Court judge can sit anywhere in the state, but it is limited to the territory
18 of the District Court that have handled the Grand Jury. That meaning
19 we have 17 counties, 12 judicial districts, so in some places it would be
20 a county, some places a couple of counties.

21 So, they then -- the Supreme Court reversed, remanded to the
22 District Court, and said, determine if there are sufficient contacts in
23 Washoe County for the Douglas County offenses. The -- once again,
24 *Guzman* argues that there is insufficient contacts in Washoe County for
25 the Douglas County offenses. The district attorney argues forcefully

1 about judicial economy, the need for one trial, the need for protecting the
2 victims and the victim families from not needlessly going through
3 duplicate trials. The district attorney's saying, we'll have to try this case
4 twice if it has to be heard in Douglas County and Washoe County. They
5 literally scoured the statute books looking for law to allow them to
6 combine the case into one, including using the joinder statutes.

7 The District Court accepted their arguments, and the District
8 Court said, the stealing of the gun in Washoe County could have been a
9 preparatory act for then going and committing the murders in Douglas
10 County. And the District Court said that the Mr. Guzman could have in --
11 formed the intent to commit the Douglas County crimes when he stole
12 the gun in Washoe County. The Courts found that that was sufficient
13 and there was venue in Washoe County.

14 It went to the Supreme Court again for *Guzman II*. This time,
15 Justice Stiglich wrote the opinion. And Justice Stiglich pointed out that
16 ordinarily, almost universally, crimes are tried and venue lies where the
17 offense is committed, where the community has an interest in the
18 prosecution of it, and the Defendant has an interest in having a jury of
19 his own peers and vicinage.

20 The judge looked at -- judge -- The Supreme Court -- and
21 when I say the justice, the opinion states that in looking at what are the
22 sufficient contacts, they go to the statute, which as the Court's aware of,
23 when a public offense is committed in part in one county and in part in
24 another, or the acts or effects thereof constituting or requisite to the
25 consummation of the offense occur in two or more counties, the venue is

1 in neither county. So, the question was, was the formation of the intent
2 to commit the Douglas County offenses and the preparatory act of
3 stealing the weapon sufficient effects or acts preparatory to the -- to the
4 Douglas County offenses?

5 The Supreme Court held that that was not sufficient. The
6 Supreme Court held that a mere -- a preparatory act, even if proven by a
7 preponderance of the evidence, which is the standard which has to be
8 shown, is insufficient standing alone. Formation of intent to commit the
9 offense in the -- a given county, standing alone, is insufficient.

10 The Supreme Court said you must have the intent shown by
11 competent evidence presented to the Grand Jury plus the preparatory
12 act done with the intent and in furtherance of carrying out the offense.
13 The Supreme Court, laying out that standard, then looked at the
14 evidence and said, it is purely speculative. Even the District Court said,
15 it could have been This, it could have been That.

16 So, the Supreme Court, once again, reversed. And when
17 Judge Stiglich ended her opinion and said she's not -- this Court is not
18 going to hand-wave for the sake of convenience this important principle
19 of trying the offense where it occurred. And of course, when she was
20 talking about not hand-waving for convenience, she was talking about,
21 yeah, following the law and these principles sometimes means we have
22 to have duplicate trials. And the Supreme Court weighed those interests
23 and came out on the side of the trial should be in Douglas County and
24 Washoe County.

25 Justice Pickering in her dissent opted for and articulated very

1 well all of the competing interests involved in having a single trial. Avoid
2 the potential for inconsistent verdicts; consider the victims, their families;
3 judicial economy. Weighing all of those, she would have come down
4 saying the contact in Washoe County was sufficient. But of course, she
5 only reached that decision because she was weighing more heavily
6 those other competing interests. Those competing interests do not exist
7 in this case.

8 This isn't a case of multiple prosecutions or multiple offenses.
9 If this case was before the Supreme Court, and the facts were there
10 were no offenses committed in Washoe County, but Mr. Guzman
11 purchased the gun in Washoe County, and then a couple weeks later
12 committed offenses in Douglas County, would that have been sufficient
13 contacts? Justice Pickering wouldn't even have said it. She stated, in
14 opening her dissenting opinion, almost all Courts universally default to
15 trial where the offense was committed.

16 With that background on *Guzman*, we then look here at what
17 happened. The Court asked the State to -- to put into one brief every
18 single potential contact, which would make the trial, the venue,
19 appropriate here in Clark County. I'm going to go through those one by
20 one, Your Honor.

21 Michael McDonald lives in Las Vegas.

22 Correct.

23 The Defendant happens to live here.

24 Jesse Reed Law lives in Henderson, Clark County.

25 Correct; he lives here.

1 You have four other Defendants who don't live here and who
2 live in Gardnerville, Minden, Zephyr Cove, and Virginia City, all in the
3 vicinity of where this offense of getting together and signing this
4 document in Carson City took place.

5 The Nevada Republic at Number 3, Nevada Republican
6 Parties' Headquarters is in Las Vegas.

7 Correct.

8 Has nothing to do with the offense that occurred.

9 Their mailing address is in Las Vegas.

10 True. That's where the office is.

11 The documents purporting to cast Nevada's electoral votes
12 were mailed to four locations by the Defendants. One of the locations
13 was to Honorable Miranda M. Du, Chief Judge, U.S. District Court, Las
14 Vegas Courthouse. The problem with that is, we now know, which the
15 Grand Jury did not because it was not presented, that Miranda Du's,
16 chief judge of the district, office is in Reno, Nevada. And we're really not
17 talking about the individuals where these documents were to go to
18 theoretically be recorded and filed. We're talking about the office.

19 Where these elector documents are supposed to go is
20 controlled by Title 3 of the United States Code. It's to go to the
21 president of the Senate. It doesn't say who; it says office. It's to go to
22 the archives, that office. It's to go to the Secretary of State of the given
23 state. Not a particular person, but that office. And it's to go to the chief
24 judge of the District Court of the state, that being here, Nevada, and that
25 being Judge Du in Reno, and that is the Office of the Chief Judge.

1 The document was mailed erroneously to the Las Vegas
2 address. The -- Attorney General's Office told the Grand Jury that it was
3 received there, and that is what creates the jurisdiction or venue. That's
4 -- one of those letters was actually received at the Chief Judge's office
5 for filing and recording, one of the elements of the offenses. But we now
6 know that it was not, that it was mailed to Las Vegas, that it was
7 received at the courthouse, that it was then forwarded unopened to the
8 Chief Judge's office in Reno, Nevada. We know the Chief Judge in
9 Reno, her staff received it.

10 It -- outer envelope was opened. Inner envelope containing
11 the documents supposedly to be filed and recorded by the Court, that
12 was not opened. They were not recorded, they were not filed, they were
13 sent to the vault on Virginia Street in Reno, Nevada. The sole contact in
14 that chain was it temporarily made a pit stop in Las Vegas probably
15 since the documents were mailed in Minden, Nevada on December 14th,
16 the day of the ceremony. I don't know if the documents come to Las
17 Vegas by truck or airplane. But undoubtedly, they passed many
18 counties. That isn't sufficient contacts.

19 Interestingly, the Attorney General's Office in our other writ,
20 talking about failure to present exculpatory evidence, they had this
21 exculpatory evidence. In fact, on the first proposed Indictment, which is
22 Grand Jury Exhibit 1 or 2 in which they were going to prosecute Mr.
23 Chesebro, the list of witnesses has Debra Kempf on it. Debra Kempf
24 was going to be a witness at the Grand Jury.

25 The only problem for the Attorney General's Office was if

1 Debra Kempf had testified, she would have put the document being
2 received in Reno, Nevada, not Clark County, and she would have said,
3 that's where the documents go to the Chief Judge. The documents sent
4 by the Secretary of State of the State of Nevada, signed by the
5 Governor with the Democratic electors went to Reno, to the Chief
6 Judge's office, and then to the vault.

7 Going in order -- well, I've covered this. It says on December
8 16th, the District Court received the electoral votes. That's true. That's
9 when the package made its pit stop and then was forwarded either by
10 interoffice mail or an employee carried them to Reno from the Clerk's
11 Office, they didn't know which.

12 Those documents -- this is another contact. Those
13 documents were processed through the United States postal service
14 facility in Las Vegas, Nevada. True; they were in the mail.

15 Next, we have Defendant Degraffenreid mailed the completed
16 documents from Minden, Nevada with a return address of Michael
17 McDonald in Las Vegas, Nevada. True; they put the return address on
18 all four documents for Michael McDonald at his Republican
19 Headquarters address here in Las Vegas.

20 The domestic return receipt for the documents sent to the
21 Nevada Secretary of State were processed in the Las Vegas Post
22 Office. True; when these documents were sent return receipt requested
23 by Mr. Degraffenreid in Minden, Douglas County, they were sent return
24 receipt requested. It was processed and through the Las Vegas facility,
25 those documents for the Secretary of State went to the Office of the

1 Secretary of State in Carson City. The return receipt went through the
2 postal service in Las Vegas to go to Mr. McDonald.

3 Nevada's Secretary of State Barbara Cegavske was in Las
4 Vegas at the time the documents were received in Carson City. Now,
5 that's a good one. I mean, if she had been in Elko, we'd have
6 jurisdiction in Elko. If she'd have been in Hawaii, who knows with our
7 extra territorial statutes. It has no -- is meaningless to our evaluation.

8 Following the receipt of the documents in Carson City,
9 Barbara Cegavske returned the documents to Michael McDonald. She
10 caused the return of them. Correct; they opened the envelope at the
11 Secretary of State's office, looked at this gob of documents, which they
12 said didn't comply with anything statutorily, didn't make any copies,
13 didn't keep them, didn't file them, didn't record them. Put them back in
14 an envelope, sent them back to Mr. McDonald in Las Vegas.

15 On December 10th and 11th, co-conspirator Chesebro
16 forwarded draft documents to Michael McDonald, Jesse Reed Law.
17 True; there's an email chain. The documents were received by Mr.
18 Degraffenreid, Mr. Law, and Mr. McDonald. We don't know -- on the
19 emails, there is no evidence before the Grand Jury as to whether those
20 emails were by Mr. Law or Mr. McDonald, were read, opened. We do
21 know that neither Mr. Law nor Mr. McDonald ever responded to any of
22 these emails that are before the Grand Jury.

23 Only Mr. Degraffenreid, Mr. Hindle, Mr. Meehan answered
24 these emails. There was no editing, drafting, revising, anything done by
25 Mr. Law or Mr. McDonald in Clark County. In fact, we don't even know

1 where they were. They live in Clark County. Were they in Las Vegas
2 and Henderson at that time? We don't know from the evidence before
3 the Grand Jury.

4 We do know that when we filed this motion to dismiss and the
5 Attorney General's Office looked at it and probably thought, uh-oh, we
6 need to show some contacts, that they submitted some exhibits with
7 their opposition, which were not presented to the Grand Jury.

8 In *Guzman I*, when the case was remanded, it was remanded
9 to make the determination based upon the evidence before the Grand
10 Jury whether there was evidence, not speculation, by the
11 preponderance standard. The phone records of Mr. Law and Mr.
12 McDonald cannot be considered to be stricken because they were not
13 presented to the Grand Jury. Attorney General's Office is trying to sure
14 up the flimsy contacts that exist with -- in Clark County, just like they
15 opted not to disclose where the Judge Du package actually ended up
16 when the mailing was complete.

17 Defendant Degraffenreid circulated the draft documents for
18 editing to Defendants McDonald and Jesse Reed Law via email. Same
19 thing, no evidence as to where they were, and if there is evidence, that
20 they are cc'd on the emails, but did not do anything in response
21 according to the email chain.

22 On December 29th and 30th, Defendants and co-conspirators
23 Degraffenreid and Hindle corresponded by email with the Nevada
24 Secretary of State to amend the certificate of ascertainment to reflect the
25 Defendants as the true, correct GOP electors. That's true. I don't see

1 what that has to do at all with Clark County. He -- that individual, the
2 Secretary of State is in Carson City. Hindle and Degraffenreid are not in
3 Clark County.

4 And the certificate of ascertainment accidentally listed the
5 republican alternate elector [indiscernible] as opposed to the republican
6 electors. So, they called and said, could you please correct that. The
7 true electors are the individuals who are Defendants here and not the
8 alternates. And that amendment was made by the Secretary of State.

9 That represents the totality of the contacts in Clark County.
10 There is nothing other than the Attorney General's response that they
11 have -- he has the unfettered discretion, unfettered meaning not bound
12 by law, not bound by rules, not bound by anything. Why is it in Clark
13 County? 'Cause I say so.

14 I know if I had the authority to be sitting where you are sitting
15 and had the authority to ask questions, I would be asking, why is it in
16 Clark County? I think everyone in this courtroom knows why it's in Clark
17 County, as opposed to Douglas County or Carson City. As Bob Dylan
18 famously said, you don't need a weatherman to know which way the
19 wind blows. But I say, I'd like to know why. The district attorneys in
20 Douglas County and Washoe County had no qualms about arguing the
21 contact and why it was necessary to bring four individuals from Northern
22 Nevada here to be tried for the offense that took place in Carson City.

23 As a final portion of our argument, I recognize that the United
24 States Supreme Court has never ruled whether a Sixth Amendment
25 Vicinage Clause applies to the states by incorporation through the

1 Fourteenth Amendment. I only raise it as a protective measure because
2 it's an open question. Because if there was ever a case that cries out
3 for relief for the very reasons the Sixth Amendment Vicinage Clause
4 exists, it's this case.

5 When you recall and go back and read the cases about why
6 venue and vicinage are in two places in the United States Constitution, it
7 was placed there because before the Revolutionary War when the
8 colonists were rebelling, England passed laws that actually allowed
9 colonists accused of offenses against the crown to be hauled to England
10 and tried in England. So, in the Declaration of Independence, it
11 discusses it. It says in there, take us across the seas for trumped up
12 charges.

13 Here, we have these four individuals in Northern Nevada
14 being called to come to Clark County for acts that totally in my judgment
15 took place in Carson City. Therefore, we ask the Court to dismiss based
16 upon lack of jurisdiction in the Grand Jury because of lack of venue
17 before this Court.

18 THE COURT: Thank you.

19 I'm going to give you a head's up. I think based on my
20 supplemental brief request, you kind of know what I'm thinking, right?

21 MR. RASHBROOK: I don't count in my mind reading that
22 high, but I would make a guess, yes, Your Honor.

23 And I will address --

24 THE COURT: It's a struggle.

25 MR. RASHBROOK: I understand.

1 THE COURT: And I'm not sure why I'm struggling so hard
2 and why we are all here struggling so hard when it could have been
3 much more easily handled somewhere else. But go ahead.

4 MR. RASHBROOK: Well, I -- respectfully, Your Honor, I
5 disagree. And simply, that's because there is no one county which
6 contains all of these crimes. So, regardless of where the State filed, we
7 could face the same motion, whether we filed in Douglas or Washoe or
8 Carson City --

9 THE COURT: I 100 percent disagree.

10 MR. RASHBROOK: Well, Your Honor --

11 THE COURT: If you filed somewhere else, the documents
12 were executed in Carson, and they were mailed in Douglas. Both of
13 those, I don't think any Judge on the bench would have an issue with
14 saying that's sufficient.

15 MR. RASHBROOK: But if I file in Carson, the whole crime
16 does not occur in Carson. And so, regardless of which county I file in, I
17 could face the same motion because no one county contains the entirety
18 of this crime.

19 THE COURT: Not as effectively as you can here because you
20 really don't have any acts here in Nevada, which is why I asked --

21 MR. RASHBROOK: But the --

22 THE COURT: -- someone living in a county, someone
23 emailing, I mean, maybe at best, you're talking preparation, plan, intent,
24 all of which is insufficient. You have -- there's nothing in the
25 supplemental brief that gives me an act in Clark County that would give

1 me jurisdiction over this case. The basic language, I think I've said this
2 before, you know, I've been doing criminal law 35 years, and I've never
3 seen anything like this. The allegation, did willfully, unlawfully, and
4 feloniously here in Clark County, Nevada, blah, blah, blah. Here in Clark
5 County, Nevada, they didn't blah, blah anything. I -- anyway, go ahead.

6 MR. RASHBROOK: I take Your Honor's point. But what I
7 would point out is, under the statute, no act is required to happen in
8 Clark County. Effects requisite to the consummation of a crime standing
9 alone establish venue.

10 THE COURT: What effect?

11 MR. RASHBROOK: The delivery of these documents at the
12 federal courthouse on Las Vegas Boulevard.

13 THE COURT: Accidentally, unopened, and sent up north?

14 MR. RASHBROOK: They can suggest that it's accidental, but
15 undeniably, these documents are delivered to the victim in Clark County.
16 And there's cases we mentioned in the briefing --

17 THE COURT: To the victim?

18 MR. RASHBROOK: Whether I use the word victim or whether
19 I use --

20 THE COURT: I don't know. I --

21 MR. RASHBROOK: -- officer or --

22 THE COURT: I didn't know if you misspoke or if you intended
23 the word victim. And I think it's --

24 MR. RASHBROOK: I think philosophically we can discuss, I
25 mean, society is the victim of the crime, voters who would have been

1 disenfranchised by these acts could be said to be the victim of the crime.
2 I'm using the term admittedly a little bit loosely and if --

3 THE COURT: Okay. I just was confirming that you
4 intentionally used the word.

5 MR. RASHBROOK: Yes.

6 THE COURT: Okay. That's all.

7 MR. RASHBROOK: Yes. Although, perhaps a little sloppily.

8 THE COURT: All good.

9 MR. RASHBROOK: What I would say though is, the cases
10 that we referenced in the briefing make clear that the crime is not
11 consummated until the document is delivered at the government office
12 that's the intended recipient, right?

13 In exactly the same way as no murder has occurred simply
14 when the killer pulls the trigger. The murder hasn't happened until the
15 death is occasioned, until the bullet strikes the victim and he falls dead.
16 And so -- and that's why I referenced that comparison in the briefing
17 because if I stand in Nye County and shoot a gun and I strike a man in
18 Clark County, and he falls dead in Clark County, venue lies in Clark
19 County, notwithstanding the fact that I was never physically present in
20 Clark County.

21 THE COURT: I'm fine with that.

22 MR. RASHBROOK: So, in this case --

23 THE COURT: I'm fine with kidnapping from here to there and
24 something bad happening there. You don't have any of that here
25 though.

1 MR. RASHBROOK: I would disagree, Your Honor. I -- the
2 documents are delivered in Las Vegas. That is where they come into
3 possession of the District Court. And the fact that they're mailed
4 internally is of no moment. If Judge Du decides to take a working
5 holiday in Hawaii and takes the documents with her there, and this is a
6 hypothetical that Mr. Wright mentioned, none of that matters. What
7 matters is where the documents leave the Defendants and where they
8 are delivered to Judge Du. And they're delivered to Judge Du at the
9 courthouse in Las Vegas.

10 A more common or a more typically seen case of offering a
11 false instrument for filing would be recording at a county clerk's office or
12 if I go and apply for a driver's license at the DMV and I give a false
13 statement, right? I tell them I don't need glasses when in fact I do. I
14 haven't offered that document at the DMV's main office in Carson City.
15 If I go to the DMV location on Sahara, then I've offered that document
16 for filing at the location on Sahara.

17 The idea that Judge Du spends more time in Reno than she
18 does in Las Vegas is really entirely a red herring. These documents are
19 delivered by the Defendants in Las Vegas. And when -- that is the effect
20 --

21 THE COURT: Do you --

22 MR. RASHBROOK: -- requisite for the consummation of the
23 crime.

24 THE COURT: -- do you disagree that they were erroneously
25 delivered here, that this wasn't the address that was intended and that

1 as soon as it was discovered it was sent to --

2 MR. RASHBROOK: I --

3 THE COURT: Judge Du's address is up north; you
4 acknowledge that?

5 MR. RASHBROOK: Judge Du is --

6 THE COURT: And that's if --

7 MR. RASHBROOK: -- to my --

8 THE COURT: -- you were sending something to Judge Du,
9 you would send it up north; is that correct?

10 MR. RASHBROOK: To my understanding, Judge Du has
11 chambers in both courthouses. And they say erroneous, but I think
12 that's a convenient explanation after the fact. Undeniably, they marked
13 the address in Las Vegas on the envelope, and that's where it's
14 delivered.

15 THE COURT: It's still in comparison to everything else, even
16 giving you the -- it's so skinny.

17 MR. RASHBROOK: But the comparison is not appropriate for
18 consideration here. The comparison is that creates a separation of
19 powers problem. It is up to the prosecutor, the executive, to make his
20 choice about where he files. And the judicial function at this point is to
21 make a determination of whether we've made a lawful choice. And
22 under the statute, the statute lays out the requirements, acts or effects
23 requisite to the consummation. And we have effects here. And that
24 really is the end of the inquiry.

25 The documents arrive in Las Vegas, venue is proper in the

1 Eighth Judicial District, and the Clark County Grand Jury is entitled to
2 inquire on that basis. And even if that were the only connection to Clark
3 County, that would be enough, venue would be appropriate here. It is
4 up to the prosecutor to make a determination where he files his
5 complaint or which Grand Jury he presents to. And then the judicial
6 function is to determine whether he made a lawful choice among those
7 available.

8 There is no -- there's -- it really is -- it is -- we say in the civil
9 sphere that the Plaintiff is the master of his complaint. And the
10 comparison here is, it is not contemplated in the statute, it's not
11 contemplated in the cases to make a determination about which of these
12 is the best venue, which one has the most jurisdiction.

13 The *Guzman* case really is distinguishable from the facts we
14 have here. Because in *Guzman*, he commits these crimes and there is -
15 -

16 THE COURT: The *Guzmans* [sic] case would be way better
17 for you, but you don't have *Guzman's* case. You have literally, in my
18 opinion, crimes that occurred in another jurisdiction that individuals may
19 have some ties to Clark County and so it's charged here. I can't see
20 jurisdiction here. I can't see it.

21 Like I said, I asked for the supplement, and I appreciate every
22 -- but it is what it is. If it's not here, it's not here. And I don't see it. It -- I
23 would have filed it up north. And I don't think that you would get any
24 issues up there.

25 But I don't see any way that I have any jurisdiction over this

1 case based upon the facts that were presented to the Grand Jury. If
2 there's something else out there I'm missing, let me know. But like I
3 said, that was specifically why I wanted -- because my initial reaction
4 was, Clark County, and then I read -- and I didn't see it, so maybe I'm
5 missing something. That's -- it was a big transcript, big Grand Jury
6 presentation, maybe I missed something. So, give me something.

7 MR. RASHBROOK: So, what I would suggest is then --

8 THE COURT: But I don't --

9 MR. RASHBROOK: -- I think the Defendants would prefer to
10 only take the evidence at face value. And what we know is that the
11 grand jurors are entitled and it's correct for them to draw inferences from
12 the evidence that's presented.

13 Your Honor's very well aware that conspiracies are not
14 generally proven by direct evidence, right? We don't --

15 THE COURT: I get it. But then what's the distinguishment
16 between preparation and intent? If you want to take a conspiracy and
17 tie everything in, I suppose if one of these individuals was making phone
18 calls from New York and sending emails from New York, would New
19 York then have jurisdiction? Because now we're in a whole new world.
20 We've got emails and things, Zoom, and nobody's ever anywhere.

21 But when I just look at the facts of the -- the alleged facts of
22 the crime that occurred, minus all of that other stuff that to me opens up
23 multiple cans of worms, it's so appropriately up north and so not here.

24 MR. RASHBROOK: Your Honor, when I look at the events
25 that happened up north, I don't see events that happened

1 spontaneously. When these Defendants arrive in Carson City, it's pretty
2 clear --

3 THE COURT: Plan and preparation. Assuming it is. I'm not
4 saying that, but I think at best, that's what you have.

5 MR. RASHBROOK: Right. And under *Guzman*, that's
6 enough. Preparatory acts coupled with intent is enough under *Guzman*.
7 Standing alone, preparatory acts and intent is enough. So, whether we
8 look at the acts or --

9 THE COURT: I'm not sure what acts there are, but okay.

10 MR. RASHBROOK: Well, and so this is what I would suggest
11 to the Court is, when we look at the event that happened in Carson City,
12 I think it's reasonable to infer, and I think the grand jurors correctly did
13 infer, that that was not an event that happened spontaneously.

14 The Defendants arrived there at a place where none of them
15 lives at an appointed date and time. They have together with them the
16 documents that they execute, there's a script prepared, everybody's
17 assigned a role already. Furniture, they bring furniture with them to set
18 up tables and chairs, and there's decorations. They've invited an
19 audience. Media have traveled from out of state to attend this event.
20 This is clearly something where planning and preparation went into it. If
21 I show the jury --

22 THE COURT: A hundred percent. But it just shows you the
23 magnitude of the acts and everything that was done there. Up there.

24 MR. RASHBROOK: But when these individuals, some of
25 them, live and maintain offices in Clark County and end up in Carson

1 City with all these preparations made, it's reasonable for the jurors to
2 infer that preparatory acts and intent and planning as we're discussing it
3 -- in the criminal context, when we talk about a group of people planning
4 to do a crime, what we're talking about is conspiracy. And they're
5 conspiring.

6 THE COURT: Mm-hmm. Oh, I know. I'm very familiar with
7 conspiracy.

8 MR. RASHBROOK: I know that. I know you are. And so, it's
9 reasonable for the jurors to infer, I suspect they did, and correctly infer
10 that preparatory acts and intent were formed, did happen in Clark
11 County.

12 THE COURT: Suspect that they inferred.

13 MR. RASHBROOK: Well, I -- of course.

14 THE COURT: It's a bit of a stretch for me.

15 MR. RASHBROOK: I can't place myself in their minds. But --

16 THE COURT: Okay. Anything further?

17 MR. RASHBROOK: A moment.

18 I just would clarify one point, Your Honor.

19 THE COURT: Sure.

20 MR. RASHBROOK: We -- Mr. Wright mentioned, and it was
21 something that we pointed out in the briefing that Secretary Cegavske
22 was in Las Vegas at the time these documents were received. And the
23 point -- we were trying to follow the Court's instructions clearly that you
24 wanted citations only and not argument --

25 THE COURT: Correct.

1 MR. RASHBROOK: -- and every citation that might be
2 relevant, and we tried to that job, essentially.

3 THE COURT: Oh, and I appreciate it. I think you did it.

4 MR. RASHBROOK: So, the reason that we highlight
5 Cegavske's physical location in Las Vegas at the time is because I think
6 it highlights why this argument about Judge Du's chambers being in
7 Reno really doesn't work. Because whether the document is -- whether
8 the Secretary is physically located in one place or another, or whether
9 the Chief Judge is located in one place or another, the offering happens
10 where the document leaves the custody of the Defendants and enters
11 the custody of the government.

12 But again, Your Honor --

13 THE COURT: And effectively --

14 MR. RASHBROOK: -- it's not --

15 THE COURT: -- leaves their custody when it goes into the
16 mailbox. So, quite frankly, at that point --

17 MR. RASHBROOK: And I would --

18 THE COURT: -- in my opinion, it's completed.

19 MR. RASHBROOK: I would suggest at that point they've
20 engaged the postal worker as an agent, and their act continues into
21 Clark County. But even if Your Honor doesn't really buy that, the effect,
22 which is requisite to the consummation, that's the language from the
23 statute, the effect requisite for the consummation of the crime doesn't --
24 it happens in Las Vegas.

25 And so, venue is appropriate in the Eighth Judicial District

1 because the Clark County Grand Jury has jurisdiction to inquire.

2 THE COURT: Thank you.

3 MR. RASHBROOK: Thank you.

4 THE COURT: Anything further?

5 MR. WRIGHT: I'd just point out, as the Court's aware, that the
6 evidence was stronger in *Guzman*. There was no question where the
7 gun came from, and there was no question. You could speculate maybe
8 This, maybe That. Call it an inference. Whatever you want to call it, the
9 Supreme Court said, it has to be based upon nonspeculative evidence
10 presented to the Grand Jury that shows by a preponderance of the
11 evidence. And that does not exist here. There's speculation about it
12 and nothing else.

13 And we still haven't heard -- I mean, we still hear that it's
14 unfettered discretion. The last time we heard that was before *Batson*
15 *versus Kentucky* when they had unfettered discretion.

16 THE COURT: I don't think that they're saying unfettered. I
17 think that they're saying that they had jurisdiction down here and they
18 had contacts here, and so they could --

19 MR. WRIGHT: All right. And then if --

20 THE COURT: Unfettered would be it doesn't matter where I
21 have contacts, I just file wherever I want to file, and I don't think
22 anybody's saying that.

23 MR. WRIGHT: What does unfettered discretion mean?

24 THE COURT: You do what you want.

25 MR. WRIGHT: Not bound by rule --

1 THE COURT: I know, but they're not saying that. They
2 understand they're bound by the law.

3 MR. WRIGHT: They're saying if there --

4 THE COURT: They're just saying they have a different view
5 of the facts and the law than you do.

6 MR. WRIGHT: Okay. Thank you, Your Honor.

7 THE COURT: All right. I mean, I don't think it's a surprise. I
8 just don't think you get there. I don't think there's any jurisdiction. I
9 don't think there's sufficient contacts. I think at most you may have
10 preparation and intent, arguably, but I don't even think that there's
11 evidence of that. I think everything took place up north, and either of
12 those two jurisdictions would have been the appropriate ones. And I
13 don't feel that we are potentially appropriate. I just don't think I have
14 jurisdiction over the case.

15 I'm going to grant the motion to dismiss as set forth in
16 Defendant's papers, which I guess moots out everything else.

17 THE COURT CLERK: Trial is vacated.

18 THE COURT: Trial will be vacated. Do you want to hold it in
19 case you appeal something? What would you like with the trial?

20 MR. FORD: Oh, yes, Your Honor.

21 MS. ENGLER: Yes, Your Honor.

22 MR. FORD: We're appealing immediately.

23 MS. ENGLER: Yeah, we will appeal. So, if you just --

24 THE COURT: Do you want me to leave a finger in the trial
25 date? I don't know if that's even a thing, but -- or should we just vacate

1 it and reset it if necessary?

2 MR. FORD: Please hold the trial date. Please hold the trial
3 date.

4 MS. ENGLER: Is the Court --

5 THE COURT: I don't even know if I can unless you all agree
6 to it. If you all agreed to it, I could. But I don't think I can because I --

7 MS. MCLETCHE: Your Honor, I think if --

8 THE COURT: I dismiss a case, I don't have the case.

9 MS. MCLETCHE: -- no jurisdiction means no date.

10 THE COURT: No -- true that. I just was offering as -- if you
11 all wanted to agree to it, then I could do it. Because if you all agree to
12 stuff, I can do whatever. But if you don't want to agree, then I can't.

13 MS. ENGLER: I don't know that -- I don't know once the
14 Court divests itself of jurisdiction that they can hold anything.

15 THE COURT: Correct.

16 MS. ENGLER: Is the Court going to be issuing written
17 Findings of Facts and Conclusions of Law?

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THE COURT: I assume defense will prepare it and have you guys sign off on it. Okay?

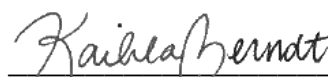
MS. ENGLER: Thank you.

THE COURT: Thank you.

[Proceeding concluded at 11:23 a.m.]

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Kaihla Berndt
Court Recorder/Transcriber

1 **ORDR**

2 RICHARD A. WRIGHT, ESQ. Nevada Bar No. 886
3 **WRIGHT MARSH, LEVY**
4 300 S. Fourth St., Ste 701
5 Las Vegas, NV 89101
6 Telephone: (702) 382-4004; Fax: (702) 382-800
7 Email: Rick@wmlawlv.com
8 *Counsel for Defendant James McDonald*

9 MONTI JORDANA LEVY, ESQ. Nevada Bar No. 8158
10 **WRIGHT MARSH, LEVY**
11 300 S. Fourth St., Ste 701
12 Las Vegas, NV 89101
13 Telephone: (702) 382-4004; Fax: (702) 382- 4800
14 Mlevy@wmlawlv.com
15 *Counsel for Defendant Eileen Rice*

16 MARGARET A. MCLETCHIE, Nevada Bar No. 10931
17 **MCLETCHIE LAW**
18 602 South Tenth St.
19 Las Vegas, Nevada 89101
20 Telephone: (702) 728-5300; Fax: (702) 425-8220
21 Email: maggie@nvlitigation.com
22 *Counsel for Defendant Jesse Law*

**DISTRICT COURT
CLARK COUNTY**

23 STATE OF NEVADA,
24
25 Plaintiff,
26 vs.
27 JAMES WALTER DEGRAFFENREID III,
28 DURWARD JAMES HINDLE III, JESSE
REED LAW, MICHAEL JAMES
MCDONALD, SHAWN MICHAEL
MEEHAN, AND EILEEN A. RICE,
Defendant/

CASE 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

DEPT. NO.: XVIII

PROPOSED ORDER

1 This matter came before the Court on May 15, 2024, and subsequently on June 21,
2 2024, before the Honorable Mary Kay Holthus for a hearing on the following Motion and
3 joinders thereto, for which Monti Jordana Levy appeared on behalf of Eileen A. Rice,
4 Richard A. Wright appeared on behalf of Michael James McDonald, Margaret A. McLetchie
5 appeared on behalf of Jesse Reed Law, Brian R. Hardy appeared on behalf of Durward James
6 Hindle III, Sigal Chattah appeared on behalf of Shawn Michael Meehan, George P. Kelesis
7 appeared on behalf of James Walter Degraffenreid III, and Aaron D. Ford, Alissa C. Engler
8 and Matthew J. Rashbrook appeared on behalf of the State of Nevada.

- 9 1. Eileen A. Rice’s January 29, 2024, Motion to Dismiss; and
- 10 2. The Joinders thereto by Michael James McDonald, Jesse Reed Law, James
11 Walter Degraffenreid III, Durward James Hindle III, and Shawn Michael
12 Meehan.

13 The Court, having carefully reviewed all papers and pleadings on file in this matter
14 (including the State’s February 8, 2024, Opposition to the Motion to Dismiss and its May 29,
15 2024, Supplement thereto) and having entertained the arguments of counsel, considered the
16 points and authorities thereof and reviewing the evidence, and for good cause appearing,
17 hereby makes the following findings of facts, conclusions of law and orders the following:

18 **I. FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

19 The State contends venue is proper in Clark County pursuant to NRS 171.030. For
20 the reasons set forth below, the grand jury for Clark County did not have authority because
21 the Eighth Judicial District does not have territorial jurisdiction, and the indictments must
22 thus be dismissed.

23 **A. Legal Standard**

- 24 1. The State may seek indictment by a grand jury anywhere that the district
25 court for which the grand jury was empaneled has territorial jurisdiction. NRS 172.105.
- 26 2. “The term territorial jurisdiction under NRS 172.105 is a term of art that
27 incorporates Nevada’s statutes governing venue and, thus, the statute empowers a grand jury
28 to inquire into an offense so long as the district court that empaneled the grand jury may

1 appropriately adjudicate the defendant’s guilt for that particular offense. Under NRS
2 172.105, if venue is proper in a given district court for an alleged criminal offense, then it
3 was committed within that court’s territorial jurisdiction and a grand jury empaneled by that
4 district court has the authority to inquire into that offense.” *Guzman v. Second Judicial Dist.*
5 *Court (“Guzman I”),* 136 Nev. 103, 110, 460 P.3d 443, 450 (2020).

6 3. Jurisdiction for an offense may lie in more than one county; NRS 171.030
7 provides:

8 When a public offense is committed in part in one county and in part in
9 another or the acts or effects thereof constituting or requisite to the
10 consummation of the offense occur in two or more counties. the venue is
11 in either county.

12 4. Determining whether a grand jury had jurisdiction “is a question reserved
13 for the court.” *Id.* at 110, 450 (*citing McNamara v. State*, 132 Nev. 606, 613-14, 377 P.3d
14 106, 112 (2016)).

15 5. The State does not have unfettered discretion to decide where to seek a
16 grand jury indictment.

17 6. Instead, the State has the burden of establishing jurisdiction by a
18 preponderance of the evidence. *McNamara*, 132 Nev. at 615, 377 Nev. at 113.

19 7. This Court was thus charged with determining whether, based on the
20 evidence presented to the Clark County grand jury, the State met its burden of establishing
21 that venue is proper in the Eighth Judicial District Court for Clark County.

22 8. Although jurisdiction may lie even if the crime was not committed in a
23 county, “[n]either formation of intent alone nor preparatory acts alone [in the charging
24 county] are sufficient to make venue proper in a charging county.” *Guzman v. Second*
25 *Judicial Dist. Court (“Guzman II”),* 496 P.3d 572, 576 (Nev. 2021).

26 9. “In Nevada, venue cannot be based on supposedly preparatory acts unless
27 the evidence shows that those acts were undertaken with the intent to commit the charged
28 crime and in furtherance of that crime.” *Id.* at 577.

10. “Many crimes involve countless acts which lead to the ultimate criminal act
being possible. But it is obvious that not every action undertaken by a defendant which puts

1 them in the particular place, time, and circumstances of an offense was done with the intent
2 to commit that offense.” *Id.*

3 11. While “neither intent nor a supposedly preparatory act, standing alone, is
4 sufficient to make venue proper in a charging county[,] when there is evidence of a
5 preparatory act plus intent in that county, an act requisite to the consummation of the charged
6 offense has occurred there, and a grand jury may indict a defendant of that offense.” *Id.*

7 12. However, “it is not enough to present evidence that may have allowed the
8 grand jury to speculate that intent could possibly have been formed in the charging county,
9 or that an action in the charging county may have been preparatory for the disputed charges.”
10 *Guzman II*, 496 P.3d at 580.

11 13. “[C]rimes should be tried where they occurred in the absence of a statutory
12 exception.”

13 **B. Factual Findings and Conclusions of Law**

14 14. The question for the Court is whether the State met its burden of establishing
15 by a preponderance of the evidence, that any defendant committed any act or effect
16 constituting or requisite to the consummation charged offenses, NRS 239.330 and NRS
17 205.110, in Clark County, including whether there was sufficient evidence of a preparatory
18 act plus intent by any defendant in Clark County.

19 15. At this Court’s hearing in this matter held on May 15, 2024, the Court
20 directed the State to provide a supplement listing all evidence of Clark County contacts that
21 support a determination that the Court had jurisdiction, which the State submitted on May
22 29, 2024 (the “Supplement”).¹

23 16. The evidence listed in the Supplement does not establish, by a
24 preponderance of the evidence, that an act or effect constituting or requisite to the
25 consummation of the offense was committed in Clark County, or that a preparatory act plus
26 intent was committed in Clark County.

27 _____
28 ¹ This submission was limited to evidence (facts), and the Defendants did not file a response
because the scope of that Response was limited to factual issues.

1 17. The county of residence, mailing address, or headquarters of the Nevada
2 Republican Party do not establish that an act or effect constituting or requisite to the
3 consummation of the offense was committed in Clark County, or that a preparatory act plus
4 intent was committed in Clark County with intent.

5 18. The fact defendants have ties to Clark County is insufficient to establish
6 jurisdiction.

7 19. The Court cannot infer from these facts and find that intent plus preparation
8 occurred in Clark County based on the evidence the State submitted. The mere possibility
9 that preparatory acts were committed with intent in Clark County is speculative and
10 insufficient.

11 20. The fact that the Defendants erroneously addressed a mailing to Chief Judge
12 of the U.S District Court to Las Vegas instead of her chambers in Reno, Nevada, where it
13 was ultimately received, unopened, is not evidence that an act or effect constituting or
14 requisite to the consummation of the offense was committed in Clark County, or that a
15 preparatory act plus intent was committed in Clark County.

16 21. The fact that the Secretary of State was physically in Las Vegas when the
17 documents were received by the Secretary of State's Office in Carson City is not evidence
18 that an act or effect constituting or requisite to the consummation of the offense was
19 committed in Clark County, or that a preparatory act plus intent was committed in Clark
20 County.

21 22. Additionally, the crimes, if any occurred, were completed when Defendants
22 delivered the items for mailing at the Minden post office.

23 23. The Court considered all the evidence and the State failed to establish by a
24 preponderance of the evidence that an act or effect constituting or requisite to the offense
25 was committed in Clark County, or that a preparatory act plus intent was committed in Clark
26 County.

27 24. In light of the foregoing, the Court is required to dismiss the charges against
28 the defendants.

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ORDER

1. IT IS ORDERED that Eileen A. Rice’s Motion to Dismiss, and the joinders thereto are hereby GRANTED.

2. IT IS FURTHER ORDERED that this case and the charges against the Defendants are hereby dismissed in their entirety.

IT IS SO ORDERED.

Dated this 26th day of July, 2024



**737 1F9 EB4B 164C
Mary Kay Holthus
District Court Judge**

Respectfully submitted by,

/s/ Richard A. Wright
Richard A. Wright
WRIGHT MARSH, LEVY
Counsel for Michael James McDonald

/s/ Monti Jordana Levy
Monti Jordana Levy
WRIGHT MARSH, LEVY
Counsel for Eileen A. Rice

/s/ Margaret A. McLetchie
Margaret A. McLetchie
MCLETCHIE LAW
Counsel for Jesse Reed Law

/s/ Brian R. Hardy
Brian R. Hardy
MARQUIS AURBACH CHTD.
Counsel for Durward James Hindle, III

/s/ Sigal Chattah
Sigal Chattah
CHATTAH LAW GROUP
Counsel for Shawn Michael Meehan

1 /s/ George P. Kelesis
George P. Kelesis
2 **COOK & KELESIS, LTD**
Counsel for James Walter Degraffenreid, III
3
4

5 **Approved as to form and content,**
6 ATTORNEY GENERAL, AARON D. FORD

7 By:
8 /s/ Matthew J. Rashbrook
Alissa C. Engler
9 Matthew J. Rashbrook
10 *Attorneys for the State of Nevada*
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Leo Wolpert

From: Richard Wright <rick@wmllawlv.com>
Sent: Thursday, July 18, 2024 12:46 PM
To: Maggie; George Kelesis; Brian R. Hardy; Sigal Chattah (Chattahlaw@gmail.com); Sigal Chattah; Monti Levy; Alissa C. Engler
Cc: Sherri Grotheer; Harry L. Arnold; Matthew J. Rashbrook; EFile; Debbie Caroselli; Leo Wolpert
Subject: RE: State v Degraffenreid et al.

Good to go.

Richard A. Wright
Wright Marsh & Levy
300 S. Fourth Street, Suite 701
Las Vegas, NV 89101
(Office) 702-382-4004
(Fax) 702-382-4800
rick@wmllawlv.com

From: Maggie <maggie@nvlitigation.com>
Sent: Thursday, July 18, 2024 12:40 PM
To: George Kelesis <GKelesis@bckltd.com>; Brian R. Hardy <bhardy@maclaw.com>; Richard Wright <rick@wmllawlv.com>; Sigal Chattah (Chattahlaw@gmail.com) <Chattahlaw@gmail.com>; Sigal Chattah <sigal@thegoodlawyerlv.com>; Monti Levy <mlevy@wmllawlv.com>; Alissa C. Engler <AEngler@ag.nv.gov>
Cc: Sherri Grotheer <SGrotheer@bckltd.com>; Harry L. Arnold <harnold@maclaw.com>; Matthew J. Rashbrook <MRashbrook@ag.nv.gov>; EFile <EFile@nvlitigation.com>; Debbie Caroselli <debbie@wmllawlv.com>; Leo Wolpert <leo@nvlitigation.com>
Subject: RE: State v Degraffenreid et al.
Importance: High

Sorry please use the attached. Typos below fixed.

Page 3, para 13 there was a stray “e” in the sentence.
Page 5, line 21 stated “Carlson” City instead of Carson

From: Maggie
Sent: Thursday, July 18, 2024 12:20 PM
To: 'George Kelesis' <GKelesis@bckltd.com>; Brian R. Hardy <bhardy@maclaw.com>; Richard Wright <rick@wmllawlv.com>; Sigal Chattah (Chattahlaw@gmail.com) <Chattahlaw@gmail.com>; Sigal Chattah <sigal@thegoodlawyerlv.com>; Monti Levy <mlevy@wmllawlv.com>; 'Alissa C. Engler' <AEngler@ag.nv.gov>
Cc: Sherri Grotheer <SGrotheer@bckltd.com>; Harry L. Arnold <harnold@maclaw.com>; 'Matthew J. Rashbrook' <MRashbrook@ag.nv.gov>; EFile <EFile@nvlitigation.com>; Debbie Caroselli <debbie@wmllawlv.com>; Leo Wolpert <leo@nvlitigation.com>
Subject: State v Degraffenreid et al.
Importance: High

Counsel: Please respond to this email and confirm I may affix your /s so I can submit to chambers.

Maggie McLetchie



602 South Tenth Street

Las Vegas, NV 89101

(702)728-5300 (T) / (702)425-8220 (F)

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Leo Wolpert

From: Monti Levy <mlevy@wmllawlv.com>
Sent: Friday, July 19, 2024 8:38 AM
To: Maggie
Cc: George Kelesis; Brian R. Hardy; Richard Wright; Sigal Chattah (Chattahlaw@gmail.com); Sigal Chattah; Alissa C. Engler; Sherri Grotheer; Harry L. Arnold; Matthew J. Rashbrook; EFile; Debbie Caroselli; Leo Wolpert
Subject: Re: State v Degraffenreid et al. - PROPOSED ORDER

You can use my e signature.

Thank you for all of your work on this Maggie!

Sent from my iPhone

On Jul 18, 2024, at 12:47 PM, Maggie <maggie@nvlitigation.com> wrote:

Sorry for the confusion, but please provide your /s authority in this chain. Thanks so much. I understand folks are out of town but I will collect the authorizations as soon as I can get them!

Maggie McLetchie

<image001.png>

602 South Tenth Street

Las Vegas, NV 89101

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Leo Wolpert

From: Brian R. Hardy <bhardy@maclaw.com>
Sent: Thursday, July 18, 2024 1:49 PM
To: George Kelesis; Maggie; Richard Wright; Sigal Chattah (Chattahlaw@gmail.com); Sigal Chattah; Monti Levy; Alissa C. Engler
Cc: Sherri Grotheer; Harry L. Arnold; Matthew J. Rashbrook; EFile; Debbie Caroselli; Leo Wolpert
Subject: Re: State v Degraffenreid et al. - PROPOSED ORDER

Good for me.


Thanks

Brian

Sent from my iPhone

Brian R. Hardy, Esq.

10001 Park Run Drive
Las Vegas, NV 89145
t | 702.207.6097
f | 702.382.5816
bhardy@maclaw.com
maclaw.com

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From: George Kelesis <GKelesis@bckltd.com>
Sent: Thursday, July 18, 2024 1:48:31 PM
To: Maggie <maggie@nvlitigation.com>; Brian R. Hardy <bhardy@maclaw.com>; Richard Wright <rick@wmlawlv.com>; Sigal Chattah (Chattahlaw@gmail.com) <Chattahlaw@gmail.com>; Sigal Chattah <sigal@thegoodlawyerlv.com>; Monti Levy <mlevy@wmlawlv.com>; Alissa C. Engler <AEngler@ag.nv.gov>
Cc: Sherri Grotheer <SGrotheer@bckltd.com>; Harry L. Arnold <harnold@MACLAW.com>; Matthew J. Rashbrook <MRashbrook@ag.nv.gov>; EFile <EFile@nvlitigation.com>; Debbie Caroselli <debbie@wmlawlv.com>; Leo Wolpert <leo@nvlitigation.com>
Subject: RE: State v Degraffenreid et al. - PROPOSED ORDER

You have my authorization to go ahead. Thank you for al your hard work and efforts

From: Maggie <maggie@nvlitigation.com>
Sent: Thursday, July 18, 2024 1:47 PM
To: George Kelesis <GKelesis@bckltd.com>; Brian R. Hardy <bhardy@maclaw.com>; Richard Wright <rick@wmlawlv.com>; Sigal Chattah (Chattahlaw@gmail.com) <Chattahlaw@gmail.com>; Sigal Chattah <sigal@thegoodlawyerlv.com>; Monti Levy <mlevy@wmlawlv.com>; Alissa C. Engler <AEngler@ag.nv.gov>
Cc: Sherri Grotheer <SGrotheer@bckltd.com>; Harry L. Arnold <harnold@maclaw.com>; Matthew J. Rashbrook

<MRashbrook@ag.nv.gov>; EFile <EFile@nvlitigation.com>; Debbie Caroselli <debbie@wmllawlv.com>; Leo Wolpert <leo@nvlitigation.com>

Subject: State v Degraffenreid et al. - PROPOSED ORDER

Importance: High

Sorry for the confusion, but please provide your /s authority in this chain. Thanks so much. I understand folks are out of town but I will collect the authorizations as soon as I can get them!

Maggie McLetchie



602 South Tenth Street

Las Vegas, NV 89101

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Leo Wolpert

From: Maggie
Sent: Friday, July 19, 2024 9:55 AM
To: Leo Wolpert
Subject: Fwd: State v Degraffenreid et al. - PROPOSED ORDER

Begin forwarded message:

From: Sigal Chattah <sigal@thegoodlawyerlv.com>
Date: July 19, 2024 at 8:56:20 AM PDT
To: Monti Levy <mlevy@wmllawlv.com>
Cc: Maggie <maggie@nvlitigation.com>, George Kelesis <GKelesis@bckltd.com>, "Brian R. Hardy" <bhardy@maclaw.com>, Richard Wright <rick@wmllawlv.com>, "Sigal Chattah (Chattahlaw@gmail.com)" <Chattahlaw@gmail.com>, "Harry L. Arnold" <harnold@maclaw.com>, Debbie Caroselli <debbie@wmllawlv.com>
Subject: Re: State v Degraffenreid et al. - PROPOSED ORDER

Mine as well.

Sigal Chattah, Esq.
Sent from my iPhone

On Jul 19, 2024, at 9:38 AM, Monti Levy <mlevy@wmllawlv.com> wrote:

You can use my e signature.

Thank you for all of your work on this Maggie!

Sent from my iPhone

On Jul 18, 2024, at 12:47 PM, Maggie
<maggie@nvlitigation.com> wrote:

Sorry for the confusion, but please provide your /s authority in this chain. Thanks so much. I understand folks are out of town but I will collect the authorizations as soon as I can get them!

Maggie McLetchie
<image001.png>
602 South Tenth Street

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<image001.png>

Leo Wolpert

From: George Kelesis <GKelesis@bckltd.com>
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To: Maggie; Brian R. Hardy; Richard Wright; Sigal Chattah (Chattahlaw@gmail.com); Sigal Chattah; Monti Levy; Alissa C. Engler
Cc: Sherri Grotheer; Harry L. Arnold; Matthew J. Rashbrook; EFile; Debbie Caroselli; Leo Wolpert
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Cc: Sherri Grotheer <SGrotheer@bckltd.com>; Harry L. Arnold <harnold@maclaw.com>; Matthew J. Rashbrook <MRashbrook@ag.nv.gov>; EFile <EFile@nvlitigation.com>; Debbie Caroselli <debbie@wmllawlv.com>; Leo Wolpert <leo@nvlitigation.com>
Subject: State v Degraffenreid et al. - PROPOSED ORDER
Importance: High

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Maggie McLetchie



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Leo Wolpert

From: Matthew J. Rashbrook <MRashbrook@ag.nv.gov>
Sent: Thursday, July 18, 2024 2:17 PM
To: Maggie; George Kelesis; Brian R. Hardy; Richard Wright; Sigal Chattah (Chattahlaw@gmail.com); Sigal Chattah; Monti Levy; Alissa C. Engler
Cc: Sherri Grotheer; Harry L. Arnold; EFile; Debbie Caroselli; Leo Wolpert
Subject: RE: State v Degraffenreid et al. - PROPOSED ORDER

Confirming, ok to sign/submit.

Thanks,

Matthew J. Rashbrook
Special Prosecutor - Consumer Protection and Fraud
Office of the Nevada Attorney General
555 E. Washington Ave., Suite 3900
☎ (702) 486-9299 (direct)

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From: Maggie <maggie@nvlitigation.com>
Sent: Thursday, July 18, 2024 1:47 PM
To: George Kelesis <GKelesis@bckltd.com>; Brian R. Hardy <bhardy@maclaw.com>; Richard Wright <rick@wmllawlv.com>; Sigal Chattah (Chattahlaw@gmail.com) <Chattahlaw@gmail.com>; Sigal Chattah <sigal@thegoodlawyerlv.com>; Monti Levy <mlevy@wmllawlv.com>; Alissa C. Engler <AEngler@ag.nv.gov>
Cc: Sherri Grotheer <SGrotheer@bckltd.com>; Harry L. Arnold <harnold@maclaw.com>; Matthew J. Rashbrook <MRashbrook@ag.nv.gov>; EFile <EFile@nvlitigation.com>; Debbie Caroselli <debbie@wmllawlv.com>; Leo Wolpert <leo@nvlitigation.com>
Subject: State v Degraffenreid et al. - PROPOSED ORDER
Importance: High

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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 State of Nevada

CASE NO: C-23-379122-1

7 vs

DEPT. NO. Department 18

8 James Degraffenreid, III

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 7/26/2024

15 Richard Wright

rick@wmlawlv.com

16 Monti Levy

mlevy@wmlawlv.com

17 George Kelesis

gkelesis@bckltd.com

18 Alissa Engler

AEngler@ag.nv.gov

19 R Holm

rholm@ag.nv.gov

20 Margaret McLetchie

maggie@nvlitigation.com

21 E- File

efile@nvlitigation.com

22 C Ross

CRoss@ag.nv.gov

23 M Burris

mburris@ag.nv.gov

24 Sherri Grotheer

sgrotheer@bckltd.com

25 Shannon Fagin

sfagin@bckltd.com

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2
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4
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T DiBari

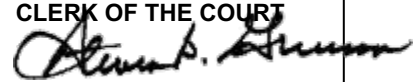
tdibari@ag.nv.gov

H Tew

htew@ag.nv.gov

ONvJ Media

media@ournevadajudges.com



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1 **NOASC**
AARON D. FORD
2 Attorney General
ALISSA ENGLER (Bar No. 11940)
3 Chief Deputy Attorney General
Office of the Attorney General
4 555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101-1068
5 P: 702 486-5706
F: 702 486-0660
6 aengler@ag.nv.gov
Attorneys for the State of Nevada

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10
11 STATE OF NEVADA,
12 Plaintiff,

13 vs.

14 JAMES WALTER DEGRAFFENREID III,
15 Defendant.

Case No. C-23-379122-1

Dept. No. XVIII

16
17
18
19 **STATE OF NEVADA'S NOTICE OF APPEAL**

20 Notice is hereby given that the State of Nevada, Plaintiff in the above-entitled matter, appeals to
21 the Supreme Court of Nevada from the order dated granting the Defendants' motions to dismiss entered
22 in this action on the 26th day of July, 2024, pursuant to NRS 177.015(1)(b).

23 DATED this 26th day of July, 2024.

24 Submitted by:

25 AARON D. FORD
Attorney General

26 By: /s/ Alissa Engler
27 ALISSA ENGLER (Bar No. 11940)
Chief Deputy Attorney General

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 July 26, 2024, I filed the **STATE OF NEVADA’S NOTICE OF APPEAL** via this Court’s
4 electronic filing system. The following parties are registered with this Court’s EFS and will be served
5 electronically.

6 Mr. George Kelesis, Esq.
7 517 S. 9th Street
8 Las Vegas, NV 89101
9 Gkelesis@bckltd.com
10 Attorney for James Degraffenreid

11 Brian Hardy, Esq.
12 10001 Park Run Drive
13 Las Vegas, NV 89145
14 Bhardy@maclaw.com
15 Attorney for Durward Hindle, III

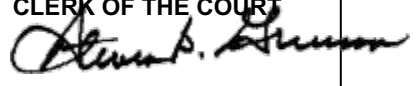
16 Richard Wright, Esq.
17 300 S. Fourth Street, Ste. 701
18 Las Vegas, NV 89101
19 Rick@wmllawlv.com
20 Attorney for Michael James McDonald

21 Monti Jordana Levy, Esq.
22 300 S. Fourth Street, Ste. 701
23 Las Vegas, NV 89101
24 Mlevy@wmllawlv.com
25 Attorney for Eileen Rice

26 Sigal Chattah, Esq.
27 5875 S. Rainbow Blvd., #204
28 Las Vegas, NV 89118
Chattahlaw@gmail.com
Attorney for Shawn Meehan

Margaret A. McLetchie, Esq.
602 S. Tenth St.
Las Vegas, NV 89101
Maggie@nvlitigation.com
Attorney for Jesse Law

By: /s/ R. Holm
An employee of the Office of
the Attorney General



1 NOASC
2 AARON D. FORD
3 Attorney General
4 ALISSA ENGLER (Bar No. 11940)
5 Chief Deputy Attorney General
6 Office of the Attorney General
7 555 E. Washington Ave., Ste. 3900
8 Las Vegas, Nevada 89101-1068
9 P: 702 486-5706
10 F: 702 486-0660
11 aengler@ag.nv.gov
12 *Attorneys for the State of Nevada*

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Elizabeth A. Brown
Clerk of Supreme Court

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

11 STATE OF NEVADA,
12 Plaintiff,

13 vs.

14 DUWARD JAMES HINDLE III,
15 Defendants.

Case No. C-23-379122-2

Dept. No. XVIII

17 **STATE OF NEVADA'S NOTICE OF APPEAL**

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19 the Supreme Court of Nevada from the order dated granting the Defendants' motions to dismiss entered
20 in this action on the 26th day of July, 2024, pursuant to NRS 177.015(1)(b).

21 DATED this 26th day of July, 2024.

22 Submitted by:

23 AARON D. FORD
24 Attorney General

25 By: /s/ Alissa Engler
26 ALISSA ENGLER (Bar No. 11940)
27 Chief Deputy Attorney General
28

1 **CERTIFICATE OF SERVICE**

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7 517 S. 9th Street
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9 Gkelesis@bckltd.com
10 Attorney for James Degraffenreid

11 Brian Hardy, Esq.
12 10001 Park Run Drive
13 Las Vegas, NV 89145
14 Bhardy@maclaw.com
15 Attorney for Durward Hindle, III

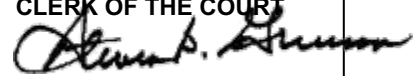
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Attorney for Jesse Law

By: /s/ R. Holm
An employee of the Office of
the Attorney General



1 NOASC
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2 Attorney General
ALISSA ENGLER (Bar No. 11940)
3 Chief Deputy Attorney General
Office of the Attorney General
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Las Vegas, Nevada 89101-1068
5 P: 702 486-5706
F: 702 486-0660
6 aengler@ag.nv.gov
Attorneys for the State of Nevada

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Clerk of Supreme Court

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

11 STATE OF NEVADA,
12 Plaintiff,
13 vs.
14 JESSIE REED LAW,
15 Defendants.

Case No. C-23-379122-3
Dept. No. XVIII

17 **STATE OF NEVADA'S NOTICE OF APPEAL**

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19 the Supreme Court of Nevada from the order dated granting the Defendants' motions to dismiss entered
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21 DATED this 26th day of July, 2024.

22 Submitted by:

23 AARON D. FORD
Attorney General

24 By: /s/ Alissa Engler
25 ALISSA ENGLER (Bar No. 11940)
26 Chief Deputy Attorney General

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9 Gkelesis@bckltd.com
10 Attorney for James Degraffenreid

11 Brian Hardy, Esq.
12 10001 Park Run Drive
13 Las Vegas, NV 89145
14 Bhardy@maclaw.com
15 Attorney for Durward Hindle, III

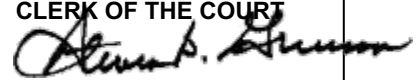
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Maggie@nvlitigation.com
Attorney for Jesse Law

By: /s/ R. Holm
An employee of the Office of
the Attorney General



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Elizabeth A. Brown
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1 **NOASC**
AARON D. FORD
2 Attorney General
ALISSA ENGLER (Bar No. 11940)
3 Chief Deputy Attorney General
Office of the Attorney General
4 555 E. Washington Ave., Ste. 3900
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5 P: 702 486-5706
F: 702 486-0660
6 aengler@ag.nv.gov
Attorneys for the State of Nevada
7

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10
11 STATE OF NEVADA,
12 Plaintiff,

13 vs.

14 MICHAEL JAMES MCDONALD,
15 Defendant.

Case No. C-23-379122-4

Dept. No. XVIII

16
17
18 **STATE OF NEVADA'S NOTICE OF APPEAL**

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20 the Supreme Court of Nevada from the order dated granting the Defendants' motions to dismiss entered
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22

23 DATED this 26th day of July, 2024.

24 Submitted by:

25 AARON D. FORD
Attorney General

26 By: /s/ Alissa Engler
27 ALISSA ENGLER (Bar No. 11940)
Chief Deputy Attorney General
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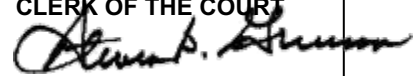
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Maggie@nvlitigation.com
Attorney for Jesse Law

By: /s/ R. Holm
An employee of the Office of
the Attorney General



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Jul 29 2024 01:52 PM
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AARON D. FORD
2 Attorney General
ALISSA ENGLER (Bar No. 11940)
3 Chief Deputy Attorney General
Office of the Attorney General
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Las Vegas, Nevada 89101-1068
5 P: 702 486-5706
F: 702 486-0660
6 aengler@ag.nv.gov
Attorneys for the State of Nevada
7

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10
11 STATE OF NEVADA,
12 Plaintiff,

Case No. C-23-379122-5

Dept. No. XVIII

13 vs.

14 SHAWN MICHAEL MEEHAN,
15 Defendant.
16

17 **STATE OF NEVADA'S NOTICE OF APPEAL**

18 Notice is hereby given that the State of Nevada, Plaintiff in the above-entitled matter, appeals to
19 the Supreme Court of Nevada from the order dated granting the Defendants' motions to dismiss entered
20 in this action on the 26th day of July, 2024, pursuant to NRS 177.015(1)(b).

21 DATED this 26th day of July, 2024.

22 Submitted by:

23 AARON D. FORD
24 Attorney General

25 By: /s/ Alissa Engler
ALISSA ENGLER (Bar No. 11940)
26 Chief Deputy Attorney General
27
28

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 July 26, 2024, I filed the **STATE OF NEVADA’S NOTICE OF APPEAL** via this Court’s
4 electronic filing system. The following parties are registered with this Court’s EFS and will be served
5 electronically.

6 Mr. George Kelesis, Esq.
7 517 S. 9th Street
8 Las Vegas, NV 89101
9 Gkelesis@bckltd.com
10 Attorney for James Degraffenreid

11 Brian Hardy, Esq.
12 10001 Park Run Drive
13 Las Vegas, NV 89145
14 Bhardy@maclaw.com
15 Attorney for Durward Hindle, III

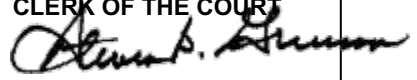
16 Richard Wright, Esq.
17 300 S. Fourth Street, Ste. 701
18 Las Vegas, NV 89101
19 Rick@wmllawlv.com
20 Attorney for Michael James McDonald

21 Monti Jordana Levy, Esq.
22 300 S. Fourth Street, Ste. 701
23 Las Vegas, NV 89101
24 Mlevy@wmllawlv.com
25 Attorney for Eileen Rice

26 Sigal Chattah, Esq.
27 5875 S. Rainbow Blvd., #204
28 Las Vegas, NV 89118
Chattahlaw@gmail.com
Attorney for Shawn Meehan

Margaret A. McLetchie, Esq.
602 S. Tenth St.
Las Vegas, NV 89101
Maggie@nvlitigation.com
Attorney for Jesse Law

By: /s/ R. Holm
An employee of the Office of
the Attorney General



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Jul 29 2024 01:53 PM
Elizabeth A. Brown
Clerk of Supreme Court

1 **NOASC**
AARON D. FORD
2 Attorney General
ALISSA ENGLER (Bar No. 11940)
3 Chief Deputy Attorney General
Office of the Attorney General
4 555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101-1068
5 P: 702 486-5706
F: 702 486-0660
6 aengler@ag.nv.gov
Attorneys for the State of Nevada

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

11 STATE OF NEVADA,
12 Plaintiff,
13 vs.
14 EILEEN A RICE,
15 Defendant.

Case No. C-23-379122-6
Dept. No. XVIII

17 **STATE OF NEVADA'S NOTICE OF APPEAL**

18 Notice is hereby given that the State of Nevada, Plaintiff in the above-entitled matter, appeals to
19 the Supreme Court of Nevada from the order dated granting the Defendants' motions to dismiss entered
20 in this action on the 26th day of July, 2024, pursuant to NRS 177.015(1)(b).

21 DATED this 26th day of July, 2024.

22 Submitted by:

23 AARON D. FORD
24 Attorney General

25 By: /s/ Alissa Engler
ALISSA ENGLER (Bar No. 11940)
26 Chief Deputy Attorney General

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3 on July 26, 2024, I filed the **STATE OF NEVADA’S NOTICE OF APPEAL** via this Court’s
4 electronic filing system. The following parties are registered with this Court’s EFS and will be served
5 electronically.

6 Mr. George Kelesis, Esq.
7 517 S. 9th Street
8 Las Vegas, NV 89101
9 Gkelesis@bckltd.com
10 Attorney for James Degraffenreid

11 Brian Hardy, Esq.
12 10001 Park Run Drive
13 Las Vegas, NV 89145
14 Bhardy@maclaw.com
15 Attorney for Durward Hindle, III

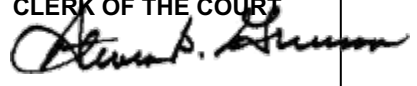
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17 300 S. Fourth Street, Ste. 701
18 Las Vegas, NV 89101
19 Rick@wmllawlv.com
20 Attorney for Michael James McDonald

21 Monti Jordana Levy, Esq.
22 300 S. Fourth Street, Ste. 701
23 Las Vegas, NV 89101
24 Mlevy@wmllawlv.com
25 Attorney for Eileen Rice

26 Sigal Chattah, Esq.
27 5875 S. Rainbow Blvd., #204
28 Las Vegas, NV 89118
Chattahlaw@gmail.com
Attorney for Shawn Meehan

Margaret A. McLetchie, Esq.
602 S. Tenth St.
Las Vegas, NV 89101
Maggie@nvlitigation.com
Attorney for Jesse Law

By: /s/ R. Holm
An employee of the Office of
the Attorney General



1 **NEOJ**
AARON D. FORD
2 Attorney General
ALISSA ENGLER (Bar No. 11940)
3 Chief Deputy Attorney General
Office of the Attorney General
4 1 State of Nevada Way, Ste. 100
Las Vegas, Nevada 89119
5 P: 702 486-5706
F: 702 486-0660
6 aengler@ag.nv.gov
Attorneys for the State of Nevada

7
8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 STATE OF NEVADA

11 Plaintiff(s),

12 vs.

13 JAMES WALTER DEGRAFFENREID, III

14 Defendant(s).

Case No. C-23-379122-1

Dept. No. XVIII

15 **NOTICE OF ENTRY OF ORDER**

16 **TO: ALL INTERESTED PARTIES:**

17 YOU, AND EACH OF YOU, PLEASE TAKE NOTICE that an ORDER GRANTING
18 DEFENDANT’S MOTION TO DISMISS was entered by the Court on the 26th day of July, 2024, in the
19 above-entitled action, a copy of which is attached hereto.

20 DATED this 7th day of August, 2024.

21 Submitted by:

22 AARON D. FORD
23 Attorney General

24 By: /s/ Alissa Engler
25 ALISSA ENGLER (Bar No. 11940)
26 Chief Deputy Attorney General
27
28

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 July 26, 2024, I filed the **NOTICE OF ENTRY OF ORDER** via this Court’s electronic filing system.

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5 Mr. George Kelesis, Esq.
6 517 S. 9th Street
7 Las Vegas, NV 89101
8 Gkelesis@bckltd.com
9 Attorney for James Degraffenreid

10 Brian Hardy, Esq.
11 10001 Park Run Drive
12 Las Vegas, NV 89145
13 Bhardy@maclaw.com
14 Attorney for Durward Hindle, III

15 Richard Wright, Esq.
16 300 S. Fourth Street, Ste. 701
17 Las Vegas, NV 89101
18 Rick@wmllawlv.com
19 Attorney for Michael James McDonald

20 Monti Jordana Levy, Esq.
21 300 S. Fourth Street, Ste. 701
22 Las Vegas, NV 89101
23 Mlevy@wmllawlv.com
24 Attorney for Eileen Rice

25 Sigal Chattah, Esq.
26 5875 S. Rainbow Blvd., #204
27 Las Vegas, NV 89118
28 Chattahlaw@gmail.com
Attorney for Shawn Meehan

Margaret A. McLetchie, Esq.
602 S. Tenth St.
Las Vegas, NV 89101
Maggie@nvlitigation.com
Attorney for Jesse Law

By: /s/ R. Holm _____
An employee of the Office of
the Attorney General

1 **ORDR**

2 RICHARD A. WRIGHT, ESQ. Nevada Bar No. 886
3 **WRIGHT MARSH, LEVY**
4 300 S. Fourth St., Ste 701
5 Las Vegas, NV 89101
6 Telephone: (702) 382-4004; Fax: (702) 382-800
7 Email: Rick@wmlawlv.com
8 *Counsel for Defendant James McDonald*

9 MONTI JORDANA LEVY, ESQ. Nevada Bar No. 8158
10 **WRIGHT MARSH, LEVY**
11 300 S. Fourth St., Ste 701
12 Las Vegas, NV 89101
13 Telephone: (702) 382-4004; Fax: (702) 382- 4800
14 Mlevy@wmlawlv.com
15 *Counsel for Defendant Eileen Rice*

16 MARGARET A. MCLETCHE, Nevada Bar No. 10931
17 **MCLETCHE LAW**
18 602 South Tenth St.
19 Las Vegas, Nevada 89101
20 Telephone: (702) 728-5300; Fax: (702) 425-8220
21 Email: maggie@nvlitigation.com
22 *Counsel for Defendant Jesse Law*

23 **DISTRICT COURT**
24 **CLARK COUNTY**

25 STATE OF NEVADA,

26 Plaintiff,

27 vs.

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

Defendant/

CASE 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

DEPT. NO.: XVIII

PROPOSED ORDER

1 This matter came before the Court on May 15, 2024, and subsequently on June 21,
2 2024, before the Honorable Mary Kay Holthus for a hearing on the following Motion and
3 joinders thereto, for which Monti Jordana Levy appeared on behalf of Eileen A. Rice,
4 Richard A. Wright appeared on behalf of Michael James McDonald, Margaret A. McLetchie
5 appeared on behalf of Jesse Reed Law, Brian R. Hardy appeared on behalf of Durward James
6 Hindle III, Sigal Chattah appeared on behalf of Shawn Michael Meehan, George P. Kelesis
7 appeared on behalf of James Walter Degraffenreid III, and Aaron D. Ford, Alissa C. Engler
8 and Matthew J. Rashbrook appeared on behalf of the State of Nevada.

- 9 1. Eileen A. Rice’s January 29, 2024, Motion to Dismiss; and
- 10 2. The Joinders thereto by Michael James McDonald, Jesse Reed Law, James
11 Walter Degraffenreid III, Durward James Hindle III, and Shawn Michael
12 Meehan.

13 The Court, having carefully reviewed all papers and pleadings on file in this matter
14 (including the State’s February 8, 2024, Opposition to the Motion to Dismiss and its May 29,
15 2024, Supplement thereto) and having entertained the arguments of counsel, considered the
16 points and authorities thereof and reviewing the evidence, and for good cause appearing,
17 hereby makes the following findings of facts, conclusions of law and orders the following:

18 **I. FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

19 The State contends venue is proper in Clark County pursuant to NRS 171.030. For
20 the reasons set forth below, the grand jury for Clark County did not have authority because
21 the Eighth Judicial District does not have territorial jurisdiction, and the indictments must
22 thus be dismissed.

23 **A. Legal Standard**

- 24 1. The State may seek indictment by a grand jury anywhere that the district
25 court for which the grand jury was empaneled has territorial jurisdiction. NRS 172.105.
- 26 2. “The term territorial jurisdiction under NRS 172.105 is a term of art that
27 incorporates Nevada’s statutes governing venue and, thus, the statute empowers a grand jury
28 to inquire into an offense so long as the district court that empaneled the grand jury may

1 appropriately adjudicate the defendant’s guilt for that particular offense. Under NRS
2 172.105, if venue is proper in a given district court for an alleged criminal offense, then it
3 was committed within that court’s territorial jurisdiction and a grand jury empaneled by that
4 district court has the authority to inquire into that offense.” *Guzman v. Second Judicial Dist.*
5 *Court (“Guzman I”),* 136 Nev. 103, 110, 460 P.3d 443, 450 (2020).

6 3. Jurisdiction for an offense may lie in more than one county; NRS 171.030
7 provides:

8 When a public offense is committed in part in one county and in part in
9 another or the acts or effects thereof constituting or requisite to the
10 consummation of the offense occur in two or more counties. the venue is
11 in either county.

12 4. Determining whether a grand jury had jurisdiction “is a question reserved
13 for the court.” *Id.* at 110, 450 (*citing McNamara v. State,* 132 Nev. 606, 613-14, 377 P.3d
14 106, 112 (2016).

15 5. The State does not have unfettered discretion to decide where to seek a
16 grand jury indictment.

17 6. Instead, the State has the burden of establishing jurisdiction by a
18 preponderance of the evidence. *McNamara,* 132 Nev. at 615, 377 Nev. at 113.

19 7. This Court was thus charged with determining whether, based on the
20 evidence presented to the Clark County grand jury, the State met its burden of establishing
21 that venue is proper in the Eighth Judicial District Court for Clark County.

22 8. Although jurisdiction may lie even if the crime was not committed in a
23 county, “[n]either formation of intent alone nor preparatory acts alone [in the charging
24 county] are sufficient to make venue proper in a charging county.” *Guzman v. Second*
25 *Judicial Dist. Court (“Guzman II”),* 496 P.3d 572, 576 (Nev. 2021).

26 9. “In Nevada, venue cannot be based on supposedly preparatory acts unless
27 the evidence shows that those acts were undertaken with the intent to commit the charged
28 crime and in furtherance of that crime.” *Id.* at 577.

10. “Many crimes involve countless acts which lead to the ultimate criminal act
being possible. But it is obvious that not every action undertaken by a defendant which puts

1 them in the particular place, time, and circumstances of an offense was done with the intent
2 to commit that offense.” *Id.*

3 11. While “neither intent nor a supposedly preparatory act, standing alone, is
4 sufficient to make venue proper in a charging county[,] when there is evidence of a
5 preparatory act plus intent in that county, an act requisite to the consummation of the charged
6 offense has occurred there, and a grand jury may indict a defendant of that offense.” *Id.*

7 12. However, “it is not enough to present evidence that may have allowed the
8 grand jury to speculate that intent could possibly have been formed in the charging county,
9 or that an action in the charging county may have been preparatory for the disputed charges.”
10 *Guzman II*, 496 P.3d at 580.

11 13. “[C]rimes should be tried where they occurred in the absence of a statutory
12 exception.”

13 **B. Factual Findings and Conclusions of Law**

14 14. The question for the Court is whether the State met its burden of establishing
15 by a preponderance of the evidence, that any defendant committed any act or effect
16 constituting or requisite to the consummation charged offenses, NRS 239.330 and NRS
17 205.110, in Clark County, including whether there was sufficient evidence of a preparatory
18 act plus intent by any defendant in Clark County.

19 15. At this Court’s hearing in this matter held on May 15, 2024, the Court
20 directed the State to provide a supplement listing all evidence of Clark County contacts that
21 support a determination that the Court had jurisdiction, which the State submitted on May
22 29, 2024 (the “Supplement”).¹

23 16. The evidence listed in the Supplement does not establish, by a
24 preponderance of the evidence, that an act or effect constituting or requisite to the
25 consummation of the offense was committed in Clark County, or that a preparatory act plus
26 intent was committed in Clark County.

27
28 ¹ This submission was limited to evidence (facts), and the Defendants did not file a response
because the scope of that Response was limited to factual issues.

1 17. The county of residence, mailing address, or headquarters of the Nevada
2 Republican Party do not establish that an act or effect constituting or requisite to the
3 consummation of the offense was committed in Clark County, or that a preparatory act plus
4 intent was committed in Clark County with intent.

5 18. The fact defendants have ties to Clark County is insufficient to establish
6 jurisdiction.

7 19. The Court cannot infer from these facts and find that intent plus preparation
8 occurred in Clark County based on the evidence the State submitted. The mere possibility
9 that preparatory acts were committed with intent in Clark County is speculative and
10 insufficient.

11 20. The fact that the Defendants erroneously addressed a mailing to Chief Judge
12 of the U.S District Court to Las Vegas instead of her chambers in Reno, Nevada, where it
13 was ultimately received, unopened, is not evidence that an act or effect constituting or
14 requisite to the consummation of the offense was committed in Clark County, or that a
15 preparatory act plus intent was committed in Clark County.

16 21. The fact that the Secretary of State was physically in Las Vegas when the
17 documents were received by the Secretary of State's Office in Carson City is not evidence
18 that an act or effect constituting or requisite to the consummation of the offense was
19 committed in Clark County, or that a preparatory act plus intent was committed in Clark
20 County.

21 22. Additionally, the crimes, if any occurred, were completed when Defendants
22 delivered the items for mailing at the Minden post office.

23 23. The Court considered all the evidence and the State failed to establish by a
24 preponderance of the evidence that an act or effect constituting or requisite to the offense
25 was committed in Clark County, or that a preparatory act plus intent was committed in Clark
26 County.

27 24. In light of the foregoing, the Court is required to dismiss the charges against
28 the defendants.

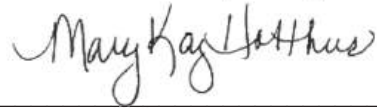
ORDER

1
2 1. IT IS ORDERED that Eileen A. Rice’s Motion to Dismiss, and the joinders
3 thereto are hereby GRANTED.

4 2. IT IS FURTHER ORDERED that this case and the charges against the
5 Defendants are hereby dismissed in their entirety.

6
7
8 IT IS SO ORDERED.

Dated this 26th day of July, 2024



737 1F9 EB4B 164C
Mary Kay Holthus
District Court Judge

9
10
11 Respectfully submitted by,

12
13 /s/ Richard A. Wright
14 Richard A. Wright
15 **WRIGHT MARSH, LEVY**
Counsel for Michael James McDonald

16 /s/ Monti Jordana Levy
17 Monti Jordana Levy
18 **WRIGHT MARSH, LEVY**
Counsel for Eileen A. Rice

19 /s/ Margaret A. McLetchie
20 Margaret A. McLetchie
21 **MCLETCHIE LAW**
Counsel for Jesse Reed Law

22 /s/ Brian R. Hardy
23 Brian R. Hardy
24 **MARQUIS AURBACH CHTD.**
Counsel for Durward James Hindle, III

25 /s/ Sigal Chattah
26 Sigal Chattah
27 **CHATTAH LAW GROUP**
Counsel for Shawn Michael Meehan

28

1 /s/ George P. Kelesis
George P. Kelesis
2 **COOK & KELESIS, LTD**
Counsel for James Walter Degraffenreid, III
3
4

5 **Approved as to form and content,**
6 ATTORNEY GENERAL, AARON D. FORD

7 By:
8 /s/ Matthew J. Rashbrook
Alissa C. Engler
9 Matthew J. Rashbrook
10 *Attorneys for the State of Nevada*
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Leo Wolpert

From: Richard Wright <rick@wmllawlv.com>
Sent: Thursday, July 18, 2024 12:46 PM
To: Maggie; George Kelesis; Brian R. Hardy; Sigal Chattah (Chattahlaw@gmail.com); Sigal Chattah; Monti Levy; Alissa C. Engler
Cc: Sherri Grotheer; Harry L. Arnold; Matthew J. Rashbrook; EFile; Debbie Caroselli; Leo Wolpert
Subject: RE: State v Degraffenreid et al.

Good to go.

Richard A. Wright
Wright Marsh & Levy
300 S. Fourth Street, Suite 701
Las Vegas, NV 89101
(Office) 702-382-4004
(Fax) 702-382-4800
rick@wmllawlv.com

From: Maggie <maggie@nvlitigation.com>
Sent: Thursday, July 18, 2024 12:40 PM
To: George Kelesis <GKelesis@bckltd.com>; Brian R. Hardy <bhardy@maclaw.com>; Richard Wright <rick@wmllawlv.com>; Sigal Chattah (Chattahlaw@gmail.com) <Chattahlaw@gmail.com>; Sigal Chattah <sigal@thegoodlawyerlv.com>; Monti Levy <mlevy@wmllawlv.com>; Alissa C. Engler <AEngler@ag.nv.gov>
Cc: Sherri Grotheer <SGrotheer@bckltd.com>; Harry L. Arnold <harnold@maclaw.com>; Matthew J. Rashbrook <MRashbrook@ag.nv.gov>; EFile <EFile@nvlitigation.com>; Debbie Caroselli <debbie@wmllawlv.com>; Leo Wolpert <leo@nvlitigation.com>
Subject: RE: State v Degraffenreid et al.
Importance: High

Sorry please use the attached. Typos below fixed.

Page 3, para 13 there was a stray “e” in the sentence.
Page 5, line 21 stated “Carlson” City instead of Carson

From: Maggie
Sent: Thursday, July 18, 2024 12:20 PM
To: 'George Kelesis' <GKelesis@bckltd.com>; Brian R. Hardy <bhardy@maclaw.com>; Richard Wright <rick@wmllawlv.com>; Sigal Chattah (Chattahlaw@gmail.com) <Chattahlaw@gmail.com>; Sigal Chattah <sigal@thegoodlawyerlv.com>; Monti Levy <mlevy@wmllawlv.com>; 'Alissa C. Engler' <AEngler@ag.nv.gov>
Cc: Sherri Grotheer <SGrotheer@bckltd.com>; Harry L. Arnold <harnold@maclaw.com>; 'Matthew J. Rashbrook' <MRashbrook@ag.nv.gov>; EFile <EFile@nvlitigation.com>; Debbie Caroselli <debbie@wmllawlv.com>; Leo Wolpert <leo@nvlitigation.com>
Subject: State v Degraffenreid et al.
Importance: High

Counsel: Please respond to this email and confirm I may affix your /s so I can submit to chambers.

Maggie McLetchie



602 South Tenth Street

Las Vegas, NV 89101

(702)728-5300 (T) / (702)425-8220 (F)

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From: Monti Levy <mlevy@wmllawlv.com>
Sent: Friday, July 19, 2024 8:38 AM
To: Maggie
Cc: George Kelesis; Brian R. Hardy; Richard Wright; Sigal Chattah (Chattahlaw@gmail.com); Sigal Chattah; Alissa C. Engler; Sherri Grotheer; Harry L. Arnold; Matthew J. Rashbrook; EFile; Debbie Caroselli; Leo Wolpert
Subject: Re: State v Degraffenreid et al. - PROPOSED ORDER

You can use my e signature.

Thank you for all of your work on this Maggie!

Sent from my iPhone

On Jul 18, 2024, at 12:47 PM, Maggie <maggie@nvlitigation.com> wrote:

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Maggie McLetchie

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Leo Wolpert

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Sent: Thursday, July 18, 2024 1:49 PM
To: George Kelesis; Maggie; Richard Wright; Sigal Chattah (Chattahlaw@gmail.com); Sigal Chattah; Monti Levy; Alissa C. Engler
Cc: Sherri Grotheer; Harry L. Arnold; Matthew J. Rashbrook; EFile; Debbie Caroselli; Leo Wolpert
Subject: Re: State v Degraffenreid et al. - PROPOSED ORDER

Good for me.


Thanks

Brian

Sent from my iPhone

Brian R. Hardy, Esq.

10001 Park Run Drive
Las Vegas, NV 89145
t | 702.207.6097
f | 702.382.5816
bhardy@maclaw.com
maclaw.com

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From: George Kelesis <GKelesis@bckltd.com>
Sent: Thursday, July 18, 2024 1:48:31 PM
To: Maggie <maggie@nvlitigation.com>; Brian R. Hardy <bhardy@maclaw.com>; Richard Wright <rick@wmlawlv.com>; Sigal Chattah (Chattahlaw@gmail.com) <Chattahlaw@gmail.com>; Sigal Chattah <sigal@thegoodlawyerlv.com>; Monti Levy <mlevy@wmlawlv.com>; Alissa C. Engler <AEngler@ag.nv.gov>
Cc: Sherri Grotheer <SGrotheer@bckltd.com>; Harry L. Arnold <harnold@MACLAW.com>; Matthew J. Rashbrook <MRashbrook@ag.nv.gov>; EFile <EFile@nvlitigation.com>; Debbie Caroselli <debbie@wmlawlv.com>; Leo Wolpert <leo@nvlitigation.com>
Subject: RE: State v Degraffenreid et al. - PROPOSED ORDER

You have my authorization to go ahead. Thank you for al your hard work and efforts

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<MRashbrook@ag.nv.gov>; EFile <EFile@nvlitigation.com>; Debbie Caroselli <debbie@wmllawlv.com>; Leo Wolpert <leo@nvlitigation.com>

Subject: State v Degraffenreid et al. - PROPOSED ORDER

Importance: High

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Maggie McLetchie



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Leo Wolpert

From: Maggie
Sent: Friday, July 19, 2024 9:55 AM
To: Leo Wolpert
Subject: Fwd: State v Degraffenreid et al. - PROPOSED ORDER

Begin forwarded message:

From: Sigal Chattah <sigal@thegoodlawyerlv.com>
Date: July 19, 2024 at 8:56:20 AM PDT
To: Monti Levy <mlevy@wmllawlv.com>
Cc: Maggie <maggie@nvlitigation.com>, George Kelesis <GKelesis@bckltd.com>, "Brian R. Hardy" <bhardy@maclaw.com>, Richard Wright <rick@wmllawlv.com>, "Sigal Chattah (Chattahlaw@gmail.com)" <Chattahlaw@gmail.com>, "Harry L. Arnold" <harnold@maclaw.com>, Debbie Caroselli <debbie@wmllawlv.com>
Subject: Re: State v Degraffenreid et al. - PROPOSED ORDER

Mine as well.

Sigal Chattah, Esq.
Sent from my iPhone

On Jul 19, 2024, at 9:38 AM, Monti Levy <mlevy@wmllawlv.com> wrote:

You can use my e signature.

Thank you for all of your work on this Maggie!

Sent from my iPhone

On Jul 18, 2024, at 12:47 PM, Maggie
<maggie@nvlitigation.com> wrote:

Sorry for the confusion, but please provide your /s authority in this chain. Thanks so much. I understand folks are out of town but I will collect the authorizations as soon as I can get them!

Maggie McLetchie
<image001.png>
602 South Tenth Street

Las Vegas, NV 89101
(702)728-5300 (T) / (702)425-8220 (F)
www.nvlitigation.com

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<LAW - Draft Order On MTD.2024.7.18 FINAL FOR APPROVAL.docx>

<LAW - Draft Order On MTD.2024.7.18 FINAL FOR APPROVAL.pdf>

<image001.png>

Leo Wolpert

From: George Kelesis <GKelesis@bckltd.com>
Sent: Thursday, July 18, 2024 1:49 PM
To: Maggie; Brian R. Hardy; Richard Wright; Sigal Chattah (Chattahlaw@gmail.com); Sigal Chattah; Monti Levy; Alissa C. Engler
Cc: Sherri Grotheer; Harry L. Arnold; Matthew J. Rashbrook; EFile; Debbie Caroselli; Leo Wolpert
Subject: RE: State v Degraffenreid et al. - PROPOSED ORDER

You have my authorization to go ahead. Thank you for al your hard work and efforts

From: Maggie <maggie@nvlitigation.com>
Sent: Thursday, July 18, 2024 1:47 PM
To: George Kelesis <GKelesis@bckltd.com>; Brian R. Hardy <bhardy@maclaw.com>; Richard Wright <rick@wmllawlv.com>; Sigal Chattah (Chattahlaw@gmail.com) <Chattahlaw@gmail.com>; Sigal Chattah <sigal@thegoodlawyerlv.com>; Monti Levy <mlevy@wmllawlv.com>; Alissa C. Engler <AEngler@ag.nv.gov>
Cc: Sherri Grotheer <SGrotheer@bckltd.com>; Harry L. Arnold <harnold@maclaw.com>; Matthew J. Rashbrook <MRashbrook@ag.nv.gov>; EFile <EFile@nvlitigation.com>; Debbie Caroselli <debbie@wmllawlv.com>; Leo Wolpert <leo@nvlitigation.com>
Subject: State v Degraffenreid et al. - PROPOSED ORDER
Importance: High

Sorry for the confusion, but please provide your /s authority in this chain. Thanks so much. I understand folks are out of town but I will collect the authorizations as soon as I can get them!

Maggie McLetchie



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Leo Wolpert

From: Matthew J. Rashbrook <MRashbrook@ag.nv.gov>
Sent: Thursday, July 18, 2024 2:17 PM
To: Maggie; George Kelesis; Brian R. Hardy; Richard Wright; Sigal Chattah (Chattahlaw@gmail.com); Sigal Chattah; Monti Levy; Alissa C. Engler
Cc: Sherri Grotheer; Harry L. Arnold; EFile; Debbie Caroselli; Leo Wolpert
Subject: RE: State v Degraffenreid et al. - PROPOSED ORDER

Confirming, ok to sign/submit.

Thanks,

Matthew J. Rashbrook
Special Prosecutor - Consumer Protection and Fraud
Office of the Nevada Attorney General
555 E. Washington Ave., Suite 3900
☎ (702) 486-9299 (direct)

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From: Maggie <maggie@nvlitigation.com>
Sent: Thursday, July 18, 2024 1:47 PM
To: George Kelesis <GKelesis@bckltd.com>; Brian R. Hardy <bhardy@maclaw.com>; Richard Wright <rick@wmlawlv.com>; Sigal Chattah (Chattahlaw@gmail.com) <Chattahlaw@gmail.com>; Sigal Chattah <sigal@thegoodlawyerlv.com>; Monti Levy <mlevy@wmlawlv.com>; Alissa C. Engler <AEngler@ag.nv.gov>
Cc: Sherri Grotheer <SGrotheer@bckltd.com>; Harry L. Arnold <harnold@maclaw.com>; Matthew J. Rashbrook <MRashbrook@ag.nv.gov>; EFile <EFile@nvlitigation.com>; Debbie Caroselli <debbie@wmlawlv.com>; Leo Wolpert <leo@nvlitigation.com>
Subject: State v Degraffenreid et al. - PROPOSED ORDER
Importance: High

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Maggie McLetchie



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1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 State of Nevada

CASE NO: C-23-379122-1

7 vs

DEPT. NO. Department 18

8 James Degraffenreid, III

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 7/26/2024

15 Richard Wright

rick@wmllawlv.com

16 Monti Levy

mlevy@wmllawlv.com

17 George Kelesis

gkelesis@bckltd.com

18 Alissa Engler

AEngler@ag.nv.gov

19 R Holm

rholm@ag.nv.gov

20 Margaret McLetchie

maggie@nvlitigation.com

21 E- File

efile@nvlitigation.com

22 C Ross

CRoss@ag.nv.gov

23 M Burris

mburris@ag.nv.gov

24 Sherri Grotheer

sgrotheer@bckltd.com

25 Shannon Fagin

sfagin@bckltd.com

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27
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T DiBari

tdibari@ag.nv.gov

H Tew

htew@ag.nv.gov

ONvJ Media

media@ournevadajudges.com