

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

STATE OF NEVADA,

Appellant,

vs.

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

Respondents.

**CASE NO.** 89064

**Dist. Court No.**

C-23-379122-1

C-23-379122-2

C-23-379122-3

C-23-379122-4

C-23-379122-5

C-23-379122-6

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**APPELLANT STATE OF  
NEVADA'S REPLY IN SUPPORT  
OF COUNTERMOTION TO  
STRIKE**

**INTRODUCTION**

Appellant State of Nevada moved this Court to strike the GOP Electors' motion to dismiss and the facts from the answering brief that the GOP Electors expressly identified as not relevant to any issue on appeal. The GOP Electors' response fails to rebut the State's position. This Court should grant the motion.

\* \* \*

## ARGUMENT

### **I. Comparison of the motion to dismiss and the reply brief supports the State's position that the motion is an improper sur-reply.**

The GOP Electors complain that the State did not adequately explain how the GOP Electors' motion to dismiss is really a response to the reply brief. Reply at 2. But the parallels between the State's reply brief and the motion speak for themselves. *Compare* Reply Brief at 3-8; *with* Motion at 1-17.

Had the GOP Electors simply presented the argument on choice-of-forum legislation creating an issue of subject matter jurisdiction that they tucked into the end of their motion, the State would have had no issue with the motion. But over the span of about 15 pages, the GOP Electors made other arguments that expose the real purpose of the motion: responding to the Reply Brief. *Compare* Reply Brief at 3-8; *with* Motion at 1-17.

And the GOP Electors are wrong that the nature of the State's response somehow disproves the State's position that the motion is an improper sur-reply. The State wants this appeal to keep moving forward, consistent with this Court's order granting the motion for expedited

consideration. The State didn't have the luxury of asking for an extension of the deadline to respond to the motion until this Court resolves the State's motion to strike. So the State presented its motion to strike and simultaneously responded to the motion.

The GOP Electors' motion should be seen for what it is, not what it is called. It is a sur-reply masquerading as a motion to dismiss.

**II. This Court should take the GOP Electors at their word and strike the factual assertions in the answering brief that the GOP Electors identified as “not relevant to the questions on appeal.”**

The GOP Electors call the State's change in position on striking facts from the answering brief an act of “retaliation” and “revenge.” Opposition at 4, 7. But there is no support for these aspersions. As the State indicated before, it chose not to file a separate motion to avoid delaying resolution of the appeal by burdening this Court with a motion to decide. Reply Brief at 2 n.1. But now that this Court has motions before it that need to be addressed before resolution of the appeal, the State's prior position no longer made sense. Nothing more, nothing less.

The GOP Electors are also wrong that the State did not cite supportive authority—the State cited NRAP 32(e), which gives this Court the authority to grant a motion to strike a brief for non-compliance with

the rules. Countermotion at 4-5. True NRAP 32(e) provides for striking an entire brief. But that is also true of NRAP 28(h), which the GOP Electors suggest was the right authority for the State to cite. Reply at 5. And it logically follows that this Court’s authority to strike an entire brief also gives it authority to strike part of a brief. To conclude otherwise would require the filing of a new brief every time this Court thinks some portion of a brief should be stricken, creating unnecessary inefficiency and delaying resolution of appeals.

And the GOP Electors feigning the inability to understand what facts the State has moved to strike is an odd position to take. The State’s argument is that the GOP Electors began a section of facts in their brief by indicating that all the facts in that section are “not relevant to the questions on appeal.” Countermotion at 5; *see also* Answering Brief at 9. The basis for the State’s countermotion tells the GOP Electors exactly what parts of the answering brief the State’s argument addresses—they only started one section of their brief by admitting the facts in it are not relevant to any issue on appeal. And the GOP Electors express admission to the irrelevance of those facts also supports granting the motion to strike. NRAP 28(a)(7); NRAP 32(e).

The GOP Electors’ argument that the State somehow made the GOP Electors’ factual assertions relevant by including the video they cite in the appendix is without support. The GOP Electors cite no authority allowing parties to make factual assertions they admit are irrelevant just because they are citing the appendix. Opposition at 9. And they also fail to acknowledge that the State requested transmission of those exhibits to allow for “consideration of *arguments* the State expect[ed] the GOP Electors to make in their answering brief.” Appellant State of Nevada’s Motion for Transmission of Physical Exhibits, *State v. Degraffenreid*, No. 89064 (Sept. 4, 2024) (emphasis added). But the GOP Electors apparently made a strategic choice not to argue any of the issues from their writ petition as an alternative basis to affirm the district court’s ruling—that was their choice to make.

That point dovetails with the State’s last point. The State continues to stand on its position that it will address the GOP Electors’ arguments about the State’s purported “distortions” of fact when the GOP Electors’ factual assertions are properly presented to this Court in support of a related legal argument. As the GOP Electors explain, the State’s recitation of the grand jury testimony is accurate. Opposition at 8. The

issue the GOP Electors have with the State's representation is whether the State failed to present exculpatory evidence to the grand jury related to Kenneth Chesebro's testimony. Opposition at 8.

If and when the time comes for the State to address the GOP Electors' claims about the State's purported failure to present exculpatory evidence to the grand jury, the State will respond in substance and give this Court an opportunity to determine that issue in the ordinary course. But until then, because the GOP Electors made a strategic choice not to assert any issues from their writ petition as a basis to affirm the district court's dismissal of the indictment, their factual assertions about those issues have no place here. This Court should strike facts in the answering brief that the GOP Electors expressly admitted are irrelevant to any issue on appeal.

\* \* \*

## CONCLUSION

This Court should strike the motion to dismiss and the facts in the answering brief that the GOP Electors expressly admitted are irrelevant to any issue on appeal.

RESPECTFULLY SUBMITTED this 12th day of November, 2024.

AARON D. FORD  
Attorney General

By: *s/ Jeffrey M. Conner* \_\_\_\_\_  
JEFFREY M. CONNER  
Chief Deputy Solicitor General, No. 11543  
100 North Carson Street  
Carson City, Nevada 89701-4717  
[jconner@ag.nv.gov](mailto:jconner@ag.nv.gov)  
775-684-1136  
*Attorneys for Respondent*

## CERTIFICATE OF COMPLIANCE

Pursuant to NRAP 32(a)(9)(A), I certify that:

This reply with the type-volume limitation of NRAP 27(d)(2)(C) because the motion contains 1094 words. This reply also complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type-style requirements of NRAP 32(a)(6) because it has been prepared in a proportionately spaced typeface with Microsoft Word using Century Schoolbook 14-point font.

\* \* \*



Finally, I hereby certify that I have read this reply, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in a brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying reply is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Respectfully submitted November 12, 2024,

AARON D. FORD  
Attorney General

By: /s/ Jeffrey M. Conner  
Chief Deputy Solicitor General  
*Attorney for Appellant*

## CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Nevada Attorney General's Office, and pursuant to NRAP 25(b) and NEFCR 9 I electronically filed the foregoing **APPELLANT STATE OF NEVADA'S REPLY IN SUPPORT OF COUNTERMOTION TO STRIKE** with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing System (Eflex) on November 12, 2024. Participants in the case who are registered with Eflex as users will be served by the Eflex system.

*/s/ Amanda White*  
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Amanda White  
AG Supervising Legal Secretary