

IN THE SUPREME COURT OF THE STATE OF NEVADA

JESSE LAW, AN INDIVIDUAL;  
MICHAEL MCDONALD, AN  
INDIVIDUAL; JAMES  
DEGRAFFENREID, III, AN  
INDIVIDUAL; DURWARD JAMES  
HINDLE, III, AN INDIVIDUAL;  
EILEEN RICE, AN INDIVIDUAL; AND  
SHAWN MEEHAN, AN INDIVIDUAL,  
AS CANDIDATES FOR PRESIDENTIAL  
ELECTORS ON BEHALF OF DONALD  
J. TRUMP,  
Appellants,


vs.

JUDITH WHITMER, AN INDIVIDUAL;  
SARAH MAHLER, AN INDIVIDUAL;  
JOSEPH THRONEBERRY, AN  
INDIVIDUAL; ARTEMESIA BLANCO,  
AN INDIVIDUAL; GABRIELLE D'AYR,  
AN INDIVIDUAL; AND YVANNA  
CANCELA, AN INDIVIDUAL, AS  
CANDIDATES FOR PRESIDENTIAL  
ELECTORS ON BEHALF OF JOSEPH  
R. BIDEN, JR.,  
Respondents.

No. 82178

FILED

DEC 08 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
CHIEF DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a district court order denying an election contest. First Judicial District Court, Carson City; James Todd Russell, Judge.

On November 3, 2020, Nevada voters elected candidates for the office of presidential elector. Following the canvass required by NRS 293.395(2), the Governor of Nevada transmitted a Certificate of Ascertainment to the National Archives on December 2, 2020, which

certifies that the Democratic Party Electors received the highest number of votes cast for presidential electors in the 2020 General Election.<sup>1</sup> On the last day allowed by Nevada law, *see* NRS 293.413(1), appellant Republican Party Electors filed an action contesting the election of the respondent Democratic Party Electors. *See generally* NRS 293.407 (allowing for contest of election to the office of presidential elector); NRS 293.410(2) (identifying the grounds on which an election may be contested). The district court expedited the proceedings, with the parties submitting deposition testimony and other evidence on December 2, 2020, and the court considering that evidence and hearing argument on December 3, 2020. The district court entered a detailed written order the following day.

This appeal was docketed in this court on December 7, 2020, and the parties promptly filed competing motions. Respondents moved for a summary affirmance without briefing, while appellants moved for an expedited briefing schedule (although they asked this court to decide this matter by December 14, they did not propose a specific briefing schedule). We directed the parties to respond to each other's motions by 2 p.m. today, December 8. We also directed the district court clerk to transmit the available portions of the district court record to this court's clerk immediately, which the district court clerk did. Then, having considered the pending motions and responses, we directed the parties to file supplemental briefs by 7 p.m. today. In particular, we ordered appellants to identify by page and paragraph number the specific portions of the district court order they contest. The parties have filed those briefs.

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<sup>1</sup>The Governor's Certificate of Ascertainment can be viewed at <https://www.archives.gov/files/electoral-college/2020/ascertainment-nevada.pdf>.

The district court entered a 34-page order, setting forth its findings of fact, conclusions of law, and evidentiary rulings. The district court's order is attached. To prevail on this appeal, appellants must demonstrate error of law, findings of fact not supported by substantial evidence, or an abuse of discretion in the admission or rejection of evidence by the district court. *See Sowers v. Forest Hills Subdivision*, 129 Nev. 99, 105-06, 294 P.3d 427, 432 (2013) (reviewing a district court's factual findings for an abuse of discretion and providing that those findings will not be set aside unless they are clearly erroneous or not supported by substantial evidence); *Weddell v. H2O, Inc.*, 128 Nev. 94, 101, 271 P.3d 743, 748 (2012) (stating that questions of law are reviewed de novo, while factual findings are reviewed for substantial evidence). We are not convinced they have done so.<sup>2</sup> In particular, appellants have not demonstrated any legal error in the district court's application of NRS 293.410(2)(c). We also are not convinced that the district court erred in applying a burden of proof by clear and convincing evidence, as supported by the cases cited in the district court's order. And, in any event, the district court further determined that appellants had not met their burden even if it applied a lesser standard. Finally, the district court's order thoroughly addressed the grounds asserted in the statement of contest filed by appellants and considered the evidence offered by appellants even when that evidence did not meet the requirements under Nevada law for expert testimony, *see* NRS 50.275; *Hallmark v. Eldridge*, 124 Nev. 492, 189 P.3d 646 (2008) (explaining requirements for witness to testify as an expert), or for admissibility, *see*,

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<sup>2</sup>We have not considered any issues or grounds for contesting the election that were not raised below. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981).

e.g., NRS 51.065 (providing that hearsay is inadmissible except as otherwise provided in Nevada law). Despite our earlier order asking appellants to identify specific findings with which they take issue, appellants have not pointed to any unsupported factual findings, and we have identified none. The clerk of this court shall issue the remittitur forthwith. See NRAP 2 (allowing the court to suspend any rules in a particular case except for the time to file a notice of appeal). For these reasons, we

ORDER the judgment of the district court AFFIRMED.<sup>3</sup>

Pickering, C.J.  
Pickering

Gibbons, J.  
Gibbons

Hardesty, J.  
Hardesty

Parraguirre, J.  
Parraguirre

Stiglich, J.  
Stiglich

Silver, J.  
Silver

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<sup>3</sup>Given our disposition, we will take no action on the pending motions.

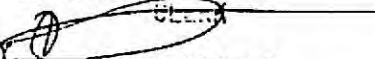
Justice Elissa F. Cadish voluntarily recused herself from participation in the decision of this matter.

cc: Hon. James Todd Russell, District Judge  
Harvey & Binnall, PLLC  
Weir Law Group LLC  
Perkins Coie, LLP/Seattle  
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP/Las Vegas  
Perkins Coie, LLP/Washington DC  
Carson City Clerk

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AUDREY ROSE STT

BY  CLERK  
DEPUTY

**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

**IN AND FOR CARSON CITY**

JESSE LAW, an individual; MICHAEL MCDONALD, an individual; JAMES DEGRAFFENREID III, an individual; DURWARD JAMES HINDLE III, an individual; EILEEN RICE, an individual; SHAWN MEEHAN, an individual, as candidates for presidential electors on behalf of Donald J. Trump,

Contestants,

vs.

JUDITH WHITMER, an individual; SARAH MAHLER, an individual; JOSEPH THRONEBERRY, an individual; ARTEMISA BLANCO, an individual; GABRIELLE D'AYR, an individual; and YVANNA CANCELA, an individual, as candidates for presidential electors on behalf of Joseph R. Biden, Jr.,

Defendants.

Case No.: 20 OC 00163 1B

Dept.: 1

**ORDER GRANTING MOTION TO DISMISS STATEMENT OF CONTEST**

**PROCEDURAL HISTORY**

On November 17, 2020, Contestants—Republican Party presidential elector candidates—filed a statement of contest challenging the results of the 2020 presidential election in Nevada, seeking an order from this Court either declaring President Donald Trump the winner in Nevada and certifying Contestants as the State’s duly elected presidential electors, or holding that President-elect Joe Biden’s victory “be declared null and void” and that the November 3 election “be annulled and that no candidate for elector for the office of President of the United States of

1 America be certified from the State of Nevada.” Statement of Contest of the Nov. 3, 2020  
2 Presidential Election 20. In orders dated November 19 and 24, 2020, this Court expanded the  
3 depositions available to each party from 10 to 15 and shortened the time for notice from seven  
4 days to 48 hours. The parties submitted their evidence to the Court on Wednesday, December 2,  
5 2020. Defendants submitted the testimony by deposition of four witnesses and Contestants  
6 submitted the testimony by deposition of eight witnesses along with numerous declarations,  
7 affidavits, and other documents. The Court held a hearing on December 3, 2020.

### 8 FINDINGS OF FACT

9 Having reviewed the full evidentiary record submitted by Contestants and Defendants, and  
10 having considered, without limitation, all evidence submitted to the Court as well as the parties’  
11 written and oral arguments, the Court makes the following findings of fact:

#### 12 I. The Election Results

13 1. In the November 3, 2020 General Election for President of the United States,  
14 President-elect Joe Biden prevailed over President Donald Trump in the State of Nevada by 33,596  
15 votes.

#### 16 II. The Agilis Machine

17 2. The COVID-19 pandemic spurred a sharp increase in mail voting for Nevada’s June  
18 2020 Primary Election. The transition to expanded mail voting placed particular stress on larger  
19 counties like Clark County because processing and counting mail ballots is time- and labor-  
20 intensive. Deposition of Wayne Thorley dated Dec. 1, 2020 (“Thorley Dep.”) 12:9–14:11;  
21 Deposition of Joseph Gloria dated Dec. 1, 2020 (“Gloria Dep.”) 13:11–12.

22 3. Accordingly, Clark County looked for solutions to enable it to meet this increased  
23 interest in mail voting. It ultimately acquired an Agilis Ballot Sorting System (the “Agilis  
24 machine”) from Runbeck Election Services (“Runbeck”). Thorley Dep. 14:10–15:18; Gloria Dep.  
25 12:20–13:22.

26 4. Runbeck is a well-respected election services company headquartered in Phoenix,  
27 Arizona. It provides a suite of hardware and software products that assist with mail ballot sorting  
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1 and processing, initiative petitions, voter registration, and ballot-on-demand printing. It is also one  
2 of the largest printing vendors for ballots in the United States. In 2020 alone, it printed 76 million  
3 ballots and mailed 30 million. Runbeck's clients are state and county election officials in the  
4 United States. Runbeck does not do work for political parties or candidates. Deposition of Jeff  
5 Ellington dated Nov. 3, 2020 ("Ellington Dep.") 8:2-19; 10:4-11; Thorley Dep. 16:1-12; Gloria  
6 Dep. 12:20-14:3.

7         5.       The Agilis machine is a ballot-sorting machine similar to those used by the U.S.  
8 Postal Service ("USPS"). As a ballot envelope is run through the machine, the Agilis takes a picture  
9 of the envelope. It also does preliminary processing to ensure the ballot is appropriate to be  
10 counted. For example, the machine scans the envelope to see if it was signed by the voter, weighs  
11 the envelope to determine if it properly contains only one ballot, and reads a barcode on the  
12 envelope to help ensure that the ballot is for the election that is being processed. The Agilis  
13 machine then sorts the mail pieces into those appropriate for counting and those with likely  
14 deficiencies, as well as by precinct or district. Ellington Dep. 11:18-13:11.

15         6.       Runbeck sells the Agilis machine with automatic signature verification software  
16 licensed from Parascript. Parascript is a preeminent provider of handwriting and signature  
17 verification software that is widely used by USPS and financial institutions across the United  
18 States. Upwards of 80 percent of bank checks in the United States are verified by Parascript's  
19 automatic signature verification technology. Ellington Dep. 13:20-14:24.

20         7.       As offered with the Agilis machine, the automatic signature verification software  
21 takes a picture of the signature on the ballot envelope. It then compares the signature from the  
22 envelope to a comparator signature from the voter registration files and, using a logarithmic  
23 algorithm, scores the signature. If that score is above the threshold setting chosen by the  
24 jurisdiction, the ballot is sorted for counting. A ballot below the threshold setting is flagged for  
25 further review. Ellington Dep. 13:3-11, 15:25-16:6; Gloria Dep. 12:1-13.

26         8.       Clark County acquired and used the Agilis machine for the June primary. Before  
27 acquiring the Agilis, Clark County approached the Office of the Nevada Secretary of State (the  
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1 “Secretary”) to request funding for the acquisition. The Secretary and Clark County engaged in  
2 extensive conversations about how the County planned to use the Agilis machine and what exactly  
3 it would do for them. Ultimately, the Secretary approved the funding. Thorley Dep. 14:15–15:21,  
4 18:1–19:6; Gloria Dep. 14:4–13.

5 9. Clark County used the Agilis machine during the June primary and November  
6 election. Before each election, Clark County conducted testing on the machine to determine what  
7 threshold setting to use. After completing this testing process, the County ultimately set the  
8 machine at a setting of 40. More testing was performed after the June primary to confirm the setting  
9 was appropriate for the November election. As a result, Clark County continued to use the Agilis  
10 machine at a setting of 40 for the November election. Gloria Dep. 16:10–17:4; 22: 1–10.

11 10. The threshold setting determines what score a signature must be given by the Agilis  
12 machine to be accepted. While it operates on a 1 to 100 scale, it does not correlate to a percentage;  
13 in other words, a setting of 40 does not represent a 40 percent likelihood that the signature is  
14 accurate, nor will a setting of 40 instruct the Agilis machine to accept 40 percent of ballots. Instead,  
15 the threshold setting is merely a cutoff for which signature scores will be accepted. Ellington Dep.  
16 16:1–17:9.

17 11. While the Agilis machine comes preset at 50, that setting does not constitute a  
18 recommended setting. Runbeck does not recommend that its customers run the machine at any  
19 particular setting. Ellington Dep. 17:10–21, 18:7–12; Gloria Dep. 15:5–22; 16:23–17:4.

20 12. Instead, Runbeck recommends that its customers do their own testing to determine  
21 a setting with which they are comfortable. Clark County complied with this best practice in  
22 choosing the setting of 40. Ellington Dep. 19:2–6.

23 13. Many jurisdictions run their Agilis machines below a threshold setting of 50.  
24 Ellington Dep. 17:17–18, 18:17–19:1; Deposition of Scott Gessler dated Dec. 1, 2020 (“Gessler  
25 Dep.”) 22:16–20.

26 14. Because the automatic signature verification is a logarithmic algorithm, there is no  
27 significant difference in the number of signatures that are verified at a setting of 40 versus a setting  
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1 of 50. Instead, the rate of verification sees a sudden high rate of change at the two extremes but  
2 not in the middle. Any setting between a 15 and 85 would produce substantially similar results.  
3 Ellington Dep. 17:12–18:6.

4 15. Accordingly, during both the June primary and November election in Clark County,  
5 a ballot envelope bearing a signature that was scored 40 or better by the Agilis machine was  
6 accepted without further review. Gloria Dep. 11:6–12:13.

7 16. If a signature was scored below 40, it was flagged for human verification. Clark  
8 County’s permanent election personnel were initially trained by a forensic signature expert and  
9 former FBI agent, and they developed a training program for temporary staff based on this  
10 instruction. During the human verification process, an election worker reviewed the signature  
11 against a reference signature on a computer screen. If the reviewer was uncertain about a signature,  
12 the signature was passed along for additional review and compared against the voter’s entire  
13 history of signatures. If uncertainty persisted, the signature was reviewed by Joseph P. Gloria,  
14 Clark County’s Registrar of Voters, as a final check. If the signature was then rejected, the voter  
15 could undertake Nevada’s statutory cure process. Gloria Dep. 17:10–20:6.

16 17. Accordingly, no ballot was rejected for signature mismatch by Clark County  
17 without first being reviewed by Clark County employees. A ballot would only ever be rejected if  
18 “at least two employees” agreed that the signature on the envelope differed in “multiple, significant  
19 and obvious respects from the signatures of the voter available in” the County’s records. Nevada  
20 Revised Statutes (“NRS”) 293.8874; *see also* Thorley Dep. 17:13–19.

21 18. During the November election, roughly 30 percent of signatures were verified by  
22 the Agilis machine, while roughly 70 percent were flagged for human verification. Gloria Dep.  
23 12:1–13.

24 19. The Agilis machine’s verification rate was relatively low because many of the  
25 comparator signatures in Clark County’s database are low-quality images from the Department of  
26 Motor Vehicles (“DMV”). A low-quality image is one with a DPI (dots per inch) below 200.  
27 Ellington Dep. 21:12–22:1.

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1           20.     When an image is below 200 DPI, the Agilis machine cannot make a match because  
2 it will not read the image file as containing a signature. Instead, it will read the image file as a  
3 series of squares and pass the signature along for human verification. In other words, low-quality  
4 comparator signatures will cause the Agilis machine to not verify signatures; it will not cause the  
5 Agilis machine to erroneously accept signatures that are not genuine. Ellington Dep. 19:19–22:1.

6           21.     During the November election, 6,864 ballots were initially rejected by Clark  
7 County for signature mismatch, representing 1.51 percent of all mail ballots received. Of those,  
8 5,506 voters (or 80.22 percent of voters whose ballots were rejected) cured their ballots, resulting  
9 in 1,358 (or 0.30 percent of) ballots being rejected for signature mismatch. See Deposition of Dr.  
10 Michael Herron dated Dec. 2, 2020 (“Herron Dep.”) 30:25–32:24, Expert Declaration of Dr.  
11 Michael Herron dated Dec. 30, 2020 (“Herron Decl.”), 23-24 (Defs.’ Ex. 6).

12           22.     Clark County’s pre-cure signature mismatch rate of 1.51 percent is nearly  
13 equivalent to that of Washoe County, which was 1.53 percent in the 2020 General Election.  
14 Washoe County did not use the Agilis machine in processing mail ballots in the 2020 General  
15 Election. The signature mismatch rate in the 2016 general election was 0.13 in both Clark County  
16 and statewide. See Herron Dep. 36:15–39:7; Herron Decl. 25–26.

17 **III.    Electronic Voting Machines**

18           23.     Clark County, along with 15 other counties in Nevada, uses Dominion Voting  
19 Systems to conduct in-person voting. Thorley Dep. 23:3–11.

20           **A.    In-Person Voting Technology**

21           24.     When a voter shows up at a polling place, she must first check in with an election  
22 worker. Clark County, like other counties in Nevada, uses an electronic poll book to check the  
23 voter in and confirm the voter’s identity. Thorley Dep. 26:9–13.

24           25.     First, the election worker will look up the voter on an electronic roster and, upon  
25 locating the voter’s record, confirm her identity. This process can involve checking more than the  
26 voter’s name if there are multiple records with the same name. Thorley Dep. 26:13–19.

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1           26.    Next, the election worker will ensure that the voter does not need to make any  
2 changes to her voter registration information. Thorley Dep. 26:20–21.

3           27.    Finally, the election worker will provide a pen with a metal screen tip to the voter,  
4 which will allow her to sign an electronic tablet to provide a signature. Thorley Dep. 22–24; Gloria  
5 Dep. 99:24–100:3.

6           28.    In Clark County, after successfully checking in the voter, the election worker will  
7 initialize a voting machine activation card—“voter card”—and provide it to the voter. The voter  
8 must insert the voter card into the electronic voting machine for her ballot to appear and to begin  
9 the voting process. Clark County uses “vote centers,” meaning any voter in the County can vote at  
10 any polling location. The voter card ensures that the voter is presented the ballot for her specific  
11 precinct. Thorley Dep. 26:5–27:10.

12          29.    When the voter inserts the voter card into the voting machine (also called the  
13 “ICX”), the voting machine pulls up the correct ballot, allowing the voter to go through and make  
14 selections on a touchscreen. The voter has various opportunities to make changes and review the  
15 ballot on the screen itself. Thorley Dep. 27:11–16.

16          30.    Once the voter has reviewed her selections, a printer connected to the voting  
17 machine (the voter verified paper audit trail printer, or “VVPAT”) flashes a green light before  
18 creating a printout of the voter’s selections. The printout is printed on a roll of paper—like a receipt  
19 from a grocery store cash register—behind a plastic covering, which allows the voter to privately  
20 review her selections. The printout is statutorily required for electronic voting machines as an  
21 alternative method for voters to confirm the selections made on electronic voting machines. If  
22 there is anything wrong with the printer, such as a paper jam or a need for more paper, the printer  
23 will flash a red light so that the voter can be assisted. Thorley Dep. 27:17–25, 28:10–22; Gloria  
24 Dep. 28:13–21, 42:13–25.

25          31.    A voter can make changes on the touchscreen, if necessary, after reading the  
26 printout. Otherwise, the voter touches the “cast-ballot” button on the machine, completing the  
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1 voting process. The voter will then retrieve the voter card from the machine, hand it to a poll  
2 worker, and receive an "I Voted" sticker. Thorley Dep. 27:25–28:9; Gloria Dep. 29:7–12.

3 32. Voters who check in but do not complete the voting process are known as "fled  
4 voters." Fled voters can be explained for various innocuous reasons, including voter confusion or  
5 an ultimate decision not to vote. Thorley Dep. 30:11–25; Gloria Dep. 52:14–18.

6 **B. Certification and Auditing**

7 33. These voting systems are subject to extensive testing and certification before each  
8 election and are audited after each election. Thorley Dep. 35:12–39:23; Gloria Dep. 31:3–32:7,  
9 33:9–21.

10 34. For example, the electronic voting systems used by Clark County were certified by  
11 the federal government when they were first brought on the market, as well as any time a hardware  
12 or software component is upgraded. This certification is done by a voting system test laboratory.  
13 Thorley Dep. 36:19–37:12.

14 35. The electronic voting machines are also tested and certified by the Secretary, who  
15 contracts with the Nevada Gaming Control Board for this certification. Thorley Dep. 37:17–38:21.

16 36. Clark County's electronic voting machines were last inspected by the Gaming  
17 Control Board in December 2019 and certified by the Secretary shortly thereafter. Thorley Dep.  
18 39:6–15; Gloria Dep. 31:3–32:7.

19 37. The voting machines are also audited against a paper trail that is generated, as  
20 discussed above, when voters make their selections. A Clark County voting machine will not  
21 operate unless it is connected to a printer (the VVPAT), which creates a paper record that voters  
22 can review. Thorley Dep. 28:11–29:6; Gloria Dep. 28:13–29:5.

23 38. After each election, Clark County, like Nevada's other counties, conducts a random  
24 audit of its voting machines. Specifically, it compares the paper trail created by the printer against  
25 the results recorded by the voting machine to ensure they match. Thorley Dep. 35:12–36:12; Gloria  
26 Dep. 33:9–21.

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1           39.     If there are any issues with or discrepancies in the data recorded by Clark’s voting  
2 machines, or issues with the accuracy of the paper trail created by the printers, then they would  
3 appear in this audit; indeed, that is what the audit is designed to catch. Thorley Dep. 36:8–12.

4           40.     Clark County conducted this audit following the November election and there were  
5 no discrepancies between the paper audit trail created by the printer and the data from the voting  
6 machine. Gloria Dep. 33:9–21.

7 **IV.    Previous Lawsuits**

8           41.     Several of the issues raised in Contestants’ statement have been litigated and  
9 resolved in previous state and federal cases.

10          A.     *Kraus v. Cegavske*

11          42.     District Judge James E. Wilson, Jr. concluded that Clark County’s use of the Agilis  
12 machine is permissible under Nevada law in *Kraus v. Cegavske*, No. 20 OC 00142 1B, slip op. at  
13 12 (Nev. 1st Jud. Dist. Ct. Oct. 29, 2020).

14          43.     During a ten-hour evidentiary hearing, the parties’ counsel—including Contestants’  
15 counsel, Jesse Binnall—addressed Clark County’s use of the Agilis machine. *See, e.g.*, Transcript  
16 of Video-Recorded Hearing 19–20, 36–37, 47–56, 70–74, 76–78, 240–43, *Kraus v. Cegavske*, No.  
17 20 OC 00142 1B (Nev. 1st Jud. Dist. Ct. Oct. 28, 2020).

18          44.     Judge Wilson found that “major metropolitan areas including Cook County,  
19 Illinois, Salt Lake City, Utah, and Houston, Texas use Agilis,” and that the same system was “used  
20 for the June primary election,” during which “[n]o evidence was presented that the setting used by  
21 Clark County causes or has resulted in any fraudulent ballot being validated or any valid ballot  
22 invalidated.” *Kraus*, slip op. at 4.

23          45.     Judge Wilson concluded that “[t]here is no evidence that any vote that should  
24 lawfully not be counted has been or will be counted,” and that “[t]here is no evidence that any  
25 election worker did anything outside of the law, policy, or procedures.” *Id.* at 9.

26          46.     On the merits of the challenge to the Agilis machine, Judge Wilson explained that  
27 Assembly Bill 4 (“AB 4”)—omnibus election legislation enacted by the Nevada Legislature during  
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1 a special session in the summer of 2020—“specifically authorized county officials to process and  
2 count ballots by electronic means. Petitioners’ argument that AB 4, Sec. 23(a) requires a clerk or  
3 employee check the signature on a returned ballot means the check can only be done manually is  
4 meritless. The ballot must certainly be checked but the statute does not prohibit the use of  
5 electronic means to check the signature.” *Id.* at 12 (citation omitted).

6 47. Judge Wilson rejected the argument that Clark County’s use of the Agilis machine  
7 violates equal protection, concluding that “[n]othing the State or Clark County has done values  
8 one voter’s vote over another’s.” *Id.* at 13.

9 48. Judge Wilson further determined that the “[p]etitioners [] failed to prove” that Mr.  
10 Gloria “has interfered with any right they or anyone else has as an observer” and that “Gloria has  
11 not failed to meet his statutory duties . . . to allow members of the general public to observe the  
12 counting of ballots.” *Id.* at 11.

13 49. The *Kraus* petitioners filed an emergency motion for immediate relief with the  
14 Nevada Supreme Court, which denied the request after concluding that they “ha[d] not  
15 demonstrated a sufficient likelihood of success to merit a stay or injunction.” *Kraus v. Cegavske*,  
16 No. 82018, slip op. at 2–3 (Nev. Nov. 3, 2020).

17 50. The *Kraus* petitioners subsequently dismissed the appeal. *See Kraus v. Cegavske*,  
18 No. 82018, slip op. at 1–2 (Nev. Nov. 10, 2020).

#### 19 **B. Other Cases**

20 51. In *Donald J. Trump for President, Inc. v. Cegavske*, Donald J. Trump for President,  
21 Inc. (the “Trump Campaign”), the Republican National Committee, and the Nevada Republican  
22 Party challenged AB 4 soon after the law was enacted, and the U.S. District Court for the District  
23 of Nevada dismissed the lawsuit after concluding that these plaintiffs lacked standing. *See* No.  
24 2:20-CV-1445 JCM (VCF), 2020 WL 5626974, at \*7 (D. Nev. Sept. 18, 2020).

25 52. Both the Eighth Judicial District Court and the Nevada Supreme Court denied relief  
26 requested by the Election Integrity Project of Nevada and Sharron Angle in a lawsuit alleging,  
27 among other claims, that AB 4 violates equal protection. *See Election Integrity Project of Nev. v.*  
28

1 *State ex rel. Cegavske*, No. A-20-820510-C, slip op. at 12 (Nev. 8th Jud. Dist. Ct. Sept. 28, 2020);  
2 *Election Integrity Project of Nev. v. Eighth Jud. Dist. Ct.*, No. 81847, slip op. at 6 (Nev. Oct. 7,  
3 2020).

4 53. On November 5, 2020, another group of plaintiffs, again backed by the Trump  
5 Campaign, filed suit in federal court and alleged that Clark County's use of the Agilis machine  
6 violates Nevada law; after conducting a hearing and concluding that use of the Agilis machine  
7 does not "conflict with the other provisions of the Nevada election laws" and that there was "little  
8 to no evidence that the machine is not doing what it's supposed to do, or incorrectly verifying other  
9 signatures," the court denied the plaintiffs' motion for temporary restraining order and preliminary  
10 injunction. Reporter's Tr. of Proceedings at 79:5-7, 79:24-80:1, *Stokke v. Cegavske*, No. 2:20-cv-  
11 02046-APG-DJA (D. Nev. Nov. 6, 2020). The *Stokke* plaintiffs voluntarily dismissed their case.  
12 See Notice of Voluntary Dismissal Under FRCP 41(a)(1)(A)(i), *Stokke v. Cegavske*, No. 2:20-cv-  
13 02046-APG-DJA (D. Nev. Nov. 24, 2020), ECF No. 31.

14 54. Other lawsuits challenging Clark County's administration of the November  
15 election have been dismissed on various grounds. See, e.g., *Becker v. Gloria*, No. A-20-824878-  
16 W, slip op. at 4 (Nev. 8th Jud. Dist. Ct. Dec. 2, 2020) ("The Court finds that Plaintiff has offered  
17 no evidence sufficient to find any error on the part of either Clark County or Registrar Gloria that  
18 would warrant granting the relief sought here."); *Rodimer v. Gloria*, No. A-20-825130-W, slip op.  
19 at 4 (Nev. 8th Jud. Dist. Ct. Nov. 25, 2020); *Marchant v. Gloria*, No. A-20-824878-W, slip op. at  
20 4 (Nev. 8th Jud. Dist. Ct. Nov. 23, 2020).

## 21 **V. Evidence Presented**

### 22 **A. Contestants' Evidence**

23 55. The Court's orders required Contestants to disclose all witnesses and provide  
24 Defendants with all evidence they intended to use at the hearing in this matter by 5:00 p.m. on  
25 November 25, 2020.

26 56. Contestants did not issue their first deposition notices until Friday, November 27,  
27 2020.

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1           57. Much of Contestants' evidence consists of non-deposition evidence in the form of  
2 witness declarations. These declarations fall outside the scope of the contest statute, which  
3 provides that election contests "shall be tried and submitted so far as may be possible upon  
4 depositions and written or oral argument as the court may order." NRS 293.415. The reason for  
5 this is to allow for the cross-examination of the deponent under oath.

6           58. These declarations also constitute hearsay, as they are out-of-court statements  
7 offered in evidence to prove the truth of the matters asserted. *See* NRS 51.035, 51.065; *Cramer v.*  
8 *State*, 126 Nev. 388, 392, 240 P.3d 8, 11 (2010) ("An affidavit is generally inadmissible hearsay.").  
9 Most of these declarations were self-serving statements of little or no evidentiary value.

10          59. The Court nonetheless considers the totality of the evidence provided by  
11 Contestants in reaching and ruling upon the merits of their claims.

12           **B. Contestants' Expert Evidence**

13           **i. Michael Baselice**

14          60. Contestants offered Mr. Baselice to opine on the incidence of illegal voting in the  
15 2020 General Election based on a phone survey of voters.

16          61. The Court questions Mr. Baselice's methodology because he was unable to identify  
17 the source of the data for his survey and conducted no quality control of the data he received.  
18 Baselice Dep. 29:13–30:8, 34:24–35:21, 57:13–58:14.

19           **ii. Jesse Kamzol**

20          62. Contestants offered Mr. Kamzol to opine that significant illegal voting occurred in  
21 Nevada during the 2020 General Election, based on his analysis of various commercially available  
22 databases of voters.

23          63. The Court questions Mr. Kamzol's methodology because he had little to no  
24 information about or supervision over the origins of his data, the manner in which it had been  
25 matched, and what the rate of false positives would be. Additionally, there was little or no  
26 verification of his numbers. Kamzol Dep. 58:6–11, 58:15–17, 59:22–24.

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1                   **iii. Scott Gessler**

2           64. Contestants offered Mr. Gessler to opine on the transition to and administration of  
3 mail voting.

4           65. Mr. Gessler's report lacked citations to facts and evidence that he used to come to  
5 his conclusions and did not include a single exhibit to support of any of his conclusions.

6           66. The Court finds that Mr. Gessler's methodology is unsound because he based nearly  
7 all his opinions on a handful of affidavits that he took no steps to corroborate through independent  
8 investigation. Gessler Dep. 44:12-14, 48:11-25, 50:8-22, 66: 1-7.

9                   **C. Defendants' Evidence**

10           67. Defendants put forth the testimony by deposition of Wayne Thorley, Nevada's  
11 former Deputy Secretary of State for Elections. This testimony is credible because of Mr.  
12 Thorley's experience, lack of bias, and first-hand knowledge of the subjects he testified to.

13           68. Defendants put forth the testimony by deposition of Jeff Ellington, President and  
14 Chief Operating Office of Runbeck, which manufactures the Agilis machine. This testimony is  
15 credible because of Mr. Ellington's experience, lack of bias, and first-hand knowledge of the  
16 subjects he testified to.

17           69. Defendants put forth the testimony by deposition of Joseph P. Gloria, the Registrar  
18 of Voters for Clark County. This testimony is credible because of Mr. Gloria's experience, lack of  
19 bias, and first-hand knowledge of the subjects he testified to.

20           70. Defendants put forth the testimony by deposition of Dr. Michael Herron. Dr. Herron  
21 is qualified as an expert in the areas of election administration, voter fraud, survey design, and  
22 statistical analysis. Dr. Herron holds advanced degrees in statistics and political science; has  
23 published academic papers in peer-reviewed journals about election administration and voter  
24 fraud; and has an extensive record of serving as an expert on related topics in litigation before  
25 numerous courts, none of which has found that his testimony lacks credibility.

26           71. The Court finds the testimony of Dr. Herron credible and his methodology and  
27 conclusions reliable. His testimony is relevant and limited in scope because it considered each  
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1 ground for contest, both individually and within the context of Nevada’s registration and voting  
2 system, and the prevalence of voter fraud nationwide and in Nevada. His methodology is reliable  
3 because it is similar to that which he uses in his published work and because he produced all of  
4 the data on which he relied, such that his conclusions are testable by others in his field.

5 **VI. Illegal or Improper Votes**

6 **A. Voter Fraud Rates**

7 72. Contestants allege that fraud occurred at multiple points in the voting process in  
8 Nevada in rates that exceed the margin of victory in the presidential race. Based on Dr. Herron’s  
9 analysis, the Court finds there is no evidence that voter fraud rates associated with mail voting are  
10 systematically higher than voter fraud rates associated with other forms of voting. *See* Herron Dep.  
11 17:7–13; Herron Decl. 17.

12 73. Based on Dr. Herron’s analysis, the Court finds there is no evidence that voter fraud  
13 rates associated with mail voting are systematically higher than voter fraud rates associated with  
14 other forms of voting. *See* Herron Dep. 17:7–13; Herron Decl. 17.

15 74. After examining voter turnout in Nevada and constructing a database of voter fraud  
16 instances in the State from 2012 to 2020, Dr. Herron concluded that out of 5,143,652 ballots cast  
17 in general and primary elections during that timeframe (not including the 2020 General Election),  
18 the illegal vote rate totaled at most only 0.00054 percent. Herron Dep. 22:19–24:7; Herron Decl.  
19 18–21.

20 75. Dr. Herron considered the academic literature on voter fraud in the United States  
21 (including published papers that he has authored) and analyzed publicly available election data in  
22 Clark County to evaluate Contestants’ allegations of fraud. Based on his study, Dr. Herron  
23 concluded that Contestants’ allegations “strain credulity.” Herron Dep. 41:4–18; Herron Decl. 28  
24 (explaining that Contest implied that double-voting rate experienced by mail-in voters in Nevada  
25 was at least 89 times greater than conservative academic estimate); Herron Dep. 45:2–46:24;  
26 Herron Decl. 33 (explaining that only 537 ballots arrived after deadline in Clark County and that  
27 there is no evidence that single one was counted).

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1           76. Dr. Herron’s comparative analysis across counties of signature mismatch rates was  
2 similar to an analysis he conducted in North Carolina’s Ninth Congressional District in 2018,  
3 during which publicly available absentee ballot data was consistent with allegations of fraud. His  
4 analysis there was credited by the North Carolina State Board of Elections. Herron Dep. 9:19–  
5 10:9. In contrast to his study in North Carolina, Dr. Herron’s comparative analysis in the 2020  
6 Nevada election revealed no irregularities across counties. *See* Herron Dep. 33:9–34:25 (finding  
7 nearly identical signature mismatch rates in Clark County and Washoe County despite that one  
8 uses the Agilis machine and one does not).

9           77. Based on his evaluation of Contestants’ allegations, Dr. Herron concluded that  
10 “none of the grounds [in the Contest] contains persuasive evidence [(1)] that there were fraudulent  
11 activities associated with the 2020 General Election in particular [or] the presidential election in  
12 Nevada; [(2)] that these fraudulent activities led to fraudulent votes, [or (3)] that these allegedly  
13 fraudulent votes affected the vote margin of 33,596 . . . that separates Joe Biden and Donald Trump  
14 in Nevada.” Herron Dep. 25:1–17; Herron Decl. 1, 21. The Court credits these findings and accepts  
15 them as its own.

16           78. Dr. Herron’s testimony is buttressed by Contestants’ own expert witness, Mr.  
17 Gessler, who also testified that he has no personal knowledge that any voting fraud occurred in  
18 Nevada’s 2020 General Election. Gessler Dep. 7:3–9, 40:13–12.

19           79. Based on this testimony, the Court finds that there is no credible or reliable evidence  
20 that the 2020 General Election in Nevada was affected by fraud. Herron Dep. 56:19–57:21.

21           **B. Provisional Ballots**

22           80. Contestants allege problems and irregularities with the provisional balloting  
23 process, including that certain voters were allowed to vote without proper Nevada identification  
24 and that the consequences of voting provisionally were not explained to voters.

25           81. The record does not support a finding that election officials counted ballots cast by  
26 same-day registrants who only provided proof of a DMV appointment in place of a Nevada  
27 photographic identification. *Cf.* Doe 3 Dep. 38:7–13, 41:6–8 (testifying that voters who provided  
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1 only proof of DMV appointments after election day were given provisional ballots, but admitting  
2 that she did not participate in counting of provisional ballots and did not know whether any such  
3 ballots were counted); Doe 5 Decl. (LAW 000462) (hearsay declaration stating that voters without  
4 identification could make DMV appointment and vote, but not alleging that this process was  
5 improper or illegal).

6 82. The record does not support a finding that any provisional voters were wrongfully  
7 disenfranchised because of directions provided by election officials or because they were not given  
8 an opportunity to cure their ballots. *Cf.* Gloria Dep. 55:5–56:11 (testifying that all provisional  
9 voters received a set of paperwork explaining why they voted provisionally).

10 83. The record does not support a finding that voters were made to cast provisional  
11 ballots on election day and then not given the opportunity to cure their lack of identification. *Cf.*  
12 Doe 3 Dep. 38:7–13, 41:6–8 (testifying that voters with DMV appointments after election day  
13 were given provisional ballots, but admitting that she did not participate in counting of provisional  
14 ballots and not testifying that such voters were not given opportunity to cure); Huff Decl. (LAW  
15 001689–92) (hearsay declaration alleging various issues with cure process, but never identifying  
16 any voters who were denied the opportunity to cure).

17 84. The record does not support a finding that same day registrants with out-of-state  
18 identification were permitted to vote a regular, rather than provisional, ballot. *Cf.* Doe 1 Dep.  
19 (describing that such voters were made to vote provisional ballots to be later verified).

20 **C. Mismatched Signatures**

21 85. Contestants assert that the Agilis machine consistently malfunctioned and accepted  
22 invalid signatures because the machine setting was set impermissibly low and approved signatures  
23 based on low quality reference images.

24 86. The record does not support a finding that the Agilis machine functioned  
25 improperly and accepted signatures that should have been rejected during the signature verification  
26 process.

1           87.    The record does not support a finding that election workers counted ballots with  
2 improper signatures that should have been rejected. *Cf.* Blanco Decl. (LAW 000238) (hearsay  
3 declaration asserting that single signature from Clark County did not appear to match, but  
4 providing no evidence that it was not the voter's signature); Cordell Criddle Decl. (LAW 000364)  
5 (hearsay declaration alleging that illegible signature was nevertheless accepted, but not that vote  
6 was illegal); Debra Criddle Decl. (LAW 000364) (same); Doe 6 Decl. (LAW 000454) (hearsay  
7 declaration alleging several instances where signatures appeared to have been signed by others  
8 assisting voters, but not providing evidence that this assistance was unlawful).

9           88.    The record does not support a finding that election workers authenticated,  
10 processed, or counted ballots that presented problems and irregularities under pressure from  
11 election officials. *Cf.* Doe 2 Dep. 53:19–54:18 (testifying that ballots with purportedly strange  
12 signatures were counted, but admitting that she did not see comparator signatures and could not  
13 confirm that these were not voters' actual signatures); Doe 3 Dep. 43:15–20 (testifying that on  
14 election day she was instructed not to score or surrender ballots, but not that any unlawful ballots  
15 were counted as result).

16           89.    The record does not support a finding that illegal ballots were cast because the  
17 signature on the ballot envelope did not match the voter's signature. *Cf.* Blanco Decl. (LAW  
18 000238) (hearsay declaration asserting that single signature from Clark County did not match, but  
19 providing no evidence that signature was not voter's); Cordell Criddle Decl. (LAW 000364)  
20 (hearsay declaration alleging that illegible signature was nevertheless accepted, but not that vote  
21 was illegal); Debra Criddle Decl. (LAW 000364) (same); Doe 6 Decl. (LAW 000454) (hearsay  
22 declaration alleging several instances where signatures appeared to have been signed by others  
23 assisting voters, but not providing evidence that this assistance was unlawful).

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1           **D.     Illegal Votes from In-Person Voting Technology**

2           90.     Contestants allege that 1,000 illegal or improper votes were cast and counted as a  
3 result of maintenance and security issues with voting machines and that 1,000 legal votes were not  
4 counted due to issues with voting machines.

5           91.     The record does not support a finding that maintenance and security issues resulted  
6 in illegal votes being cast and counted or legal votes not being counted. *See* Gloria Dep. 33:9–21,  
7 36:8–12 (testifying that the voting machines were audited against a paper trail and that audit turned  
8 up no discrepancies).

9           **E.     Ineligible Voters and Double Voting**

10          92.     Contestants allege that voters were sent and cast multiple ballots and otherwise  
11 double voted, that non-Nevada residents cast ballots and those ballots were counted, and that  
12 numerous persons arrived to vote in-person on election day only to find out that a mail ballots was  
13 cast in their name already.

14          93.     The record does not support a finding that any Nevada voter voted twice. *See* Doe  
15 4 Dep. 10:6–13 (testifying that two voters he checked in were not allowed to vote because of record  
16 that they already voted).

17          94.     The record does not support a finding that any individuals were sent and cast  
18 multiple mail ballots. *Cf.* Negrete Decl. (LAW 001626) (hearsay declaration alleging that she  
19 received two ballots, one each for her married and maiden names, but not that she or anyone else  
20 cast multiple votes); Finley Decl. (LAW 004944) (hearsay declaration alleging that voter received  
21 two ballots, but providing no evidence that ballot was cast or counted).

22          95.     The record does not support a finding that numerous voters arrived to vote at their  
23 respective polling places only to be informed that a mail ballot had already been received on their  
24 behalf when, in fact, the voter had not submitted a mail ballot. *Cf.* Doe 3 Dep. 36:18–25, 37:1–18  
25 (testifying that single unidentified man arrived at her polling place and claimed that he did not cast  
26 mail ballot allegedly received by election officials, but not providing any corroborating evidence);  
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1 Doe 4 Dep. 10:6–13 (testifying that two voters he checked in were not allowed to vote because of  
2 record that they already voted, but not demonstrating whether these voters had in fact cast ballots).

3 96. The record does not support a finding that election officials counted mail ballots  
4 from voters who also voted in other states. *Cf.* Doe 2 Dep. 56:15–25 (testifying that she saw ballots  
5 arrive from out of state but admitting that she did not know whether they were lawfully cast); Doe  
6 3 Dep. 12:8–16 (testifying that she was asked to accept a voter’s California identification with  
7 Nevada address and was instructed to give them a provisional ballot, but not that voter had also  
8 voted in California).

9 97. The record does not support a finding that election officials counted ballots from  
10 voters who did not meet Nevada residency requirements. *Cf.* Doe 2 Dep. 56:15–25 (testifying that  
11 voters were allowed to cast ballots without presenting identification, but not that voters did not  
12 meet residency requirements); Doe 4 Dep. 10:14–11:12, 40:7–23 (testifying to belief that  
13 individuals with out-of-state identification were allowed to vote, but admitting that he did not know  
14 if these individuals voted after they were directed to team leaders); Linda Smith Decl. (LAW  
15 004650) (hearsay declaration describing voters arriving with out-of-state license plates, but not  
16 claiming that these voters were ineligible to vote in Nevada); *see* Thorley Dep. 47:1–48:12  
17 (testifying that Nevada directs the USPS not to forward ballots and that ballots are mailed as  
18 marketing mail, which does not include mail forwarding, a feature that requires additional  
19 payment).

20 **F. Ballot Issues**

21 98. Contestants allege that Clark County election workers were pressured to push  
22 ballots through despite deficiencies.

23 99. The record does not support a finding that Clark County election workers were  
24 pressured to process and count ballots that presented problems and irregularities. *Cf.* Doe 2 Dep.  
25 53:19–54:18 (testifying that ballots with purportedly strange signatures were counted, but  
26 admitting that she did not see comparator signatures and could not confirm that these were not  
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1 voters' actual signatures); Doe 3 Dep. 43:15–20 (testifying that on election day she was instructed  
2 not to score or surrender ballots, but not that any unlawful ballots were counted as result).

3 **G. Deceased Voters**

4 100. Contestants allege that votes from deceased voters were improperly cast and  
5 counted.

6 101. The record does not support a finding that, as Contestants allege, 500 votes were  
7 illegal or improper because they were cast by deceased voters. *See* Thorley Dep. 44:2–45:24  
8 (testifying to the process in place to maintain voter rolls, including removing confirmed deceased  
9 voters); Gloria Dep. 63:24–64:8, 90:7–23 (same); Hartle Decl. (LAW 000260–61) (hearsay  
10 declaration asserting only that single vote from deceased wife was counted during November  
11 election); 2020 General Election Rejection Log (LAW 004366, 004527) (showing only two “voter  
12 is deceased” entries).

13 **H. Voter Impersonation**

14 102. Contestants allege that persons cast mail ballots in other persons' names.

15 103. The record does not support a finding that ballots that were completed and  
16 submitted by anyone other than the proper voters. *Cf.* Doe 3 Dep. 14:8–14, 35:1–5 (testifying that  
17 unidentified persons near purported Biden-Harris bus next to polling location prefilled mail ballots  
18 and put them in pink ballot envelopes, but admitting that she did not see these ballots cast and  
19 cannot confirm that these ballots were counted); Walters Decl. (LAW 000266) (hearsay  
20 declaration claiming that occupants of van seen following USPS truck took mail ballots from  
21 mailboxes, but providing no evidence that these ballots were cast and counted); Garrett Smith  
22 Decl. (LAW 000453) (hearsay declaration claiming that he did not vote and that “[a] search of the  
23 Clark County web site [] disclosed that a ballot in my name was accepted by the county on  
24 November 7, 2020,” but providing no evidence that this was his ballot and not ballot of someone  
25 with same name).