

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 STATE OF
NEVADA’S MOTION FOR
EXPEDITED CONSIDERATION
OF APPEAL (IMMEDIATE
CONSIDERATION REQUESTED)**

I. Introduction

The district court dismissed the indictments against Respondents (“the GOP Electors”) after determining—incorrectly—that Clark County was an improper venue under NRS 171.030. The State expects to prevail in this appeal. And a swift, public decision reinstating the indictment the State lawfully obtained in Clark County will have a deterrent effect on those considering similar criminal conduct during the upcoming 2024 Presidential Election, regardless of which party prevails. But even if this Court affirms, expediting the appeal remains appropriate. The State can still pursue Uttering a Forged Instrument: Forgery in an alternative

venue because the statute of limitations will not expire before December 14, 2024. For those reasons, this Court should expedite this appeal.

II. Factual and procedural background

A. The 2020 Presidential Election in Nevada.

Joseph R. Biden for President of the United States and Kamala D. Harris for Vice President of the United States received the highest number of votes in the State of Nevada. *Law v. Whitmer*, 136 Nev. 800, 477 P.3d 1124, 2020 WL 7240299, at *2 (2020) (unpublished table disposition).¹ Two weeks after the election, the GOP Electors filed a Statement of Contest in the First Judicial District Court, challenging the result of the Presidential Election in Nevada. *Id.* at *1. The Statement sought an order “declaring President Donald Trump the winner in Nevada and certifying [the GOP Electors] as the State’s duly elected presidential electors.” *Id.* at 2. In the alternative, the Statement requested an order declaring the election result “‘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 America be certified from the State of Nevada.’” *Id.*

¹ Pin citations to *Law* are citations to the pagination on Westlaw.

On December 2, 2020, the district court conducted an evidentiary hearing, allowing each party to present evidence. *Law*, 2020 WL 7240299, at *1. The next day, the district court heard arguments. *Id.* And the day after that, the district court dismissed the case. *Id.* at **1-21.

The GOP Electors appealed on December 7, 2020. *Id.* at *1. The same day, this Court ordered expedited briefing with specific directions for the GOP Electors “to identify by page and paragraph number the specific portions of the district court order they contest.” *Id.* The parties filed their briefs. *Id.* And this Court issued an order affirming the district court’s order and directing the clerk of court to “issue the remittitur forthwith” on December 8, 2020. *Id.* at **1-2.

The Nevada Secretary of State then moved forward with planning the meeting of the Electoral College for Nevada’s Democratic Party electors. Exhibit 3 at 82. Secretary Barbara Cegavske presided over the meeting on the morning of December 14, 2020. Exhibit 3 at 72, 82-83.

After the meeting concluded, Deputy Secretary of State for Elections Mark Wlaschin and his staff compiled the Certificate of Ascertainment, the Certificate of Vote, and the Certificate of Final Determination of Contests concerning Presidential Electors. Exhibit 3 at 83-86. And they

sent copies of each document to the Nevada Secretary of State, Chief Judge of the U.S. District Court for the District of Nevada, the Archivist of the United States, and the President of the U.S. Senate. Exhibit 3 at 87. The genuine Certificate of Vote contained the Nevada state seal, the Democratic Party's electors signed the Certificate of Vote, and their signatures matched the names on the Certificate of Ascertainment. Exhibit 3 at 85-86; Exhibit 4.

B. With assistance from the Trump Campaign, the GOP Electors forge false electoral college documents, conduct a fake signing ceremony, and mail the documents to various locations.

James Troupis contacted Kenneth Chesebro around November 10, 2020, and asked Chesebro to do some legal work related to challenges to election results in Wisconsin. Exhibit 2 at 26-27. Chesebro drafted various memoranda on behalf of the Trump Campaign, including a memorandum dated November 18, 2020, that suggested Trump electors would need to cast ballots by December 14, 2020, to comply with federal statutes, if the Wisconsin challenges succeeded. Exhibit 2 at 28-29.

Chesebro also drafted a memorandum addressing federal and state law elections standards for states where litigation over the election remained ongoing. Exhibit 2 at 30-31. And he drafted voting documents—

based on Wisconsin's documents—for electors in other states to use as a modifiable template for use in the electors' respective states. Exhibit 2 at 32-33. And after he contacted James DeGraffenreid, Michael McDonald, and Jesse Law, he shared copies of those documents to James DeGraffenreid. Exhibit 2 at 33-35.

When communicating with DeGraffenreid, Chesebro inquired about whether litigation was still pending in Nevada—in Chesebro's view, the existence of pending litigation was the only reason to cast alternate elector votes. Exhibit 2 at 35-36. But he received no response to his inquiry. Exhibit 2 at 36.

DeGraffenreid circulated the documents received from Chesebro to each of the GOP Electors on December 13, 2020. Exhibit 5. And the documents, which were titled "CERTIFICATE OF THE VOTES OF THE 2020 ELECTORS FROM NEVADA," included declarations from the GOP Electors that they were "the duly elected and qualified Electors for President and Vice President of the United States of America from the State of Nevada." Exhibit 6.

The next day, coming from various parts of Nevada, the GOP Electors convened in Carson City, Nevada where they executed the

documents and broadcast their meeting via Right Side Broadcasting. Exhibit 2 at 9-10. In response to a subpoena, Right Side Broadcasting produced two videos, one edited version totaling 38 minutes, 46 second in length, and one raw footage that was a little over an hour in length, which depicted “the six Nevada Republican nominee electors executing their ballots for the Electoral College election of the U.S president and vice president,” in Carson City on December 14, 2020. Exhibit 2 at 9-10.

After the GOP Electors concluded their fake voting ceremony, DeGraffenried travelled to Minden, Nevada, where he mailed the completed documents with a return mailing address of Michael J. McDonald, Nevada Republican Party at 840 S. Rancho Dr. 4-800, Las Vegas Nevada 89106. Exhibits 6, 7, and 8; Exhibit 1 at 26. The documents purporting to cast Nevada’s electoral votes for Donald J. Trump and Michael R. Pence were sent to following locations by the GOP Electors: (1) Archivist of the United States, 700 Pennsylvania Avenue NW, Washington D.C., 20408; (2) President of the Senate, United States Senate, Washington D.C. 20510; (3) Secretary of State, State of Nevada, 101 N. Carson St., Suite 3, Carson City, Nevada 89701; and (4) Honorable Miranda M. Du, Chief Judge, U.S. District Court, District of Nevada,

Lloyd D. George Courthouse, 333 Las Vegas Blvd South, Las Vegas, N.V.
89101. Exhibit 8.

The Secretary of State received the documents on December 15, 2020. Exhibit 3 at 89-94. The U.S. District Court received the documents two days later. Exhibit 7. The President of the Senate received the documents on December 21, 2020. Exhibit 3 at 53; Exhibit 7. And the National Archives received the documents the day after that. Exhibit 1 at 21; Exhibits 6 and 7.

C. The Grand Jury in Clark County returns a true bill, indicting the GOP Electors on one count of Offering a False Instrument for Filing or Recording and one count of Uttering a Forged Instrument: Forgery.

The State presented evidence to the Clark County Grand Jury, establishing everything explained above, and more, over a period of three days. Exhibits 1, 2, and 3. After the Grand Jury returned a true bill, the State filed an indictment charging the GOP Electors with one count of Offering a False Instrument for Filing or Recording, and one count of Uttering a Forged Instrument: Forgery. Exhibit 9.

* * *

D. The district court dismisses the indictment after concluding that Clark County is not a proper venue.

Eileen Rice filed a motion to dismiss, and the other GOP Electors filed joinders. Exhibit 10 at 2. The district court ordered the State to file a supplement that identified evidence that established venue in Clark County. Exhibit 10 at 4. But after the State produced the supplement, the district court granted the motion to dismiss with respect to each Respondent. Exhibit 10 at 4-6. The district court concluded that no acts or effects requisite to the offense occurred in Clark County and any criminal offenses were complete upon delivery of the documents to the U.S. Postal Service in Douglas County. Exhibit 10 at 4-6.

III. Argument: Good cause exists for expedited briefing.

This Court has authority to suspend provisions of this Court's rules "to expedite its decision or for other good cause." NRAP 2. That includes granting a request for expedited briefing and an expedited resolution. *Cook v. Maher*, 108 Nev. 1024, 1025 n.1, 842 P.2d 729, 729 n.1 (1992) (granting motion for immediate decision); *see also Chattah v. First. Jud. Dist. Ct.*, 516 P.3d 674 (2022) (unpublished table disposition) (noting parties may seek an expedited briefing schedule); *Board of County Com'rs v. Las Vegas Discount Golf & Tennis, Inc.*, 110 Nev. 567, 569, 875 P.2d

1045, 1046 (1994) (discussing decision granting expedited briefing).

Good cause exists to expedite this appeal. First, the State expects to establish that it lawfully obtained the indictment in Clark County. And a swift reversal that reinstates the indictment is likely to have a deterrent effect on any person considering similar conduct during the upcoming election. *Cf. Allred v. State*, 120 Nev. 410, 421, 92 P.3d 1246, 1253 (2004) (identifying deterrence as a goal of the criminal justice system).

Second, even if this Court were to affirm, time remains for the State to pursue a forgery charge in an alternative venue. The statute of limitations has yet to run for Uttering a Forged Instrument: Forgery. The statute of limitations for forgery is four years. NRS 171.085. And even accepting the district court's rationale that any offense was complete upon delivery of the forged documents for mailing, the State would still have until December 14, 2024, to charge forgery in an alternative venue.

To be sure, there are viable arguments for tolling of the statute of limitations that may also preserve the State's ability to pursue both charges in an alternative forum if this Court affirms dismissal of the indictment. *See* NRS 177.085 (addressing tolling during pendency of this appeal); *HIBU Inc. v. Plotkin Financial, Inc.*, 722 Fed. App'x 625, 626-27

(9th Cir. 2018) (gathering cases on equitable tolling and identifying good faith filing in wrong forum as a basis for tolling). But the State will leave no stone unturned in availing itself of legally available options to ensure that justice is served here. An expedited schedule that allows for disposition of this appeal in advance of December 14, 2024, avoids the need for the State to rely on tolling for the forgery count. For that reason, the State proposes the following schedule:

Opening Brief—Wednesday, September 4, 2024;

Answering Brief—Wednesday, October 2, 2024;

Reply Brief—Wednesday, October 16, 2024.

IV. Conclusion

This Court should expedite this appeal under NRAP 2.

RESPECTFULLY SUBMITTED this 31st day of July, 2024.

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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 MOTION FOR EXPEDITED CONSIDERATION OF APPEAL** with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing System (Eflex) on July 31, 2024. Participants in the case who are registered with Eflex as users will be served by the Eflex system.

/s/ Amanda White

Amanda White
AG Supervising Legal Secretary