

REC'D & FILED

2020 DEC -4 PM 1:55

AUDREY ROY CLERK

BY 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.

FINDINGS OF FACT

Having reviewed the full evidentiary record submitted by Contestants and Defendants, and having considered, without limitation, all evidence submitted to the Court as well as the parties' 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

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
28

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

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.

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.

27 ///

28

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

27
28

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.

27 ///

28

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
28

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.

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.

27 ///

28

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

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).

28

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
28

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.

27
28

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).

24 ///

25

26

27

28

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 ballot 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);

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

27
28

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).

26

27

28

1 **I. Untimely Ballots**

2 104. Contestants allege that election officials counted ballots that arrived after the
3 deadline for submitting them.

4 105. The record does not support a finding that election officials counted untimely mail
5 ballots that were submitted after deadlines.

6 **J. Other Allegedly Illegal or Improper Votes**

7 106. Contestants allege that Nevada failed to properly maintain its voter lists resulting
8 in illegal votes cast and counted, and that the postal service was directed to violate USPS policy
9 and improperly deliver ballots.

10 107. The record does not support a finding that Nevada failed to cure its voter lists to
11 reflect returned ballots during the 2020 primary election and that, as a result, ballots were delivered
12 to addresses where no known voter lives and were cast and counted at all or in an amount equal to
13 or greater than 33,596. *Cf.* Walter Decl. (LAW 000266) (hearsay declaration alleging that he
14 received ballot for individual who never lived at his address, but not demonstrating that the ballot
15 was voted or counted); Gessler Dep. 41:23–42:10 (testifying that he has no knowledge of how
16 Nevada maintains its voter rolls and that he knows of no one who is improperly included in those
17 rolls).

18 108. The record does not support a finding that USPS letter carriers were directed to
19 violate USPS policy by delivering mail ballots to addresses where the addressee of the ballot was
20 known to be deceased, known to have moved from that address, or had no affiliation with that
21 address at all. Thorley Dep. 46:18–48:14; *cf.* Doe 7 Decl. (LAW 000265) (hearsay declaration
22 alleging that deceased mother’s ballot was forwarded to son in California, but not demonstrating
23 that person was actually deceased and not simply living with son temporarily); *id.* (alleging that
24 USPS supervisor instructed her to forward ballot to deceased person in California, but providing
25 no evidence that such ballot was returned as voted).

26 109. Despite two of Contestants’ experts testifying to “questionable ballots” and “illegal
27 ballots,” Baselice Dep. 52:20–25 (“questionable ballots”); Kamzol Dep. 53:10–14 (“illegal
28

1 ballots”), neither provided evidence to support Contestants’ allegations regarding the presence of
2 illegal votes in the 2020 presidential election. *See* Herron Dep. 59:22–60:12, 68:13–69:12
3 (testifying that neither Mr. Baselice nor Mr. Kamzol disclosed the data underlying their analysis);
4 Baselice Dep. 24:7–15 (explaining that he did not participate in compiling the data he used and
5 “shouldn’t even surmise” “what the original source of the data was”); Kamzol Dep. 58:6–59:15
6 (explaining that he did not know how the matching work to enhance the data he used was
7 performed); Baselice Dep. 60:8–61:17 (acknowledging that he could not determine how many
8 “questionable” ballots were actually counted, contained votes in the presidential election, or were
9 cast for a particular candidate); Kamzol Dep. 92:4–16 (same). Little or no verification of numbers
10 was done by Mr. Kamzol.

11 **VII. Observation of the Ballot Processing and Counting Process**

12 110. The record does not support a finding that Clark County’s policy for observation of
13 ballot counting and ballot duplication was designed to shield voter fraud or actually led to voter
14 fraud. Gessler Dep. 64:16-66:21 (testifying he has no knowledge of Nevada law relating to voting
15 observation and no personal knowledge of how Clark County allowed observation of ballot
16 counting and ballot duplication).

17 111. The record does not support a finding that election workers marked choices for any
18 unfilled elections or questions on duplicated ballots. *Cf.* Fezza Decl. (LAW 000257) (hearsay
19 declaration describing ballot duplication process, but providing no evidence that anything
20 unscrupulous occurred and noting that duplication teams were comprised of members of opposite
21 parties, that each team “worked well together,” and that “getting things done right was encouraged
22 over speed”); Taylor Decl. (LAW 001749) (hearsay declaration describing ballot duplication
23 process, but providing no evidence that anything unscrupulous occurred); Kraus Decl. (LAW
24 000440) (similar); Stewart Decl. (LAW 000456) (similar).

25 112. The record does not support a finding that members of the public were denied the
26 right to observe the processing and tabulation of mail ballots. *Cf.* Fezza Decl. (LAW 000257)
27 (hearsay declaration asserting that observers were confined to “tiny, taped off area” in corner of

28

1 room, but admitting that observers were always present and given access); Kraus Decl. (LAW
2 000441) (hearsay declaration alleging insufficient access to Clark County's facilities for
3 "meaningful observation," but confirming he was consistently given access to facilities); Taylor
4 Decl. (LAW 001749) (similar); Percin Decl. (LAW 001642–88) (similar); Stewart Decl. (LAW
5 000456) (similar); Gloria Dep. 61:1–7 (explaining that observers were stationed in pre-designated
6 locations that ensured social distancing).

7 113. In *Kraus*, Judge Wilson found that Clark County had not interfered with any
8 individual's statutory right to observe ballot processing. *Kraus*, slip op. at 10–11 ("Petitioners have
9 failed to prove Registrar Gloria has interfered with any right they or anyone else has as an
10 observer."). The Court adopts this finding of fact as its own.

11 **VIII. Candidate Misconduct**

12 **A. The Nevada Native Vote Project**

13 114. The record does not support a finding that groups or individuals linked to the Biden–
14 Harris campaign offered or gave, directly or indirectly, anything of value to manipulate votes in
15 this election or otherwise alter the outcome of the election. Cf. LAW 004662–751 (depicting only
16 two posts including Biden-Harris paraphernalia, neither of which were affiliated with Nevada
17 Native Vote Project or Biden-Harris campaign). The record also does not support a finding that
18 any group or individual offered anything of value to voters to manipulate the voters' choice for
19 president. Cf. LAW 000274–358 (showing purported Facebook screenshots from groups and
20 individuals, but not demonstrating that they offered anything of value to alter outcome of election).

21 115. Although the Nevada Native Vote Project ("NNVP") organized voter drives, that
22 organization expressly disclaimed any relationship with President-elect Biden's or any other
23 political campaign. See Official Statement from the Nevada Native Vote Project ("The NNVP is a
24 non-partisan, non-profit organization that is dedicated to engaging the Native community in their
25 Constitutional right to vote. Regardless of party affiliation, the ability to make your voice heard
26 and ensure the Native perspective is present in every determination made on the ballot is of the
27 utmost importance.").

28

1 116. The record does not support a finding that NNP or any other group or individual
2 engaged in voting drives acted on behalf of Defendants or President-elect Biden. Cf. LAW
3 000274–358 (showing purported Facebook screenshots from groups and individuals, but not
4 demonstrating any partisan activity linked to Biden-Harris campaign).

5 **B. The Biden-Harris Bus**

6 117. The record does not support a finding that multiple ballots were filled out against a
7 bus bearing the Biden-Harris emblem outside a polling place in Clark County. Cf. Doe 3 Dep.
8 14:13–19:7. While Doe 3 testified to alleged ballot-stuffing occurring in broad daylight outside a
9 busy polling location in Nevada’s most populous county, no other witness corroborated Doe 3’s
10 account. The Court finds Doe 3’s account not credible.

11 118. The record does not support a finding that the Biden-Harris campaign paid anything
12 of value for anyone to alter votes. Cf. Doe 3 Dep. 23:21–24:10 (admitting that she had no hard
13 evidence tying activities she saw to Democratic candidates); *id.* 35:1–8 (admitting to not knowing
14 whether these allegedly unlawful ballots were accepted and counted).

15 **CONCLUSIONS OF LAW**

16 **I. Expert Evidence by Contestants**

17 119. “To testify as an expert witness . . . , the witness must satisfy the following three
18 requirements: (1) he or she must be qualified in an area of ‘scientific, technical or other specialized
19 knowledge’ (the qualification requirement); (2) his or her specialized knowledge must ‘assist the
20 trier of fact to understand the evidence or to determine a fact in issue’ (the assistance requirement);
21 and (3) his or her testimony must be limited ‘to matters within the scope of [his or her specialized]
22 knowledge’ (the limited scope requirement).” *Hallmark v. Eldridge*, 124 Nev. 492, 498, 189 P.3d
23 646, 650 (2008) (alteration in original) (quoting NRS 50.275); *see also Higgs v. State*, 126 Nev.
24 1043 1, 16, 222 P.3d 648, 658 (2010).

25 120. As reflected herein, the Court finds that the expert testimony provided by
26 Contestants was of little to no value. The Court did not exclude consideration of this evidence,
27 which it could have, but gave it very little weight.

28

121. To determine whether these three requirements are satisfied, Nevada courts consider several non-exhaustive factors. *See Higgs*, 126 Nev. at 16–17, 222 P.3d at 657–58.

122. For the qualification requirement, the Court must consider the witness's "(1) formal schooling and academic degrees, (2) licensure, (3) employment experience, and (4) practical experience and specialized training." *Hallmark*, 124 Nev. at 499, 189 P.3d at 650–51 (footnotes omitted).

123. For the assistance requirement, the expert's testimony must be (1) relevant and (2) reliable. *Id.* at 500, 189 P.3d at 651; *see also Perez v. State*, 129 Nev. 850, 858, 313 P.3d 862, 867–68 (2013) (“Evidence is relevant when it tends ‘to make the existence of any fact that is of consequence to the determination of the action more or less probable.’” (quoting NRS 48.015)); *Hallmark*, 124 Nev. at 500–01, 189 P.3d at 651–52 (“In determining whether an expert’s opinion is based upon reliable methodology, a district court should consider whether the opinion is (1) within a recognized field of expertise; (2) testable and has been tested; (3) published and subjected to peer review; (4) generally accepted in the scientific community . . . ; and (5) based more on particularized facts rather than assumption, conjecture, or generalization.” (footnotes omitted)).

124. For the limited scope requirement, the expert testimony must be related to the “highly particularized facts” of the case, *Higgs*, 126 Nev. at 20, 222 P.3d at 660, and fall within the scope of the witness’s specialized knowledge. See *Perez*, 129 Nev. at 861, 313 P.3d at 869.

125. As reflected above, this Court gave very little weight to Contestants' experts and could possibly have excluded their testimony under the above stated standards. The Court is concerned about the failure of these experts to verify the data they were relying on.

126. The Court nonetheless considers Contestants' proffered expert testimony in reaching and ruling upon the merits of Contestants' claims.

II. Issue Preclusion

127. Under Nevada law, issue preclusion applies when (1) the issue decided in the prior litigation is identical to the issue in the current action; (2) the initial ruling was on the merits and

1 has become final; (3) the party against whom the judgment is asserted was a party or in privity
2 with a party to the prior litigation; and (4) the issue was necessarily and actually litigated. *Five*
3 *Star Cap. Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008).

4 128. Contestants' challenges to Clark County's use of the Agilis machine and its
5 observation policies are identical to issues raised by the *Kraus* petitioners because two challenges
6 are the same and the same facts underlie these challenges and the *Kraus* claims. *See LaForge v.*
7 *State, Univ. & Cnty. Coll. Sys.*, 116 Nev. 415, 420, 997 P.2d 130, 134 (2000); *see also Kraus*, slip
8 op. at 12–13.

9 129. Contestants' challenge to an alleged lack of meaningful observation was also raised
10 and addressed in *Kraus*. *See* slip op. at 10–11, 13.

11 130. This Court issued a thorough, well-reasoned opinion in *Kraus* denying the
12 petitioners mandamus relief, which constituted a final decision on the merits because it was neither
13 tentative nor subject to further determination. *See Kirsch v. Traber*, 134 Nev. 163, 166–67, 414
14 P.3d 818, 821–22 (2018); *Hoffman v. Second Jud. Dist. Ct.*, No. 60119, 2013 WL 7158424, at *4
15 (Nev. Dec. 16, 2013).

16 131. As Trump electors, Contestants are in privity with the *Kraus* petitioners—
17 specifically, the Trump Campaign and Nevada Republican Party—because they were
18 “nomin[ated]” and “select[ed]” to serve as electors by the Nevada Republican Party, NRS
19 298.035(1), and are functionaries of the Trump Campaign. *See* NRS 298.065; NRS 298.075; *see*
20 *also Chiafalo v. Washington*, 140 S. Ct. 2316, 2322 (2020). Contestants are thus “sufficiently
21 close” to, such that their interests were “adequate[ly] represent[ed]” by, the *Kraus* petitioners.
22 *Mendenhall v. Tassinari*, 133 Nev. 614, 618, 403 P.3d 364, 369 (2017) (first quoting *Vets N., Inc.*
23 *v. Libutti*, No. CV-01-7773-DRHETB, 2003 WL 21542554, at *11 (E.D.N.Y. Jan. 24, 2003); and
24 then quoting *Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, 261, 321 P.3d
25 912, 917 (2014)); *cf. In re Coday*, 130 P.3d 809, 816–17 (Wash. 2006).

26 ///

27 ///

28

1 132. The issues relating to the Agilis machine and meaningful observation of tabulation
2 were necessarily and actually litigated in *Kraus* because they were properly raised and submitted
3 for determination. See *Alcantara*, 130 Nev. at 262, 321 P.3d at 918.

4 133. Each of the four requirements for issue preclusion is therefore satisfied as to
5 Contestants' grounds for contest related to the lawfulness of the Agilis machines and meaningful
6 observation of ballot tabulation

7 134. While issue preclusion provides alternative grounds to dispose of these issues, the
8 Court reaches and rules on the merits of all of Contestants' claims.

9 **III. Grounds for Contests**

10 135. Although Nevada has not addressed this issue, the Court believes that Contestants
11 are required to prove the grounds for their contest by clear and convincing evidence. See, e.g.,
12 *Gooch v. Hendrix*, 851 P.2d 1321, 1328 (Cal. 1993); *Bazydlo v. Volant*, 647 N.E.2d 273, 276 (Ill.
13 1995); *Adair Cnty. Bd. of Elections v. Arnold*, No. 2015-CA-000661-MR, 2015 WL 5308132, at
14 *6 (Ky. Ct. App. Sept. 11, 2015); *Snyder v. Glusing*, 520 A.2d 349, 357 (Md. 1987); *Drummond*
15 v. *Town of Virginia City*, 833 P.2d 1067, 1070 (Mont. 1992); *Harmon v. Baldwin*, 837 N.E.2d
16 1196, 1201 (Ohio 2005) (per curiam); *Quinn v. City of Tulsa*, 777 P.2d 1331, 1341 (Okla. 1989);
17 *Thomas v. Penfold*, 541 P.2d 1065, 1067 (Or. 1975); *Gonzalez v. Villarreal*, 251 S.W.3d 763, 773
18 (Tex. Ct. App. 2008).

19 136. This higher standard of proof is appropriate in election contests because it
20 "adequately balances the conflicting interests in preserving the integrity of the election and
21 avoiding unnecessary disenfranchisement of qualified absentee voters." *Bazydlo*, 647 N.E.2d at
22 276 (quoting *Bazydlo v. Volant*, 636 N.E.2d 1107, 1110 (Ill. App. Ct. 1994)); accord *Sadler v.*
23 *Connolly*, 575 P.2d 51, 55 (Mont. 1978) ("The underlying basis for [the clear and convincing
24 evidence] standard is that an election contest . . . , if successful, has the serious effect of
25 disenfranchisement of the voters." (citing *Thornton v. Johnson*, 453 P.2d 178, 182 (Or. 1969) (per
26 curiam))).

27 ///

28

1 137. “In Nevada, a plaintiff must prove a general civil fraud claim, which requires intent
2 to defraud, with clear and convincing evidence.” *Nellis Motors v. State*, 124 Nev. 1263, 1267, 197
3 P.3d 1061, 1064 (2008).

4 138. “[C]lear and convincing evidence must be ‘satisfactory’ proof that is ‘so strong and
5 cogent as to satisfy the mind and conscience of a common man, and so to convince him that he
6 would venture to act upon that conviction in matters of the highest concern and importance to his
7 own interest. It need not possess such a degree of force as to be irresistible, but there must be
8 evidence of tangible facts from which a legitimate inference . . . may be drawn.’” *In re Discipline*
9 *of Drakulich*, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995) (alteration in original) (quoting
10 *Gruber v. Baker*, 20 Nev. 453, 477, 23 P. 858, 865 (1890)).

11 139. However, even if a preponderance of the evidence standard was used, the Court
12 concludes that Contestants’ claims fail on the merits there under or under any other standard.

13 A. **Contestants did not prove that there was a “malfunction of any voting device
14 or electronic tabulator, counting device or computer in a manner sufficient to
raise reasonable doubt as to the outcome of the election.”**

15 140. Contestants’ evidence does not establish by clear and convincing proof, or under
16 any standard of evidence, that “there was a malfunction of any voting device or electronic
17 tabulator, counting device or computer in a manner sufficient to raise reasonable doubt as to the
18 outcome of the election.” NRS 293.410(2)(f).

19 141. A “malfunction” is “[a] fault in the way something works,” *Malfunction*, *Black’s Law Dictionary* (11th ed. 2019), and “a failure to operate or function in the normal or correct manner,” *Malfunction*, *Merriam-Webster’s Collegiate Dictionary* (11th ed. 2003); *see also Otis Elevator Co. v. Reid*, 101 Nev. 515, 520, 706 P.2d 1378, 1381 (1985) (describing incidents where elevator operated differently than “normal” as “malfunctions”).

24 142. Contests did not prove under any standard of proof that the Agilis machine
25 malfunctioned.

26 ///

27 ///

28

1 143. Contestants did not prove under any standard of proof that the Agilis machine
2 malfunctioned in a manner sufficient to raise reasonable doubt as to the outcome of the election.

3 144. Contests did not prove under any standard of proof that the electronic voting
4 machines malfunctioned in a manner sufficient to raise reasonable doubt as to the outcome of the
5 election.

6 **B. Contestants did not prove that “[i]llegal or improper votes were cast and
7 counted,” and/or “[l]egal and proper votes were not counted . . . in an
8 amount that is equal to or greater than the margin between the contestant
and the defendant, or otherwise in an amount sufficient to raise reasonable
doubt as to the outcome of the election.”**

9 145. Contestants evidence does not establish by clear and convincing proof, or under
10 any standard of evidence, that “[i]llegal or improper votes were cast and counted,” and/or “[l]egal
11 and proper votes were not counted . . . in an amount that is equal to or greater than the margin
12 between the contestant and the defendant, or otherwise in an amount sufficient to raise reasonable
13 doubt as to the outcome of the election.” NRS 293.410(2)(c).

14 146. “Illegal or improper votes” are those that could not have been lawfully cast and
15 therefore should not be counted. *See, e.g., Mahaffey v. Barnhill*, 855 P.2d 847, 850 (Colo. 1993)
16 (defining votes cast by those ineligible to vote as “illegal votes”); *Turner v. Cooper*, 347 So. 2d
17 1339, 1341 (Ala. 1977) (describing “illegal votes” as those cast by unqualified voters); *Grounds
v. Lawe*, 193 P.2d 447, 449 (Ariz. 1948) (explaining that trial court found “fifteen illegal votes”
18 because “fifteen [votes] had been cast by persons not qualified to vote”); *Harris v. Stewart*, 193
20 So. 339, 341 (Miss. 1940) (describing “illegal votes” as those cast by someone “not a qualified
21 voter”); *Jaycox v. Varnum*, 226 P. 285, 288 (Idaho 1924) (similar); *Montoya v. Ortiz*, 175 P. 335,
22 337 (N.M. 1918) (“There was no question raised as to illegal votes. All voters who voted at the
23 election were concededly qualified voters.”); *Horton v. Sullivan*, 86 A. 314, 314 (R.I. 1913) (using
24 “illegal votes” to describe those cast by “illegal voters”).

25 147. Contestants did not prove under any standard of proof that illegal votes were cast
26 and counted, or legal votes were not counted at all, due to voter fraud, nor in an amount equal to
27
28

1 or greater than 33,596, or otherwise in an amount sufficient to raise reasonable doubt as to the
2 outcome of the election.

3 148. Contestants did not prove under any standard of proof that voters who were given
4 provisional ballots cast illegal votes which were then counted, or voters who were given provision
5 ballots cast legal votes which were not counted at all, nor in an amount equal to or greater than
6 33,596, or otherwise in an amount sufficient to raise reasonable doubt as to the outcome of the
7 election.

8 149. Contestants did not prove under any standard of proof that illegal votes were cast
9 and counted that should have been rejected during the signature verification process, or legal votes
10 were not counted that should have been accepted during the signature verification process at all,
11 nor in an amount equal to or greater than 33,596, or otherwise in an amount sufficient to raise
12 reasonable doubt as to the outcome of the election.

13 150. Contestants did not prove under any standard of proof that illegal votes were cast
14 and counted, or legal votes were not counted at all, due to issues with in-person voting technology,
15 nor in an amount equal to or greater than 33,596, or otherwise in an amount sufficient to raise
16 reasonable doubt as to the outcome of the election.

17 151. Contestants did not prove under any standard of proof that illegal votes by ineligible
18 voters were cast and counted, nor in an amount equal to or greater than 33,596, or otherwise in an
19 amount sufficient to raise reasonable doubt as to the outcome of the election.

152. Contestants did not prove under any standard of proof that illegal votes were cast
and counted wherein the ballots had problems or irregularities, nor in an amount equal to or greater
than 33,596, or otherwise in an amount sufficient to raise reasonable doubt as to the outcome of
the election.

24 153. Contestants did not prove under any standard of proof that illegal votes by deceased
25 voters were cast and counted, nor in an amount equal to or greater than 33,596, or otherwise in an
26 amount sufficient to raise reasonable doubt as to the outcome of the election.

27 //

1 154. Contestants did not prove under any standard of proof that illegal votes were cast
2 by individuals other than the intended voters and counted, nor in an amount equal to or greater
3 than 33,596, or otherwise in an amount sufficient to raise reasonable doubt as to the outcome of
4 the election.

5 155. Contestants did not prove under any standard of proof that illegal votes submitted
6 after deadlines were cast and counted, nor in an amount equal to or greater than 33,596, or
7 otherwise in an amount sufficient to raise reasonable doubt as to the outcome of the election.

8 156. Contestants did not prove under any standard of proof that any illegal votes were
9 cast and counted, or legal votes were not counted at all, for any other improper or illegal reason,
10 nor in an amount equal to or greater than 33,596, or otherwise in an amount sufficient to raise
11 reasonable doubt as to the outcome of the election. Reasonable doubt is one based on reason, not
12 mere possibility.

13 **C. Contestants did not prove that that “the election board or any member
14 thereof was guilty of malfeasance.”**

15 157. Contestants evidence does not establish by clear and convincing proof, or under
16 any standard of evidence, that “the election board or any member thereof was guilty of
17 malfeasance.” NRS 293.410(2)(a).

18 158. Under Nevada law, “malfeasance . . . constitute[s] an act of commission as
19 distinguished from an act of omission.” *Jones v. Eighth Jud. Dist. Ct.*, 67 Nev. 404, 408, 219 P.2d
20 1055, 1057 (1950).

21 159. “Omissions to act are not acts of malfeasance in office, but constitute nonfeasance.
22 A distinct difference is recognized between the two. Conduct invoking one charge will not be
23 sufficient to justify the other.” *Buckingham v. Fifth Jud. Dist. Ct.*, 60 Nev. 129, 136, 102 P.2d 632,
24 635 (1940).

25 160. Malfeasance requires, at the very least, an allegation of knowledge that the act was
26 wrongful, if not a greater level of nefarious intent. See *Jones*, 67 Nev. at 415–18, 219 P.2d at 1060–
27 62 (finding that complaint sufficiently alleged malfeasance by alleging knowledge and agreeing
28

1 that officer “must have done [the illegal act] knowing that he was doing wrong or at least under
2 such circumstances that any reasonable person who had done the same thing would have known
3 that he was doing something wrong” (quoting *Atwood v. Cox*, 55 P.2d 377, 393 (Utah 1936))).

4 161. Contestants did not prove under any standard of proof that any of Nevada’s election
5 officials committed malfeasance.

6 162. Contestants did not prove under any standard of proof that Clark County or any
7 other county or state election officials violated any right to observation provided for in Nevada
8 Law. Cf. *Kraus*, slip op. at 11 (concluding that “[p]etitioners [] failed to prove Registrar Gloria has
9 interfered with any right they or anyone else has as an observer” and that Registrar “Gloria has not
10 failed to meet his statutory duties . . . to allow members of the general public to observe the
11 counting of ballots”).

12 163. Contestants did not prove under any standard of proof that Clark County election
13 officials or any other election officials acted with knowledge or intent that they were violating the
14 law as it relates to public observation of ballot processing or counting.

15 164. Contestants did not prove under any standard of proof that Clark County’s use of
16 the Agilis machines constitutes malfeasance.

17 165. Clark County’s use of the Agilis machines was lawful under Nevada law. See NRS
18 293.8871(2)(a) (permitting processing and counting of mail ballots “by electronic means”).

19 166. Clark County did not violate the Equal Protection Clauses of the Nevada or U.S.
20 Constitutions by using the Agilis machine, let alone intentionally so, because county by county
21 differences in the way votes are processed does not violate equal protection unless it impedes or
22 obstructs the ability of individual citizens to cast their votes or have those votes counted. See
23 *Kraus*, slip op. at 12–13 (concluding that Clark County’s use of Agilis machine is permitted under
24 Nevada’s election law and Equal Protection Clause).

25 167. Contestants did not prove under any standard of proof that Clark County election
26 officials had knowledge that their use of the Agilis, including the settings it was used with and its
27
28

use to verify certain ballots without additional human review violated any law, nor that election officials acted with nefarious intent.

3 168. Contestants did not prove under any standard of proof that any state or county
4 election officials misused electronic voting machines or other voting equipment.

5 169. Contestants did not prove under any standard of proof that any election officials
6 knowingly committed any misconduct relating to the operation of electronic voting machines, nor
7 that election officials acted with nefarious intent in doing so.

D. Contestants did not prove that “the defendant or any person acting, either directly or indirectly, on behalf of the defendant has given, or offered to give, to any person anything of value for the purpose of manipulating or altering the outcome of the election.”

10 170. Contestants evidence does not establish by clear and convincing proof, or under
11 any standard of evidence, that “the defendant or any person acting, either directly or indirectly, on
12 behalf of the defendant has given, or offered to give, to any person anything of value for the
13 purpose of manipulating or altering the outcome of the election.” NRS 293.410(2)(e).

18 172. Contestants did not prove under any standard of proof that Defendants, the Biden-
19 Harris Campaign, or anyone acting on their behalf gave or offered to give to any person anything
20 of value for the purpose of manipulating or altering the outcome of the election.

173. Contestants did not prove under any standard of proof that NNVP had an agency
relationship with Defendants or the Biden-Harris Campaign, or otherwise acted on the behalf of,
either directly or indirectly, Defendants or the Biden-Harris campaign.

24 174. Contestants did not prove under any standard of proof that NNPV gave or offered
25 to give to any person anything of value for the purpose of manipulating or altering the outcome of
26 the election.

1 175. Contestants did not prove under any standard of proof that the persons witnessed
2 by Doe 3 had an agency relationship with Defendants or the Biden-Harris Campaign, or otherwise
3 acted on the behalf of, either directly or indirectly, Defendants or the Biden-Harris campaign.

4 176. Contestants did not prove under any standard of proof that the persons witnessed
5 by Doe 3 gave or offered to give to any person anything of value for the purpose of manipulating
6 or altering the outcome of the election.

CONCLUSION

8 177. The Contestants failed to meet their burden to provide credible and relevant
9 evidence to substantiate any of the grounds set forth in NRS 293.410 to contest the November 3,
10 2020 General Election.

JUDGMENT

12 Therefore, based upon the above Findings of Fact and Conclusions of Law made by this
13 Court, after trial, and good cause appearing, the following Judgment is entered by the Court:

14 **IT IS HEREBY ORDERED** that Contestants' contest is **DENIED** and this case is
15 **DISMISSED** with prejudice.

16 **IT IS HEREBY FURTHER ORDERED** that Contestants are shall pay Defendants' costs
17 pursuant to NRS 293.420.

DATED this 4 th day of December, 2020.


James T. Russell
DISTRICT JUDGE

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 4th day of December, 2020, I caused to be transmitted via email, a true and correct copy of the foregoing Order addressed as follows:

Shana D. Weir, Esq.
6220 Stevenson Way
Las Vegas, NV 89120
sweir@weirlawgroup.com

Jesse R. Binnall, Esq.
717 King Street, Suite 200
Alexandria, VA 22314
jbinnall@harveybinnall.com

Marc E. Elias, Esq.
John M. Devaney, Esq.
Henry J. Brewster, Esq.
Courtney A. Elgart, Esq.
Jyoti Jasrasaria, Esq.
700 Thirteenth Street NW, Suite 800
Washington, D.C. 20005-3960
melias@perkinscoie.com
jdevaney@perkinscoie.com
hbrewster@perkinscoie.com
celgart@perkinscoie.com
jjasrasaria@perkinscoie.com

Kevin J. Hamilton, Esq.
Abha Khanna, Esq.
Jonathan P. Hawley, Esq.
Reina A. Almon-Griffin, Esq.
Nitika Arora, Esq.
1201 Third Avenue, Suite 4900
Seattle, WA 98101
khamilton@perkinscoie.com
akhanna@perkinscoie.com
jhawley@perkinscoie.com
ralmon-griffin@perkinscoie.com
narora@perkinscoie.com

Bradley Schrager, Esq.
Daniel Bravo, Esq.
3556 E. Russell Rd.
Las Vegas, NV 89120
bschrager@wrslawyers.com
dbravo@wrslawyers.com

Kimberly M. Campbell

Kimberly M. Carrubba, Esq.
Law Clerk, Dept. 1