

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERICK M. BROWN

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Case No. 47856

FILED

MAR 20 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *J. Hendrix*
DEPUTY CLERK

MOTION TO RECALL REMITTITUR

COMES NOW, Appellant, ERICK M. BROWN (Appellant), by and through his proper person, and respectfully requests that, this court Recall its Remittitur, and GRANT the relief that is herein requested by Appellant. This is requested as pertains to this Motion, to correct substantial manifest fundamental miscarriage of justice of one whom is "Actually Innocent."

This Motion is made and based upon the accompanying Memorandum of Points and Authorities, the attached exhibits in support hereof, and any argument that this court is encouraged to hear in support of the foregoing Motion in the unquestioned interest of justice.

Respectfully submitted:

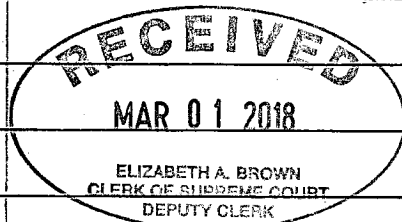
Dated this 23 day of February, 2018

Erick M. Brown

ERICK M. BROWN

SDCC
PO BOX 208# 92713

Indian Springs NV 89070-0208
Appellant Pro Se



18-10727

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MEMORANDUM OF POINTS AND AUTHORITIES

Appellant, respectfully request that, this Court Recall its Remittitur, and render a just and appropriate decision in accordance with the paramount law of the State of Nevada, i.e. the Constitution of the State of Nevada (Const. of Nev.), Article (Art.), 3, §1, and Art. 6, §11, and the Fourteenth (14th), Amendment of the United States Constitution (U.S. Const.), the right to Due Process and Equal Protection of law. As well as "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

FACTUAL STATEMENT:

A timely Notice of Appeal was filed from the Judgment of Conviction of the Eighth Judicial District Court for Case No. C-189658-1 and _____ Where upon this court, allegedly being a court of competent jurisdiction, sat in appellate review of all issues raised on appeal, including matters pertaining to the Nevada Revised Statutes (NRS), and denying same.

LEGAL AUTHORITY:

Although the NRS 177.305, provides that this court loses jurisdiction over a matter after certificate of judgment is remitted, this court may recall its remittitur and regain jurisdiction in cases of inadvertance, "fraud," imposition, false suggestion, misapprehension, or mistake of fact. See Wood v. State, 60 Nev. 139, 141, 104 P.2d 187, 188 (1940).

Appellant respectfully submits that good cause exists for the Recall of the Remittitur, due to "fraud," even "stealth fraud," mistake of law, inadvertance, false suggestion, very material points of law, etc.

Appellant is unaware of any other remedy, speedy remedy, to cure the fundamental miscarriage of justice see *United States v. Olano*, 507 U.S. 725, 736-37 (1993) (A fundamental miscarriage of justice can occur if an error "seriously affects the fairness, integrity, or public reputation of judicial proceedings, independent of the defendant's innocence), (citing *United States v. Atkinson*, 297 U.S. 157, 160 (1936)), the manifest injustice, and denial of constitutional rights of the U.S. Const. the First (1st), Fourth (4th), and 14th Amendments, as well as the Const. of Nev. Art. 1, § 1; 1, § 2; 1, § 8; 1, § 10; 1, § 18; Art. 3, § 1; Art. 4, § 1; Art. 5, § 7; 5, § 20; Art. 6, § 11; and Art. 15, § 2.

Legal argument is also made pursuant to "LACK OF SUBJECT MATTER JURISDICTION, which this Court in *Landreth v. Malik*, 127 Nev. Adv. Rep. 16, 251 P.3d 163, 166 (Nev. 2011), has iterated can be raised at any time, see also *People v. Mc Murty*, 122 P.3d 237, 241 (Colo. 2005); *Tiger v. State*, 900 P.2d 406, 412 (OKl. 1995), and *Am. Fire & Gas Co. v. Finn*, 341 U.S. 6, 17-18 (1951).

The following has been opined as concerns the importance of jurisdiction, subject matter jurisdiction: In *United States v. Cotton*, 535 U.S. 625, 630 (2002), the Nations High Court held: This latter concept of subject-matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived. Consequently, defects in subject-matter jurisdiction require correction regardless of whether the error was raised in district court. see also e.g. *Louisville & Nashville R. Co. v. Mottley*, 211 U.S.

149 (1908); *Gschwind v. Cessna Aircraft Company*, 232 F.3d 1342, 1347 (10th Cir. 2000); The court held: that "courts are constituted by authority and they cannot [act] beyond the power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities." (quoting *Valley v. Northern Fire & Marine Ins. Co.*, 254 U.S. 348, 353 (1920)).

In *Farke v. Raley*, 506 U.S. 20, 30 (1992), the High Court opined: "... that "If there is no principle of law better settled, than that every act of a court of 'competent jurisdiction' shall be presumed to have been rightly done, 'till the contrary appears.'" (emphasis strongly added to original).

In *Hooker v. Boles*, 346 F.2d 285, 286 (4th Cir. 1965), the court held: Regardless of the fundamental fairness required in a proceeding to constitute due process of law, no authority need be cited for the proposition that, when a court lacks jurisdiction, any judgment rendered by it is void and unenforceable.

In *Old Wayne Mut. L. Asso. v. McDonough*, 204 U.S. 8, 16 (1907), the High Court delineated: The court, among other things, said that if it be once conceded that "the validity of a judgment may be attacked collaterally by evidence showing that the court had no jurisdiction, it is not perceived how any allegation contained in the record itself, however strongly made, can affect the right so to question it."

And in *William et ux. v. Berry*, 8 HOWARD 459, 541 (), the High Court held: Where a court has jurisdiction, it has a right to decide every question which occurs in the cause, and whether its decision be correct or otherwise, its

decision be correct or otherwise, its judgment," until reversed, is regarded as binding in every other court." "But if it act without authority, its judgment and orders ^{are} nullities; they are not voidable, but simply void, and form no bar to a recovery sought even prior to a reversal in opposition to them; they constitute no justification, and all persons concerned in executing such judgments, or sentences, are considered in law as trespassers." (emphasis added to original).

Appellant Alleges And Will Set Forth That The District Court Below Lacked SUBJECT MATTER JURISDICTION Where-By Any Judgment Or Sentence, Orders Are Nullities, They Are Not Voidable, But Simply Void:

This court in McCullough v. State, 99 Nev. 72, 74, 657 P.2d 1157, 1158 (Nev. 1983), held: However, when constitutional questions are raised ..., we have the power to address them.

In Warden, Nevada State Prison v. Peters, 83 Nev. 298, 301, 302, 429 P.2d 549, 551, 552 (Nev. 1967), this court held: We deem the procedural label to be of little importance. The fact remains that courts which make a mistake in rendering a judgment which works to the extreme detriment of the defendant will not be allowed to stand uncorrected. In a situation such as this, ..., the court has inherent power to reconsider a judgment for good cause shown ..., and in such proceedings judicial acts may be annulled if they are determined to be in excess of the courts powers. (emphasis added).

This court in Clem v. State, 119 Nev. 615, 620, 81 P.3d 521 525 (Nev. 2003), held: We will depart from our prior hold-

ings only where we determine that they are so clearly erroneous that continued adherence to them would work a "manifest injustice." (emphasis added).

For the reasons set forth infra this court should find the district court's judgment, orders were in excess of the courts powers, jurisdiction Peters, 83 Nev. at 301, 302, 429 P.2d at 551, 552; Cotton, 535 U.S. at 630; Valley, 254 U.S. at 353. Further, this court should find "extraordinary circumstance," to depart from the Orders to Case No. 47856 / 72339: Appellants' prior appeals from the judgment of the Eighth Judicial District Court (8th Jud. Dist. Ct.), Clem, 119 Nev. at 620, 81 P.3d at 525; Old Wayne, 204 U.S. at 16; William et ux, 8 HOWARD at 541.

This court has opined on the Due Process Clause as follows: The Due Process Clause requires that a person have the opportunity to "establish any fact" which would be "protection to him," The Due Process Clause of the Const. of Nev. Art. 1, 38, not only requires that a person shall be properly brought into court, yet that he "shall have opportunity to establish any fact" (SUBJECT-MATTER JURISDICTION), which according to usages of common law or "provisions of constitution, would be protection to him," (emphasis added). See Wright v. Cradlebaugh, 3 Nev. 341 (1867); cited Persing v. Reno Stock Brokerage Co., 30 Nev. 342, 349, 96 Pac. 1054 (1908); State v. Fauquette, 67 Nev. 505, 514, 221 P.2d 404 (1950).

The facts with supporting evidence, pursuant to constitutional provisions, etc., are protection to Appel-

lant, sufficient to warrant Due Process protection *Persing*, 30 Nev. at 349; see also *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972); *Burleigh v. State Bar*, 98 Nev. 140, 145, 643 P.2d 1201, 1204 (Nev. 1982); recognizing that "due process is flexible and calls for such procedural protections as the particular situation demands."

The extraordinary circumstance of this matter calls for the flexibility of such procedural protections that this particular situation demands. *Morrissey*, 408 U.S. at 481.

This Court Has The Authority And Jurisdiction To Recall A Remittitur:

Although this court has not done so often, at least in published decisions, this court has invoked its authority to recall a remittitur. For example, in *Walters v. State*, 108 Nev. 186, 187, 825 P.2d 1237, 1238 (1992), this court recalled the remittitur and granted rehearing upon the State's request to do so. In *Dudrey v. Malner*, 80 Nev. 477, 399 P.2d 455 (1964), this court issued an order of recall for the return of the remittitur upon motion of the parties in a civil case. More recently in *Geary v. State*, 114 Nev. 100, 952 P.2d 431 (1998), this permitted the appellant to file a motion even though the time for filing such a motion had elapsed.

Determining the constitutional questions herein, as well as the issue of lack of SUBJECT-MATTER JURISDICTION, and 'ACTUAL INNOCENCE,' will also promote substantial justice, warranting Recall of the Remittitur. Compare: *Consolidated Generators v. Cummings Engine*, 114 Nev. 1304, 971 P.2d 1251 (Nev. 1990).

LACK OF SUBJECT-MATTER JURISDICTION

As to the facts, evidence, and reasons set forth infra, the 8th Jud. Dist. Ct. in case number C-189658, and S.Ct. 47856 "lacked SUBJECT-MATTER JURISDICTION."

In *Levingston v. Washoe County By and Through Sheriff of Washoe County*, 112 Nev. 479, 482, 916 P.2d 163, 166 (Nev. 1996), this court held: "This opportunity is necessary because 'the privilege of bringing every law to the test of the constitution belongs to the humblest citizen,' who 'owes no obedience to any legislative act, which transcends the constitutional limits.'" "see also *Persing* 30 Nev. at 349.

Appellant asserts that the judgments of convictions obtained against were obtained by acts of fraud. The decree of a court without jurisdiction over the controversy furnishes no justification and is not "prima facie" evidence of probable cause. All proceedings had under such decree are wrongful and a trespass. See: *Crescent City Live-Stock Landing, etc. Co. v. Butchers' Union, etc. Co.*, 120 US 141, 151 (1887).

Appellant asserts that the judgments of conviction will be shown to have been obtained by fraud via conclusive evidence. *Crescent City*, 120 US at 150.

Appellant asserts that the judgments of conviction obtained in the 8th Jud. Dist. Ct. Case No. _____, and _____ were obtain under an unconstitutional legislative "Act," an Act that is "facially unconstitutional (on its face), that is, that it always operates unconstitutionally Wash.

State Grange v. Wash. State Republican Party, 552 U.S. 442, 449 (2008), that "no set of circumstances exists under which the Act would be valid, i.e. that the law, Act is unconstitutional in all of its applications." Whereby, the same affects the foundation of the whole proceeding. See: Ex parte Siebold, 100 U.S. 371, 376-77 (1880).

Wherefore, Appellant asserts, sets forth that, the State of Nevada had no power to proscribe the conduct for which Appellant was imprisoned, it cannot constitutionally insist that he remain in jail. See: Desist v. United States, 394 U.S. 244, 261, n.2 (1969).

The State of Nevada had no power to proscribe the conduct for which Appellant was imprisoned as unlawful, etc., as Senate Bill No. 182-Committee on Finance CHAPTER 304 Statutes of Nevada 1951, Approved March 22, 1951 (S.B. No. 182), is a "facially unconstitutional legislative Act, an Act of fraud, a mistake of law; that no set of circumstances exists under which the Act S.B. No. 182 would be valid, i.e. the law is unconstitutional in all of its applications, the law, Act is void from its inception and cannot be applied constitutionally "under any circumstances" Wash. State Grange, 552 U.S. at 449, see also Bible v. Malone, 68 Nev. 32, 44, 231 P.2d 599, 603 (1951) (citing State ex rel. Stevenson v. Tully, 20 Nev. 427, 22 P. 1054; Norton v. Shelby County, 118 U.S. 425, 442 (1886)); nor can S.B. No. 182 be amended See In The Matter of The Application of F.R. Medeiros For A Writ of Habeas Corpus, 57 Nev. 301, 304, 64 P.2d 346 (1937) (If a law so conflicts with the constitution as to be entirely void, there is nothing to amend).

S.B. No. 182 is a "facially unconstitutional legislative Act" in that it contravenes, and is repugnant to the plain and unambiguous language of the Const. of Nev. Art. 6, §11, and Art. 3, §1, in this particular order.

S.B. No. 182 SECTION 1, expressly mandates in part as follows: "There is hereby created a commission of the State of Nevada, to be known as the 'commission for revision and compilation of Nevada laws,' hereinafter referred to as the commission. Such commission shall be composed of three members, and said members shall be the three justices of the supreme court. The members of such commission shall have the powers and duties prescribed by this act, and shall each receive such salary for their services as shall be prescribed by this act, and subsequent enactments." (See Exhibit "1" Senate Bill No. 182 - Committee on Finance CHAPTER 304 Statutes of Nevada 1951 (Approved March 22, 1951), effective after May 1, 1951).

The Const of Nev. Art. 6, §11, being a legislative Act of the people themselves in their sovereign capacity See *King v. The Board of Regents*, 65 Nev. 533, 556, 200 P.2d 221, 232 (1948) (opinion delivered by Judge Baile), the applicable provisions of the constitution constitute the supreme law of the state and control over any conflicting statutory provisions cannot be subject to any serious dispute. See, e.g. *Robison v. District Court*, 73 Nev. 169, 313 P.2d 436 (1957); see also *Wren v. Dixon*, 40 Nev. 170, 187, 161 P. 722, 726 (1916), citing *Oakland Paving Co. v. Hilton*, 11 P. 3 (Cal. 1886) (constitution is law absolutely controlling the legislature, executive, and judicial departments and its provisions "take effect on laws

already passed as well as to those to be enacted in the future"); *State v. Duffy*, 6 Nev. 138 (1870) (provision of state constitution constitute supreme law of the state and must be enforced by the courts in letter and spirit). In *Robison*, this court also stated the "well recognized rule that an express constitutional provision requiring a certain thing to be done in a certain way is exclusive to like extent as if it had included a negative provision to the effect that it may not be done in any other way." *Robison*, 73 Nev. 175, 313 P.2d at 440.

The Const. of Nev. Art. 6, § 11, strictly mandates as follows: "The justices of the supreme court and the district judges shall be ineligible to any office, other than a judicial office, during the term for which they shall have been elected or appointed; and all elections or appointments of any such judges by the people, legislature, or otherwise, during said period, to any office other than judicial, shall be void." [Amended in 1950. Proposed and passed by the 1947 legislature; agreed to and passed by the 1949 legislature; and approved and ratified by the people at the 1950 general election. See: Statutes of Nevada 1947, p. 878; Statutes of Nevada, p. 684] (See Exhibit "2" Constitution of the State of Nevada Article 6, § 11). see also OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF NEVADA 2002 NEV. AG / EX 15 4 Opinion No. 2002-04 February 6, 2002. (The state's interest in separating the judiciary from the political arena is sufficient to justify the reasonable restriction). Opinion by: Frankie Sue Del Papa, Attorney General; Kateri Cavin, Senior Deputy Attorney General, Civil Division.

The mandate of S.B. No. SECTION 1, sought to place then

justices of the supreme court in the office of the commission, the commission seeking to be created via legislative Act.

Whereby, the commission was an office. See, *Mathews v. Murray*, 70 Nev. 116, 121, 258 P.2d 982, 983 (1953), an office other than a judicial office, within the prohibited mandatory provision of the Const. of Nev. Art. 6, § 11.

Likewise, the Const. of Nev. Art. 3, § 1, strictly mandates as follows: "The powers of the Government of the State of Nevada shall be divided into ~~three~~ separate departments, - the Legislature, - Executive and the Judicial; and 'no persons charged with the exercise of powers properly belonging to one of these departments shall exercise any functions, appertaining to either of the others,'" except in the cases herein expressly directed or permitted." (See Exhibit "3" Constitution of the State of Nevada Article 3, § 1), See also, OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF NEVADA 2004 Nev. AG LEXIS 4 Opinion No. 2004-03 March 1, 2004 Opinion By: Brian Sandoval, Attorney General; and *Whitehead v. Comm'n on Jud. Discipline*, 110 Nev. 874, 879, 878 P.2d 913 (1994); *Galloway v. Truesdell*, 83 Nev. 13, 18, 19, 422 P.2d 237 (1967).

For clarification concerning the justice's on the commission:

1. the justice's weren't merely just on the commission;
2. the justice's didn't just "make recommendations towards their creation;"
3. the justice's actually encroached upon the role of the legislature by "exercising any function(s), appertaining to the Legislative Department, while being charged with the exercise of powers, functions, properly belonging to, appertaining to the Judicial Department as set forth infra."

From the FOREWORD, "As the work progressed, Mr. McDonald submitted drafts of chapter after chapter as re-compiled and revised, and the members of the commission individually and in conference meticulously check all revisions. In the vast majority of cases these revisions were promptly approved. Many required further conferences with the director. Some were modified and redrafted." ... (See Exhibit "4" FOREWORD STATUTE REVISION COMMISSION MILTON B. BAST; EDGAR EATHER; CHARLES M. MERRILL).

The "function" of compiling and revising of Nevada law by the justice's on the commission, culminated too: "Upon completion of the revision of the text of the statutes, in December 1956, the commission turned to the solution of a vital problem: Would it recommend the enactment of the revised statutes or would it request the legislature merely to adopt the revised statutes as evidence of the law?"⁶ The commission concluded that the enactment of the revised statutes as law, rather than the mere adoption thereof as evidence of the law, would be the more desirable course of action.⁷ Accordingly, Nevada Revised Statutes in typewritten form was submitted to the 48th session of the legislature in the form of a bill providing for its enactment as law of the State of Nevada.⁸ This bill, "Senate Bill No. 2 (hereafter referred to in this preface as 'the revision bill'), was passed without amendment or dissenting vote, and on January 25, 1957, was approved by Governor Charles H. Russell."⁹ (Emphasis added to original). (See Exhibit "5" LEGISLATIVE COUNSEL'S PREFACE).

Thus, the aforesaid mandate of S.B. No. 182 is in Plain contravention of the plain unambiguous, prohibited mandatory language of Art. 3, § 1, of the Const. of Nev., therefore, S.B. No. 182 is a "facially unconstitutional legislative Act. King, 65 Nev. at 556, 200 P.2d at 232.

The above and foregoing must leave "no question in the minds of the justice's of this court," as pertains to the legal argument that, the district court(s) lacked Subject-Matter-Jurisdiction. Desist, 394 U.S. at 261, n. 2; Siebold, 100 U.S. at 376-77; Wash. State Grange, 552 U.S. at 449; Bible, 68 Nev. at 44; 231 P.2d at 603; Stevenson, 20 Nev. 427, 22 P. 1054; Norton, 118 U.S. at 442; Crescent City, 120 U.S. at 150; Peters, 83 Nev. at 301; Cotton, 535 U.S. at 630; Valley, 254 U.S. at 353; Old Wayne, 204 U.S. at 16; and William, 8 HOWARD at 541. That, the conviction stemming from unconstitutional law, legislative Act(s)," is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment. Siebold, 100 U.S. at 376-77.

The Justice's Functions On The Committee To Revise And Compile Nevada Laws Was Not Only Improper, It Objectively Compromised The Appellate Court In Appearance And Actuality, To Perform Its Constitutionally Assigned Function:

It should be self evident, that the people of the State of Nevada, in their sovereign capacity via the Const. of Nev. Art. 3, § 1, for the separation of Departments in Nevada's tripartite government See Galloway v. Truesdell, 83 Nev. 13, 18, 422 P.2d 237 (1967), in affirming that the separation of powers is "probably the most single principle of government declaring and guaranteeing the liberties of the people,"

this court opined: "... The extent to which a country can successfully resolve the conflict between the three branches of government is to a very great extent the measure of that country's capacity for self-government. Id. at 18.

The Truesdell Court, in recognition of the magnitude of this issue, opined further: The separation of powers; the independence of one branch from the others; the requirement that one department cannot exercise the powers of the other two is fundamental in our system of government. 83 Nev. at 19 (emphasis added).

Indeed, in a more contemporary decision, this court did not hesitate to reaffirm its unyielding adherence to the separation of powers doctrine. *Whitehead v. Comm'n on Jud. Discipline*, 110 Nev. 874, 879, 878 P.2d 913 (1994).

In the Truesdell and Whitehead cases, this court was presented with the questions of whether the judicial branch could perform legislative functions and an officer of the executive branch could perform judicial functions. In both instances, the Court soundly rejected such a notion, finding that such conduct would violate the principle of separation of powers contained in Article 3, § 1, of the Const. of Nev.

This provision of Art. 3, § 1, of the Const. of Nev. "and no persons charged with exercise of powers properly belonging to one of these departments may exercise any 'functions' appertaining to either of the other, ..." (emphasis added), has recognized by this court since 1874. See *Ex parte Blanchard*, 9 Nev. 101 (1874), and has been affirmed consistently in *Sawyer v. Dooley*, 21 Nev. 390, 32 Pac. 437 (1893), cited *Ormsby County v*

Kearney, 37 Nev. 314, 341, 142 Pac. 803 (1914); Galloway, supra, (1967), cited Dunphy v. Sheehan, 92 Nev. 259, 265, 549 P.2d 332 (1976), City of N. Las Vegas ex rel. Arnold v. Daines, 92 Nev. 292, 294, 550 P.2d 399 (1976), and O'Bryan v. Eighth Judicial Dist. Court, 95 Nev. 386, 388, 594 P.2d 739 (1979).

Clearly, taking on the "function" of revising and compiling Nevada law by the justices on the commission, was not only "improper," it's been constitutionally "prohibited" since 1864, by the Const. of Nev. Art. 3, §1, King, 65 Nev. at 556.

The second reason that the "function" of revising and compiling Nevada law was not only improper, yet objectively unreasonable, and plain and simple, the people of the State of Nevada, since the General Election of 1950, in their sovereign capacity have strictly prohibited; justice's or judges from being in "any other 'office,' other than a judicial office." This mandate "alone" by the people of Nevada Art. 6, §11, is enough to make it improper. King, 65 Nev. at 556, 200 P.2d at 232.

Likewise, there are several rational justifications for the constitutional provision of Art. 6, 11, of the Const. of Nev. The purpose of the Nevada constitutional provision is to divorce the judiciary from the political arena. The provision serves to separate any impact it may have upon his or her decision-making process or integrity as a judge. The judiciary is unique in our system of government in that those who hold judicial office are expected and in fact required to view issues with a neutral eye and to hear litigants with an unbiased ear. The individuals of the State of Nevada recognized the importance of maintaining the integrity of the

judiciary in enacting this provision of their Constitution. Compare: *Worthy v. Michigan*, 142 F.Supp. 2d 806 (2000), see also, compare *Baskin v. State*, 107 Okla. 272, 232 P. 388 (1925).

In reviewing S.B. No. 182 SECTION 1, the passing of S.B. No. 182 in the Legis. of Nev., the approval of S.B. No. 182 as Statutes of Nevada 1951, law of the State of Nevada by Governor Russell, and the then justice's of the supreme court having taken to complete the mandate" functions; "authorized thereto by S.B. No. 182, the judiciary, the reasonable restriction of Art. 6, § 11, of the Const. of Nevada was not adhered to.

Is there liberty, when the power of judging was not separate from the legislative and executive? Since the power of judging was joined with the legislative, the life and liberty of Appellant was exposed to arbitrary control, for the judge was the legislator. Compare: *Galloway*, 83 Nev. 19, citing *City of Enterprise v. State*, 69 P.2d 953 (Ore. 1937).

The slightest interference with the ability of the Judicial branch to complete its constitutionally - ordained functions must be closely scrutinized. See *Nixon v. Administrator of General Services*, 433 U.S. 425, 443 (1977).

Either the Constitution of the State of Nevada is the supreme law of the State of Nevada, and S.B. No. 182 is a "facially unconstitutional legislative Act," which should not have passed in the Legis. of Nev., nor approved by Governor Russell, nor acted upon by the state appellate judiciary *Wash. State Grange*, 552 U.S. at 449; see also *Robison*, 73 Nev. 169, 313 P.2d 436, *Wren*, 40 Nev. 170, 187, 161 P. 722, 726 (1916), citing *Oakland Paving Co.*, 11 P. 3; and *Duffy*, 6 Nev. 138, and could not be

"amended" by any subsequent legislative "Act," See In re Medeiros, 57 Nev. 301, 304, 64 P.2d 346 (1937), "If a law so conflicts with the constitution as to be entirely void, there is 'nothing to amend.'" (emphasis added to original), or S.B. No. 182 is constitutional in all its application, and the Constitution of the State of Nevada is a fraudulent document, not the supreme law of the State of Nevada; and its government by the Rule of Men.

"Facts are stubborn things: and whatever may be our wishes, our inclinations, or the dictates of our passions, they cannot alter the state of the 'facts' and evidence." I.e. it could be said that S.B. No. 182 did not create any new office, that the justices were in. Yet, S.B. No. 182 still made the state appellate judiciary, supreme court, by legislative mandate an "adjunct" to the office of the Legis. of Nev., by virtue of the "function" of "revising and compiling, performed by the commission."

This court has the ability to correct the manifest injustice, fundamental miscarriage of justice, accomplished via acts of "FRAUD, malfeasance, misfeasance, non-feasance, mistake of law," as set forth supra, to deem that Appellant is entitled to relief. Wood, 60 Nev. at 141, 104 P.2d at 188 That, relief be GRANTED without undue delay.

This Court Can Recall Its Remittitur, And Can Recall Its Remittitur Due To Fraud, And Lack Of Subject-Matter Jurisdiction:

Avoiding a miscarriage of justice requires "a showing by clear and convincing evidence that, but for a con-

stitutional error, no reasonable juror would have found the defendant guilty under the applicable state law." *Sanvier v. Whitley*, 505 U.S. 333 (1992).

Appellant has presented to this court substantive pre-
valent material evidence, matters, facts, that the Recall of
the Remittitur will promote substantial justice, the same
will prevent (lessen), manifest injustice, as well as funda-
mental miscarriage of justice. *McCleskey v. Zant*, 449 U.S.
467, 494 (1991).

Review is warranted in this "extraordinary" circumst-
ance, case, as based upon the "facial unconstitutionality"
of S.B. No. 182 Wash. State Grange, 552 U.S. at 449, Appell-
ant is "ACTUALLY INNOCENT," as it has been demonstrated
that; based upon the "facts, and evidence," it is more likely
than not, in light of the "facts, and new evidence," no reason-
able juror would have found him guilty beyond a reasonable
doubt. (When would Appellant have "legally" have been arrest-
ed?) *Schlup v. Delo*, 513 U.S. 298 (1995), see also *Desist*, 394
U.S. at 261, n.2; *Siebold*, 100 U.S. at 376-77; *Bible*, 68 Nev. at
44, 231 P.2d at 603, *Stevenson*, 20 Nev. 427, 22 P. 1054;
Norton, 118 U.S. at 442. "facially," the State of Nevada plainly
lacked subject-matter jurisdiction to have arrested Appel-
lant, for alleged criminal conduct. *Desist*, supra, *Siebold*,
supra.

There is an imperative showing, where correcting an
illegal, unjust incarceration is warranted. *Murray v.*
Carrier, 477 U.S. 478, 495 (1991).

The question is "not" can this court Recall its Remit-

titur, the question is will this court Recall its Remittitur?
This court in the interest of justice, "Judges are not to consider the political or economic impact that might ensue from upholding the Constitution as written. They are to uphold it no matter what may result, as that ancient maxim of law states: 'Though the heavens may fall, let justice be done.'" Clem, 119 Nev. at 620, 81 P.3d at 525, continued adherence will work an extreme fundamental manifest miscarriage of justice.

Additionally, and of particular importance, due to the act of fraud, mistake of law, "facial unconstitutionality," of S.B. No. 182, the errors created because of S.B. 182, are errors, external factors, i.e. that "must be imputed to the State." Compare: Coleman v. Thompson, 501 U.S. 722, 754 (1991)

CONCLUSION

Appellant respectfully requests, a full, fair, and adequate review of the foregoing Motion, as to provide such review, Appellant believe's that this court will come to the conclusion, in accordance to the Constitution of the State of Nevada that; S.B. No. 182 is an "facially unconstitutional" legislative "Act," that could not be amended.

That, as such, Appellant cannot be required to remain in prison under an illegal, unlawful, unconstitutional conviction.

Respectfully submitted:

Dated this 23 day of February, 2018

Erick M. Brown

APPELLANT PRO SE

CERTIFICATE OF SERVICE BY MAILING

I, ERICK M. BROWN, hereby certify, pursuant to NRCP 5(b), that on this 23
day of February, 2018, I mailed a true and correct copy of the foregoing, "Motion To
Recall Remittitur"
by placing document in a sealed pre-postage paid envelope and deposited said envelope in the
United State Mail addressed to the following:

District Attorney
Clark County Nevada
2nd Lewis Ave
PO Box 55 2212
Las Vegas NV 89155-2212

Adam Laxalt
Attorney General
State of Nevada
100 North Carson Street
Carson City NV 89101

CC:FILE

DATED: this 23 day of February, 2018.

Erick M. Brown
ERICK M. BROWN # 92713
Appellant /In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

other than carrying out the legitimate functions of the Nevada Children's Foundation, Inc., the same shall be taxed.

Eleventh—Notwithstanding any other provisions of this act or any section or subsection thereof, all claims for tax exemptions on real property shall be filed on or before the second Monday of July of the year for which the exemption is claimed.

SEC. 2. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

SEC. 3. This act shall be in effect immediately upon its passage and approval.

Senate Bill No. 182—Committee on Finance

CHAPTER 304

AN ACT establishing a permanent commission for the revision, compilation, annotation, and publishing of the laws of the State of Nevada and certain laws of the United States; prescribing certain duties of a temporary nature; prescribing certain duties of a permanent nature; making an appropriation therefor, and other matters properly connected therewith.

[Approved March 22, 1951]

*The People of the State of Nevada, represented in Senate and Assembly,
do enact as follows:*

SECTION 1. There is hereby created a commission of the State of Nevada, to be known as the "commission for revision and compilation of Nevada laws," hereinafter referred to as the commission. Such commission shall be composed of three members, and said members shall be the three justices of the supreme court. The members of such commission shall have the powers and duties prescribed by this act, and shall each receive such salary for their services as shall be prescribed by this act, and subsequent enactments.

SEC. 2. As soon as practicable after the effective date hereof the commission shall commence the preparation of a complete revision and compilation of the constitution and the laws of the State of Nevada of general application, together with brief annotations and marginal notes to sections thereof. Such compilation when completed shall be known as "Revised Laws of Nevada," and the year of first publication shall be filled in the blank space of such title, for brevity such title may be cited as "Rev. Laws."

SEC. 3. In preparing such compilation the commission is hereby authorized to adopt such system of numbering as it deems practical, to cause said compilation to be published in such number of volumes, but such volumes shall not exceed 750 pages, as shall be deemed convenient, and to cause such volumes to be bound in loose-leaf binders of good, and so far as possible, permanent quality. The pages of such compilation shall conform in size and printing style to the pages of the Statutes of Nevada, except that if necessary for marginal notes, the same may be of greater width, and roman style type only, shall

EXHIBIT "1" pg 1

be used. In general, it is recommended, but not required, that such compilation should follow the plan of organization used in the compilation heretofore made and known as the "Revised Laws of Nevada, 1912," as authorized by chapter CCXXXVI, Statutes of 1909.

SEC. 4. Upon completion of each portion of said "Revised Laws," the commission is authorized and directed to have the same printed at the state printing office, and upon completion of the final printing the separate volumes shall be bound as heretofore required and forwarded to the secretary of state for safekeeping and disposition as set forth hereinafter. Sufficient copies of each page shall be printed so that there shall be bound 2,500 copies of each volume of said "Revised Laws." A master copy of said "Revised Laws of Nevada," shall be kept in the office of the commission, and such master copy shall not be removed from said office except in the custody of a member of the commission.

SEC. 5. In complying with the provisions of this act, and within the limitation of available appropriations, the commission is authorized to employ such clerical assistance as it deems necessary, to be compensated at the same rate as other state employees of comparable position, and such assistants in drafting and research as may be necessary, and shall be familiar with methods of compilation and drafting of laws. The terms of the employment and compensation of such assistants shall be fixed by the commission.

SEC. 6. The commission shall reimburse the state printer from the appropriation hereby made for the cost of printing and binding required by this act.

SEC. 7. From and after the completion of "Revised Laws of Nevada," and the delivery of the same to the secretary of state, the said secretary of state shall forward one set of the same to the office of each elected or appointed state officer, and take the official receipt of said officer therefor, thirty sets shall be reserved at all times for the exclusive use of the legislature, one set shall be furnished to each county of the state for the use of the district judge and district attorney of that county, one set shall be furnished to each library in the state maintained by public funds, and such number of sets as may be necessary, not to exceed 50 sets, shall be made available to the state librarian for reciprocal trading with state libraries of sister states and federal territories. The remaining sets shall be sold by the secretary of state at a price of \$10 per volume, and all proceeds of such sales shall be deposited in the general fund.

SEC. 8. The compilation herein authorized to be made, shall be accompanied by as complete an index as it shall be practical to prepare, which index shall be printed and bound in the same manner and style as the "Revised Laws."

SEC. 9. The secretary of state shall make available to the commission all records of his office which are or may be of use to the commission, and any books or statutes in the custody of the said secretary shall likewise be made available to said commission.

SEC. 10. Upon request of the commission, the superintendent of

EXHIBIT "1" pg. 2

buildings and grounds shall assign and make available to the commission suitable and convenient rooms or space for the use of the commission and its employees.

SEC. 11. The commission is authorized to purchase or otherwise secure, necessary supplies and equipment.

SEC. 12. Upon the completion of "Revised Laws of Nevada,", the commission is authorized and directed to prepare and have printed such replacement and supplementary pages for such laws, as may from time to time be necessary. In any event, said commission shall prepare the replacement and supplementary pages made necessary by the sessions of the legislature, as soon as possible after each such session. The intent of this section is that such "Revised Laws" shall be kept current insofar as may be possible. Distribution of the same is to be made as for the original volumes, and prices shall be set by the commission as near as possible to the cost of preparing and printing, provided, that where distribution of the original volumes was without charge, no charge shall be made for replacement.

SEC. 13. Upon completion, "Revised Laws of Nevada,", may be cited as prima-facie evidence of the law in all of the courts of this state. Such evidence may be rebutted by proof that the same differ from the official Statutes of Nevada.

SEC. 14. The commission shall, from time to time, make recommendations for clarification of specific statutes, for elimination of obsolete statutes, and calling the attention of the legislature to conflicting statutes, and such other matter as it deems necessary.

SEC. 15. The members of the commission shall each receive a salary of one hundred twenty-five dollars (\$125) per month, paid as are the salaries of other state officers, and out of the appropriation hereby made, for the period commencing on the effective date hereof, and expiring June 30, 1953.

SEC. 16. There is hereby appropriated from the general fund, for the purposes of this act, the sum of seventy-five thousand dollars (\$75,000). Claims against this appropriation shall be allowed and paid in the same manner as are other claims against the state.

SEC. 17. This act shall be effective from and after May 1, 1951.

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Page	Chapter	Title	Page
445		material for state te Bill No. 178— rch 22, 1951	
446		board of county ada, to purchase, e line, extending California power rnia, to the town a to the town of branches thereof; line as a public levy and collec- matters relating te Bill No. 183— March 22, 1951	446
447		at prohibiting the laims against any no funds in said ment, or employe- ation thereof, and ed April 2, 1929, March 22, 1951	447
448		relation to public he state board of matters relating conflict herewith, No. 180—Senators Budelman, Munk,	448
448		proceedings in civil relation thereto," No. 113—Committee	448
449		define and regulate d dollars or less; such business; to rate than lend- s of charge which administration and lations and orders and investigations; for a review of n act fund for the l providing for the cess under certain all acts and parts elate to the same onsistent with the ate Bill No. 103— Approved March	449
455		or the government uary 26, 1881, as liary. Approved	455
459		r a state board of ities and granting fessional engineer- board of registered ing for forfeiture, professional engi- fessional engineers nd surveying as a g for the forfeiture, e land surveying; duties of land sur- thorizing land sur- g all persons who l seals; providing all acts in conflict ," approved March s Reid, Budelman,	459
		s and local councils ouncil of defense;	
		defining their powers and duties and other matters related thereto; making an appropriation therefor, and repealing acts in conflict here- with," approved March 23, 1943. Senate Bill No. 203—Committee on Finance. Approved March 22, 1951	463
	301	An Act to amend an act entitled "An act concerning the estates of deceased persons," approved March 26, 1941. Senate Substitute for Senate Bill No. 14—Committee on Judiciary. Approved March 22, 1951	464
	302	An Act to amend an act entitled "An act to regulate traffic on the high- ways of this state, to provide punishment for violations thereof, to make exceptions in certain cases, and other matters properly con- nected therewith," approved March 31, 1925, as amended. Assembly Bill No. 79—Mr. Folsom. Approved March 22, 1951	466
	303	An Act to amend an act entitled "An act to provide revenue for the support of the government of the State of Nevada, providing penalties for the violation thereof, and to repeal certain acts relating thereto," approved March 23, 1891, as amended. Senate Bill No. 96—Senator Lovelock Approved March 22, 1951	467
	304	An Act establishing a permanent commission for the revision, compilation, annotation, and publishing of the laws of the State of Nevada, and certain laws of the United States; prescribing certain duties of a temporary nature; prescribing certain duties of a permanent nature; making an appropriation therefor, and other matters properly connected therewith. Senate Bill No. 182—Committee on Finance. Approved March 22, 1951	470
	305	An Act to amend an act entitled "An act relating to aeronautics; providing for acquisition, construction, maintenance, operation, and regulation by municipalities and counties of airports and air navigation facilities within or without the state, and declaring such to be a public purpose; authorizing eminent domain proceedings; providing tax exemptions for municipal airports and income thereof; authorizing leasing of airports, supplying of services in airport operation, and liens to secure payment thereof; granting extra territorial jurisdiction; authorizing penalties for violation of municipal ordinances and regulations; providing for appro- priations, levying of taxes, issuance of bonds, and acceptance of federal aid; and state aid; validating prior acquisitions, actions and bond issues; authorizing joint action by municipalities and other public agencies; providing for mutual aid between municipalities; and to make uniform the law with reference to public municipal airports," approved March 31, 1947. Assembly Bill No. 102—Messrs. Evers and Francovich.	473
	306	An Act to amend an act entitled "An act relating to unemployment com- pensation, creating unemployment compensation and administration funds and providing for the administration thereof; making an appro- priation therefor; defining unemployment and providing compensation therefor; requiring contributions by employers to the unemployment compensation fund; creating the office of director, a board of review, and providing for other officers and employees and defining their powers and duties; providing for the levy of assessment; and other matters relating thereto," approved March 23, 1937, as amended. Assembly Bill No. 263—Mr. Folsom. Approved March 22, 1951	474
	307	An Act to amend an act entitled "An act to create a water district in the Las Vegas valley, Clark County, Nevada; to provide for the procure- ment, storage, distribution and sale of water and rights in the use thereof, from Lake Mead for industrial, irrigation, municipal, and domestic uses; to provide for the conservation of the ground-water resources of the Las Vegas valley, and to create authority to purchase, acquire and construct the necessary works to carry out the provisions of this act; to provide for the issuance of district bonds; to provide for the levy of taxes for the payment of operation and maintenance expenses and to supplement other revenues available for the payment of principal of and interest on such bonds of said district; granting said district the franchise to carry on its operations in municipal corporations within its boundaries; exempting the property and bonds of said district from taxation; validating the creation and organiza- tion of said district; and for other purposes related thereto," approved March 27, 1947, as amended. Assembly Bill No. 229—Mr. Coulthard.	477
	308	An Act to amend an act entitled "An act creating an industrial insurance commission; providing for the creating and disbursement of funds for the compensation and care of workmen injured in the course of employ- ment; relating to the compensation of injured workmen and the com- pensation of their dependents where such injuries result in death; mak- ing premium payments by certain employers compulsory; authorizing the commission created by the act to make such rules and regulations	

EXHIBIT "1" pg. 4

BARBARA K. CEGAUSKE
Secretary of State

GAIL J. ANDERSON
Deputy Secretary for Southern Nevada

CADENCE MATJEVICH
Deputy Secretary for Operations

STATE OF NEVADA



OFFICE OF THE
SECRETARY OF STATE

SCOTT W. ANDERSON
Chief Deputy Secretary of State

KIMBERLEY PERONDI
Deputy Secretary for Commercial Recordings

WAYNE THORLEY
Deputy Secretary for Elections

September 28, 2017

3723 Southern Light Dr.
Las Vegas, NV 89115

Re: Certified Copy - Senate Bill 182, Chapter 304 - Approved March 22, 1951

Dear Mr. Cabrera:

Pursuant to your public records request referenced above, please find enclosed a copy of SB 182, approved March 22, 1951. I was able to locate the bill in our Statutes of Nevada, 1951 volume (copy enclosed). If you require an official certified copy of the actual bill, please contact:

Nevada State Library and Archives
100 North Stewart Street, Suite 200
Carson City, NV 89701

Telephone: (775) 684-0135
Fax: (775) 684-0118

Please be aware there may be a fee for certified copy requests. I hope you find this information helpful. Thank you for contacting the Secretary of State Elections Division.

Sincerely,

Barbara K. Cegavske
Secretary of State

By: *Janet Stokes*
Janet Stokes, Elections Division

/jfs
Enclosure

EXHIBIT "1" pg. 5

Art. 6, § 11 CONSTITUTION OF THE STATE OF NEVADA

provisions. State ex rel. Coffin v. Atherton, 19 Nev. 332, 10 Pac. 901 (1886)

Statute's provision allowing judges necessary expenses actually paid in traveling did not violate section. Where statute redistricted state into one judicial district, and provided for election in such district of three judges having equal and concurrent jurisdiction, fact that statute allowed judges, in addition to their salary, necessary expenses actually paid by them in traveling by public conveyance in going to and from place of holding court, did not violate Nev. Art. 6, § 10, which prohibits judicial officers from receiving to their own use any fees or perquisites of office. State ex rel. Coffin v. Atherton, 19 Nev. 332, 10 Pac. 901 (1886)

Compensation allowed trustee under statute not prohibited fee or perquisite. Under sec. 7, ch. 28, Stats. 1869, as amended by sec. 3, ch. 82, Stats. 1871 (cf. NRS 325.070), which authorizes trustee of townsite on public land to charge fee for his time and services while employed in such trust, fact that person became trustee by virtue of his office as district judge did not prevent his making charge for his services as trustee, because compensation allowed trustee under statute is not fee or perquisite of office of district judge, and therefore does not come within prohibi-

tion of Nev. Art. 6, § 10, which forbids judicial officer to receive to his own use any fees or perquisites of office. State ex rel. Jennett v. Stevens, 34 Nev. 128, 116 Pac. 601 (1911)

Statute prohibiting justices of the peace from solemnizing marriages in certain townships did not violate provision requiring uniform system of county and township government. NRS 122.080, which prohibits justices of the peace from solemnizing marriages in certain townships in populous counties did not violate Nev. Art. 4, § 25, which requires uniform system of county and township government, because classification of townships had reasonable basis and did not constitute unconstitutional denial of perquisites of office, because Nev. Art. 6, § 10, which prohibits other judicial officers from accepting fees, did not give justices of the peace any right to marriage fees or limit power of legislature under former provisions of Nev. Art. 6, § 8, to fix their powers, duties and responsibilities. Reid v. Woolfer, 88 Nev. 378, 498 P.2d 361 (1972), cited, State ex rel. Brennan v. Bowman, 89 Nev. 330, at 334, 512 P.2d 1321 (1973), Anthony v. State, 94 Nev. 337, at 341, 580 P.2d 939 (1978), County of Clark v. City of Las Vegas, 97 Nev. 260, at 264, 628 P.2d 1120 (1981)

Sec. 11. Justices and judges ineligible for other offices. The justices of the supreme court and the district judges shall be ineligible to any office, other than a judicial office, during the term for which they shall have been elected or appointed; and all elections or appointments of any such judges by the people, legislature, or otherwise, during said period, to any office other than judicial, shall be void.

[Amended in 1950. Proposed and passed by the 1947 legislature; agreed to and passed by the 1949 legislature; and approved and ratified by the people at the 1950 general election. See: Statutes of Nevada 1947, p. 878; Statutes of Nevada 1949, p. 684.]

—ANNOTATIONS—

Constitutional Debates.

Nevada Constitutional Debates and Proceedings, pp. 537, 676, 728, 802, 843.

Nevada Cases.

District judge not prevented from becoming trustee of townsite on public land. Under Nev. Art. 6, § 11, which provides that justices of supreme court and judges of district court shall be ineligible to any office, other than judicial office, during term for which they

shall have been elected or appointed, district judge was not prevented from becoming trustee of townsite on public land, because even though he became trustee by virtue of his office of district judge, and certain of his duties as trustee were judicial in character, his trusteeship was at all times separate and distinct from his office of district judge. State ex rel. Jennett v. Stevens, 34 Nev. 128, 116 Pac. 601 (1911)

CONSTITUTION OF THE STATE OF NEVADA Art. 3, § 1

Statute permitting disqualification of judge in civil action without filing of affidavit of bias or grounds for disqualification held unconstitutional. Former statute which established peremptory challenge procedure permitting any party in civil action to disqualify judge without filing affidavit of bias or otherwise alleging any grounds for disqualifi-

cation (see sec. 2 of ch. 398, Stats. 1977, codified as former NRS 1.240) constituted unwarranted interference with courts in exercise of judicial function and violated doctrine of separation of powers and therefore was unconstitutional. *Johnson v. Goldman*, 94 Nev. 6, 575 P.2d 929 (1978)

Section. 1. Three separate departments; separation of powers. The powers of the Government of the State of Nevada shall be divided into three separate departments,—the Legislative,—the Executive and the Judicial; and no persons charged with the exercise of powers properly belonging to one of these departments shall exercise any functions, appertaining to either of the others, except in the cases herein expressly directed or permitted.

—ANNOTATIONS—

Constitutional Debates.

Nevada Constitutional Debates and Proceedings, pp. 138, 246, 787, 836.

Nevada Cases.

Exercise of judicial function by board of county commissioners is constitutional. Exercise of judicial function by board of county commissioners is not violation of Nev. Art. 3, § 1, which provides for separation of legislative, executive and judicial powers; because that section is limited by Nev. Art. 4, § 26, which provides that legislature shall prescribe duties of boards of county commissioners. State ex rel. *Mason v. Board of County Comm'rs*, 7 Nev. 392 (1872).

Construction to be placed on act can be determined only by courts, not legislature. Construction to be placed on act can be determined only by courts, and attempted exercise of this power by legislature, in providing that nothing in act authorizing raffle should be construed as authorizing lottery contrary to provisions of constitution, was assumption of functions of judiciary in violation of Nev. Art. 3, § 1, and was disregarded by court. Ex parte *Blanchard*, 9 Nev. 101 (1874).

Separation of powers provision of Nevada constitution. Under Nev. Art. 3, § 1, state government is divided into executive, legislative and judicial departments; and no person charged with exercise of powers properly belonging to one of these departments may exercise any functions appertaining to either of the others, except in cases expressly directed or permitted by constitution. Ex parte *Blanchard*, 9 Nev. 101 (1874).

Legislative appointment of officers. The offices and agencies of a municipal corporation, through which its affairs are administered, are created by the legislature, and persons to fill such offices are chosen or appointed in the mode prescribed by the law of incorporation. Nev. Art. 3, § 1, which separates powers and duties of respective branches of state government, does not prevent legislative appointment because that power is not generally conferred upon executive, and Nev. Art. 15, § 10, exclusively authorizes legislature to provide for election or appointment. State ex rel. *Rosenstock v. Swift*, 11 Nev. 128 (1876).

Legislature cannot adjudicate claims where only private interests are involved. Where only private interests are involved, legislature cannot adjudicate upon disputed claims, and statute directing city treasurer to set apart certain amount of money as special fund and to pay certain enumerated indebtednesses against city, insofar as it undertook to fix amount due listed persons, was attempt by legislature to exercise judicial powers and repugnant to Nev. Art. 3, § 1, pertaining to separation of powers. State ex rel. *Arick v. Hampton*, 13 Nev. 439 (1878).

Statute providing for reduction of jail time is void insofar as it attempts to commute any portion of sentence imposed by courts before time act took effect. Ch. 78, Stats. 1881 (cf. NRS 209.433), relating to government of state prison, insofar as it attempts to commute any portion of sentence imposed by courts prior to time act took effect,

FOREWORD

By the provisions of chapter 304, Statutes of Nevada 1951, amended by chapter 280, Statutes of Nevada 1953, and chapter 248, Statutes of Nevada 1955, the legislature of the State of Nevada created the statute revision commission comprised of the three justices of the supreme court, authorized such commission to appoint a reviser of statutes to be known as the director of the statute revision commission, and charged the commission to commence the preparation of a complete revision and compilation of the laws of the State of Nevada to be known as Nevada Revised Statutes. Reference is made to chapter 220 of Nevada Revised Statutes for the further duties and authority of the statute revision commission relating to the preparation of Nevada Revised Statutes, the numbering of sections, binding, printing, classification, revision and sale thereof.

The commission employed as director Russell W. McDonald, a member of the State Bar of Nevada, who, with his staff, undertook and performed this monumental task with such methods, care, precision, completeness, accuracy and safeguards against error as to evoke the highest praise of the commission and the commendation of the bench and bar of the state.

As the work progressed, Mr. McDonald submitted drafts of chapter after chapter as recompiled and revised, and the members of the commission individually and in conference meticulously checked all revisions. In the vast majority of cases these revisions were promptly approved. Many required further conferences with the director. Some were modified and redrafted. As the several chapters were returned with approval to the director, they were in turn delivered to the superintendent of state printing for printing, to the end that upon the convening of the 1957 legislature Nevada Revised Statutes was ready to present for approval. By the provisions of chapter 2, Statutes of Nevada 1957, Nevada Revised Statutes, consisting of NRS 1.010 to 710.590, inclusive, was "adopted and enacted as law of the State of Nevada."

STATUTE REVISION COMMISSION

MILTON B. BADT
EDGAR EATHER
CHARLES M. MERRILL

EXHIBIT "4" pg. 1

1. Long sections were divided into shorter sections. The division of long sections facilitates indexing and reduces the complications and expense incident to future amendment of the statutes.

2. Whole sections or parts of sections relating to the same subject were sometimes combined.

3. Sentences within a section, and words within a sentence, were rearranged, and tabulations were employed where indicated.

4. Such words and phrases as "on and after the effective date of this act," "heretofore," "hereinafter," "now," and "this act" were replaced by more explicit words when possible.

* 5. The correct names of officers, agencies or funds were substituted for incorrect designations.

The general types of revisions to be made by the reviser, as well as the broad policies governing the work of revision, were determined by the statute revision commission at frequent meetings. Precautions were taken to ensure the accomplishment of the objectives of the program without changing the meaning or substance of the statutes.

Upon completion of the revision of the text of the statutes in December 1956, the commission turned to the solution of a vital problem: Would it recommend the enactment of the revised statutes or would it request the legislature merely to adopt the revised statutes as evidence of the law? The commission concluded that the enactment of the revised statutes as law, rather than the mere adoption thereof as evidence of the law, would be the more desirable course of action. Accordingly, *Nevada Revised Statutes* in typewritten form was submitted to the 48th session of the legislature in the form of a bill providing for its enactment as law of the State of Nevada. * This bill, Senate Bill No. 2 (hereafter referred to in this preface as "the revision bill"), was passed without amendment or dissenting vote, and on January 25, 1957, was approved by Governor Charles H. Russell.

On July 1, 1963, pursuant to the provisions of chapter 403, Statutes of Nevada 1963, the statute revision commission was abolished, and its powers, duties and functions were transferred to the legislative counsel of the State of Nevada.

SCOPE AND EFFECT OF NEVADA REVISED STATUTES

Nevada Revised Statutes, including the supplementary and replacement pages, constitutes all of the statute laws of Nevada of a general nature enacted by the legislature. All statutes of a general nature enacted before the regular legislative session of 1957 have been repealed. See section 3 of chapter 2, Statutes of Nevada 1957, immediately following this preface.

The revised statutes were the result of 7 years of labor by the statute revision commission and its editorial staff addressed to the problem of eliminating from the accumulation of 95 years of legislation those provisions no longer in force and restating and compiling the remainder in an understandable form. This involved elimination of duplicating, conflicting, obsolete and unconstitutional provisions, and those provisions that had been repealed by implication. It involved a complete reclassification, bringing together those laws and parts of laws which, because of similarity of subject matter, properly belonged together, and an arrangement of the laws within each class in a logical order. It involved the elimination of thousands of needless words and redundant expressions. It was a labor involving almost infinite detail, as well as the problems of classification and the general plan of arrangement.