

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

2
3 VILLAGE LEAGUE TO SAVE INCLINE Case No. 56030
4 ASSETS, INC., a Nevada non-
5 profit corporation, on behalf
6 of its members, and others
7 similarly situated,

Electronically Filed
Nov 02 2010 09:40 a.m.
Tracie K. Lindeman

8 Appellants,

9 v.

10 STATE OF NEVADA, on relation
11 of its DEPARTMENT OF TAXATION,
12 the NEVADA STATE TAX
13 COMMISSION, and the STATE
14 BOARD OF EQUALIZATION; WASHOE
15 COUNTY; ROBERT MCGOWAN, WASHOE
16 COUNTY ASSESSOR; BILL BERRUM,
17 WASHOE COUNTY TREASURER,

18 Respondents.
19 _____/

20 ON APPEAL FROM THE SECOND JUDICIAL DISTRICT COURT OF THE
21 STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE
22 CASE NO. CV03-06922

23 RESPONDENTS WASHOE COUNTY, WASHOE COUNTY ASSESSOR AND
24 TREASURER'S ANSWERING BRIEF

25 MORRIS PETERSON
26 SUELLEN FULSTONE, ESQ.
6100 Neil Road Ste. 555
Reno, NV 89511
(775) 829-6000

ATTORNEY FOR APPELLANTS

RICHARD A. GAMMICK
Washoe County District Attorney

DAVID C. CREEKMAN
Chief Deputy District Attorney
P. O. Box 30083
Reno, NV 89520-3083
(775) 337-5700

ATTORNEYS FOR RESPONDENTS
WASHOE COUNTY; WASHOE COUNTY
ASSESSOR AND WASHOE COUNTY
TREASURER

TABLE OF CONTENTS

	<u>Page</u>
I. JURISDICTIONAL STATEMENT	1
II. STATEMENT OF THE ISSUES PRESENTED FOR REVIEW	1
III. STANDARD OF REVIEW	2
IV. STATEMENT OF THE CASE AND RELEVANT FACTS	2
A. Introduction	2
B. Identification of the nature of the claims for relief in the District Court case	4
V. ARGUMENT	5
A. Mandamus is not available to these Appellants to grant the relief they request	5
1. The law of mandamus	6
2. Mandamus is not available to control the exercise of the State Board of Equalization's discretion in the manner requested by these Appellants	7
3. The fact that the relief these Appellants now seek could have once been considered in a proceeding at law bars their claim for mandamus relief	8
a. The State Board of Equalization's authority to equalize under NRS 361.395(1) is already performed under Nevada law, at NRS 361.333	8
b. The 2010 regulations recognize the long-standing practice of the State Board of Equalization in the performance of its equalization responsibility under NRS 361.395(1)	12
c. Mandamus is also barred by the existence of other methods at law for properly invoking the jurisdiction of the State Board of Equalization, as an appellate body from decisions of the County Boards of	17

1	Equalization under NRS 361.400, with respect	
2	to claims of disparate property valuations	
3	and eligibility for refunds, and are to be	
4	found in NRS 361.355, 361.356 and 361.360,	
5	with refund availability only obtainable	
6	pursuant to NRS 361.405(4).	
7	i. NRS 361.355	17
8	ii. NRS 361.356	19
9	iii. NRS 361.360	20
10	iv. NRS 361.405(4)	21
11	d. Mandamus is also barred by the	22
12	existence of a third method for properly	
13	invoking the jurisdiction of the State Board	
14	of Equalization, with respect to the	
15	assessment and refund issues these	
16	Appellants have asserted an entitlement to,	
17	which may be found in NRS 361.420's "payment	
18	under protest" provisions but is now	
19	unavailable to these Appellants	
20	i. NRS 361.420	22
21	ii. Recovery of voluntarily-paid . . .	24
22	taxes is not permitted by the law	
23	iii. Nothing in the amended complaint . .	26
24	establishes that these Appellants	
25	paid under NRS 361.420's protest	
26	provisions for the tax year involved in	
	this case and they are now time barred	
	from doing so	
	iv. Just as with the other	26
	previously-described remedies at law	
	once available to these Appellants, the	
	availability of the "payment under	
	protest" remedy contained in NRS	
	361.420 goes to the question of	
	whether judgment could have been	
	obtained in a proceeding at law	
24	VI. CONCLUSION	27
25	CERTIFICATE OF COMPLIANCE	28

TABLE OF AUTHORITIES

Page

CASES

Allen v. Bergland,	15, 16, 17
661 F.2d 1001, 1007 (4th Cir. 1981)	
Bass v. South Cook County Mosquito Abatement Dist.,	24
236 Ill. App.3d 466, 603 N.E.2d 749 (1st Dist. 1992)	
Bellon v. Monroe County,	7
577 N.W.2d 877 (Iowa Ct. App. 1998)	
Berman v. Board of Registration in Medicine,	7
355 Mass. 358, 244 N.E.2d 553 (1969)	
Budget Rent-A-Car of Tulsa v. State ex rel. Oklahoma	24
Tax Com'n., 773 P.2d 736 (Okla. 1989)	
Chevron, U.S.A., Inc. v. Natural Resources Defense	14, 15
Council, Inc., 467 U.S. 837 (1984)	
City of Laredo v. South Texas Nat. Bank,	24
775 S.W.2d 729 (Tex. App. San Antonio 1989)	
Community Federal Sav. & Loan Ass'n v. Director of Revenue,	25
796 S.W.2d 883 (Mo. 1990)	
Cote v. Eighth Jud. Dist. Ct. ex rel. County of Clark,	6
124 Nev. 36, 175 P.3d 906, 908 (2008)	
County of Washoe v. Golden Road Motor Inn, Inc.,	23
105 Nev. 402, 777 P.2d 358 (1989)	
County of Washoe v. Reno,	8, 26
77 Nev. 152, 360 P.2d 602 (1961)	
D.R. Horton, Inc. v. Eighth Jud. Dist. Ct. ex rel.	6
County of Clark, 123 Nev. 468, 168 P.3d 731, 737 (2007)	
Ehlert v. United States,	16
402 U.S. 99, 105 (1971)	
Elzea v. Perry,	25
340 Ark. 588, 12 S.W.3d 213 (2000)	
Getto v. City of Chicago,	24
86 Ill. 2d 39, 426 N.E.2d 844 (1981)	

1	Gosman v. United States,	15, 16, 17
2	573 F.2d 31, 39 (Ct. Cl. 1978)	
3	Imperial Gardens, Inc. v. Town of Wallkill,	25
4	228 A.D.2d 562, 644 N.Y.S.2d 528 (N.Y.A.D. 1966)	
5	Kapplemann v. Delta Air Lines,	15
6	539 F.2d 165, 168 - 169 (C.App. D.C. 1976)	
7	Lett v. City of St. Louis,	25
8	948 S.W.2d 614 (Mo. Ct. App. E.D. 1996)	
9	McCarten v. Sanderson,	7
10	111 Mont. 407, 109 P.2d 1108 (1941)	
11	Mertz v. Pappas,	25
12	320 Ark. 368, 896 S.W.2d 593 (1995)	
13	New Jersey Hosp. Ass'n v. Fishman,	25, 26
14	283 N.J. Super. 253, 661 A.2d 842 (App. Div. 1995)	
15	Oxford v. Perry,	25
16	340 Ark. 577, 13 S.W.3d 567 (2000)	
17	Ring v. Metropolitan St. Louis Sewer District,	25
18	969 S.W.2d 716 (Mo. 1998)	
19	Sports Form, Inc. v. Leroy's Horse and Sports Place,	15
20	108 Nev. 37, 823 P.2d 901 (1992)	
21	State Board of Equalization v. Barta,	3, 22, 23
22	124 Nev. 58, 188 P.3d 1092 (2008)	
23	State ex rel. Affiliated Const. Trades Foundation v. Vieweg,	7
24	205 W.Va. 687, 520 S.E.2d 854 (1999)	
25	State ex rel. McGuire v. Watterman,	6
26	5 Nev. 323, 326 (1869)	
	State v. Sadler,	21
	21 Nev. 13, 17, 23 P. 799 (1880)	
	State v. Second Jud. Dist. Ct. ex rel. County of Washoe,	6
	121 Nev. 413, 415 - 416, 116 P.3d 834, 835 (2005)	
	State v. Wright,	21
	4 Nev. 251 (1868)	
	Stratton v. St. Louis Southwestern Ry. Co.,	24
	284 U.S. 530 (1932)	

1	Sunset Drive Corp. v. City of Redlands,	7
2	73 Cal. App. 4th 215, 86 Cal. Rptr.2d 209 (4th Dist. 1999)	
3	Tamaroff v. Cowen,	7
4	270 Ga. 415, 511 S.E.2d 159 (1999)	
5	Thomas v. City of North Las Vegas,	15
6	122 Nev. 82, 127 P.3d 1057 (2006)	
7	Video Aid Corp. v. Town of Wallkill,	25
8	85 N.Y.2d 663, 651 N.E.2d 886 (1995)	
9	Welfare Division v. Maynard,	13, 15
10	84 Nev. 525, 529, 445 P.2d 153 (1968)	
11	Williams v. James,	7
12	684 So.2d 868 (Fla. Dist. Ct. App. 2d Dist. 1996)	
13	Wisconsin Pharmaceutical Ass'n. v. Lee,	7
14	264 Wis. 325, 58 N.W.2d 700 (1953)	
15	<u>NEVADA REVISED STATUTES</u>	
16	NRS 34.160	6
17	NRS 361	3
18	NRS 361.225	9
19	NRS 361.333	8, 9, 13
20	NRS 361.333(2)	10
21	NRS 361.333(5) (c)	11
22	NRS 361.355	17, 18, 19, 20
23	NRS 361.355(1)	18
24	NRS 361.355(3)	18
25	NRS 361.355(4)	19
26	NRS 361.356	17, 19, 20
	NRS 361.356(1)	20
	NRS 361.356(4)	19
	NRS 361.360	17, 20

1	NRS 361.360 (1)	20
2	NRS 361.395 (1)	3, 7, 8, 9, 12
3	NRS 361.400	17, 22
4	NRS 361.405 (4)	17, 21
5	NRS 361.410	21
6	NRS 361.410 (1)	22
7	NRS 361.420	22, 23, 26
8	NRS 361.420 (1)	23
9	NRS 361.420 (2)	23
10	NRS 361.420 (3)	26
11	NRS 361.420 (4) (f)	23
12	<u>NEVADA RULES OF CIVIL PROCEDURE</u>	
13	NRCP 12 (b) (5)	4
14	NRCP 12 (b) (6)	4
15	NRCP 15	4
16	<u>OTHER AUTHORITY</u>	
17	International Association of Assessing Officers,	11
18	Standard on Ratio Studies, (1999), p. 23.	
19		
20		
21		
22		
23		
24		
25		
26		

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

2
3 VILLAGE LEAGUE TO SAVE INCLINE Case No. 56030
4 ASSETS, INC., a Nevada non-
5 profit corporation, on behalf
6 of its members, and others
7 similarly situated,

8 Appellants,

9 v.

10 STATE OF NEVADA, on relation
11 of its DEPARTMENT OF TAXATION,
12 the NEVADA STATE TAX
13 COMMISSION, and the STATE
14 BOARD OF EQUALIZATION; WASHOE
15 COUNTY; ROBERT MCGOWAN, WASHOE
16 COUNTY ASSESSOR; BILL BERRUM,
17 WASHOE COUNTY TREASURER,

18 Respondents.
19 _____/

20 **I. JURISDICTIONAL STATEMENT**

21 These Respondents adopt the "Jurisdictional Statement"
22 contained in the Appellants' Opening Brief.

23 **II. STATEMENT OF THE ISSUES PRESENTED FOR REVIEW**

24 Does mandamus relief exist to assist taxpayers obtain
25 desired equalization of their property valuations with other
26 property valuations in the State of Nevada, and subsequent
27 refunds, in light of a detailed and comprehensive statutory
28 scheme which has already been complied with by the Nevada Board
29 of Equalization and where such refund relief could have been
30 pursued by the taxpayers in other manners, each of which is set
31 forth in Nevada law.

1 **III. STANDARD OF REVIEW**

2 These Respondents adopt the "Standard of Review" contained
3 in the Appellants' Opening Brief.

4 **IV. STATEMENT OF THE CASE AND RELEVANT FACTS**

5 A. Introduction

6 This case was initiated when the Appellants here filed a
7 Complaint in the Second Judicial District Court on November 12,
8 2003. Joint Appendix "JA" I, 1-18. Then-Washoe County Assessor
9 Robert McGowan, and Treasurer Bill Berrum, moved to dismiss on
10 December 19, 2003. The responding parties asserted the grounds
11 of failure to exhaust administrative remedies and Village
12 League's lack of standing to bring the lawsuit in the District
13 Court. Respondents' Appendix "RA" 1-11. The State Board of
14 Equalization and Nevada Department of Taxation also filed
15 "Motions to Dismiss." RA 12-38. Following the completion of
16 briefing and oral argument, the District Court, through its
17 predecessor judge, the Honorable Peter Breen, on June 2, 2004,
18 granted all motions to dismiss, based upon the Court's
19 perception that the Appellants had failed to exhaust their
20 administrative remedies. JA I, 19-24. The Washoe County parties
21 filed a "Notice of Entry of Order" on June 4, 2004. RA 39-47.
22 The Village League filed its "Notice of Appeal" to the Nevada
23 Supreme Court on June 10, 2004. JA I, 25-27. The appeal was
24 from this Court's Order granting all the defending parties',
25 from both the State of Nevada and Washoe County, "Motions to
26 Dismiss."

1 On March 19, 2009, the Nevada Supreme Court issued its
2 "Order Affirming in Part, Reversing in Part and Remanding" in
3 this case. JA I, 28-37. The Supreme Court's Order concluded
4 that the District Court properly dismissed the action below,
5 except for the valuation equalization claim as between Douglas
6 and Washoe Counties, because the Village League failed to
7 exhaust its administrative remedies before seeking judicial
8 review. JA I, 28-37. Following this conclusion, the Supreme
9 Court directed that District Court should have proceeded to
10 determine if the Village League's valuation equalization claim
11 for injunctive relief was viable and remanded this one issue
12 back to the District Court for further proceedings. JA I, 35.
13 It did so in likely recognition of its prior holding in State
14 Board of Equalization v. Barta, 124 Nev. 58, 188 P.3d 1092
15 (2008), that "[u]nder NRS 361.395(1), the State Board clearly
16 has a duty to equalize property valuations throughout the state:
17 'the [State Board] shall ... [e]qualize property valuations in the
18 State'" Barta, 124 Nev. at ___, 188 P.3d at 1102, coupled with
19 its holding, also in Barta, that:

20 NRS 361 establishes a duty, separate from the equalization
21 duty, that the State Board hear appeals from decisions made
22 by the county boards of equalization. The two statutes
23 create separate functions: equalizing property valuations
24 throughout the state and hearing appeals from the county
25 boards. Id.

24 Following the Supreme Court's remand to the District Court
25 of the above-described one remaining cause of action, the
26 District Court conducted a status conference in April of 2009.

1 JA I, 45-61. At that status conference, the District Court
2 ordered that the parties file briefs concerning their
3 perceptions of the issues then before the District Court, and
4 state their positions with respect to those issues. The parties
5 did so, as ordered by the Court, with such briefs fully
6 completed, and filed, with the Court by mid-June 2009. JA I, 62-
7 75, 76-181, 182-189, 200-207. At the April status conference,
8 the District Court also granted Village League the opportunity
9 to file an amended complaint, which the Village League did on
10 June 19, 2009, after the above-described briefs were fully
11 completed, and filed, with the District Court. JA I, 190-199.
12 The District Court held a subsequent status conference on
13 Friday, September 25, 2009. At that status conference, the
14 Court ordered either an answer, or other responsive pleading, to
15 be filed by Thursday, October 15, 2009. JA II, 231-273.

16 B. Identification of the nature of the claims for relief
17 in the District Court case

18 These Respondents opposed the amended complaint with a
19 "Motion to Dismiss (NRCP 12(b)(5) and NRCP 12(b)(6)) and Motion
20 to Strike Amended Complaint (NRCP 15)" on October 15, 2009. The
21 amended complaint first requested that the District Court
22 certify that this action be maintained as a class action. Then,
23 most important from the perspective of this appeal before the
24 Supreme Court, the amended complaint went on to request the
25 issuance of a Writ of Mandamus to require the State Board of
26 Equalization to consider valuation issues, and to conclude that

1 inequities exist with respect to those valuations, between
2 certain residential properties in Douglas and Washoe County, for
3 the 2003 - 2004 tax year, when this action was initially
4 initiated, and for all subsequent tax years. Finally, the
5 amended complaint requested that any issued Writ of Mandamus
6 direct the payment of tax refunds to the taxpayers involved in
7 this manner. JA I, 197. The amended complaint, contrary to the
8 representations of the Appellants here, clearly requested that
9 the District Court interject itself into the internal operations
10 of the State Board of Equalization and, once having done so,
11 requested that the District Court order the State Board of
12 Equalization to reach a particularized, specific result - the
13 payment of refunds to the taxpayers involved. JA I, 197. The
14 result requested by the Appellants is not possible under the law
15 of mandamus.

16 These Washoe County Respondents' motion was followed by a
17 "Statement of New Authority" dated March 3, 2010. JA III, 427-
18 527. In its statement, the District Court was advised of the
19 adoption of administrative regulations which set forth the
20 criteria to determine whether property has been assessed
21 uniformly in Nevada, including through the Nevada Department of
22 Taxation's review of relevant ratio studies prepared in accord
23 with NRS 361.333. See infra.

24 **V. ARGUMENT**

25 A. Mandamus is not available to these Appellants to grant
26 the relief they request

1 1. The law of mandamus

2 A writ of mandamus may be issued by a district court "to
3 compel the performance of an act" of an inferior state tribunal,
4 corporation, board or person. NRS 34.160. It enjoins the
5 inferior body or person to affirmatively act in a manner which
6 the law already compels the body or person to act. See D.R.
7 Horton, Inc. v. Eighth Jud. Dist. Ct. ex rel. County of Clark,
8 123 Nev. 468, 168 P.3d 731, 737 (2007).

9 Before a writ of mandamus will be issued, certain
10 requirements must be met. First the act required to be
11 performed must be a duty resulting from the office and required
12 by law. State ex rel. McGuire v. Watterman, 5 Nev. 323, 326
13 (1869). It must also appear that the defendant has it in his
14 power to perform the duty required of him, and that the writ
15 will have a beneficial effect to the applying party. Id. The
16 writ of mandamus does not lie unless the usual and ordinary
17 remedies fail to provide a plain, speedy and adequate remedy.
18 Cote v. Eighth Jud. Dist. Ct. ex rel. County of Clark, 124 Nev.
19 36, 175 P.3d 906, 908 (2008). Petitions for writs of mandamus
20 are not used to control discretionary acts, unless the
21 discretion has been manifestly abused or is exercised in an
22 arbitrary and capricious manner. See State v. Second Jud. Dist.
23 Ct. ex rel. County of Washoe, 121 Nev. 413, 415 - 416, 116 P.3d
24 834, 835 (2005). They are not to be used to achieve a
25 particularized result.

26 ///

1 2. Mandamus is not available to control the exercise
2 of the State Board of Equalization's discretion
3 in the manner requested by these Appellants

4 Although mandamus can compel an exercise of discretion, it
5 cannot control or interfere with the manner in which the
6 discretion is exercised or demand a particular result or
7 determination. Sunset Drive Corp. v. City of Redlands, 73 Cal.
8 App. 4th 215, 86 Cal. Rptr.2d 209 (4th Dist. 1999); Williams v.
9 James, 684 So.2d 868 (Fla. Dist. Ct. App. 2d Dist. 1996);
10 Tamaroff v. Cowen, 270 Ga. 415, 511 S.E.2d 159 (1999); Bellon v.
11 Monroe County, 577 N.W.2d 877 (Iowa Ct. App. 1998); Berman v.
12 Board of Registration in Medicine, 355 Mass. 358, 244 N.E.2d 553
13 (1969); McCarten v. Sanderson, 111 Mont. 407, 109 P.2d 1108
14 (1941); State ex rel. Affiliated Const. Trades Foundation v.
15 Vieweg, 205 W.Va. 687, 520 S.E.2d 854 (1999); Wisconsin
16 Pharmaceutical Ass'n. v. Lee, 264 Wis. 325, 58 N.W.2d 700
17 (1953).

18 As stated, mandamus is unavailable to control discretionary
19 acts. Yet the Appellants in this case sought a Writ of Mandamus
20 to do precisely that. A review of their prayer for relief
21 contained within their amended complaint establishes that they
22 sought a Writ of Mandamus to perform NRS 361.395(1)'s
23 equalization function already fully performed, as explained
24 below, and to require the State Board of Equalization to reach
25 the conclusion they desire with respect to valuation issues
26 between certain residential properties in Douglas and Washoe
Counties. They then sought to have the District Court direct

1 the payment of tax refunds to the taxpayers involved in this
2 action. JA I, 197.

3 The result these appellants desired to obtain from the
4 District Court could have been obtained in a myriad of other
5 ways, each of which constitutes a legal remedy barring mandamus
6 relief here. Mandamus is unavailable to control the exercise of
7 the State Board of Equalization's discretion in such a
8 micro-managed fashion.

9 3. The fact that the relief these Appellants now
10 seek could have once been considered in a
11 proceeding at law bars their claim for mandamus
12 relief

12 The inadequacy of a remedy at law is not the test of a
13 right to mandamus. The true test is much more simple. It
14 questions only whether judgment could be obtained in a
15 proceeding at law. If it could be, or could have been, mandamus
16 will not lie. County of Washoe v. Reno, 77 Nev. 152, 360 P.2d
17 602 (1961). Mandamus is not the proper remedy if there is a
18 plain, speedy and adequate remedy at law. Id. Because of the
19 adequacy of the below-described remedies at law, available to
20 all taxpayers, mandamus is inappropriate in this case.

21 a. The State Board of Equalization's authority
22 to equalize under NRS 361.395(1) is already
performed under Nevada law, at NRS 361.333

23 In performing its equalization function under NRS
24 361.395(1), the State Board of Equalization performs this
25 significant function in association with the Nevada Department
26 of Taxation's assistance to the State Tax Commission and the

1 State Board of Equalization in testing a variety of information
2 using applied statistics to determine if inequity or assessment
3 bias exists. The Department surveys and analyzes assessor work
4 practices to ensure the uniform application of valuation and
5 assessment methodology as provided by law and assessment
6 standards. If inequity or bias is discovered, NRS 361.333
7 provides the Nevada Tax Commission with authority to correct
8 inequitable conditions. If the Nevada Tax Commission fails to
9 perform this function, the Nevada State Board of Equalization
10 may step in and perform this function, pursuant to the
11 authority to "equalize" under NRS 361.395(1).

12 Because Nevada law, at NRS 361.225, requires that "[a]ll
13 property subject to taxation must be assessed at 35% of its
14 taxable value," known as the assessment ratio, the Department of
15 Taxation, acting under authority of NRS 361.333, conducts a
16 ratio study each year. This ratio study is designed to measure
17 the level of appraisal accuracy of local county assessors.
18 Generally speaking, a ratio study is designed to evaluate
19 appraisal performance to determine taxable value through a
20 comparison of appraised or assessed values estimated for tax
21 purposes with independent estimates of value based on either
22 sales prices or independent appraisals. The comparison of the
23 estimate of assessed value produced by the assessor on each
24 parcel in the sample to the estimate of taxable value produced
25 by the Department of Taxation is called a "ratio." The ratio
26 study involves the determination of assessment levels by

1 computing the central tendencies (mean, median and aggregate
2 ratios) of assessment ratios. Nevada specifies the use of the
3 median ratio, the aggregate ratio, and the coefficient of
4 dispersion of the median to evaluate both the total property
5 assessments and the assessments of each major property class.

6 In likely recognition of the administrative burden imposed
7 on both the Department of Taxation and the Nevada Tax Commission
8 of such an undertaking being performed on an annual basis, NRS
9 361.333(2) permits the Department of Taxation and the Nevada Tax
10 Commission to conduct a ratio study on smaller groups of
11 counties instead of the entire state in one year. The 2005 -
12 2006 ratio study included three year statistics for all of
13 Nevada's counties. JA I, 105-181. For the purposes of this
14 action, the 2005 - 2006 Ratio Study is the most relevant to the
15 2003 - 2004 tax year first at issue in this case as it included
16 a review of Washoe County during the 2005 study year. Prior to
17 the 2005 - 2006 Ratio Study, Washoe County was last reviewed in
18 2002, a review which occurred before the 2003 - 2004 valuations
19 which prompted this action in the first place.

20 The Department of Taxation calculates the overall, or
21 aggregate, ratio by dividing the total assessed value of all the
22 parcels in the sample by the total taxable value of all the
23 parcels in the sample. This produces a ratio weighted by dollar
24 value. Because parcels with higher values exert more influence
25 than parcels with lower values, all the ratios are arrayed in
26 order of magnitude and the median, a statistic describing the

1 measure of central tendency of the sample, divides the sample
2 into two equal parts. The median is the most widely used
3 measure of central tendency by equalization agencies because it
4 is less affected by extreme ratios and is therefore the
5 preferred measure for monitoring appraisal performance or
6 evaluating the need for a reappraisal. See International
7 Association of Assessing Officers, Standard on Ratio Studies,
8 (1999), p. 23.

9 NRS 361.333(5)(c) states that over- or under-assessment may
10 exist, under the ratio study, if the median of the ratios falls
11 in a range of less than 32% or more than 36%. As established,
12 the median of individual ratios for all property in Washoe
13 County, in the 2005 - 2006 Ratio Study, fell at 34.40%. JA I,
14 128. For the major classes of properties, as enumerated in NRS
15 361.333(5)(c), Washoe County's ratios varied between 33.50% and
16 34.90%, all well within the permissible median ratio of assessed
17 value to taxable value. Most significantly, the 2005 - 2006
18 Ratio Study consistently concluded that the Washoe County
19 Assessor's discovery and valuation work practices met all
20 applicable standards of the Nevada Department of Taxation, in
21 all areas of the Assessor's valuation responsibilities. JA I,
22 168-174. No deficiencies were reported by the Nevada Department
23 of Taxation, the agency with supervision and control over the
24 entire system of real property valuation and taxation in the
25 State of Nevada.

26 Because the ratios fell within the permissible statutory

1 range, it is reasonably concluded that no over- or under-
2 assessment existed in either Washoe or any other county subject
3 to that review, thus permitting the further conclusion that
4 equalization occurred both within, and between, these counties.
5 This conclusion, in turn obviated the need for the State Board
6 of Equalization to step in and equalize pursuant to its
7 authority to do so under NRS 361.395(1). Had the Department of
8 Taxation and the Tax Commission not so acted, however, or had
9 the ratios fallen outside the permissible range, the State Board
10 of Equalization could reasonably be expected to step in and
11 correct this situation under its authority, as recognized in
12 Barta, to equalize, pursuant to NRS 361.395(1)'s mandate.

13 b. The 2010 regulations recognize the long-standing
14 practice of the State Board of Equalization in
15 the performance of its equalization
responsibility under NRS 361.395(1)

16 The Appellants contend that the 2010 regulations provide no
17 basis for the District Court's decision to dismiss their
18 mandamus petition. The Appellants' argument misconstrues the
19 basis of the District Court decision.

20 In its decision, the District Court merely stated that
21 "[t]he issuance of a writ of mandamus to compel the State Board
22 of Equalization to perform a function it is already performing
23 is an inappropriate exercise of this court's discretion under
24 the law." It said this in recognition of the fact that the new
25 regulations of the State Board provide "precisely the relief
26 sought by Village League in its Amended Complaint." JA IV, 773.

1 On March 1, 2010, the State Board of Equalization, in a
2 duly noticed meeting, JA III, 441-442, and after giving Notice
3 of Public Hearing for the Adoption and Amendment of Permanent
4 Regulations of the State Board of Equalization, JA III, 443-445,
5 adopted regulations, JA III, 446-527, which set forth the
6 criteria to determine whether property has been assessed
7 uniformly in Nevada, including through the Nevada Department of
8 Taxation's review of relevant ratio studies prepared in accord
9 with NRS 361.333. The regulations adopted by the State Board of
10 Equalization are not inconsistent with Washoe County's
11 previously-provided description of NRS 361.333's law of
12 equalization. Nor are the regulations inconsistent and with
13 Washoe County's position that the law of equalization
14 establishes an adequate legal remedy, employed for many years
15 within the State of Nevada, which should bar both the District
16 Court and this Court from considering these Plaintiffs' request
17 for equitable writ relief. Although the newly-adopted
18 regulations of the State Board of Equalization were not to take
19 effect until October 1, 2010, it is further Washoe County's
20 belief that these regulations merely confirm the long existing
21 status of the law of equalization in Nevada, in conformance with
22 the rule announced by the Supreme Court in Welfare Division v.
23 Maynard, 84 Nev. 525, 529, 445 P.2d 153 (1968) that "[a]
24 statutory enactment can be simply a legislative pronouncement of
25 existing law."

26 Similarly, agency decisions, such as the decision to adopt

1 these regulations, which determine the scope and effect of
2 statutory terms are considered to be interpretive. An
3 interpretive rule may be applied to transactions which occurred
4 before the development of the interpretation because it merely
5 explains what the law required since its enactment. Thus, when
6 a regulatory law is translated by an agency, the translation
7 should not be considered novel nor unanticipated by the
8 regulated party. Hence, although it may appear as if rules are
9 being given retroactive effect, rules which simply interpret
10 existing legislative mandates are not really retroactive
11 lawmaking.

12 The District Court's reliance upon the Board of
13 Equalization's regulations in its Order, now under appeal, is
14 also consistent with the holding of the United States Supreme
15 Court in Chevron, U.S.A., Inc. v. Natural Resources Defense
16 Council, Inc., 467 U.S. 837 (1984). In Chevron, the Court set
17 forth the doctrine which holds that courts must defer to
18 reasonable interpretations of law made by administrative
19 agencies. The Chevron Court set forth a two-step test for
20 judicial analysis of agency interpretations of a statutory grant
21 of authority for an agency's regulations, stating that:

22 First, always, is the question whether Congress has
23 directly spoken to the precise question at issue. If the
24 intent of Congress is clear, ... the court, as well as the
25 agency, must give effect to the unambiguously expressed
26 intent of Congress. If, however, ... the statute is silent
or ambiguous with respect to the specific issue, the
question for the court is whether the agency's answer is
based on a permissible construction of the statute."
Chevron, at 842 - 843 (footnote omitted)

1 Nevada adopted the Chevron standard in Thomas v. City of North
2 Las Vegas, 122 Nev. 82, 127 P.3d 1057 (2006), wherein this Court
3 stated, citing to Chevron at footnote 50, that “[w]e give
4 deference to administrative interpretations.”

5 The need for the District Court to respect the boundaries
6 between itself and administrative agencies was also recognized
7 by the District Court in this case:

8 The Nevada Supreme Court has directed district courts to
9 “refrain from exercising jurisdiction so that technical
10 issues can first be determined by an administrative
11 agency.” Sports Form, Inc. v. Leroy’s Horse and Sports
12 Place, 108 Nev. 37, 823 P.2d 901 (1992). This is to
13 promote “(1) the desire for uniformity of regulation and,
14 (2) the need for an initial consideration by a tribunal
with specialized knowledge.” Id. (citing Kapplemann v.
Delta Air Lines, 539 F.2d 165, 168 – 169 (C.App. D.C.
1976). These laudable policies are better served by
allowing the State Board of Equalization to apply its new
equalization regulations without district court
interference. JA IV, 736.

15 But the result achieved by the District court is also
16 permissible, even if the District Court ignored the rules of
17 Chevron, Thomas and Sports Form. This is so because the Board
18 of Equalization’s rules would then be considered interpretive,
19 which is consistent with this Court’s holding in Welfare
20 Division v. Maynard, 84 Nev. 525, 529, 445 P.2d 153 (1968). It
21 is also consistent with the law of interpretative rules and
22 regulations across the United States. “An interpretative rule
23 effectuates no change in policy or law and merely explains or
24 clarifies existing law or regulations” Allen v. Bergland, 661
25 F.2d 1001, 1007 (4th Cir. 1981). In Gosman v. United States,
26 573 F.2d 31, 39 (Ct. Cl. 1978), the Claims Court stated that

1 "[a]ll agree that an interpretative rule merely clarifies or
2 explains existing law or regulations." In the Bergland case,
3 the Fourth Circuit reviewed a grant of summary judgment in favor
4 of the United States Department of Agriculture, and was asked to
5 determine whether the Department's interpretation of its
6 regulations regarding the non-recurring income of a recipient
7 family of government benefits was reasonable. The court of
8 appeals held that the regulations in question were "interpretive
9 rules" which eliminated the necessity for public notice and
10 comment regarding the application and effect of the rules under
11 the federal administrative procedures act. At the outset, the
12 court demonstrated its appreciation of the serious limitations
13 imposed upon judicial review of administrative regulations.
14 Citing Ehlert v. United States, 402 U.S. 99, 105 (1971), the
15 court noted that it was "'obligated to regard as controlling a
16 reasonable, consistently applied ... interpretation' of an
17 agency's regulations...." Bergland, 661 F.2d at 1004.

18 Similarly, in Gosman, the United States Court of Claims
19 reviewed the provisions of the Medicare provider's reimbursement
20 manual to determine if the pertinent regulations reasonably
21 informed Medicare providers that reimbursement was not available
22 for advertising expenses related to business development. The
23 court held that the provision disallowing advertising
24 reimbursement did not constitute a substantive change from the
25 preexisting general regulation. Accordingly, the denial of
26 reimbursement by the Department of Health, Education and Welfare

1 entailed the reasonable interpretation of an existing rule,
2 thereby eliminating the necessity for public notice and comment,
3 and impeding a reviewing court's authority to interfere with the
4 rule's application.

5 Just like in both Bergland and Gosman, the "interpretive
6 rule" involved in this case and the partial subject of this
7 appeal could have involved the upset of settled expectations of
8 the regulated party. But it does not. Where the application of
9 new rules comports with past precedent and sets forth nothing
10 particularly new or different, there is good reason to give
11 effect, through deference, to agency rulemaking, both
12 prospectively and retrospectively. Such is the case here.

13 c. Mandamus is also barred by the existence of
14 other methods at law for properly invoking
15 the jurisdiction of the State Board of
16 Equalization, as an appellate body from
17 decisions of the County Boards of
18 Equalization under NRS 361.400, with respect
19 to claims of disparate property valuations
20 and eligibility for refunds, and are to be
21 found in NRS 361.355, 361.356 and 361.360,
22 with refund availability only obtainable
23 pursuant to NRS 361.405(4).

19 i. NRS 361.355

20 Under this statute, the State Board of Equalization may
21 become involved in valuation issues only if a taxpayer concerned
22 with valuation issues between his property and
23 similarly-situated property in another county "... appear[s]
24 before the county board of equalization of the county or
25 counties where the undervalued or non-assessed property is
26 located and make[s] a complaint concerning it and submit[s]

1 proof thereon. The complaint and proof must show the name of
2 the owners or owners, the location, the description, and the
3 taxable value of the property claimed to be undervalued or
4 non-assessed." NRS 361.355(1). Nothing in the Petitioner's
5 amended complaint establishes that any of the taxpayers alleged
6 to be represented by the Village League in this case availed
7 themselves of this remedy. Instead, they came directly into
8 this Court, without first exhausting this important statutory
9 remedy once available to them.

10 If these taxpayers had so availed themselves, the statute
11 goes on to provide that if the county board of equalization to
12 which they complained determines that "just cause for making the
13 complaint" existed, "it shall immediately make such increase in
14 valuation of the property complained of as conforms to its
15 taxable value, or cause the property to be placed on the
16 assessment roll at its taxable value, as the case may be and
17 make proper equalization thereof." NRS 361.355(3). But the
18 most important part of NRS 361.355, from the perspective of this
19 case, is that it clearly and unambiguously establishes the fact
20 that these Appellants have absolutely no possibility of success
21 on the merits of their case before this Court – this Court
22 cannot issue mandamus relief as they request because of the fact
23 that they once could have obtained the relief they now seek at a
24 proceeding at law and because of the statute's admonition that:

25 ...any such person, firm, company, association or
26 corporation who fails to make a complaint and submit proof
to the county board of equalization of each county wherein

1 it is claimed property is undervalued or non-assessed, as
2 provided in this section, is not entitled to file a
3 complaint with, or offer proof concerning that undervalued
or non-assessed property to, the State Board of
Equalization. NRS 361.355(4) (emphasis added).

4 Nothing could be clearer. The State Board of Equalization
5 is now statutorily-barred from hearing the Appellants'
6 complaints concerning disparities in valuation between their
7 Washoe County properties and similarly-situated properties in
8 Douglas County. As the State Board cannot hear these
9 complaints, pursuant to NRS 361.355(4), neither the District
10 Court nor this Court, similarly, may not grant the mandamus
11 relief requested by these taxpayers. Due to Appellants'
12 non-compliance with the statutory mandates of NRS 361.355, they
13 had an adequate remedy at law, the once availability of which,
14 coupled with their non-exercise of which, now absolutely
15 precludes mandamus relief.

16 ii. NRS 361.356

17 Even if this statute provides a remedy for disparate
18 valuations between similarly-situated properties in different
19 counties,¹ the Appellants make no allegation that they availed

20

¹

21 Washoe County does not so concede. In fact, Washoe County
22 directs the Court's attention to that portion of NRS 361.356 in
23 which the Legislature obligates an aggrieved residential
24 taxpayer attempting to avail himself of the protections of this
25 section to "...cite other property within the same subdivision
26 if possible." NRS 361.356(4). Arguably, this requirement is
intended to limit the application of this section to valuation
disparities between similarly-situated properties located in
the same Nevada county, not as between different counties.
Nonetheless, this statute is of relevance here because the
Appellants also complain of assessment disparities within
Incline Village and Crystal Bay, Nevada.

1 themselves of its protections and, as such, they cannot now seek
2 this Court's assistance in rectifying their mistake. Under NRS
3 361.356, "[a]n owner of property who believes that his property
4 was assessed at a higher value than another property whose use
5 is identical and whose location is comparable may appeal the
6 assessment, on or before January 15 of the fiscal year in which
7 the assessment was made, to the county board of equalization."
8 NRS 361.356(1). In this case, the record is, once again, devoid
9 of any such appeal based upon allegations of unequal assessments
10 between similarly situated properties within, or between, Washoe
11 and Douglas Counties. This failure to follow this once-possibly
12 available statutory remedy, just as with these Appellants'
13 failure to follow NRS 361.355's provisions, now make it
14 impossible for these Appellants to legitimately claim a right to
15 the mandamus relief they seek, in order to now bring their
16 claims before the State Board of Equalization.

17 iii. NRS 361.360

18 Adding another important dimension for the Court to
19 consider in its determination that these Appellants enjoy no
20 right to mandamus relief is NRS 361.360's admonition that
21 appeals to the State Board of Equalization may only be heard as
22 a result of an appeal filed with the State Board of Equalization
23 by "[a]ny taxpayer aggrieved at the action of the county board
24 of equalization in equalizing, or failing to equalize, the value
25 of his property, or property of others, or a county
26 assessor...." NRS 361.360(1). In this regard, the case law is

1 clear, and long-established, that a taxpayer who believes the
2 assessment of his property is incorrect may apply to the board
3 of equalization for a reduction, and if he does not do so he has
4 lost his remedy. He cannot later complain of the assessment in
5 subsequent court proceedings. State v. Wright, 4 Nev. 251
6 (1868), cited, State v. Sadler, 21 Nev. 13, 17, 23 P. 799
7 (1880).

8 iv. NRS 361.405(4)

9 NRS 361.405(4) provides, chronologically and after a
10 taxpayer has pursued the above-described statutory remedies,
11 ending with success before the State Board of Equalization, with
12 respect to the taxpayer's valuation concerns, the availability
13 of a possible tax refund:

14 As soon as changes resulting from cases having less than a
15 substantial effect on tax revenue have been certified to
16 him by the Secretary of the State Board of Equalization,
17 the county tax receiver shall adjust the assessment roll or
the tax statement or make a tax refund, as directed by the
State Board of Equalization. NRS 361.405(4).

18 Thus, Appellants now have no access to the State Board of
19 Equalization. Neither could the District Court, nor this Court,
20 provide Appellants with such access, in the form of mandamus
21 relief, pursuant to Nevada Supreme Court precedent, as set
22 forth, supra, in State v. Wright and in State v. Sadler. This
23 legal impossibility completely eliminates any likelihood of
24 success for these taxpayers.

25 Finally, NRS 361.405(4) is followed by NRS 361.410's
26 admonition that access to any remedy or redress in a court of

1 law relating to the payment of taxes "... must be for redress from
2 the findings of the State Board of Equalization, and no such
3 action may be instituted upon the act of a county assessor or of
4 a county board of equalization or the Nevada Tax Commission
5 until the State Board of Equalization has denied complainant
6 relief." NRS 361.410(1).

7 d. Mandamus is also barred by the existence of
8 a third method for properly invoking the
9 jurisdiction of the State Board of
10 Equalization, with respect to the assessment
11 and refund issues these Appellants have
12 asserted an entitlement to, which may be
13 found in NRS 361.420's "payment under
14 protest" provisions but is now unavailable
15 to these Appellants

16 i. NRS 361.420

17 NRS 361.420 contains no apparent obligatory administrative
18 process which a taxpayer is required to follow in challenging
19 the State Board of Equalization's compliance with its
20 equalization duties, in accord with the Supreme Court's remand
21 order in this case ("no statute provides for an administrative
22 process to remedy the State Board's failure to equalize county
23 valuation, insofar as Village League alleged that the State
24 Board failed to perform an act required by law...") and in
25 compliance with the Supreme Court's recognition, in Barta, that
26 "NRS 361.400 establishes a duty, separate from the equalization
duty, that the State Board hear appeals from decisions made by
the county boards of equalization. The two statutes create
separate functions: equalizing property valuations throughout
the state and hearing appeals from the county boards." Barta,

1 124 Nev. 58, 188 P.3d at 1102. Nothing in Barta, the law of
2 this case, the law of voluntary payments or in NRS 361.420's
3 procedural requirements establishes the optionality of the
4 statute's requirements. Instead, these requirements are
5 obligatory, and must be followed, by a taxpayer seeking
6 equalization of assessments and a resulting refund of taxes
7 allegedly overpaid in a manner other than by pursuing relief, as
8 described above, through the traditional administrative process
9 and beginning with a county board of equalization. Nothing in
10 the Appellants' amended complaint establishes such compliance
11 with either avenue of relief.

12 But, NRS 361.420 permits a "property owner whose taxes are
13 in excess of the amount which the owner claims justly to be due"
14 to "pay each installment of taxes as it becomes due under
15 protest in writing. The protest must be in the form of a
16 separate, signed statement ... and filed with the tax receiver at
17 the time of the payment..." NRS 361.420(1). The statute then
18 anticipates the involvement of the State Board of Equalization
19 before the taxpayer may commence suit "for a recovery of the
20 difference between the amount of taxes paid and the amount which
21 the owner claims justly to be due." NRS 361.420(2); County of
22 Washoe v. Golden Road Motor Inn, Inc., 105 Nev. 402, 777 P.2d
23 358 (1989).

24 This statute goes on to envision a suit for precisely the
25 relief ultimately now being sought by these Appellants in this
26 action before this Court. NRS 361.420(4)(f) permits a suit on

1 the grounds "[t]hat the assessment is out of proportion to and
2 above the valuation fixed ... for the year in which the taxes were
3 levied and the property assessed; or (g) [t]hat the assessment
4 complained of is discriminatory in that it is not in accordance
5 with a uniform and equal rate of assessment and taxation, but is
6 at a higher rate of the taxable value of the property so
7 assessed than that at which the other property in the State is
8 assessed."

9 ii. Recovery of voluntarily-paid taxes is
10 not permitted by the law

11 A taxpayer is not entitled to recover taxes paid
12 voluntarily, Stratton v. St. Louis Southwestern Ry. Co., 284
13 U.S. 530 (1932), unless recovery is authorized by statute.
14 Getto v. City of Chicago, 86 Ill. 2d 39, 426 N.E.2d 844 (1981);
15 Bass v. South Cook County Mosquito Abatement Dist., 236 Ill.
16 App.3d 466, 603 N.E.2d 749 (1st Dist. 1992). This rule is known
17 as the "voluntary payment doctrine," the public policy behind
18 which is to prevent the taxing entity from using funds paid by
19 taxpayers in a given budget year and subsequently being required
20 to refund those amounts. City of Laredo v. South Texas Nat.
21 Bank, 775 S.W.2d 729 (Tex. App. San Antonio 1989). The rule
22 that taxes voluntarily paid are not recoverable absent a
23 specific statute conferring such right is a rule which is
24 necessary for the orderly and efficient administration of
25 governmental affairs. Budget Rent-A-Car of Tulsa v. State ex
26 rel. Oklahoma Tax Com'n., 773 P.2d 736 (Okla. 1989). The

1 voluntary payment rule bars taxpayers from seeking a refund of
2 their property taxes, where the taxpayers pay their property
3 taxes prior to filing an action seeking recovery of payments.
4 Oxford v. Perry, 340 Ark. 577, 13 S.W.3d 567 (2000).

5 The tax collecting entity need not refund taxes voluntarily
6 paid, but illegally collected, Ring v. Metropolitan St. Louis
7 Sewer District, 969 S.W.2d 716 (Mo. 1998), and the payment of a
8 tax cannot be recovered, even after a taxing statute or rule is
9 declared illegal, unless the taxpayer can demonstrate that the
10 payment was involuntary. Video Aid Corp. v. Town of Wallkill,
11 85 N.Y.2d 663, 651 N.E.2d 886 (1995); Imperial Gardens, Inc. v.
12 Town of Wallkill, 228 A.D.2d 562, 644 N.Y.S.2d 528 (N.Y.A.D.
13 1966).

14 The voluntary payment rule originated at common-law and has
15 been modified and adopted in Nevada at NRS 361.420. The rule is
16 so stringent that it prohibits the recovery of voluntarily paid
17 taxes, except where and in the manner provided by statute, and
18 is followed even when a refund is requested on an
19 illegal-exaction claim based on constitutional grounds. Elzea
20 v. Perry, 340 Ark. 588, 12 S.W.3d 213 (2000); Mertz v. Pappas,
21 320 Ark. 368, 896 S.W.2d 593 (1995). In the absence of
22 statutory authority, even a tax that is voluntarily, although
23 erroneously, paid, albeit under an unconstitutional statute,
24 cannot be refunded. Community Federal Sav. & Loan Ass'n v.
25 Director of Revenue, 796 S.W.2d 883 (Mo. 1990); Lett v. City of
26 St. Louis, 948 S.W.2d 614 (Mo. Ct. App. E.D. 1996); New Jersey

1 Hosp. Ass'n v. Fishman, 283 N.J. Super. 253, 661 A.2d 842 (App.
2 Div. 1995).

3 iii. Nothing in the amended complaint
4 establishes that these Appellants
5 paid under NRS 361.420's protest
6 provisions for the tax year involved in
7 this case and they are now time barred
8 from doing so

9 Despite the once-available "payment under protest" remedy
10 available to all taxpayers, nothing in the amended complaint
11 establishes, asserts or alleges that these Appellants availed
12 themselves of this remedy. This form of legal relief, once
13 readily available to these Appellants, is now time-barred under
14 NRS 361.420's 3-month period of limitation "after the date of
15 the payment of the last installment of taxes and if not so
16 commenced is forever barred." NRS 361.420(3). No suit may now
17 be made for the recovery of the difference between the amount
18 paid and the amount these Appellants claim to be justly due.

19 iv. Just as with the other previously-
20 described remedies at law once
21 available to these Appellants, the
22 availability of the "payment under
23 protest" remedy contained in NRS
24 361.420 goes to the question of
25 whether judgment could have been
26 obtained in a proceeding at law

27 The proper focus in a mandamus action is whether judgment
28 could be obtained in a proceeding at law. If it could be,
29 mandamus will not lie. County of Washoe v. Reno, 77 Nev. 152,
30 360 P.2d 602 (1961). Because of the once-available payment
31 under protest remedy, as described above, mandamus was not an

1 option before the District Court, and is not now before this
2 Supreme Court. It should not now be considered.

3 **VI. CONCLUSION**

4 Mandamus is not available to these taxpayers who seek to
5 have Nevada's judiciary control the exercise of administrative
6 discretion to achieve a particularized result. Such is
7 especially the case in light of a detailed statutory scheme
8 which, had these appellants followed it, may have resulted in a
9 decision favorable to these taxpayers. Finally, the recent
10 adoption of administrative regulations merely confirms that
11 which has always been the case --- the duty these taxpayers seek
12 to have Nevada's judiciary impose on the State Board of
13 Equalization has already been performed.

14 Dated this 2nd day of November, 2010.

15 RICHARD GAMMICK
16 Washoe County District Attorney

17 By /s/ DAVID C. CREEKMAN
18 DAVID C. CREEKMAN
19 Chief Deputy District Attorney
P. O. Box 30083
Reno, NV 89520-3083
(775) 337-5700

20 ATTORNEYS FOR RESPONDENTS
21 WASHOE COUNTY, WASHOE COUNTY
22 ASSESSOR AND TREASURER
23
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF COMPLIANCE

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

Dated this 2nd day of November, 2010.

/S/ DAVID C. CREEKMAN
DAVID C. CREEKMAN
Chief Deputy District Attorney
Nevada Bar No. 4580
Washoe County District Attorney
P. O. Box 30083
Reno, NV 89520-3083
(775) 337-5700

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on November 2, 2010. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:
Suellen Fulstone, Esq., Counsel for Appellants
Deonne Contine, Deputy Attorney General, Counsel for Respondents
Dated this 2nd day of November, 2010.

 /s/ MICHELLE FOSTER
MICHELLE FOSTER