IN THE SUPREME COURT OF THE STATE OF NEVADA

VILLAGE LEAGUE TO SAVE INCLINE ASSETS, INC., a Nevada non-profit corporation, on behalf of its members and others similarly situated; MARYANNE INGEMANSON, Trustee of the Larry D. and Maryanne B. Ingemanson Trust; DEAN R. INGEMANSON, individual and as Trustee of the Dean R. Ingemanson Trust; J. ROBERT ANDERSON; and LES BARTA; on behalf of themselves and others similarly situated;

Appellants,

vs.

STATE OF NEVADA, *ex rel.* State Board of Equalization; WASHOE COUNTY; and BILL BERRUM, Washoe County Treasurer;

Respondents.

_____/

APPEAL
Case No. CV03-06922
of the Second Judicial District Court of the State of Nevada
before the Honorable Patrick Flanagan

APPELLANTS' REPLY BRIEF

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I. TAXPAYERS HAVE NO ADEQUATE REMEDY AT LAW.

Mandamus lies "to compel the performance of an act which the law especially enjoins as a duty resulting from an office." NRS 34.160. The "duty" of the State Board is beyond dispute. "Under NRS 361.395(1), the State Board clearly has a duty to equalize property valuations throughout the state. . . ." State ex rel. State Board of Equalization v. Barta ("Barta"), 124 Nev. 58, 188 P.3d 1092, 1102 (2008). The issue on this appeal is whether the mandamus remedy is barred because taxpayers have "a plain, speedy and adequate remedy in the ordinary course of law." NRS 34.170.

When taxpayers argued below that there was no remedy at law for a failure of equalization in the 2003-2004 tax year at issue, the trial court said, "You're absolutely correct." **Joint Appendix (APX), Vol. IV, p. 676, ln. 22).** Nonetheless, the trial court, inexplicably held that taxpayers "have a plain, speedy and adequate remedy at law through the newly promulgated procedures of the State Board of Equalization." **APX, Vol, IV, p. 760, lns. 18-20.** That holding is directly and conclusively refuted by the actual substance of those "newly promulgated procedures." Appellants' Opening Brief, Addendum, pp. 8-25. By their express terms, those procedures did not go into effect until October 1, 2010. Accordingly, they apply only to the 2011-2012 tax year and thereafter. Nothing in those procedures requires, or even allows taxpayers to trigger, an equalization review of the 2003-2004 tax year or any tax year prior to 2011-2012.

The trial court wrote that by allowing the State Board to apply its new equalization regulation taxpayers "may achieve the result they seek" without litigation. **APX, Vol. IV, p. 760, lns.4-7.** This conclusion makes no sense in light of a property tax system that treats each year as a discrete event. Equalization in 2011 simply cannot remedy a failure of

equalization in 2003.

Furthermore, even if the trial court were correct in its understanding of the property tax system, the "newly promulgated procedures" exclude any taxpayer participation whatsoever except as permitted in the discretion of the Board. Appellants' Opening Brief, Addendum, pp. 8-25. In Marvin v. Fitch, 126 Nev.Adv.Opn. 18, 232 P.3d 425, 432-433 (2010), before the equalization regulation was adopted, this Court wrote as follows:

> If the equalization process was determined to be administrative, Nevada's taxpayers in general would not be assured of their adversarial right to participate in the meetings, present evidence, provide testimony, or seek judicial review. By concluding that the State Board's equalization process is quasi-judicial, we honor the Legislature's intent and safeguard every taxpayer's right to meaningfully participate in the annual equalization process.

The "newly promulgated procedures" effectively make the equalization process administrative, with no adversarial right or role for the taxpayer. When taxpayers argued below that the "newly promulgated procedures" excluded taxpayers such that there was still no legal remedy for taxpayers seeking equalization, the trial court responded: "I read the regulation and you're right." **APX, Vol IV. p. 678, lns. 7-17.** The trial court's subsequent ruling that this new equalization regulation provided a legal remedy barring taxpayers from relief in mandamus is indefensible and must be reversed.

II. TAXPAYERS ARE NOT SEEKING A NON-EXISTENT REMEDY.

As an alternative ground for dismissing the petition, the trial court also wrote that taxpayers "are seeking a judicial remedy that does not exist under Nevada's present taxable-value system." **APX, Vol. IV, p. 760. 15-16.** At first blush, this statement of the unavailability of a remedy at law would seem to confirm the taxpayers' right to seek relief in mandamus. What the trial court apparently refers to, however, is its finding that taxpayers

sought a writ "directing the State Board to employ a specific statistical method" and its observation that:

> Village League's own expert admits there is no statistical method that Nevada regulators can adopt that would effectively measure whether state-wide equalization is occurring given state's "taxable-value" property assessment system. *See* Plaintiff Response to Statement of New Authority, Ex. 2. **APX, Vol. IV, p. 758, lns. 7-12.**

The trial court has misunderstood both the taxpayers' petition, the "expert" and the context. Taxpayers sought no "statistical" remedy at all. **APX, Vol I., p. 197.** Futhermore, the Exhibit 2 referenced by the court is not an affidavit but simply a news article written by John Dougherty of the Nevada Policy Research Institute based, in part, on his interview of Richard Almy on the proposed equalization regulation. **APX, Vol. III, pp. 602-604.** Mr. Almy is described as "among the world's authorities on property-tax assessment." **Id., 602.** At the time of this 2010 interview, Mr. Almy was not "the taxpayers' expert" or any other party's expert. Mr. Almy's opinion of the proposed equalization regulation was that it "would not work." Mr. Almy did not "admit" that there was no statistical method that Nevada regulators could adopt to measure equalization. When asked that question, Mr. Almy simply answered, "I don't know." **Id., 603.**

Even if it were accurate, however, the trial court's observation would not support its ruling. The Constitutional right to tax uniformity and equalization is not dependent upon the availability of "statistical" determination. As this Court has recognized, without regard to statistics, equalization in a taxable value system is dependent upon the use of the same valuation methodology for similar properties. Barta, supra, 188 P.3d at 1101. Furthermore, if, in fact, statistical verification were required but nonetheless impossible, then the taxable value system would itself violate the Nevada Constitution. The court cannot say,

"Taxpayers, you lose because the system cannot be made to work." If equalization cannot be achieved and verified, the unconstitutional system must lose, not taxpayers.

III. TAXPAYERS WERE WRONGFULLY DENIED MANDAMUS RELIEF ON THE GROUNDS THAT THEY ASKED THE COURT TO CONTROL THE EQUALIZATION DISCRETION OF THE STATE BOARD.

The trial court's third justification for its decision is that taxpayers asked the court to "direct the State Board of Equalization to exercise its regulatory discretion to achieve a predetermined result" and that such an order would be "an impermissible exercise of [the] court's lawful authority." **APX, Vol IV, at p. 760, lns. 16-18.** In its answering brief, the State Board posits the taxpayers' purported effort to control Board discretion with a particularized remedy as the sole issue on this appeal. State Board Answering Brief, p. 1, lns. 5-9. The effort to draw this Court's focus away from the failure of the State Board to perform its affirmative duty of statewide equalization must be rejected.

Among other relief, taxpayers sought an order in mandamus requiring the State Board of Equalization to equalize the land portion of residential real property at Incline Village and Crystal Bay for the 2003-2004 tax year by reducing valuations to their 2002-2003 levels based on this Court's decision in State *ex rel.* Board of Equalization v. Bakst ("Bakst"), 122 Nev. 1403, 148 P.3d 717 (2006), and the area wide use by the Assessor of unauthorized valuation methodologies. **APX, Vol. I, p. 796, lns. 20-25**. Taxpayers sought a further order for refunds of the tax amounts paid at the unconstitutional higher valuation levels. Id. It is this request for relief that is the basis for the ruling that taxpayers "impermissibly" asked the court to "control the discretion" of the State Board. In this ruling, the trial court is mistaken on every level as set forth below.

A. *BAKST* EQUALIZATION IS AVAILABLE RELIEF IN MANDAMUS.

First of all, the relief sought by taxpayers is available in mandamus. Neither the State Board's duty of statewide equalization under NRS 361.395 nor its performance of that duty is "discretionary." Equalization decisions made by the Board would not be reviewable for abuse but rather for their basis in substantial evidence. The lack of equalization at Incline Village based on the unconstitutional methodologies used by the Assessor is an established fact. The State Board cannot "overrule" this Court's Bakst decision either as an exercise of "discretion" or "administrative judgment."

Furthermore, taxpayers never asked the trial court to take any action "outside its lawful authority." In the interests of avoiding yet another appeal and associated delay, taxpayers asked the trial court to give the State Board of Equalization guidance in its determination and to require the State Board to comply with this Court's Bakst decision. Taxpayers specifically asked the court to act only "to the extent **permitted by law** to avoid the necessity of another appeal, another decision by the Supreme Court reversing an erroneous determination by the State Board, yet another remand to the State Board to try again, and another six years or more before the constitutional rights of taxpayers are vindicated." **APX, Vol. II, p. 373, lns. 17-21.** (Emphasis added.) Mandamus is an equitable remedy. An order in mandamus could be written to outline the legal parameters for the exercise of the State Board's judgment. See, e.g., Village League to Save Incline Assets v. State ex rel. Board of Equalization, 124 Nev. ___, 194 P.3d 1254, 1261 (2008).

B. EVEN IF *BAKST* EQUALIZATION WAS UNAVAILABLE IN MANDAMUS, TAXPAYERS' PETITION SOUGHT OTHER AVAILABLE RELIEF AND WAS NOT SUBJECT TO DISMISSAL.

The State Board failed its duty of statewide equalization for the 2003-2004 tax

year and subsequent years. The trial court, however, wholly excused that failure, blamed the taxpayers for seeking limited and efficient relief, and dismissed the petition. Even if directing the State Board to equalize in light of the Bakst decision were not "legally permissible" for some reason, taxpayers sought other relief which is available. Neither the trial court nor the State Board take the position that taxpayers are not entitled to any relief from the Board's failure to equalize. Taxpayers' prayer for relief, as well as the arguments before the court, reflect that, in addition to Bakst equalization, taxpayers also sought equalization between properties at Lake Tahoe in Douglas and Washoe Counties. **APX, Vol. I, p. 196, ln. 26 – 197, ln. 2.** Again there is documented evidence in the Department's own Lake Tahoe Special Study of a lack of equalization between the counties. **APX, Vol. I, p. 228 and Vol II, p. 245.** In response to the State's insistence in oral argument that "statewide equalization is statewide equalization," taxpayers agreed that NRS 361.395 imposes a duty of statewide equalization upon the Board and that the trial court could choose to make such an order. **APX., Vol. IV, pp. 658, 661, 666, 672, 674, 702, 713- 714.**

In this regard, the Board is clearly speaking out of both sides of its figurative mouth. On the one hand, it argues that appeal-driven equalization for 30 homeowners is the performance of its duty under NRS 361.395. On the other hand, it argues that taxpayers can seek no relief less than full statewide equalization, even though

(1) there is an established failure of equalization at Lake Tahoe and

(2) taxpayers from Lake Tahoe brought this 2003 action for equalization.

In any event, the taxpayers' request for such "other and further relief" to which they may be entitled clearly encompasses an order mandating full statewide equalization. **APX, Vol. I, p. 197, lns. 7-8.**

There is no requirement in mandamus that a petitioner be entitled to **each and every element** of the prayer for relief. Dismissing the taxpayers' petition here based on their request for Bakst equalization without even addressing the other and alternative requests for relief was plain error and a gross injustice.

C. THE TRIAL COURT MISAPPREHENDED THE LAW.

Citing Gumm v. Nevada Department of Education, 121 Nev. 371, 375, 113 P.3d 853 (2005), the trial court wrote that mandamus requires that "the right to the relief is clear." **APX, Vol. IV, p. 755, ln. 19.** On the basis that taxpayers' right to Bakst equalization is not "clear," the court subsequently dismissed the petition. **APX, Vol. IV, p. 760.** Citing Gumm, supra, and adding State v. Daugherty, 48 Nev. 299, 231 P. 384 (1924) and State ex rel. Schaw v. Noyes, 25 Nev. 31, 56 P. 946, 950 (1899), the State Board repeats this argument here. Both the trial court and the State Board have misapprehended the law.

As an ultimate issue, the right to a remedy is a non sequitur. Not just in mandamus but in every case, the plaintiff/petitioner must establish a right to any remedy awarded. As such, however, the right to a particular remedy is not an issue on a Rule 12 motion. In Gumm, supra, for example, the issuance of the writ was ultimately denied but only after an answer, a reply, and a thorough review by this Court. In Daugherty, supra, as well, the writ was denied only after a review of the facts, not on a motion to dismiss.

The Court should also note that the "clear right" to the relief language is not in the statutes which govern mandamus (NRS 34.150-34.310) but is found only in the case law and arises out of cases which predate the adoption of the mandamus statutes. Gumm, for example, cites to Hardin v. Guthrie, 26 Nev. 246, 66 P. 744 (1901), as precedent for that language. 121 Nev. at 375, fn. 7; 113 P.3d at 856, fn. 7. The Daugherty opinion cites to

Noyes, supra, a 1899 case. 48 Nev. at 304, 231 P. at 285. With the exception of NRS 34.185, which is inapplicable here, the current mandamus statutes were initially enacted as part of the Civil Practice Act of 1911. See NRS 34.150-34.310. The statutes provide that the writ may issue "to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station" and further that the writ "**shall** be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law." NRS 34.160; NRS 34.170. (Emphasis added.) No mention is made of any requirement that there be a "clear right" to the remedy sought. The right to a remedy, however, is the reciprocal of the duty which must be performed. In Daugherty, for example, it is not clear whether the decision is truly based on the absence of a "clear right" in the petitioner or in the absence of a "clear duty" on the part of the County Commissioners. See concurring opinion, 48 Nev. at 306-311, 231 P. at 386-388.

In any event, as a threshold issue in mandamus actions which may appropriately be addressed on a motion to dismiss, the "right" to the relief sought can only be an expression of the requirement of standing. Again it is a function of reciprocity. The duty and the right are opposite sides of a single coin. Here, for example, if petitioners were not property owner taxpayers, they would have no "right" to pursue an order in mandamus requiring equalization of property values. Petitioners, however, are property owners and taxpayers. Their standing to pursue mandamus relief is unassailable.

D. THE DISMISSAL OF TAXPAYERS' PETITION MUST BE REVERSED BECAUSE THE TRIAL COURT FAILED TO APPLY THE RULE 12 STANDARD FOR DISMISSAL OF ACTIONS.

Under NRS 34.300, except as expressly otherwise provided, "the Nevada Rules of Civil Procedure relative to civil actions in the district court are applicable to and

constitute the rules of practice in [mandamus] proceedings." The mandamus statutes make no other provision for the dismissal of mandamus actions. Under the circumstances, a Rule 12 motion to dismiss is determined under the standard applicable to "civil actions in the district court." Under the established standard, a petition for mandamus "should be dismissed only if it appears beyond a doubt that [petitioners] could prove no set of facts, which, if true, would entitle [them] to relief." Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev.Adv.Opn. 21, 181 P.3d 670, 672 (2008); see also, Simpson v. Mars Inc., 113 Nev. 188, 190, 929 P.2d 966, 967 (1997). The specifics of the relief to which taxpayer petitioners are entitled in this action is not subject to determination on a NRCP Rule 12 motion to dismiss. The precise nature of that relief is simply not at issue on a motion to dismiss. See, e.g., Midwest Supply, Inc. v. Waters, 89 Nev. 210, 213, 510 P.2d 876, 878 (1973) (prayer for relief is "'not a part of the claimant's cause of action.'"). The trial court's dismissal of taxpayers' petition must be reversed.

IV. THE CLAIM THAT MANDAMUS IS BARRED BECAUSE THE STATE BOARD HAS ALREADY COMPLIED WITH ITS OBLIGATION OF STATEWIDE EQUALIZATION FOR THE 2003-2004 AND SUBSEQUENT TAX YEARS IS A COMPLETE FICTION WHICH MUST BE REJECTED.

The County frames the initial issue here as whether relief in mandamus is barred because "a detailed and comprehensive statutory scheme [exists] which has already been complied with by the Nevada Board of Equalization." County Answering Brief, p. 1, lns. 22-24. The argument apparently is that the equalization regulation adopted in 2010 somehow "codified" prior practice such that, even though it did not yet exist, the State Board somehow "complied with" the regulation and "performed" its statewide duty of equalization for the 2003-2004 and subsequent tax years. The County goes on for almost

ten pages with its argument that, without knowing it, the State Board has been performing annual statewide equalization for years. Id., pp. 8-17. This Court cannot endorse this consummate fiction. The trial court made no such finding and certainly no evidence to support such a finding can be located in the record. The record that does exist, in fact, is directly to the contrary.

The State Board is a public agency governed by the Open Meeting Law. It cannot "equalize" except as part of an agendized public meeting. No such meeting occurred with respect to the 2003-2004 tax year. No such meeting occurred for an unknown period of years preceding the 2003-2004 tax year. No such meetings occurred in the years subsequent to the 2003-2004 tax year.

With respect to the 2004-2005 tax year, upon the representation of Board counsel that the Board had, in fact, reviewed the tax rolls and performed its duty of statewide equalization but had been remiss only in not doing so in a public meeting, the First Judicial District Court remanded the matter before it to the Board to supply proof of such private performance of the duty of statewide equalization. **APX, Vol. II, pp. 380-396.** No such proof was forthcoming. Id. As this Court wrote in Barta, supra;

> The transcript of the State Board hearing reflects, however, that the State Board appeared uncertain about how to equalize property values, the scope of its duty to equalize, or how to resolve potential conflicts between its and the Tax Commission's property value determinations. 188 P.3d at 1098.

Without wasting pages distinguishing the County's cases on deference to "agency interpretation" or refuting in detail its discussion of ratio studies, it is sufficient to note that the State Board of Equalization itself does not claim to have "equalized" in 2003-2004 or any subsequent tax year prior to the October 1, 2010 effective date of its "equalization"

regulation. The regulation itself furthermore identifies its contents as "**establishing** procedures for the equalization of property valuations by the State Board of Equalization." Appellants' Opening Brief, Addendum, p. 8 (Emphasis added.) This Court should further note that the State Board is authorized by statute only to make "regulations governing the conduct of its business." NRS 361.375(9). Any substantive or "interpretive" regulations have to be adopted by the Tax Commission. NRS 361.250.

Taxpayers deny that the October 2010 equalization regulation actually created the "detailed and comprehensive" scheme referenced by the County. Even if it did, however, that scheme was not even in the mind's eye in 2003-2004, the first tax year at issue here.

The claim that the State Board's duty of statewide equalization has been performed by the Department of Taxation through its ratio studies is equally untenable. A ratio study generally refers to a comparison in a market value jurisdiction of assessor market valuations to actual sales prices. The ratio study is a measure of assessor performance. If an assessor sets the market value of a property at $100,000 for property tax purpose and the property then sells for $200,000, the assessor has missed the mark.

Nevada's ratio studies statute, NRS 361.333, was enacted in 1967. In 1967, Nevada was still a market value jurisdiction for property tax purposes. The ratio studies provision was part of legislation intended to stabilize financial aid to schools throughout the state.[1] The Legislature has never established any kind of link between the ratio studies of NRS 361.333 and the equalization duties of the State Board. From its adoption in 1967 through

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[1] See, http://www.leg.state.nv.us/Division/Reserach/Library/LegHistor/LHs/1967/B015,1967.pdf; see also, Bulletin no. 69, "State Financial Support for Public Schools," found online at: http://www.leg.state.nv.us/Division/Research/Publications/ InterimReports/1967/Bulletin069.pdf.

the most recent amendment of the ratio studies statute in 1999, the Nevada Legislature never altered the language of NRS 361.395 requiring annual statewide equalization by the State Board and never required the State Board to review the Department's ratio studies or otherwise take them into consideration in any way in the performance of that duty. In fact, NRS 361.333 makes no reference whatsoever to the State Board of Equalization.

NRS 361.333 provides for ratio studies to be performed on only **one-third** of Nevada counties in any single year. The duty imposed by NRS 361.395 of annual statewide equalization cannot be satisfied on the basis of one-third of the counties per year. Furthermore, and specifically with respect to the 2003-2004 tax year which gave rise to the instant matter,

(1) neither Washoe County nor Douglas County was the subject of the Department's ratio studies for that year; **APX, Vol. II, pp. 398-399.**

(2) in the three-year rotation of counties, ratio studies were never done of Washoe County and Douglas County in the same year; **Id., pp. 376 and 402.**

(3) as of 2003-2004, ratio studies were only performed on the reappraisal area in any county and, as a result, the combination of the three-year rotation of counties for ratio studies and the five-year rotation of reappraisal areas within counties like Washoe County, a "ratio study" was done of any particular reappraisal area only once every **fifteen** years; and

(4) as of 2003-2004, the most recent ratio study that even tangentially included Incline Village/Crystal Bay was in 1997[2].

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[2] Washoe County was part of the Department's ratio studies for 2002-2003. The reappraisal area was Area 5, north of Reno to the Oregon State Line. The last time Area 1 (which includes Incline Village/Crystal Bay) was studied was in 1997. **APX, Vol. II, p. 412.**

The argument that statewide equalization has been historically achieved through ratio studies under NRS 361.333 can only be based on an alternate reality of some kind. In the real world of Nevada property taxation, the facts to support such an argument are simply non-existent.

V. TAXPAYERS ARE NOT PRECLUDED FROM EQUALIZATION RELIEF IN MANDAMUS BECAUSE "REFUND RELIEF COULD HAVE BEEN PURSUED BY TAXPAYERS IN OTHER MANNERS."

The County respondents also argue that mandamus relief is unavailable in this case because "refund relief could have been pursued by the taxpayers in other manners." County Answering Brief, p. 1, lns. 24-25. As referenced by the County, those "other manners" consist of the various statutory bases for taxpayer **valuation** appeals, including NRS 361.355, 361.356, 361.360, 361.405(4), and 361.420. Id., pp. 17-27. Taxpayers sought an order requiring the State Board to perform its duty of statewide **equalization** as that duty encompasses equalization between the Lake Tahoe areas of Douglas and Washoe Counties as well as equalization within the Incline Village/Crystal Bay area of Washoe County. None of the statutes cited by the County provide that relief. In fact, this Court has already addressed this issue, providing in its Order of Remand as follows:

> While NRS 361.356 allows a property owner to raise equalization issues regarding properties with comparable locations before the county board, and while NRS 361.360 allows taxpayers to challenge the county board's failure to equalize, those statutes do not address statewide, county-by-county equalization issues. **APX, Vol. I, p. 33.**

Although this Court did not specifically address either NRS 361.355, NRS 361.405(4), or NRS 361.420, the same analysis applies. None of those statutes addresses statewide equalization issues. NRS 361.355 allows a taxpayer resident in one county to go before the county board of equalization in another county and complain about the lesser

valuation of property in that second county.[3] NRS 361.405 merely concerns what happens after the State Board has made adjustments to a county's assessment roll. NRS 361.420 addresses only an action for the recovery of taxes after the denial of relief by the State Board of Equalization on an appeal from an adverse decision of a County Board of Equalization. The limitation of equalization relief to those taxpayers paying under protest is completely antithetical to the concept of equalization.

The County even argues that NRS 361.420 "goes on to envision a suit for precisely the relief ultimately now being sought by these Petitioners in this action before this Court." County Answering Brief, p. 23, lns. 24-26. The argument could not be more misleading. The County cites NRS 361.420(4)(f) as permitting "a suit on the grounds '[t]hat the assessment is out of proportion to and above the valuation fixed . . . for the year in which the taxes were levied and the property assessed. . . ." Id., p. 17, lns. 16-18. The ellipsis is both intentional and critical. The words omitted by the County establish that NRS 361.420(4)(f) **only** applies to valuations **by the Nevada Tax Commission.** What the County represents as providing "precisely" the relief sought by taxpayers here in fact has no application to these taxpayers at all. NRS 361.420(4)(f) not only has nothing to do with equalization, it has no application even to individual property valuations by the County Assessor or the County or State Boards of Equalization. It applies only to centrally assessed properties.

The County argues that the taxpayers' mandamus petition was properly dismissed

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[3] Even if it could be argued that, because it crosses county lines, NRS 361.555 addresses in part the issue of statewide equalization, it still excludes the claim made by taxpayer petitioners in this case. NRS 361.555 is limited solely to claims that another taxpayer's property is undervalued. In this case, taxpayer petitioners believe that it is their own properties that have been overvalued. NRS 361.555 contains no provision for such a claim.

because taxpayers could have sought the same relief under the valuation statutes. As this Court has already recognized, valuation and equalization are separate functions. Even if taxpayers could achieve some approximation of equalization through mass valuation appeals, the State Board would not be relieved of its affirmative duty of equalization. If a person seeks a civil remedy for some criminal action such as fraud or assault, the authorities are not thereby relieved of their duty of criminal prosecution.

Annual statewide equalization is the affirmative and mandatory duty under NRS 361.395 of the State Board of Equalization. It is not incumbent upon the taxpayer to effect some alternative means to accomplish equalization. The necessity for mandamus, as this Court wrote, is found in the absence of "any means [by which a taxpayer] could administratively challenge the State Board of Equalization's alleged failures to carry out its equalization duties." **APX, Vol. I, p. 33, lns. 9-11.** The absence of any such "means" cannot be remedied by any of the valuation statutes cited by the County. Taxpayers' only remedy lies in mandamus.

Dated this 20th day of January, 2011.

MORRIS PETERSON

By /s/ Suellen Fulstone
Suellen Fulstone

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 N.R.A.P. 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 20th day of January, 2011.

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 20th day of January, 2011. Electronic Service of the foregoing document shall be made in accordance with the Master Service list as follows:

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