

IN THE SUPREME COURT OF THE STATE OF NEVADA

STATE OF NEVADA ex rel. THE
NEVADA DEPARTMENT OF
TAXATION; THE HONORABLE
KATE MARSHALL, in her official
capacity as TREASURER OF THE
STATE OF NEVADA; and THE
LEGISLATURE OF THE STATE OF
NEVADA,

Petitioners,

vs.

THE FIRST JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, in and for CARSON
CITY; and THE HONORABLE
JAMES TODD RUSSELL, District
Judge,

Respondents, and

CITY OF FERNLEY, NEVADA, a
Nevada municipal corporation,

Real Party in

Interest.

Supreme Court Case No. 62050

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Tracie K. Lindeman
Clerk of Supreme Court

Original Action for Writ to First
Judicial District Court, Carson City,
Nevada, Case No. 12 OC 00168 1B

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19 IN THE FIRST JUDICIAL DISTRICT COURT
20 OF THE STATE OF NEVADA IN AND FOR CARSON CITY

21 CITY OF FERNLEY, NEVADA, a
22 Nevada municipal corporation,

23 Plaintiff,

24 v.

25 STATE OF NEVADA ex rel. THE NEVADA
26 DEPARTMENT OF TAXATION; THE
27 HONORABLE KATE MARSHALL, in her
28 official capacity as TREASURER OF THE
STATE OF NEVADA; and DOES 1-20,
Inclusive,

Defendants,

NEVADA LEGISLATURE,

Intervenor.

Case No.: 12 OC 00168 1B

Dept. No.: 1

REQUEST FOR SUBMISSION OF
PLAINTIFF'S MOTION FOR
CONTINUANCE PURSUANT TO NRC
56(f) AND NOTICE OF NON-
OPPOSITION

Plaintiff City of Fernley's ("Fernley") filed a Motion for Continuance Pursuant to NRC
56(f). ("Motion"). The Motion was made on August 20, 2012 as part of Fernley's Opposition to
the Motion to Dismiss filed by the Nevada Department of Taxation and Nevada Treasurer and

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ALAN G. GUY
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1 was duly served on Defendants and the Intervenor. Neither Defendants nor the Intervenor have
2 objected to the Motion. Accordingly, Fernley hereby requests that its Motion be submitted to the
3 Court for decision.

4 DATED this 28th day of September, 2012.

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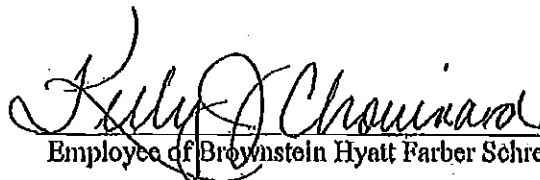
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of BROWNSTEIN HYATT FARBER
SCHRECK, LLP, and that on this 28th of September, 2012, I caused to be served via
electronic mail and hand delivery, a true and correct copy of the above foregoing REQUEST
FOR SUBMISSION OF PLAINTIFF'S MOTION FOR CONTINUANCE PURSUANT TO
NRCP 56(F) AND NOTICE OF NON-OPPOSITION properly addressed to the following:

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9 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
10 **IN AND FOR CARSON CITY**

11 CITY OF FERNLEY, NEVADA, a
Nevada municipal corporation,

12
13 Plaintiff,

14 vs.

15 STATE OF NEVADA ex rel. THE NEVADA
DEPARTMENT OF TAXATION; THE
16 HONORABLE KATE MARSHALL, in her
official capacity as TREASURER OF THE
17 STATE OF NEVADA; and DOES 1-20,
inclusive,

18 Defendants.

Case No. 12 OC 00168 1B
Dept. No. 1

19
20 **NEVADA LEGISLATURE'S**
21 **MOTION TO INTERVENE**
22
23
24

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ALAN GLOVER
CLERK
DEPUTY
G. Cooper

MOTION

The Legislature of the State of Nevada (Legislature), by and through its counsel, the Legal Division of the Legislative Counsel Bureau under NRS 218F.720, hereby moves the Court for an order granting the Legislature's Motion to Intervene in this action as a Defendant pursuant to NRCP 24 and NRS 218F.720.¹ This Motion is made under FJDCR 15 and is based upon the attached Memorandum of Points and Authorities, all pleadings, documents and exhibits on file in this case and any oral arguments the Court may allow. Pursuant to NRCP 24(c), this Motion is accompanied by the Legislature's proposed Answer to the Complaint, which is attached as Exhibit 1.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction and Summary of the Argument:

On June 6, 2012, the City of Fernley (Plaintiff) filed a Complaint against the Nevada Department of Taxation and Kate Marshall in her official capacity as Treasurer of the State of Nevada (collectively, Defendants). The Summons was filed on June 8, 2012. On June 13, 2012, the Defendants were served with the Summons and Complaint. Shortly thereafter, the Office of the Attorney General, as the agency charged with representing the Defendants, was also served with the Summons and Complaint on June 21, 2012. The Defendants' time for filing an answer or other responsive pleading has not yet run under NRCP 12(a)(3).

The Plaintiff is challenging the constitutionality of Nevada's system of allocating certain statewide tax revenues consolidated into and disbursed from the Local Government Tax Distribution Account to counties and various local governments. The Plaintiff contends that this system of allocation, commonly referred to as the consolidated tax or CTX system, violates: (1) the Fourteenth Amendment to the United States Constitution by denying equal protection; (2) the Separation of Powers Clause set forth in Article 3, §1 of the Nevada Constitution; (3) Article 4, §20 of the Nevada Constitution by creating a

¹ NRCP 24 and NRS 218F.720 are reproduced in the Addendum following the Memorandum of Points and Authorities.

1 special law; (4) Article 4, §21 of the Nevada Constitution by creating a law that is not general and of
2 uniform operation throughout the State of Nevada; (5) and the Fourteenth Amendment of the United
3 States Constitution by denying due process. Consequently, the Plaintiff seeks declaratory and injunctive
4 relief, as well as damages in an amount to be proven at trial.

5 Because the Plaintiff is challenging the constitutional authority of the Legislature to enact
6 legislation for the allocation of certain taxes to counties and local governments within the State of
7 Nevada, the Legislature is timely moving to intervene in this case pursuant to NRCP 24(a)(1) and
8 NRS 218F.720. The statute confers an unconditional right to intervene when a party in any action or
9 proceeding alleges that the Legislature has violated the Nevada Constitution or alleges that any law is
10 invalid, unenforceable or unconstitutional. When a party makes such a constitutional challenge, the
11 statute provides that:

12 the Legislature has an *unconditional right and standing to intervene* in the action or
13 proceeding and to present its arguments, claims, objections or defenses, in law or fact,
14 whether or not the Legislature's interests are adequately represented by existing parties and
whether or not the State or any agency, officer or employee of the State is an existing party.

15 NRS 218F.720(3) (emphasis added). Therefore, under NRCP 24(a)(1) and NRS 218F.720, the
16 Legislature has an unconditional right and standing to intervene in this action.

17 In addition, the Legislature qualifies for intervention as of right under NRCP 24(a)(2) because the
18 Legislature has substantial interests in the subject matter of this case which may be impaired if the
19 Legislature is not permitted to intervene and which may not be adequately represented by existing
20 parties. The Legislature also qualifies for permissive intervention under NRCP 24(b) because this case
21 involves extremely important questions of constitutional law whose resolution may have a substantial
22 impact on the scope of the Legislature's constitutional authority over fiscal and tax policies and the
23 performance of its public duties.
24

1 Finally, the Legislature has acted with appropriate haste and diligence to intervene in order to
2 protect its official interests, and the Legislature's participation will not delay the proceedings or
3 complicate the management of the case and will not cause any prejudice to existing parties. If permitted
4 to intervene, the Legislature would be in a position to protect its official interests by providing a more
5 comprehensive and thorough presentation of the controlling law and a better understanding of the issues,
6 and the Court would be ensuring that the views of the Legislature are fairly and adequately represented.
7 Therefore, because the Legislature has acted with appropriate haste and diligence to intervene in this
8 case in order to protect its official interests, the Legislature's Motion to Intervene should be granted.

9 II. Argument.

10 A. Intervention as of right.

11 Under NRCP 24(a), an applicant qualifies for intervention as of right under two circumstances.
12 Am. Home Assurance Co. v. Dist. Ct., 122 Nev. 1229, 1235 (2006). First, under subsection (a)(1), an
13 applicant is entitled to intervene "when a statute confers an unconditional right to intervene." Second,
14 under subsection (a)(2), an applicant is entitled to intervene when:

15 the applicant claims an interest relating to the property or transaction which is the subject of
16 the action and the applicant is so situated that the disposition of the action may as a practical
17 matter impair or impede the applicant's ability to protect that interest, unless the applicant's
18 interest is adequately represented by existing parties.

19 NRCP 24(a)(2). In this case, the Legislature qualifies for intervention as of right under both subsections
20 of NRCP 24(a).

21 (1) The Legislature qualifies for intervention as of right under NRCP 24(a)(1).

22 To qualify for intervention as of right under NRCP 24(a)(1), the applicant must prove that: (1) a
23 statute confers upon the applicant an unconditional right to intervene; and (2) the applicant's motion to
24 intervene is timely. See EEOC v. Gmri, Inc., 221 F.R.D. 562, 563 (D. Kan. 2004); EEOC v. Taylor Elec.

1 Co., 155 F.R.D. 180, 182 (N.D. Ill. 1994).²

2 In determining whether a statute confers upon the applicant an unconditional right to intervene for
3 purposes of NRCP 24(a)(1), the issue before the court is one of statutory construction, and the court
4 must limit its inquiry to the terms of the statute and must not consider any of the factors listed in
5 NRCP 24(a)(2). See Bhd. of R.R. Trainmen v. Balt. & Ohio R.R., 331 U.S. 519, 525-31 (1947); Ruiz v.
6 Estelle, 161 F.3d 814, 828 (5th Cir. 1998). Consequently, the applicant is not required to prove that
7 existing parties may be inadequately representing its interests or that its interests may be impaired if it is
8 not allowed to intervene. Ruiz, 161 F.3d at 828. Instead, the applicant is required to prove only that it
9 qualifies for intervention under the terms of the statute. Bhd. of R.R. Trainmen, 331 U.S. at 531. Upon
10 meeting the statutory requirements for intervention, "there is no room for the operation of a court's
11 discretion" and "the right to intervene is absolute and unconditional." Id.; see also United States v.
12 Presidio Invs., Ltd., 4 F.3d 805, 808 n.1 (9th Cir. 1993).

13 Under NRS 218F.720, the Legislature may elect to intervene in any action or proceeding when a
14 party alleges that the Legislature, by its actions or failure to act, has violated the Nevada Constitution or
15 when a party contests or raises as an issue that any law is invalid, unenforceable or unconstitutional. To
16 intervene in the action or proceeding, the Legislature must file "a motion or request to intervene in the
17 form required by the rules, laws or regulations applicable to the action or proceeding."
18 NRS 218F.720(2). If the Legislature files such a motion or request to intervene:

19 the Legislature has an *unconditional right and standing to intervene* in the action or
20 proceeding and to present its arguments, claims, objections or defenses, in law or fact,
21 whether or not the Legislature's interests are adequately represented by existing parties and
whether or not the State or any agency, officer or employee of the State is an existing party.

22 ² When interpreting the provisions of NRCP 24 regarding intervention, the Nevada Supreme Court
23 often looks to federal cases interpreting the analogous provisions of the Federal Rules of Civil
24 Procedure. Am. Home Assurance, 122 Nev. at 1238-39; Lawler v. Ginochio, 94 Nev. 623, 626 (1978).
Thus, in determining whether intervention is appropriate under NRCP 24, such federal cases "are
strong persuasive authority, because the Nevada Rules of Civil Procedure are based in large part upon
their federal counterparts." Exec. Mgmt., Ltd. v. Ticor Title Ins. Co., 118 Nev. 46, 53 (2002) (quoting
Las Vegas Novelty, Inc. v. Fernandez, 106 Nev. 113, 119 (1990)).

1 NRS 218F.720(3) (emphasis added).

2 In this case, the Plaintiff alleges that the CTX system, as enacted by the Legislature and
3 implemented by the Defendants, is unconstitutional because the CTX system improperly deprives the
4 Plaintiff of an equitable share of the allocated distributions from the Local Government Tax Distribution
5 Account. (Compl. ¶¶ 4-19.) Thus, the Plaintiff alleges that the statutory method for the allocation of
6 the consolidated taxes, as enacted by the Legislature, violates the Nevada Constitution. (Compl. ¶¶ 33,
7 40, 46, 54.) The Plaintiff also alleges that the CTX system violates the United States Constitution.
8 (Compl. ¶¶ 24, 54.)

9 Nevada's CTX system was first created in 1997 by the enactment of Senate Bill No. 254
10 (S.B. 254) (69th Sess. 1997), 1997 Nev. Stat., ch. 660, at 3278-3304. The statutory provisions of the
11 CTX system have since been amended numerous times during subsequent regular and special legislative
12 sessions. In its Complaint, the Plaintiff does not assert that only certain provisions of the CTX system
13 are unconstitutional. Rather, the Complaint alleges that the entire system, as administered, is
14 unconstitutional. (Compl. ¶ 19.) Thus, the Plaintiff is clearly alleging that the Legislature violated both
15 the federal and state constitutions not only when it enacted S.B. 254, but also when the Legislature
16 enacted all subsequent legislation amending the initial statutory framework of the CTX system.
17 Accordingly, the Plaintiff is alleging that S.B. 254 and all of the legislation that followed throughout the
18 gradual evolution of the CTX system are invalid, unenforceable or unconstitutional. Given these
19 allegations, the Legislature has an unconditional right to intervene under NRS 218F.720.

20 Because NRS 218F.720 confers an unconditional right to intervene, the Legislature's Motion to
21 Intervene must be granted so long as the motion is timely. The timeliness of a motion to intervene is a
22 determination that lies within the discretion of the district court. Lawler, 94 Nev. at 626; Cleland v. Dist.
23 Ct., 92 Nev. 454, 456 (1976). In determining whether a motion to intervene is timely, the court must
24 consider the age of the lawsuit, the length of the applicant's delay in seeking intervention after learning

1 of the need to intervene, and the extent of any prejudice to the rights of existing parties resulting from
2 the delay. Am. Home Assurance, 122 Nev. at 1244; Dangberg Holdings Nev. v. Douglas County, 115
3 Nev. 129, 141 (1999). If the applicant's intervention would cause prejudice to the rights of existing
4 parties, the court must weigh that prejudice against any prejudice resulting to the applicant if the motion
5 to intervene is denied. Am. Home Assurance, 122 Nev. at 1244.

6 In this case, the Plaintiff filed its Complaint on June 6, 2012, and served the Defendants with the
7 Summons and Complaint on June 13, 2012. The Office of the Attorney General, as legal counsel for the
8 Defendants, was served by the Plaintiff on June 21, 2012. The Defendants' time for filing an answer or
9 other responsive pleading has not yet run under NRCP 12(a)(3). Accordingly, because this case is still
10 in its earliest stages, this Motion to Intervene is timely. See EEOC v. Taylor Elec. Co., 155 F.R.D. 180,
11 182 (N.D. Ill. 1994) (finding that motion to intervene filed four months after plaintiff commenced action
12 was timely where no discovery had been conducted in the case).

13 In sum, because the Legislature has an unconditional right to Intervene under NRS 218F.720 and
14 because the Legislature's Motion to Intervene is timely, the Legislature meets the standards for
15 intervention as of right under NRCP 24(a)(1). Therefore, the Legislature's Motion to Intervene should
16 be granted.

17 **(2) The Legislature qualifies for intervention as of right under NRCP 24(a)(2).**

18 As a general rule, courts give NRCP 24(a)(2) a broad and liberal construction in favor of
19 intervention as of right. State Indus. Ins. Sys. v. Dist. Ct., 111 Nev. 28, 32 (1995), *overruled in part on*
20 *other grounds by* Am. Home Assurance Co. v. Dist. Ct., 122 Nev. 1229 (2006); Arakaki v. Cayetano,
21 324 F.3d 1078, 1083 (9th Cir. 2003) ("Rule 24 traditionally receives liberal construction in favor of
22 applicants for intervention."); Scotts Valley Band of Pomo Indians v. United States, 921 F.2d 924, 926
23 (9th Cir. 1990) ("Rule 24(a) is construed broadly, in favor of the applicants for intervention.").

1 To qualify for intervention as of right under NRCP 24(a)(2), the applicant must establish that:
2 (1) the applicant has sufficient interests in the subject matter of the litigation; (2) the applicant's ability
3 to protect those interests could be impaired if the applicant is not permitted to intervene; (3) the
4 applicant's interests may not be adequately represented by the existing parties; and (4) the application is
5 timely. Am. Home Assurance, 122 Nev. at 1238. The determination of whether an applicant has met the
6 four requirements is within the discretion of the district court. Id. As discussed previously, the
7 Legislature's Motion to Intervene is timely. The Legislature also meets the remaining requirements for
8 intervention as of right under NRCP 24(a)(2).

9 (a) The Legislature has significantly protectable interests in the subject matter of this
10 action which will be impaired if the Plaintiff succeeds on its claims.

11 For purposes of intervention as of right under NRCP 24(a)(2), the applicant must have a
12 significantly protectable interest in the subject matter of the action and must be situated such that the
13 disposition of the action may impair or impede the applicant's ability to protect that interest. PEST
14 Comm. v. Miller, 648 F.Supp.2d 1202, 1211-12 (D. Nev. 2009). The applicant satisfies these
15 requirements if: (1) the applicant asserts an interest that is protected under federal or state law; and
16 (2) there is a relationship between the applicant's protected interest and the plaintiff's claims such that
17 the applicant will suffer a practical impairment of its interest if the plaintiff succeeds on its claims. Id. at
18 1212. When the plaintiff seeks declaratory relief that statutes are unconstitutional, the applicant is
19 entitled to intervene to defend the validity of the statutes if the applicant's protected interest would be
20 impaired, as a practical matter, by a declaration that the statutes are unconstitutional. Cal. ex rel.
21 Lockyer v. United States, 450 F.3d 436, 441-45 (9th Cir. 2006).

22 In the context of defending the validity of state statutes, courts have recognized that a state
23 legislature may have an independent "legal interest in defending the constitutionality of [its] laws" that
24 is separate and distinct from the interests of state officials who are charged with administering those

1 laws. Ne. Ohio Coal. for Homeless v. Blackwell, 467 F.3d 999, 1007 (6th Cir. 2006). For example, in a
2 case challenging the constitutionality of Ohio's election laws where Ohio's Secretary of State was
3 named as the defendant, the Sixth Circuit allowed the State of Ohio and its General Assembly to
4 intervene in the case because "the Secretary's primary interest is in ensuring the smooth administration
5 of the election, while the State and General Assembly have an independent interest in defending the
6 validity of Ohio laws and ensuring that those laws are enforced." Id. at 1008.

7 In this case, the Legislature has an independent legal interest in defending the constitutionality of
8 S.B. 254 and all subsequent legislation impacting the Legislature's chosen method of allocating tax
9 revenue that is separate and distinct from the interests of the Department of Taxation and the State
10 Treasurer who are charged with administering those laws, and the Legislature's interests will be
11 impaired if the Plaintiff succeeds on its claims. The Plaintiff is challenging decisions made by the
12 Legislature in enacting legislation to distribute money throughout the State of Nevada. As a
13 consequence, this case strikes at the heart of one of the most vital components of the legislative
14 function—fiscal policy determinations to manage the collection and distribution of taxes in the state.
15 Because the Legislature has a right to defend its carefully considered tax schemes, the Legislature has a
16 substantial interest in the subject matter of this action which will be impaired if the Legislature is not
17 permitted to intervene.

18 This case raises important legal issues which could have significant and far-reaching ramifications
19 that could severely impact the Legislature's role in making policy decisions regarding taxation. Since
20 the initial creation of a consolidated tax system, the Legislature has continuously revisited the issue and
21 worked in concert with counties, local governments, analysts, lobbyists and various other individuals
22 and groups with the goal of maintaining a reasonable distribution method to allocate certain tax revenues
23 throughout the State for the benefit of its citizens. If the Court were to declare that S.B. 254 and all the
24 related legislation which built upon the initial framework established by S.B. 254 are unconstitutional,

1 such a declaration would call into doubt the constitutionality of at least fifteen years of tax allocations
2 simply based on one local government's claim that it did not receive its fair share of money. Because the
3 Legislature has a right to defend the continued validity of Nevada's tax policies and CTX allocation
4 determinations, the Legislature has established that it has significantly protectable interests in the subject
5 matter of this action which will be impaired if the Plaintiff succeeds on its claims.

6 (b) The Legislature's interests are not adequately represented by existing parties.

7 When an applicant has sufficient interests to support intervention as of right under NRCP 24(a)(2),
8 the applicant must be permitted to intervene unless the applicant's interests are adequately represented
9 by existing parties. Am. Home Assurance, 122 Nev. at 1241; Lundberg v. Koontz, 82 Nev. 360, 362-63
10 (1966). The applicant must satisfy only a minimal burden to demonstrate that existing parties do not
11 adequately represent its interests. Sw. Ctr. for Biological Diversity v. Berg, 268 F.3d 810, 823 (9th Cir.
12 2001). The applicant need only show that representation by existing parties may be inadequate, not that
13 it will be inadequate. Id. Courts typically consider three factors when determining whether existing
14 parties adequately represent the interests of a proposed intervenor: (1) whether the interests of existing
15 parties are such that they will undoubtedly make all of the proposed intervenor's arguments; (2) whether
16 existing parties are capable and willing to make such arguments; and (3) whether the proposed
17 intervenor would offer any necessary elements to the proceeding that existing parties would neglect.
18 PEST Comm., 648 F.Supp.2d at 1212.

19 As a general rule, there is a presumption that a state official adequately represents the interests of
20 private parties in defending the constitutionality of state statutes because the state official is acting in a
21 representative capacity on behalf of the citizens of the state and because the state official and the private
22 parties share the same ultimate objective, which is to uphold the statutes against constitutional attack. Id.
23 at 1212-13. This presumption, however, does not apply here because the Legislature is a governmental
24 entity, not a private party, and the Legislature has an independent legal interest in defending the

1 constitutionality of the CTX system that is separate and distinct from the interests of the Department of
2 Taxation and the State Treasurer who are charged with administering those laws. See Ne. Ohio Coal.
3 467 F.3d at 1008.

4 The Department of Taxation has an undeniable interest in ensuring the smooth administration of
5 the CTX system.³ To that end, the Department of Taxation is concerned with the validity of Nevada
6 laws providing for the distribution of CTX pursuant to statutory formulas. Similarly, the State Treasurer
7 is entrusted with disbursing public money and is therefore also concerned with the validity of the
8 existing method of CTX allocations.⁴ However, the Plaintiff's claims that the Legislature's actions with
9 regard to establishing a tax distribution system are unconstitutional could have significant and far-
10 reaching ramifications on the Legislature's ability to make fiscal policy and tax decisions which affect
11 the entire state and go far beyond the interests of the agencies.

12 If the Plaintiff were to succeed on its claims that the statutory CTX system is unconstitutional,
13 both on its face and in application, it would unravel fifteen years of consolidated tax distributions in
14 Nevada, and the Legislature would have to drastically change the way it performs its function of
15 enacting tax laws. Given that the Plaintiff's constitutional claims are directed at an extremely vital part
16 of the Legislature's function—forming fiscal and tax policies and determining how, when and where the
17 State should spend its tax revenues—neither the Department of Taxation nor the State Treasurer are in a
18 position to adequately represent the official interests of the Legislature. Under such circumstances, the
19 Legislature's interests are not adequately represented by existing parties, and the Legislature is entitled
20 to intervention as of right under NRCP 24(a)(2). See Ne. Ohio Coal., 467 F.3d at 1007-08 (allowing

21 ³ The main provisions for the distribution of proceeds from the Local Government Tax Distribution
22 Account to local governments are set forth in NRS 360.600 to 360.740, inclusive. The Department of
23 Taxation is authorized to "exercise the specific powers enumerated in [chapter 360 of NRS] and,
except as otherwise provided by law, may exercise general supervision and control over the entire
revenue system of the State." See NRS 360.200.

24 ⁴ See NRS 226.110(5) (the State Treasurer "[s]hall disburse the public money upon warrants drawn
upon the Treasury by the State Controller, and not otherwise").

1 intervention as of right where "the Secretary's primary interest is in ensuring the smooth administration
2 of the election, while the State and General Assembly have an independent interest in defending the
3 validity of Ohio laws and ensuring that those laws are enforced.").

4 **B. Permissive intervention.**

5 The provisions of NRCP 24(b) provide that permissive intervention may be granted under the
6 following circumstances:

7 Upon timely application anyone may be permitted to intervene in an action: (1) when a
8 statute confers a conditional right to intervene; or (2) when an applicant's claim or defense
9 and the main action have a question of law or fact in common. In exercising its discretion
the court shall consider whether the intervention will unduly delay or prejudice the
adjudication of the rights of the original parties.

10 Permissive intervention lies within the discretion of the district court. See 6 Moore's Federal
11 Practice § 24:10 (3d ed. 2004). The decision whether to grant permissive intervention is controlled by
12 considerations of equity, judicial economy and fairness. Id. Permissive intervention ordinarily should be
13 granted to a governmental agency where the legal issues in the case may have a substantial impact on
14 "the maintenance of its statutory authority and the performance of its public duties." SEC v. U.S. Realty
15 & Impr. Co., 310 U.S. 434, 460 (1940). Thus, where the governmental agency's interest in the case "is a
16 public one" and it intends to raise claims or defenses concerning questions of law involved in the main
17 action, permissive intervention should be granted, especially when the agency's intervention "might be
18 helpful in [a] difficult and delicate area." United States v. Local 638, Enter. Ass'n of Pipefitters, 347 F.
19 Supp. 164, 166 (S.D.N.Y. 1972) (quoting SEC v. U.S. Realty & Impr. Co., 310 U.S. 434, 460 (1940)).

20 In this case, considerations of equity, judicial economy and fairness militate in favor of the Court
21 granting permissive intervention to the Legislature. The Plaintiff's claims attack a significant tax scheme
22 enacted by the Legislature and which affects the entire State of Nevada and its citizens. The legal
23 analysis of the CTX system in this case, and the resulting judicial determinations, will have a substantial
24 impact on the scope of the Legislature's constitutional authority and the performance of one of its core

1 functions of making tax decisions. The Department of Taxation and the State Treasurer are not in a
2 position to adequately represent the official interests of the Legislature, and neither Defendant can offer
3 the Legislature's unique insight into the historical background of the CTX system or a complete
4 overview of the factors supporting the validity and enforceability of its statutory provisions. By
5 permitting the Legislature to intervene, the Court would be facilitating a more comprehensive and
6 thorough presentation of the controlling law and a better understanding of the issues, and the Court
7 would be ensuring that the views of the Legislature are fairly and adequately represented and are not
8 prejudiced by this case. In addition, because this case is in its earliest stages, intervention will not unduly
9 delay the proceedings or prejudice the rights of existing parties. Therefore, even assuming that the
10 Legislature does not qualify for intervention as of right under NRCP 24(a)(1) and (a)(2), the Court
11 should exercise its discretion and allow the Legislature to intervene under the standards for permissive
12 intervention set forth in NRCP 24(b).

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1 CONCLUSION

2 Based upon the foregoing, the Legislature respectfully requests that the Court enter an order
3 granting the Legislature's Motion to Intervene.

4 The undersigned hereby affirm that this document does not contain "personal information about
5 any person" as defined in NRS 239B.030 and 603A.040.

6 DATED: This 3rd day of August, 2012.

7 Respectfully submitted,

8 **BRENDA J. ERDOES**
Legislative Counsel

9
10 By: 

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ADDENDUM

NRCP 24. INTERVENTION

(a) **Intervention of Right.** Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) **Permissive Intervention.** Upon timely application anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) **Procedure.** A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute gives a right to intervene.

NRS 218F.720 Authority to provide legal representation in actions and proceedings; exemption from fees, costs and expenses; standards and procedures for exercising unconditional right and standing to intervene; payment of costs and expenses of representation.

1. When deemed necessary or advisable to protect the official interests of the Legislature in any action or proceeding, the Legislative Commission, or the Chair of the Legislative Commission in cases where action is required before a meeting of the Legislative Commission is scheduled to be held, may direct the Legislative Counsel and the Legal Division to appear in, commence, prosecute, defend or intervene in any action or proceeding before any court, agency or officer of the United States, this State or any other jurisdiction, or any political subdivision thereof. In any such action or proceeding, the Legislature may not be assessed or held liable for:

- (a) Any filing or other court or agency fees; or
- (b) The attorney's fees or any other fees, costs or expenses of any other parties.

2. If a party to any action or proceeding before any court, agency or officer:

(a) Alleges that the Legislature, by its actions or failure to act, has violated the Constitution, treaties or laws of the United States or the Constitution or laws of this State; or

(b) Challenges, contests or raises as an issue, either in law or in equity, in whole or in part, or facially or as applied, the meaning, intent, purpose, scope, applicability, validity, enforceability or constitutionality of any law, resolution, initiative, referendum or other legislative or constitutional measure, including, without limitation, on grounds that it is ambiguous, unclear, uncertain, imprecise, indefinite or vague, is preempted by federal law or is otherwise inapplicable, invalid, unenforceable or unconstitutional,

the Legislature may elect to intervene in the action or proceeding by filing a motion or request to intervene in the form required by the rules, laws or regulations applicable to the action or proceeding. The motion or request to intervene must be accompanied by an appropriate pleading,

1 brief or dispositive motion setting forth the Legislature's arguments, claims, objections or
2 defenses, in law or fact, or by a motion or request to file such a pleading, brief or dispositive
motion at a later time.

3 3. Notwithstanding any other law to the contrary, upon the filing of a motion or request to
4 intervene pursuant to subsection 2, the Legislature has an unconditional right and standing to
5 intervene in the action or proceeding and to present its arguments, claims, objections or defenses,
in law or fact, whether or not the Legislature's interests are adequately represented by existing
parties and whether or not the State or any agency, officer or employee of the State is an existing
party. If the Legislature intervenes in the action or proceeding, the Legislature has all the rights of
a party.

6 4. The provisions of this section do not make the Legislature a necessary or indispensable
7 party to any action or proceeding unless the Legislature intervenes in the action or proceeding, and
no party to any action or proceeding may name the Legislature as a party or move to join the
Legislature as a party based on the provisions of this section.

8 5. The Legislative Commission may authorize payment of the expenses and costs incurred
pursuant to this section from the Legislative Fund.

9 6. As used in this section:

10 (a) "Action or proceeding" means any action, suit, matter, cause, hearing, appeal or
proceeding.

11 (b) "Agency" means any agency, office, department, division, bureau, unit, board,
commission, authority, institution, committee, subcommittee or other similar body or entity,
including, without limitation, any body or entity created by an interstate, cooperative, joint or
interlocal agreement or compact.

12 (c) "Legislature" means:

13 (1) The Legislature or either House; or

14 (2) Any current or former agency, member, officer or employee of the Legislature, the
Legislative Counsel Bureau or the Legislative Department.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Nevada Legislative Counsel Bureau, Legal Division,
and that on the 3rd day of August, 2012, I served a true and correct copy of the Legislature's Motion
to Intervene by depositing the same in the United States Mail, postage prepaid, addressed to the
following:

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An Employee of the Legislative Counsel Bureau

Exhibit 1

Nevada Legislature

Exhibit 1

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7 *Attorneys for the Legislature of the State of Nevada*

8
9 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
10 **IN AND FOR CARSON CITY**

11 CITY OF FERNLEY, NEVADA, a
Nevada municipal corporation,

12
13 Plaintiff,

14 vs.

15 STATE OF NEVADA ex. rel. THE NEVADA
DEPARTMENT OF TAXATION; THE
16 HONORABLE KATE MARSHALL, in her
official capacity as TREASURER OF THE
17 STATE OF NEVADA; and DOES 1-20,
inclusive,

18 Defendants.

Case No. 12 OC 00168 1B
Dept. No. 1

19
20 **NEVADA LEGISLATURE'S**
21 **PROPOSED ANSWER TO PLAINTIFF'S COMPLAINT**
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1 **PROPOSED ANSWER TO PLAINTIFF'S COMPLAINT**

2 Proposed Intervenor-Defendant, the Legislature of the State of Nevada (Legislature), by and
3 through its counsel, the Legal Division of the Legislative Counsel Bureau under NRS 218F.720, hereby
4 submits pursuant to NRCP 24(c) the Legislature's proposed Answer to Plaintiff's Complaint, which
5 Plaintiff filed on June 6, 2012.

6 **ADMISSIONS AND DENIALS OF THE ALLEGATIONS**

7 **PARTIES**

8 ¶ 1. The Legislature admits the City of Fernley is a Nevada municipal corporation located in
9 Lyon County, Nevada. The Legislature is without knowledge or information sufficient to form a belief
10 as to the truth of the remaining allegations in paragraph 1 and denies them.

11 ¶ 2-3. The Legislature admits the allegations in paragraphs 2-3.

12 **BACKGROUND**

13 ¶ 4-18. The Legislature is without knowledge or information sufficient to form a belief as to
14 the truth of the allegations in paragraphs 4-18 and denies them.

15 ¶ 19. The Legislature denies the allegations in paragraph 19.

16 **FIRST CLAIM FOR RELIEF**

17 (Denial of Equal Protection in Violation of Section 1 of the
18 Fourteenth Amendment to the United States Constitution)

19 ¶ 20-27. The Legislature denies the allegations in paragraphs 20-27.

20 **SECOND CLAIM FOR RELIEF**

21 (Violation of the Separation of Powers Clause of the Nevada Constitution)

22 ¶ 28-36. The Legislature denies the allegations in paragraphs 28-36.
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THIRD CLAIM FOR RELIEF

(Creation of a Special Law in Violation of Article 4, Section 20 of the Nevada Constitution)

¶ 37-43. The Legislature denies the allegations in paragraphs 37-43.

FOURTH CLAIM FOR RELIEF

(Violation of Article 4, Section 21 of the Nevada Constitution)

¶ 44-49. The Legislature denies the allegations in paragraphs 44-49.

FIFTH CLAIM FOR RELIEF

**(Denial of Due Process in Violation of Section 1 of
the 14th Amendment to the United States Constitution)**

¶ 50-57. The Legislature denies the allegations in paragraphs 50-57.

SIXTH CLAIM FOR RELIEF

(Declaratory Relief)

¶ 58-64. The Legislature denies the allegations in paragraphs 58-64.

SEVENTH CLAIM FOR RELIEF

(Injunctive Relief)

¶ 65-70. The Legislature denies the allegations in paragraphs 65-70.

AFFIRMATIVE DEFENSES

1. The Legislature pleads as an affirmative defense that the Complaint fails to state a claim upon which relief can be granted.

2. The Legislature pleads as affirmative defenses that Plaintiff lacks capacity to sue and standing; that Plaintiff's claims do not present a justiciable case or controversy; that Plaintiff's claims are not ripe for adjudication; and that the Court lacks jurisdiction of the subject matter.

1 3. The Legislature pleads as an affirmative defense that Plaintiff's claims are barred by the
2 doctrine of immunity, including, without limitation, sovereign immunity, official immunity,
3 discretionary function immunity, absolute immunity and qualified immunity.

4 4. The Legislature pleads as affirmative defenses that Plaintiff's claims are barred by the statute
5 of limitations, laches, estoppel and waiver.

6 5. The Legislature pleads as an affirmative defense that, pursuant to NRS 218F.720, the
7 Legislature may not be assessed or held liable for any filing or other court fees or the attorney's fees or
8 other fees, costs or expenses of any other parties.

9 6. The Legislature reserves its right to plead, raise or assert any additional affirmative defenses
10 which are not presently known to the Legislature, following its reasonable inquiry under the
11 circumstances, but which may become known to the Legislature as a result of discovery, further
12 pleadings, or the acquisition of information from any other source during the course of this litigation.

13 **PRAYER FOR RELIEF**

14 The Legislature prays for the following relief:

15 1. That the Court enter judgment in favor of the Legislature and against Plaintiff on all claims
16 and prayers for relief directly or indirectly pled in the Complaint;

17 2. That the Court enter judgment in favor of the Legislature and against Plaintiff for the
18 Legislature's costs and attorney's fees as determined by law; and

19 3. That the Court grant such other relief in favor of the Legislature and against Plaintiff as the
20 Court may deem just and proper.

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1 **AFFIRMATION**

2 The undersigned hereby affirm that this document does not contain "personal information about
3 any person" as defined in NRS 239B.030 and 603A.040.

4 DATED: This 3rd day of August, 2012.

5 Respectfully submitted,

6 **BRENDA J. ERDOES**
7 Legislative Counsel

8 By: 

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15 *Attorneys for the Legislature*

Nailed 10/22 JF



City of Fernley
MAYOR'S OFFICE

Mayor & City Council
Legislative
Public Policy

October 17th, 2012

Assemblywoman Marilyn Kirkpatrick, Chair
Legislative Commission's Subcommittee to
Study the Allocation of Money Distributed
From the Local Government Tax Distribution
Account (A.B. 71, 2011 Legislature)
Legislative Building
401 S. Carson St.
Carson City, Nevada 89701-4747

Re: Proposed BDR 32-247

Dear Chair Kirkpatrick,

Thank you for the opportunity to participate over the past nine months as the Legislative Commission's Subcommittee has considered various proposals to amend the C-Tax system. As you are aware, the City of Fernley's concerns with the C-Tax system are quite different than the concerns raised by other participants in the system. Notably, Fernley's base allocation is so low that only a significant adjustment to the C-Tax formula will provide Fernley any relief. The proposed BDR 32-247, unfortunately, does not provide any such significant adjustment. The concepts set forth in the proposed BDR, while likely useful to participants who are receiving an equitable share of the C-Tax, has no real impact on a participant who receives very little C-Tax to begin with.

Moreover, the proposed BDR provides no mechanism by which a current participant in the C-Tax system can apply for any kind of meaningful adjustment. The current system essentially provides that applications for an adjustment by a municipality must either be made within a year of incorporation or in cooperation with another local government. It is unrealistic to expect a local government to consent to any kind of significant loss of C-Tax revenue, and indeed, Fernley has sought and been denied such a readjustment. What the current system means is that a new municipality is at the complete mercy of other local governments in terms of seeking an adjustment. Leaving this type of option as the only

Creating

Opportunities



option for a city like Fernley (or for future municipalities that may seek to incorporate) is neither fair nor realistic.

We believe it would be a better idea to undertake a comprehensive evaluation of tax distributions to all C-Tax recipients. Time and again we have heard that participants are funded depending on the services they provide. However, we are unaware of any comprehensive evaluation, legislative or otherwise, of C-Tax distributions as compared to services provided since the C-Tax system was set up in 1997. Instead, the system appears designed purely to keep the status quo from 1997 in place into perpetuity. Accordingly, we believe it is time for the Legislature to closely evaluate where C-Tax dollars are going, and whether current funding levels for C-Tax participants are appropriate in terms of the actual needs of those participants.

The City of Fernley experienced significant growth since it was incorporated in 2001, and is the only city to incorporate since the C-Tax system was implemented in 1997. Fernley is now the seventh largest city in Nevada, experiencing a rapid population boom from 8,000 residents in 1997 to 19,000 residents today. To claim, as some in the process have, that Fernley has not experienced a commensurate burden on its ability to provide public services in light of this rapid growth is simply absurd. Fernley's per capita rate of law enforcement to citizens is dangerously low, and Fernley's roads, parks and public buildings are deteriorating. Ultimately, the proposed BDR 32-247 will provide no relief to Fernley, but Fernley remains hopeful that it will ultimately obtain relief from the currently inequitable and inflexible C-Tax system.



Mayor Leroy Goodman

On behalf of the Fernley City Council