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CITY OF FERNLEY, NEVADA, A
NEVADA MUNICIPAL
CORPORATION,

VS.

THE STATE OF NEVADA
DEPARTMENT OF TAXATION; THE
HONORABLE KATE MARSHALL, IN
HER CAPACITY AS TREASURER OF
THE STATE OF NEVADA; AND THE
LEGISLATURE OF THE STATE OF
NEVADA,

Electronically Filed
Nov 19 2014 01:41 p.m.
Tracie K. Lindeman
Clerk of Supreme Court
Supreme Court No. 00891

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1 Appellant CITY OF FERNLEY, NEVADA (hereinafter "Fernley"), by and
2 through its attorneys of record, the law firm of Brownstein Hyatt Farber Schreck,
3 LLP, hereby moves this Honorable Court for an order: (1) reconsidering the
4 Court's exemption of this appeal from the settlement conference program
5 administered under the provisions of Rule 16 of the Nevada Rules of Appellate
6 Procedure (the "Settlement Program") pursuant to the Clerk's Notice dated
7 November 13, 2014; and (2) assigning this appeal to the Settlement Program. This
8 motion is made pursuant to Rules 16 and 27 of the Nevada Rules of Appellate
9 Procedure and is based on the following points and authorities, all other pleadings,
10 papers, and documents on file with the Court in this action, such further
11 documentary evidence as the Court deems appropriate, and the arguments of
12 counsel at any hearing on this motion.

13 **POINTS AND AUTHORITIES**

14 **I. INTRODUCTION**

15 Like the Court, Fernley originally determined that its claims against the
16 State, which arise out of its treatment under the Consolidated Tax or "C-Tax"
17 system, were not amenable to resolution through the Settlement Program. As
18 reflected in its Case Appeal Statement, Fernley's rationale at the time was that the
19 Legislature's opposition to the relief it seeks was so entrenched that judicial
20 intervention presented the only viable solution. The results of the recent general
21 election will soon bring new leadership to the Legislature, however, along with the
22 potential for different perspectives on Fernley's constitutional objections to the C-
23 Tax system. This significant development warrants exploring the possibility that
24 Fernley and the State might resolve their dispute through the mediation process
25 offered by the Settlement Program. On this basis, Fernley respectfully submits that
26 the Court should reconsider its exemption and assign this appeal to the Settlement
27 Program.

II. BRIEF FACTUAL BACKGROUND

The City of Fernley brought this matter of first impression to challenge, as violations of Article 3, Section 1 of the Nevada Constitution (separation of powers), Article 4, Section 20 of the Nevada Constitution (prohibition on special or local laws), and Article 4, Section 21 of the Nevada Constitution (guarantee of general and uniform laws), the statutory scheme under which the State collects and distributes certain taxes to local governments. In 1997, the Nevada Legislature passed Senate Bill 254, enacting the C-Tax system whereby six different state taxes would be collected, placed in a segregated State account, and appropriated by the Nevada Department of Taxation and Nevada Treasurer to local governments via a statutory formula. Since 1997, the C-Tax system and the distributions therefrom have been largely unchanged, while the circumstances of Fernley, one of the recipients of C-Tax revenue, have substantially changed.

Fernley incorporated as a municipality in 2001, and has been the only local government to do so since the enactment of Senate Bill 254. Because Fernley's population has more than doubled since 1997, the service needs of Fernley's residents have greatly increased. Despite having much lower growth rates, however, similarly sized cities have received millions of dollars more in C-Tax revenue than Fernley since 2001. These gross inequities have left Fernley unable to provide comparable levels of services to its residents, and have forced Fernley to burden residents and businesses with high property taxes in an effort to make up some of the difference, while comparably sized neighbors realize high levels of service and lower property taxes. Fernley seeks both injunctive and monetary relief to redress prior distributions and to ensure that distributions in the future meet constitutional standards.

The District Court heard cross-motions for summary judgment, and erroneously entered judgment for the State on the following grounds: (1) Fernley's state constitutional claims are barred by the four-year statute of limitations set forth

1 in NRS 11.220; (2) Fernley's claims for money damages are barred by sovereign
2 immunity under NRS 41.032(1); (3) Fernley lacks standing to bring separation of
3 powers claims against the State under Article 3, Section 1 of the Nevada
4 Constitution because it is a political subdivision of the State; (4) Fernley's
5 separation of powers claim is unsustainable, regardless of Fernley's standing,
6 because the C-Tax does not violate Article 3, Section 1 of the Nevada Constitution;
7 and (5) Fernley's state constitutional claims under Article 4, Sections 20 and 21 of
8 the Nevada Constitution are unsustainable, even if they were not time-barred,
9 because the C-Tax does not violate either constitutional provision. The District
10 Court thereafter erroneously granted the State's motion for costs, and denied
11 Fernley's motion to retax costs.

12 Fernley timely filed its Notice of Appeal on November 7, 2014, and the
13 Court Clerk issued a written notice exempting this appeal from the Settlement
14 Program on November 13, 2014. This motion follows.

15 **III. ARGUMENT**

16 **A. The Court Should Include This Appeal In The Settlement** 17 **Program To Promote Judicial Economy And Further The** 18 **Interests Of Justice.**

19 Rule 16 of the Nevada Rules of Appellate Procedure ("Rule 16") authorizes
20 the assignment of this appeal to the Settlement Program. See NRAP 16(a). Rule
21 16(a) provides in relevant part:

22 Any civil appeal in which all parties are represented by counsel and
23 that does not involve termination of parental rights may be assigned to
24 the settlement conference program.

25 *See id.* Because this case is a civil appeal in which all parties are represented by
26 counsel and the termination of parental rights is not at issue, it is appropriate for
27 inclusion in the Settlement Program according to the plain language of Rule 16. As
28 it did with appeals involving the termination of parental rights, the Court could
have automatically exempted appeals involving constitutional issues from the
Settlement Program. The Court has not, however, recognized such an automatic

1 exemption.

2 Fernley respectfully submits that, by assigning this appeal to the Settlement
3 Program, the Court will fulfill its goals in adopting Rule 16. Instead of an
4 uninformed exemption, doing so will at least enable a settlement judge to assess
5 whether this appeal is appropriate for the Settlement Program after directly
6 consulting with the parties' counsel during an Early Case Assessment. *See* NRAP
7 16(b). Fernley anticipates that a settlement judge will find, after engaging in this
8 process, that this appeal should proceed to mediation. The Court therefore should
9 grant this motion in its entirety to promote judicial economy and further the
10 interests of justice.

11 **IV. CONCLUSION**

12 For the foregoing reasons, Fernley respectfully requests that the Court: (1)
13 reconsider its exemption of this appeal from the Settlement Program; and (2) assign
14 this appeal to the Settlement Program.

15 DATED this 19th day of November, 2014.

16 BROWNSTEIN HYATT FARBER SCHRECK, LLP

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of November, 2014, I served a copy of the foregoing APPELLANT'S MOTION FOR RECONSIDERATION OF THE COURT'S EXEMPTION OF THIS APPEAL FROM THE SETTLEMENT CONFERENCE PROGRAM, by causing a copy of the same to be filed electronically with the Nevada Supreme Court, with electronic service on:

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