

IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF FERNLEY, NEVADA,
A NEVADA MUNICIPAL
CORPORATION,
Appellant,

vs.

THE STATE OF NEVADA,
DEPARTMENT OF TAXATION; THE
HONORABLE DAN SCHWARTZ, IN
HIS CAPACITY AS TREASURER OF
THE STATE OF NEVADA; AND THE
LEGISLATURE OF THE STATE OF
NEVADA,
Respondents.

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Tracie K. Lindeman
Clerk of Supreme Court

Supreme Court Case No. 66851

Appeal from First Judicial District
Court, Carson City, Nevada,
Case No. 12 OC 00168 1B

**RESPONDENTS' MOTION TO EXCEED TYPE-VOLUME
LIMITATION FOR JOINT ANSWERING BRIEF**

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MOTION

Respondents, the State of Nevada, the Department of Taxation (Department) and the Dan Schwartz in his official capacity as the State Treasurer, by and through their counsel the Office of the Attorney General, and the Legislature of the State of Nevada (Legislature), by and through its counsel the Legal Division of the Legislative Counsel Bureau (LCB) under NRS 218F.720 (collectively the State), hereby file a Motion to Exceed the Type-Volume Limitation for their Joint Answering Brief pursuant to NRAP 32(a)(7)(D). This Motion is accompanied by a copy of the proposed Joint Answering Brief, and it is based upon the following declaration of counsel stating in detail the reasons for the Motion and upon all orders, pleadings, documents and exhibits on file in this case.

DECLARATION OF REASONS FOR THE MOTION

The State respectfully requests to file a Joint Answering Brief which contains **16,938 words**, which exceeds by **2,938 words** the type-volume limitation of **14,000 words**. In filing this motion, the State's attorneys are respectful of the Court's admonition to appellate counsel to observe reasonable limitations on arguments filed with the Court. *See Hernandez v. State*, 117 Nev. 463 (2001). However, the State's motion to exceed the type-volume limitation is necessary because this appeal raises numerous complex issues of first impression and constitutional law that could have a significant impact on the validity of the

consolidated tax system or C-Tax system codified in NRS 360.600-360.740. Because the C-Tax system directly affects the budget of almost every local government in Nevada, the constitutional challenges in this appeal present important questions of law that may implicate the fiscal policy of the entire State.

In particular, this appeal involves state constitutional claims brought by the City of Fernley (Fernley) against the State of Nevada concerning the validity of the C-Tax system. The principal issues are: (1) whether Fernley's state constitutional claims are time-barred by the statute of limitations and laches; (2) whether Fernley lacks standing to bring its separation-of-powers claims against the State; (3) whether the C-Tax statutes are valid under the separation-of-powers provision of Article 3, §1 of the Nevada Constitution; (4) whether the C-Tax statutes are valid under the special-or-local law provisions of Article 4, §§20-21 of the Nevada Constitution; and (5) whether the Department of Taxation was entitled to an award of costs as a prevailing party.

To properly address these complex issues of first impression and constitutional law, the State needed to exceed the type-volume limitation to meet the Court's high standards of appellate practice in which the Court "expects all appeals to be pursued with high standards of diligence, professionalism, and competence." *Barry v. Lindner*, 119 Nev. 661, 671 (2003); *Polk v. State*, 126 Nev.Adv.Op. 19, 233 P.3d 357, 359 (2010). This duty requires counsel to avoid

inadequate appellate practices, such as discussing issues without including “cogent argument and citation to relevant authority.” *Berkson v. Lepome*, 126 Nev.Adv.Op. 46, 245 P.3d 560, 566 (2010). Therefore, the additional words in the State’s Joint Answering Brief are the direct result of discussing the numerous complex issues of first impression and constitutional law raised by this appeal in a cogent manner that includes “adequate supporting law.” *Barry*, 119 Nev. at 672.

The State also needed to exceed the type-volume limitation to provide the Court with a complete and accurate discussion of the C-Tax system and its 20-year legislative history, including: (1) the purposes of the C-Tax system; (2) the Legislature’s oversight of the C-Tax system; (3) the statutory methods for increasing distributions to new local governments under the C-Tax system; and (4) the operation and application of the C-Tax system to Fernley. Therefore, the additional words in the State’s Joint Answering Brief are also the direct result of discussing this extensive background information to provide the Court with a complete and accurate understanding the C-Tax system.

Therefore, for all the foregoing reasons, the State respectfully asks the Court to grant its Motion to Exceed the Type-Volume Limitation for its Joint Answering Brief pursuant to NRAP 32(a)(7)(D).

CERTIFICATION OF WORD COUNT

The State's attorneys of record certify that, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), the State's proposed Answering Brief is proportionately spaced, has a typeface of 14 points or more, and contains **16,938 words**, which exceeds by **2,938 words** the type-volume limitation of **14,000 words**.

DATED: This **6th** day of July, 2015.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Nevada Legislative Counsel Bureau, Legal Division, and that on the 6th day of July, 2015, pursuant to NRAP 25(c) and the parties' stipulation and written consent to service by electronic means, I served a true and correct copy of the Respondents' Motion to Exceed the Type-Volume Limitation for their Joint Answering Brief, by means of the Nevada Supreme Court's electronic filing system and electronic mail, directed to the following:

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