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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Supreme Court Case No. 66851

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

RESPONDENTS' JOINT ANSWERING BRIEF

ADAM PAUL LAXALT
Attorney General
Nevada Bar No. 12426
GINA C. SESSION
Chief Deputy Attorney General
Nevada Bar No. 5493
gsession@ag.nv.gov
ANDREA H. NICHOLS
Senior Deputy Attorney General
Nevada Bar No. 6436
anichols@ag.nv.gov
OFFICE OF THE ATTORNEY GENERAL
5420 Kietzke Ln., Suite 202
Reno, NV 89511
Tel: (775) 688-1818; Fax: (775) 688-1822
Attorneys for Respondents State of Nevada, Department of Taxation and State Treasurer

BRENDA J. ERDOES
Legislative Counsel
Nevada Bar No. 3644
KEVIN C. POWERS
Chief Litigation Counsel
Nevada Bar No. 6781
kpowers@lcb.state.nv.us
J. DANIEL YU
Principal Deputy Legislative Counsel
Nevada Bar No. 10806
Dan.Yu@lcb.state.nv.us
LEGISLATIVE COUNSEL BUREAU,
LEGAL DIVISION
401 S. Carson Street
Carson City, NV 89701
Tel: (775) 684-6830; Fax: (775) 684-6761
Attorneys for Respondent Legislature of the State of Nevada

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

NEVADA CONSTITUTION

NEVADA REVISED STATUTES

NEVADA BILLS AND RESOLUTIONS

NEVADA ADMINISTRATIVE CODE

NEVADA RULES OF APPELLATE PROCEDURE

OTHER AUTHORITIES

STATEMENT OF APPELLATE ASSIGNMENT

For purposes of appellate assignment, this case should be retained by the Supreme Court and should not be assigned to the Court of Appeals. NRAP 28(a)(5). The principal issues raised in this case are matters that the Supreme Court should hear and decide under NRAP 17(a). In particular, this case involves state constitutional claims brought by the City of Fernley (Fernley) against the State of Nevada concerning the constitutionality of the consolidated tax system or C-Tax system codified in NRS 360.600-360.740. 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. Given these principal issues, this case involves a dispute between the State and a local government concerning several questions of first impression and statewide public importance that presumptively are matters which should be retained by the Supreme Court under NRAP 17(a)(8), (a)(13) and (a)(14).

STATEMENT OF THE ISSUES

1. Did the district court correctly determine that Fernley's state constitutional claims are time-barred by the statute of limitations?

2. Are Fernley's state constitutional claims also time-barred by the equitable doctrine of laches?

3. Did the district court correctly determine that Fernley lacks standing to bring its separation-of-powers claims against the State?

4. Did the district court correctly determine that the C-Tax statutes are valid under the separation-of-powers provision of Article 3, §1 of the Nevada Constitution?

5. Did the district court correctly determine that the C-Tax statutes are valid under the special-or-local law provisions of Article 4, §§20-21 of the Nevada Constitution?

6. Did the district court correctly award costs to the Department of Taxation as a prevailing party?

ANSWERING BRIEF

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 their Answering Brief. The State asks the Court to affirm the district court's final judgment in favor of the State on all causes of action and claims for relief alleged in Fernley's complaint and the post-judgment award of costs to the Department as a prevailing party.[1]

INTRODUCTION

The district court entered summary judgment in favor of the State on Fernley's state constitutional claims challenging the validity of the C-Tax system codified in NRS 360.600-360.740. The district court correctly determined that: (1) Fernley's claims are time-barred by the statute of limitations as a matter of law; (2) Fernley lacks standing as a matter of law to bring its separation-of-powers claims against the State; and (3) Fernley's claims have no merit as a matter of law

[1] Fernley does not appeal the district court's determination that sovereign immunity bars its claims for money damages. (Opening Br. at 5 n.1, 40 n.8.) Therefore, because Fernley abandons its claims for money damages, the State will not address those claims.

because the C-Tax statutes do not violate the separation-of-powers provision of Article 3, §1 of the Nevada Constitution or the special-or-local law provisions of Article 4, §§20-21 of the Nevada Constitution. The district court also correctly awarded costs to the Department as a prevailing party.

It is evident that Fernley brought this case because it disagrees with the Legislature's public policy determinations regarding how C-Tax revenues are distributed under the system. However, as the district court correctly determined, because the Legislature did not exceed its constitutional power over the appropriation of state tax dollars when it made those public policy determinations, Fernley may not ask the judiciary to second-guess the Legislature's public policy determinations or judge the wisdom, policy or fairness of how C-Tax revenues are distributed under the system because "matters of policy or convenience or right or justice or hardship or questions of whether the legislation is good or bad are solely matters for consideration of the legislature and not of the courts." *King v. Bd. of Regents*, 65 Nev. 533, 542 (1948).

When the Legislature enacted the C-Tax system, it wanted to encourage the formation of new general-purpose local governments that would provide their own traditional general-purpose governmental services, which the Legislature defined to mean police protection and at least two of the following services: (1) fire protection; (2) construction, maintenance and repair of roads; or (3) parks and

recreation. NRS 360.740. The Legislature also wanted to discourage the formation of new local governments that did not provide general-purpose governmental services or did not assume the functions of another local government. NRS 360.740; NRS 354.598747. Finally, the Legislature wanted to encourage cooperation among local governments by permitting them to enter into cooperative agreements to establish alternative formulas for C-Tax distributions. NRS 360.730.

To accomplish these legitimate purposes, the Legislature created valid legislative classifications that are founded upon natural, intrinsic, rational and constitutional distinctions. First, if a new local government is created after July 1, 1998, and it elects to provide the requisite general-purpose governmental services, it is eligible for increased C-Tax distributions. NRS 360.740. Second, if such a new local government assumes the functions of another local government, it is entitled to increased C-Tax distributions. NRS 354.598747. Third, such a new local government may enter into a cooperative agreement with another local government to increase its C-Tax distributions, such as when the new local government agrees to take over services provided by the other local government. NRS 360.730.

Fernley wants increased C-Tax distributions without doing anything required or authorized by the C-Tax statutes to receive the increased distributions. Fernley

is attempting to do exactly what the Legislature intended to discourage—the formation of new local governments that want increased C-Tax distributions without providing the necessary general-purpose governmental services or assuming the functions of another local government as required by the C-Tax statutes. In addition, even though Fernley does not provide the traditional general-purpose governmental services of police and fire protection, it wants to compare itself to the Cities of Elko, Mesquite and Boulder City, all of which are general-purpose governments that provide police and fire protection. Thus, Fernley wants the same C-Tax distributions as those general-purpose governments, but Fernley does not want to provide the same services as those general-purpose governments. This is the textbook money grab that the Legislature intended to discourage by enacting the C-Tax system. Simply put, Fernley wants more C-Tax money without providing the necessary general-purpose governmental services or assuming the functions of another local government as required by the C-Tax statutes.

To justify its money grab, Fernley claims the C-Tax system is unfair and inequitable and that there is no process to obtain an adjustment to its C-Tax distributions. These statements are simply untrue given the various statutory avenues for adjusting C-Tax distributions. Moreover, based on long-settled law, no political subdivision has a constitutional right to an equal or equitable distribution of *state* tax dollars, no political subdivision has a constitutional right to

obtain an adjustment to its C-Tax distributions, and no political subdivision is entitled to any process for review or adjustment of its C-Tax distributions other than the legislative process. In reality, Fernley is asking the Court to substitute Fernley's judgment of "fairness" for the judgment made by the Legislature after 20 years of regularly, repeatedly and comprehensively examining all aspects of the C-Tax system. That is not an appropriate role for the judiciary because "it is not within either the disposition or power of this court to revise the necessarily complicated taxing systems of the States for the purpose of attempting to produce what might be thought to be a more just distribution of the burdens of taxation than that arrived at by the state legislatures." *Dane v. Jackson*, 256 U.S. 589, 598-99 (1921).

STATEMENT OF THE CASE AND FACTS

The State agrees with the procedural history and the history and overview of the C-Tax system set forth in the district court's order. (*JA22-1:3952-57*.)[2] Therefore, the State will not restate that information here. However, the State disagrees with Fernley's incomplete and inaccurate statement of the facts, including its statements regarding: (1) the purposes of the C-Tax system; (2) the Legislature's oversight of the C-Tax system; (3) the statutory methods for

[2] Citations to "*JA*" are to volume and page numbers of the Joint Appendix.

increasing distributions to new local governments under the C-Tax system; (4) the operation and application of the C-Tax system to Fernley; and (5) Fernley's attempted comparison to cities that provide the traditional general-purpose governmental services of police and fire protection. Consequently, the State will provide a complete and accurate discussion of these matters.

I. The purposes of the C-Tax system.

In 1995, the Legislature passed Senate Concurrent Resolution 40 (SCR40), 1995 Nev.Stat. at 3034-36, which created an interim committee to study Nevada's laws governing the distribution of certain statewide tax revenues to local governments. (*JA18-4:3290-91*.) The Legislature authorized the interim study because it found that the existing laws relating to the distribution of tax revenue were inadequate to meet the demands for new and expanded services placed on local governments by Nevada's rapid population and economic growth. *Id.* Under SCR40, the Legislative Commission appointed an interim committee consisting of eight legislators and a technical advisory committee consisting of the Department's Executive Director and eight representatives from local governments. *LCB Bulletin 97-5: Laws Relating to the Distribution Among Local Governments of Revenue from State and Local Taxes* (Nev. LCB Research Library, Jan. 1997) (*JA18-4:3280-83*).

Based on its study, the interim committee recommended: (1) consolidating six statewide tax revenue sources into a single account and establishing base amounts that would be distributed from the account to local governments; (2) establishing appropriate adjustments to the base amounts when public services provided by local governments are taken over by other local governments or are eliminated; and (3) establishing the number and type of public services that new local governments must provide in order to participate in the distribution of revenue. (*JA18-4:3286*.) With regard to the distribution of revenue to new local governments, the specific recommendation from the technical advisory committee was that "any such new entity would need to provide at least police protection and at least two of the following services: fire protection, road maintenance and parks and recreation to be eligible for consideration for sharing the distribution of revenues." (*JA20-1:3533*.)

In 1997, based on the results of the interim study, the Legislature enacted Senate Bill 254 (SB254), which created the C-Tax system codified in NRS 360.600-360.740. 1997 Nev.Stat., ch.660, at 3278-3304. During legislative committee meetings, members of the SCR40 technical advisory committee and representatives of local governments presented testimony regarding the purposes of SB254. *Legislative History of SB254*, 69th Leg. (Nev. LCB Research Library 1997) (*JA17-3:2978 to JA18-3:3182*).

One of the purposes was to encourage the formation of general-purpose local governments that would provide traditional general-purpose governmental services, such as police and fire protection. (*JA17-3:3008; JA17-4:3026*.) As explained by a member of the technical advisory committee, general-purpose local governments were preferred because:

> They are the ones that provide a wide variety of services. You know, normally they have police, fire, parks, planning, and all the services we normally associate with general-purpose government. Because of that, there has been a feeling that general-purpose government is the desirable of all the little forms of government that we have because they can make a conscious decision, on an annual basis, about service levels.

(*JA17-3:3008*.)

To carry out the preference for general-purpose local governments, SB254 was drafted so that "the distribution formula was a deliberate attempt to promote the formation of general-purpose governments." (*JA17-4:3026*.) Consequently, "the bill discriminated against those performing less governmental functions in favor of those who performed more governmental functions." (*JA17-4:3028*.)

By favoring general-purpose local governments, SB254 was intended to rectify problems with the prior formula of revenue distribution to local governments which did not follow the growth of population and the resulting greater demand for general-purpose governmental services. (*JA17-3:3001-08*.) The prior formula no longer worked because "with moneys not going to the growth areas, it was very difficult for local governments to be able to provide the increased

demands of service." (*JA18-1:3106*.) However, "the technical advisory committee wanted to ensure if entities were looking at proliferation or incorporation, the need had to be measured based upon service-level considerations and not in competition for tax dollars." (*JA17-4:3023*.)

Thus, SB254 aimed to eliminate the prior formula of revenue distribution that did not relate to providing general-purpose governmental services. (*JA17-3:3001-08*.) The new formula in SB254 was based on the necessity of local governments providing general-purpose governmental services in order to "provide a level of service for the population groups they support." (*JA18-1:3075*.) In fact, "the whole formula was related to services and money." *Id.* The new formula in SB254 was proposed because "[i]n order for a local government to provide adequate service levels to its citizens, the funding levels must keep commensurate with the costs." (*JA18-1:3105*.) In other words, the new formula in SB254 was intended to ensure that "service levels can match the demands of Nevada's citizens." (*JA18-1:3106*.)

In addition, the new formula in SB254 was intended to decrease the competition among local governments for tax revenue. (*JA18-1:3106*.) Under the prior formula, if a county had one city, the county and the city shared the revenue, but if a county had two cities, the cities shared the revenue and the county received none. (*JA18-1:3106*; *JA18-2:3147*.) While the prior formula encouraged cities to

be formed in order to receive greater revenue for that locality, SB254 ensured that when a new city is formed, it is not "based upon how much money the new entity will be receiving but upon the service level needs of its citizens." (*JA18-1:3106*.) Thus, SB254 was enacted based on "the idea of distributing governmental revenues to governments performing governmental functions." (*JA17-4:3028*.)

Fernley incorrectly states that the Legislature had only two objectives in creating the C-Tax system: (1) initially preserving the "status quo" in the distribution of C-Tax revenue; and (2) distributing future C-Tax revenue to areas of growth. (Opening Br. at 9.) Fernley ignores the Legislature's other objectives to: (1) encourage the formation of new general-purpose local governments that provide their own traditional general-purpose governmental services, such as police and fire protection; (2) discourage the formation of new local governments that do not provide general-purpose governmental services or do not assume the functions of another local government; (3) rectify problems with the prior formula of revenue distribution to local governments which did not relate to providing general-purpose governmental services; and (4) decrease competition among local governments for tax revenue and encourage cooperation among local governments by permitting them to enter into cooperative agreements to establish alternative formulas for C-Tax distributions.

Fernley also incorrectly states that "since the inception of the C-Tax, the all-important base distribution has been unrelated to growth or to the nature and cost of services rendered by recipients even though the demand for services generally increases or decreases as their populations grow or decline." (Opening Br. at 10 11.) Fernley ignores the fact that the C-Tax statutes provide for increases in base distributions to new local governments experiencing population growth so long as the new local governments provide the necessary general-purpose governmental services to meet the demands of their growing populations.

Based on the plain language of the C-Tax statutes, if a new local government is created after July 1, 1998, and it elects to provide the requisite general-purpose governmental services, it is eligible for increased C-Tax distributions. NRS 360.740. Additionally, if such a new local government assumes the functions of another local government, it is entitled to increased C-Tax distributions. NRS 354.598747. Such a new local government may also enter into a cooperative agreement with another local government to increase its C-Tax distributions, such as when the new local government agrees to take over services provided by the other local government. NRS 360.730.

Fernley wants increased C-Tax distributions without doing anything required or authorized by the C-Tax statutes to receive the increased distributions. Fernley is attempting to do exactly what the Legislature intended to discourage—the

formation of new local governments that want increased C-Tax distributions without providing the necessary general-purpose governmental services or assuming the functions of another local government as required by the C-Tax statutes. Fernley's goal is the textbook money grab that the Legislature intended to discourage by enacting the C-Tax system.

II. The Legislature's oversight of the C-Tax system.

Since conducting the SCR40 interim study in 1995 and enacting SB254 in 1997, the Legislature and its committees have regularly, repeatedly and comprehensively considered all aspects of the C-Tax system. Changes to the C-Tax system were enacted or considered during each legislative session from 1997 to 2013.[3] The most recent statutory changes to the C-Tax system were made in 2013 based on recommendations from the Legislative Commission's Subcommittee to Study the Allocation of Money Distributed from the Local Government Tax Distribution Account (2011-2013 C-Tax Study).

[3] The legislative bills containing a material change to the C-Tax system that were either enacted or considered by the Legislature include: Senate Bill 534 (1999); Senate Bill 535 (1999); Senate Bill 538 (1999); Senate Bill 317 (2001); Assembly Bill 653 (2001); Assembly Bill 10 (2001 Special Session); Senate Bill 469 (2003); Assembly Bill 144 (2005); Senate Bill 38 (2005); Senate Bill 96 (2007); Senate Bill 153 (2007); Senate Bill 88 (2009); Senate Bill 294 (2009); Assembly Bill 47 (2011); Assembly Bill 71 (2011); Senate Bill 31 (2011); Assembly Bill 68 (2013); and Senate Bill 400 (2013).

The 2011-2013 C-Tax Study was created by Assembly Bill 71, 2011 Nev.Stat., ch.384, at 2391-92. Over the course of the study, extensive efforts were made by the subcommittee to review the history of the C-Tax system, examine the public policy and current method of revenue distribution under the statutory formulas, solicit information and suggestions from every local government, gather information from the Department, the Committee on Local Government Finance (CLGF), the Nevada Association of Counties and the Nevada League of Cities and ultimately consider alternative methods of revenue allocation as deemed appropriate and necessary to ensure the fiscal health of the State and that of the local governments. *LCB Bulletin 13-04: Allocation of Money Distributed From the Local Government Tax Distribution Account* (Nev. LCB Research Library, Jan. 2013) (*JA18-3:3187-3212*.)

As part of these efforts and at the direction of the subcommittee, an independent economic, financial and public policy firm, Applied Analysis of Reno, collaborated with a working group of various representatives of local governments which met approximately 20 times from May 2012 through August 2012, to address any concerns with first-tier or second-tier base and excess distributions and to formulate alternate distribution methods for recommendation to the subcommittee. (*JA18-3:3199-3203*.) All local governments were invited to participate in the working group. *Id.* Additionally, the subcommittee's fiscal

staff solicited input from local governments to address several proposals that concerned potential changes to the C-Tax system and which were developed over the course of the 2011-2013 C-Tax Study. *Id.*

During the meetings of the 2011-2013 C-Tax Study, it was recognized that despite the fact that many local governments felt the need for additional money, there is only a limited amount of C-Tax revenue that can be allocated and that the increase in allocation to one local governmental entity necessarily results in the reduction of allocation to another local governmental entity. (*JA18-3:3187-3212*.) As explained to the subcommittee, even the "local government working group believed that it was not possible for the Legislature to create a single, 'one-size-fits-all' formula for the distribution of all excess revenues that would create an optimal distribution of revenues in all seventeen counties in the state." (*JA18-3:3211*.)

Based on the 2011-2013 C-Tax Study, several changes to the C-Tax system were proposed and enacted by the passage of Assembly Bill 68, 2013 Nev.Stats., ch.3, at 10-21, including amendments to the statutory formulas for calculating the base distributions and excess distributions in each fiscal year. Therefore, contrary to Fernley's contentions, the Legislature and its committees have regularly, repeatedly and comprehensively considered, examined and studied all aspects of the C-Tax system over the past two decades and, when the Legislature has deemed

it necessary to change the C-Tax system as a matter of public policy, the Legislature has made statutory revisions.

III. The statutory methods for increasing distributions to new local governments under the C-Tax system.

Fernley incorrectly states that there are only two statutory methods for a local government to seek an adjustment to its C-Tax distributions. (Opening Br. at 13.) Fernley also incorrectly states that the existing statutory methods are not options for Fernley because they "are nothing more than illusory remedies." *Id.* Relying on its incorrect interpretation of the C-Tax statutes, Fernley contends that without a viable statutory method or remedy for increasing its C-Tax distributions, it has been precluded from receiving an equal or equitable distribution of state tax dollars in comparison to other local governments under the C-Tax system and such a disparity violates its constitutional rights. (Opening Br. at 3-5 & 6-20.) Fernley's interpretation of the C-Tax statutes and its resulting legal arguments are flawed for several reasons.

First, Fernley's interpretation of the C-Tax statutes and its resulting legal arguments are based on the false premise that Fernley is entitled, as a matter of constitutional right, to a statutory method or remedy for increasing its C-Tax distributions so that it receives an equal or equitable distribution of state tax dollars in comparison to other local governments. Fernley, however, fails to cite any

authority to support such a constitutional right, which is not surprising because there is no such constitutional right.

It is well established that no political subdivision has a constitutional right to an equal or equitable distribution of *state* tax dollars because the Legislature may "disburse the proceeds of taxes, fees, and penalties to various communities inequitably according to need." *Anthony v. State*, 94 Nev. 337, 342 (1978); *City of Las Vegas v. Mack*, 87 Nev. 105, 110 (1971) ("we are aware of no authority . . . which declares that an inequality in distribution of the tax in and of itself is sufficient to constitute a denial of due process.").[4] Thus, the mere fact that Fernley may receive less in C-Tax distributions than other governmental entities does not constitute a violation of any constitutional right.

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[4] *See also N.Y. Rapid Transit Corp. v. New York*, 303 U.S. 573, 578 (1938) ("The power to make distinctions exists with full vigor in the field of taxation, where no 'iron rule' of equality has ever been enforced upon the states."); *Hess v. Mullaney*, 213 F.2d 635, 640 (9th Cir. 1954) ("No requirements of uniformity or of equal protection of the law limit the power of a legislature in respect to allocation and distribution of public funds."); *E. Jackson Pub. Schs. v. State*, 348 N.W.2d 303, 306 (Mich.Ct.App. 1984) (holding that local school districts could not sue the state to "overturn the legislative scheme of [school] financing and to thus compel the Legislature to enact a different system that would conform to plaintiffs' theories of equality."); *Bd. of Comm'rs v. Cooper*, 264 S.E.2d 193, 198 (Ga. 1980); *Leonardson v. Moon*, 451 P.2d 542, 554-55 (Idaho 1969); *McBreairty v. Comm'r Admin. & Fin. Servs.*, 663 A.2d 50, 54-55 (Me. 1995); *McKenney v. Byrne*, 412 A.2d 1041, 1045-49 (N.J. 1980); *Beech Mtn. v. County of Watauga*, 370 S.E.2d 453, 454-55 (N.C.Ct.App. 1988); *Douglas Indep. Sch. Dist. v. Bell*, 272 N.W.2d 825, 827 (S.D. 1978).

Second, no political subdivision has a constitutional right to obtain an adjustment to its C-Tax distributions, and no political subdivision is entitled to any process for review or adjustment of its C-Tax distributions other than the legislative process. By enacting the C-Tax system, the Legislature used the legislative process to adjust the distribution of *state* tax revenues to local governments. When the Legislature uses the legislative process to adjust legal rights through the passage of legislation, the legislative process "provides all the process that is due." *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 433 (1982); *Bi-Metallic Inv. Co. v. State Bd. of Equal.*, 239 U.S. 441, 445-46 (1915). Even if Fernley has been unsuccessful in its efforts in the legislative process to change the C-Tax system, Fernley does not have a constitutional right to a favorable result in the Legislature. Since Fernley may continue to seek redress though the legislative process, it has been provided with all the process that is due.

Because Fernley does not have a constitutional right to a statutory method or remedy for increasing its C-Tax distributions or a constitutional right to receive an equal or equitable distribution of state tax dollars in comparison to other local governments, the Legislature has the constitutional power to determine, as a matter of public policy, whether and under what circumstances a political subdivision may request or receive any increases in its C-Tax distributions. With regard to the C-Tax system, the Legislature has, as a matter of public policy, provided several

statutory methods for increasing C-Tax distributions to new local governments, like Fernley, which are created or incorporated after July 1, 1998. SB254, 1997 Nev.Stat., ch.660, §§14, 15 & 24, at 3282-86 & 3293-94 (codified at NRS 360.730, 360.740 & 354.598747).

First, if a new local government is created after July 1, 1998, it is eligible to receive increased C-Tax distributions if it elects to provide police protection and at least two of the following services: (1) fire protection; (2) construction, maintenance and repair of roads; or (3) parks and recreation. NRS 360.740. Second, if a new local government assumes the functions of another local government, it is entitled to increased C-Tax distributions. NRS 354.598747. Third, a new local government may enter into a cooperative agreement with another local government to increase its C-Tax distributions, such as when the new local government agrees to take over services provided by the other local government. NRS 360.730.

Fernley contends that a new local government which incorporates after July 1, 1998, and elects to provide the required services "has a one-year window to request an adjustment" of its C-Tax distributions under NRS 360.740 and that because Fernley did not request an adjustment within that timeframe after its incorporation, this option is no longer available. (Opening Br. at 13-14.) Fernley's contention is based on the statutory provision mandating that the new local

government must submit its request for increased C-Tax distributions "[o]n or before December 31 of the year immediately preceding *the first fiscal year* that the local government . . . would receive money from the Account." NRS 360.740(2) (emphasis added).

To support its contention, Fernley primarily relies on an advisory opinion from the Department and deposition testimony of a Department employee. (*JA9-2:1833-35*; *JA14-4:2613-15*; *JA15-2:2728-30*.) However, despite having the right to pursue an appeal of the Department's advisory opinion to the Nevada Tax Commission and the further right to seek judicial review under the Administrative Procedure Act, Fernley did not pursue any such relief. NRS 360.245 & NAC 360.200 (providing for administrative appeals of the Department's advisory opinions to the Tax Commission); NRS 233B.120 (providing for judicial review of an agency's advisory opinions). Thus, Fernley did not exhaust its administrative and judicial remedies to obtain a conclusive interpretation concerning whether it is eligible to request an increase in its C-Tax distributions under NRS 360.740 if it elects to provide the required services. In addition, because Fernley has never submitted a request for increased C-Tax distributions under NRS 360.740, the issue of Fernley's eligibility to submit such a request has never been litigated and conclusively decided on the merits by a final decision in any administrative or judicial proceeding. *See Univ. & Cmty. Coll. Sys. v. Sutton*, 120 Nev. 972, 983-84

(2004); *Britton v. City of N. Las Vegas*, 106 Nev. 690, 692-93 (1990) (discussing issue preclusion in administrative proceedings).

Because there has not been any final administrative or judicial decision conclusively deciding that Fernley is not eligible to request an increase in its C-Tax distributions under NRS 360.740, the statute remains subject to interpretation, and Fernley cannot claim that it is precluded as a matter of law from requesting an increase in its C-Tax distributions under NRS 360.740 if it elects to provide the required services. Therefore, in the absence of any conclusive interpretation of NRS 360.740, the statute should be interpreted according to well-established rules of statutory construction.

Under those rules, the Court's "primary objective in construing a statute is to give effect to the Legislature's intent." *City of Las Vegas v. Walsh*, 121 Nev. 899, 902-03 (2005). To determine legislative intent, the Court "first looks at the plain language of a statute" and will "only look beyond the plain language if it is ambiguous or silent on the issue in question." *Allstate Ins. v. Fackett*, 125 Nev. 132, 138 (2009). When a statute is ambiguous, meaning it "is capable of being understood in two or more senses by reasonably informed persons," or when it does not address the issue at hand, the Court will "turn to the statute's historical background and spirit, reason, and public policy to guide [its] interpretation." *PEBP v. LVMPD*, 124 Nev. 138, 147 (2008) (quoting *McKay v. Bd. of Superv'rs*,

102 Nev. 644, 649 (1986)). The Court will also "read statutes within a statutory scheme harmoniously with one another to avoid an unreasonable or absurd result," *Fackett*, 125 Nev. at 138, and will "interpret the statute so that it complies with constitutional standards." *Bell v. Anderson*, 109 Nev. 363, 366 (1993). Finally, the Court will interpret statutes "with a view to promoting rather than defeating the legislative policy behind them." *State Dep't Mtr. Vehs. v. Brown*, 104 Nev. 524, 526 (1988).

The plain language of NRS 360.740 states that a new local government which elects to provide the required services must submit its request for increased C-Tax distributions "[o]n or before December 31 of the year immediately preceding *the first fiscal year* that the local government . . . would receive money from the Account" to provide those services. NRS 360.740(2) (emphasis added). There is no language in NRS 360.740 which states that the new local government must provide the required services within one-year after incorporation. The term "the first fiscal year" in the statute does not refer to the first fiscal year after incorporation but to the first fiscal year after the local government elects to provide the required services and files its request for increased C-Tax distributions, which can occur in any year after incorporation. Consequently, the plain language of NRS 360.740 does not preclude Fernley from requesting an increase in its C-Tax distributions if it elects to provide the required services.

Moreover, even if NRS 360.740 is ambiguous because it is subject to more than one reasonable interpretation, such ambiguity should be resolved in favor of new local governments being able to request increased C-Tax distributions in any year after incorporation in order to carry out the intent of the C-Tax statutes and to avoid any unreasonable or absurd results or alleged constitutional problems. Because the intent of NRS 360.740 is to encourage the formation of new general-purpose local governments that provide their own traditional general-purpose governmental services, such as police and fire protection, the statute must be interpreted in a reasonable manner that promotes, rather than defeats, the legislative policy of distributing increased C-Tax revenues to new local governments that elect to provide those services in any year after incorporation. (*JA17-4:3026* ("the distribution formula was a deliberate attempt to promote the formation of general-purpose governments.”))

Fernley contends that even if it is eligible to request an increase in its C-Tax distributions under NRS 360.740, it is caught in a "classic catch-22" because it must first provide police protection to request an increase in its C-Tax distributions under NRS 360.740 but it is currently unable to provide police protection because it does not have sufficient tax revenues to do so without first receiving an increase in its C-Tax distributions. (Opening Br. at 14.) Fernley also contends that even if it elects to provide police protection and the other required services, it would not

be entitled to an increase in its C-Tax distributions because its request would have to be reviewed and approved by the CLGF and Tax Commission. NRS 360.740(4)-(6). Fernley believes "there is no likelihood of success for a new entity in such a process" based on its assertion that the members of the CLGF are representatives of other local governments which would stand to lose C-Tax revenues upon their redistribution to a new local government like Fernley.[5] (Opening Br. at 14-15.)

Again, Fernley's interpretation of NRS 360.740 is not consistent with the intent of the statute, would produce unreasonable or absurd results and would defeat, rather than promote, the legislative policy of distributing increased C-Tax revenues to new local governments that elect to provide their own traditional general-purpose governmental services, such as police and fire protection. (*JA17-4:3026* ("the distribution formula was a deliberate attempt to promote the formation of general-purpose governments.")) It would be unreasonable or absurd to interpret NRS 360.740 to require Fernley to provide a fully operational police department and the other required services before it may request an increase in its

[5] Under NRS 354.105, the CLGF consists of eleven members. The following associations each appoint three members: (1) the Nevada League of Cities; (2) the Nevada Association of County Commissioners; and (3) the Nevada School Trustees Association. The Nevada State Board of Accountancy appoints the other two members.

C-Tax distributions to fund those services. Instead, a reasonable reading of NRS 360.740 would require Fernley to take appropriate legislative action expressing the city's intent to provide police protection and the other required services beginning in an upcoming fiscal year. Fernley then could submit a request under the statute "[o]n or before December 31 of the year immediately preceding the first fiscal year" that Fernley would receive increased C-Tax distributions to fund those services. NRS 360.740(2). By reading NRS 360.740 in a reasonable manner that promotes, rather than defeats, the legislative policy behind the statute, Fernley is eligible to request an increase in its C-Tax distributions under NRS 360.740 if it elects to provide the required services.

In addition, regardless of the proper statutory interpretation of NRS 360.740, Fernley is entitled to increased C-Tax distributions under NRS 354.598747 if Fernley assumes the functions of another local government. Based on the plain language of the statute, if Fernley assumes the functions of another local government such as police or fire protection, the statute provides that the Department "shall" recalculate the amount of C-Tax distributed to Fernley to account for the functions it assumes. NRS 354.598747(1). Thus, if Fernley were to assume police services currently being provided by the Lyon County Sheriff's Department or fire services currently being provided by the North Lyon County

Fire Protection District (NLCFPD), Fernley would be entitled to increased C-Tax distributions under NRS 354.598747.

Finally, Fernley may enter into a cooperative agreement with another local government to increase its C-Tax distributions under NRS 360.730, including in circumstances where Fernley agrees to take over services provided by another local government. Fernley contends that a cooperative agreement is not a viable option because Lyon County is unlikely or unwilling to enter into any cooperative agreements to increase Fernley's C-Tax distributions given that Lyon County has already rejected several of Fernley's previous requests to enter into such agreements. (Opening Br. at 15-16.) Lyon County, however, has officially represented on the public record in legislative proceedings that it is willing to negotiate a cooperative agreement to increase Fernley's C-Tax distributions if Fernley is willing take over one or more of the services the county is presently providing to the city.

During the 2011-2013 C-Tax Study, the Lyon County Comptroller, Josh Foli, testified at the March 15, 2012 meeting that the county did not oppose providing additional C-Tax funding to Fernley and would be willing to discuss a redistribution of C-Tax funding between the county and the city if Fernley would be willing to take over one or more of the services provided by the county to the

city, such as police protection. (*JA20-1:3514-15.*) The minutes of the meeting indicate that Mr. Foli testified as follows:

> Concluding his presentation, Mr. Foli noted that Lyon County did not have any issues with the first-tier CTX distribution and the second-tier distribution was currently working well; however, Lyon County was willing to negotiate the second-tier distribution and was willing to shift services between entities.
>
> Chairwoman Kirkpatrick asked Mr. Foli what kind of services Lyon County provided and was it because the county was so large and spanned over such a large area. She asked the reasoning behind the county still providing services because she thought the Subcommittee heard earlier that in order to incorporate, they had to provide services.
>
> Mr. Foli stated that the City of Fernley had the option to take over public safety services when they incorporated in 2001. For example, Lyon County provided Sheriff's deputies in Fernley, along with a jail and dispatch services, which were all public safety services. He added that North Lyon County Fire Protection District provided fire protection services for the City of Fernley. He noted that if Fernley had chosen to take any service or combination of services, and had the discussions at the point, Fernley would have received an allocation from Lyon County to go to the city coffers to pay for those services. Since Fernley chose not to provide law enforcement services, they did not receive additional CTX under statute. In fact the only reason the City of Fernley had CTX was because the city was receiving distributions when they were an unincorporated town providing park services previously.
>
> Mr. Foli said to address the question of Chairwoman Kirkpatrick, the City of Fernley chose not to take those services when the city incorporated. The city had every chance since incorporation in 2001 to discuss the issue with Lyon County and take over services and modify the CTX so that they received what they needed to-fund any services, which at this time has not occurred.

(*JA20-1:3515.*)

Additionally, at the April 30, 2012 meeting, the Lyon County Manager, Jeff Page, testified that the reason the county was reluctant to enter into any agreements with Fernley for a redistribution of C-Tax was because Fernley had not assumed any services that would reduce the budget concerns of the county and that Fernley had not provided any information as to what services the city would actually provide, other than services to improve the city's road system. (*JA20-1:3525.*) The minutes of the meeting indicate that Mr. Page testified as follows:

> Jeff Page, Lyon County Manager, said that representatives from Lyon County have advised the Subcommittee on more than one occasion that it is opposed to any change to the first-tier distribution. However, they would be willing to discuss changes to the second-tier distribution. He noted that the Board of County Commissioners has twice rejected the City of Fernley's request for an MOU regarding the CTX funding due to advice from legal counsel that the City of Fernley would have to take on additional services, noting that Fernley has yet to provide information as to what services they would take on, other than to improve the road system.

(*JA20-1:3525.*)

Thus, Fernley's contention that a cooperative agreement with Lyon County is not a viable option is plainly contradicted by the public legislative record, which clearly shows that Lyon County is willing to negotiate a cooperative agreement to increase Fernley's C-Tax distributions if Fernley is willing to assume one or more of the services that Lyon County is presently providing to the city. Accordingly, the Legislature has provided several statutory methods for increasing C-Tax distributions to new local governments. Fernley, however, does not want to utilize

those statutory methods because it wants more C-Tax money without providing the necessary general-purpose governmental services or assuming the functions of another local government as required by the C-Tax statutes.

IV. The operation and application of the C-Tax statutes to Fernley.

When the C-Tax system was enacted in 1997, Fernley was an unincorporated town that was eligible for C-Tax distributions. To implement the new C-Tax system, SB254 included transitory provisions which initially took precedence over NRS 360.600-360.740. SB254, 1997 Nev.Stat., ch.660, §§35-36, at 3301-04. Under section 35 of SB254, Fernley's initial year of C-Tax distributions was the fiscal year beginning on July 1, 1998, and ending on June 30, 1999, and Fernley's base distributions for that initial year were calculated using section 35's formula. *Id.* at 3301-02. Thereafter, Fernley's base distributions were calculated using the statutory formulas in NRS 360.680, as amended, and any excess distributions were calculated using the statutory formulas in NRS 360.690, as amended.

In 1998, the Fernley Incorporation Committee was formed to circulate a petition to bring about Fernley's incorporation as a general-law city under NRS Chapter 266, and the Committee corresponded with the Department to obtain estimates of the C-Tax distributions that Fernley could expect after incorporation. (*JA20-1:3535.*) On June 25, 1998, using several population growth rates proposed by the Committee, the Department responded that Fernley would not realize a

significant increase in C-Tax distributions because of incorporation. (*JA20-1:3537-38.*) For example, based on a population of 6,510, the Department projected Fernley's C-Tax distribution would be $83,824.89 for the fiscal year beginning on July 1, 1999, and based on a hypothetical population growth rate of 9.09% with a resulting population of 12,000, the Department projected Fernley's C-Tax distribution would be $84,075.91, a net increase of only $251.02. (*JA20-1:3537.*) The Department also advised the Committee to examine NRS 354.598747 to determine the impact on Fernley's C-Tax distributions if Fernley were to assume any of the services provided by Lyon County. (*JA20-1:3538.*)

On July 17, 1998, the Department again advised the Committee that Fernley would not realize a significant increase in C-Tax distributions because of incorporation, stating that:

> If Fernley were to incorporate, with the boundaries unchanged, **the new city would not realize a significant increase in revenue from the consolidated tax**. If the new city were to annex property extending the boundaries (and therefore population), then a larger share of the available revenue in the county's consolidated tax account would be realized by the city.

(*JA20-1:3540.*) On March 3, 1999, the Department also advised the Committee of the requirements of NRS 360.740 concerning the provision of required services for a newly incorporated city to receive increased C-Tax distributions. (*JA20-1:3542.*)

On March 27, 2000, the Incorporation Committee submitted an informational letter and its incorporation petition to the CLGF which is required under NRS Chapter 266 to determine whether certain requirements for incorporation have been satisfied. (*JA20-1:3550-64*.) The informational letter indicated that the NLCFPD provided Fernley's fire protection and Lyon County provided Fernley with services relating to police protection, parks and recreation and the construction, maintenance and repair of roads. (*JA20-1:3553*.) The incorporation petition indicated that, after incorporation, Fernley expected the NLCFPD to continue providing fire protection and it anticipated negotiating and entering into interlocal agreements with Lyon County to continue providing services relating to police protection, parks and recreation and the construction, maintenance and repair of roads. (*JA20-1:3558-59*.)

During a CLGF meeting to address the feasibility of Fernley's incorporation, the CLGF noted that Fernley would not receive a significant increase in C-Tax distributions and its incorporation relied on the expectation that Lyon County would continue providing a number of services:

> If you look at the other cities, we also see substantially more coming in from consolidated tax. However, it looks like this proposal anticipates the County providing a number of services rather than the city doing them, and the County providing these services probably makes it somewhat equivalent to what they would otherwise have [in] consolidated tax if they had reached some agreement to transfer money to the County instead of services directly. . . . how effective this can be is gonna [sic] be determined largely on how willing and how able the city

> is to reach agreement with the County eventually on the provision of services or the trading back and forth of this money, mostly from the consolidated tax I would assume. When we look at everything, if indeed, the working with the County goes smoothly I think we clearly have the ability to provide the revenues needed for a city. If the County says no, go take a walk, then you've got big problems.

(*JA20-1:3566*.) In response, Debra Brazell, the Chair of the Incorporation Committee, assured the CLGF that "the change in [C-Tax] law is really equitable and really, really works nicely" and that because of Fernley's relationship with Lyon County, Fernley expected to maintain service levels "either by funds or negotiated services." (*JA20-1:3567*.)

Fernley's incorporation became effective on July 1, 2001. Considering the public record preceding its incorporation, Fernley was aware in 2001 that it would not realize a significant increase in C-Tax distributions due to incorporation, regardless of any population growth. Fernley also was aware in 2001 that its C-Tax distributions could be increased only if it provided the required services under NRS 360.740, assumed the functions of another local government under NRS 354.598747, or entered into a cooperative agreement with another local government under NRS 360.730. Thus, Fernley was aware in 2001 that its C-Tax distributions would continue to be calculated and adjusted using its original base distributions under section 35-36 of SB254 and the statutory formulas in NRS 360.680 and 360.690, as amended, unless it complied with one or more of the statutory methods for increasing its C-Tax distributions. As this Court stated in its

mandamus order, "[n]either party disputes that, at the time of the City's incorporation in 2001, the City was aware that absent specific circumstances, its base consolidated-tax distributions would be set by its previous distributions and would remain at that level." *State Dep't of Taxation v. First Jud. Dist. Ct.*, No. 62050 (Nev. Jan. 25, 2013) (*JA7-1:1375*).

V. Fernley is not comparable to cities that provide the traditional general-purpose governmental services of police and fire protection.

Even though Fernley does not provide the traditional general-purpose governmental services of police and fire protection, which are provided to Fernley by Lyon County and the NLCFPD, Fernley wants to be compared to the Cities of Elko, Mesquite and Boulder City, which have similar populations to Fernley but which are different from Fernley because they provide police and fire protection. Thus, while Fernley wants to receive the same C-Tax distributions as those general-purpose governments, Fernley does not want to provide the same services as those general-purpose governments or assume the functions of another local government as required by the C-Tax statutes.

Fernley contends that its residents shoulder a unique burden among general-law cities because they pay a property tax charge that directly funds the fire-protection services of the NLCFPD. (Opening Br. at 20.) However, it was representatives of Fernley who lobbied for passage of special legislation in 2001 to preserve the NLCFPD so that Fernley would not have to create a city fire

department. Assembly Bill 663, 2001 Nev.Stat., ch.135, at 701-02; *Hearing on AB663 before Assembly Comm. Gov't Affairs*, 71st Leg. (Nev. Apr. 25, 2001).

Furthermore, as the district court correctly determined, the 2001 legislation does not mandate that the NLCFPD must exist indefinitely within the incorporated boundaries of Fernley. Fernley's city council may create a city fire department under NRS 266.310, which authorizes the city council to "[o]rganize, regulate and maintain a fire department." Consequently, although Fernley's fire protection is currently provided by the NLCFPD, Fernley could assume those fire-protection services, and it would be entitled to increased C-Tax distributions under NRS 354.598747 by assuming those services.

Similarly, Fernley's city council may create a city police department. *See* NRS 266.390, 266.455, 266.460 & 266.530. Thus, even though Fernley's police-protection services are currently provided by Lyon County, Fernley could assume those police-protection services, and it would be entitled to increased C-Tax distributions under NRS 354.598747 by assuming those services.

Accordingly, if Fernley wants to be comparable to Elko, Mesquite and Boulder City, it has the statutory authority to provide the traditional general-purpose governmental services of police and fire protection like those cities, and it would be entitled to increased C-Tax distributions under NRS 354.598747 if it

provided those services. But until Fernley provides police and fire protection, it is not comparable to Elko, Mesquite and Boulder City under the C-Tax system.

ARGUMENT

I. Standard of review.

Because Fernley's claims raise only issues of law, the district court's decision granting summary judgment and denying declaratory and injunctive relief is reviewed de novo on appeal. *Nevadans for Nev. v. Beers*, 122 Nev. 930, 942 (2006). The question of whether a statute is constitutional is also subject to de novo review. *Id.* at 939. In conducting that review, all "[s]tatutes are presumed to be valid, and the challenger bears the burden of showing that a statute is unconstitutional. In order to meet that burden, the challenger must make a clear showing of invalidity." *Id.*

II. Fernley's claims are time-barred by the statute of limitations.

The district court correctly determined that: (1) the statute of limitations in NRS Chapter 11 applies to Fernley's state constitutional claims; (2) the statute of limitations began to run on Fernley's claims when it incorporated in 2001; and (3) the continuing violations doctrine recognized by federal law does not save Fernley's claims from being time-barred by the statute of limitations. (*JA22-1:3971-76.*)

As a preliminary matter, Fernley contends that because this Court had a clear opportunity in its mandamus order to address the statute-of-limitations issue for state constitutional claims but declined to do so, this Court has already decided as the law of the case that the statute of limitations does not apply to Fernley's claims. (Opening Br. at 23-24.) Fernley's application of the law-of-the-case doctrine is wrong as a matter of law.

For the law-of-the-case doctrine to apply, "the appellate court must actually address and decide the issue explicitly or by necessary implication." *Dictor v. Creative Mgmt. Servs.*, 126 Nev.Adv.Op. 4, 223 P.3d 332, 334 (2010). Issues that the appellate court declines to address "do not become the law of the case by default." *Id.* (quoting *Bone v. City of Lafayette*, 919 F.2d 64, 66 (7th Cir. 1990)). Therefore, "[t]he doctrine only applies to issues previously determined, not to matters left open by the appellate court." *Wheeler Springs Plaza v. Beemon*, 119 Nev. 260, 266 (2003); *Recontrust Co. v. Zhang*, 130 Nev.Adv.Op. 1, 317 P.3d 814, 818 (2014).

In its mandamus order, this Court directed dismissal of Fernley's federal constitutional claims as time-barred by the statute of limitations but stated "as to the remaining issues raised in the petition, although we make no comment on the merits of these arguments, we nonetheless decline to exercise our discretion to entertain this writ petition with regard to these issues." (*JA7-1:1375-76.*) This

Court clearly declined in its mandamus order to address the issue of whether Fernley's state constitutional claims are time-barred by the statute of limitations. Therefore, the district court's consideration of that issue was not precluded by the law-of-the-case doctrine.

Fernley contends that because this Court has not previously decided the issue of whether the statute of limitations applies to state constitutional claims, it can reasonably be inferred that no limitations period applies to such claims. (Opening Br. at 24.) Fernley, however, has not provided any authority to support a conclusion that the statute of limitations does not apply to its state constitutional claims seeking legal and equitable relief.

Since 1861, Nevada's statute of limitations has applied to all causes of action seeking legal and equitable relief. 1861 Nev.Laws, ch.12, §§1, 18, at 26, 29 (presently codified in NRS 11.010, 11.220). As early as 1868, the Court stated "it is clear that our Statute of Limitations embraces all characters of actions, legal and equitable, and is as obligatory upon the Courts in a suit in equity as in actions at law." *White v. Sheldon*, 4 Nev. 280, 288-89 (1868). As further explained by the Court, the statute of limitations:

> embraces every civil action, both legal and equitable, whether brought by an individual or the state; and if the cause of action is not particularly specified elsewhere in the statute, it is embraced in section 1033 [presently codified in NRS 11.220], and the action must be commenced within four years after the cause of action accrued. Such is the plain reading of the statute and the evident intention of the legislature.

State v. Yellow Jacket Mining, 14 Nev. 220, 230 (1879).

At the federal level, the U.S. Supreme Court has determined that "[a] constitutional claim can become time-barred just as any other claim can." *Block v. North Dakota*, 461 U.S. 273, 292 (1983); *United States v. Clintwood Elkhorn Mining*, 553 U.S. 1, 9 (2008). State courts have likewise determined that state constitutional claims can be time-barred by the statute of limitations. *See, e.g.*, *Rutledge v. State*, 412 P.2d 467, 472 (Ariz. 1966) (upholding 2-year statute of limitations because "[t]he legislature may impose a reasonable time within which an action must be brought to recover damages recoverable under a constitutional provision."); *Wood v. HSBC Bank*, 439 S.W.3d 585, 592-94 (Tex. App. 2014) (applying residual 4-year statute of limitations to state constitutional claims for declaratory relief); *City of E. Orange v. Livingston Twp.*, 27 N.J. Tax 161, 175-79 (2013) (holding that statute of limitations applied to state constitutional claims challenging excessive tax assessments).

Given this long-standing law in Nevada and elsewhere, it is untenable for Fernley to contend that no limitations period applies to its state constitutional claims. Thus, the district court correctly determined that the statute of limitations applies to Fernley's state constitutional claims to the same extent that it applies to any other claims for legal or equitable relief.

The district court also correctly determined that the general 4-year limitations period in NRS 11.220 covers this case because no other statute provides a more specific limitations period.[6] (*JA22-1:3971-76.*) Relying on *White Pine Lumber v. City of Reno*, 106 Nev. 778, 779-80 (1990), Fernley contends that this Court applied a 15-year limitations period to the plaintiff's constitutional takings claims and that it is more appropriate to analogize Fernley's claims to takings claims because Fernley alleges that it is being unconstitutionally deprived of tax revenues. (Opening Br. at 24-25.) Fernley's contentions have no merit.

First, it would not be appropriate to analogize Fernley's claims to takings claims because, as a political subdivision, Fernley cannot bring constitutional takings claims against the State as a matter of law. *City of Reno v. County of Washoe*, 94 Nev. 327, 329-31 (1978). Second, Fernley's claims are not similar to the plaintiff's constitutional takings claims in *White Pine Lumber* where the plaintiff—a private property owner—alleged that the city impermissibly required it to dedicate its constitutionally protected ownership interest in real property to the city as a condition for approval of a condominium project. 106 Nev. at 779-80.

[6] Because the 2-year statute of limitations in NRS 11.190(4)(e) applies to federal constitutional claims arising in Nevada, it also would be reasonable for the Court to apply the 2-year period to state constitutional claims. *See Wilson v. Garcia*, 471 U.S. 261, 279-80 (1985); *Owens v. Okure*, 488 U.S. 235, 236 (1989); *Day v. Zubel*, 112 Nev. 972, 977 (1996). Under either the 2-year or 4-year period, Fernley's claims are time-barred as a matter of law.

Unlike a private property owner, Fernley cannot claim any constitutionally protected ownership interest in C-Tax distributions because no political subdivision has a constitutionally protected ownership interest in state tax dollars.

Finally, in *White Pine Lumber*, the Court held that a specific statute provided a 15-year limitations period for the plaintiff's constitutional takings claim which meant that the general 4-year period did not apply. *Id.* If anything, *White Pine Lumber* substantiates that: (1) the statute of limitations applies to constitutional claims; and (2) unless there is a different period in a specific statute, the general 4-year period is the applicable limitations period. Because Fernley fails to cite any specific statute which provides a longer limitations period for its state constitutional claims, the district court correctly determined that the general 4-year limitations period in NRS 11.220 applies to Fernley's claims.

The district court also correctly determined that the statute of limitations began to run on Fernley's claims when it incorporated in 2001. Fernley contends that its "injuries, both past and future, were not apparent in 1997 or even in 2001, and did not manifest until Fernley grew significantly without receiving comparable C-Tax revenues." (Opening Br. at 26.) This Court rejected Fernley's reasoning in its mandamus order, stating that "[n]either party disputes that, at the time of the City's incorporation in 2001, the City was aware that absent specific

circumstances, its base consolidated-tax distributions would be set by its previous distributions and would remain at that level." (*JA7-1:1375.*)

Moreover, when the facts giving rise to a claim are a matter of public record, the general rule is that the limitations period begins to run immediately because courts will presume that "[t]he public record gave notice sufficient to start the statute of limitations running." *Cumming v. San Bernardino Redev. Agency*, 125 Cal.Rptr.2d 42, 46 (Cal.Ct.App. 2002). Under this rule, the public record provides constructive or presumed notice or knowledge that is considered to be equivalent to actual notice or knowledge. *Id.*

Considering the public record preceding its incorporation, Fernley was aware in 2001 that it would not realize a significant increase in C-Tax distributions due to incorporation, regardless of any population growth. Fernley also was aware in 2001 that its C-Tax distributions could be increased only if it provided the required services under NRS 360.740, assumed the functions of another local government under NRS 354.598747, or entered into a cooperative agreement with another local government under NRS 360.730. Thus, Fernley was aware in 2001 that its C-Tax distributions would continue to be calculated and adjusted using its original base distributions and the statutory formulas, unless it complied with one or more of the statutory methods for increasing its C-Tax distributions. Because the public record conclusively establishes that Fernley had notice or knowledge of how the C-Tax

system would apply to it in future years as an incorporated city, the district court correctly determined that the statute of limitations began to run on Fernley's claims when it incorporated in 2001.

Lastly, the district court correctly determined that the continuing violations doctrine recognized by federal law does not save Fernley's claims from being time-barred by the statute of limitations. In its mandamus order, this Court ordered the dismissal of Fernley's federal constitutional claims based on the statute of limitations even though Fernley argued for application of the continuing violations doctrine as an exception under federal law. (*JA7-1:1375*.) In doing so, the Court clearly rejected Fernley's reliance on the continuing violations doctrine to allow it to avoid the expiration of the limitations period, and that is now the law of this case. Given that the continuing violations doctrine, which is a creature of federal law, did not save Fernley's federal constitutional claims from the expiration of the statute of limitations, it follows that the doctrine does not save Fernley's state constitutional claims from the expiration of the statute of limitations either.

It also is well established that continuing impact from past violations does not extend the statute of limitations. *McDougal v. County of Imperial*, 942 F.2d 668, 674-75 (9th Cir. 1991); *McCoy v. San Francisco*, 14 F.3d 28, 30 (9th Cir. 1994) ("statute of limitations period is triggered by the decision constituting the discriminatory act and not by the consequences of that act."). Instead, "the proper

focus is upon the time of the [alleged] discriminatory acts, not upon the time at which the consequences of the acts became most painful." *Abramson v. Univ. of Hawaii*, 594 F.2d 202, 209 (9th Cir. 1979).

Despite this authority, Fernley contends that the C-Tax system results in systematic and repeated constitutional violations with every dollar collected and distributed under the system. (Opening Br. at 25.) However, in applying statutes of limitations in other jurisdictions, courts have rejected arguments similar to Fernley's where the alleged "wrong" is the government's use of an unlawful formula and where alleged deficiencies in future distributions are simply continued ill effects resulting from the ongoing use of the allegedly unlawful formula. Under such circumstances, courts have concluded that the "wrong" occurred when the government first used the allegedly unlawful formula and that any alleged deficiencies in future distributions are not separate "wrongs" for statute-of-limitations purposes. *See, e.g., Brown Park Estates-Fairfield Dev. Co. v. United States*, 127 F.3d 1449, 1456 (Fed. Cir. 1997) (where HUD allegedly used unlawful formula to calculate government rent subsidies, "wrong" occurred when HUD first used formula to calculate subsidies and alleged deficiencies in future subsidies are not separate "wrongs" for statute-of-limitations purposes); *Davidson v. United States*, 66 Fed. Cl. 206, 207-10 (Fed. Cl. 2005) (where Defense Department allegedly used unlawful formula to recalculate survivor benefit payments, "wrong"

occurred when Defense Department first recalculated the payments and alleged deficiencies in future payments are not separate "wrongs" for statute-of-limitations purposes).

Even though Fernley alleges that a separate "wrong" has occurred with each C-Tax distribution since 2001, any "wrong" occurred, if at all, when the State used an allegedly unlawful formula to calculate Fernley's C-Tax distributions after its incorporation in 2001. Even if the amount of each C-Tax distribution to Fernley since 2001 has been deficient, the deficiencies are simply continued ill effects resulting from use of the allegedly unlawful formula in 2001. Therefore, because the alleged "wrong" to Fernley occurred in 2001 and because Fernley did not commence this action until 2012, the district court correctly determined that Fernley's state constitutional claims are time-barred by the statute of limitations as a matter of law.

III. Fernley's claims are time-barred by laches.

On appeal, a party who prevailed in the district court may "without cross appealing, advance any argument in support of the judgment even if the district court rejected or did not consider the argument." *Ford v. Showboat Operating Co.*, 110 Nev. 752, 755 (1994). Because the district court held that Fernley's claims are time-barred by the statute of limitations, it declined to consider the State's additional arguments that Fernley's claims are time-barred by laches. (*JA22-*

1:3976.) Although the district court did not consider the State's arguments, its judgment may be affirmed based on laches because Fernley's claims are time-barred by laches as a matter of law.

Constitutional claims may be time-barred by laches when there has been an unreasonable or inexcusable delay in bringing the claims and such delay has worked to the disadvantage or prejudice of others or has resulted in a change of circumstances which would make the granting of relief inequitable. *Miller v. Burk*, 124 Nev. 579, 598-99 (2008). The doctrine of laches is based on the maxim that equity aids the vigilant, not those who sleep on their rights. *Am. Int'l Group v. Am. Int'l Bank*, 926 F.2d 829, 835 (9th Cir. 1991) ("The fundamental premise of laches is that those who sleep on their rights surrender them; if you snooze, you lose."). To determine whether a constitutional challenge is barred by laches, the Court considers: (1) whether the party inexcusably delayed bringing the challenge and the length of the delay; (2) whether the delay constitutes acquiescence by the party in the validity of the legislation; and (3) whether the delay was prejudicial to others who relied on the validity of the legislation. *Burk*, 124 Nev. at 598-99. The applicability of laches turns upon the particular facts and circumstances of each case. *Carson City v. Price*, 113 Nev. 409, 412 (1997).

For purposes of applying laches, the fact that the plaintiff has publicly opposed governmental action in the political branches does not excuse the

plaintiff's failure to promptly commence a judicial action. *See Batiste v. New Haven*, 239 F.Supp.2d 213, 225 (D.Conn. 2002); *Mussington v. St. Luke's-Roosevelt Hosp.*, 824 F.Supp. 427, 434 (S.D.N.Y. 1993), *aff'd*, 18 F.3d 1033 (2d Cir. 1994). In *Batiste* and *Mussington*, the plaintiffs argued that laches did not bar their untimely constitutional claims because they had engaged in "vociferous public opposition" to the defendants' construction projects at the local agency level before they commenced their judicial actions. The courts rejected the plaintiffs' arguments and found that their claims were barred by laches because "despite the plaintiffs' 'vociferous public opposition' to the defendants' construction plans, the plaintiffs were required to address their grievance in court, not in the political arena, in order to preserve their claims." *Batiste*, 239 F.Supp.2d at 225; *Mussington*, 824 F.Supp. at 434.

When Fernley incorporated on July 1, 2001, it already knew that it would be receiving little to no increase in C-Tax revenue regardless of any projected population growth, unless it began to provide the requisite services or assumed the functions of another local governmental entity as required by the C-Tax statutes. (*JA20-1:3536-48.*) But despite having knowledge of the operation of the C-Tax system and its alleged inequities since at least 2001, Fernley inexcusably and unreasonably slept on its rights and waited nearly 11 years to bring its claims.

In the district court, Fernley contended that its delay was excusable because during that period, it "unsuccessfully lobbied for relief from the Legislature, requested assistance from the Department, and pursued adjustments from Lyon County before commencing this action." (*JA17-2:2910.*) However, for purposes of laches, the fact that Fernley may have sought redress in the political branches does not excuse its failure to promptly commence a judicial action. Thus, even assuming Fernley diligently sought redress before the political branches during that 11-year period, Fernley's efforts do not excuse its 11-year delay in commencing its judicial action because nothing stopped Fernley during that 11-year period from timely pursuing judicial remedies while concurrently pursuing other remedies in the political branches.

Next, since at least 1998, the public record conclusively establishes that Fernley had notice or knowledge of how the C-Tax system would apply to it in future years as an incorporated city, but it incorporated anyway and thereby publicly acquiesced in any alleged inequities of the C-Tax system through its official act of incorporation. Before Fernley incorporated, the Chair of its Incorporation Committee informed the CLGF in a public meeting that "the change in [C-Tax] law is really equitable and really, really works nicely." (*JA20-1:3567.*) Thereafter, if Fernley believed the C-Tax system was not so equitable, it had a legal duty to pursue judicial relief in a diligent and timely manner instead of

waiting 11 years. By failing to act diligently and timely within that 11-year period, Fernley acquiesced in any alleged inequities of the C-Tax system.

Finally, Fernley's inexcusable delay has prejudiced the State and the participants in the C-Tax system. Since 1997, the State has reasonably relied on the validity of the C-Tax system to provide supplemental funding to augment the operations of local governments, and those local governments and their citizens have reasonably relied on the validity of the C-Tax system for purposes of local budgeting and fiscal planning and they have a reasonable expectation in continuing to receive their allotted distributions under that system. If the C-Tax system is declared invalid now after such a long period of operation, such a declaration would bring chaos to Nevada's tax distribution system, and it would prejudice the State and those local governments and their citizens who have reasonably relied on the validity of the C-Tax system for nearly two decades. Because consideration of Fernley's claims after such an unreasonable and inexcusable delay would upset settled expectations, would work to the disadvantage and prejudice of others, and would make the granting of relief inequitable, Fernley's claims are time-barred by laches as a matter of law, and the district court's judgment should be affirmed based on laches.

IV. Fernley lacks standing to bring separation-of-powers claims against the State.

The district court correctly determined that Fernley lacks standing to bring separation-of-powers claims against the State as a matter of law. (*JA22-1:3982-JA22-2:3985.*) Fernley contends that courts in other states have allowed political subdivisions to bring separation-of-powers claims against their state governments. (Opening Br. at 35.) However, the rule in Nevada is that political subdivisions lack standing to bring claims against the State alleging violations of state constitutional provisions unless the provisions exist for the protection of the political subdivisions, such as provisions which protect political subdivisions from certain types of special or local laws. *City of Reno v. County of Washoe*, 94 Nev. 327, 329-32 (1978); *State ex rel. List v. County of Douglas*, 90 Nev. 272, 280-81 (1974). As explained by New York's highest court:

> the traditional principle throughout the United States has been that municipalities . . . lack capacity to mount constitutional challenges to acts of the State and State legislation. . . . Moreover, our Court has extended the doctrine of no capacity to sue by municipal corporate bodies to a wide variety of challenges based as well upon claimed violations of the State Constitution.

City of New York v. State, 655 N.E.2d 649, 651-52 (N.Y. 1995).

For example, Nevada's political subdivisions lack standing to bring claims against the State for violations of the Due Process Clause of Article 1, §8 of the Nevada Constitution because that provision does not exist for the protection of

political subdivisions. *Reno*, 94 Nev. at 330. By contrast, Nevada's political subdivisions have standing to bring claims against the State for violations of Article 4, §§20-21 of the Nevada Constitution because those provisions "exist for the protection of political subdivisions of the State. Their effect is to limit the Legislature, in certain instances, to the enactment of general, rather than special or local, laws." *Id.* at 332.

The reason that political subdivisions are generally prohibited from bringing claims against the State alleging constitutional violations is that political subdivisions are not independent sovereigns with plenary authority to act contrary to the will of their creator. *List*, 90 Nev. at 279-81. Rather, political subdivisions are created by the State for the convenient administration of government, and they are entitled to challenge the actions of their creator *only if* a constitutional provision is enacted specifically to protect political subdivisions from the State's actions. *Reno*, 94 Nev. at 329-32.

The separation-of-powers provision of the Nevada Constitution does not exist for the protection of political subdivisions. By its plain terms, the separation-of-powers provision has no application to political subdivisions and provides them with no protection from state action. Nev. Const. art. 3, § 1(1) ("The powers of the Government of the State of Nevada shall be divided into three separate departments"). The separation-of-powers provision exists for the protection of

state government by prohibiting one branch of state government from impinging on the functions of another branch of state government. *Comm'n on Ethics v. Hardy*, 125 Nev. 285, 291-94 (2009); *Heller v. Legislature*, 120 Nev. 456, 466-72 (2004); *Sawyer v. Dooley*, 21 Nev. 390, 396 (1893) ("As will be noticed, it is the *state* government as created by the constitution which is divided into departments.") (emphasis added).

The conclusion that the separation-of-powers provision does not exist for the protection of political subdivisions is reinforced by the fact that the separation-of-powers provision does not apply to local governments in any way. In interpreting the separation-of-powers provision of the California Constitution of 1849, which was the model for Nevada's separation-of-powers provision, the California Supreme Court has stated that "the Third Article of the Constitution means that the powers of the *State* Government, not the local governments thereafter to be created by the Legislature, shall be divided into three departments." *People v. Provines*, 34 Cal. 520, 534 (1868). Thus, "it is settled that the separation of powers provision of the constitution, art. 3, §1, does not apply to local governments as distinguished from departments of the state government." *Mariposa County v. Merced Irrig. Dist.*, 196 P.2d 920, 926 (Cal. 1948).

Because the separation-of-powers provision of the Nevada Constitution does not exist for the protection of political subdivisions, the district court correctly

determined that Fernley lacks standing to bring separation-of-powers claims against the State as a matter of law.

V. Fernley's separation-of-powers claims have no merit.

The district court correctly determined that the C-Tax statutes do not violate the separation-of-powers provision of Article 3, §1 of the Nevada Constitution. (*JA22-2:3985-89*.) Fernley contends that the C-Tax system violates the separation-of-powers provision because the Legislature has unconstitutionally delegated its power over appropriation of C-Tax revenues to the Department without any legislative participation or oversight. (Opening Br. at 34-38.) Fernley's contention fails as a matter of law because the C-Tax system is a lawfully enacted ongoing appropriation which operates prospectively on a recurrent basis in future years and which the Department must administer under clearly defined statutory standards.

It is well established that there is no unconstitutional delegation of legislative power to an executive branch agency when the agency must work within sufficiently defined statutory standards to carry out the statutory provisions. *Sheriff v. Luqman*, 101 Nev. 149, 153-54 (1985); *Nev. Indus. Comm'n v. Reese*, 93 Nev. 115, 120 (1977); *State v. Bowman*, 89 Nev. 330, 334 (1973); *State v. Shaughnessy*, 47 Nev. 129, 135 (1923). As explained by the Court:

> Although the legislature may not delegate its power to legislate, it may delegate the power to determine the facts or state of things upon which the law makes its own operations depend. Thus, the legislature can make the application or operation of a statute complete within itself

> dependent upon the existence of certain facts or conditions, the ascertainment of which is left to the administrative agency. In doing so the legislature vests the agency with mere fact finding authority and not the authority to legislate. The agency is only authorized to determine the facts which will make the statute effective. Such authority will be upheld as constitutional so long as suitable standards are established by the legislature for the agency's use of its power. These standards must be sufficient to guide the agency with respect to the purpose of the law and the power authorized. Sufficient legislative standards are required in order to assure that the agency will neither act capriciously nor arbitrarily.

Luqman, 101 Nev. at 153-54 (citations omitted).

Thus, the Legislature may delegate authority to execute tax statutes so long as the agency charged with that responsibility must work within sufficiently defined statutory standards. *See City of Las Vegas v. Mack*, 87 Nev. 105, 109 (1971). There is no separation-of-powers violation when the Legislature authorizes the agency to distribute tax proceeds pursuant to specific statutory formulas which provide such standards. *See Bd. of Comm'rs v. Cooper*, 264 S.E.2d 193, 198 (Ga. 1980); *Amos v. Mathews*, 126 So. 308, 335-36 (Fla. 1930).

With regard to appropriations, the Nevada Constitution provides that "[n]o money shall be drawn from the treasury but in consequence of appropriations made by law." Nev. Const. art. 4, §19. Thus, the power to make appropriations is a legislative power. *See State v. Eggers*, 29 Nev. 469, 475 (1907) ("The provision that no moneys shall be drawn from the treasury but in consequence of appropriations made by law requires that their expenditure shall first be authorized

by the legislature, which stands as the representative of the people."). When the Legislature exercises the power to make appropriations, "[i]t is not necessary that all expenditures be authorized by the general appropriation bill. The language in any act which shows that the legislature intended to authorize the expenditure, and which fixes the amount and indicates the fund, is sufficient." *Id.* Furthermore, the Legislature may constitutionally enact an ongoing appropriation in a permanent and continuing statute which operates prospectively on a recurrent basis in future years so long as "a method is provided whereby the exact amount to be expended in pursuance of the act may be ascertained." *Norcross v. Cole*, 44 Nev. 88, 93 (1920); *State v. LaGrave*, 23 Nev. 25, 26-27 (1895) ("an appropriation may be prospective, that is, it may be made in one year of the revenues to accrue in another or future years, the law being so framed as to address itself to such future revenues." (quoting *Ristine v. State*, 20 Ind. 328, 339 (1863))); *State v. Cooper*, 536 S.E.2d 870, 877 (S.C. 2000) ("An appropriation may be made by a permanent continuing statute. A continuing appropriation is an appropriation running on from year to year without further legislative action until the purpose of levy and appropriation has been accomplished." (citations omitted)).

The C-Tax statutes contain a constitutionally valid ongoing appropriation and provide the Department with clearly defined statutory standards to carry out the statutory provisions. The C-Tax statutes provide a clearly defined statutory

method whereby the Department can ascertain the exact amount to be appropriated from the Local Government Tax Distribution Account in each fiscal year based on specific statutory formulas. NRS 360.600-360.740. The Department is only authorized to apply its findings of fact, based on fiscal data, to the mathematical equations set forth in the C-Tax statutes to arrive at the exact amount to be appropriated to each local government. *Id.* Fernley admits that the Department distributes C-Tax revenues based solely on the outcome of its mechanical application of the mathematical formulas in the C-Tax statutes. (Opening Br. at 37.) Therefore, because the Department properly functions as a factfinder under the C-Tax statutes and must perform its statutory duties in accordance with clearly defined statutory standards, the C-Tax statutes do not unconstitutionally delegate the Legislature's power over appropriation of C-Tax revenues to the Department.

Furthermore, there has been extensive legislative participation and oversight concerning the C-Tax system. The nearly 20-year legislative history of the C-Tax system shows that the Legislature has conducted numerous interim studies of the system and has considered legislation proposing material changes to the system during every legislative session since its enactment in 1997. Over the past two decades, the Legislature has regularly, repeatedly and comprehensively considered, examined and studied all aspects of the C-Tax system, and when the Legislature has deemed it necessary to change the C-Tax system as a matter of public policy,

the Legislature has enacted legislation amending the C-Tax statutes to conform with its public policy determinations. The fact that Fernley disagrees with the Legislature's public policy determinations does not result in a constitutional violation because "[t]he policy, wisdom, or expediency of a law is within the exclusive theater of legislative action. It is a forbidden sphere for the judiciary, which courts cannot invade, even under pressure of constant importunity." *In re McKay's Estate*, 43 Nev. 114, 127 (1919).

Therefore, because the Legislature has not unconstitutionally delegated its power over appropriation of C-Tax revenues to the Department without any legislative participation or oversight, the district court correctly determined that the C-Tax statutes do not violate the separation-of-powers provision as a matter of law.

VI. Fernley's special-or-local law claims have no merit.

The district court correctly determined that the C-Tax statutes are general laws, not special or local laws, and therefore do not violate the special-or-local law provisions of Article 4, §§20-21. (*JA22-2:3989-97*.) When a statute is challenged as an invalid special or local law, the threshold issue is whether the statute is, in fact, a special or local law. *Youngs v. Hall*, 9 Nev. 212, 217-22 (1874). If the statute is a general law, Article 4, §§20-21 are not implicated, and the statute must be upheld. *Id.*

A statute that applies "upon all persons similarly situated is a general law." *Id.* at 222. In other words, "[a] law is general when it applies equally to all persons embraced in a class founded upon some natural, intrinsic, or constitutional distinction." *Clean Water Coalition v. M Resort*, 127 Nev.Adv.Op. 24, 255 P.3d 247, 254 (2011) (quoting *Colman v. Utah State Land Bd.*, 795 P.2d 622, 636 (Utah 1990)). At their core, the special-or-local law provisions "reflect a concern for equal treatment under the law." *Clean Water Coalition*, 255 P.3d at 254 (quoting Robert F. Williams, *Equality Guarantees in State Constitutional Law*, 63 Tex. L. Rev. 1195, 1209 (1985)). Equal treatment under the law allows the Legislature to create different classifications of treatment, but the legislative classifications must be rationally related to a legitimate governmental purpose and must apply uniformly to all who are similarly situated.[7]

With regard to the distribution of state tax dollars, it is well established that no local government has a constitutional right to an equal or equitable distribution of state tax dollars because the Legislature may "disburse the proceeds of taxes, fees, and penalties to various communities inequitably according to need."

[7] *See Flamingo Paradise Gaming v. Chanos*, 125 Nev. 502, 520-22 (2009) (holding that businesses with nonrestricted gaming licenses were not similarly situated to businesses with restricted gaming licenses and because these businesses have different impacts on the economy, there was a rational basis for treating them differently).

Anthony v. State, 94 Nev. 337, 342 (1978).[8] Thus, if the Legislature enacts a statute which creates legislative classifications among local governments and distributes different amounts of state tax dollars to different local governments based on those legislative classifications, the statute is not a special or local law if "the classification is constitutionally reasonable." *McKenney v. Byrne*, 412 A.2d 1041, 1049 (N.J. 1980) (holding that a statutory scheme which distributed different amounts of state tax dollars to different local governments using statutory formulas "is not a special or local law because the classification is constitutionally reasonable.").

The C-Tax statutes create constitutionally reasonable classifications and apply statewide to all similarly situated local governments. When the Legislature enacted the C-Tax system, it wanted to encourage the formation of new general-purpose local governments that would provide their own traditional general-purpose governmental services such as police and fire protection. The C-Tax

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[8] *See also City of Las Vegas v. Mack*, 87 Nev. 105, 110 (1971) ("we are aware of no authority . . . which declares that an inequality in distribution of the tax in and of itself is sufficient to constitute a denial of due process."); *N.Y. Rapid Transit Corp. v. City of New York*, 303 U.S. 573, 578 (1938) ("The power to make distinctions exists with full vigor in the field of taxation, where no 'iron rule' of equality has ever been enforced upon the states."); *Hess v. Mullaney*, 213 F.2d 635, 640 (9th Cir. 1954) ("No requirements of uniformity or of equal protection of the law limit the power of a legislature in respect to allocation and distribution of public funds.").

statutes were drafted so that "the distribution formula was a deliberate attempt to promote the formation of general-purpose governments." (*JA17-4:3026*.) Consequently, the statutes "discriminated against those performing less governmental functions in favor of those who performed more governmental functions." (*JA17-4:3028*.)

The Legislature's objectives serve a legitimate governmental purpose because they incentivize new local governments to provide their own traditional general-purpose governmental services in exchange for increased C-Tax distributions. Because Fernley is a new local government that does not provide its own traditional general-purpose governmental services such as police and fire protection, it is not similarly situated to other cities formed before the enactment of the C-Tax statutes, like Elko, Mesquite and Boulder City, which provide those services. Consequently, there is a rational basis for placing Fernley in a different class and treating Fernley differently as a new local government.[9]

Additionally, the C-Tax statutes do not single out Fernley by name or subject it to specialized burdens which would not be imposed on other new local

[9] *See Town of Ball v. Rapides Parish*, 746 F.2d 1049, 1062 (5th Cir. 1984) (holding that denying share of tax revenue to newly created town is rationally related to a legitimate governmental purpose because the legislative body "could have felt that in this parish there was no need for an additional incorporated town and denial of sales tax proceeds would be an effective counterforce.").

governments that are similarly situated. *Cf. Clean Water Coalition*, 255 P.3d at 253-62 (holding that a statute which singled out a political subdivision by name and subjected it to specialized burdens not imposed on other political subdivisions was not a general law). On the contrary, the C-Tax statutes apply uniformly to all new local governments that incorporate in Nevada after July 1, 1998. Although Fernley is the only entity that has incorporated in Nevada since July 1, 1998, if any other entity incorporates in Nevada, it will be required to comply with the same statutory requirements as Fernley in order to qualify for increased C-Tax distributions as a new local government under the C-Tax statutes. NRS 360.740; NRS 354.598747. Therefore, the C-Tax statutes apply uniformly to all new local governments that are similarly situated and do not place Fernley in a closed class of one because "the classification applies prospectively to all [new local governments] which might come within its designated class." *County of Clark v. City of Las Vegas*, 97 Nev. 260, 263 (1981).[10]

[10] *See also Reid v. Woofter*, 88 Nev. 378, 380 (1972) ("Since [the statute] in its operation and effect is so framed as to apply in the future to all counties coming within its designated class, it is neither local nor special within the provisions of Nev. Const., art. 4, §§ 20 or 21."); *Fairbanks v. Pavlikowski*, 83 Nev. 80, 83 (1967) ("The fact [the statute] might apply only to Las Vegas township is of no moment, for if there were others, the statute would then too apply. It therefore conforms to the constitutional mandate that there shall be no local and special laws, and that general laws shall have uniform operation.").

As noted by this Court, "all legislation necessarily involves linedrawing. But as long as there is a rational basis for the distinction drawn, it must be upheld." *Allen v. State*, 100 Nev. 130, 136-37 (1984). In the C-Tax statutes, the Legislature drew a line between cities formed before the enactment of the C-Tax statutes, like Elko, Mesquite and Boulder City, and cities formed thereafter, like Fernley and any other new local government that may incorporate and come within the designated class. Because there is a rational basis for the distinction drawn by the Legislature, the C-Tax statutes must be upheld.

That rational basis also makes Fernley's reliance on *Anthony v. State*, 94 Nev. 337, 342 (1978), misplaced. In *Anthony*, the Court struck down statutory provisions which distributed tax proceeds to local governments in Clark County based on a weighted population classification that favored only the City of Las Vegas because:

> The ostensible purpose of the challenged legislation is to distribute taxes equally between local governmental units. Yet, the population classification bears no rational relation to that purpose. Nor is there any showing why tax distribution should be any different in our more populous counties. While the Legislature may, within constitutional limits, disburse the proceeds of taxes, fees, and penalties to various communities inequitably according to need, *City of Las Vegas v. Mack*, 87 Nev. 105 (1971), when the Legislature chooses to disburse among other cities according to population proportion, however, there must be some rational basis for treating the largest city in a particular county different from other cities. Here, such rationality is absent.

Anthony, 94 Nev. at 342.

Unlike the statutory provisions in *Anthony* which were not supported by a rational basis for treating local governments differently, there is a rational basis for placing Fernley in a different class as a new local government and treating Fernley differently under the C-Tax statutes because Fernley does not provide its own traditional general-purpose governmental services such as police and fire protection and it is not similarly situated to other cities formed before the enactment of the C-Tax statutes, like Elko, Mesquite and Boulder City, which provide those services. Given this rational basis for differential treatment, the C-Tax statutes create constitutionally reasonable classifications that apply uniformly to all similarly situated local governments embraced in classes founded upon natural, intrinsic, rational and constitutional distinctions. Consequently, the C-Tax statutes are general laws, not special or local laws, and they do not violate the special-or-local law provisions of Article 4, §§20-21.

Furthermore, even if the C-Tax statutes were local or special laws, they still would not violate Article 4, §§20-21. Although the Nevada Constitution expresses a preference for general laws, local and special laws are not per se unconstitutional. *Clean Water Coalition*, 255 P.3d at 255. A local or special law must be upheld when: (1) it does not come within any of prohibited categories in Article 4, §20; and (2) it conforms with Article 4, §21 because a general law could not have been made applicable under the circumstances. *Id.*

Fernley contends that the C-Tax statutes come within a prohibited category in Article 4, §20 because the statutes are local or special laws "[f]or the assessment and collection of taxes for state, county, and township purposes." (Opening Br. at 26-30.) However, this prohibition in Article 4, §20 applies only to laws which regulate the method or manner in which local assessors and collectors of taxes perform their assessment and collection duties. *City of Reno v. County of Washoe*, 94 Nev. 327, 334-35 (1978); *Cauble v. Beemer*, 64 Nev. 77, 87-88 (1947); *Washoe County Water Dist. v. Beemer*, 56 Nev. 104, 117 (1935). As explained by the Court, "[w]e are clearly of opinion that the constitutional provision simply prohibits special legislation regulating those acts which the assessors and collectors of taxes generally perform, and which are denominated 'assessment' and 'collection of taxes.'" *Gibson v. Mason*, 5 Nev. 283, 305 (1869). A law cannot violate Article 4, §20 when it "contains no provision whatever respecting the assessment or collection of the tax complained of, in the sense in which those words are employed in the Constitution." *Id.* Thus, the prohibition does not apply to the distribution of tax proceeds.[11]

[11] If the prohibition applied to the distribution of tax proceeds, then every legislative appropriation over the past 150 years which authorized the distribution of state money to a specific local government would be constitutionally suspect.

The six statewide taxes whose proceeds are deposited in the Local Government Tax Distribution Account are all collected under different general laws that are separate from the C-Tax statutes. Fernley does not allege that any of the different general laws governing the collection of the six statewide taxes violates Article 4, §20. Instead, all of Fernley's allegations concern the distribution of the proceeds of the taxes after they are assessed and collected. Furthermore, the C-Tax statutes contain no provisions dealing with the assessment or collection of the six statewide taxes that are deposited in the Account. The C-Tax statutes deal only with distribution of the proceeds of the taxes after they are assessed and collected. Thus, even if the C-Tax statutes were local or special laws, they would not be local or special laws "[f]or the assessment and collection of taxes" which violate Article 4, §20.

Finally, under Article 4, §21, the Legislature has the power to enact special and local laws "unless it manifestly appear[s] that a general law could have been made applicable." *Hess v. Pegg*, 7 Nev. 23, 28 (1871). When determining whether a special or local law is permissible because a general law could not be made "applicable" for purposes of Article 4, §21, the Court looks to whether a general law could sufficiently "answer the just purposes of [the] legislation; that is, best subserve the interests of the people of the State, or such class or portion as the

particular legislation is intended to affect." *State v. Irwin*, 5 Nev. 111, 122 (1869); *Clean Water Coalition*, 255 P.3d at 259 (discussing the *Irwin* standard).

In applying this standard, the Court has stated that the Legislature's decision to enact a special or local law must stand where a general law "fails to accomplish the proper and legitimate objects of [the] legislation." *Hess*, 7 Nev. at 28; *Evans v. Job*, 8 Nev. 322, 340-41 (1873). The Court has also rejected the notion that a special or local law is invalid simply because it is possible to conceive of a general law that could address some purposes of the legislation. *Irwin*, 5 Nev. at 122-25; *Hess*, 7 Nev. at 28-29. If a general law could not sufficiently "subserve" or carry out the just purposes of the legislation under the particular circumstances, a special or local law is permissible.

Fernley contends that the Legislature could enact a general law which distributes C-Tax revenues in the same manner to new local governments formed after the enactment of the C-Tax statutes, like Fernley, and to preexisting local governments formed before the enactment of the C-Tax statutes, like Elko, Mesquite and Boulder City. However, such a general law would not sufficiently "subserve" or carry out the just purposes of the C-Tax statutes as intended by the Legislature.

When the Legislature enacted the C-Tax system, it decided to incentivize new local governments, like Fernley, to provide certain services to their residents in

exchange for increased C-Tax distributions. However, because preexisting local governments, like Elko, Mesquite and Boulder City, already provide the traditional general-purpose governmental services of police and fire protection, it would not accomplish the just purposes of the C-Tax statutes to apply the statutes in the same manner to preexisting local governments because they are intrinsically different from new local governments. Therefore, even if the C-Tax statutes are special or local laws because they treat new local governments differently from preexisting local governments, such special or local laws are permissible under Article 4, §21 because a general law could not sufficiently "answer the just purposes of [the] legislation" and therefore could not be made applicable under these particular circumstances.

Fernley also contends that the Legislature could have enacted a general law relating to the collection and appropriation of C-Tax revenues because "the taxes could have been collected, deposited into a fund segregated for local governments, and appropriated biennially by the Legislature after a careful review of local government budgets." (Opening Br. at 32.) Fernley's contention is defeated by its own example. Under that example, the Legislature would be required to make individualized local and special appropriations during each regular session to each separate local government based on an individualized local and special review of each separate local government budget. That is the antithesis of a law that is

"general and of uniform operation throughout the State." Nev.Const. art.4, §21. What Fernley's example amply demonstrates is that even if the C-Tax statutes were local or special laws, they still would not violate Article 4, §21 because given the unique and peculiar differences and circumstances among local governments, a general law could not be made applicable to meet the unique and peculiar needs of each particular local and special situation. Therefore, Fernley's Article 4, §21 claims fail as a matter of law.

VII. The district court correctly dismissed all claims against the Treasurer.

In its June 6, 2014 order, the district court dismissed all claims against the Treasurer because the district court determined that the Treasurer was entitled to sovereign immunity under NRS 41.032 as a matter of law. (*JA7-3:1453-54.*) On June 18, 2014, Fernley filed a Motion for Partial Reconsideration and Rehearing of the Court's June 6, 2014 Order and argued that the district court erred by dismissing all claims against the Treasurer based on sovereign immunity. (*JA12-1:2005-09.*) In its October 6, 2014 order, the district court denied, as moot, Fernley's Motion for Partial Reconsideration and Rehearing of the Court's June 6, 2014 Order because the district court determined that all State Defendants, including the Treasurer, were entitled to judgment as a matter of law on all causes of action and claims for relief alleged in Fernley's complaint. (*JA22-1:3950-51.*)

On appeal, Fernley does not challenge the district court's determination in its June 6, 2014 order that sovereign immunity bars Fernley's claims for *money damages* against the Treasurer. (Opening Br. at 40 n.8.) Instead, Fernley challenges the district court's determination in its June 6, 2014 order that sovereign immunity bars Fernley's claims for *declaratory and injunctive relief* against the Treasurer. (Opening Br. at 38-40.)

The issue of whether sovereign immunity bars Fernley's claims for declaratory and injunctive relief against the Treasurer is moot because the district court correctly entered a final judgment in favor of all State Defendants, including the Treasurer, on other grounds. As thoroughly discussed above, all of Fernley's causes of action and claims for relief against the State are barred by the statute of limitations as a matter of law. In addition, Fernley lacks standing as a matter of law to bring separation-of-powers claims against the State. Finally, Fernley's state constitutional claims have no merit as a matter of law because the C-Tax statutes do not violate the separation-of-powers provision of Article 3, §1 or the special-or-local law provisions of Article 4, §§20-21.

Because the district court correctly determined that all State Defendants, including the Treasurer, are entitled to judgment as a matter of law, the district court's final judgment must be affirmed as to all State Defendants, including the Treasurer, and there is no need for the Court to consider the issue of whether

sovereign immunity bars Fernley's claims for declaratory and injunctive relief against the Treasurer. *See Rosenstein v. Steele*, 103 Nev. 571, 575 (1987) ("[T]his court will affirm the order of the district court if it reached the correct result, albeit for different reasons.").

VIII. The district court correctly awarded costs to the Department as a prevailing party.

The district court correctly awarded costs in the amount of $8,489.04 to the Department as a prevailing party under NRS 18.020(3) and 18.025. (*JA23-3:4190-94.*) Fernley contends that the district court abused its discretion when it awarded costs to the Department rather than ordering that all parties bear their own costs given the unique constitutional nature of this case and the fact that all parties are governmental entities. (Opening Br. at 41.) Fernley's contentions have no merit.

Under NRS 18.020(3), "the prevailing party in an action alleging more than $2,500 in damages is entitled to recover all costs as a matter of right." *Albios v. Horizon Communities*, 122 Nev. 409, 431 (2006). The district court does not have the discretion to deny an award of costs to a prevailing party in an action alleging more than $2,500 in damages. *U.S. Design & Const. Corp. v. Int'l Broth. of Elec. Workers*, 118 Nev. 458, 463 (2002). The district court only has the discretion to determine the reasonableness of the individual costs to be awarded. *Id.* Further, under NRS 18.025, the district court may not refuse to award costs solely because a public agency is the prevailing party.

By contrast, in an action for declaratory relief, an award of costs is discretionary. NRS 30.120. Similarly, because an action for injunctive relief is generally considered an action in equity, an award of costs is also discretionary. *See Ormachea v. Ormachea*, 67 Nev. 273, 301 (1950) ("when the court is sitting as a court of equity it is not bound by the statute fixing costs as in other cases, but may exercise its discretion."); *Magee v. Whitacre*, 60 Nev. 202, 205 (1939) ("This is an action in equity, and is clearly one in which the court is vested with discretion in the assessment of costs, under section 8927 N.C.L. [presently codified in NRS 18.050]"), *abrogated in part on other grounds by Lee v. GNLV Corp.*, 116 Nev. 424, 426 (2000).

In its complaint, Fernley brought claims alleging more than $2,500 in damages and claims for declaratory and injunctive relief. (*JA1-1:5-11.*) Fernley contends on appeal that "this case has always been more about prospective constitutional relief for Fernley than its claim for money damages." (Opening Br. at 40-41.) Fernley, however, cannot deny that throughout the proceedings in the district court, Fernley consistently asserted and pursued its claims for money damages. (*JA4-1:669; JA7-4:1487; JA20-2:3618; JA20-4:3684, 3691; JA21-2:3784-85.*) With regard to its claims for money damages, Fernley sought damages in an amount to be proven at trial on its first, second, third, fourth and fifth claims for relief. (*JA1-1:5-11.*) In response to the State's discovery request

for a calculation of those damages, Fernley estimated its damages to be $42,670,000, which is far in excess of $2,500. (*JA21-2:3784-85*.)

Because the district court determined that the Department is entitled to judgment as a matter of law on all causes of action and claims for relief alleged in Fernley's complaint, the Department is clearly a prevailing party on Fernley's claims for money damages and Fernley's claims for declaratory and injunctive relief. (*JA22-1:3950-51*.) As a prevailing party on Fernley's claims for money damages, the Department was entitled to an award of costs as a matter of right under NRS 18.020(3) and 18.025, and the district court did not have the discretion to deny an award of costs to the Department. The district court only had the discretion to determine the reasonableness of the individual costs awarded to the Department, and the district court's determination will not be reversed on appeal absent an abuse of discretion. *Vill. Builders 96 v. U.S. Labs.*, 121 Nev. 261, 276 (2005).

In its Opening Brief, Fernley does not challenge the district court's determination regarding the reasonableness of the individual costs awarded to the Department. (Opening Br. at 40-42.) Therefore, Fernley waived this issue on appeal. *Powell v. Liberty Mut. Fire Ins.*, 127 Nev.Adv.Op. 14 n.3, 252 P.3d 668, 672 n.3 (2011) ("Issues not raised in an appellant's opening brief are deemed waived."). Moreover, the district court did not abuse its discretion because the

Department presented sufficient justifying documentation to support the award of costs. (*JA23-1:4058-JA23-3:4177*.) Therefore, the Department properly established that the costs were "reasonable, necessary, and actually incurred." *Cadle Co. v. Woods & Erickson*, 131 Nev.Adv.Op. 15, 345 P.3d 1049, 1054 (2015).

Finally, without supporting legal authority, Fernley contends that sovereign immunity under NRS 41.032 bars an award of costs against it. However, Fernley's sovereign immunity is not greater than the State's sovereign immunity. NRS 41.031(1) ("The State of Nevada further waives the immunity from liability and action of all political subdivisions of the State, and their liability must be determined in the same manner [as the State]."). Therefore, if the State's sovereign immunity does not protect it from liability for costs, the same rule applies to all political subdivisions.

This Court has held that the State's sovereign immunity "does not limit the State's liability for attorney fees and costs." *Arnesano v. State Dep't of Transp.*, 113 Nev. 815, 821 (1997). Furthermore, NRS 18.150 expressly provides for the payment of costs by the State when it is a party to litigation and costs are awarded against it. *State ex rel. List v. Courtesy Motors*, 95 Nev. 103, 108 (1979) (holding that the State was liable for an award of costs in an unsuccessful action brought by the State). Therefore, like the State, political subdivisions are not protected by

sovereign immunity from an award of costs. Accordingly, because sovereign immunity does not bar an award of costs against Fernley, the district court correctly awarded costs in the amount of $8,489.04 to the Department as a prevailing party under NRS 18.020(3) and 18.025.

CONCLUSION

The State respectfully asks the Court to affirm the final judgment in favor of the State on all causes of action and claims for relief alleged in Fernley's complaint and the post-judgment award of costs to the Department as a prevailing party.

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

Respectfully submitted,

ADAM PAUL LAXALT
Attorney General

By: /s/ Andrea Nichols
ANDREA H. NICHOLS
Senior Deputy Attorney General
Nevada Bar No. 6436
OFFICE OF THE ATTORNEY GENERAL
5420 Kietzke Ln., Suite 202
Reno, NV 89511
Tel: (775) 688-1818
Fax: (775) 688-1822
anichols@ag.nv.gov
Attorneys for Respondents State of Nevada, Department of Taxation and State Treasurer

BRENDA J. ERDOES
Legislative Counsel

By: /s/ Kevin C. Powers
KEVIN C. POWERS
Chief Litigation Counsel
Nevada Bar No. 6781
LEGISLATIVE COUNSEL BUREAU,
LEGAL DIVISION
401 S. Carson Street
Carson City, NV 89701
Tel: (775) 684-6830
Fax: (775) 684-6761
kpowers@lcb.state.nv.us
Attorneys for Respondent Legislature of the State of Nevada

CERTIFICATE OF COMPLIANCE

1. We certify that the foregoing Answering Brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because the Answering Brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2010 in 14 point font and Times New Roman type.

2. We certify that the foregoing Answering Brief **does not** comply with the type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), the Answering Brief is proportionately spaced, has a typeface of 14 points or more, and contains **16,938** words, which exceeds the type-volume limitation of 14,000 words. **However, we certify that a motion to exceed the type-volume limitation has been filed with this brief pursuant to NRAP 32(a)(7)(D).**

3. We certify that we have read the foregoing Answering Brief, and to the best of our knowledge, information and belief, it is not frivolous or interposed for any improper purpose. We further certify that the Answering Brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the Answering Brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the appendix where the matter relied on is to be found. We understand that we may be

subject to sanctions in the event that the Answering Brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

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

ADAM PAUL LAXALT
Attorney General

By: /s/ Andrea Nichols
ANDREA H. NICHOLS
Senior Deputy Attorney General
Nevada Bar No. 6436
OFFICE OF THE ATTORNEY GENERAL
5420 Kietzke Ln., Suite 202
Reno, NV 89511
Tel: (775) 688-1818
Fax: (775) 688-1822
anichols@ag.nv.gov
Attorneys for Respondents State of Nevada, Department of Taxation and State Treasurer

BRENDA J. ERDOES
Legislative Counsel

By: /s/ Kevin C. Powers
KEVIN C. POWERS
Chief Litigation Counsel
Nevada Bar No. 6781
LEGISLATIVE COUNSEL BUREAU,
LEGAL DIVISION
401 S. Carson Street
Carson City, NV 89701
Tel: (775) 684-6830
Fax: (775) 684-6761
kpowers@lcb.state.nv.us
Attorneys for Respondent Legislature of the State of Nevada

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' Joint Answering Brief, by means of the Nevada Supreme Court's electronic filing system and electronic mail, directed to the following:

JOSHUA J. HICKS, Esq.
BROWNSTEIN HYATT FARBER SCHRECK, LLP
50 W. Liberty St., Suite 1030
Reno, NV 89501
jhicks@bhfs.com

BRANDI L. JENSEN, Esq.
OFFICE OF THE CITY ATTORNEY, FERNLEY, NEVADA
595 Silver Lace Blvd.
Fernley, NV 89408
bjensen@cityoffernley.org

CLARK V. VELLIS, Esq.
HOLLEY, DRIGGS, WALCH, PUZEY, THOMPSON
800 S. Meadows Pkwy., Suite 800
Reno, NV 89521
cvellis@nevadafirm.com

Attorneys for Appellant
City of Fernley, Nevada

/s/ Kevin C. Powers
An Employee of the Legislative Counsel Bureau