

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

DAN SCHWARTZ, in his official capacity as  
Treasurer of the State of Nevada,

*Appellant,*

v.

HELLEN QUAN LOPEZ, *et al.*,

*Respondents.*

Supreme Court No. 69611

District Court Case No. 15-DC-00207-1B

Dept. No. II Jan 21 2016 08:58 a.m.

Tracie K. Lindeman  
Clerk of Supreme Court

**MOTION TO EXPEDITE APPEAL**

Appellant Treasurer Dan Schwartz, by and through his counsel, Adam Paul Laxalt, Attorney General; Lawrence VanDyke, Solicitor General; Joseph Tartakovsky, Deputy Solicitor General; and Ketan Bhirud, Head of Complex Litigation, respectfully requests that this Court expedite the briefing, oral argument, and resolution of this appeal pursuant to NRAP 2, 26(d) and 31(a).

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. Facts and Procedural History**

This appeal arises from a constitutional challenge to Nevada's new Education Savings Account ("ESA") Program. The ESA law generally provides a means for Nevada parents with children enrolled in a public or charter school to choose a different option to meet their children's educational needs. These options are diverse, from different curriculum to smaller classes to superior accommodation of a disability. A parent who wishes to choose something other than a public school can apply for an Education Savings Account and the child will receive funds, deposited

into an account for that child, that can be used for education-related expenses at approved participating entities. The ESA law's premise is that parents know best.

More than 4,000 students have already applied to participate in the ESA Program. In October the Treasurer announced that approved ESAs would start being funded in early February, and thousands of Nevada families were relying on those funds. Last week, the First Judicial District Court preliminarily enjoined the Treasurer from implementing the ESA Program. The Treasurer seeks reversal of that order in this appeal.

The ESA Program was enacted as Senate Bill 302 and approved by Governor Sandoval on June 2, 2015. On September 9, 2015, Respondents filed their complaint, alleging that the ESA Program violates Article XI, Sections 2, 3, and 6 of the Nevada Constitution and seeking a declaratory judgment and a permanent injunction enjoining the Treasurer from implementing SB 302. They subsequently moved the District Court for a preliminary injunction.

On November 5, 2015, the Treasurer moved to dismiss the case. On December 24, 2015, the District Court summarily denied the motion.

SB 302 took effect on January 1, 2016. *See* SB 302, § 17.

On January 6, 2016, the District Court held a hearing on Respondents' preliminary injunction motion, and on January 11, 2016, it issued an order enjoining implementation of the ESA Program. The District Court rejected

Plaintiffs’ Section 2 and Section 3 claims, but concluded that Plaintiffs had shown a likelihood of success and irreparable harm on their Section 6 claim.

The Treasurer filed a notice of appeal on January 15, 2016, and this Court docketed the appeal on January 20, 2016.

**II. Expedited review is necessary to ensure that Nevada parents can make informed decisions about their children’s education and to ensure that the State can implement SB 302 in a timely manner.**

Expedited review of this appeal would serve the public interest.<sup>1</sup> The next school year begins for Nevada students in just seven months and new semesters are beginning now. Thousands of parents submitted applications for the ESA Program and are anxiously planning for the coming school year. Some parents have already been approved to participate in the program and as a result withdrew a child from one school and placed him in another. For many families, their ability to educate their sons and daughters as they believe best hinges on the existence of a fully implemented ESA program. Thousands of parents have made financial-planning decisions in reliance on the ESA Program. But in the wake of the District Court’s injunction, and the uncertainty and disruption it unleashed, those families now face

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<sup>1</sup> Cf. *Huckabay Properties, Inc. v. NC Auto Parts, LLC*, 130 Nev. Adv. Op. 23, 322 P.3d 429, 430 (2014) (noting “the public’s interest in expeditious resolution of appeals”); *City of Las Vegas v. Int’l Ass’n of Firefighters, Local # 1285*, 110 Nev. 449, 451, 874 P.2d 735, 737 (1994) (noting that it “is a matter of the utmost concern to this court, to litigants in general, and to this State’s citizens” that “appeals proceed to finality in an expeditious fashion”).

the agonizing choice of whether or not to continue pursuing the educational options best suited to their children. Some parents even face the immediate prospect of having to withdraw a child freshly settled in a happy new classroom and return her to one that failed her, or, in some cases, caused her emotional or physical pain.

In addition, the Treasurer and his staff have already spent over \$100,000 and hundreds of hours of time implementing SB 302, from data processing to answering parent queries to complex new software development. But the District Court's preliminary injunction has halted that preparation in its tracks. It will take additional time and money to resume implementing and operating the ESA Program, even if this Court quickly dissolves the District Court's injunction. The longer the injunction remains in place, the more difficult and costly it will be to implement the ESA Program for the 2016-17 school year.

In short, parents need to know as soon as possible if they can rely on the financial support promised in an important law adopted by their elected representatives. The State needs time to implement the program. A prompt review and resolution from this Court is necessary to satisfy both of those needs.

Therefore, the Treasurer respectfully moves this Court to expedite the disposition of this appeal. To assist the Court in reaching a timely resolution of this matter, the Treasurer proposes the following briefing schedule:

1. The Treasurer's opening brief will be due 21 calendar days after the date on which the Court grants this motion.
2. Respondents' answering brief will be due 21 calendar days after the date on which the opening brief is filed.
3. The Treasurer's reply brief will be due 10 calendar days after the date on which the answering brief is filed.
4. Oral argument will be heard at the Court's earliest convenience thereafter.

This proposed briefing schedule shortens the time in which the Treasurer has to file his opening brief by 99 days, shortens the time in which Respondents have to file their answering brief by 9 days, and shortens the time in which the Treasurer has to file his reply brief by 20 days. *See* NRAP 31(a)(1). Of course, if an alternative time frame would better suit this Court's docket, counsel will comply with any schedule the Court may order.

Appellant's counsel have contacted counsel for Respondents, and counsel for Respondents have confirmed that they concur in the above proposed expedited briefing schedule.

### **CONCLUSION**

For the foregoing reasons, Appellant Treasurer Dan Schwartz respectfully requests that this Court EXPEDITE review of this appeal, and that the Court ORDER that: the opening brief shall be due 21 calendar days after the Court's

order granting this motion; the answering brief shall be due 21 calendar days after the opening brief is filed; and the reply brief shall be due 10 calendar days after the answering brief is filed.

DATED this 20th day of January, 2016.

Respectfully submitted,

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Attorney General

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\*Motion for admission *pro hac vice*  
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## **CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing **MOTION TO EXPEDITE APPEAL** with the Clerk of the Court for the Nevada Supreme Court by using the appellate CM/ECF system on January 20, 2016.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, to the following non-CM/ECF participants:

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