

FIRST JUDICIAL DISTRICT COURT
IN AND FOR CARSON CITY, NEVADA

HELLEN QUAN LOPEZ, individually and on
behalf of her minor child, C.Q.; MICHELLE
GORELOW, individually and on behalf of her
minor children, A.G. and H.G.; ELECTRA
SKRYZDLEWSKI, individually and on behalf
of her minor child, L.M.; JENNIFER CARR,
individually and on behalf of her minor
children, W.C., A.C., and E.C.; LINDA
JOHNSON, individually and on behalf of her
minor child, K.J.; SARAH and BRIAN
SOLOMON, individually and on behalf of
their minor children, D.S. and K.S.,

Plaintiffs,

vs.

DAN SCHWARTZ, IN HIS OFFICIAL
CAPACITY AS TREASURER OF THE
STATE OF NEVADA,

Defendant.

Case No. 150C002071B

Dept. No.: II

DECLARATION OF SAMUEL T. BOYD IN
SUPPORT OF PLAINTIFFS' REPLY ON ITS
MOTION FOR A PRELIMINARY
INJUNCTION AND OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS

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(Nevada Bar No. 1021)
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(Nevada Bar No. 8519)
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DECLARATION OF SAMUEL T. BOYD

I, SAMUEL T. BOYD, declare as follows:

1. I am over the age of 18 and legally competent to make this declaration.

2. I am an attorney at the law firm of Munger, Tolles & Olson LLP and counsel for Plaintiffs in the above-captioned matter. I have personal knowledge of the facts set forth in this declaration, and, if called as a witness, I could and would testify competently to the matters set forth herein.

3. Attached as Exhibit 1 is a true and correct copy of Senate Bill 515.

4. Attached as Exhibit 2 is a true and correct copy of a document entitled "The Nevada Plan for School Finance: An Overview" published by the Fiscal Analysis Division of the Legislative Counsel Bureau of the Nevada Legislature for the 2015 Legislative Session. This document is also available online at: https://www.leg.state.nv.us/Division/Fiscal/NevadaPlan/Nevada_Plan.pdf.

5. Attached as Exhibit 3 is a true and correct copy of an excerpt from the Minutes of the Senate Committee on Finance, Seventy-Eight Session, May 14, 2015. This document is also available online at <https://www.leg.state.nv.us/Session/78th2015/Minutes/Senate/FIN/Final/1242.pdf>.

6. Attached as Exhibit 4 is a true and correct copy of a document entitled "Nevada K-12 Education Finance Fact Sheet" published by the Guinn Center for Policy Priorities in February 2015.

7. Attached as Exhibit 5 is a true and correct copy of a document entitled "Unsolicited Executive Agency Fiscal Note" prepared on May 25, 2015 and submitted to the Nevada Legislature by the Nevada Department of Education.

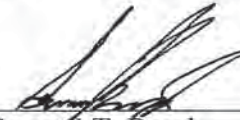
8. Attached as Exhibit 6 is a true and correct copy of SB 508.

9. Attached as Exhibit 7 is a true and correct copy of an excerpt from the Official Report of the Debates and Proceedings in the Constitutional Convention of the State of Nevada, dated 1866.

1 10. Attached as Exhibit 8 is a true and correct copy of an article entitled "ESA
2 applications reveal wealth gap" by Steve Sebelius, published in the Las Vegas Review-Journal on
3 November 1, 2015.

4 11. I declare under penalty of perjury that the foregoing is true and correct.

5 12. Executed on November 24, 2015, at Los Angeles, California.

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Samuel T. Boyd

The *NEVADA PLAN* For School Finance An Overview



**Fiscal Analysis Division
Legislative Counsel Bureau**

2015 Legislative Session

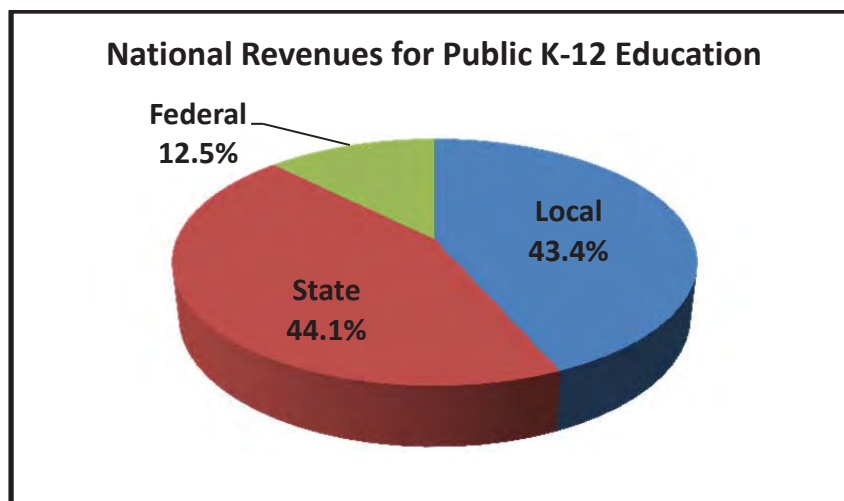


Nevada Plan for School Finance

I. Overview of Public K-12 Education Finance

National Overview

The National Center for Education Statistics (NCES) reports that approximately \$604.3 billion was collected in revenues for public elementary and secondary education in the United States in FY 2011 (the most recent year for which data is available). These revenues are used to support the operations of schools, as well as capital construction, equipment costs, and debt financing, and come from a combination of local, state, and federal sources. The greatest percentage of revenues came from state and local governments, which together provided \$528.8 billion, or approximately 87.5 percent of all revenues; the federal government's contribution was \$75.5 billion, or approximately 12.5 percent of all revenues.



Source: U.S. Department of Education, National Center for Education Statistics, Common Core of Data (CCD), "National Public Education Financial Survey (NPEFS)," FY 2011, preliminary Version 1a.

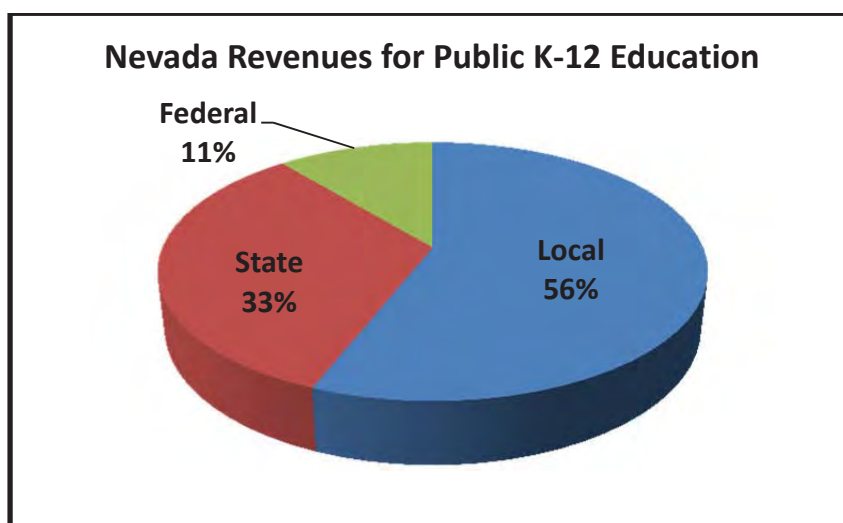
Between FY 2005 and FY 2011, total revenues for public elementary and secondary education in the United States have increased by 23.9 percent, from \$487.8 billion in FY 2005 to \$604.3 billion in FY 2011. However, not all revenue sources have increased at the same rate. The largest percentage increase has occurred in revenue provided by the federal government, which has increased from \$44.8 billion in FY 2005 to \$75.5 billion in FY 2011, a 68.5 percent increase. Over the same time period, local revenue for public K-12 education increased from \$214.4 billion to \$262.0 billion and state revenue increased from \$228.6 billion to \$266.8 billion, a 22.2 percent and 16.7 percent increase, respectively. See Appendix A for a chart showing changes in national revenues for public elementary and secondary education between FY 2005 and FY 2011.

Due to the differing financing mechanisms utilized in each of the states, there are tremendous differences between the revenue mix used to fund public elementary and secondary education. For example, among states with more than one school district, local contributions to the public K-12 education funding mix in FY 2011 varied from 7.6 percent in Vermont to 57.2 percent in Illinois. Similarly, state contributions to public K-12 education in FY 2011 varied from 29.1 percent in South Dakota to 81.7 in Vermont. As a result of these differences in funding mixes, meaningful comparisons across states of public elementary and secondary education revenue is difficult.

Nevada Overview

According to NCES, revenues in support of Nevada's public K-12 schools for FY 2011 were approximately \$4.21 billion. This represents a decrease of 5.2 percent from FY 2009 when revenues totaled \$4.44 billion. However, when compared to the FY 2005 total revenue of \$3.40 billion, revenue for public elementary and secondary education in Nevada has increased by 23.8 percent between FY 2005 and FY 2011. This percentage increase in K-12 public education revenue is nearly identical to the national increase of 23.9 percent over the same time period. See Appendix B for a chart showing changes in Nevada revenues for public elementary and secondary education between FY 2005 and FY 2011.

Like the nationwide support for education, financial support of Nevada's public elementary and secondary schools is a shared responsibility. In FY 2011 the local share of public K-12 education revenue totaled 56 percent (\$2.4 billion), while revenue from the state totaled 33 percent (\$1.4 billion). Total revenue for public elementary and secondary schools in Nevada in FY 2011 was rounded out by an 11 percent (\$0.5 billion) contribution from the federal government, which was below the national average of 12.5 percent.



Source: U.S. Department of Education, National Center for Education Statistics, Common Core of Data (CCD), "National Public Education Financial Survey (NPEFS)," FY 2011, preliminary Version 1a.

It should be noted that a large portion of the local funding in Nevada is derived from the state-mandated Local School Support Tax (LSST) and Ad Valorem Property/Mining Tax (property tax). As a result, the local share of public K-12 education revenue in Nevada

has historically been one of the highest in the nation. However, the Great Recession impacted the amount of local revenue collected for public elementary and secondary education, which caused a higher percentage of state funding to flow toward education. In FY 2006, the local share of K-12 public education revenue in Nevada topped out at 66.9 percent, the highest in the nation at that time (excluding the District of Columbia). By FY 2011, the local revenue share had dropped to 56 percent, the sixth highest percentage nationally (excluding the District of Columbia). Over the same time period, the state share of public elementary and secondary education revenue in Nevada increased from 25.9 percent to 33 percent. See Appendix C for a chart showing the percentage distribution of revenues for public elementary and secondary education in Nevada and the United States between FY 2005 and FY 2011.

Just as there are differences between the national averages and Nevada's sources of revenue for public education, there are differences between Nevada's averages and what might be found in any given Nevada school district. For example, due to the wealth created by the mining industry in Eureka County, approximately 2 percent of total revenue in the Eureka County School District came from state aid in FY 2014. On the other hand, the Lincoln County School District received approximately 71.3 percent of its total revenue from state aid in FY 2014. It is important to note that the funding percentage distribution varies between the Nevada school districts as a result of an equity allocation process, which factors in wealth and operating and transportation costs to determine the amount of state support for each school district.

Nevada K-12 Public Education Revenues and Percentage Distribution – FY 2014							
District	Revenues* (Millions of \$)				Percentage Distribution		
	Local	State	Federal	Total	Local	State	Federal
Carson City	37.9	37.2	9.2	84.3	45.0%	44.1%	10.9%
Churchill	16.0	20.2	3.9	40.1	39.9%	50.4%	9.7%
Clark	1761.6	955.2	282.6	2999.4	58.7%	31.8%	9.4%
Douglas	39.2	20.5	5.0	64.7	60.6%	31.7%	7.7%
Elko	71.3	31.6	6.5	109.4	65.2%	28.9%	5.9%
Esmeralda	1.2	0.9	0.1	2.2	54.5%	40.9%	4.5%
Eureka	9.3	0.2	0.4	9.9	93.9%	2.0%	4.0%
Humboldt	26.0	3.3	2.6	31.9	81.5%	10.3%	8.2%
Lander	10.3	0.7	0.8	11.8	87.3%	5.9%	6.8%
Lincoln	3.0	10.2	1.1	14.3	21.0%	71.3%	7.7%
Lyon	26.9	50.4	8.4	85.7	31.4%	58.8%	9.8%
Mineral	2.3	4.9	1.1	8.3	27.7%	59.0%	13.3%
Nye	19.3	29.0	6.7	55.0	35.1%	52.7%	12.2%
Pershing	4.1	6.9	0.8	11.8	34.7%	58.5%	6.8%
Storey	5.6	1.5	0.4	7.5	74.7%	20.0%	5.3%
Washoe	325.2	210.6	65.0	600.8	54.1%	35.1%	10.8%
White Pine	8.1	8.8	1.0	17.90	45.3%	49.2%	5.6%
State Sponsored Charter Schools	11.8	167.5	6.3	185.6	6.4%	90.2%	3.4%
Statewide	2,379.1	1,559.6	401.9	4,340.6	54.8%	35.9%	9.3%

Source: NRS 387.303 Report, Major Funds tab, FY 2014 (unaudited)

*Revenues exclude bond proceeds, fund transfers, opening fund balance, and all other revenue not categorized as local, state, or federal.

II. History of Public K-12 Education Funding in Nevada

For nearly 50 years, changes in Nevada's tax policy have impacted the share of revenue each level of government contributes to fund our schools. This section includes a brief overview and discussion of some of the major tax policy and other changes that have impacted public elementary and secondary education funding in Nevada. Please note, this section should not be read as an exhaustive history of public K-12 education funding changes, but rather a brief introduction to the major adjustments, reforms, and revisions to education funding in Nevada.

- **1967** – The Legislature approves the creation of the Local School Support Tax (LSST), which is added to the sales and use tax at a rate of 1 percent.
- **1979** – To provide relief to taxpayers, the Legislature approves a reduction in the property tax rate for the support of schools from \$1.50 (70 cents mandatory and 80 cents optional) to 50 cents per \$100 of assessed valuation. General Fund appropriations to the state's Distributive School Account (DSA) were increased to offset the effects of reducing property tax and removing sales tax on food (see the next bullet concerning the food exemption from the sales and use tax).
- **1979** – Voters amend the sales and use tax to provide for the exemption of food for home consumption.
- **1981** – To reduce the cost of K-12 public education on the State General Fund, the LSST increases from 1 percent to 1.5 percent.
- **1983** – As a result of the 1981 "Tax Shift," which changed the primary revenue source of local governments from the property tax to the sales and use tax, local governments are hit hard when the national recession causes sales and use tax revenues to fall short of estimates. In response, the Legislature increases the property tax rate by 25 cents (from 50 cents to 75 cents) and places the extra 25 cents inside the *Nevada Plan* formula to offset state General Fund appropriations for K-12 public education.
- **1991** – The LSST rate increases from 1.5 percent to 2.25 percent, which reduces the need for state General Fund appropriations for K-12 public education.
- **1999** – The Legislature combines the Class-Size Reduction (CSR) program with the DSA. Historically, the CSR program had been funded as a categorical grant with revenues from estate taxes and state General Fund appropriations.
- **2001** – As a result of the passage of the federal Economic Growth and Tax Relief Reconciliation Act of 2001, estate tax revenues in the DSA begin to decline. Nevada's allowable "pick-up tax" credit is reduced by 25 percent in 2002, 50 percent in 2003, 75 percent in 2004, and repealed in 2005. During the same time period Nevada also realizes a reduction in revenue from the estate tax because of changes to the exemption threshold, which increased from \$675,000 in 2001 to \$1 million in 2002, and to \$1.5 million in 2004.

EXHIBIT 2

- **2009** – Due to the Great Recession, the Legislature temporarily increases the LSST rate by 0.35 percentage points (from 2.25 percent to 2.60 percent) for the period beginning July 1, 2009, through June 30, 2011.
- **2009** – Initiative Petition (IP) 1, though not signed by the Governor, becomes law pursuant to Article 4, Section 35, of the Nevada Constitution. The initiative imposes an additional tax on the gross receipts from the rental of transient lodging in certain counties. Pursuant to the language of the initiative, the proceeds from this tax are credited to the state General Fund between July 1, 2009, and June 30, 2011.
- **2011** – The Legislature votes to maintain the LSST rate at 2.60 percent and extend the sunset to June 30, 2013, at which time the rate would revert back to 2.25 percent.
- **2011** – Pursuant to the language of IP 1, beginning July 1, 2011, the proceeds of the transient lodging tax are supposed to be credited to the State Supplemental School Support Account to be distributed proportionally among all school districts and charter schools in the state to improve student achievement and to retain qualified teachers and non-administrative employees. However, the Legislature approves the transfer of all IP 1 revenue over the 2011-13 biennium (FY 2012 and FY 2013) from the State Supplemental School Support Account to the DSA.
- **2011** – The Legislature approves Senate Bill 11, which instructs the Legislative Commission to appoint a committee (known as the Committee to Study a New Method for Funding Public Schools) to conduct an interim study concerning the development of a new method for funding public schools in Nevada. After contracting with a consultant to assist with the study, the committee makes various recommendations, including, but not limited to, a bill draft request to include the definition of the data modules of the school finance formula and the basis for the allocation of special education funding in statute; a recommendation that the state consider moving to a weighted-funding formula that considers individual needs and characteristics of student populations; and a recommendation that the state consider alternatives to the single count day approach for determining enrollment for apportionment purposes.
- **2013** – The Legislature again votes to maintain the LSST rate at 2.60 percent and extend the sunset to June 30, 2015, at which time the rate would revert back to 2.25 percent.
- **2013** – The Legislature again votes to transfer all IP 1 revenue from the State Supplemental Support Account to the DSA for the 2013-15 biennium (FY 2014 and FY 2015).
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- **2013** – The Legislature approves Senate Bill 500, which creates the Task Force on K-12 Public Education Funding to conduct a review of the consultant's report to the Committee to Study a New Method for Funding Public Schools; survey the weighted

pupil public education funding formulas used in other states; and develop a plan for revising and implementing the state's public education funding formula in a manner that equitably accounts for the needs of, and the costs to educate, students based upon their individual educational needs and demographic characteristics, including students from low-income families, students with disabilities, and students who have limited proficiency in the English language. Recommendations from the Task Force on K-12 Public Education funding include, but are not limited to, implementing a weighted student funding model that would apply a weight of not less than 1.5 for students identified as English Language Learners (ELLs) or at-risk of low academic achievement and replacing the current unit-funding methodology for students with disabilities with a weighted student-funding model that would apply a 2.0 weight to all students with disabilities.

- **2014** – Ballot Question 3, known as The Education Initiative, appears on the statewide general election ballot. The initiative asks voters to approve the creation of a 2 percent tax on a margin of the gross revenues of Nevada businesses with total revenue exceeding \$1 million, with the proceeds being allocated to the DSA. The ballot question is defeated by the voters 79 percent to 21 percent.
- **2015-17 Biennium** - The Governor recommends the continuation of the transfer of the IP 1 revenues as a revenue source in the DSA budget for the 2015-17 biennium and the LSST rate permanently remain at the 2.60 percent rate and not revert back to the 2.25 percent rate.

III. The Nevada Plan

The 1967 Legislature approved Senate Bill 15 (*Statutes of Nevada, 889*), which revised the method the state uses to finance elementary and secondary education in the state's public schools and created the *Nevada Plan*. In creating the *Nevada Plan*, the Legislature declared “that the proper objective of state financial aid to public education is to ensure each Nevada child a reasonably equal educational opportunity.”

• • •
 “The Legislature
 declares that the
 proper objective of
 state financial aid to
 public education is to
 ensure each Nevada
 child a reasonably
 equal educational
 opportunity.”
 NRS 387.121
 • • •

The *Nevada Plan* is a statewide, formula-based funding mechanism for public K-12 education. Stated as a formula, the *Nevada Plan* calls for state financial aid to school districts to equal the difference between school district basic support guarantee and local available funds produced by mandatory taxes minus all the local funds attributable to pupils who reside in the county but attend a charter school or a university school for profoundly gifted pupils (NRS 387.121).

The *Nevada Plan* has not been markedly changed in approximately 40 years, and it does not include targeted, formula-based funding for individual student differences. However, some student-specific state categorical funding is provided outside the *Nevada Plan*, such as Class-Size Reduction, Full-Day Kindergarten, Career and

Technical Education programs, Adult High School Diploma and Special Education programs.

How the Nevada Plan Works

Under the *Nevada Plan*, the state develops a guaranteed amount of funding for each of the local school districts and charter schools. The revenue, which provides the guaranteed funding, is derived both from state and local sources. On average, this guaranteed funding contributes approximately 75 to 80 percent of school districts' and charter schools' general fund resources. *Nevada Plan* funding for school districts and charter schools consists of state support received through the DSA and locally collected revenues from the LSST and one-third of the proceeds from the 75-cent property tax imposed pursuant to NRS 387.195.

To determine the level of guaranteed funding for each school district and charter school, a basic per-pupil support amount for each district is established in law each legislative session. The amount is determined by a formula that considers the demographic characteristics of each school district. Average operating and transportation costs, as well as a wealth adjustment, are also considered to determine the basic per-pupil support amount for each school district. The wealth adjustment is based on a district's ability to generate revenues in addition to the guaranteed funding. It should be noted that the basic per-pupil support amount for charter schools varies and is determined by the school district of origin for each student. For example, a virtual charter school that enrolls students from multiple Nevada school districts will receive differing basic per-pupil support amounts for each student depending on the home school district of each student.

The corresponding basic per-pupil support amount is then multiplied by a school district's or charter school's weighted apportionment enrollment. The official enrollment count for apportionment purposes is taken on the last day of the first school month (count day) for each district and charter school. The number of kindergarten children and disabled three- and four-year-olds is multiplied by 0.6 percent and added to the total number of all other children enrolled, net of transfers, to derive the total weighted apportionment enrollment.

Special Provisions Related to Enrollment Changes

To protect school districts and charter schools during times of declining enrollment, the *Nevada Plan* contains a hold-harmless provision (NRS 387.1233). Pursuant to statute, if a school district or charter school enrollment is less than the prior year's enrollment, funding from the DSA is apportioned to the school district or charter school based on enrollment from the immediately preceding school year. In cases of significant enrollment decrease (when school district or charter school enrollment is less than or equal to 95 percent of the prior year's enrollment), the highest enrollment number from the immediately preceding two school years must be used for purposes of apportioning funding from the DSA. It should be noted that the hold-harmless provision does not apply to school districts or charter schools that deliberately cause a decline in the enrollment by eliminating grade levels, moving into smaller facilities, or other means.

An additional provision of the *Nevada Plan* assists school districts and charter schools that experience significant growth in enrollment within a school year (NRS 387.1243). If enrollment at a school district or charter school grows by at least 3 percent or more but less than 6 percent after the second month of school, a growth increment consisting of an additional 2 percent of basic support is added to the guaranteed level of funding for the school district or charter school. If enrollment at a school district or charter school grows by 6 percent or more after the second month of school, the total growth increment applied is 4 percent of basic support.

Special Education is funded on a “unit” basis, with the amount per unit established by the Legislature. These units provide funding for licensed personnel providing a program of instruction in accordance with minimum standards prescribed by the State Board of Education. Special Education unit funding is provided in addition to the basic per-pupil support amount.

Determining State Aid

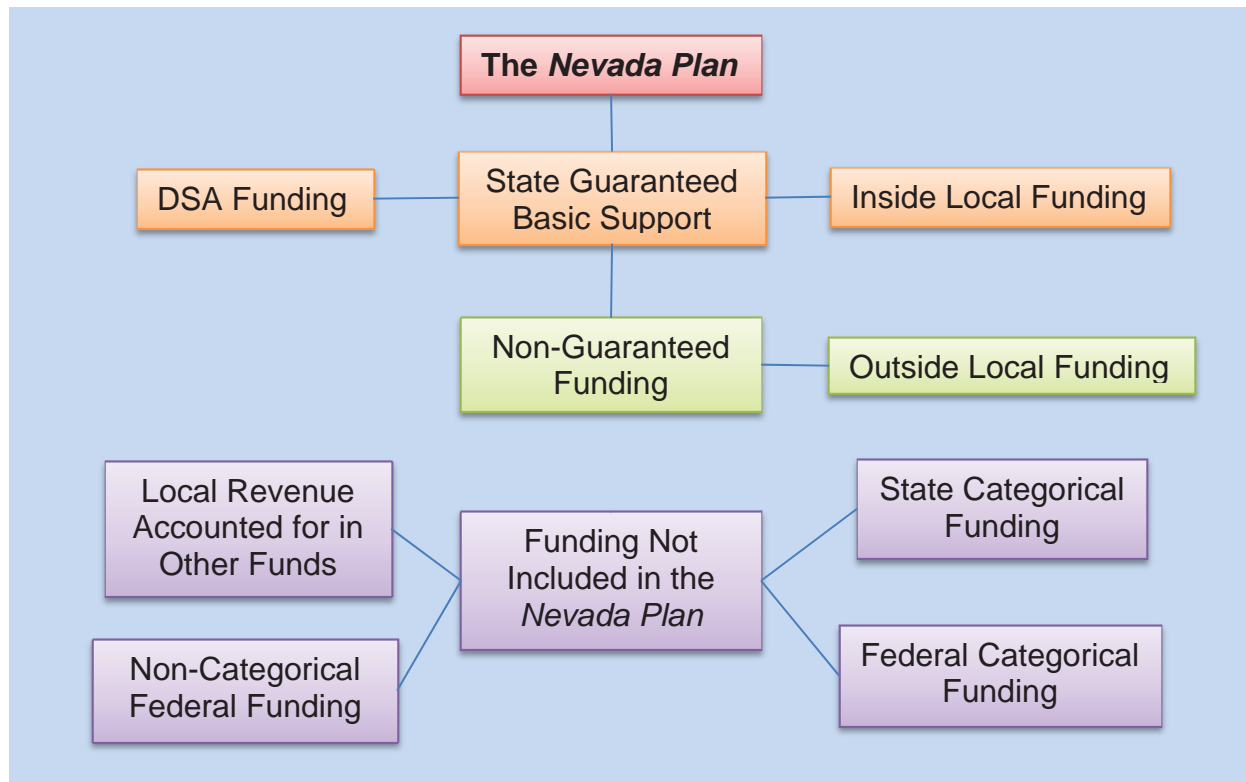
The difference between the total guaranteed support (as approved by the Legislature) and local resources is state aid, which is funded through the DSA. Revenue received by the school district from the LSST derived from in-state sales and from one-third of the proceeds from the 75-cent property tax is deducted from the school district’s or charter school’s total basic support guarantee to determine the amount of state aid the district or charter school will receive. If local revenues from these two sources are less than anticipated, state aid is increased to cover the shortfall in total guaranteed support. Conversely, if these two local revenues exceed projected levels, state aid is reduced.

In addition to revenue guaranteed through the *Nevada Plan*, school districts receive other local revenues considered “outside” the *Nevada Plan* that are not built into the state guarantee. Local revenues outside the *Nevada Plan* include two-thirds of the proceeds from the 75-cent property tax; the share of basic government services tax distributed to school districts; franchise tax revenue; interest income; tuition revenue; unrestricted federal revenue, and other local revenues. Because these other local revenues are not guaranteed, state aid is not increased or decreased based on actual realized revenue from local revenue sources outside the *Nevada Plan*. Again, it should be noted that charter schools are allocated outside revenues proportionally by the district in which a charter school is located.

In addition to revenues both “inside” and “outside” the *Nevada Plan*, school districts and charter schools may receive “categorical” funds from the state, federal government, and private organizations that may only be expended for designated purposes. Examples include the state-funded Class-Size Reduction program, Early Childhood Education, Career and Technical Education, and Education Technology. Examples of federally-funded programs include the Title I program for disadvantaged pupils, No Child Left Behind Act, the National School Lunch program, and Individuals with Disabilities Education Act (IDEA). Categorical funds must be accounted for separately in special revenue funds. Funding for capital projects, which may come from the sale of general obligation bonds, “pay-as-you-go” tax levies, or fees imposed on the construction of new residential units, are also accounted for in separate funds (Capital Projects Fund, Debt Service Fund).

IV. Components of the Nevada Plan

The *Nevada Plan* is made up of various funding components. The following chart illustrates the combination of funding components that make up the *Nevada Plan*, as well as other K-12 education funding sources that are not part of the *Nevada Plan*:



The list below outlines the various revenue components:

DSA Funding

- State General Fund
- A share of the annual slot tax
- Investment income from the permanent school fund
- Federal mineral land lease receipts
- Out-of-state LSST revenue that cannot be attributed to a particular county
- Medical marijuana excise tax (75 percent)
- Transfers of IP 1 (2009) room tax revenues

“Inside” Local Funding

- LSST
- One-third of the proceeds from the 75-cent property tax

“Outside” Local Funding

- Two-thirds of the proceeds from the 75-cent property tax
- Share of basic government services tax distributed to school districts
- Franchise taxes

“Outside” Local Funding - continued

- Interest income
- Tuition
- Rent
- Opening General Fund balance

Non-Categorical Federal Funding

- Impact received in lieu of taxes for federally impacted areas
- Forest reserves

Federal Categorical Funding

- Nutrition Education (e.g., National School Lunch Program)
- Title I Program
- Special Education Programs
- Vocational Education Programs
- Other School Improvement Programs, including programs under the No Child Left Behind Act of 2001

Other Funding

- Capital Projects – General Obligation Bonds
- “Pay as You Go” Debt Service

V. Biennial DSA Budget Preparation

To prepare a biennial budget for Nevada’s public schools, estimated General Fund and Special Education expenditures for charter schools and each of the 17 school districts funded by state or local revenues are combined into a single, statewide budget for each year of the upcoming biennium.

It is important to recognize that the DSA budget does not include the entire funding for K-12 public education, but rather includes only the state’s portion of the school district and charter school operating funds that provide the basic support guarantee and other state-supported programs. Federal categorical funds, such as those received through Title I or IDEA, as well as most state categorical funds, are not included in this budget of General Fund expenditures, but do contribute significantly to the total amount of funding available to local schools.

Schools’ opening fund balances and projected local revenues considered outside the funding formula, are then deducted from the total statewide operating expenditures. Because outside local revenues are deducted from the funding formula at this point, they are not built into the state guarantee.

Next, the costs of programs which are not allocated to schools on the basis of enrollment, such as the costs of special education program units, are subtracted to yield statewide basic support which, in turn, is divided by the estimated (weighted) enrollment for the year to determine the guaranteed statewide average basic support per pupil for each fiscal year in the coming biennium. In summary, the estimated need, minus local

revenues “outside” the *Nevada Plan*, is divided by the number of pupils to determine a statewide average basic support per pupil that will be guaranteed by the combination of state DSA funding and local revenues “inside” the *Nevada Plan*.

From the statewide average basic support per pupil, the State Department of Education calculates a separate basic support per pupil figure for each school district, using a formula that considers the economic and geographic characteristics of each school district. The dollar amount of basic support differs across school districts due to variations in the cost of living, differences in the costs of providing education as a result of school size, and the cost per pupil of administration and support services. The funding formula also recognizes each school district’s transportation costs by including 85 percent of actual, historical costs adjusted for inflation using the Consumer Price Index (CPI). A wealth adjustment, based on each district’s ability to generate revenue in addition to the guaranteed level of funding, is also included in the funding formula.

Since funding through the *Nevada Plan* is based on a guaranteed amount of basic support per pupil set forth in law during each legislative session, the only way to increase the total amount to be received through the *Nevada Plan* is if enrollment increases. If, on the other hand, enrollment fails to meet projections, schools will receive less money than expected, because a given dollar amount per pupil is guaranteed only for those pupils enrolled.

The funding for additional programs that are not allocated to schools on the basis of enrollment (e.g., Class-Size Reduction programs) is then added to the total regular basic support guarantee amount to arrive at the total required support. This figure represents the amount of funding, through a combination of inside local revenues, state General Fund appropriations, and other non-General Fund state revenues, that the school districts and charter schools will receive.

To determine the state’s share of the total guaranteed support, projected local revenues considered inside the funding formula are deducted. The remaining amount is the state’s share, and after subtracting the amount of projected revenues from the slot tax and other non-General Fund state funding sources, the state’s General Fund obligation is established. Because the total guaranteed support is made up of both inside local revenues and state General Fund appropriations, if actual realized inside local revenues are higher than projected, state General Fund appropriations are reduced. Similarly, if actual realized inside local revenues are less than projected, state General Fund appropriations are increased to meet the guaranteed support amount.

The chart on the following page illustrates the steps that are taken to prepare the DSA budget and determine the state’s General Fund obligation:

EXHIBIT 2

Total Operating Expenditures, Including Salaries and Benefits

Minus

Projected Outside Local Revenue

Minus

Non-Basic Support Programs (e.g., Special Education)

Equals

Guaranteed Regular Basic Support

Plus

Cost of Additional Programs (e.g., Class-Size Reduction)

Equals

Total Required Support

Minus

Projected Inside Local Revenue

Equals

Total State Share

Minus

Miscellaneous State Revenues (e.g., Slot Tax)

Equals

State's General Fund Obligation

VI. The Nevada Plan – An Example

To better understand how the *Nevada Plan* works, a step-by-step summary is provided below. The bolded number(s) at the end of each step corresponds to step(s) of a numerical example of a hypothetical school district that is presented following the step-by-step summary.

1. **Enrollment** – The count of pupils for apportionment purposes is the number of children enrolled in grades 1 through 12 on the last day of the first school month in regular or

special education programs Children enrolled in kindergarten, as well as disabled or gifted and talented children under the age of five, are counted (weighted) as six-tenths of a pupil. In instances of declining enrollment, the hold harmless provision described in NRS 387.1233 is applied **(1)**.

2. Guaranteed Regular Basic Support – The weighted enrollment total is multiplied by the legislatively approved per-pupil support guarantee for the school district to determine the school district's guaranteed basic support **(2 and 3)**.
3. Special Education Allocation – The number of special education units allocated to the district is multiplied by the per-unit amount established by the Legislature, and the product is added to the guaranteed basic support to obtain the school district's total guaranteed support. This sum is the amount of total funding guaranteed to the school district from a combination of state and local funds **(4 and 5)**.
4. Inside Local Resources – Revenue received by the school district from the LSST and one-third of the proceeds from the 75-cent property tax is deducted from the school district's total guaranteed basic support to determine the amount of state aid the district will receive. If actual realized local revenues from these two sources are less than projected, state aid is increased to cover the total basic support guarantee. On the other hand, if revenues come in higher than projected, state aid is reduced. The difference between the total guaranteed support and local resources is state aid, which is funded through the DSA **(6 and 7)**.
5. Other State-Funded Programs – An amount for any specific programs funded by the Legislature through the DSA, such as the Class-Size Reduction program, is added to the school district's total state aid to determine the total amount of revenue the school district will receive from the DSA **(8 and 9)**.
6. Outside Local and Federal Resources – Sources of revenue outside the funding formula, such as two-thirds of the proceeds from the 75-cent property tax and unrestricted federal funding, are added to the total guaranteed support and the amount provided for other legislatively-approved programs to determine the school district's total available resources **(10 through 16)**.

The following numerical example illustrates the guaranteed funding process based on the revenue of a hypothetical school district and, in addition, shows other revenue outside of the guarantee, making up the total resources included in a school district's operating budget.

Basic Support Guarantee		
1	Number of Pupils (Weighted Apportionment Enrollment*)	8,000
2	X Basic Support Per Pupil	<u>\$ 4,700</u>
3	= Guaranteed Basic Support	\$ 37,600,000
4	+ Special Education Allocation (40 units @ \$32,000 per unit)	<u>\$ 1,280,000</u>
5	= Total Guaranteed Support	\$ 38,880,000
	– Local Resources	
6	2.60 percent LSST**	(\$ 15,540,000)
	1/3 of the proceeds from 75-cent property tax	<u>(\$ 4,600,000)</u>
7	= State Responsibility	\$ 18,740,000
8	+ Other State Programs funded through the DSA (e.g., Class-Size Reduction Funding)	<u>\$ 35,000</u>
9	= Total Revenue from Distributive School Account (DSA)	\$ 18,775,000
Resources in Addition to Basic Support		
10	2/3 of the proceeds from 75-cent property tax	\$ 9,200,000
11	Government Services Tax (GST)	\$ 1,700,000
12	Federal Revenues (Unrestricted)	\$ 150,000
13	Miscellaneous Revenues	\$ 10,000
14	Opening Fund Balance	<u>\$ 2,000,000</u>
15	Total Resources in Addition to Basic Support	<u>\$ 13,060,000</u>
16	Total Resources Available (Add lines 5, 8, and 15)	\$ 51,975,000

*Weighted apportionment enrollment includes six-tenths of the count of pupils enrolled in kindergarten, six-tenths of the count of 3- and 4-year-olds who are receiving special education, a full count of pupils enrolled in grades 1 through 12, and a full count of disabled minors age 5 and over receiving special education (NRS 387.1233)

**The Local School Support Tax (LSST) rate of 2.60 percent reverts back to 2.25 percent on July 1, 2015 (NRS 374.111). However, the Governor's budget for the 2015-17 biennium recommends the continuation of the 2.60 percent LSST rate permanently.

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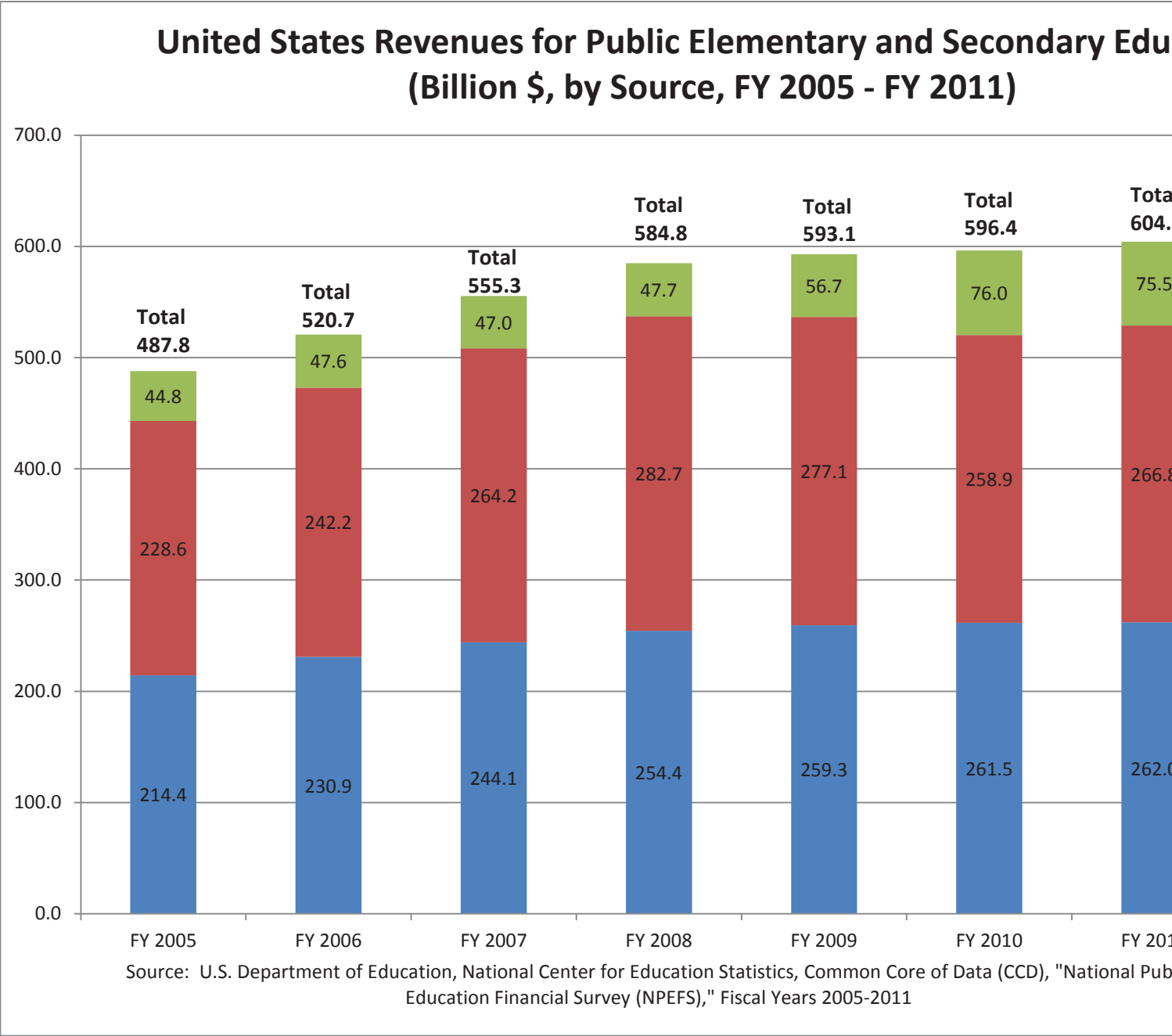


EXHIBIT 2

EXHIBIT 2

Nevada Revenues for Public Elementary and Secondary Education (Billion \$, by Source, FY 2005 - FY 2011)

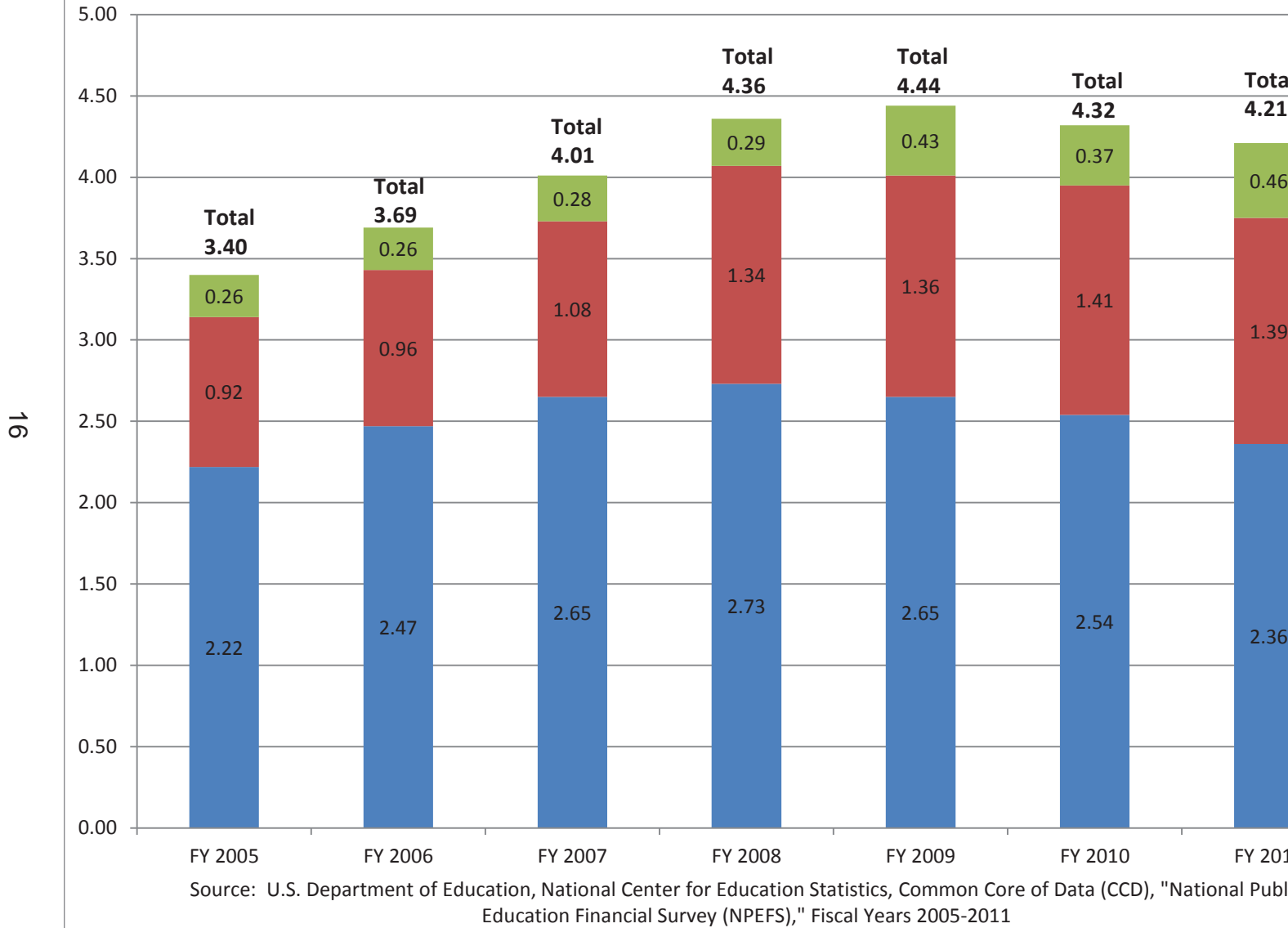


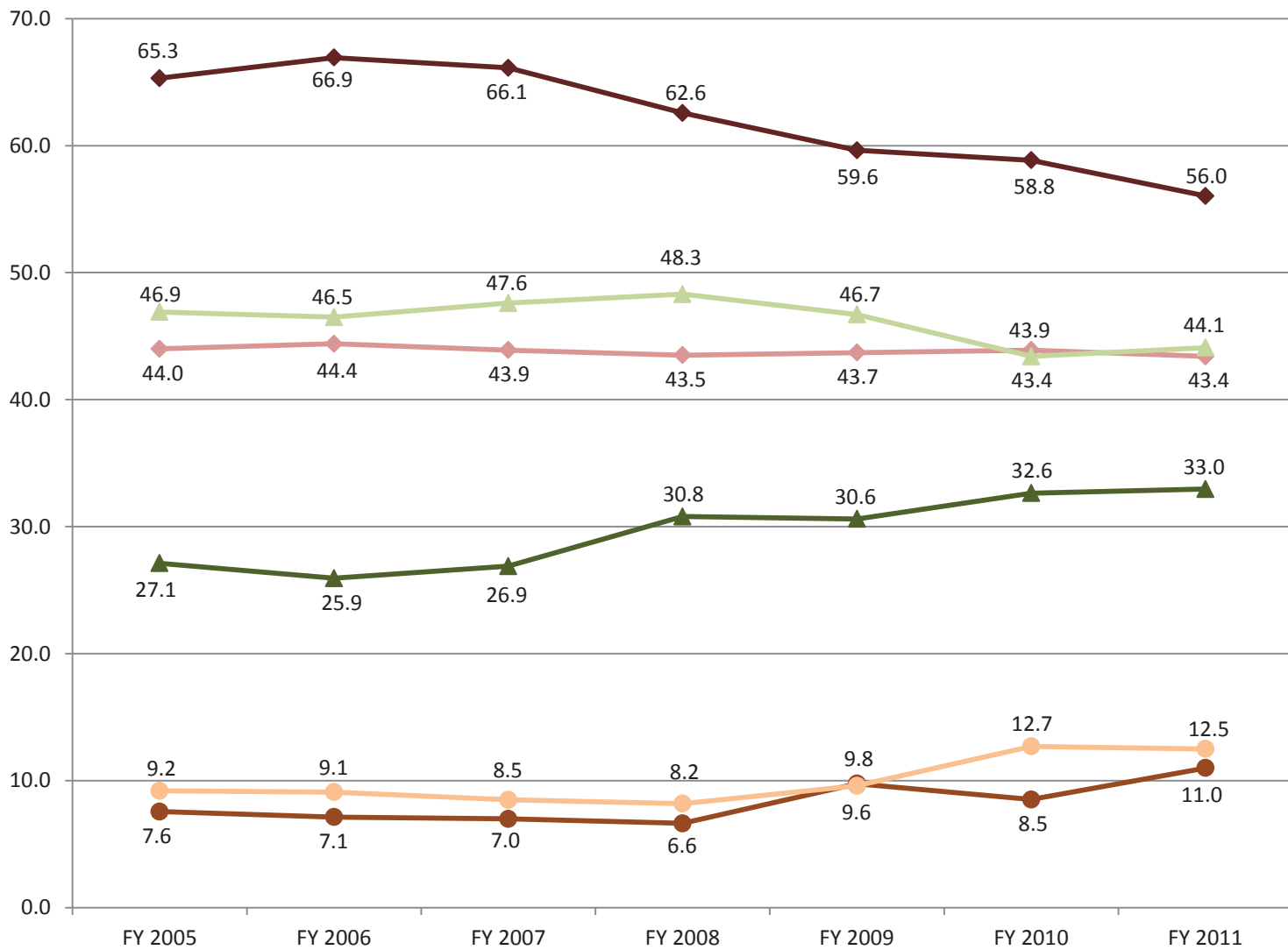
EXHIBIT 2

EXHIBIT 2

EXHIBIT 2

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Percentage Distribution of Revenues for Public Elementary and Secondary Education (%, by Source, FY 2005 - FY 2011)



Source: U.S. Department of Education, National Center for Education Statistics, Common Core of Data (CCD), "National Public Education Financial Survey (NPEFS)," Fiscal Years 2005-2011

EXHIBIT 2

EXHIBIT 2

EXHIBIT 2

EXHIBIT 3

MINUTES OF THE SENATE COMMITTEE ON FINANCE

Seventy-Eighth Session
May 14, 2015

The Senate Committee on Finance was called to order by Chair Ben Kieckhefer at 6:47 p.m. on Thursday, May 14, 2015, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Ben Kieckhefer, Chair
Senator Michael Roberson, Vice Chair
Senator Pete Goicoechea
Senator Mark A. Lipparelli
Senator David R. Parks
Senator Joyce Woodhouse

COMMITTEE MEMBERS ABSENT:

Senator Debbie Smith (Excused)

GUEST LEGISLATORS PRESENT:

Senator James A. Settelmeyer, Senatorial District No. 17
Senator Scott Hammond, Senatorial District No. 18
Senator Becky Harris, Senatorial District No. 9

STAFF MEMBERS PRESENT:

Mark Krmpotic, Senate Fiscal Analyst
Alex Haartz, Principal Deputy Fiscal Analyst
Emily Cervi, Committee Assistant
Lona Domenici, Committee Manager
Trish O'Flinn, Committee Secretary

OTHERS PRESENT:

Constance Brooks, Ph.D., Vice Chancellor, Nevada System of Higher Education

Chester O. Burton, Interim President, Western Nevada College

Adam Peshek, Policy Director of School Choice, Foundation for Excellence in Education

Frank Schnorbus, Nevada Homeschool Network; ParentalRights.org

Janine Hansen, President, Nevada Families for Freedom

Victor Joecks, Nevada Policy Research Institute

Lesley Pittman, American Federation for Children

Mary-Sarah Kinner, Las Vegas Sands

Leslie Hiner, Friedman Foundation for Educational Choice

Lynn Chapman, Independent American Party

Joyce Haldeman, Clark County School District

Lindsay Anderson, Washoe County School District

Jessica Ferrato, Nevada Association of School Boards

Mary Pierczynski, Ed.D., Nevada Association of School Superintendents

Barbara Dragon

Dale A.R. Erquiaga, Superintendent of Public Instruction, Department of Education

Nicole Rourke, Clark County School District

Patrick Gavin, Director, State Public Charter School Authority

Elissa Wahl, Vice Chair, State Public Charter School Authority

Craig Stevens, Clark County School District

Renee Olson, Administrator, Employment Security Division, Nevada Department of Employment, Training and Rehabilitation

Jeannine M. Warner, M.B.A., Director, Nevada Office, Western Interstate Commission for Higher Education

Melinda (Mindy) Martini, Deputy Superintendent for Business and Support Services, Department of Education

Andrew Diss, StudentsFirst

Seth Rau, Nevada Succeeds

Victoria Carreón, Guinn Center for Policy Priorities

Sylvia Lazos, Latino Leadership Council

Chair Kieckhefer:

We will deviate a bit from the agenda and start with Senate Bill (S.B.) 414.

EXHIBIT 3

Chair Kieckhefer:

There are different definitions for a homeschooled child and an opt-in child, but they appear to overlap. A parent is identified as eligible to be a participating entity. How is that different from homeschooling?

Senator Hammond:

This definition was created because many homeschooling parents do not want any funding from the State or federal government that would have requirements or limitations. However, a parent who wishes to provide education at home may opt in to the program if they are amenable to the parameters of the program.

Chair Kieckhefer:

Would an opt-in child still be eligible for an ESA?

Senator Hammond:

Yes.

Chair Kieckhefer:

Do you have an estimate of the total amount that would be deposited into an ESA annually for the upcoming biennium? The State share of the DSA is approximately \$5,700.

Senator Hammond:

The amount would be 90 percent of the DSA, less 3 percent of administrative costs allowed to the Treasurer's Office.

Chair Kieckhefer:

Nationally, about 2 percent of children are home-schooled. Is that percentage the same in Nevada?

Senator Hammond:

I do not know.

Chair Kieckhefer:

Some of the national homeschool Web sites give that percentage. They do not currently receive a DSA allotment. If the students who are currently homeschooled become opt-in students, using the basic per-pupil support of \$5,700, multiplied by 2 percent of 450,000 students, the State would incur a

\$50 million liability. Why would a parent not choose to opt-in if these funds are available to purchase a college savings plan?

Senator Hammond:

One of the provisions of S.B. 302 is that the student must attend public school 100 days prior to establishing an ESA. Many of those families who are homeschooling do not want to be part of the public school system whatsoever.

Mr. Peshek:

The 100-day provision helps to make this fiscally neutral. Eligibility is restricted to those students who have already been receiving education support through the DSA.

Senator Goicoechea:

If a student has been attending public school for at least 100 days, she or he can then opt to attend a private school, or a home school. Are the DSA and local school support deposited into the ESA?

Senator Hammond:

These students will not be homeschooled. They will be involved in a hybrid program. But, yes, those students who have been attending public school, whose parents decide their children are not receiving the education they need, can participate in this program. The money in the ESA must be spent on education of some sort; the students must pass tests every year. It cannot only be spent on college savings.

Senator Goicoechea:

Can a student move from a public school to home school? Must they enroll in an educational facility of some kind?

Mr. Peshek:

That is the Legislative intent. It is analogous to a Health Savings Account (HSA). Funds in an HSA may only be spent on medical care expenses. Funds in an ESA may only be spent on educational expenses. For example, 80 percent of the money may be spent on private school tuition, 10 percent could be put into the Nevada Prepaid College Fund and the remaining 10 percent on tutoring or industry certification training and exams. It is not merely school choice, it is educational choice. Funds could be used for

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Nevada K-12 Education Finance

Executive Summary

Nevada's system for funding K-12 education is complex and has not been substantially revised since it was created in 1967. It has been criticized for not providing sufficient funding to adequately educate students and for not fully recognizing the additional investment needed to educate specific populations such as low-income students, English Language Learners, and special education students.

The primary funding mechanism for K-12 education is called the Nevada Plan, which includes State and local revenue. Each school district has its own basic support guarantee per pupil, which varies substantially throughout Nevada. The guarantee is the sum of three separate calculations: basic support, the wealth factor, and the transportation factor. State aid is the difference between the basic support guarantee and local funds. School districts with local revenue exceeding the basic support guarantee are able to retain the additional funds. Districts also receive substantial tax revenue outside the Nevada Plan, which is not part of the basic support guarantee. These taxes vary significantly by district and have been volatile in recent years for districts that receive significant revenues from the Net Proceeds of Minerals tax. In addition, districts receive funds for special education as well as a variety of State and Federal grants.

Per-pupil funding for charter schools is based on the funding rate in the county of residence for each pupil. While charter schools receive general fund revenue comparable to school districts, charter schools receive substantially less funds per pupil than school districts for special education, State grants, and Federal grants.

There are several issues the Nevada State Legislature can consider in the 2015 Legislative Session:

1. Historic expenditures vs adequacy formula: Should Nevada move from a school financing system built on historic expenditures to a funding formula based on the cost to adequately educate students?
2. Differential funding for specific populations: Should the Nevada Plan be amended to include weights to account for the extra costs required to educate populations such as English Language Learners, low-income students, and special education students?
3. Categorical Funds: Should the State fold existing categorical programs into the main funding formula and make these monies flexible? Should the proposed weights be funded as categorical programs or should they be folded into the main funding formula? Should charter schools receive a direct allocation of State categorical funding to achieve parity with school districts?
4. Outside Tax Revenue: Should any tax revenues outside the Nevada Plan be incorporated into the funding guarantee? Should outside revenues be considered when calculating weights for special needs?
5. Enrollment: Should Nevada move from a single count day for enrollment to multiple count days?
6. Implementation: Given limited availability of State revenues, how should the State implement a new funding formula? Should it be phased in over time and should districts be held harmless?
7. Revenue: Should legislators increase revenue for K-12 education? What are the potential sources of increased revenues?

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Nevada K-12 Education Finance

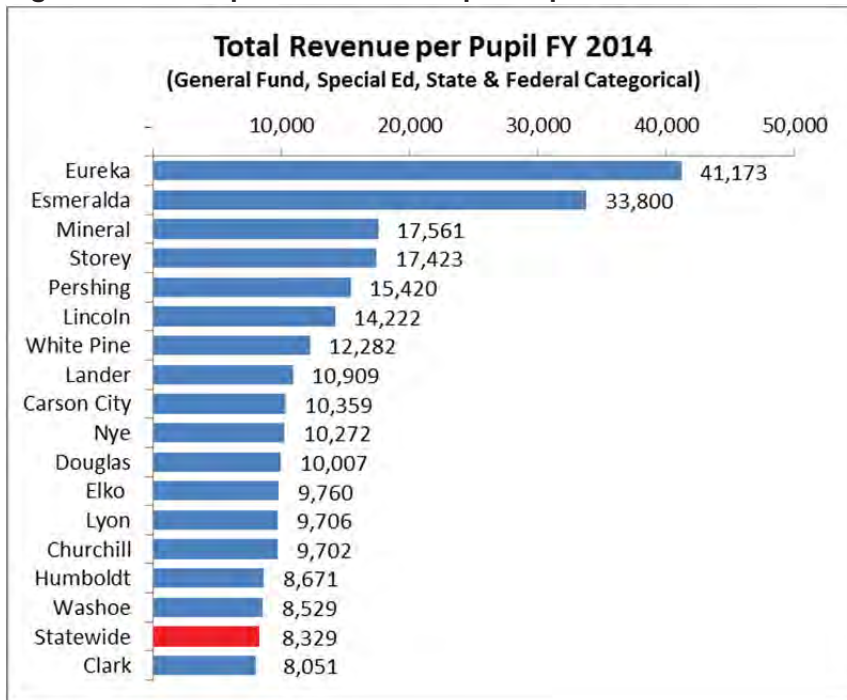
Objective

This Fact Sheet describes how Nevada's K-12 public schools are funded and identifies issues for the Nevada Legislature to consider during the 2015 Session.

1. How does per pupil funding from all revenue sources vary by district?

Nevada's school districts receive operational funding from a variety of local, State, and Federal sources. To provide a broad overview of K-12 education funding, Figure 1 shows the per-pupil funding each school district received from all of these sources in FY 2014. The statewide average in FY 2014 was \$8,329 per pupil. While per pupil revenue for most school districts exceeded the average, these school districts represented only 11 percent of the State's enrollment. In contrast, 84 percent of Nevada's students were in Clark and Washoe Counties, which received the least funding per pupil at \$8,051 and \$8,529 respectively. (The large size of these districts brings down the statewide average.) The districts with the highest funding rates were Eureka and Esmeralda, which received over \$30,000 per pupil. Over 94 percent of Eureka's funds came from local sources while Esmeralda received a mix of local (55 percent), State (39 percent), and Federal funds (6 percent).

Figure 1: Total Operational Funds per Pupil: FY 2014



Source: NRS 387-303 Report for FY 2014

2. What is the Nevada Plan?

The Silver State's primary funding mechanism for K-12 education is called the Nevada Plan, which was created by the Legislature in 1967 (NRS 387.121). Given wide local variations in wealth and costs per pupil, the Nevada Plan creates a mechanism to provide State aid to supplement local funding "to ensure each Nevada child a reasonably equal educational opportunity" (NRS 387.121).

The Nevada Plan establishes a basic support guarantee for each school district.¹ State aid is the difference between the basic support guarantee and local funds. If local revenues are higher or lower than projected, State aid is adjusted to cover the total guaranteed support. Districts with local revenue exceeding the basic support guarantee retain the additional funds.

While the Nevada Plan is the primary source of operational funding for school districts, it is only one component of total school district revenue. Funds from the Nevada Plan and local revenues outside the Nevada Plan are deposited in the school district general fund, which is the primary fund for school district operations. Revenues are also deposited in the following funds: special education fund, governmental funds, State categorical grant funds, and Federal categorical grant funds. Appendix A illustrates all the funding sources received by school districts.

3. How is the Basic Support Guarantee Calculated?

Under the Nevada Plan, each school district has its own basic support guarantee per pupil, which varies substantially throughout the State. The average statewide rate approved by the Legislature was \$5,590 in FY 2014 and \$5,676 in FY 2015 (Chapter 382, *Statutes of Nevada* 2013). For the next biennium, the Governor recommends a statewide rate of \$5,669 in FY 2016 and \$5,716 in FY 2017.²

The methodology for calculating the basic support guarantee is complex and is not delineated in statute, reflecting a lack of analytical rigor and transparency. It is based on historical expenditure data and does not include any adjustments associated with individual student needs and characteristics. The formula used in the 2013-2015 biennium was last updated by a committee of district superintendents and fiscal staff in 2004 and used expenditure data dating back to 2001. In 2014, the Nevada Department of Education convened a group of district superintendents, fiscal staff, and community members to update the data in the calculation. The Governor used these updated calculations in the proposed budget for the 2015-2017 biennium.

The basic support guarantee is the sum of three separate calculations: basic support, the wealth factor, and the transportation factor:³

- **Basic Support:** To calculate basic support, the formula groups districts together by size and density to calculate per-pupil averages of historical staff and operational costs. This data is used to calculate a basic support ratio for each district that is multiplied by the legislatively determined statewide basic support per pupil.
- **Wealth Factor:** The wealth factor takes into account other general fund revenue received outside of the formula (taxes and unrestricted Federal revenue). It calculates a statewide average of this outside revenue and then adds or subtracts revenue based on each district's difference from the statewide average.

- Transportation Factor: The transportation factor is calculated based on 85 percent of a four year average of transportation costs in each school district.

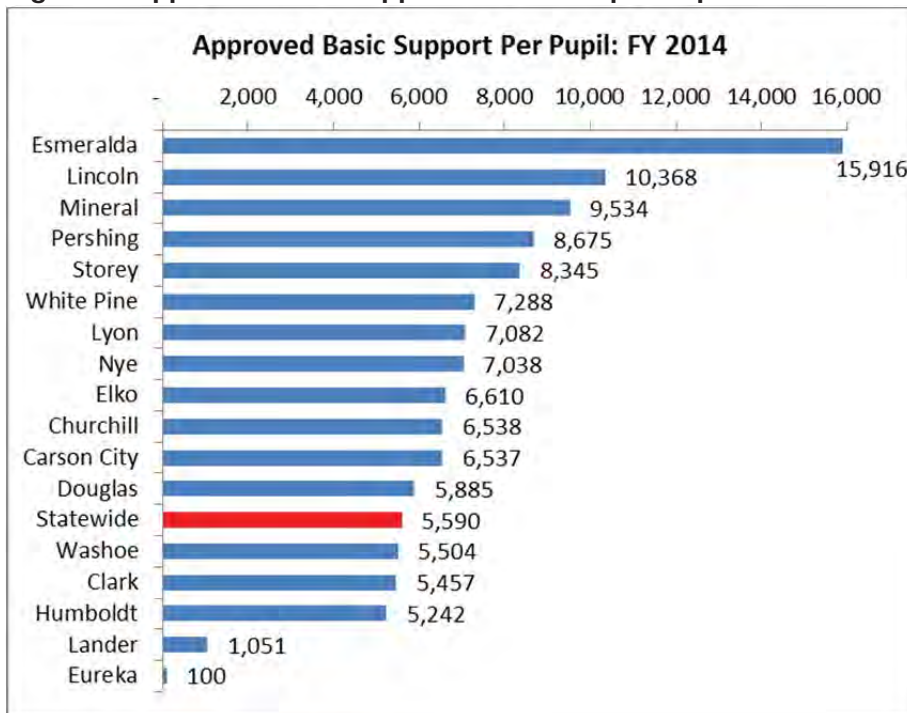
Basic Support Guarantee =

Basic Support (basic support ratio x statewide basic support per pupil)
+ Wealth Factor + Transportation Factor

To calculate the actual funding provided to each school district, the basic support guarantee per pupil is multiplied by actual weighted enrollment (NRS 387.1233). Enrollment is determined on “count day,” which is the last day of the first school month. Pre-kindergarten and kindergarten students receive a weight of 0.6, while all other students in grades 1 through 12 receive a weight of 1.0.⁴

The FY 2014 Basic Support Guarantee approved by the Nevada Legislature for each school district is shown in Figure 2. The districts with the largest basic support guarantee are small, rural school districts. In contrast, the largest districts, Clark and Washoe Counties, have basic support guarantees below the statewide average of \$5,590 per pupil. Eureka and Lander Counties have the lowest basic support guarantee due to the wealth factor calculation, which reduces the guarantee based on revenues received outside the formula. In practice, Eureka and Lander Counties receive more revenue than the basic support guarantee provides, because actual local revenues exceed the guarantee. In FY 2014, actual revenues per pupil inside the Nevada Plan were \$32,119 for Eureka County and \$7,068 for Lander County.

Figure 2: Approved Basic Support Guarantee per Pupil: FY 2014



Senate Bill 522 (Chapter 382, *Statutes of Nevada* 2013)

4. What sources of funding do school districts receive inside the Nevada plan?

The Nevada Plan includes both State and local revenue. On a statewide basis, revenues inside the Nevada Plan provided 75 percent of school district general fund resources in FY 2014. Table 1 provides detail on the State and local funding sources included inside the Nevada Plan in the last biennial budget. Total basic support provided inside the Nevada Plan was \$2.42 billion in FY 2014 and \$2.46 billion in FY 2015, of which 46 percent was State funding and 54 percent was local funding (Table 1, Line O).

Table 1: State and Local Funding Inside Nevada Plan: 2013-2015 Biennium

State Funding (Distributive School Account)	FY 2014	FY 2015	Percent
A. General Fund	1,134,528,570	1,110,133,915	
B. Annual Slot Machine Tax	31,658,547	32,305,032	
C. Permanent School Fund	1,000,000	1,000,000	
D. Federal Mineral Lease Revenue	7,874,977	7,874,977	
E. Out of State Local School Support Tax- 2.6%	110,329,328	116,397,425	
F. Initiative Petition 1 Room Tax Revenue	131,932,800	136,653,300	
G. Subtotal	1,417,324,222	1,404,364,649	
H. Less Categorical Funding	(289,454,554)	(297,688,957)	
I. State Funding for Basic Support	1,127,869,668	1,106,675,692	46%
Local Funding	FY 2014	FY 2015	Percent
J. Local School Support Tax- 2.6%	1,095,455,672	1,155,705,575	
K. 1/3 of 75 cent ad valorem tax (Property & Net Proceeds of Minerals Taxes)	193,681,840	201,117,251	
L. Total	1,289,137,512	1,356,822,826	54%
O. Total Basic Support	2,417,007,180	2,463,498,518	

Source: Legislative Counsel Bureau Fiscal Division, 2013 Appropriations Report⁵

State funding is allocated to schools through the Distributive School Account (DSA). As shown on Table 1, Line A, the State General Fund is the primary funding source of the DSA, representing 80 percent of funding. The DSA is also funded by: a share of the annual slot machine tax (Table 1, Line B); investment income from the Permanent School Fund (Table 1, Line C); Federal mineral land lease receipts (Table 1, Line D); out of State sales tax revenue received through the Local School Support Tax (LSST) (Table 1, Line E); and the 3 percent Initiative Petition 1 room tax (Table 1, Line F). Beginning in FY 2015, 75 percent of the new 2 percent medical marijuana excise tax will also become a funding source for the DSA (NRS 372A.075).

Total revenue sources for the DSA are shown on Table 1, Line G. The funds in the DSA are allocated to both the Nevada Plan and certain categorical programs, such as Class Size Reduction. These categorical funds are subtracted out on Table 1, Line H because they are not part of the Nevada Plan. State funds provided for basic support through the Nevada Plan totaled \$1.13 billion in FY 2014 and \$1.10 in FY 2015 (Table 1, Line I).

Local funding inside the Nevada Plan includes the LSST (Table 1, Line J) and 1/3 of 75 cent ad valorem tax (Table 1, Line K). The ad valorem tax includes taxes collected from the Property Tax and the Net Proceeds of Minerals Tax. Local funds inside the Nevada Plan totaled \$1.29 billion in FY 2014 and \$1.36 billion in FY 2015 (Table 1, Line L).

Table 2 provides detail on actual funding distributed to school districts inside the Nevada Plan in FY 2014. As previously indicated, statewide, this represented only 75 percent of district general fund revenue. The figures in Table 2 differ from the budget because they reflect actual enrollment and revenues. State and local revenue received inside the Nevada Plan in FY 2014 totaled \$2.46 billion (Table 2, Column E), which

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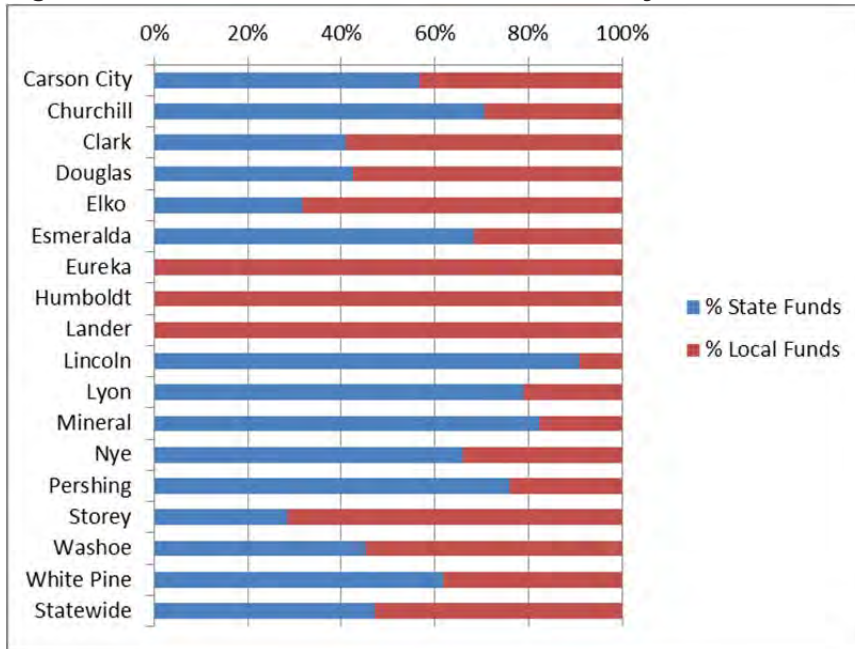
is higher than the \$2.42 billion budgeted (Table 1, Line O). Table 2, Column A shows that actual DSA revenue totaled \$1.16 billion, which represents 47 percent of funding received inside the Nevada Plan. Columns B and C of Table 2 show the amount of local revenue received from ad valorem taxes and the LSST. The LSST was the largest local funding source inside the Nevada Plan at \$1.1 billion, which represents 45 percent of revenue. In contrast, ad valorem taxes totaled only \$203 million, which represents 8 percent of revenue inside the Nevada Plan. Together, the two local funding sources totaled \$1.3 billion, representing 53 percent of revenue inside the Nevada Plan.

Table 2: Actual Revenue Received Inside Nevada Plan: FY 2014

	State Funds	Local Funds			Total
District	A State DSA Revenue	B 1/3 of 75 cent ad valorem tax	C Local School Support Tax	D Sum of Local Funds inside Nevada Plan B+C	E Total State and Local A+D
Carson City	27,034,368	3,007,871	17,600,970	20,608,841	47,643,209
Churchill	16,313,799	1,677,784	5,130,124	6,807,908	23,121,707
Clark	671,657,851	132,350,310	832,511,729	964,862,039	1,636,519,890
Douglas	14,573,286	6,003,026	13,715,285	19,718,311	34,291,597
Elko	19,838,844	4,150,753	38,460,741	42,611,494	62,450,338
Esmeralda	689,080	199,705	118,340	318,045	1,007,125
Eureka	-	5,580,828	2,070,006	7,650,834	7,650,834
Humboldt	(285,948)	4,659,436	13,296,840	17,956,275	17,670,327
Lander	-	5,804,824	1,716,582	7,521,406	7,521,406
Lincoln	8,898,341	525,280	353,632	878,912	9,777,253
Lyon	43,406,064	2,832,516	8,774,339	11,606,855	55,012,919
Mineral	3,836,667	304,153	524,702	828,855	4,665,522
Nye	23,365,103	3,357,123	8,639,321	11,996,444	35,361,547
Pershing	4,477,763	877,079	536,982	1,414,062	5,891,825
Storey	933,732	1,177,147	1,160,309	2,337,455	3,271,187
Washoe	149,045,682	30,170,146	151,070,968	181,241,114	330,286,796
White Pine	6,109,577	856,046	2,902,842	3,758,888	9,868,465
Charter Schools	165,664,763	-	-	-	165,664,763
Statewide	1,155,558,972	203,534,025	1,098,583,712	1,302,117,736	2,457,676,709
Percent of Total	47%	8%	45%	53%	100%

Source: FY 2014 NRS 387-303 Report⁶

There is significant variation in the percentage of State vs. local revenue received by each school district inside the Nevada Plan (see Figure 3). This occurs because some school districts have high Net Proceeds of Minerals Taxes, which cause local funding to exceed the basic support guarantee. As shown in Figure 3, Eureka County, Lander County, and Humboldt County received 100 percent of the basic support guarantee from local funding in FY 2014 and received no State aid. In contrast, Lincoln County and Mineral County received more than 80 percent of their basic support funding from the State.

Figure 3: Nevada Plan State vs Local Revenue by District: FY 2014Source: FY 2014 NRS 387-303 Report⁷

5. What sources of general fund revenue do school districts receive outside the Nevada plan?

Statewide, 25 percent of district general fund resources come from outside of the Nevada Plan. Unlike the revenues inside the Nevada Plan, these outside revenues are not guaranteed, meaning that the State does not make up for any shortfalls in projected revenues. The primary general fund revenues outside the Nevada Plan include:

- 2/3 of the 75 cent ad valorem tax (includes Property Tax and Net Proceeds of Minerals Tax)
- Government Services Tax
- Franchise Taxes
- Unrestricted Federal funds such as Impact Aid and Forest Reserve revenue
- Interest, tuition, other local revenue
- Beginning fund balance

School districts also receive funding outside of the general fund. As shown in Appendix A, major funds include special education, governmental funds, State grants, and Federal grants.

6. How does actual general fund revenue inside and outside the Nevada Plan vary by district?

There is substantial variation in per-pupil funding between school districts. To provide a complete picture of each district's general fund, Table 3 shows actual FY 2014 funding inside and outside the Nevada Plan. Statewide, total revenue per pupil was \$6,831 but six districts received over \$10,000 per pupil (Table 3, Column H). This table reveals that Eureka County had the highest general fund per-pupil revenue in Nevada at \$39,170, followed by Esmeralda County at \$29,833. Eureka's high funding rate is due to Net

Proceeds of Minerals Taxes while Esmeralda's funding rate is due to its small enrollment. The districts with the lowest general fund per-pupil revenue were Clark at \$6,549 and Washoe County at \$6,761.

Table 3: Actual School District General Fund Revenue FY 2014

A District	B Enrollment	Inside Nevada Plan			Outside Nevada Plan		H Total Revenue per pupil E+F+G
		C Local Funds per Pupil	D State Funds per Pupil	E Total Basic Support per Pupil C+D	F Outside taxes per pupil	G Outside other revenue per pupil	
Carson City	7,274	2,833	3,717	6,550	1,061	379	7,990
Churchill	3,539	1,924	4,610	6,534	1,201	244	7,979
Clark	303,447	3,180	2,213	5,393	1,050	106	6,549
Douglas	5,885	3,351	2,476	5,827	2,461	109	8,397
Elko	9,496	4,487	2,089	6,576	1,342	111	8,029
Esmeralda	65	4,893	10,601	15,494	10,072	4,267	29,833
Eureka	238	32,119	-	32,119	5,830	1,221	39,170
Humboldt	3,363	5,339	(85)	5,254	1,583	317	7,154
Lander	1,064	7,068	-	7,068	2,491	252	9,811
Lincoln	934	941	9,527	10,468	1,424	164	12,056
Lyon	7,812	1,486	5,556	7,042	926	35	8,003
Mineral	439	1,886	8,732	10,618	2,227	987	13,832
Nye	5,036	2,382	4,639	7,021	1,111	226	8,358
Pershing	681	2,075	6,571	8,646	2,175	137	10,958
Storey	385	6,074	2,427	8,501	6,470	19	14,990
Washoe	60,796	2,981	2,452	5,433	1,207	121	6,761
White Pine	1,303	2,884	4,687	7,571	1,866	328	9,765
Statewide	435,795	2,988	2,652	5,640	1,062	129	6,831

Source: FY 2014 NRS 387-303 Report

For districts with substantial amounts of Net Proceeds of Minerals Taxes, total General Fund revenue can be quite volatile from year to year. This Net Proceeds of Minerals Taxes allocated to local governments and school districts statewide tripled from 2008 to 2012 and then fell by 30 percent in 2013.⁸ As a result, from FY 2011 to FY 2014, total General Fund revenue decreased by 60 percent in Eureka County, 50 percent in Lander County, and 18 percent in Humboldt County.

7. What other State and Federal grants do school districts receive?

School districts receive a variety of State and Federal grants to fund specific programs or to meet special student needs. These are commonly called categorical programs. The largest State categorical programs are class size reduction, full day kindergarten, Senate Bill 504 funds for English Language Learners, adult education, and Career Technical Education (CTE). The largest Federal programs include Title I of the Elementary and Secondary Education Act for at-risk students, Individuals with Disabilities Education Act (IDEA) for special education, and Perkins funds for CTE.

Table 4 provides detail on total State and Federal grants per pupil for each district in FY 2014. Statewide, school districts received \$668 per pupil in State grants (Table 4, Column D) and \$613 per pupil in Federal grants (Table 4, Column F) for a total of \$1,281 per pupil (Table 4, Column G). The districts with the highest per-pupil funding for all categorical grants were Esmeralda and Pershing, while the districts with the lowest per-pupil amounts were Lander and Douglas.

Table 4: State and Federal Grant Funds for School Districts FY 2014

A	B	C	D	E	F	G
District	Enrollment	Total State Categorical Funds	Total State per Pupil	Total Federal Categorical Funds	Total Federal per Pupil	Grand Total Categorical per Pupil
			C/B		E/B	D+F
Carson City	7,274	6,835,183	940	7,067,300	972	1,911
Churchill	3,539	1,877,683	531	2,122,781	600	1,130
Clark	303,447	201,992,135	666	172,925,622	570	1,236
Douglas	5,885	3,011,882	512	3,503,421	595	1,107
Elko	9,496	8,256,885	869	4,682,469	493	1,363
Esmeralda	65	105,987	1,631	89,481	1,377	3,007
Eureka	238	100,525	422	258,184	1,084	1,506
Humboldt	3,363	2,196,706	653	1,550,500	461	1,114
Lander	1,064	483,603	454	486,749	457	912
Lincoln	934	500,819	536	731,972	784	1,320
Lyon	7,812	4,394,120	562	6,269,939	803	1,365
Mineral	439	705,565	1,606	599,023	1,363	2,969
Nye	5,036	3,168,431	629	4,054,906	805	1,434
Pershing	681	1,819,532	2,670	575,368	844	3,515
Storey	385	311,392	809	354,189	920	1,730
Washoe	60,796	37,275,646	613	46,460,003	764	1,377
White Pine	1,303	2,029,268	1,557	560,570	430	1,987
Total	411,759	275,065,362	668	252,292,477	613	1,281

Source: NRS 387-303 Report for FY 2014

8. How is special education funded?

State funding for special education is allocated based on “units,” which provide funding for licensed personnel.⁹ The funding units were initially designed to cover the cost of an average teacher salary for a specified number of special education pupils by disability. This methodology was established prior to requirements that students be placed in the least restrictive environment and does not reflect the current reality that many special education students are now mainstreamed in regular classrooms.

The number of units across all districts in Nevada has been fixed at 3,049 since 2009. The per-unit rates for the current biennium are \$41,608 for FY 2014 and \$42,745 for FY 2015. Although this funding rate was originally meant to cover the average teacher salary, the funding rate approved by the Legislature has not kept pace with the statewide average teacher salary plus benefits of \$75,756 in FY 2014 and \$77,384 in FY 2015.¹⁰ Total State funding allocated for special education funding units in the biennium was \$126.8 million in FY 2014 and \$130.3 million in FY 2015.

Each school district has a special education fund, which primarily includes State-funded special education units as well as monies transferred from the district general fund to make up for any shortfall not covered by other funds. IDEA revenues total \$60 to \$70 million per year statewide but are accounted for in a Federal grants fund instead of the special education fund. Table 5 illustrates school district special education fund revenue per pupil in FY 2014. Each district received State funds, ranging from a low of \$186 per pupil in Lander County to \$960 per pupil in Eureka County (Table 5, Column C). There is also wide variation in the amount transferred from the general fund to the special education fund. If State funding is adequate, no transfer is necessary, but this is not the case for most districts. Transfers ranged from \$0 in Lincoln to \$1,259 per pupil in Eureka (Table 5, Column E). Statewide, total resources in the special education fund averaged \$1,170 per pupil (Table 5, Column F).

Table 5: School District Special Education Fund Revenue FY 2014

A District	B Enrollment	C State Funds per Pupil	D Local/ Federal Funds per Pupil	E Transfers in per Pupil	F Total Revenue per Pupil C+D+E
Carson City	7,274	458	-	734	1,192
Churchill	3,539	553	41	879	1,472
Clark	303,447	266	0	962	1,228
Douglas	5,885	503	0	775	1,278
Elko	9,496	368	-	243	611
Esmeralda	65	960	-	778	1,738
Eureka	238	497	-	1,259	1,757
Humboldt	3,363	401	3	557	960
Lander	1,064	186	-	712	899
Lincoln	934	846	-	-	846
Lyon	7,812	339	-	960	1,299
Mineral	439	760	-	467	1,226
Nye	5,036	479	-	1,044	1,523
Pershing	681	946	-	778	1,724
Storey	385	703	-	647	1,350
Washoe	60,796	391	-	507	898
White Pine	1,303	511	18	904	1,433
TOTAL	411,759	305	0	865	1,170

Source: NRS 387-303 Report for FY 2014

9. How are charter schools funded?

Charter schools also receive funding through the Nevada Plan. Because charter schools do not have access to local tax revenue, the entire basic support guarantee is funded by the State. The allocation is based on the per-pupil funding rate of revenues inside the Nevada Plan and taxes outside the Nevada Plan in the county where each pupil resides, minus a charter school sponsorship fee (NRS 387.124). For some charter schools, all pupils reside in one county and there is a single funding rate per pupil. For other charter schools, students reside in multiple counties and generate multiple funding rates. Table 6 shows the county where each charter school is located and the per-pupil funding provided under the Nevada Plan in FY 2014. Charter schools sponsored by the State Public Charter School Authority (SPCSA) are denoted with "SPCSA" after the county name. This table reveals that charter school funding rates are comparable to the total revenue per pupil for districts shown in Table 3.

**Charter School Per-Pupil Funding Calculation for Each
County Where Pupils Reside**

Revenues inside Nevada Plan + Taxes Outside Nevada Plan

Total Charter and District Enrollment in County

Table 6: FY 2014 Charter School Funding through Nevada Plan

A Charter School	B County	C Enrollment	D Nevada Plan Funding Per Pupil
100 Academy of Excellence	Clark	657	6,520
Academy for Career Education	Washoe	191	6,827
Alpine Academy	Washoe- SPCSA	80	9,298
Andre Agassi College Preparatory Academy	Clark	1,128	6,520
Bailey Charter Elementary School	Washoe	249	6,684
Beacon Academy of Nevada	Clark- SPCSA	804	6,627
Carson Montessori School	Carson	220	7,672
Coral Academy of Science-Las Vegas	Clark- SPCSA	1,337	6,520
Coral Academy of Science-Reno	Washoe	900	6,703
Davidson Academy of Nevada (University)	State School- Washoe	133	6,736
Delta Academy	Clark	226	6,777
Discovery Charter School	Clark- SPCSA	346	6,520
Doral Academy of Nevada (LV)	Clark- SPCSA	712	6,520
Elko Institute for Academic Achievement	Elko- SPCSA	154	8,174
Explore Knowledge Academy	Clark	755	6,520
High Desert Montessori School	Washoe	351	6,695
Honors Academy of Literature	Clark- SPCSA	187	6,698
I Can Do Anything Charter High School	Washoe	238	8,702
Imagine School at Mt. View	Clark- SPCSA	426	6,520
Innovations International	Clark	928	6,520
Learning Bridge Charter School	White Pine- SPCSA	109	9,225
Mariposa Academy of Language and Learning	Washoe	147	6,684
Nevada Connections Academy	Washoe- SPCSA	1,904	6,899
Nevada State High School	Clark- SPCSA	279	6,528
Nevada Virtual Academy	Clark- SPCSA	3,528	8,177
Oasis Academy	Churchill- SPCSA	173	7,738
Odyssey Charter Schools	Clark	1,759	6,520
Pinecrest Academy	Clark- SPCSA	847	6,520
Quest Academy Preparatory	Clark- SPCSA	836	7,324
Rainbow Dreams Academy	Clark	244	6,753
Rainshadow Community Charter High School	Washoe	127	6,987
Sierra Nevada Academy Charter	Washoe	263	7,081
Silver Sands Montessori Charter School	Clark- SPCSA	266	6,520
Silver State High School	Carson- SPCSA	429	8,093
Somerset Academy of Las Vegas	Clark- SPCSA	2,864	6,522

Source: NRS 387-303 Report for FY 2014

For categorical and special education funding, charter schools are supposed to receive funding comparable to school districts. Under NRS 386.570, "A charter school is entitled to receive its proportionate share of any other money available from Federal, State or local sources that the school or the pupils who are enrolled in the school are eligible to receive." In practice, charter schools have experienced limited accessibility to categorical and special education funds compared to school districts.

For State and Federal categorical funds, charter schools sometimes opt not to participate due to the small size of potential grants and/or compliance requirements. In other cases, charter schools are not eligible for funding. For example, charter schools are not eligible for class size reduction, which is the largest State categorical program (NRS 388.700[8]). Some charter schools are also not eligible for Federal Title I

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funding, which is only allocated to schools with a high percentage of low-income students. As shown in Table 7, average statewide categorical funding in FY 2014 for charter schools was \$13 per pupil for State funding and \$223 per pupil for Federal funding, for a total of \$236 per pupil (Columns D, F, and G). This is less than one-fifth of the school district average of \$1,281 per pupil (see Table 4, Column G).

Table 7: State and Federal Grant Funds for Districts FY 2014

A	B	C	D	E	F	G
Charter School	Enrollment	Total State Categorical Funds	Total State per pupil	Total Federal Categorical Funds	Total Federal per pupil	Grand Total Categorical per Pupil
			C/B		E/B	D+F
100 Academy of Excellence	657	0	0	231,559	352	352
Academy for Career Education	191	38,105	200	100,110	524	724
Alpine Academy	80	0	0	25,395	317	317
Andre Agassi College Preparatory Academy	1,128	2,948	3	237,732	211	213
Bailey Charter Elementary School	249	108,672	437	52,452	211	648
Beacon Academy of Nevada	804	0	0	130,000	162	162
Carson Montessori School	220	0	0	0	0	0
Coral Academy of Science-Las Vegas	1,337	0	0	73,232	55	55
Coral Academy of Science-Reno	900	0	0	0	0	0
Davidson Academy of Nevada (University)	133	0	0	0	0	0
Delta Academy	226	2,828	13	45,413	201	213
Discovery Charter School	346	0	0	36,932	107	107
Doral Academy of Nevada (LV)	712	0	0	46,717	66	66
Elko Institute for Academic Achievement	154	0	0	173,795	1,127	1,127
Explore Knowledge Academy	755	0	0	88,434	117	117
High Desert Montessori School	351	0	0	107,109	305	305
Honors Academy of Literature	187	2,317	12	52,313	279	292
I Can Do Anything Charter High School	238	1,540	6	0	0	6
Imagine School at Mt. View	426	5,015	12	212,111	497	509
Innovations International	928	5,077	5	199,586	215	221
Learning Bridge Charter School	109	0	0	57,299	526	526
Mariposa Academy of Language and Learning	147	108,672	737	3,840	26	763
Nevada Connections Academy	1,904	0	0	552,345	290	290
Nevada State High School	279	0	0	5,051	18	18
Nevada Virtual Academy	3,528	7,311	2	1,691,433	479	482
Oasis Academy	173	0	0	41,406	239	239
Odyssey Charter Schools	1,759	2,456	1	421,405	240	241
Pinecrest Academy	847	2,226	3	94,830	112	115
Quest Academy Preparatory	836	0	0	124,953	149	149
Rainbow Dreams Academy	244	0	0	33,768	139	139
Rainshadow Community Charter High School	127	0	0	45,521	358	358
Sierra Nevada Academy Charter	263	0	0	0	0	0
Silver Sands Montessori Charter School	266	606	2	31,515	118	121
Silver State High School	429	0	0	111,028	259	259
Somerset Academy of Las Vegas	2,864	21,159	7	273,990	96	103
Total	23,798	308,932	13	5,301,272	223	236

Source: NRS 387-303 Report for FY 2014

For special education, SPCSA-sponsored charter schools have access to a total of only 13 special education units while charter schools sponsored by school districts can receive special education funding through their sponsoring district.¹¹ In FY 2014, total per-pupil revenue for special education was much lower for charter schools (\$301) than for school districts (\$1,170) in FY 2014 (see Table 8, Column F and Table 5, Column F). Fourteen out of 35 charter schools did not receive any State special education funding (Table 8, Column C). Charter schools can also receive local and Federal funding for special

education (Table 8, Column D). Five charter schools received local funds from their sponsoring district and three received Federal funds. In addition, twenty charter schools transferred money from their general fund to help pay for special education (Table 8, Column E).

Table 8: Charter School Special Education Fund Revenue FY 2014

A District	B Enrollment	C State Funds per Pupil	D Local/ Federal Funds per Pupil	E Transfers in per Pupil	F Total Revenue per Pupil C+D+E
100 Academy of Excellence	657	-	233	252	485
Academy for Career Education	191	-	379	-	379
Alpine Academy	80	520	-	203	723
Andre Agassi College Preparatory Academy	1,128	-	223	273	496
Bailey Charter Elementary School	249	-	-	41	41
Beacon Academy of Nevada	804	52	-	18	70
Carson Montessori School	220	-	371	-	371
Coral Academy of Science-Las Vegas	1,337	47	-	-	47
Coral Academy of Science-Reno	900	-	161	-	161
Davidson Academy of Nevada (University)	133	-	-	-	-
Delta Academy	226	-	388	289	677
Discovery Charter School	346	120	-	107	227
Doral Academy of Nevada (LV)	712	44	-	191	234
Elko Institute for Academic Achievement	154	135	-	-	135
Explore Knowledge Academy	755	143	-	377	520
High Desert Montessori School	351	118	-	-	118
Honors Academy of Literature	187	111	-	-	111
I Can Do Anything Charter High School	238	-	416	-	416
Imagine School at Mt. View	426	98	-	401	498
Innovations International	928	201	-	126	327
Learning Bridge Charter School	109	95	-	37	133
Mariposa Academy of Language and Learning	147	-	-	-	-
Nevada Connections Academy	1,904	33	-	-	33
Nevada State High School	279	-	-	-	-
Nevada Virtual Academy	3,528	29	-	260	289
Oasis Academy	173	241	-	182	422
Odyssey Charter Schools	1,759	260	-	586	846
Pinecrest Academy	847	49	-	110	159
Quest Academy Preparatory	836	75	-	303	377
Rainbow Dreams Academy	244	-	-	-	-
Rainshadow Community Charter High School	127	-	-	-	-
Sierra Nevada Academy Charter	263	-	-	220	220
Silver Sands Montessori Charter School	266	78	-	-	78
Silver State High School	429	242	-	777	1,019
Somerset Academy of Las Vegas	2,864	29	-	209	238
TOTAL	23,798	68	37	195	301

Source: NRS 387-303 Report for FY 2014

10. How do the “sunset taxes” affect K-12 funding?

Three of the funding sources for K-12 education are part of the package of temporary tax increases and tax shifts enacted by the State to address revenue shortfalls resulting from the Great Recession: the Local School Support Tax, the Initiative Petition 1 room tax, and prepayment of the Net Proceeds of Minerals Tax. These revenue sources represent approximately \$630 million in revenue in the 2013-2015 biennium and are scheduled to expire on June 30, 2015.

For the 2015-2017 biennium, these revenues represent a State impact of approximately \$700 million.¹² The Governor recommends making the Local School Support Tax permanent, making the Initiative Petition 1 transfer permanent, and extending the prepayment of Net Proceeds of Minerals Taxes for one year. The Legislature will need to decide whether to extend these sunsets, make them permanent, or substitute other taxes. Each tax is discussed in detail below.

- Local School Support Tax: This sales tax increased from 2.25 percent to 2.6 percent in 2009 and will revert to 2.25 percent on June 30, 2015 (NRS 374.110 & 374.111). The increased rate was budgeted to provide approximately \$333.6 million during the 2013-2015 biennium. The Governor recommends that this rate increase be made permanent beginning July 1, 2015, representing \$379.4 million for the 2015-2017 biennium.¹³ Again, the LSST comprises approximately 45 percent of the total basic support provided by the Nevada Plan.
- Initiative Petition 1: This 3 percent room tax was originally designed to provide supplemental revenue to education beginning in 2011 but has instead been used as a funding source to the Distributive School Account (NRS 387.191) due to budget shortfalls. This tax shift was budgeted to provide approximately \$268.6 million during the 2013-2015 biennium. On June 30, 2015, this revenue source is scheduled to become a supplemental source for education as originally intended, which would necessitate backfilling from the State general fund. The Governor recommends making this funding shift permanent, which represents \$308.2 million in revenue in the 2015-2017 biennium.¹⁴
- Prepayment of Net Proceeds of Minerals: School districts receive Net Proceeds of Minerals Taxes as part of the 75 cent ad valorem tax rate. One-third of this revenue is inside the Nevada Plan and two-thirds is outside the Nevada Plan. The total impact to schools was approximately \$28 million during the 2013-2015 biennium, with 83 percent of the revenue going to Eureka, Humboldt, and Lander Counties.¹⁵ The prepayment of these taxes is scheduled to sunset on June 30, 2015. The Governor recommends that this sunset be extended to June 30, 2016, which means that school districts would not receive any Net Proceeds of Minerals Taxes in FY 2017 but would begin receiving this revenue again in FY 2018. The portion of this revenue that is inside the Nevada Plan is guaranteed and would be made up by the general fund (\$12.6 million).¹⁶ However, the portion outside the Nevada Plan is not guaranteed and would be unfunded for one year (approximately \$25 million). This would have a significant impact on school districts in which large mining operations are located.

11. What key issues should the Legislature consider in 2015?

Several studies and Legislative committees have identified the following key challenges and issues in the K-12 funding formula which can be considered during the 2015 Legislative Session.¹⁷

- Historic expenditures vs adequacy formula: Should Nevada move from a funding system built on historic expenditures to a funding formula based on the cost to adequately educate students? Some stakeholders argue that using historic expenditures perpetuates low funding levels and does not establish a goal for an adequate funding level. In addition, small districts with traditionally high fixed costs have the largest funding rates, while large districts receive the lowest funding per pupil. Using past expenditure data also makes it difficult for districts with historically low costs to change the status quo and increase per-pupil funding relative to other districts.

Over the past decade, the education finance consulting firm Augenblick, Palaich and Associates (APA) conducted two studies of the adequate cost to educate students in Nevada, one in 2006 and a second in 2015. The 2015 study recommends a base funding rate of \$8,251 per pupil plus adjustments for size.¹⁸ The cost of implementing this higher base funding rate is approximately \$1.6 billion more than actual State, local, and Federal expenditures in FY 2013. Given the large price tag of a higher base funding rate, the Legislature may want to set a goal for per-pupil funding and develop a multi-year implementation plan.

- Differential funding for specific populations: Should the Nevada Plan be amended to include weights to account for the extra costs to educate populations such as English Language Learners, low-income students, and special education students? Nevada is one of only a few states that does not provide weighted funding and studies have shown that using weights increases fairness.¹⁹ Several alternative recommendations have been made to the Legislature.
 - In June 2014, the Legislature's Task Force on K-12 Public Education Funding recommended implementing weights of not less than 1.5 for English Learners and Free and Reduced Lunch students, until such time as a cost (adequacy) study may be conducted.²⁰ For Special Education, the Task Force recommended a weight of 2.0 with a funding cap of 13 percent of enrollment.¹ The Task Force recommended that the base for applying weights would include all State and local funding but exclude all Federal and State categorical funding. To ensure accountability, the Task Force also recommended that the funding associated with these weights be initially allocated as a categorical program outside the funding formula and then transitioned into the formula at a future date.
 - In January 2015, the consulting firm APA released a cost (adequacy) study and recommended a base of \$8,251 per pupil plus weights of 1.35 for at-risk students, 1.42 for English Language Learners, and 2.1 for special education students.²¹ While APA's weights for at-risk students and English Language Learners are lower than those recommended by the Task Force on K-12 Public Education Funding, they are calculated off of a higher base funding rate, resulting in higher overall funding levels. The Legislature could reconsider the base funding level and weights recommended by the Task Force on K-12 Public Education Funding in light of the new APA study.
 - The Governor's 2015-2017 Executive Budget includes a \$25 million increase in FY 2017 for special education to start the transition toward a weight of 2.0 as recommended by the Task Force on K-12 Public Education Funding. A timeline for achieving the weight of 2.0 is not specified in the Governor's budget. The proposed budget also includes a new \$5 million contingency fund for high cost special education students.

¹ Here we note that Governor Brian Sandoval has proposed phasing in a weighted formula, beginning with Special Education. The Governor's biennium budget allocates an additional \$25 million in FY 2017, with the eventual goal of achieving a funding weight of 2.0.

- Categorical funds: There are three key questions Nevada should consider for categorical funds:
 - Should the State fold existing categorical programs into the main funding formula and make these monies flexible? State funds for specific populations and programs are currently allocated outside the basic support guarantee, such as special education, Senate Bill 504 funding for English Learners, class size reduction, and full day kindergarten. Funding these programs outside the funding formula limits school district flexibility and places emphasis on compliance instead of outcomes. It may not be possible to place all programs in the main funding formula. For example, special education has maintenance of effort requirements that are easier to monitor if expenditures are accounted for separately.^{2,22}
 - Should the proposed weights be funded as categorical programs or should they be folded into the main funding formula? The Task Force on K-12 Public Education Funding recommended that the proposed weights be funded as categorical programs and then be transitioned into the funding formula at some future date. For 2015-2017, the Governor recommends providing \$100 million for Zoom Schools to serve English Language Learners and \$50 million for a new categorical program for at-risk students called Victory Schools. As an alternative, the Legislature could use this \$150 million to fund new weights inside the formula for English Language Learners and at-risk students. Doing so would enhance flexibility for school districts and could be accompanied by accountability measures that switch the focus from compliance to increased student achievement.
 - Should charter schools receive a direct allocation of State categorical funding? Under current law, charter schools are entitled to a proportionate share of State grants but in practice receive very limited funds. If categorical grants are folded into the funding formula, the Legislature could increase the per-pupil funding rate for charter schools to ensure parity with school districts. Alternatively, if the State chooses to keep categorical grants outside the formula, charter schools could receive a categorical block grant to ensure proportionate funding.
- Outside Tax Revenue: There are two key questions the Legislature should consider regarding tax revenue that school districts currently receive outside the Nevada Plan:
 - Should any tax revenues outside the Nevada Plan be incorporated into the funding guarantee? The tax revenues outside the Nevada Plan are significant in size, so incorporating them into the formula would increase transparency and provide a more accurate picture of the amount of funding schools receive. If the State increases the base funding guarantee, these revenues could be counted towards the new higher guarantee, thereby reducing the amount of new revenue the State would need to contribute. Moving outside taxes into the formula would also shift much of the risk for the volatility of the Net Proceeds of Minerals Tax from school districts to the State. Conversely, this action would increase stability and predictability of revenue for districts.

² California is an example of a State that has consolidated categorical programs into the main funding formula in return for greater accountability from schools. In FY 2014, California folded most categorical programs into the main funding formula. In return for making these funds unrestricted, districts were tasked with crafting accountability plans that tie funding to outcomes for specific populations.

- Should outside revenues be taken into account when calculating weights for special needs? The Task Force for K-12 Public Education recommended that the base for applying weights include all State and local funding but exclude all Federal and State categorical funding. The Legislature's decision on this issue interacts with other determinations, such as the base funding rate and what funding sources should be included in the guarantee.
- Enrollment: Should Nevada move from a single count day for enrollment to multiple count days? A single count day does not take into account variation throughout the school year. Multiple count days would help growing districts receive additional revenue but would result in less revenue for districts that experience enrollment declines throughout the year. Alternatively, the State could base funding on average daily attendance. This incentivizes school districts to keep students in school. However, it would disadvantage high schools with significant drop-out rates where attendance decreases throughout the year. The State would need to take into account the cost implications of increased reporting for both the Department of Education and school districts.
- Implementation: Given limited availability of funds, how should Nevada implement a new funding formula? If a new formula is implemented using existing funds, monies would simply be reallocated and some districts could receive significantly less revenue. Conversely, the State could establish a per-pupil funding goal and create a multi-year plan to reach that objective. Nevada would need to consider how long it should hold districts harmless to avoid sharp decreases in revenue in rural areas.
- Revenue: Should legislators increase revenue for K-12 education and what revenue sources should be used? To help provide additional funding for education, the Governor recommends increasing cigarette taxes, increasing business taxes on mining, modifying the restricted slot machine tax, and restructuring the Business License Fee. These proposals would raise approximately \$569 million over the biennium. In addition, several funding sources used for K-12 education are part of the package of sunset taxes the Legislature will be considering during the 2015 Session. The State will need to decide whether to continue these taxes, replace them with other revenue sources, or develop new revenue sources.

Conclusion

This fact sheet illustrates the breadth and complexity of the K-12 public school financing system. While the Nevada Plan is the primary source of funding for operations, schools also receive revenue from a variety of local, State, and Federal sources. There is significant variation in funding between school districts and there are funding disparities between school districts and charter schools. In addition, there is a high degree of volatility in some of the general fund tax revenue received outside the Nevada Plan.

As the Legislature begins the 2015 Session, it can draw on the recommendations made by several Legislative committees and outside experts to improve the K-12 finance system. Issues include whether the State should move to a formula based on the cost to adequately educate pupils, whether to implement funding weights for specific populations, how to treat categorical funds and outside tax revenue, how to count the number of students, how to phase in implementation of the formula, and what revenue sources should be used for a new funding formula.

Appendix A: Funding of K-12 Public Schools in Nevada



About the Kenny C. Guinn Center for Policy Priorities

The Kenny C. Guinn Center for Policy Priorities is a 501(c)(3) nonprofit, bipartisan, think-do tank focused on independent, fact-based, relevant, and well-reasoned analysis of critical policy issues facing Nevada and the Intermountain West. The Guinn Center engages policy-makers, experts, and the public with innovative, data-driven research and analysis to advance policy solutions, inform the public debate, and expand public engagement. The Guinn Center does not take institutional positions on policy issues.

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¹ For more information, see Fiscal Analysis Division, Legislative Counsel Bureau. The Nevada Plan for School Finance: An Overview (January 2015) http://www.leg.state.nv.us/interim/77th2013/Committee/Interim/LegCommisionBudgetSubcomm/Other/20-January-2015/Nevada_Plan_web_version.pdf and 2013: http://www.leg.state.nv.us/Division/Fiscal/NevadaPlan/Nevada_Plan_2013.pdf

² Nevada Department of Education. The Executive Budget - DSA & Related K-12 Budgets: 2015-2017 Biennium (January 20, 2015) <http://www.leg.state.nv.us/interim/77th2013/Committee/Interim/LegCommisionBudgetSubcomm/Other/20-January-2015/DSA.pdf>

³ 2013-2014 Interim Task Force on K-12 Public Education Funding Technical Advisory Committee, Item VI- Simplified DSA Model Example- Mike Alastuey (April 21, 2014)

<http://www.leg.state.nv.us/interim/77th2013/Committee/Studies/K12FundingTAC/Other/21-April-2014/MeetingPage.cfm?ID=77&d=21-April-2014>

⁴ There are special provisions to accommodate times when enrollment is increasing or decreasing. The guaranteed level of funding is based on the higher of current or prior year enrollment (NRS 387.1233). If a district's enrollment declines by more than 5 percent, funding is based on the higher count of the two previous years. Districts that experience enrollment increases during the school year can receive an increase in basic support of 2 to 4 percent (NRS 387.1243). If enrollment increases after the second school month by at least 3 percent, basic support will increase by 2 percent. If enrollment increases by 6 percent or more after the second school month, basic support will increase by 4 percent.

⁵ Legislative Counsel Bureau, Fiscal Division, 2013 Appropriations Report. Education.

http://www.leg.state.nv.us/Division/fiscal/Appropriation%20Reports/2013AppropriationsReport/6_Education.pdf

⁶ Nevada Department of Education. State Reports, NRS 387-303 http://www.doe.nv.gov/Business_Support_Services/Reports/

⁷ Nevada Department of Education. State Reports, NRS 387-303 http://www.doe.nv.gov/Business_Support_Services/Reports/

⁸ Nevada Department of Taxation, 2013-2014 Net Proceeds of Minerals Bulletin

http://tax.nv.gov/LocalGovt/PolicyPub/ArchiveFiles/Net_Proceeds_of_Minerals/ and Nevada Department of Taxation: Local Government Finance: Property Taxes for Nevada Local Governments Fiscal Year 2013-2014.

⁹ Nevada Department of Education, Nevada K-12 Funding: Special Education, SB 500 (2013) Task Force on K-12 Funding (March 31, 2014) <http://www.leg.state.nv.us/interim/77th2013/Committee/Studies/K12Funding/Other/31-March-2014/NDESpeciaEducationFunding.pdf>

¹⁰ Ibid

¹¹ Ibid

¹² Nevada Legislative Counsel Bureau, Fiscal Division. Table 1: General Fund Revenue for 2015-2017 Biennium: Economic Forum Forecast versus Governor Recommends Estimate. (February 1, 2015).

<https://www.leg.state.nv.us/App/NELIS/REL/78th2015/ExhibitDocument/OpenExhibitDocument/8940/General%20Fund%20Revenue%20Comparison%20-%20EF%20Forecast%20vs%20Gov%20Rec.pdf>

¹³ Ibid

¹⁴ Ibid

¹⁵ Nevada Department of Taxation, 2013-2014 Net Proceeds of Minerals Bulletin

http://tax.nv.gov/LocalGovt/PolicyPub/ArchiveFiles/Net_Proceeds_of_Minerals/ and Nevada Department of Taxation: Local Government Finance: Property Taxes for Nevada Local Governments Fiscal Year 2013-2014.

<http://tax.nv.gov/LocalGovt/PolicyPub/ArchiveFiles/Redbook/>

¹⁶ Nevada Legislative Counsel Bureau, Fiscal Division. Table 1: General Fund Revenue for 2015-2017 Biennium: Economic Forum Forecast versus Governor Recommends Estimate. (February 1, 2015).

<https://www.leg.state.nv.us/App/NELIS/REL/78th2015/ExhibitDocument/OpenExhibitDocument/8940/General%20Fund%20Revenue%20Comparison%20-%20EF%20Forecast%20vs%20Gov%20Rec.pdf>

¹⁷ Augenblick, Palaich and Associates, Inc. Estimating the Cost of an Adequate Education in Nevada (August, 2006)

<http://www.leg.state.nv.us/Division/Research/Publications/InterimReports/2007/Bulletin07-07.pdf>, American Institutes for Research.

Study of a New Method for Funding Public Schools in Nevada (September, 2012)

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http://www.edlawcenter.org/assets/files/pdfs/publications/National_Report_Card_2014.pdf, and Augenblick, Palaich and Associates

Inc. 2015 Professional Judgment Study in Nevada. <http://www.unlv.edu/lincyinstitute/events>

¹⁸ Augenblick, Palaich and Associates Inc. 2015 Professional Judgment Study in Nevada. <http://www.unlv.edu/lincyinstitute/events>

¹⁹ American Institutes of Research. Study of a New Method for Funding Public Schools in Nevada (September, 2012)

<http://www.leg.state.nv.us/Interim/77th2013/Committee/Studies/K12Funding/Other/NVFundingStudyReportFINAL92812.pdf>

²⁰ Legislative Counsel Bureau. Task Force on Public Education Funding. Bulletin 15-5 (January 2015)

<https://www.leg.state.nv.us/Division/Research/Publications/InterimReports/2015/Bulletin15-05.pdf>

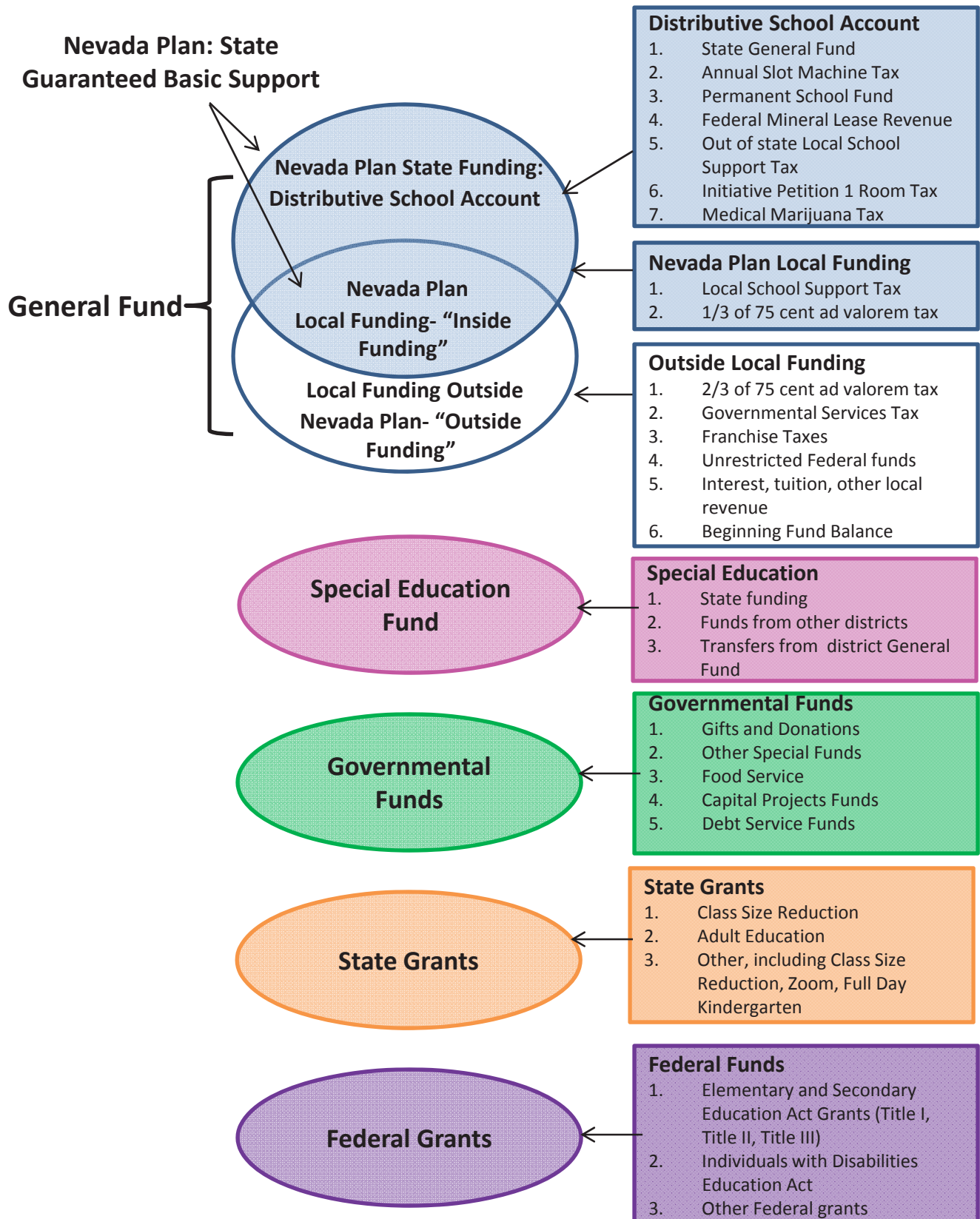
²¹ Augenblick, Palaich and Associates Inc. 2015 Professional Judgment Study in Nevada.

http://www.unlv.edu/sites/default/files/page_files/27/Lincy-ProfessionalJudgmentStudySummary.pdf

²² California Department of Education. Local Control Funding Formula. <http://www.cde.ca.gov/fg/aa/lc/>

Appendix A

Funding of K-12 Public Schools in Nevada



**UNSOLICITED
EXECUTIVE AGENCY
FISCAL NOTE**

AGENCY'S ESTIMATES

Date Prepared: May 25, 2015

Agency Submitting: Nevada Department of Education

Items of Revenue or Expense, or Both	Fiscal Year 2014-15	Fiscal Year 2015-16	Fiscal Year 2016-17	Effect on Future Biennia
Total	0	0	0	0

Explanation

(Use Additional Sheets of Attachments, if required)

Senate Bill 302, as amended, creates a voucher system in which an entity that educates a child may receive a grant of State and local per pupil funding in an amount equal to 90 percent, or 100 percent if the child has special needs or a household income less than 185 percent of the federally designated level signifying poverty. The Department is unable to quantify the fiscal impact of this measure. However, the Department believes there will be a fiscal impact to the State due to the redistribution of State and local funding from school districts to other entities, not representative of the school districts, as follows: 1) For the first time, the homeschool population will have access to State and local per pupil funding; and 2) It is anticipated that the redistribution of funding may negatively impact school district enrollment, which will increase the need for hold harmless funding.

Name Mindy MartiniTitle Deputy, Business & Support

FIRST JUDICIAL DISTRICT COURT
IN AND FOR CARSON CITY, NEVADA

HELLEN QUAN LOPEZ, individually and on
behalf of her minor child, C.Q.; MICHELLE
GORELOW, individually and on behalf of her
minor children, A.G. and H.G.; ELECTRA
SKRYZDLEWSKI, individually and on behalf
of her minor child, L.M.; JENNIFER CARR,
individually and on behalf of her minor
children, W.C., A.C., and E.C.; LINDA
JOHNSON, individually and on behalf of her
minor child, K.J.; SARAH and BRIAN
SOLOMON, individually and on behalf of
their minor children, D.S. and K.S.,

Plaintiffs,

vs.

DAN SCHWARTZ, IN HIS OFFICIAL
CAPACITY AS TREASURER OF THE
STATE OF NEVADA,

Defendant.

Case No.: 150C002071B

Dept. No: II

DECLARATION OF JEFF ZANDER

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JUSTIN C. JONES
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1 I, JEFF ZANDER, declare as follows:

2 1. I am Superintendent of the Elko County School District. I have been
3 Superintendent of the Elko County School District since 2010. From 2006 to 2009 I was the
4 Assistant Superintendent of Finance and Facilities in the Elko County School District. I served as
5 the Comptroller of the Elko County School District from 2001 to 2006. I make this declaration
6 based on personal knowledge and experience. If called as a witness, I could and would
7 competently testify to the facts set forth herein.

8 2. As Superintendent of Elko County and in my previous positions as Comptroller and
9 Assistant Superintendent of Finance and Facilities, I have personal knowledge of the management
10 of Elko County's yearly budget. I have read SB 302 and the proposed regulations and analyzed
11 the potential impact of SB 302 on Elko County.

12 3. SB 302 and its proposed regulations allow students who have been enrolled in one
13 or more classes at a public school for 100 days to become eligible to receive either \$5,139 or
14 \$5,710 in funds originally appropriated for the public schools. It is my understanding that those
15 funds will be deducted from the school district's quarterly apportionment from the State
16 Distributive School Account ("DSA").

17 4. SB 302 will reduce the funding available to school districts and may result in a
18 mid-year or quarterly reduction of the district's operating budget. While SB 302 will result in the
19 reduction of district budgetary allotments on a quarterly basis, many of a school district's costs are
20 fixed prior to the start of a school year, based on estimated enrollment for the upcoming year. For
21 example, school districts must notify teachers by May 1 if they will be reemployed for the ensuing
22 school year, and cannot readily reduce staffing during the school year. School districts have
23 several other fixed costs, including leases for copy machines, and licenses for interim assessment
24 and intervention tracking software.

25 5. These fixed costs cannot be adjusted on a per-pupil basis during the school year,
26 particularly in rural counties. Smaller rural counties like Elko do not have the ability to easily
27 transfer teachers to other positions or other schools when there are minor changes in enrollment,
28 because those schools can be up to 100 miles apart. For smaller rural districts, making these

1 staffing determinations accurately is critical to developing a budget for the next fiscal year.

2 Because SB 302 introduces instability into district budgeting, there may be teacher surpluses in a
3 given school, which will result in the elimination of programming and opportunities for students.

4 6. When there are reductions to a school district's budgetary allotment, the district
5 may be required to eliminate teacher resources and professional development programs which are
6 critical to improving instruction at our schools. This may include the elimination of: (i)
7 professional development opportunities that help teachers create challenging and engaging
8 curricula; (ii) coaching/mentoring programs for classroom teachers; (iii) overtime pay used to
9 compensate teachers for time spent beyond the school day in professional learning communities to
10 improve instruction; and (iv) IT and maintenance positions, which provide critical support to
11 schools. Other programs that provide substantial benefits to students but are not essential to the
12 day-to-day delivery of instruction may be eliminated or reduced, including extra and co-curricular
13 activities like music programs and intramural sports.

14 7. The fact that SB 302 allows students to leave in the middle of a school year makes
15 managing budget reductions all the more challenging. Mid-year budget reductions are particularly
16 harmful and disruptive to schools. They require school districts to make changes in the allocation
17 of resources and the provision of programs during the school year, to the detriment of students.

18 I declare under penalty of perjury under the laws of Nevada that the foregoing is true and
19 correct. Dated this 19 day of September, 2015 in Elko, NV.

20 By 

21 JEFF ZANDER
22
23
24
25
26
27
28

FIRST JUDICIAL DISTRICT COURT
IN AND FOR CARSON CITY, NEVADA

HELLEN QUAN LOPEZ, individually and on behalf of her minor child, C.Q.; MICHELLE GORELOW, individually and on behalf of her minor children, A.G. and H.G.; ELECTRA SKRYZDLEWSKI, individually and on behalf of her minor child, L.M.; JENNIFER CARR, individually and on behalf of her minor children, W.C., A.C., and E.C.; LINDA JOHNSON, individually and on behalf of her minor child, K.J.; SARAH and BRIAN SOLOMON, individually and on behalf of their minor children, D.S. and K.S.,

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vs.

DAN SCHWARTZ, IN HIS OFFICIAL
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1 I, JIM MCINTOSH, declare as follows:

2 1. I am the Chief Financial Officer ("CFO") of Clark County School District
3 ("CCSD"). I have been the CFO of CCSD since 2013. Prior to being named CFO of CCSD, I
4 was the Deputy CFO of CCSD and, before that, the Accounting Director of CCSD. I make this
5 declaration based on personal knowledge and experience. If called as a witness, I could and would
6 competently testify to the facts set forth herein.

7 2. As CFO of CCSD and in my previous positions as Deputy CFO and Accounting
8 Director of CCSD, I have personal knowledge of the management of CCSD's yearly budget. I
9 have also read SB 302 and the proposed regulations.

10 3. Pursuant to SB 302, a student may enroll in the first 100 days of classes and,
11 subsequently, leave the district, taking with him or her 90 to 100 percent of the basic support
12 guarantee attributable to that student. Practically, the reduction of funds to a district will happen
13 almost immediately. Pursuant to N.R.S. 387.1233, a district must report its average enrollment on
14 a quarterly basis, which the state then uses to compute a district's budgetary allotment. Funding
15 allotted to a district will be adjusted up or down on a quarterly basis based on quarterly changes in
16 enrollment. Accordingly, a district's budget will be reduced mid-year if students enroll for the first
17 100 days of school and subsequently leave after obtaining an ESA.

18 4. Although CCSD is funded on a quarterly basis, it must project and plan for an
19 annual budget, based on projected enrollment for the upcoming school year. For example,
20 CCSD's projected enrollment for the 2015-2016 school year is 322,902. If CCSD lost 1,000
21 students from its projected enrollment, CCSD would experience a budgetary shortfall of over \$5
22 million dollars. That budgetary shortfall would cause significant harm to students enrolled in
23 CCSD, in the following ways:

- 24 a. Because teachers must be rehired by May 1 of the preceding school year, a decline
25 from projected enrollment may result in a teacher surplus in a particular school.
26 The district-wide impact of any teacher surplus is significant, as salaries comprise
27 between 85-87 percent of CCSD's expenditures. In order to respond to that teacher
28 surplus, CCSD must transfer teachers from overstaffed positions to vacant

1 positions. This can be a disruptive process, during which individual classes must be
2 restructured and teachers moved to different schools. If all vacancies are filled and
3 a teacher surplus remains, CCSD may be forced to reduce the workforce. Even if a
4 school district reduces a workforce, it is required to provide substantial notice
5 pursuant to the collective bargaining agreements. Thus, any reduction in workforce
6 would not take effect immediately, and the district would not recoup the costs of
7 declining enrollment immediately.

8 b. Fixed costs, including salaries, utilities, transportation, facilities maintenance and
9 upkeep, make up a large portion of CCSD's budget. These costs cannot be readily
10 decreased if there is a reduction of students. For example, if one student leaves the
11 district, the district will nevertheless still have to pay for the school bus that
12 previously transported that child to school. As another example, CCSD enters into
13 software licenses for instructional tools (i.e., for reading comprehension and
14 mathematics skill-building) on an annual basis based on estimated enrollment
15 figures. Those costs do not decrease when a student obtains an ESA and leaves the
16 district.


17 c. Because many of CCSD's costs are fixed, CCSD may be forced to make budgetary
18 adjustments which would be detrimental to students. For example, a school may
19 have to eliminate instructional materials for certain courses or cut programs like
20 college preparation programs, dropout prevention programs, math and science
21 enrichment programs. These curricular programs are critical to helping our schools
22 provide academic support to our highest-need students.

23 5. Further, the cost of educating students on a per-pupil basis in CCSD will increase
24 as enrollment declines. As a large district, CCSD is able to limit expenses through economies of
25 scale. For example, when the district negotiates a software license, a vendor may offer a lower
26 price per pupil because of CCSD's purchasing power. However, if CCSD's enrollment declines
27 or becomes unstable, the cost of these licenses and other services may increase on a per-pupil
28 basis, making it even more expensive to educate the students remaining in the district.

Additionally, the cost of educating high-need students, i.e., English language learners, students with special needs, and students receiving free and reduced-price lunch, is between 1.5 and 2 times higher than the average per-pupil cost in CCSD. The cost of educating students on a per-pupil basis increases if students who are less expensive to educate leave the district, thereby increasing the proportion of high-needs students in the district.

6. Impacts of shifting and declining enrollment and funding are felt most deeply at the school level. Each time a particular school experiences a decline in enrollment and funding, staff will be transferred and students will need to be re-dispersed mid-way through the school year. If course offerings are reduced and student schedules changed, it could cause substantial disruption to students' academic careers.

I declare under penalty of perjury under the laws of Nevada that the foregoing is true and correct. Dated this 20 day of October, 2015 in Clark County.

By: 
JIM MCINTOSH

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15 **FIRST JUDICIAL DISTRICT COURT**

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17 HELLEN QUAN LOPEZ, individually and on
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18 GORELOW, individually and on behalf of her
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21 JOHNSON, individually and on behalf of her
minor child, K.J.; SARAH and BRIAN
22 SOLOMON, individually and on behalf of their
minor children D.S. and K.S.,

23 Plaintiffs,

24 v.

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

27 Defendant.
28

REC'D & FILED

2015 NOV -5 PM 2:44

SUSAN MERRIWETHER
CLERK

BY V. Alegria
DEPUTY

CASE NO. 15-0C-00207-1B

Dept. No: II

**OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION AND
COUNTERMOTION TO DISMISS**

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4	<i>State of Nevada, Div. of Ins. v. State Farm Mut. Auto. Ins. Co.</i> , 116 Nev. 290, 995 P.2d 482 (2000)	21
6	<i>United States v. Salerno</i> , 481 U.S. 739 (1987)	7, 17
8	<i>Univ. & Cmty. Coll. Sys. of Nevada v. Nevadans for Sound Gov't</i> , 120 Nev. 712, 100 P.3d 179 (2004)	24
10	<i>Webster v. Doe</i> , 486 U.S. 592 (1988)	23
11	<u>Constitutional Provisions</u>	
12	FLA. CONST. art. 9, § 1	14
13	IND. CONST. art. 8, § 1	13, 15
14	NEV. CONST. art. 11, § 1	<i>passim</i>
15	NEV. CONST. art. 11, § 2	<i>passim</i>
16	NEV. CONST. art. 11, § 3	<i>passim</i>
17	NEV. CONST. art. 11, § 4	12
18	NEV. CONST. art. 11, § 6	<i>passim</i>
19	WIS. CONST. art. 10	12, 14
21	<u>Statutes</u>	
22	NRS 387.030	5, 6
23	NRS 387.045	16
24	NRS 387.121	5
25	NRS 387.122	5
26	NRS 387.1233	20, 22, 26
27	NRS 392.070	8, 11

1	NRS 394.130.....	10
2	<u>Other Authorities</u>	
3	BLACK'S LAW DICTIONARY (10th ed. 2014).....	2
4	Gov. Brian Sandoval, State of the State (Jan. 15, 2015).....	4, 27
5	Greg Forster, Friedman Foundation for Educational Choice, <i>A Win-Win Solution:</i>	
6	<i>The Empirical Evidence on School Choice</i> (3d ed. 2013)	3
7	<i>Minutes of the Assembly Committee on Education</i> , 78th Sess.	
8	(Nev. May 28, 2015).....	3, 4
9	<i>Minutes of the Senate Committee on Education</i> , 78th Sess. (Nev. Apr. 3, 2015)	2, 3, 4
10	<i>Minutes of the Senate Committee on Finance</i> , 78th Sess. (Nev. May 14, 2015)	2
11	N. Singer & S. Singer, 2A Sutherland Statutory Construction (7th ed.)	11
12	Nevada Assembly Bill 165 (2015).....	5
13	Nevada Senate Bill 302 (2015).....	<i>passim</i>
14	Nevada Senate Bill 405 (2015).....	5
15	Nevada Senate Bill 491 (2015).....	5
16	Nevada Senate Bill 508 (2015).....	20, 26
17	Nevada Senate Bill 515 (2015).....	6, 19, 21, 24
18	Official Report of the Debates and Proceedings in the	
19	Constitutional Convention of the State of Nevada (1866)	18
20	SB 302 Fiscal Note (Mar. 30, 2015)	23, 26

INTRODUCTION

Plaintiffs bring a facial challenge to Nevada's new education savings account ("ESA") program, enacted by the Legislature as Senate Bill 302 ("SB 302") to address serious and longstanding problems with the education system in Nevada. Claiming that the ESA program violates Sections 2, 3, and 6 of Article 11 of the Nevada Constitution, Plaintiffs seek a preliminary injunction. But all of Plaintiffs' claims fail as a matter of law. And Plaintiffs fail to demonstrate the irreparable injury required for a court to grant preliminary relief. Accordingly, Plaintiffs' complaint should be dismissed under Rule 12(b)(5), and their motion for preliminary injunction should be denied.

BACKGROUND

I. Nevada's New Education Savings Account Program

The State of Nevada, as part of sweeping education reforms enacted earlier this year, has empowered parents with real choice in how best to educate their children. Senate Bill 302, adopted by the Legislature and approved by Governor Sandoval on June 2, 2015, creates the ESA program. Under SB 302, Nevada parents may enter into agreements with the State Treasurer to open ESAs for their children. SB 302, §§ 7.1, 7.2 (attached as Exhibit 1). Any school-age child in Nevada may participate in the program. § 7.1. The only requirements are that a child take standardized tests and be enrolled in a Nevada public school for at least 100 consecutive school days before opening an account. §§ 7.1, 12.1.

Once an education savings account is opened, "[t]he child will receive a grant, in the form of money deposited" into the account. § 7.1(b); § 8.1. Children participating in the program receive a grant equal to 90% of a formula described as the "statewide average basic support per pupil." § 8.2(b). Children with disabilities or in low-income households receive 100% of Nevada's per-student allocation. § 8.2(a). For the 2015-16 school year, accounts will be funded in the spring, and the grant amounts will be a pro rata portion of \$5,139 or \$5,710. Any funds remaining in an account at the end of a school year are carried forward to the next year if the parents' agreement with the State Treasurer is renewed. § 8.6(a).

SB 302 specifies the educational purposes for which ESA grants may be spent,

1 including tuition, textbooks, tutoring, special education, and fees for achievement, advanced
2 placement, and college-admission examinations. § 9.1(a)-(k).¹ For these purposes, ESA
3 grants may be used at a "participating entity" or "eligible institution," including private schools,
4 colleges or universities within the Nevada System of Higher Education, certain other
5 accredited colleges, and certain accredited distance-learning programs. §§ 3.5, 5; *see also* §
6 11.1. Participating private schools must be "licensed pursuant to chapter 394 of NRS or
7 exempt from such licensing pursuant to NRS 394.211." § 5.

8 **II. Legislative History of SB 302**

9 Senate Majority Leader Michael Roberson explained the purpose of SB 302: "This
10 would be a world-class educational choice program. We are attempting to make an historic
11 investment in the Nevada public school system this session. There is room for a school
12 choice system as well." *Minutes of the Senate Committee on Finance*, 78th Sess. 18 (Nev.
13 May 14, 2015). As Senator Scott Hammond, the Vice Chair of the Senate Committee on
14 Education and the sponsor of SB 302, stated, "[t]he ultimate expression of parental
15 involvement is when parents choose their children's school." *Minutes of the Senate*
16 *Committee on Education*, 78th Sess. 7 (Nev. Apr. 3, 2015) ("*Minutes*, Apr. 3"). "More than 20
17 states," he noted, "offer programs empowering parents to choose educational placement that
18 best meets their children's unique needs." *Id.*

19 Senator Hammond explained that "[s]chool choice programs provide greater
20 educational opportunities by enhancing competition in the public education system. They also
21 give low-income families a chance to transfer their children to private schools that meet their

22 ¹ While Plaintiffs label SB 302 a "voucher law," Plfs.' Mot. for Prelim. Inj. ("PI Mot.") 1,
23 Nevada's ESA program is not a "voucher" program. In a voucher program, the State issues
24 "vouchers" that authorize the disbursement of State funds directly to a private school. *See*
25 *BLACK'S LAW DICTIONARY* 1809 (10th ed. 2014). Under Nevada's ESA program, by contrast,
26 the State disburses funds into students' education savings accounts, from which parents
27 choose where and how those funds will be spent (within the variety of educational purposes
28 allowed by SB 302). Parents are not required to spend ESA funds at a private school, but
rather may choose to spend ESA funds at, for example, a university or college within the
Nevada System of Higher Education, on tutoring, on achievement, advanced placement, and
admission examinations, or on a homeschool curriculum. *See* SB 302, §§ 3.5, 9(c), (e), (k),
11(d), (e).

1 needs." *Id.* He observed that "the nonpartisan Center on Education Policy outlined the
2 following conclusions from research studies about school choice programs: students offered
3 school choice programs graduate from high school at a higher rate than their public school
4 counterparts and parents are more satisfied with their child's school. In some jurisdictions
5 with school choice options, public schools demonstrated gains in student achievement
6 because of competition." *Id.* Senator Hammond found, too, that educational choice "would
7 provide relief to overcrowded public schools, benefiting teachers and students," *id.* at 8, and
8 that "[s]chools would be motivated to maintain high quality teaching and to be more
9 responsive to the needs of students and their parents." *Id.*

10 The legislative record includes evidence that school-choice programs improve public
11 schools. *Minutes of the Assembly Committee on Education*, 78th Sess. 30 (Nev. May 28,
12 2015) ("*Minutes*, May 28"). The Legislature received a report that examined empirical studies
13 of school-choice programs. See Greg Forster, Friedman Foundation for Educational Choice,
14 *A Win-Win Solution: The Empirical Evidence on School Choice* (3d ed. 2013) ("Friedman
15 Report"). Of the "23 empirical studies that have looked at the academic impact of school
16 choice on students that remain in the public schools," 22 "of those studies found school choice
17 improved outcomes in the public schools, and one found no difference." *Minutes*, May 28, at
18 30 (testimony of Victor Joecks of the Nevada Policy Research Institute). The report concludes
19 that "[s]chool choice improves academic outcomes" for participants and public schools "by
20 allowing students to find the schools that best match their needs, and by introducing healthy
21 competition that keeps schools mission-focused." Friedman Report at 1.

22 The Legislature also heard the testimony of Nevada parents. *Minutes*, Apr. 3, at 15 &
23 Exhibit I thereto; *Minutes*, May 28, at 27-30. As one Clark County parent testified, "[p]ublic
24 school is not a good fit for everyone. Parents know their children best and need to be able to
25 choose the best educational direction for them." *Minutes*, Apr. 3, at 15. Assemblyman David
26 Gardner noted that, according to a 2013 survey by the Cato Institute, "[o]ne hundred percent
27 of the parents participating in [an ESA program in Arizona] are satisfied." *Minutes*, May 28, at
28 15.

1 A number of organizations also supported SB 302, including the American Federation
2 for Children, the Friedman Foundation for Educational Choice, Advocates for Choice in
3 Education of Nevada, Nevada Policy Research Institute, Excellence in Education National,
4 and Nevada Families for Freedom. *Minutes*, Apr. 3, at 13-16; *Minutes*, May 28, at 25-27, 30-
5 32. Even private businesses weighed in. A representative of the Las Vegas Sands, for
6 example, testified:

7 ESAs could become a game changer for the state of Nevada. As a
8 company, the Sands is dedicated to helping our employees and
9 their children learn, advance, and share new ideas that drive
10 innovation. We believe that S.B. 302 (R2) will provide Nevada
11 students with the opportunity to earn a high-quality education at the
12 institution of their choice. ... Simply put, S.B. 302 (R2) can provide
13 a choice and a chance for Nevada students. [*Minutes*, May 28, at
14 27.]

12 **III. The Enactment of SB 302 as Part of the 2015 Education Reforms**

13 SB 302 was part of a comprehensive overhaul of the education system in Nevada. The
14 Governor, in his 2015 *State of the State* address to the Legislature, drew attention to the
15 serious problems that Nevada parents and students know all too well. See Gov. Brian
16 Sandoval, *State of the State* (Jan. 15, 2015).² Governor Sandoval noted that “far too many of
17 our schools are persistently failing”—10% of Nevada schools are on the Nevada Department
18 of Education’s list of underperforming schools—and “[m]any have been failing for more than a
19 decade.” *Id.* at 8. “Our most troubling education statistic,” he lamented, is “Nevada’s worst-in-
20 the-nation high school graduation rate.” *Id.* at 5. Nevada schools, he also noted, “are simply
21 overcrowded and need maintenance. Imagine sitting in a high school class in Las Vegas with
22 over forty students and no air conditioning.” *Id.* at 6. “[I]mprovements will not be made,” he
23 said, “without accountability measures, collective bargaining reform, and school choice.” *Id.*

24 In the months following the Governor’s call for a “New Nevada,” *id.* at 2, the Legislature
25 proceeded to enact more than 40 education reform measures. (For descriptions of many of
26 the new programs, see <http://www.doe.nv.gov/Legislative/Materials/>.) For example, the
27

28 ² Available at <http://gov.nv.gov/uploadedFiles/govnv.gov/Content/About/2015-SOS.pdf>.

1 Legislature created the Victory schools program, under which schools with the lowest student
2 achievement levels in the poorest parts of the State will receive an additional \$25 million in
3 annual funding. See Senate Bill 432. The Legislature created the Nevada Educational
4 Choice Scholarship Program, which provides tax credits in exchange for contributions to
5 organizations that offer scholarships to students from low-income households. See Assembly
6 Bill 165. The Legislature expanded the Zoom schools program, which assists pupils with
7 limited English proficiency. See Senate Bill 405. The Legislature also acted to improve
8 Charter schools. See Senate Bill 491.

9 **IV. Public School Funding in Nevada**

10 The Nevada Constitution requires the Legislature to support and maintain the public
11 schools by "direct legislative appropriation from the general fund." NEV. CONST. art. 11, § 6.1.
12 The Legislature is required to "provide the money the Legislature deems to be sufficient, when
13 combined with the local money" to fund the public schools for the next biennium. *Id.* § 6.2.
14 "To fulfill its constitutional obligation to fund education, the Legislature created the Nevada
15 Plan, a statutory scheme setting forth the process by which it determines the biennial funding
16 for education." *Educ. Initiative PAC v. Comm. to Protect Nev. Jobs*, 129 Nev. Adv. Op. 5, 293
17 P.3d 874, 883 n.8 (2013). Under the Nevada Plan, "the Legislature establishes 'basic support
18 guarantees' for all school districts." *Rogers v. Heller*, 117 Nev. 169, 174, 18 P.3d 1034, 1037
19 (2001) (quoting NRS 387.121). The basic support guarantee is the amount of money each
20 school district is assured of having to fund its operations. See NRS 387.121. The guarantee
21 is an amount "per pupil for each school district." NRS 387.122. "After the Legislature
22 determines how much money each local school district can" contribute, the Legislature
23 "makes up the difference between" the district's contribution and the amount of the basic
24 support guarantee. *Rogers*, 117 Nev. at 174, 18 P.3d at 1037. Funds appropriated by the
25 Legislature from the general fund sufficient to satisfy each district's basic support guarantee
26 are deposited in the State Distributive School Account ("DSA"), which is an account within the
27 State general fund. See NRS 387.030.

28 The DSA, in addition to receiving such appropriations from the general fund, also

1 receives money from certain other sources. The Permanent School Fund ("PSF") is one of
2 those sources. The Legislature created the PSF to implement Article 11, Section 3 of the
3 Constitution, which provides that specified property, including "lands granted by Congress to
4 [Nevada] for educational purposes" and "the proceeds derived from these sources," are
5 "pledged for educational purposes and the money therefrom must not be transferred to other
6 funds for other uses." NEV. CONST. art. 11, § 3. Section 3 money is kept in the PSF, and
7 interest on Section 3 money is transferred to the DSA. See NRS 387.030. The interest on the
8 PSF, however, constitutes a miniscule portion of the funds in the DSA. For example, in 2014,
9 of the \$1.4 billion in the DSA that came from the State Government, \$1.1 billion, or 78%, came
10 from the general fund. Only \$1.6 million, just 0.14%, came from the PSF. See Exhibit 2 (DSA
11 Summary).³

12 In June 2015, the Legislature enacted Senate Bill 515 to "ensur[e] sufficient funding for
13 K-12 public education for the 2015-2017 biennium." SB 515, Title. The Legislature
14 established an estimated weighted average basic support guarantee of \$5,710 per pupil for
15 FY 2015-16 and \$5,774 per pupil for FY 2016-17. *Id.* §§ 1-2. The per-pupil basic support
16 guarantee varies by district. For example, the FY 2015-16 guarantee for Clark County is
17 \$5,512 while White Pine County's is \$7,799 and Lincoln County's is \$10,534. *Id.* § 1. The
18 Legislature appropriated some \$1.1 billion from the general fund to the DSA for FY 2015-16
19 and more than \$933 million for FY 2016-17—over \$2 billion for the biennium. *Id.* § 7.

20 STANDARDS OF REVIEW

21 A number of standards govern the Court's review. "To survive dismissal [under Rule
22 12(b)(5)], a complaint must contain some set of facts, which, if true, would entitle [the plaintiff]
23 to relief." *In re Amerco Derivative Litig.*, 127 Nev. Adv. Op. 17, 252 P.3d 681, 692 (2011)
24 (quotation marks omitted).

25 Plaintiffs repeatedly state that they are challenging SB 302 "on its face." PI Mot. 2, 16,
26 17. In a facial challenge to a statute, the plaintiff "bears the burden of demonstrating that

27 ³ Available at [http://www.doe.nv.gov/uploadedFiles/ndedoenvgov/content/Legislative/DSA-](http://www.doe.nv.gov/uploadedFiles/ndedoenvgov/content/Legislative/DSA-SummaryForBiennium.pdf)
28 [SummaryForBiennium.pdf](http://www.doe.nv.gov/uploadedFiles/ndedoenvgov/content/Legislative/DSA-SummaryForBiennium.pdf).

1 there is no set of circumstances under which the statute would be valid." *Deja Vu Showgirls v.*
2 *Nevada Dep't of Taxation*, 130 Nev. Adv. Op. 73, 334 P.3d 392, 398 (2014). Given the high
3 bar set by the facial-challenge rule, "[a] facial challenge to a legislative Act is, of course, the
4 most difficult challenge to mount successfully." *United States v. Salerno*, 481 U.S. 739, 745
5 (1987).

6 A preliminary injunction is "extraordinary relief." *Dep't of Conserv. & Nat. Res. v. Foley*,
7 121 Nev. 77, 80, 109 P.3d 760, 762 (2005). "For a preliminary injunction to issue, the moving
8 party must show that there is a likelihood of success on the merits and that the nonmoving
9 party's conduct, should it continue, would cause irreparable harm for which there is no
10 adequate remedy at law." *Id.*

11 Importantly, "[b]ecause statutes are presumed to be valid," Plaintiffs bear "the burden of
12 clearly showing that [SB 302] is unconstitutional" to win a preliminary injunction. *S.M. v. State*
13 *of Nevada Dep't of Pub. Safety*, No. 64634, 2015 WL 528122, at *2 (Nev. Feb. 6, 2015); *id.* at
14 *3 (holding that the plaintiff "did not and could not meet his burden of clearly demonstrating
15 that A.B. 579 is unconstitutional as applied to him and, thus, could not show a reasonable
16 likelihood of success on the merits to maintain his preliminary injunction."). In Nevada, "the
17 judiciary has long recognized a strong presumption that a statute duly enacted by the
18 Legislature is constitutional." *Sheriff, Washoe Cnty. v. Smith*, 91 Nev. 729, 731, 542 P.2d
19 440, 442 (1975). "In case of doubt, every possible presumption will be made in favor of the
20 constitutionality of a statute, and courts will interfere only when the Constitution is clearly
21 violated." *List v. Whisler*, 99 Nev. 133, 137, 660 P.2d 104, 106 (1983).

22 ARGUMENT

23 I. The Legislature's Constitutional Power To "Encourage Education" By "All 24 Suitable Means" Fully Authorized The Enactment Of SB 302 And The ESA 25 Program.

26 The question in this case is whether Article 11 of the Nevada Constitution allows or
27 forbids the ESA program enacted by the Legislature in SB 302. Plaintiffs contend that the
28 program violates the Legislature's obligations under Sections 2, 3, and 6 of Article 11.

1 Any analysis of this issue, however, must begin with Article 11's very first section. Section 1—
2 captioned "Legislature to encourage education ..."—provides in full:

3 The legislature shall encourage by *all suitable means* the promotion
4 of intellectual, literary, scientific, mining, mechanical, agricultural,
5 and moral improvements, and also provide for a superintendent of
6 public instruction and by law prescribe the manner of appointment,
7 term of office and the duties thereof. [NEV. CONST. art. 11, § 1
8 (emphasis added).]

9 The plain language of Section 1 thus confers broad, discretionary power on the
10 Legislature to encourage education in Nevada by "all" means the Legislature deems to be
11 "suitable."⁴ The Legislature is not limited to encouraging education through the public-school
12 system. See, e.g., NRS 392.070 (exempting children in private schools and being
13 homeschooled from public school attendance requirements). On the contrary, Section 1
14 authorizes the Legislature to encourage education by "all" suitable means.

15 The Legislature deemed the ESA program to be a means of encouraging education.
16 Thus, the Nevada Legislature exercised its Section 1 power when it enacted SB 302 as part of
17 the 2015 education reforms, and Section 1 fully authorized the Legislature to enact the ESA
18 program established by SB 302. Plaintiffs' arguments under Sections 2, 3, and 6 cannot
19 justify the negation of the Legislature's legitimate use of its express Section 1 authority.

20 **II. The ESA Program Does Not Violate The "Uniform System Of Common Schools"**
21 **Language In Article 11, Section 2.**

22 Article 11, Section 2 of the Nevada Constitution provides:

23 The legislature shall provide for a uniform system of common
24 schools, by which a school shall be established and maintained in
25 each school district at least six months in every year, and any
26 school district which shall allow instruction of a sectarian character
27 therein may be deprived of its proportion of the interest of the public
28 school fund during such neglect or infraction, and the legislature
 may pass such laws as will tend to secure a general attendance of
 the children in each school district upon said public schools. [NEV.
 CONST. art. 11, § 2.]

⁴ In *Meredith v. Pence*, 984 N.E.2d 1213 (Ind. 2013), the Indiana Supreme Court explained
 that the similarly worded "all suitable means" clause in the Indiana Constitution constituted a
 "broad delegation of legislative discretion." *Id.* at 1224 n.7. See *infra* at 13 n.8. The same is
 true of the "all suitable means" clause in Article 11, Section 1 of the Nevada Constitution.

1 Plaintiffs contend (PI Mot. 16-19) that the ESA program violates that portion of Section
2 2 requiring the Legislature to provide for a "uniform system of common schools." *Id.* But the
3 ESA program does not even *implicate* Section 2, much less violate its uniformity requirement.
4 The program is instead fully authorized by Section 1. Plaintiffs' claim under Section 2 lacks
5 merit and should be dismissed.

6 Section 2 confers on the Legislature both the power and the duty to establish a public-
7 school system. It requires the Legislature to establish a "uniform" public-school system with a
8 school in every district open at least six months per year. The uniformity requirement in
9 Section 2 is concerned with uniformity *within* the public school system. It is aimed at avoiding
10 certain differences between public schools in different parts of the State. *See State of Nevada*
11 *v. Tilford*, 1 Nev. 240 (1865).⁵

12 Plaintiffs argue that "SB 302 uses public monies for private schools and entities not
13 subject to the legal requirements and educational standards governing public schools, in
14 violation of the uniformity mandate" of Section 2. PI Mot. 18. Plaintiffs also argue that the
15 ESA program is unlawful because Section 2 "prohibit[s] the Legislature from establishing and
16 maintaining a separate alternative system to Nevada's public schools." *Id.* Yet Plaintiffs' two
17 theories wholly ignore Section 1. The Legislature did not create the ESA program as part of
18 Nevada's "uniform system of common schools" under Section 2; it created ESAs as part of its
19 plenary power to "encourage [education] by all suitable means" under Section 1. In all events,
20 both of Plaintiffs' theories suffer deeper flaws.

21 Plaintiffs' first objection to the ESA program—that private schools receiving ESA funds
22 are not subject to the laws and standards uniformly applied to public schools—fails because

23
24 ⁵ In *Tilford* the Supreme Court upheld, based on Section 2, the Legislature's abolition of
25 the Storey County board of education as part of the creation of a new public-school system.
26 The Court explained: "There were county officers in Storey county which were not to be found
27 in any other county in the State. The system of schools was different there from that in any
28 other county. It became the imperative duty of the Legislature to either alter the systems of
school and county government in Storey county so as to conform to the other counties, to
make the other counties conform to Storey, or to adopt a new system of school and county
government for all the counties. Certainly the legislature was not restricted in the choice of
these three alternatives. The legislature adopted the latter alternative." *Tilford*, 1 Nev. at 245.

1 Section 2 requires only that the *public schools* be uniform. Section 2 does not apply to private
2 schools or impose any uniformity requirement on them. *Cf.* NRS 394.130 (requiring private
3 schools to provide “instruction in the subjects required by law” for public schools “[i]n order to
4 secure uniform and standard work for pupils in private school”). Nor does the ESA program
5 convert participating private schools into public schools. See SB 302, § 14 (providing that SB
6 302 shall not be deemed “to make the actions of a participating entity the actions of the State
7 Government”). Nevada had a uniform public-school system before the adoption of SB 302,
8 and after SB 302’s adoption the State continues to have a uniform public-school system—one
9 that is open to all who wish to attend. Nothing in Section 2 bars the Legislature from funding
10 ESAs that parents and students may choose to use for private school. Any construction of
11 Section 2 as prohibiting the ESA program would fly in the face of Section 1, which expressly
12 empowers the Legislature to use “all suitable means” to encourage education.

13 Plaintiffs’ second theory—that Section 2 “prohibit[s] the Legislature from establishing
14 and maintaining a separate alternative system to Nevada’s uniform public schools”—fares no
15 better than their first. Pl Mot. 18. As an initial matter, it simply misunderstands the effect of
16 SB 302: the Legislature has not established, let alone maintained, an alternative system of
17 schools. Moreover, by its terms, the “uniform system of common schools” language in
18 Section 2 does not impose any restriction on the Legislature’s ability to provide grants to
19 children for educational purposes beyond public schools. Section 2 mandates uniformity
20 within the public school system; it does not prohibit other efforts to promote education.
21 Section 2’s public-school uniformity requirement thus does not bar the Legislature from
22 funding ESAs that parents and students may use on private schooling. Any such
23 interpretation of Section 2 reads out of Nevada’s Constitution Section 1’s clear and expansive
24 directive to the Legislature to “encourage [education] by all suitable means,” including means
25 outside the public-school system.⁶

26
27 ⁶ This construction of the Nevada Constitution makes particular sense in light of the reality
28 that parents have a constitutional right to educate their children outside the public education
system. See *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Meyer v. Nebraska*, 262 U.S.
390 (1923). Given that federal constitutional right, it would be more than passing strange for

1 Plaintiffs argue that the Legislature's duty under Section 2 "to provide for the education
2 of Nevada's children through the establishment of a uniform system of public schools ...
3 prohibits the Legislature from enacting SB 302, a law that allows for the education of Nevada
4 children" outside of the public-school system. PI Mot. 18-19. This argument fails for several
5 reasons. First, it overlooks the Legislature's express power to encourage education by "all
6 suitable means." NEV. CONST. art. 11, § 1 (emphasis added). The Legislature is not restricted
7 to encouraging education through the public schools. See, e.g., NRS 392.070 (permitting
8 private schools and homeschooling). Furthermore, Plaintiffs' argument is a non-sequitur. The
9 Legislature has a duty to create and fund public schools; it does not follow, however, that this
10 duty prohibits the Legislature from supporting with ESAs parents and students who choose a
11 private-sector education. Section 2 is a floor, not a ceiling. And Plaintiffs' argument proves
12 too much. If, as Plaintiffs argue, Section 2 prohibits the Legislature from enacting "a law that
13 allows for the education of Nevada children" outside of the public school system, that would
14 mean NRS 392.070—which excuses private and homeschool students from Nevada's public
15 school attendance requirements (see NRS 392.040)—is unconstitutional. If this Court accepts
16 Plaintiffs' theory of Section 2, it will make private schools and homeschooling illegal in
17 Nevada. That cannot be the law.

18 Plaintiffs' argument is based on a mechanical and erroneous use of the *expressio unius*
19 canon. See PI Mot. 18. That canon must be applied "with great caution" and "courts should
20 be careful not to allow its use to thwart legislative intent." N. Singer & S. Singer, 2A
21 Sutherland Statutory Construction § 47:25 (7th ed.). It "does not mean that anything not
22 required is forbidden." *Id.* Plaintiffs' claim illustrates why courts call the maxim "a valuable
23 servant" but "a dangerous master." *Ford v. United States*, 273 U.S. 593, 612 (1927)
24 (quotation marks omitted).

25 Here, Plaintiffs' argument converts the *expressio unius* canon from a commonsense
26 tool into a weapon of illogic. It would thwart the intent of Section 1 to encourage education by
27 Nevada to be powerless to provide any assistance to children educated outside the uniform
28 system of public schools.

1 "all" suitable means. Surely Section 2 was not intended to nullify the immediately antecedent
2 provision in the Constitution. Plaintiffs' blinkered approach in applying the maxim to Article 11
3 would also yield absurd results. For example, Article 11, Section 4 of the Constitution requires
4 a "State University which shall embrace departments for Agriculture, Mechanic Arts, and
5 Mining." In Plaintiffs' world, the fact that the Constitution *requires* the University to have these
6 three departments *forbids* it from having any others.⁷ A perusal of the UNR course catalog
7 reveals that this is not the case.

8 The Supreme Courts of Indiana, North Carolina, and Wisconsin have all upheld
9 educational choice programs against challenges brought under the "uniformity" clauses of
10 their state constitutions. *Davis v. Grover*, 480 N.W.2d 460 (Wis. 1992), upheld the Milwaukee
11 Parental Choice Program ("MPCP"). The plaintiffs in *Davis* argued that the MPCP violated
12 Article X, § 3 of the Wisconsin Constitution, which states: "The legislature shall provide by law
13 for the establishment of district schools, which shall be as nearly uniform as practicable; and
14 such schools shall be free and without charge" Rejecting that argument, the *Davis* Court
15 held:

16 [T]he MPCP in no way deprives any student the opportunity to
17 attend a public school with a uniform character of education. ...
18 [T]he uniformity clause requires the legislature to provide the
19 opportunity for all children in Wisconsin to receive a free uniform
20 basic education. The legislature has done so. The MPCP merely
21 reflects a legislative desire to do more than that which is
22 constitutionally mandated. [480 N.W.2d at 474.]

23 See also *Jackson v. Benson*, 578 N.W.2d 602, 627-28 (Wis. 1998) (again upholding the
24 MPCP).

25 The Indiana Choice Scholarship Program was upheld in *Meredith v. Pence*, 984 N.E.2d
26 1213 (Ind. 2013). Indiana's Constitution, like Nevada's, directs the legislature to

27 ⁷ Plaintiffs rely on *Galloway v. Truesdell*, 83 Nev. 13, 422 P.2d 237 (1967) (Pl Mot. 18).
28 *Galloway* involved a statute that gave non-judicial powers to, and imposed non-judicial duties
on, district judges. The Supreme Court struck down the statute because it violated the
separation of powers set forth in Article 3, Section 1 and Article 6, Section 6 of the
Constitution. In contrast to the statute at issue in *Galloway*, the ESA program is authorized by
Article 11, Section 1 and does not violate any constitutional provision.

1 (1) "encourage" education by "all suitable means" and (2) establish a "uniform system of
2 Common Schools."⁸ Rejecting the plaintiffs' "uniformity" challenge, the Court explained that
3 the "[t]he school voucher program does not replace the public school system, which remains
4 in place and available to all Indiana schoolchildren," and that "so long as a 'uniform' public
5 school system ... is maintained, the General Assembly has fulfilled the duty imposed by the
6 Education Clause." *Id.* at 1223.

7 The *Meredith* Court also held that the Indiana program was authorized by the
8 legislature's power to encourage education by all suitable means, explaining that "the
9 Education Clause directs the legislature generally to encourage improvement in education in
10 Indiana, and this imperative is broader than and in addition to the duty to provide for a system
11 of common schools." *Id.* at 1224. Because the Indiana program did "not alter the structure or
12 components of the public school system," it came under "the first imperative" to encourage
13 education "and not the second" imperative for a uniform public-school system. *Id.*

14 North Carolina's Opportunity Scholarship Program was recently upheld in *Hart v. State*
15 *of North Carolina*, 774 S.E.2d 281 (N.C. 2015). The plaintiffs argued that the program violated
16 Article IX, § 2(1) of the State Constitution, which provides that "[t]he General Assembly shall
17 provide by taxation and otherwise for a general and uniform system of free public schools."
18 The *Hart* Court rejected that argument. The uniformity clause, which "requires that provision
19 be made for public schools of like kind throughout the state," was held to "appl[y] exclusively
20 to the public school system and does not prohibit the General Assembly from funding
21 educational initiatives outside of that system." *Id.* at 289-90. The Court specifically rejected
22 the argument that the school-choice program created "an alternate system of publicly funded
23 private schools standing apart from the system of free public schools," *id.* at 289—the same
24 argument that Plaintiffs make here.

25
26 ⁸ The Education Clause of the Indiana Constitution provides that "it should be the duty of the
27 General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and
28 agricultural improvement; and to provide, by law, for a general and uniform system of
Common Schools, wherein tuition shall be without charge, and equally open to all." IND.
CONST. art. 8, § 1.

1 Plaintiffs rely upon *Bush v. Holmes*, 919 So.2d 392 (Fla. 2006) (PI Mot. 19), but *Bush* is
2 of no help to them. *Bush* struck down a Florida program under Article IX, Section 1(a), of the
3 Florida Constitution, which reads in relevant part:

4 It is ... a paramount duty of the state to make adequate provision for
5 the education of all children residing within its borders. Adequate
6 provision shall be made by law for a uniform, efficient, safe, secure,
7 and high quality system of free public schools that allows students
8 to obtain a high quality education and for the establishment,
maintenance, and operation of institutions of higher learning and
other public education programs that the needs of the people may
require. [FLA. CONST. art. IX, § 1(a).]

9 The *Bush* Court read the first sentence, with its "paramount duty" language, as
10 imposing a duty on the legislature to provide an adequate education and construed the
11 second sentence concerning "a uniform, efficient, safe, secure, and high quality system of free
12 public schools" as a *restriction* on how the legislature may carry out its "paramount duty." The
13 Court held that the Florida program violated the second sentence "by devoting the state's
14 resources to the education of children within our state through means other than a system of
15 free public schools." *Bush*, 919 So.2d at 407.

16 *Bush* distinguished the Wisconsin Supreme Court's decision in *Davis* on the ground
17 that "the education article of the Wisconsin Constitution construed in *Davis*, see WIS. CONST.
18 art. X, does not contain language analogous to the statement in [Florida] article IX, section
19 1(a) that it is 'a paramount duty of the state to make adequate provision for the education of all
20 children residing within its borders.'" *Bush*, 919 So.2d at 407 n.10. This reasoning also
21 distinguishes this case, because the Nevada Constitution, like Wisconsin's, does not contain
22 the "paramount duty" and "adequate provision" language that the *Bush* Court found
23 dispositive.

24 The Indiana Supreme Court's decision in *Meredith* confirms the foregoing analysis.
25 *Meredith* distinguished *Bush* based on *Bush*'s distinction of the Wisconsin case. See
26 *Meredith*, 984 N.E.2d at 1224 ("Like the Wisconsin Constitution, the Indiana Constitution
27 contains no analogous 'adequate provision' clause."). The Indiana Supreme Court also
28 distinguished *Bush* based on the "all suitable means" clause in the Indiana Constitution. As

1 noted, Indiana's Constitution is the most similar to Nevada's because it contains an "all
2 suitable means" clause as well as a "uniform system of Common Schools" clause. IND.
3 CONST. art. 8, § 1; *see supra* at 13 n.8. The *Meredith* Court held that the legislature's duty to
4 provide for a uniform system of common schools "cannot be read as a restriction on the first
5 duty" to encourage education by all suitable means. 984 N.E.2d at 1224. "[T]he legislature
6 [has a duty] generally to encourage improvement in education in Indiana, and this imperative
7 is broader than and in addition to the duty to provide for a system of common schools. Each
8 may be accomplished without reference to the other." *Id.* So too here. The Nevada
9 Constitution, like the Indiana Constitution, empowers the Legislature to promote education by
10 "all suitable means" and does not contain the language on which the *Bush* Court relied. For
11 the reasons articulated in *Meredith*, *Bush* does not support Plaintiffs' challenge to the ESA
12 program.

13 **III. The ESA Program Does Not Violate Article 11, Section 3's Pledge Of Certain**
14 **Property For "Educational Purposes".**

15 Plaintiffs argue that SB 302 violates Section 3 "on its face" because SB 302 "diverts
16 funds allocated for the public schools to private uses." PI Mot. 2; *see also id.* at 11-13.
17 Plaintiffs' argument is that the Legislature appropriated funds for the public schools and,
18 contrary to Section 3, SB 302 transfers a portion of those funds to ESAs. But the plain
19 language of Section 3 defeats Plaintiffs' facial challenge to SB 302.

20 Article 11, Section 3 of the Constitution provides in full:

21 All lands granted by Congress to this state for educational
22 purposes, all estates that escheat to the state, all property given or
23 bequeathed to the state for educational purposes, and the
24 proceeds derived from these sources, together with that percentage
25 of the proceeds from the sale of federal lands which has been
26 granted by Congress to this state without restriction or for
27 educational purposes and all fines collected under the penal laws of
28 the state are hereby pledged for educational purposes and the
money therefrom must not be transferred to other funds for other
uses. The interest only earned on the money derived from these
sources must be apportioned by the legislature among the several
counties for educational purposes, and, if necessary, a portion of
that interest may be appropriated for the support of the state
university, but any of that interest which is unexpended at the end
of any year must be added to the principal sum pledged for

educational purposes. [NEV. CONST. art. 11, § 3.]

The first point to make about Section 3 is that it simply does not require all funds covered by that section, or all funds appropriated for "educational purposes," to be used for public schools. Nothing in Section 3's text imposes any such requirement. Instead, Section 3 provides that the specific property described therein is "pledged for educational purposes and the money therefrom must not be transferred to other funds for other uses." NEV. CONST. art. 11, § 3.⁹

As explained above, the interest on Section 3 money goes from the Permanent School Fund to the Distributive School Account. See *supra* at 6. ESAs will be funded from the DSA. See SB 302, § 16.1. But depositing a small amount of Section 3 money with the other funds in the DSA does not mean that SB 302 violates Section 3, for two reasons.

First, Plaintiffs' facial challenge to SB 302 fails because nothing in SB 302 requires that ESAs be funded with Section 3 money. Section 3 money, as noted, constitutes a tiny fraction of the DSA. In 2014, of the \$1.4 billion in State funds in the DSA, only \$1.6 million—a mere 0.14%—came to the DSA from the PSF. The vast majority of the \$1.4 billion—\$1.1 billion or 78%—came from the general fund. See *supra* at 6; Exhibit 2 (DSA Summary). Because the amount of money from the DSA used to support the public schools is far greater than the PSF funds deposited into the DSA—orders of magnitude greater—this Court can safely conclude that all PSF funds will be used to support public schools. Funds for ESAs will constitute only a small portion of the funds distributed from the DSA, and ESA funds need not be drawn from the tiny portion of the DSA comprised of PSF funds. ESA funds may be drawn from that part of the DSA consisting of appropriations from the general fund. "[T]hose attacking a statute [have] the burden of making a *clear showing* that the statute is unconstitutional," *List*, 99 Nev. at 138, 660 P.2d at 106 (emphasis added). Speculation that PSF funds are being used to

⁹ Before SB 302's enactment, NRS 387.045 provided that "[n]o portion of the public school funds or of the money specially appropriated for the purpose of public schools shall be devoted to any other object or purpose." Yet SB 302 expressly amended NRS 387.045 to exempt the ESA program from this statute. See SB 302, § 15.9. Thus, Plaintiffs do not contend that the ESA program violates NRS 387.045. See *Pl Mot.* 12.

1 fund ESAs is just that—speculation.

2 Because Plaintiffs challenge SB 302 on its face, they bear “the burden of
3 demonstrating that there is *no set of circumstances* under which the statute would be valid.”
4 *Deja Vu Showgirls*, 334 P.3d at 398 (emphasis added). The ESA program has not yet been
5 implemented. It is not enough for Plaintiffs to posit that some Section 3 money could in theory
6 go to ESAs. Under the facial-challenge rule, even if SB 302 “might operate unconstitutionally
7 under some conceivable set of circumstances [that] is insufficient.” *Salerno*, 481 U.S. at 745.
8 SB 302 does not require that Section 3 money be used for the ESA program. There is no
9 reason to assume that the State will implement SB 302 such that Section 3 money goes to
10 ESAs.

11 *Second*, even if some Section 3 money were used to fund ESAs, that would not violate
12 Section 3. The plain text of Section 3 provides that Section 3 money must be used “for
13 educational purposes.” NEV. CONST. art. 11, § 3. Any Section 3 money transferred to an ESA
14 account is being used for an educational purpose. The ESA program is unquestionably an
15 educational program, as the legislative history makes clear. *See supra* at 2-5. The United
16 States Supreme Court has long recognized that education-choice programs serve educational
17 purposes. *See, e.g., Mueller v. Allen*, 463 U.S. 388, 395 (1983) (“A state’s decision to defray
18 the cost of educational expenses incurred by parents—regardless of the type of schools their
19 children attend—evidences ... [the] purpose of ensuring that the state’s citizenry is well-
20 educated.”). Plaintiffs assert that SB 302 serves “non-public educational purposes” (PI Mot.
21 12); but they make no argument that SB 302’s purposes are not “educational purposes,”
22 which is all Section 3 requires. And in all events, SB 302 does serve public-education
23 purposes. SB 302 was not enacted just to promote the welfare of students opting out of public
24 schools, but also to improve the educational well-being of *all* students, whether they use ESAs
25 or remain in public schools with smaller class sizes and better educational opportunities
26 because of the positive effect of the “exit” option SB 302 creates has on the public schools. In
27 considering SB 302, the Legislature examined evidence that education-choice programs
28 improve public schools by promoting competition and reducing overcrowding. *See supra* at 3.

1 Thus, the Legislature enacted SB 302 for *public education* purposes as well other educational
2 purposes.

3 Plaintiffs rely on *State ex rel. Keith v. Westerfield*, 23 Nev. 468, 49 P. 119 (1897) (PI
4 Mot. 12 n.4, 13 & n.5), but they misread that case. The question in *Keith* was whether the
5 Legislature's appropriation of a sum to pay the salary of a teacher at the state orphans' home
6 could be paid from an account known as the "general school fund." The Supreme Court
7 concluded the salary could not be paid from that fund. *Keith*, 49 p. at 121. But the Court did
8 not hold that the salary payment lacked an "educational purpose"; quite the opposite, the
9 Court readily acknowledged that "moneys ... appropriated" for educating children not in public
10 school is "applying [that money] to educational purposes." *Id.* The Court held the payment
11 could not come from the "general school fund" because the orphans in *Keith* "ha[d] not the
12 right to attend the public school." *Id.* at 120 (following *State ex rel. Wright v. Dovey*, 19 Nev.
13 396, 12 P. 910 (1887)).¹⁰ Here, ESA funds are spent to educate children who have the right
14 to attend public school in Nevada. Thus, spending State funds on the ESA program is, as
15 *Keith* explained (and common sense confirms), "applying them to educational purposes." *Id.*
16 at 121.¹¹

17 Moreover, even though the Supreme Court in *Keith* held that the salary of the orphan-
18 home teacher could not be paid from the general school fund because the orphans were not

19 ¹⁰ When *Wright* and *Keith* were decided, Article 11, Section 3 "provide[d] that the interest on
20 school moneys shall be apportioned among the several counties in proportion to the
21 ascertained number of the persons between the ages of six and eighteen years in the different
22 counties." *Wright*, 12 P. at 910. *Wright* held that orphans were not be counted because they
23 were "not entitled to attend the public schools." *Id.* at 912.

24 ¹¹ Plaintiffs' citation of a few scattered phrases in the report of the debates in Nevada's
25 Constitutional Convention are inapposite. The first snippet that Plaintiffs quote concerns
26 Section 2, not Section 3. See PI Mot. 12 (quoting Official Report of the Debates and
27 Proceedings in the Constitutional Convention of the State of Nevada 568 (1866)). The
28 speaker was making the point that sectarian instruction in a school district would cause a loss
of funds under Section 2 only if such instruction occurred in a public school; no funding loss
would occur if there were a Catholic school in the district. Plaintiffs also misapply the
statement of a speaker who was discussing, not the "educational purpose" language of
Section 3, but rather "the last proviso" of Section 3, which at that time stated that interest on
Section 3 proceeds "may be appropriated for the support of the State University." See PI Mot.
12 n.4 (citing Debates 579).

1 allowed to attend public school, the Court went on to hold that the salary was "payable out of
2 the general fund in the state treasury." *Id.* The implication of that latter holding for the instant
3 case is clear: the vast majority of the money in the DSA is, in fact, from the general fund, and
4 if this Court were to conclude that Section 3 funds cannot be used for the educational purpose
5 of funding ESAs, then, like the Court in *Keith*, it should also conclude that ESAs are "payable
6 out of the general fund" monies already in the DSA. *Id.* Plaintiffs admit that, under *Keith*,
7 funding ESAs from general fund monies would not violate Section 3, PI Mot. 13 n.5, but they
8 attempt to dismiss what the *Keith* Court did as involving only a *de minimus* amount of money.
9 But there is nothing in *Keith* to support that distinction. Under *Keith*, there is simply no
10 constitutional issue in paying for non-public school educational purposes out of the general
11 fund. Section 3 does not apply to monies in the DSA appropriated from the general fund.

12 Plaintiffs also assert that the Legislature would not "have passed [SB 302] if it required
13 a substantial new appropriation from the general fund," *id.*, but they ignore the fact that the
14 Legislature *did* appropriate substantial monies for the ESA program—from the general fund.
15 In SB 515, enacted right after SB 302, the Legislature appropriated some \$2 billion from the
16 general fund to the DSA to fund the public schools *and* ESAs for the biennium. See SB 515, §
17 7; see also SB 302, § 16 (ESAs to be funded from the DSA).

18 **IV. In Enacting SB 302, The Legislature Did Not Violate Its Article 11, Section 6 Duty**
19 **To appropriate Funds "The Legislature Deems To Be Sufficient" For The Public**
20 **Schools.**

21 Plaintiffs' final claim is that SB 302 violates Article 11, Section 6, the first two
22 paragraphs of which provide:

23 1. In addition to other means provided for the support and
24 maintenance of said university and common schools, the legislature
25 shall provide for their support and maintenance by direct legislative
26 appropriation from the general fund, upon the presentation of
27 budgets in the manner required by law.

28 2. During a regular session of the Legislature, before any other
appropriation is enacted to fund a portion of the state budget for the
next ensuing biennium, the Legislature shall enact one or more
appropriations to provide the money *the Legislature deems to be*
sufficient, when combined with the local money reasonably

1 available for this purpose, to fund the operation of the public
2 schools in the State for kindergarten through grade 12 for the next
3 ensuing biennium for the population reasonably estimated for that
4 biennium. [NEV. CONST. art. 11, § 6 (emphasis added).]

5 Specifically, Plaintiffs argue that "SB 302, by transferring funding appropriated by the
6 Legislature for the public schools into ESAs for private uses necessarily reduces the
7 Legislature's appropriations for the public schools below the level deemed 'sufficient' by the
8 Legislature under Art. XI, section 6.2." PI Mot. 14. But Plaintiffs' notion that the Legislature
9 has somehow violated its own judgment about what amount of funds are "sufficient" ignores
10 the chronology of SB 302's passage, disregards the way the Legislature historically has
11 complied with Article 11, Section 6, and engages in gross, incorrect speculation unfit for a
12 facial challenge.

13 Under the Nevada Plan, the Legislature does not appropriate a sum certain for the
14 public schools; it funds on a per-pupil basis by establishing the basic support guarantee for
15 each school district. This per-pupil method means that a district's funding fluctuates with
16 enrollment. This was true before ESAs, and remains so today. See Canavero Decl. ¶ 6
17 (attached as Exhibit 3).

18 The Legislature, in addition to this per-pupil amount, also guarantees school districts a
19 minimum aggregate amount of funding under the Nevada Plan's "hold harmless" provision.
20 See NRS 387.1233(3), *as amended*, SB 508, § 9. This provision guarantees that if a school
21 district experiences more than a 5% reduction in enrollment, it will receive funding at a level
22 based on the prior year's enrollment. *Id.* Thus, Nevada's "hold harmless" provision sets a
23 lump-sum funding floor for Nevada's public schools based on 95% of the prior year's
24 enrollment. This also was true before ESAs, and remains true today. See Canavero Decl. ¶
25 8.

26 In short, both before and after ESAs, the Legislature has complied with its Article 11,
27 Section 6 requirement the same way: by guaranteeing a minimum fixed amount of funding
28 (*i.e.*, the hold harmless guarantee), and by guaranteeing a minimum per-pupil amount of
funding with no upper limit (*i.e.*, the per-pupil basic support guarantee).

...

1 On June 1, 2015, the Legislature passed SB 515 to "ensur[e] sufficient funding for K-12
2 public education for the 2015-2017 biennium." SB 515, Title. In Sections 1 and 2 of SB 515,
3 the Legislature—just as it did before it created the ESA program—established per-pupil basic
4 support guarantees for each school district, and in Section 7 it appropriated some \$2 billion
5 from the general fund to the DSA. SB 515, enacted against the backdrop of Nevada's hold
6 harmless guarantee, was how the Legislature "enact[ed] one or more appropriations to
7 provide the money the Legislature deems to be sufficient, when combined with the local
8 money reasonably available for this purpose, to fund the operation of the public schools ... for
9 the population reasonably estimated for that biennium." NEV. CONST. art. 11, § 6.2. See
10 Canavero Decl. ¶ 5.

11 Plaintiffs complain that SB 302 violates Section 6 because it "transfer[s] funding
12 appropriated by the Legislature for the public schools into ESAs." PI Mot. 14. This ignores
13 that SB 302 was enacted *before* SB 515 appropriated funds under Section 6. The Legislature
14 passed SB 302 on May 29, 2015. It passed SB 515 three days later on June 1, 2015.¹² SB
15 515 was passed against the backdrop of the already-passed SB 302. Therefore, even
16 assuming Plaintiffs are correct that SB 302's ESA program somehow affects the appropriation
17 made by SB 515, that effect had already been put in place by the Legislature when it made
18 the appropriation it "deemed to be sufficient" for the public schools under Article 6. "Whenever
19 possible, this court will interpret a rule or statute in harmony with other rules or statutes."
20 *State of Nevada, Div. of Ins. v. State Farm Mut. Auto. Ins. Co.*, 116 Nev. 290, 295, 995 P.2d
21 482, 486 (2000) (citing cases). Furthermore, "when the legislature enacts a statute, this court
22 presumes that it does so 'with full knowledge of existing statutes relating to the same subject.'"
23 *Id.* (quoting *City of Boulder v. Gen. Sales Drivers*, 101 Nev. 117, 118-119, 694 P.2d 498, 500
24 (1985)). Nothing in Article 6 required the Legislature to ignore background laws in making the
25 "sufficient" appropriation under Section 6. Quite the opposite, the Legislature clearly does
26 make Section 6 appropriations against the backdrop of already-existing laws, including

27 ¹² The Governor approved SB 302 on June 2, 2015. He approved SB 515 on June 11,
28 2015.

1 Nevada's "hold harmless provision" in NRS 387.1233(3). The Legislature's passage of SB
2 302 could not somehow cause the Legislature, three days later, to appropriate less than that
3 which it deemed sufficient for the public schools. Contrary to Plaintiffs' argument, this cannot
4 be a case where the Legislature set aside an amount of money under Section 6, and then
5 *later* impermissibly "transferr[ed]" or "removed" that money to another use. PI Mot. 14. That
6 other use was already in place—and presumably accounted for—when the Legislature made
7 the Section 6 set-aside. Plaintiffs' statement that it "is simple math" that SB 302 "will reduce
8 [public school] funding below the amount deemed sufficient by the Legislature," *id.*, gets a
9 failing grade.

10 Plaintiffs' argument that SB 302 violates Section 6 because public schools have
11 "significant fixed costs," PI Mot. 15, is not really an attack on ESAs, but an attack on the
12 Nevada Plan itself. The Legislature funded public schools under Section 6 using a per-pupil
13 basic support guarantee long before ESAs existed. This per-pupil guarantee will fluctuate
14 based on actual enrollment. If Plaintiffs are right that ESAs cause the Nevada Plan to violate
15 Section 6 because the "fixed costs of operating a system of public schools are not
16 commensurately reduced by losing one or even a handful of students," *id.*, then the Nevada
17 Plan was unconstitutional long before ESAs. Public schools have always had "fixed costs"
18 and lost "one or even a handful of students" for innumerable reasons, including students
19 dropping out, moving, or withdrawing to go to a private school or homeschool. Plaintiffs' "fixed
20 costs" argument proves too much.

21 In any event, the Legislature *has* accommodated Plaintiffs' concern about fixed costs—
22 and in the same way before and after SB 302. The Nevada Plan's "hold harmless" provision
23 protects school districts by providing a guaranteed 95% funding floor. That is the fixed
24 amount the Legislature deems "sufficient" under Article 6. And that amount is unaffected by
25 SB 302.¹³

26 ¹³ In a declaration attached to Plaintiffs' motion, Paul Johnson speculates about "possible"
27 ways that ESAs "may" affect per-pupil public school funding if his "assumptions are correct."
28 Johnson Decl. ¶ 5. To prevail on a facial challenge, Plaintiffs must prove "that there is no set
of circumstances under which the statute would be valid," *Deja Vu Showgirls*, 334 P.3d at 398,

1 Plaintiffs' claim under Section 6 must also be rejected on the independent ground that
2 whether the Legislature has appropriated the funds it deems sufficient for the public schools is
3 not a justiciable question. See *N. Lake Tahoe Fire Prot. Dist. v. Washoe Cnty. Bd. of Cnty.*
4 *Comm'rs*, 129 Nev. Adv. Op. 72, 310 P.3d 583, 587 (2013) ("Under the political question
5 doctrine, controversies are precluded from judicial review when they revolve around policy
6 choices and value determinations constitutionally committed for resolution to the legislative
7 and executive branches.") (quotation marks omitted); *Heller v. Legislature of State of Nevada*,
8 120 Nev. 456, 466, 93 P.3d 746, 753 (2004) ("Separation of powers is particularly applicable
9 when a constitution expressly grants authority to one branch of government"). Section 6
10 provides that "*the Legislature shall enact one or more appropriations to provide the money the*
11 *Legislature deems to be sufficient ... to fund the operation of the public schools.*" NEV. CONST.
12 art. 11, § 6.2 (emphases added). The Legislature is the sole judge of what it "deems" to be
13 "sufficient," and its view of the matter may not be reviewed or second-guessed by the judicial
14 branch. Cf. *Webster v. Doe*, 486 U.S. 592, 600 (1988) (statute permitting CIA Director to
15 terminate Agency employee whenever the Director shall "deem such termination necessary or
16 advisable" "exudes deference to the Director" and "foreclose[s] the application of any
17 meaningful judicial standard of review" under the Administrative Procedure Act).¹⁴

18 Finally, even if this Court were to find a violation of the Legislature's duty under Section
19

20 not speculate about "possible" ways ESAs "may" be implemented to the detriment of a school
21 district. Mr. Johnson's conceded speculation neither helps Plaintiffs' motion for preliminary
22 injunction nor prevents dismissal of their facial challenge. In any event, Mr. Johnson's
23 "assumptions ... are not correct." See Canavero Decl. ¶¶ 9-13. Indeed, Mr. Johnson's
24 speculation in this case is contradicted by his own earlier statement submitted to the
Legislature and included in its fiscal note on SB 302, that SB 302 would have "no impact" in
White Pine County School district. See SB 302 Fiscal Note, at 4 (attached as Exhibit 4),
available at <http://www.leg.state.nv.us/Session/78th2015/FiscalNotes/8283.pdf>.

25 ¹⁴ In *Guinn v. Legislature of State of Nevada*, 119 Nev. 277, 71 P.3d 1269 (2003), *pet. for*
26 *reh'g dis'd & prior op. clarified*, 119 Nev. 460, 76 P.3d 22 (2003), the Supreme Court
27 suspended the operation of a constitutional provision requiring a two-thirds supermajority vote
28 of the Legislature to raise taxes because that provision caused an impasse preventing the
Legislature from passing a balanced budget and funding the public schools. But the Supreme
Court emphasized that "we could not, nor did we, direct the Legislature to approve any
particular funding amount" for the public schools. *Id.*, 119 Nev. at 472, 76 P.3d at 30.

6.2 to appropriate the money it deems to be sufficient, enjoining the ESA program would not be a proper remedy. Section 6.5 provides that “[a]ny appropriation of money enacted in violation of subsection 2, 3 or 4 is void.” NEV. CONST. art. 11, § 6.5. If there were a Section 6.2 violation, this Court would have to set aside the appropriations bill, *i.e.*, SB 515—not SB 302. And because Plaintiffs have not requested any such relief, this Court should not order it even if there were a Section 6.2 violation (which there is not).

V. Plaintiffs Are Not Entitled To A Preliminary Injunction.

Plaintiffs fail to prove that a preliminary injunction should issue. Nevada courts will grant a preliminary injunction only “where the moving party can demonstrate that it has a reasonable likelihood of success on the merits and that, absent a preliminary injunction, it will suffer irreparable harm for which compensatory damages would not suffice.” *Excellence Cmty. Mgmt. v. Gilmore*, 131 Nev. Adv. Op. 38, 351 P.3d 720, 722 (2015). “In considering preliminary injunctions, courts also weigh the potential hardships to the relative parties and others, and the public interest.” *Univ. & Cmty. Coll. Sys. of Nevada v. Nevadans for Sound Gov’t*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004). Plaintiffs do not demonstrate that any of these factors supports their request for such “extraordinary relief.” *Dep’t of Conserv. & Nat. Res.*, 121 Nev. at 80, 109 P.3d at 762.

As shown above, Plaintiffs have not met their burden of “clearly demonstrating” that SB 302 “is unconstitutional” and hence have not shown a “reasonable likelihood of success on the merits.” *S.M. v. State of Nevada Dep’t of Pub. Safety*, 2015 WL 528122, at *3. The Court can deny Plaintiffs’ motion for this reason alone. *See, e.g., Boulder Oaks Cmty. Ass’n v. B & J Andrews Enter., LLC*, 125 Nev. 397, 403 n.6, 215 P.3d 27, 31 n.6 (2009).

Plaintiffs, even if this Court sets aside their meritless claims, fail entirely to show that they will suffer “irreparable harm for which there is no adequate remedy at law.” *Dep’t of Conserv. & Nat. Res.*, 121 Nev. at 80, 109 P.3d at 762. As a threshold matter, Plaintiffs allege potential harms to *school districts*, not to themselves—and even those harms relate only to financial loss that could be remedied at law. The principal harms that Plaintiffs allege are that public school districts will receive less funding, will face higher per-pupil education costs, and

1 will have to adjust their budgets and program offerings in response to the ESA program. See
2 PI Mot. 20-21. Because they are “[m]ere allegations of financial hardship,” Plaintiffs’
3 predictions are legally “insufficient to support a finding of irreparable harm.” *Church of*
4 *Scientology of Cal. v. United States*, 920 F.2d 1481, 1489 (9th Cir. 1990); see also *Elias v.*
5 *Connett*, 908 F.2d 521, 526 (9th Cir. 1990) (irreparable harm not established where plaintiff
6 “has failed to show that he will suffer more than mere monetary harm or financial hardship if
7 denied relief”). But even if the alleged harms were cognizable, Plaintiffs have made no effort
8 to show that the harms will have any effect on *them*. None of the Plaintiffs have submitted a
9 declaration. There is no evidence that they personally will suffer irreparable injury.

10 The harms that Plaintiffs allege, moreover, are speculative. They say that “[s]chool
11 districts *may* have to” cut educational services and extra-curricular activities, PI Mot. 20-21
12 (emphasis added), but they provide no concrete proof to support these chicken-little
13 predictions. Especially in a facial challenge like this one—where Plaintiffs bear the burden to
14 demonstrate that SB 302 is unconstitutional in *all* circumstances—unsupported hypotheticals
15 are insufficient to justify a preliminary injunction. See *Flick Theater, Inc. v. City of Las Vegas*,
16 104 Nev. 87, 91 n.4, 752 P.2d 235, 238 n.4 (1988) (holding that the “case for a preliminary
17 injunction” may not be “based on mere conjecture”); *Goldie’s Bookstore, Inc. v. Super. Ct. of*
18 *State of Cal.*, 739 F.2d 466, 472 (9th Cir. 1984) (“Speculative injury does not constitute
19 irreparable injury.”); *In re Excel Innovations, Inc.*, 502 F.3d 1086, 1098 (9th Cir. 2007)
20 (“Speculative injury cannot be the basis for a finding of irreparable harm.”).

21 The declarations that Plaintiffs offer to support their predictions are equally speculative.
22 Paul Johnson, the Chief Financial Officer of White Pine County School District can say no
23 more than that “[a] number of damaging *scenarios* are *possible*.” Johnson Decl. ¶ 5
24 (emphases added); see also ¶ 11 (“*If* funding declines *in the coming years* as a result of SB
25 302, White Pine will *begin seriously considering* closing schools”) (emphases added). Jeff
26 Zander, the Superintendent of the Elko County School District says that SB 302 “*may* result in
27 a mid-year or quarterly reduction of the district’s operating budget.” Zander Decl. ¶ 4
28 (emphasis added). The Chief Financial Officer of Clark County School District, Jim McIntosh,

1 similarly warns that SB 302 “*may* result in a teacher surplus in a particular school,” McIntosh
2 Decl. ¶ 4(a) (emphasis added), that certain costs “*may* increase on a per-pupil basis,” *id.* ¶ 5
3 (emphasis added), and that a school district “*may* be forced to make budgetary adjustments
4 which would be detrimental to students,” *id.* ¶ 4(c) (emphasis added). And the most that Dr.
5 Christopher Lubienski, a professor from Illinois, can muster is that SB 302 “*may* lead to more
6 inequitable opportunities and outcomes.” Lubienski Decl. ¶ 7(d) (emphasis added). Courts
7 should not preliminarily enjoin a duly-enacted, state-wide public policy based on selective
8 conjecture from non-party declarants.

9 Worse yet, the declarations contradict each other and fail to understand the law. Mr.
10 Johnson warns that class sizes in certain grades “would balloon,” Johnson Decl. ¶ 11, while
11 Mr. McIntosh worries that shrinking class sizes could lead to “a teacher surplus in a particular
12 school.” McIntosh Decl. ¶ 4. Mr. Johnson even contradicts himself. *Compare* Johnson Decl.
13 ¶ 6 (“SB 302 will harm public schools”), *with* SB 302 Fiscal Note, at 4 (SB 302 will have “no
14 impact”). Nor do the declarants acknowledge the “hold harmless” provision enacted by the
15 Legislature ensures that no school district will lose more than 5% of its funding from quarter to
16 quarter due to a decline in enrollment. *See* NRS 387.1233(3), *amended by* SB 508, § 9. The
17 “hold harmless” provision is intended to prevent the large funding fluctuations on which
18 Plaintiffs and their declarants base their speculations.

19 Even if significant fluctuations are still possible, they are not caused by SB 302, but
20 instead by the Nevada Plan for school funding, which Plaintiffs have not challenged here.
21 Under the Nevada Plan’s funding formula, school districts are funded on a per-pupil basis.
22 When a pupil exits the district—whether because she has moved to a different district or
23 another State, she has dropped out of a poor-performing school, or she has decided to go to
24 private school (whether or not with ESA funds)—the district’s total funding will decrease.
25 Enrollment fluctuations and concomitant funding fluctuations will naturally occur with or
26 without the ESA program. Under Plaintiffs’ theory, it would be unconstitutional—and cause
27 irreparable harm—for the State to transfer a large number of government workers from
28 Carson City to Las Vegas anytime during the school year, simply because the departure of

1 those employees' school-age children could cause funding decreases for the Carson City
2 schools.

3 In reality, the ESA program actually could stabilize public school enrollments. Nevada
4 has the dubious distinction of having the worst high-school graduation rate in the country, as
5 Governor Sandoval noted in his 2015 *State of the State* address. In enacting SB 302, the
6 Legislature considered evidence that education-choice programs *improve* public school
7 outcomes. See *supra* at 3. If through competition the ESA program improves public schools,
8 there may be fewer dropouts and thus more funding for public schools. If the Court is to
9 entertain Plaintiffs' conjecture about the hypothetical harms of SB 302, it should also consider
10 the many predicted benefits of that measure.¹⁵

11 Finally, a preliminary injunction in this case would severely damage the public interest.
12 Every child in Nevada has a right to "the opportunity to receive a basic education." *Guinn*, 119
13 Nev. at 286, 71 P.3d at 1275. Plaintiffs do not argue and present no evidence that the ESA
14 program will *deprive* any child of this right and opportunity. Granting a preliminary injunction,
15 however, would deny Nevada children the opportunity to transcend this lowest common
16 denominator by attending the school that is best for them. The people of Nevada and their
17 elected representatives have adopted a policy aimed at improving education in the State. A
18 handful of plaintiffs with mere policy disagreements and no proof of irreparable harm are not
19 entitled to obstruct the Legislature's considered judgment.

20 * * *

21 Nevada's new ESA program is a lawful exercise of the Legislature's express
22 constitutional power to "encourage" education by "all suitable means." NEV. CONST. art. 11,
23 § 1. The program does not violate the constitutional provision concerning a "uniform system

24 ¹⁵ Plaintiffs argue that, because they allege a constitutional violation, they are not required
25 to show actual irreparable injury. See PI Mot. 19-20. But Plaintiffs rely on a case that merely
26 states that a constitutional violation "may" constitute irreparable harm. *City of Sparks v.*
27 *Sparks Mun. Ct.*, 129 Nev. Adv. Op. 38, 302 P.3d 1118, 1124 (2013) (citing *Monterey Mech.*
28 *Co. v. Wilson*, 125 F.3d 702, 715 (9th Cir. 1997)). Plaintiffs have not explained how they
personally are irreparably harmed by the ESA program. Nor have they shown that the ESA
program is unconstitutional.

1 of common schools." *Id.*, art. 11, § 2. The program exists for an obvious and urgently needed
2 "educational purpose," *id.* art. 11, § 3, and does not call for the use of money covered by
3 Section 3 in any event. And in enacting the program—three days *before* it appropriated funds
4 for the public schools for the next biennium—the Legislature did not violate its duty to "provide
5 the money the Legislature deems to be sufficient" for the public schools. *Id.*, art. 11, § 6.2.
6 Because none of Plaintiffs' facial attacks on the ESA program have merit, this Court should
7 uphold the constitutionality of the program.

8 CONCLUSION

9 For the foregoing reasons, Defendant's motion to dismiss should be granted, and
10 Plaintiffs' motion for preliminary injunction should be denied.

11 DATED this 5th day of November, 2015.

12 Respectfully submitted,

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Plaintiff: Hellen Quan Lopez et al.	Defendant: Dan Schwartz

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FIRST JUDICIAL DISTRICT COURT
IN AND FOR CARSON CITY, NEVADA

REC'D & FILED

2015 NOV 24 PM 3:14

HELLEN QUAN LOPEZ, individually and
on behalf of her minor child, C.Q.;
MICHELLE GORELOW, individually and on
behalf of her minor children, A.G. and H.G.;
ELECTRA SKRYZDLEWSKI, individually
and on behalf of her minor child, L.M.;
JENNIFER CARR, individually and on
behalf of her minor children, W.C., A.C., and
E.C.; LINDA JOHNSON, individually and on
behalf of her minor child, K.J.; SARAH and
BRIAN SOLOMON, individually and on
behalf of their minor children, D.S. and K.S.,

Plaintiffs,

vs.

DAN SCHWARTZ, IN HIS OFFICIAL
CAPACITY AS TREASURER OF THE
STATE OF NEVADA,

Defendant.

Case No. 150C002071B

Dept. No.: II

SUSAN MERRIVETHER
CLERK

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DEPUTY

PLAINTIFFS' REPLY ON ITS MOTION
FOR A PRELIMINARY INJUNCTION AND
OPPOSITION TO DEFENDANT'S MOTION
TO DISMISS

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant's brief waxes eloquent about "sweeping education reform" and all of the purported benefits Nevada will realize from using public school funds to subsidize private school tuitions and home schooling expenditures. But rhetoric and posturing aside, SB 302 simply does not pass constitutional muster. Plaintiff public school parents established in their motion for a preliminary injunction that SB 302 violates the Nevada Constitution on three separate grounds. Defendant's brief fails to refute Plaintiffs' showing.

First, Plaintiffs demonstrated that SB 302 is unconstitutional because it diverts to a private voucher program—Education Savings Accounts ("ESAs")—funds appropriated by the Legislature solely for the operation of the public schools under Article XI, Sections 3 and 6. Defendant has no answer for this nor can he. Defendant concedes that SB 302 on its face funds the private ESAs authorized by SB 302 from the Distributive School Account ("DSA")—the Section 3 and 6 funds. These funds cannot be used for private expenditures by express mandate of the Nevada Constitution. The statute fails on this ground alone regardless of any other argument raised by Defendant.

Second, Plaintiffs established that SB 302, by diverting funds from the DSA, reduces the amounts deemed sufficient by the Legislature to fund public education in violation of Section 6. In response, Defendant argues that the Legislature anticipated SB 302's diversion of funds when it appropriated money for public education so the amount left in the DSA after implementation of SB 302 is sufficient. This is both factually wrong and practically impossible. Defendant does not dispute that the Legislature provided no additional funds—beyond the appropriations for the public schools—to pay for private ESAs authorized under SB302. Indeed, the Legislature could not have determined the amounts sufficient to fund both public education and ESAs over the biennium. SB 302 has no cap and is not limited to any particular criteria of students. There is no way to predict how many ESAs will siphon off money from the DSA. Accordingly, it is impossible for the Legislature to uphold its constitutional duty to sufficiently

1 fund the public schools first before any other appropriation when SB 302 will divert an unlimited
2 amount of funds out of that appropriation to ESAs.

3 Third, Plaintiffs showed that SB 302 violates the Legislature's constitutional
4 obligation to maintain a uniform system of public schools under Article XI, Section 2. Defendant
5 does not dispute that the ESA funds—the diverted public school funds—will support non-uniform
6 private schools in violation of Section 2. Instead, Defendant argues that ESAs are not subject to
7 Section 2 at all but are permissible under Section 1's general aspiration that the Legislature shall
8 "encourage by all suitable means the promotion of intellectual, literary, scientific mining,
9 mechanical, agricultural, and moral improvements." This contention, however, is unsupported by
10 anything in the history or drafting of Article XI and directly conflicts with the intent of the framers
11 of the Nevada Constitution. It also goes against well-established canons of constitutional
12 construction: namely, specific terms govern the general, the Constitution must be read as a whole
13 and clear affirmative expressions exclude the contrary. While Section 1's introductory statements
14 exhort the Legislature to promote intellectual, literary and scientific development, Sections 2, 3
15 and 6 set forth the clear directives for the manner in which the Legislature must do so for K-12
16 students: the establishment, maintenance and support of a uniform system of public schools. The
17 laudatory language in Section 1 cannot be read to allow funds appropriated to maintain the
18 uniform system of public schools to be used to support non-uniform private schools and other non-
19 uniform private education expenditures.

20 For these reasons and as discussed below, Defendant's brief fails on all counts to
21 provide support for the constitutionality of SB 302. Plaintiffs, thus, have shown that they are
22 likely to succeed on their claims that SB 302 is unconstitutional on its face. Unconstitutional
23 statutes are alone sufficient harm to justify an injunction without a further showing but there is
24 ample evidence in the record that SB 302 will cause irreparable harm. SB 302 must be
25 preliminarily enjoined.

1 **II. ARGUMENT**

2 **A. Plaintiffs Are Likely To Prevail On The Merits And, Thus, Have Also Stated**
3 **Valid Claims Defeating A Motion to Dismiss**

4 Defendant's brief both opposes Plaintiffs' motion for preliminary injunction and
5 supports Defendant's separate motion to dismiss Plaintiffs' complaint (hereinafter referred to
6 jointly as "Defendant's Brief" or "Def. Br."). Because Plaintiffs are likely to prevail on their
7 motion seeking to preliminarily enjoin SB302's implementation, Defendant's motion to dismiss
8 must also be denied.

9 **1. Defendant Does Not, And Cannot, Refute SB 302's Diversion Of Public**
10 **School Funds To Private Purposes In Violation Of Article XI, Section 3**
11 **And Section 6, Of The Nevada Constitution**

12 Plaintiffs' Motion for Preliminary Injunction (hereinafter "Plaintiffs' Motion" or
13 "Pl. Mot.") demonstrates that, under the Education Article of the Nevada Constitution, funds
14 specifically allocated to public schools by the Legislature in the biennium budget for public
15 schools have a singular purpose: to provide for the support, maintenance and operation of
16 Nevada's public schools. Article XI establishes two sources of such funds—those set aside under
17 Section 3 and those appropriated under Section 6. By the plain terms of the Nevada Constitution,
18 neither of these sources of funds may be diverted to private schools or other non-public school
19 expenditures. *See, e.g., State ex rel. Keith v. Westerfield*, 23 Nev. 468 (1897) (Section 3 and
20 Section 6 funds "constitute the general school fund" which cannot be diverted away from the
21 public school system "without disregarding the mandates of the constitution"); *see also* Pl. Mot. at
22 13 (discussing relevant authority). SB 302 violates these provisions by specifically authorizing
the use of Article XI funds for private purposes.

23 Defendant does not directly address SB 302's unconstitutional diversion of funds
24 appropriated for the public schools under Section 6. Instead, Defendant attempts to recast
25 Plaintiffs' position as pertaining only to Section 3 and then asserts that the diversion of Section 3
26 funds to ESAs is allowable because (1) Section 3 funds comprise a small portion of the Article XI
27 funds; and (2) Section 3 funds may be used for any "educational purpose"—public or private.
28 Def. Br. at 15-17. Neither argument cures SB 302's constitutional defects. Further, Defendant's

1 failure to directly address the diversion of Section 6 public school funding under SB 302 is a tacit
2 admission of the law’s violation of the express constitutional prohibition on using public school
3 funding for anything other than the operation of Nevada’s public schools.¹

4 **(a) Defendant Fails To Directly Address The Unconstitutional**
5 **Diversion Of Public School Funding Under Article XI, Section 6**
6 **Of The Nevada Constitution**

7 Defendant does not address nor refute Plaintiffs’ claim that SB 302 diverts funds
8 appropriated by the Legislature “for the support and maintenance of . . . [the] common schools”
9 under Section 6 to private purposes. Nev. Const. art. XI, § 6.1. By its plain terms, funds
10 appropriated under Section 6 must be used “to fund the *operation of the public schools* in the State
11 for kindergarten through grade 12” *Id.*, § 6.2 (emphasis added). As Defendant readily concedes,
12 the funds appropriated by legislation in the biennium State budget (SB 515) pursuant to Section 6
13 comprise the vast majority of the funds allocated to the DSA, the State account from which
14 payments to public school districts are made during the school year. *See* Def. Br. at 16 (funds
15 appropriated pursuant to Section 6 comprised 78 percent of the DSA in 2015); *see also* Boyd
16 Decl., Ex. 1.

17 Defendant does not deny, nor can he, that SB 302 by its plain terms diverts funds
18 appropriated by the Legislature for the operation of the public schools under Section 6 to ESAs for
19 private expenditures. *See* SB 302 § 16.1 (school districts are entitled to their apportioned Section 6
20 funds “minus . . . all the funds deposited in education savings accounts established on behalf of
21 children who reside in the county”); *see also* SB 302, Legislative Counsel’s Digest (“the amount
22 of the [ESA] must be deducted from the total apportionment to the resident school district of the
23 child on whose behalf the [ESA] is made”). That ends the analysis. Section 6 funds are

24 ¹ Defendant suggests that, under *Keith*, funding of ESAs from the money appropriated pursuant to
25 SB 515 is not unconstitutional because those are “general fund monies.” Def. Br. at 19. Yet *Keith*
26 provides no support for Defendant’s position. In *Keith*, the Court specifically stated that the
27 disputed payment could not be paid from the “general school fund,” comprised of Section 3 and
28 Section 6 funds. 49 P. at 121. The express and clear purpose of Section 6—to “provide[] for the
support and maintenance of said University and common schools”—has remained the same since
the Constitution’s founding. Thus, the diversion of funds appropriated pursuant to Section 6 is
unconstitutional, just like it was in 1897.

1 appropriated and must be used solely for the operation of the public schools, and SB 302's
2 diversion of those funds for private purposes is unconstitutional.

3 (b) **Article XI, Section 3, Prohibits The Use Of The Permanent**
4 **School Fund For Private Schools And Other Private**
5 **Educational Programs**

6 While ignoring Section 6 funds, Defendant contends that funds established under
7 Section 3 can be used for any “educational purpose,” not just for the public schools, and therefore,
8 SB 302 does not violate that provision. Def. Br. at 17-18. This reading is belied by “the history,
9 public policy, and reason for the provision,” *Landreth v. Malik*, 251 P.3d 163, 166 (2011), as well
10 as the Nevada Supreme Court’s precedent interpreting this provision.

11 Section 3 was drafted and established to ensure sources of funding for public
12 education in addition to direct legislative appropriations, primarily revenue from federal land
13 grants made by Congress. *See* Nevada Enabling Act, Pub. L. No. 38-30, 13 Stat. 30, 32 (1864);
14 *see also Heydenfeldt v. Daney Gold & Silver Min. Co.*, 10 Nev. 290 (1875) *aff’d sub nom.*
15 *Heydenfeldt v. Daney Gold & Silver Mining Co.*, 93 U.S. 634, 23 L. Ed. 995 (1876). Nevada’s
16 Enabling Act expressly states that the federal land grants were “granted to said state *for the*
17 *support of common schools.*” Nevada Enabling Act, Pub. L. No. 38-30, 13 Stat. at 32 (emphasis
18 added). Consistent with the terms of the Nevada Enabling Act, the framers of the Nevada
19 Constitution in their debates underscored that Section 3 was explicitly intended to establish a
20 “public school fund” that would be used to support “the common school system of the State.”
21 Clancy Decl. in Support of Mot. for Preliminary Injunction (“Clancy Decl.”) Ex. 2, OFFICIAL
22 REPORT OF THE DEBATES AND PROCEEDINGS IN THE CONSTITUTIONAL CONVENTION OF THE STATE
23 OF NEVADA (“DEBATES AND PROCEEDINGS”) at 579.

24 While Defendant asserts Plaintiffs cherry picked choice excerpts from the framers’
25 constitutional debates (Def. Br. at 18 n.11), Defendant fails to cite *any* statement by the framers of
26 the Nevada Constitution indicating an intent to authorize the use of Section 3 for anything other
27 than to support Nevada’s K-12 public schools and the State University. In fact, the history of the
28 drafting of Article XI and the debates about it are to the contrary. *See generally* Declaration of
Michael Green (“Green Decl.”) at ¶¶ 8-21.

1 It is also well established that the term “educational purposes” in Section 3 refers
2 only to the public K-12 schools and the State University. As the Nevada Supreme Court has long
3 held the term “educational purposes” in Section 3 refers specifically to the educational system of
4 the state, comprised of the State University and the public schools. *Keith*, 49 P. at 120. The
5 plaintiff in *Keith* raised—and the court rejected—the very same argument Defendant asserts in his
6 opposition. Def. Br. at 17-18. Specifically, the plaintiff argued that because Section 3 pledged
7 moneys “for educational purposes,” those funds could be used for the payment of teachers outside
8 of the common or public school system. *Keith*, 49 P. at 120. The court flatly rejected that
9 argument, holding that funds appropriated under Section 3 were only for the support of “the
10 educational system of this state,” comprised of the K-12 public schools and the State University.
11 *Id.* Further, the court emphasized that institutions “foreign to the educational system of the state”
12 had “no interest in [Section 3] moneys.” *Id.*

13 Defendant cites the court’s statement in *Keith* “that ‘moneys . . . appropriated’ for
14 educating children not in public school is ‘applying [that money] to educational purposes,” Def.
15 Br. at 18. But Defendant fails to note that, *in the very same sentence*, the court went on to
16 expressly state that, nevertheless, “the constitution does not include the education of these [non-
17 public school] children in the term ‘educational purposes.’” *Keith*, 49 P. at 121. Defendant
18 cannot circumvent the clear holding of *Keith*. *See also State ex rel. Wright v. Dovey*, 19 Nev. 396,
19 12 P. 910, 912 (1887) (the framers of the Constitution did not “intend[] to allow public-school
20 moneys [to be paid] to any county for persons not entitled to attend the public schools therein . . .
21 .”); *State ex rel. Stoutmeyer v. Duffy*, 7 Nev. 342, 346-47 (1872) (“certain funds are pledged and
22 certain taxation allowed for the support of common schools, which are public and open to be
23 enjoyed by all resident children between the ages of six and eighteen years”).

24 Finally, Defendant contends that SB 302 is constitutional because it does not
25 require the use of Section 3 funds for ESAs. Def. Br. at 16-17. By so arguing, Defendant
26 concedes that funds set aside by Section 3 must be used for the public schools, implying that the
27 funds for ESAs can come from Section 6 appropriations. But, as Plaintiffs have established,
28

1 Section 6 funds cannot constitutionally be used for anything other than the public schools either.
2 Any diversion of Section 3 and 6 funds to ESAs is unconstitutional.

3 **2. Defendant Cannot Refute That SB 302 Reduces Public School Funding**
4 **Below The Level Deemed Sufficient By The Legislature In Violation Of**
5 **Article XI, Section 6 Of The Nevada Constitution**

6 SB 302 also violates Section 6's mandate that the Legislature appropriate *first* the funds it
7 "deems to be sufficient" to fund the operation of Nevada's public schools for the next biennium.
8 Defendant contends that SB 302 does not violate this provision because: (a) the Legislature took
9 ESAs into account when enacting SB 515—the appropriation for public education for the 2015-17
10 biennium—by including funds to cover the funds diverted to ESAs; and (b) even if SB 302
11 reduces the monies deemed sufficient, separate and unrelated legislation mitigates any
12 unconstitutional impact SB 302 may have on the public schools. Both of these contentions are
13 erroneous and should be rejected.

14 **(a) The Fact That SB 302 Was Passed Before SB 515 Does Not Cure**
15 **Its Constitutional Defects**

16 Defendant argues that SB 302 is constitutional because the Legislature, after enacting SB
17 302, approved appropriations for the public schools in the biennium State Budget that accounted
18 for the funds to be diverted to private schools and other private expenditures through ESAs. Def.
19 Br. at 21. There is no basis for this position in the legislative record, either on SB 302, the
20 voucher law, or SB 515, the biennium State Budget.

21 Defendant's assertion that the Legislature took ESAs into account when enacting
22 appropriations for the public schools in SB 515 is based solely on timing. Defendant argues that
23 the appropriations in SB 515 accounted for ESAs because SB 515 was passed three days after SB
24 302. Def. Br. at 21. But the minutes of the various meetings regarding SB 515 never mention SB
25 302, and Defendant's own Exhibit 2 demonstrates that SB 302 was not considered when
26 determining the level of funding sufficient to fund the public schools or in calculating that
27 appropriation for the DSA. *See* Minutes of the Senate Committee on Finance, May 30, 2015 and
28 May 31, 2015, and Minutes of the Assembly Ways and Means Committee, June 1, 2015, at 7-8
(all online at

1 <https://www.leg.state.nv.us/Session/78th2015/Reports/history.cfm?BillName=SB515>); Def. Br.
2 Ex. 2, Distributive School Account – Summary for 2015-17 Biennium (“DSA Summary 2015-
3 2017”).

4 Further, in enacting SB 515, the Legislature followed the exact same process and funding
5 formula used in prior biennium budgets to determine the sufficiency of public school
6 appropriations for the DSA. *See* Declaration of Samuel T. Boyd (“Boyd Decl.”) Ex. 2 Legislative
7 Counsel Bureau, Fiscal Analysis Division, *The Nevada Plan for School Finance: An Overview* at
8 10-14 (2015) (“Nevada Plan”). First, it calculated the Basic Support Guarantee under the Nevada
9 Plan for each district and multiplied it by the number of students it anticipated attending public
10 schools. Next, it added categorical funds not provided on a per-pupil basis and outside the Nevada
11 Plan, to identify the total state support for the public schools, known as the “Total Required State
12 Support.” Each of these obligations is set out in SB 515 and none of them includes funding for
13 ESAs.²

14 From this figure, the Legislature deducted the local funds that flow directly to local schools
15 within the Nevada Plan to arrive at the “Total State Share” to fund the Basic Support Guarantee.
16 It also deducted sources of funds available to the DSA other than the state general fund, including
17 a portion of the slot machine tax, certain mineral taxes, and like revenues. It is this figure that is
18 appropriated by Section 7 of SB 515. This is the same formula the Legislature used for the 2013-
19 2015 biennium, and it did not change in 2015-17. Further, in no way did this formula, or the
20 Legislative appropriations, take into account the loss of funds under SB 302. *Compare* Nevada
21 Plan (laying out the manner in which education is funded in a typical biennium) *with* DSA
22 Summary 2015-2017 (showing that the Legislature followed the same steps in 2015).

23 Defendant’s claim that the Legislature considered the impact of ESAs on the biennial
24 appropriation to public schools is also belied by the legislative debates on SB 302. Contrary to
25 Defendant’s post hoc assertion in his brief, the Legislature appears to have believed that SB 302

27 ² Categorical funding includes funding for special education (sections 3-4), class size reduction
28 (sections 15-16), school lunches (section 12), and transportation (section 11). SB 515 also
contains other categorical funding not funded through the DSA.

1 would not result in *any impact* on the DSA so long as the 100 days requirement resulted in
2 participation only by students who would otherwise have been attending public school. *See* Boyd
3 Decl. Ex. 3, Minutes of the Senate Committee on Finance, Seventy-Eight Session, May 14, 2015
4 at 10-11 (“the 100-day provision helps to make this fiscally neutral”). Yet this understanding of
5 how SB 302 operates is plainly incorrect. Because students currently in private school and home
6 schooled can also readily qualify for ESAs, the diversion of funds into ESAs extends well beyond
7 students accounted for in the Legislature’s public school appropriation.

8 But even assuming—incorrectly—that only current public school students obtain ESAs,
9 the public schools will still experience a diminution of the appropriations necessary for their
10 operation. This occurs because, as Defendant fails to acknowledge, Legislative appropriations
11 from the DSA only support a *fraction* of the per-pupil Basic Support Guarantee to school districts.
12 For example, in fiscal year 2014, the per-pupil Basic Support Guarantee for Clark County was
13 \$5,393. *See* Boyd Decl. Ex. 4, Guinn Center, Nevada K-12 Education Finance Fact Sheet (Feb.
14 2015) (“K-12 Fact Sheet”) at 8. Of that, the State’s share was only \$2,213. *Id.* For the 2015-2017
15 biennium, the per-pupil Basic Support Guarantee for Clark County is \$5,512, of which the State
16 DSA portion is only a fraction. Yet, for students obtaining ESAs, the State must pay the full
17 \$5,139 or \$5,710 per pupil directly out of the DSA. *Cf.* Def. Br., Ex. 3, Canavero Decl. at ¶¶ 11-
18 12. The Legislature provided no additional funding for ESAs in SB 515, nor did it budget for the
19 increased demand on the DSA resulting from ESAs for students currently enrolled in the public
20 schools or for students already enrolled in private schools or home-schooled.

21 Indeed, it was *not possible* for the Legislature to have taken into account, let alone
22 provided extra funding, to address the public school funding depleted by SB 302 when passing the
23 public school appropriations in SB 515. The Legislature did not know, and still does not know,
24 how many students will obtain ESAs and how much funding will be depleted from the DSA in the
25 2015-17 biennium. SB 302 does not limit the number of ESAs that can be authorized or the
26 amount of funding that can be diverted from the public schools. The Department of Education
27 specifically told the Legislature this was the case when it submitted its “fiscal note” on SB 302:

1 The Department is unable to quantify the fiscal impact of this measure. However,
2 the Department believes there will be a fiscal impact to the State due to the
redistribution of State and local funding from school districts to other entities. . . .

3 Boyd Decl. Ex. 5, Department of Education Unsolicited Fiscal Note on SB 302 (May 25, 2015).

4 Contrary to Defendant's assertions, the Legislature could not have accounted for SB 302's
5 unknown and uncapped impact such that the funds appropriated for public school funds could
6 remain at the levels deemed sufficient by the Legislature under Section 6.³

7 **(b) SB 508 Does Not Render SB 302 Constitutional**

8 Acknowledging as he must that SB 302 will divert funds appropriated for the public
9 schools to ESAs (Def. Br. at 19, 21), Defendant nonetheless contends that the impact of SB 302's
10 diversion is ameliorated by another statute, SB 508. Def. Br. at 20. This statute limits the impact
11 on a school district's revenue from large demographic swings. Specifically, it limits a school
12 district's total decrease in funding to no more than what would be due the district from a decrease
13 of 5 percent of the district's student population from the same quarter in the prior year. Boyd
14 Decl., Ex. 6.

15 This provision fails to cure SB 302's constitutional defects. As a first point, there is
16 nothing in SB 302 that applies this provision to the reduction in a districts' funding resulting from
17 the diversion of funds to ESAs. SB 302 plainly requires the prescribed Basic Support Guarantee
18 per pupil amounts be diverted from district budgets for every ESA established by Defendant,
19 without limit or exception. SB 302, therefore, on its face, triggers diversion of public school
20 funding irrespective of the provisions in SB 508.

21 Moreover, reductions resulting from a drop of five percent or less of the student population
22 are still significant. For example, five percent of Clark County's student population is ~16,000
23 students. If just less than 16,000 students applied for ESAs this would be a reduction in at least
24 \$30 million from Clark County schools. To the extent the Legislature's appropriations are

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27 ³ Defendant also asserts that enjoining SB 302 is not the proper remedy for a violation of Section
28 6; Plaintiff should seek to enjoin SB 515. Def. Br. at 24. But, SB 515 by itself is not at issue on
Plaintiff's Motion. It is SB 302's diversion of SB 515 public school funds that is unconstitutional
and must be enjoined.

1 reduced below those deemed sufficient by SB 302, it is unconstitutional whether that decrease is
2 more or less than 5 percent.

3 **(c) Defendant's Interpretation Of Section 6.2 Defeats The Purpose**
4 **For Which The "Education First Amendment" Was Passed**

5 The requirement in Section 6 that public school appropriations be made first and that they
6 be sufficient was added to the Nevada Constitution by proposition in 2006. The "Education First
7 Amendment" was a response to the budget crisis in the 2003 legislative session. In that year, the
8 Legislature and the Governor could not agree on how much to appropriate for the public schools.
9 Clancy Decl. Ex. 11, at 4-5. As a result of this deadlock, havoc ensued such that schools did not
10 open on time and teacher hiring was delayed. In response, the voters passed Sections 6.2 through
11 6.6, which require, *inter alia*, the Legislature to fund education first before any other
12 appropriations in the biennium budget.

13 Simply requiring the Legislature to pass *some* appropriation for education before any other
14 appropriation, would not, however, have achieved the Amendment's purpose. Thus Section 6.2
15 also required the Legislature to appropriate the monies "the Legislature deems to be sufficient ...
16 to fund the operation of the public schools." This provision prevents the Legislature from simply
17 appropriating some nominal or insufficient amount for education, turn to other appropriations, and
18 then take up education funding last. The drafters of the Education First Amendment, therefore,
19 required the Legislature to complete its appropriations for public education before turning to any
20 other appropriations, required those appropriations be sufficient to operate the public schools, and
21 prevented it from later undoing those appropriations by re-allocating those funds to other uses.
22 Nev. Const. art. XI, § 6.5.

23 Defendant's arguments would allow the Legislature to evade the requirements of the
24 Education First Amendment in precisely the manner the "deems sufficient" clause was intended to
25 prevent. So long as the Legislature made the public education funding the "first appropriation,"
26 according to Defendant, legislation—such as SB 302—that reduces the funds appropriated would
27 pass constitutional muster, a result that is plainly contrary to the text and purpose of the
28 Amendment as approved by the voters.

1 Likewise, as discussed *supra* at 9,⁴ because the draw on the DSA from ESA payments is
2 greater than the draw on the DSA for a student enrolled in public school, even a small number of
3 participants in the voucher program will reduce the funds in the DSA below the level deemed by
4 the Legislature to be sufficient under Section 6.2. And, indications are that the number will not be
5 small. As of the last public report, over 3500 have already pre-registered for the program. Clancy
6 Decl. Ex. 10. As a result, SB 302, if permitted to stand, will cause a shortfall in the DSA over the
7 course of the biennium and the Legislature will, therefore, end up funding education *last*, contrary
8 to the Education First Amendment. This is precisely the situation Section 6 sought to avoid—
9 funds necessary for the operation of the public schools being appropriated after all of the State's
10 tax revenue is spoken for, with the prospect of dire consequences to public school students if an
11 agreement cannot be reached.

12 (d) **Plaintiffs Do Not Challenge Here The Legislature's**
13 **Determination Of The Amount Sufficient To Fund Public**
Education

14 Finally, Defendant attempts to recast Plaintiffs' Section 6 claim as a purportedly non-
15 justiciable challenge to the Legislature's judgment on the amount appropriated for public
16 education. Def. Br. at 23. This argument is a straw man. Plaintiffs do not in this case challenge
17 the amount or sufficiency of the Legislature's appropriations under SB 515 for the public schools.
18 Rather, they challenge the Legislature's enactment of SB 302, which reduces the funds *the*
19 *Legislature deemed sufficient for the public schools* by diverting some of those funds to ESAs for
20 private expenditures. This is an unconstitutional attempt to siphon funds away from the public
21 schools on the back-end in contravention of the plain language and intent of Section 6.
22 Defendant's arguments concerning justiciability are beside the point.

23 The Nevada courts have the responsibility and the obligation to ensure that newly enacted
24 statutes are constitutional. *N. Lake Tahoe Fire Prot. Dist. v. Washoe Cnty. Comm'rs*, 129 Nev.
25 Adv. Op. 72, 310 P.3d 583, 589 (2013). As the Nevada Supreme Court has explained, the judicial

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27 ⁴ As discussed above, only a portion of the Basic Support Guarantee funds actually comes from
28 the state. See Nevada Plan at 10-11. The remainder goes directly to districts from various local
sources that are within the Nevada Plan. *Id.* at 13.

1 branch “has no authority to levy taxes or make appropriations,” but it “must exercise its judicial
2 function of interpreting the Constitution[.]” Where a statute conflicts with the “[L]egislature’s
3 constitutional obligation to fund public education” it must be struck down. *Guinn v. Legislature of*
4 *State of Nev. (Guinn I)*, 119 Nev. 277, 285-88, 71 P.3d 1269, 1274-76 (2003), *decision clarified*
5 *on denial of reh’g sub nom. Guinn v. Legislature of State of Nev.*, 119 Nev. 460, 76 P.3d 22 (2003)
6 *overruled on other grounds by Nevadans for Nevada v. Beers*, 122 Nev. 930, 142 P.3d 339 (2006).
7 SB 302 is such a provision.

8 **3. SB 302 Violates The Constitutional Mandate To Establish And**
9 **Maintain A Uniform System Of Common Schools In Violation Of Art.**
10 **XI, Section 2, Of The Nevada Constitution**

11 **(a) Defendant Concedes That Participating Entities Receiving**
12 **Funds Under SB 302 Are Not Part Of The Uniform System Of**
13 **Common Schools.**

14 Defendant does not contest that Article XI, Section 2, mandates that the Legislature
15 establish and maintain a uniform system of common schools. Defendant also does not contest that
16 SB 302 allows funds appropriated for Nevada’s uniform system of public schools to be used by
17 private schools and other private entities outside that uniform system. *See* Declaration of
18 Christopher Lubienski In Support of Pl. Mot. (“Lubienski Decl. to Pl. Mot.”) at ¶ 13. As Plaintiffs
19 have demonstrated, Pl. Mot. at 16-17, SB 302 does not require private schools and other
20 participating entities receiving voucher funds to adhere to the education standards and
21 accountability measures that are the hallmark of Nevada’s public schools. These include teacher
22 licensure requirements; open and non-discriminatory admissions; and assessment benchmarks to
23 evaluate school performance. *Id.*; *see also* Lubienski Decl. to Pl. Mot. at 16.

24 **(b) Article XI, Section 1. Of The Nevada Constitution Does Not**
25 **Authorize The Legislature To Divert Funds From Public**
26 **Education To Private Uses**

27 Instead, Defendant argues that SB 302 is permissible under Article XI, Section 1’s, general
28 aspiration “to encourage by all suitable means the promotion of intellectual, literary, scientific. . .
and moral improvements.” Def. Br. at 7. Even if that were the case—which it is not—SB 302
violates the constitutional provisions prohibiting the diversion of public school funds to private
purposes under Sections 3 and 6, and the Legislature’s obligation to first and sufficiently fund the

1 public schools under Section 2 and 6. Thus, SB 302 is unconstitutional on these grounds standing
2 alone and regardless of Section 1.

3 Section 1, however, does not authorize enactment of SB 302.⁵ The Education Article is
4 comprised of ten sections. The first, Section 1, is a hortatory introductory provision. Beyond this
5 clause, sections 2, 3, 5, 6, 9 and 10 address, in specific terms, the establishment, maintenance and
6 funding of Nevada's K-12 public education system (the remaining sections address the State
7 University). Defendant's interpretation of Section 1 as conferring "broad, discretionary power" on
8 the Legislature to promote the education of Nevada's children in whatever manner it sees fit, Def.
9 Br. at 8, is contrary to the express terms of that provision, the intent of the framers of the
10 Constitution, and well established canons of constitutional interpretation.

11 (i) **Defendant's Interpretation Is Contrary To The Plain**
12 **Meaning Of Section 1**

13 On its face, the phrase all "suitable means" cannot include means that are unconstitutional.
14 *See Williams v. Rhodes*, 393 U.S. 23, 29, 89 S. Ct. 5, 9, 21 L. Ed. 2d 24 (1968) (holding that while
15 the federal constitution grants Congress or states "specific power to legislate in certain areas,"
16 these granted powers "are always subject to the limitation that they may not be exercised in a way
17 that violates other specific provisions of the Constitution") (footnotes omitted). Thus, even if
18 Section 1 were something other than an introductory encouragement, which it is not, because SB
19 302 violates Article XI, Sections 2, 3, and 6 of the Nevada Constitution, it is not a "suitable
20 means."

21
22
23 ⁵ It should also be noted that SB 302 does not actually provide the "encouragement" to education
24 that Defendant suggests. The empirical studies that were quoted to the Nevada Legislature during
25 the discussion of SB 302, and repeated by Defendant in his brief, do not accurately capture the
26 research consensus on the effects of vouchers. *See generally* Declaration of Professor Christopher
27 Lubienski Declaration in support of Reply on Motion for Preliminary Injunction and Opposition to
28 Motion to Dismiss; *id.* at ¶ 4. Defendant relies on bodies of partisan research that are not
considered credible by experts in the field. *Id.* at ¶ 22. In contrast to the claims made by
Defendant, in actuality, non-partisan scholars agree that the research on the academic effects of
vouchers is inconclusive at best. *Id.* at ¶ 33. Research does reveal conclusively, however, that
vouchers tend to increase segregation in public schools. *Id.* at ¶ 19; *see also* Lubienski Decl. to Pl.
Mot. at ¶ 19.

(ii) **Defendant's Argument Is Not Supported By The Intent Of The Framers Of The Nevada Constitution**

Section 1 was also never intended to allow the Legislature to fund non-public educational expenditures.⁶ As Nevada historian, Michael Green, explains in his declaration, the delegates' clear intent in passing Article XI as a whole was to provide for a system of *public* education. Green Decl. at ¶¶ 8-21. In both the 1863 and 1864 debates, the delegates agreed that the Legislature had to provide for a system of public education and that this was the appropriate method of educating Nevada school children. *Id.* at ¶¶ 8-15. While there was disagreement about whether to make attendance at public schools compulsory, the delegates agreed that the public schools should be amply funded. *Id.* at ¶¶ 8, 10, 13-14.

Professor Green explains that “[t]here is no evidence from the debates that in passing this version of Article XI, Section 1, the delegates intended to confer power on the legislature to fund non-public educational systems.” *Id.* at ¶ 25. In fact, Article XI, Section 1 was drafted and discussed in conjunction with the entire Education Article, particularly Section 2, which requires the Legislature to maintain a uniform system of common schools. *See, e.g., id.* at ¶ 26. Further, “the idea that the delegates meant to empower the Legislature to fund both the public schools and other means of educating Nevada’s children is inconsistent with the delegates’ pronounced concerns that there would not be enough funds to provide for both common schools and higher education.” *Id.* at ¶ 27. The delegates actually considered and rejected giving the Legislature discretion whether to pass a special tax to fund public education because of the fear that the Legislature would not adequately fund the public education system. *Id.* Delegate Collins, whose view prevailed, expressly noted “I do not believe that the Legislature is likely to be as earnest in this matter of education as gentlemen appear to anticipate.” *Id.* (citing DEBATES AND PROCEEDINGS at 588).

⁶ *See generally* Boyd Decl., Ex. 7, DEBATES AND PROCEEDINGS at 565-588 (discussing Education Article and necessity of funding public schools, with no discussion of providing funds for non-public schools).

1 Not only is there no evidence that the delegates intended to give the Legislature sweeping
2 power to provide for an alternative mechanism of education, such a view runs contrary to the
3 general aims of the delegates at the convention, which was to greatly limit the power of the
4 Legislature. *Id.* at ¶¶ 23-31. It is plainly inconsistent with the historical understanding of the 1863
5 or 1864 debates on the Constitution to conclude that the delegates intended to both mandate the
6 Legislature establish a system of public school and also allow the Legislature to take boundless
7 other actions to educate Nevada’s children. *Id.* at ¶¶ 28-31.

8 (iii) **Defendant’s Argument Is Contrary To Well-Established**
9 **Principles Of Interpretation**

10 Defendant’s interpretation of Section 1 also violates the well-established canons of
11 construction that the specific takes precedence over the general, and the Constitution must be read
12 as a whole. *See, e.g., Gaines v. State*, 116 Nev. 359, 365, 998 P.2d 166, 169-70 (2000)
13 (reaffirming the principles that multiple legislative provisions must “be construed as a whole”;
14 where possible, “a statute should be read to give plain meaning to all of its parts;” and specific
15 statutes “take precedence” over general statutes.); *Lader v. Warden*, 121 Nev. 682, 687, 120 P.3d
16 1164, 1167 (2005) (holding that where a specific statute is “in conflict with a general one, the
17 specific statute will take precedence”).

18 Although Defendant urges that the Constitution’s specific mandates to establish and
19 maintain a system of uniform schools give way to the general exhortation to encourage intellectual
20 improvements, *e.g.* Def. Br. at 9, 11-12, the opposite is true. To the extent that there is a conflict
21 between legislation enacted under Section 1’s broad, aspirational goal and the detailed and specific
22 mandates of Sections 2, 3 and 6, those specific mandates take precedence over the general.

23 Such is the precise holding in *Louisiana Federation of Teachers v. State*, 118 So. 3d 1033,
24 1051-53 (2013), where the Louisiana Supreme Court declared a voucher program an
25 unconstitutional diversion of public school funds, expressly holding that the Louisiana
26 Constitution’s general exhortation that the Legislature “provide for the education of the people”
27 does not authorize a voucher law that clearly violates the more specific mandate to “maintain a
28 public educational system.” *Id.* Similarly, the Nevada Constitution’s general goal of encouraging

1 education in Section 1 in no way stands as a wholly separate and independent basis for a statute
2 such as SB 302, which clearly violates the specific mandates for maintaining Nevada's uniform
3 system of public schools under Sections 2, 3 and 6.

4 **(c) The Legislature May Not Maintain And Fund A Separate**
5 **Mechanism For K-12 Education Outside Of The Public Schools**

6 Plaintiffs' Motion further established that the Nevada Constitution, in mandating the
7 establishment and maintenance of a uniform public school system, simultaneously forbade the
8 Nevada Legislature from establishing and maintaining a separate alternative system to Nevada's
9 uniform public schools. "Nevada follows the maxim 'expressio unius est exclusio alterius,' the
10 expression of one thing is the exclusion of the other," *State v. Javier C.*, 128 Nev. Adv. Op. 50,
11 289 P.3d 1194, 1197 (2012) and "[t]his rule applies as forcibly to the construction of the written
12 Constitutions as other instruments." *King v. Bd. of Regents of Univ. of Nev.*, 65 Nev. 533, 556,
13 200 P.2d 221 (1948); *see also* Pl. Mot. at 18-19.

14 Defendant asserts, without any support, that Plaintiffs' interpretation would render private
15 schools and home schooling unconstitutional. Def. Br. at 11. This contention rests upon a plain
16 mischaracterization of Plaintiffs' claims. Plaintiffs argue that the Legislature may not maintain and
17 *fund* a mechanism that provides for the education of children outside of the uniform system of
18 public schools. Plaintiffs' Complaint raises no issue regarding the right of parents to enroll their
19 children in private school or to home school their children. No matter what the outcome of this
20 litigation, parents will continue to be able to choose private and home schooling to educate their
21 children.

22 **(d) The Cases Cited by Defendant Do Not Change The Analysis**

23 Finally, to support its argument that SB 302 is authorized by Section 1 and outside Section
24 2's uniformity mandate, Defendant points to a handful of rulings in other states allowing limited
25 voucher programs. Def. Br. at 12-13. As a foundational point, these decisions rely upon
26 Education Articles with different textual provisions and mandates, and unique histories, from the
27 provisions and history of the Education Article of the Nevada Constitution. Most importantly, the
28

1 limited voucher programs upheld by other states did not violate a constitutional bar on the use of
2 public school funding for private expenditures.

3 Defendant relies heavily on *Meredith v. Pence*, 984 N.E.2d 1213 (Ind. 2013). In this case,
4 the Indiana Supreme Court considered the constitutionality of a targeted voucher program that was
5 not funded by public school appropriations, applied only to students at or below 150 percent of the
6 poverty level, and required institutions receiving the public funds to meet accountability standards.
7 As the court explained, to participate in the program “a nonpublic school must meet several
8 criteria, including accreditation from the Indiana State Board of Education (“Board of Education”)
9 or other recognized accreditation agency . . .” *Id.* at 1219. Eligible institutions were required to
10 provide “instruction in Indiana and United States history and government, social studies, language
11 arts, mathematics, sciences, fine arts, and health.” *Id.* Further, “[a]n eligible school may not
12 discriminate on the basis of race, color, or national origin.” *Id.* at 1220 (citing Ind. Code § 20–51–
13 4–3(a), (b)). The Indiana Supreme Court’s approval of *general fund* monies for a targeted,
14 regulated program for at-risk students distinguishes it from SB 302’s expenditure of public school
15 funds, without limit, for wholly unregulated private institutions and individuals.⁷ *See also Davis*
16 *v. Grover*, 480 N.W.2d 460 (Wis. 1992) (upholding limited, regulated voucher program for
17 Milwaukee low income students in an opinion that did not take up issues of public school funding
18 for private expenditures); *Hart v. State*, 774 S.E.2d 281 (N.C. 2015) (upholding a “modest,”
19 regulated voucher program for low income families paid for by the general fund).

20 Defendant’s attempts to distinguish cases that have struck down voucher programs are
21 unconvincing. Def. Br. at 14-15. Most notably, in *Bush v. Holmes*, 919 So.2d 392 (Fla. 2006), the
22 court interpreted the state’s constitutional provision requiring the Florida Legislature to create and
23

24 ⁷ The Indiana Supreme Court’s decision is also distinguishable because it was heavily dependent
25 on the development of the Indiana Constitution, which originally provided that the Legislature was
26 to provide for a “general system of education” “as soon as circumstances will permit.” *Meredith*
27 *v. Pence*, 984 N.E.2d at 1222. The Indiana Court relied on the notion that the Indiana framers did
28 not unequivocally require the establishment of public schools to support their analysis that the
Legislature could also provide for non-public systems of education. *Id.* Nevada’s constitutional
history is in stark contrast—it is clear that the delegates viewed the establishment of a public
education system as an unequivocal duty of the Legislature. Green Decl. at ¶¶ 8-21.

1 maintain “a uniform, efficient, safe, secure, and high quality system of free public schools,” Fla.
2 Const. art. IX § 1, to forbid vouchers because “providing a free education . . . by paying tuition to
3 attend private schools is a ‘substantially different manner’ of providing a publicly funded
4 education than . . . the one prescribed by the Constitution.” *Holmes*, 919 So.2d at 407.

5 Defendant argues that *Bush v. Holmes* is distinguishable because it relied on a clause
6 stating that “it is a paramount duty of the state to make adequate provision for the education of all
7 children residing in its borders,” and that Nevada’s Constitution lacks such a clause. Def. Br. at
8 14. Defendant further argues that because Indiana and Wisconsin’s constitutions also lack a
9 similar clause, those decisions are more persuasive here. *Id.* at 14-15. However, Defendant is
10 wrong that Nevada lacks a clause making it the “paramount duty” to “make adequate provision”
11 for the education of Nevada’s children. Article XI, Section 6—the Education First article—
12 requires that Nevada fund public school education “before any other appropriation” in a
13 “sufficient” amount. This amendment was passed to ensure that “education is first” in Nevada and
14 to “that the funding of education in Nevada will be given the status intended by the framers of our
15 Constitution.” Clancy Decl. Ex. 11, at 4-5. Wisconsin and Indiana lack such a provision requiring
16 that education be “first” or “paramount.” Thus, contrary to Defendant’s own assertions, the
17 commitment to education under Nevada’s Education Article is just as strong, if not stronger, than
18 the Florida constitutional provisions under which the Florida voucher law was declared
19 unconstitutional.

20 * * * * *

21 Defendant’s arguments on the various constitutional Sections also conflict and undermine
22 each other. On the one hand, Defendant argues that the Legislature appropriated money for the
23 ESAs when the Legislature, as a first priority, appropriated the funds sufficient for the public
24 schools under Section 6. Def. Br. at 21. But, if the ESAs are to be funded under Section 6—
25 which clearly and unequivocally addresses only the funding for the public schools—then they
26 need to be part of the uniform system, which they are not and which constitutes a constitutional
27 violation. On the other hand, Defendant argues that ESAs have nothing to do with the uniform
28 system. Def. Br. at 9. If that is the case, they cannot be funded through the use of Section 6

1 funds. Defendant cannot have it both ways. Either way, SB 302 is unconstitutional and should be
2 preliminarily enjoined.

3 **B. Defendant Cannot Refute The Irreparable Harm SB 302 Will Cause Or That**
4 **The Balance Of Hardships Tips Toward Plaintiffs**

5 As established in Plaintiffs' Motion, because SB 302 violates the Nevada Constitution, the
6 irreparable harm standard is presumptively met. Pl. Mot. at 19-20. (citing *City of Sparks v.*
7 *Sparks Mun. Court*, 129 Nev. Adv. Op. 38, 302 P.3d 1118, 1124 (2013); *see also Stormans, Inc. v.*
8 *Selecky*, 586 F.3d 1109, 1138 (9th Cir.2009) (same); *Rivero v. McDaniel*, No. 3:08-CV-286-
9 ECR(RAM), 2009 WL 2834958, at *2 (D. Nev. July 17, 2009) (same). Defendant does not
10 contest this blackletter law in his briefing.

11 Regardless, in their Motion, Plaintiffs demonstrated that the loss of funding to public
12 schools from SB 302 will cause irreparable harm to Plaintiffs and other Nevada public school
13 children. Larger class sizes, lack of instructional materials, inadequate maintenance, and other
14 deficits in essential education resources will impact students and result in harm to the educational
15 opportunities guaranteed them under the Nevada Constitution. *See Guinn*, 119 Nev. at 286
16 ("education is a basic constitutional right in Nevada.").

17 Unable to credibly refute the irreparable harm resulting from SB 302, Defendant attempts a
18 deflection, arguing that such harms will impact school districts and not Plaintiff students and their
19 peers. Def. Br. at 24-25. SB 302 will without question impact public school districts by reducing
20 the funding in their budgets and the resources in their schools. These cuts will have a direct impact
21 on the quality of curriculum, instruction, support and other services the district can make available
22 to Plaintiffs and all other Nevada school children. Defendant's suggestion that districts somehow
23 exist independently of the students they are obligated to serve is wrong. Public school districts
24 exist only to serve the needs of their students; they are not a for-profit venture. By forcing
25 districts to continually adjust budgets and reduce staff, programs and services over the course of
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1 the school year, the harm to districts and their schools *is* harm to the students attending those
2 schools.⁸

3 Defendant also argues that the harm from SB 302 is only “financial” and not irreparable
4 harm. Def. Br. at 25. But Plaintiffs’ complaint is not about financial harm that can be remedied
5 by money damages. Rather, deductions of funding when ESAs are established reduce district
6 budgets and, consequently, the staff and instructional resources they can provide to students in
7 schools and classrooms. This reduction in resources, in turn, directly diminishes the opportunities
8 for students to master reading, think deeply, problem solve, understand scientific reasoning and
9 otherwise obtain the skills needed for college, career, citizenship and productive employment.
10 Paying the money back to the school districts at a later date will not remedy the loss to the
11 students at the time when the funds were unavailable. These are not financial, but life altering,
12 irreparable harms.⁹

13 Defendant further argues that the harms are speculative. But, less money to public schools
14 indisputably means less money spent on instruction, teacher training, supplies, maintenance,
15 school leadership, curriculum, professional development, or some other expenditure. These are
16 not speculative harms—they are certain. School districts have limited budgets that they have to

17
18 ⁸ Defendant also takes issue with the declaration of Paul Johnson, the CFO of White Pine County,
19 claiming he has taken inconsistent positions in a previous statement on the harm created by SB
20 302. But, that is not the case. Defendant fails to quote Mr. Johnson’s full statement. When asked
21 for comment on what he understood to be the proposed legislation, Mr. Johnson said: “There are
22 no private schools at this time in White Pine county so there would be no impact at this time.”
23 Mr. Johnson thought that SB 302 only allowed use of ESAs for brick and mortar private schools
24 when he made this statement and he was considering the impact on White Pine, a County that
25 currently has no private schools. Now that the bill has been passed he knows it applies to home
26 schooling and distance learning as well as private schools, which will have a negative impact on
27 his district. Johnson Reply Decl. ¶ 4. Moreover, the harms that Mr. Johnson describes are harms
28 that will occur for all school districts for which funding is diverted to ESAs; Mr. Johnson provides
his testimony regarding harm based on his years of experience in school finance and not just on
the harms expected for his current district.

⁹ Defendant’s references to *Church of Scientology v. United States*, 920 F.2d 1481 (9th Cir. 1990)
and *Elias v. Connett*, 908 F.2d 521 (9th Cir. 1990) are irrelevant to Plaintiffs’ claims. Both cases
involve disputes with the IRS over taxes. In those cases, the Ninth Circuit denied injunctive relief
on the ground that plaintiffs had an adequate remedy at law, *i.e.*, a separate action for a tax refund,
based on a long line of cases holding that disputes over tax levies do not create irreparable harm
and cannot form the basis for a preliminary injunction.

1 maintain. That the exact reductions in services and resources cannot be named is obvious—the
2 reductions will be determined by local school boards and administrators. That cuts will be made
3 and students' education impacted when less funds are distributed to districts, however, is certain.¹⁰

4 Finally, Defendant argues that the balance of hardships tips in his favor. Granting a
5 preliminary injunction, he argues, would deny Nevada children choice. Def. Br. at 27. However,
6 the ESA amounts are not enough to cover tuition at most Nevada private schools. Pl. Mot.. at 8.
7 Only those who can use SB 302 as a subsidy for costs they can otherwise afford will benefit. As
8 the preliminary data shows, those families who have pre-registered for ESAs reside in wealthier
9 neighborhoods. Boyd Decl., Exh. 8. Very few are from poorer neighborhoods. *Id.*

10 If SB 302 is not enjoined, those who can already choose private schooling stand to benefit,
11 while Plaintiffs and other public school children, many of whom are at-risk, vulnerable and
12 disadvantaged, will attend schools with less resources to provide them with the educational
13 services they need and deserve. At bottom, enjoining SB 302 will not impair the right of parents
14 to enroll their child in a private school, as Defendant asserts. Rather, the issue in this case is
15 concise and narrow: whether funding appropriated for the public schools can be diverted to
16 subsidize those decisions. Under Nevada's Constitution, it cannot.

17 **III. CONCLUSION**

18 Wherefore, Plaintiffs respectfully request that this Court issue a preliminary injunction
19 enjoining Defendant from implementing SB 302 and its regulations and deny Defendant's motion
20 to dismiss.

21
22
23
24 ¹⁰ Defendant relies on *Flick Theater, Inc. v. Las Vegas*, 104 Nev. 87, 752 P.2d 235, 238 n.4 (1984)
25 and *Goldie's Bookstore, Inc. v. Superior Court*, 739 F.2d 466 (9th Cir. 1984) for his position that
26 Plaintiffs' harm is speculative and "mere conjecture." Def. Br. at 25. But, the Nevada Supreme
27 Court and Ninth Circuit respectively denied preliminary injunctions because of a complete
28 absence of a record of harm to protected speech by adult business operators and, in the *Goldie's*
case, to the good will and reputation of an adult book store owner. The certain harm to public
school children from decreased funding is not akin to the unsupported harm alleged by adult
business proprietors.

1 November 24, 2015

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of November, 2015, a true and correct copy of **PLAINTIFFS' REPLY ON ITS MOTION FOR A PRELIMINARY INJUNCTION AND OPPOSITION TO DEFENDANT'S MOTION TO DISMISS** was placed in an envelope, postage prepaid, addressed as stated below, in the basket for outgoing mail before 4:00 p.m. at WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP. The firm has established procedures so that all mail placed in the basket before 4:00 p.m. is taken that same day by an employee and deposited in a U.S. Mail box.

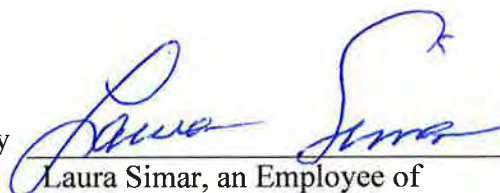
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FIRST JUDICIAL DISTRICT COURT
IN AND FOR CARSON CITY, NEVADA

REC'D & FILED

2015 OCT 20 PM 2: 56

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individually and on behalf of her minor
children, W.C., A.C., and E.C.; LINDA
JOHNSON, individually and on behalf of her
minor child, K.J.; SARAH and BRIAN
SOLOMON, individually and on behalf of
their minor children, D.S. and K.S.,

Plaintiffs,

vs.

DAN SCHWARTZ, IN HIS OFFICIAL
CAPACITY AS TREASURER OF THE
STATE OF NEVADA,

Defendant.

Case No. 150C002071B SUSAN MERRIWETHER
V. Alegria
Dept. No.: II BY _____
DEPUTY

**PLAINTIFFS' MOTION FOR
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POINTS AND AUTHORITIES IN
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1 **MOTION**

2 Pursuant to Nevada Rule of Civil Procedure 65, Plaintiffs hereby seek a preliminary
3 injunction, enjoining Defendant, Dan Schwartz, in his official capacity as Treasurer of the State of
4 Nevada, from implementing Senate Bill 302 on the grounds that Senate Bill 302 violates Article
5 XI of the Nevada Constitution.

6 **POINT AND AUTHORITIES**

7 **I. INTRODUCTION**

8 From its founding, Nevada has recognized that a primary duty of the Legislature is to
9 provide for the public education of Nevada's children. This duty is enshrined in the Nevada
10 Constitution, which mandates that the Legislature maintain a uniform system of common schools,
11 sufficiently fund that uniform system as the first appropriation of every biennium budget, and use
12 the funds appropriated for the public schools solely for that purpose.

13 In its last legislative session, the Nevada Legislature passed Senate Bill 302 (See Exhibit 1
14 to Clancy Declaration,) ("SB 302" or the "voucher law").¹ This law authorizes the State Treasurer
15 to divert funds from public schools to private accounts, called Education Saving Accounts
16 ("ESAs"), to pay for a wide array of non-public education expenses, including private school
17 tuition, tutoring, home-based education curriculums, and even transportation. SB 302 violates
18 Article XI of Nevada Constitution (the "Education Article") on three separate grounds and must be
19 enjoined:

20 First, the Nevada Constitution, Article XI, sections 3 and 6, expressly prohibits the transfer
21 of funds appropriated for the operation of the public schools to any other use. This is exactly what
22 occurs under SB 302—each individual ESA represents a direct diversion of public school funds
23 from Nevada's public schools to private purposes. As the Legislative Counsel's Digest on SB 302
24 explains, "the amount of the [ESA] must be deducted from the total apportionment to the resident
25 school district of the child on whose behalf the grant is made." SB 302, Legislative Counsel's
26

27 ¹ A copy of SB 302 is attached to the Declaration of Thomas Clancy (hereinafter "Clancy
28 Declaration") as Exhibit A.

1 Digest. Because SB 302 diverts funds allocated for the public schools to private uses, the voucher
2 law, on its face, violates the Education Article of the Nevada Constitution.

3 Second, Article XI, section 6, of the Nevada Constitution mandates that the Legislature
4 appropriate the funds it “deems sufficient” to fund the public education system first before any
5 other budget appropriation is enacted. The Legislature did just that in the last legislative session.
6 However, through SB 302, it then directed the State Treasure to reduce the amounts provided to
7 public schools by the amounts deposited in private ESAs. Deductions from the amount deemed
8 sufficient by the Legislature to operate the public schools necessarily depletes the pool of funds
9 below the amount deemed sufficient to do so. Because SB 302 reduces the funds appropriated by
10 the Legislature as sufficient to maintain and operate the public schools, the voucher law, on its
11 face, violates the Education Article of the Nevada Constitution.

12 Third, Article XI, section 2, of the Nevada Constitution mandates that the Legislature
13 establish a “uniform system of common,” or public, schools. Public schools must educate and be
14 free and open to all children, regardless of their religious beliefs, socioeconomic status, academic
15 achievement, ELL status, disability or special needs. In contrast, private schools and other private
16 entities accepting funds under SB 302 need not be open to all children and may discriminate on the
17 basis of a student’s personal characteristics, including household income, academic performance or
18 other factors. Likewise, private schools and other private entities accepting funds under SB 302 do
19 not have to implement the established curriculum, teaching standards, testing regimen or other
20 education requirements applicable to all public schools across the state enacted by the Legislature
21 to maintain uniformity in Nevada’s public school system. By funding both public schools *and*
22 private entities that are exempt from non-discrimination requirements as well as the educational
23 performance and accountability measures mandated by the Legislature, SB 302 directly
24 undermines the maintenance of a “uniform system.” For this third reason, the voucher law, on its
25 face, violates the Education Article of the Nevada Constitution.

26 Nevada courts have held that violation of the Nevada Constitution alone constitutes
27 sufficient irreparable harm to warrant an injunction. Even if this were not the case, irreparable
28 injury will plainly result here if the voucher law is not enjoined. Public school districts across the

1 state are faced with the imminent threat of losing guaranteed funding allocated by the Legislature
2 to support and maintain the operation of their schools. This reduction in funding will impede the
3 districts' ability to provide essential educational resources to students. As the State Treasurer
4 deducts funding during the school year, districts will be compelled to reduce their budgets on a
5 continuing basis—causing instability and disruption of basic educational programs and services.
6 Students will be negatively impacted by increased class sizes, reductions in resources, reduced
7 programming, lack of building maintenance, and other like harms. Public school children will not
8 get this instructional time back, impairing their basic Constitutional right to a public education.
9 The harms to that right resulting from SB 302's implementation are significant and cannot be
10 remedied by money damages.

11 This court should declare the voucher law unconstitutional under the Education Article and
12 issue a preliminary injunction forthwith to enjoin implementation by the State Treasurer.

13 **II. BACKGROUND**

14 **A. Nevada Public School Funding**

15 From the outset, the Nevada Constitution has placed a high priority on public education.
16 As one of the drafters of the Constitution explained in the 1864 Constitutional debate, “[t]ime will
17 not permit, nor is it necessary that I should recapitulate the arguments which have already been
18 urged to show that among the first and the highest duties of the State, is the duty of educating the
19 rising generation.” Clancy Declaration, Exhibit 2, OFFICIAL REPORT OF THE DEBATES AND
20 PROCEEDINGS IN THE CONSTITUTIONAL CONVENTION OF THE STATE OF NEVADA (hereinafter
21 “DEBATES AND PROCEEDINGS”) at 587-88, 591-93. Likewise, in his inaugural speech to the
22 Legislature of Nevada, Henry Blasdel, the First Elected Governor of Nevada, stated:

23 The fundamental law of the State imposes on you the duty of
24 providing for a uniform system of common schools The
25 advantages accruing to the body politic arising from an educated,
26 well-informed thinking population, must be obvious to those into
27 whose hands our people have confided the law-making power.
28 Universal education is no longer an experiment of doubtful policy . .
Under that liberal and enlightened system of government which
pervades all our institutions and which guarantees to every citizen,
however humble his station in life, a voice in the management and
direction of State affairs, too much importance cannot be attached to
a judicious inauguration of that system, which is to have such an

1 important bearing upon the future prosperity and reputation of the
2 State. I conjure you therefore, to give your early and earnest
attention to this subject

3 Clancy Declaration, Exhibit 3, First Annual Message of H.G. Blasdel, Governor of the State of
4 Nevada (1864).

5 Consistent with this high duty, the Nevada Constitution mandates that “[t]he legislature
6 shall provide for a uniform system of common schools” NEV. CONST. art. XI, § 2. The
7 Constitution specifies revenue streams that are to be pledged to the public schools and “must not
8 be transferred to other funds for other uses.” *Id.* at § 3. The Constitution further mandates that
9 “the legislature shall provide for support and maintenance [of the common schools] by direct
10 legislative appropriation from the general fund” *Id.* at § 6(1). These appropriations must
11 provide the funding the Legislature “deems to be sufficient,” to “fund the operation of the public
12 schools in the State” first “before any other appropriation is enacted.” *Id.* at § 6(2).

13 The Nevada Legislature provides funding for the public school system through the
14 “Nevada Plan.” Under the Nevada Plan, the Legislature determines for each biennium² the amount
15 of funding sufficient to operate the public schools and guarantees that amount to school districts.
16 This amount—the basic support guarantee—is funded by the Legislature through a combination of
17 state monies appropriated to the State’s Distributive School Account (“DSA”) and mandated local
18 taxes. The DSA is comprised, amongst other sources, of money derived from interest on the State
19 Permanent School Fund pursuant to Article XI, section 3, of the Nevada Constitution and the
20 appropriations of state revenue made by the Legislature each biennium for the operation of
21 Nevada’s public schools pursuant to Article XI, section 6, of the Nevada Constitution. NRS
22 387.030. The Nevada Plan requires the State to make quarterly payments to school districts from
23 the DSA. NRS 387.121, 387.1235. Through the Nevada Plan, the State guarantees the amount it
24 deems sufficient to operate the public schools and provides the funding for that amount as the first
25 priority in the biennium State budget.

26
27 _____
28 ² Art. XI, section 6.6, defines “biennium” as “a period of two fiscal years beginning on July 1 of an
odd-numbered year and ending on June 30 of the next ensuing odd-numbered year.”

1 The Legislature's stated objective in funding public schools through the Nevada Plan is "to
2 ensure each Nevada child has a reasonably equal educational opportunity." NRS 387.121.
3 Further, the Legislature recognizes, through the Nevada Plan, the State's obligation to supplement
4 "local financial ability to whatever extent necessary in each school district to provide programs of
5 instruction in both compulsory and elective subjects that offer full opportunity for every Nevada
6 child to receive the benefit of the purposes for which public schools are maintained." *Id.*

7 Pursuant to its Constitutional obligation, the Legislature passed Senate Bill 515 ("SB
8 515")—its enactment of the Nevada Plan for the 2015-2017 biennium—and appropriated the funds
9 it deemed sufficient for the operation of the Nevada public schools for the student population
10 reasonably estimated for the biennium. SB 515 establishes the statewide average basic support per
11 public school pupil for 2015-16 at \$5,710. SB 515 § 1. In enacting SB 515, the Legislature
12 explained the bill's purpose was to "ensur[e] sufficient funding for K-12 public education for the
13 2015-2017 biennium." SB 515.

14 **B. SB 302's Diversion of Public School Funds to Private Purposes**

15 During the same Legislative session, the Legislature also enacted SB 302, which was
16 signed into law on June 2, 2015. SB 302 authorizes the transfer of the Legislature's biennial
17 appropriations for the operation of Nevada public schools from those schools into private ESAs.

18 Any child who enrolls in a public school for 100 consecutive days may establish an ESA.
19 SB 302 § 7. The 100-day requirement need be met only once in the child's academic career in
20 order for that child to obtain funding every year until he or she matriculates, drops out, or leaves
21 the state. *Id.* Under the current proposed regulations, part time or full time enrollment will satisfy
22 the 100-day requirement, and a student who attended public school in 2014-2015 is eligible for an
23 ESA. Clancy Declaration, Exhibit 4, Second Revised Proposed Regulations of the State Treasurer
24 at § 9.4. Further, a child currently enrolled in private school may become eligible by enrolling in
25 just one public school class for 100 days. *Id.* Likewise, a child can attend a public kindergarten
26
27
28

1 for 100 days, withdraw to attend private school, and receive a state funded voucher for the next
2 thirteen years. *Id.*; SB 302 § 7.6.³

3 When an ESA is established, SB 302 requires the State Treasurer to deposit into the ESA
4 an amount equal to 90 percent of the statewide average basic support guarantee per pupil, or
5 \$5,139 per pupil for the 2015-16 school year. SB 302 § 8(2). For children with disabilities and
6 children in a household with an income of less than 185 percent of the Federal poverty level, the
7 State Treasurer must transfer 100 percent of the statewide average basic support guarantee per
8 pupil, or \$5,710 for 2015-16. *Id.*

9 The total amount of the basic support guarantee transferred to the ESAs is deducted from
10 the funding appropriated by the Legislature for the operation of the school district in which the
11 eligible children reside. Specifically, the statute directs the State Treasurer to deduct “all the funds
12 deposited in education savings accounts established on behalf of children who reside in the
13 county” from the school district’s “apportionment” of the legislatively appropriated funding
14 “computed on a yearly basis.” SB 302 § 16.1; *see also* SB 302, Legislative Counsel’s Digest (“the
15 amount of the [ESA] must be deducted from the total apportionment to the resident school district
16 of the child on whose behalf the grant is made.”). As such, each ESA established represents a loss
17 to the public school district of the basic support guarantee amount, that is, either \$5,139 or \$5,710
18 per year.

19 **C. SB 302’s Funding of Non-Uniform Private Schools**

20 SB 302 authorizes the most expansive voucher program in the nation. Declaration of
21 Christopher Lubienski as Exhibit B (“Lubienski Declaration”) at ¶ 9 (noting that “no other
22 program in the [United States] comes anywhere near” Nevada’s expansiveness). Other state
23 voucher programs are targeted at low income students, those from underperforming schools,
24

25 ³ Indeed, Senator Scott T. Hammond, SB 302’s sponsor, has indicated his belief that the law was
26 intended to allow kindergartners to collect their ~\$5000 ESA subsidy for 13 years without meeting
27 any attendance requirements. Clancy Declaration, Exhibit 5, Statement of Senator Hammond,
28 Sponsoring Senator of SB 302, at Public Hearing (July 17, 2015) at 47 (“I just want to say that—
the intent of the bill, actually from the very beginning was to allow for kindergarten—people
coming into kindergarten to choose. So, these are students who are not yet on the rolls.”)

1 and/or are capped by a limit on the number of vouchers available or the total amount allocated for
2 the program each year. *Id.* at ¶ 8, 10 (discussing numerous eligibility requirements other states
3 impose for voucher recipients). SB 302 has no such limits. It does not impose any income
4 threshold, hardship, school achievement, or academic requirement to receive an ESA. *See* Clancy
5 Declaration, Exhibit 4, Second Revised Proposed Regulation of the State Treasurer, § 3(1)(b)
6 (stating that the goal of SB 302 is to establish ESAs to “the largest number of children allowable”).
7 SB 302 contains no cap on the total amount of funding that can be transferred from the public
8 school districts to ESAs and it imposes no limit on the number of children who can receive an ESA
9 in any given year.

10 SB 302 also makes almost no restrictions on the private use of funds deposited into ESAs
11 by the State Treasurer. The law allows ESA funds to pay for a myriad of expenses far beyond
12 private school tuition, such as tutoring, commercial tests, home-based education curriculum
13 materials, and transportation to a private school or home-based education experiences. SB 302 §
14 9.1. The list of institutions and entities eligible to participate in the voucher program is also very
15 broad, including private schools, universities, distance education programs, tutors, tutoring
16 programs, and even parents themselves. SB 302 § 11.1. The only requirement in SB 302 for
17 participating entities is that they administer a norm-referenced achievement assessment in
18 mathematics and English/language arts each year. SB 302 § 12(1)(a).

19 SB 302 does not require private schools or other entities participating in the voucher
20 program to meet the non-discrimination, educational performance, accountability or any other
21 requirements established by the Legislature for the operation of Nevada’s uniform system of public
22 schools. Public schools, of course, cannot discriminate and must be open to all students without
23 regard to religion, household income, disability, homelessness or transiency, immigrant status,
24 English non-proficiency, academic or special needs. *See, e.g.*, NRS 388.450; 388.520; 388.405;
25 388.407. In contrast, private institutions receiving ESA funds diverted from public schools may
26 refuse to admit, or otherwise discriminate against, students based on their personal and family
27 characteristics, including household income and academic performance. *See generally* SB 302;
28 *see also* Lubienski Declaration at ¶¶ 15-18 (stating that SB 302’s lack of non-discrimination

1 requirements is “anomalous” and noting other states’ myriad non-discrimination requirements).
2 Private schools are not required to provide accommodations for students with disabilities. Further,
3 SB 302 does not require private schools or other entities to accept the ESA amount (\$5,139 or
4 \$5,710) as full tuition. Rather, private schools may continue to charge tuitions far exceeding that
5 amount and deny entry to those unable to pay. *Id.* at ¶ 17 (“[N]othing in SB 302 prevents a private
6 school from charging more than the ESA amount and denying entry to those who are unable to pay
7 the full tuition amount.”).

8 Private entities receiving ESA funds are also not required to meet the same academic
9 requirements established by the Legislature for public schools. Nevada public schools are subject
10 to numerous requirements regarding testing and curriculum. *See generally* NRS 389 *et seq.*
11 (setting academic and testing standards for public schools). Private entities receiving ESA funding
12 do not have to meet any such requirements. Indeed, private schools can operate in Nevada
13 whether they are licensed by the state or not, NRS 394.211; approximately half of the private
14 schools in the state are exempt from licensure. *See* Clancy Declaration, Exhibit 6, 2014-15 Private
15 School Reports. Under SB 302, these non-licensed private schools can participate in the voucher
16 program. SB 302 § 11(1)(a). Private schools and other participating entities are also not required
17 to use a curriculum based on state-adopted curriculum content standards. SB 302’s absence of
18 educational performance and accountability requirements is anomalous when compared to other
19 state voucher programs. Lubienski Declaration at ¶¶ 12-14 (explaining that other, more limited,
20 voucher programs impose academic, curricular, and safety requirements for participating entities
21 receiving voucher funds and that SB 302 is “anomalous” for its lack of such requirements).

22 **D. Implementation of SB 302**

23 The State Treasurer expects to open the application process for ESAs in January of 2016,
24 and to begin disbursing funds in April of 2016. *See* Clancy Declaration, Exhibit 7, Office of the
25 State Treasurer News Release (July 9, 2015), “Treasurer’s Office Proposes Quarterly Enrollment
26 Periods for Education Savings Accounts” (noting quarterly enrollment periods beginning in
27 January 2016 with corresponding disbursement period of April 2016); *see also* Clancy Declaration,
28 Exhibit 8, Education Savings Account – SB 302, Notice of Workshop, Aug. 21, 2015 at 108,

1 Statement of Chief of Staff Grant Hewitt (noting possibility of payments as early as January, but
2 no later than April). The State Treasurer has already begun allowing applicants to pre-register for
3 ESAs. *See* Clancy Declaration, Exhibit 9, Early Enrollment Form.

4 The Treasurer's office currently reports that over 3,500 have pre-registered for ESAs. *Id.*
5 at Exhibit 10. If the Treasurer diverts funding away from the public schools for these 3,500 ESAs,
6 he would deduct over \$17.5 million from the public school districts budgets in the current school
7 year. If the over 20,000 students already enrolled in private schools in Nevada each obtained an
8 ESA, the yearly cost to Nevada's public schools under the voucher law would be over \$102
9 million. The Treasurer's Office has estimated that full participation in the voucher program by
10 both Nevada's private school and home-based education populations would result in the reduction
11 of \$200 million in public school district budgets. Clancy Declaration, Exhibit 8, Education
12 Savings Account – SB 302, Notice of Workshop, Aug. 21, 2015 at 67, Statement of Chief of Staff
13 Grant Hewitt (if all private and homeschooled children qualified for an ESA, "you'd have
14 approximately a \$200M [hole in the budget]").

15 **E. Procedural Background**

16 On September 9, 2015, Plaintiffs—parents and children enrolled in the Nevada public
17 schools—filed their Complaint, challenging the constitutionality of SB 302. On September 16,
18 2015, Putative Intervenor-Defendants filed a Motion to Intervene as Defendants and their putative
19 Answer. On October 5, 2015, Plaintiffs filed their Opposition to the Motion to Intervene. The
20 Reply was filed on October 15, 2015. That motion is pending.

21 **III. ARGUMENT**

22 **A. Standard for Preliminary Injunction**

23 Nevada Rule of Civil Procedure 65 provides this Court with the authority to issue a
24 preliminary injunction here. By statute an injunction may issue:

- 25 1. When it shall appear by the complaint that the plaintiff is entitled
26 to the relief demanded, and such relief or any part thereof consists in
27 restraining the commission or continuance of the act complained of,
28 either for a limited period or perpetually.

1 2. When it shall appear by the complaint or affidavit that the
2 commission or continuance of some act, during the litigation, would
3 produce great or irreparable injury to the plaintiff.

3 3. When it shall appear, during the litigation, that the defendant is
4 doing or threatens, or is about to do, or is procuring or suffering to
5 be done, some act in violation of the plaintiff's rights respecting the
6 subject of the action, and tending to render the judgment ineffectual.

5 NRS 33.010.

6 Applying this statute, the Nevada Supreme Court has held that a preliminary injunction
7 should issue “upon a showing that the party seeking it enjoys a reasonable probability of success
8 on the merits and that the defendant's conduct, if allowed to continue, will result in irreparable
9 harm for which compensatory damage is an inadequate remedy.” *Dixon v. Thatcher*, 103 Nev.
10 414, 415, 742 P.2d 1029, 1029 (1987) (citing *Number One Rent-A-Car v. Ramada Inns*, 94 Nev.
11 779, 780, 587 P.2d 1329 (1978)); *Dangberg Holdings Nevada, L.L.C. v. Douglas Cnty. & Bd. of*
12 *Cnty. Comm'rs*, 115 Nev. 129, 142, 978 P.2d 311, 319 (1999). In considering preliminary
13 injunctions, courts may also weigh the potential hardships to the relative parties and others, and the
14 public interest. *University and Community College System of Nevada v. Nevadans for Sound*
15 *Government*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004).

16 **B. Plaintiffs Are Likely To Prevail On The Merits**

17 The rules of statutory construction apply to the interpretation of a Constitutional provision.
18 As the Nevada Supreme Court has held, if a Constitutional provision “is clear and unambiguous,”
19 courts “will not look beyond the language of the provision but will instead apply its plain
20 meaning.” *Lorton v. Jones*, 322 P.3d 1051, 1054 (2014) (internal citations omitted); *see also In re*
21 *Contested Election of Mallory*, 128 Nev. Adv. Op. 41, 282 P.3d 739, 741 (2012) (Nevada courts
22 must “first look to the language itself and . . . give effect to its plain meaning.”); *We the People*
23 *Nev. ex rel. Angle v. Miller*, 124 Nev. 874, 881, 192 P.3d 1166, 1170 (2008) (same); *Kay v. Nunez*,
24 122 Nev. 1100, 1104, 146 P.3d 801, 804–05 (2006) (same).

25 Article XI of the Nevada Constitution affirmatively and unambiguously obligates the
26 Legislature to establish, maintain and support a system of free and uniform public schools that all
27 Nevada children are entitled to attend. The Nevada Supreme Court has recognized that Article XI
28

1 of the Nevada Constitution “clearly expresses the vital role education plays in our state,” finding
2 that

3 [o]ur Constitution’s framers strongly believed that each child should have the
4 opportunity to receive a basic education. Their views resulted in a Constitution that
5 places great importance on education. Its provisions demonstrate that education is a
6 basic constitutional right in Nevada.

6 *Guinn v. Legislature of Nev.*, 119 Nev. 277, 286, 71 P.3d 1269, 1275, *decision clarified on denial*
7 *of reh’g Guinn v. Legislature of Nev.*, 119 Nev. 460, 76 P.3d 22 (2003), *overruled on other*
8 *grounds by Nevadans for Nev. v. Beers*, 122 Nev. 930, 142 P.3d 339 (2006).

9 The Education Article, by its clear and unambiguous terms, contains mandatory directives
10 to ensure the Legislature effectuates the “basic constitutional right” to education guaranteed to all
11 Nevada children. First, the Legislature must specifically appropriate funds for the maintenance of
12 the public schools and cannot use the funds appropriated for public education for any other
13 purpose. Second, the appropriations must be an amount deemed to be sufficient by the Legislature
14 to fund the operation of the public schools kindergarten through grade 12. Third, the Legislature
15 must provide a system of public schools that is uniform throughout the state. SB 302 violates each
16 of these explicit Constitutional mandates.

17 **1. SB 302 Diverts Public School Funds From Public Schools to Private**
18 **Purposes in Violation of Article XI, Sections 3 and 6, of the Nevada**
19 **Constitution.**

19 By its plain terms, the Education Article of the Nevada Constitution requires the
20 Legislature to “provide for the[] support and maintenance” of the common or public schools “by
21 direct legislative appropriation from the general fund.” Nev. Const. art. XI, § 6.1. The
22 appropriation for the public schools must occur “before any other appropriation is enacted to fund
23 a portion of the state budget for the next ensuing biennium.” Nev. Const. art XI, § 6.2. The direct
24 legislative appropriation can only be used “to fund the operation of the public schools in the State
25 for kindergarten through grade 12 for the next ensuing biennium for the population reasonably
26 estimated for that biennium.” Nev. Const. art. XI, § 6.2. “Any appropriation of money enacted in
27 violation of subsection 2. . . is void.” Nev. Const. art. XI, § 6.5. Likewise, Article XI, section 3,
28 specifies additional sources of funding for the public schools and also restricts the use of those

1 funds. Nev. Const. art. XI, § 3 (specifying funds “pledged for educational purposes” and stating
2 that “the money therefrom must not be transferred to other funds for other uses”).⁴

3 The debates of the founding delegates to the Nevada Constitutional Convention underscore
4 the founders’ intent that funds appropriated to the public schools be used only for that purpose.
5 Delegates were specific that Article XI makes reference “only to public schools, and to the
6 appropriation of the public funds . . . so that it has a direct reference to the public schools, and
7 clearly cannot refer to anything else.” DEBATES AND PROCEEDINGS at 568. Further, the delegates
8 explained that that funds appropriated by the Legislature pursuant to Article XI were for “the
9 support of good common schools . . . the support and encouragement of public instruction.” *Id.* at
10 594. This Constitutional mandate is affirmed by statute. Nevada Revised Statute 387.045
11 provides that “[n]o portion of the public school funds or of the money specially appropriated for
12 the purpose of public schools shall be devoted to any other object or purpose.” NRS 387.045.

13 Nevertheless, SB 302 explicitly authorizes the use of funds appropriated to the public
14 schools for prohibited, non-public educational purposes. It directs the State Treasurer to transfer
15 into private ESAs the basic support guarantee per-pupil funding appropriated by the Legislature for
16 the operation of the school district in which the ESA-eligible child resides. SB 302 § 16.1 (school
17 districts are entitled to their apportioned funds “minus . . . all the funds deposited in education
18 savings accounts established on behalf of children who reside in the county”). This diversion of
19 public schools funds is in direct contravention of the plain language and intent of Article XI,
20 sections 3, 6.2, and 6.5 of the Nevada Constitution.

21 The Legislature apparently understood that SB 302 runs afoul of this constitutional
22 mandate when it attempted to exclude ESAs from NRS 387.045 (prohibiting use of public school
23 funding for other purposes). But this attempt is of no legal consequence. To the extent that NRS
24

25 ⁴ The term “educational purposes” in Art. XI, section 3, refers specifically to the educational
26 system of the state, comprised of the State university and the public schools. *See* DEBATES AND
27 PROCEEDINGS at 579 (referring to Section 3 as a “public school fund” for the support of the State
28 University and common schools); *see also State ex rel. Keith v. Westerfield*, 23 Nev. 468, 49 P.
119, 121 (1897) (rejecting argument that the term “educational purposes” in Article XI, section 3
applies beyond public education).

1 387.045 codifies the requirement in Article XI, sections 3 and 6, that public school appropriations
2 are for the exclusive use of operating the public schools, the Legislature cannot by statutory
3 enactment exempt itself from that clear constitutional mandate. *Whitehead v. Nevada Comm'n On*
4 *Judicial Discipline*, 110 Nev. 128, 166, 906 P.2d 230, 254, *decision clarified on denial of reh'g*,
5 110 Nev. 380, 873 P.2d 946 (1994) (holding that the Legislature “may not authorize that which is
6 forbidden by the Constitution.”).

7 The Nevada Supreme Court has long held that Article XI prohibits the diversion of public
8 school funding to other uses. *State ex rel. Keith v. Westerfield*, 23 Nev. 468 (1897) (holding that
9 funds allocated to the general school fund are reserved solely for the public school system). As the
10 Supreme Court explained, funds appropriated for the public schools under Article XI can only be
11 used for “the support” of the public schools and no portion of those funds can be used to pay a
12 non-public school employee “without disregarding the mandates of the constitution.” *Id.* at 121.
13 Payments of such funds for any other purpose are “unconstitutional, null and void” *Id.*⁵ *see also*
14 *State ex rel. Wright v. Dovey*, 19 Nev. 396, 12 P. 910, 912 (1887) (holding that “neither the
15 framers of the constitution nor the legislature intended to allow public-school moneys to any
16 county for persons not entitled to attend the public schools therein . . .”).

17 SB 302 expressly authorizes the diversion of funds appropriated by the Legislature for the
18 public schools, as well as funds set aside to the public schools pursuant to Section 3, to ESAs for
19 private expenses. Such a diversion directly violates Article XI, sections 3 and 6.2, and is,
20 therefore, “void.”
21
22

23 ⁵ The *Westerfield* court ultimately permitted the disputed payment out of the general fund rather
24 than the school fund, reasoning that the Legislature would have passed the small appropriation at
25 issue in that case (\$45) even if taken out of the general fund. *Westerfield*, 49 P. at 121. The same
26 cannot be said here. As the State Treasurer acknowledges, implementation of SB 302 could cost
27 hundreds of millions of dollars, all of which will be deducted from the funding appropriated by the
28 Legislature for the operation of the public schools. Clancy Declaration at Exhibit 8, p.67. There is
simply no evidence in the legislative record on SB 302 to suggest that the legislature would have
passed the voucher law if it required a substantial new appropriation from the general fund, instead
of relying on the transfer of an unlimited amount of existing appropriations to the public schools
made under Art. XI, section 6.2.

1 **2. SB 302 Reduces Public School Funding Below the Level Deemed**
2 **Sufficient by the Legislature in Violation of Article XI, Section 6, of the**
3 **Nevada Constitution**

4 Article XI, section 6, directs the Legislature to provide the appropriations it “deems to be
5 sufficient,” to fund the operation of Nevada’s public schools for kindergarten through grade 12 for
6 the next ensuing biennium. Nev. Const. art. XI, § 6.2. This provision was an amendment to the
7 Constitution by a ballot initiative in 2006. *See* Clancy Declaration, Exhibit 11, State of Nevada,
8 Statewide Ballot Questions, 2006. The stated purpose of this amendment was “to ensure funding
9 of education be given the status intended” by the Constitutions’ framers and to “substantially
10 enhance[] Nevada’s credibility as a stable environment for students and teachers.” *Id.* at 4-5.

11 SB 302, by transferring funding appropriated by the Legislature for the public schools into
12 ESAs for private uses necessarily reduces the Legislature’s appropriations for the public schools
13 below the level deemed “sufficient” by the Legislature under Art. XI, section 6.2. As a result, SB
14 302, is unconstitutional and, under Art. XI, section 6.5, void.

15 It cannot be disputed that deducting over \$5,000 for each ESA from the funds appropriated
16 and guaranteed to school districts will reduce that funding below the amount deemed sufficient by
17 the Legislature to operate the public schools. This is simple math — each ESA decreases district
18 funding by the amount deposited in the ESA. As discussed *supra* at II.D, the total reduction in the
19 Legislative allocation of funding to districts under SB 302 is not inconsequential but substantial.
20 Beyond this straightforward math, there are several additional reasons why the loss of funding
21 triggered by SB 302 will reduce the funding and resources below that deemed to be sufficient by
22 the Legislature in violation of Article XI, section 6.2.

23 First, SB 302 makes ESAs available to Nevada’s current private school and home-schooled
24 population. Students who never attended public school in the past can meet the 100-day
25 requirement with a single public school class and begin to receive funds, drawing millions of
26 dollars away from the public schools. *See* Section II.D, *supra*. These dollars are removed from
27 the school districts without any reduction in the enrollment on which the Legislature based the
28 sufficiency of the appropriations to operate the public schools. Thus, SB 302 will reduce the
Legislature’s appropriation of funds below what it has deemed to be sufficient to operate the public

1 schools for “kindergarten through grade 12 for the next ensuing biennium for the population
2 reasonably estimated for that biennium.” Art. XI, section 6.2.

3 Second, SB 302 fails to take into account that the amounts appropriated and “deemed to be
4 sufficient. . . to fund the operation of the public schools,” Art. XI, section 6.2, includes not only
5 expenses that may vary due to changes in student enrollment, but also significant fixed costs.
6 When a student obtains an ESA under SB 302 and no longer attends a public school, the school
7 district loses the 90 or 100 percent of the amount of the guaranteed basic support yet retains the
8 fixed costs of educating that student and all the other students remaining in the district’s schools.
9 Declaration of Paul Johnson as Exhibit C, CFO for White Pine County School District (“Johnson
10 Declaration”), at ¶¶ 7-9 (stating that “if a student were to leave White Pine after obtaining an
11 ESA,” the district “would nevertheless maintain many of the fixed expenditures associated with
12 educating that child” including teachers and “school counselors, school administrators, school
13 resource officers, custodial staff, maintenance personnel, groundskeepers, bus routes, bus drivers,
14 nutrition programs, and other support services”).

15 The fixed costs of operating a system of public schools are not commensurately reduced by
16 losing one or even a handful of students. For example, the cost of a teacher remains unless there
17 is a sufficient decline in the number of students in a particular grade or school to allow for
18 eliminating the teaching position altogether. Nor can teachers easily be released mid-year.
19 Johnson Declaration at ¶ 8 (“pursuant to N.R.S. 391.3196, school districts must notify teachers by
20 May 1 if they will be reemployed for the ensuing school year. These staffing decisions are made
21 based on projected enrollment, and cannot be readily adjusted during the school year.”) Likewise,
22 the fixed costs associated with keeping a particular school operating in a safe and healthy
23 manner—janitorial positions, administration, utilities, maintenance, grounds keeping,
24 counseling—all of those expenses remain unless enrollment drops to the point where the district
25 can close a school. *See* Clancy Declaration, Exhibit 12, Nevada Legislative Counsel Bureau,
26 “2015 Nevada Education Data Book” at 84-89 (breaking down per-pupil expenditures into
27 categories that include fixed costs, such as operations and leadership).

28

1 Third, SB 302 fails to recognize that the estimated enrollment on which the Legislature
2 determines the sufficiency of the funding necessary to operate the public schools includes students
3 requiring additional staff and services and, therefore, are more costly to educate. As the
4 Legislature has acknowledged, educating students with disabilities in need of special education
5 services, English language learners, and students from lower socio-economic backgrounds require
6 more resources and funding. *Id.* at 91 (demonstrating increased per-pupil costs for Special
7 Education students, ELL students, and economically disadvantaged students).⁶

8 Thus, as funding is redirected to ESAs under SB 302, districts will have less funding—
9 below the level deemed to be sufficient under Art. XI, section 6.2—to provide the resources
10 essential to educate the significant numbers of students with greater needs: students with
11 disabilities; English language learners; students at risk due to household and neighborhood
12 poverty, homelessness and transiency; and students with other special needs who will remain in the
13 public schools. *See, e.g.* Lubienski Declaration at ¶ 20-21 (noting that typical effect of choice
14 systems is that students who are more expensive to educate stay in the public school system).

15 SB 302, by deducting substantial amounts from school district budgets for ESAs, reduces
16 the level of funding for the operation of the public schools below that which the Legislature has
17 deemed to be sufficient in its biennium appropriations for the maintenance and support of
18 Nevada's public schools. As a result, SB 302, on its face, violates Art. XI, section 6.2, of the
19 Nevada Constitution.

20 **3. SB 302 Violates the Mandate to Establish and Maintain a Uniform**
21 **System of Common Schools in Violation of Art. XI, Section 2, of the**
22 **Nevada Constitution**

23 At the heart of the Education Article is the command that the Legislature establish and
24 maintain a “uniform” public school system. Nev. Const. art. XI, § 2. To ensure uniformity
25 consistent with this mandate, the Legislature has enacted an extensive framework of requirements
26 to ensure the public schools are open to all children and to provide them with a quality education

27 ⁶ Indeed, the Legislature in SB 302 itself recognized the higher cost of educating students with
28 disabilities and at-risk, low-income students by deducting not just 90 percent, but the full amount
of the basic guaranteed support for those special needs students. SB 302, § 8.1(a).

1 as is their basic Constitutional entitlement. *See e.g.*, NRS 388.450; 388.520; 388.405; 388.407
2 (providing specific standards for the instruction of ELL and special needs students); NRS 389, *et*
3 *seq.* (setting academic and testing standards for public schools); NRS 391.465 (establishing
4 statewide performance evaluation system for teachers).

5 SB 302 on its face violates this clear and unambiguous Constitutional requirement. SB 302
6 allows public school funds to pay for private schools and other entities that are not subject to the
7 requirements applied to public schools. The private schools, on-line programs and parents
8 receiving public school funds under SB 302 do not have to use the State adopted curriculum taught
9 in public schools, nor administer State assessments to determine whether students are achieving
10 State academic goals. While private schools and other entities under SB 302 have to give a norm-
11 referenced test in mathematics and English each year, SB 302 § 12(1)(a), there is no requirement
12 that the subjects be taught or that the assessment results will be used to evaluate performance in the
13 same manner that the public schools are held accountable. *See id.* Private schools can also
14 participate under SB 302 whether they are State licensed or not; approximately half of the private
15 schools in the state are not licensed. *See* Clancy Declaration, Exhibit 6, 2014-15 Private School
16 Reports; SB 302 § 11(1)(a). Indeed, every element designed to ensure uniformity and
17 accountability in the public school system—curriculum guidelines, testing requirements, teacher
18 qualifications—is inapplicable to the private schools and entities participating under SB 302.

19 Likewise, private schools and entities that accept ESA funds do not have to accept all
20 students. These schools and entities may discriminate based on a student's religion or lack thereof,
21 academic achievement, ELL status, disability, homelessness or transiency, gender, gender identity
22 and sexual orientation. Lubienski Declaration at ¶ 16 (identifying multiple Nevada private schools
23 with publically available admissions criteria that are facially discriminatory, *e.g.*, requiring a
24 declaration of religious belief, agreement with a statement on sexuality, grade minimums, or a lack
25 of behavior problems, or charging more for English Language Learners). These schools can also
26 refuse to serve a student based on the student's socio-economic status and inability to pay tuition
27 that exceeds the voucher amount. *Id.* at ¶ 17.

1 Thus, SB 302 uses public monies for private schools and entities not subject to the legal
2 requirements and educational standards governing public schools, in violation of the uniformity
3 mandate of the Education Article. *Cf. Bush v. Holmes*, 919 So. 2d 392, 409-10 (Fla. 2006)
4 (holding Florida's voucher system unconstitutionally non-uniform because private schools
5 receiving vouchers were not required to be accredited by the state or to adopt State-approved
6 curricula used by public schools, and could hire teachers without the training, education, and
7 background-check mandated for public school teachers).

8 SB 302 violates the Nevada Constitution's uniformity requirement in an additional way. In
9 mandating the establishment and maintenance of a uniform public school system, the Constitution
10 has, in the same breath, prohibited the Legislature from establishing and maintaining a separate
11 alternative system to Nevada's uniform public schools. "Nevada follows the maxim 'expressio
12 unius est exclusio alterius,' the expression of one thing is the exclusion of another," *State v. Javier*
13 *C.*, 128 Nev. Adv. Op. 50, 289 P.3d 1194, 1197 (2012), and "[t]his rule applies as forcibly to the
14 construction of written Constitutions as other instruments." *King v. Bd. of Regents of Univ. of*
15 *Nev.*, 65 Nev. 533, 556, 200 P.2d 221 (1948); *see also Thomas v. Nev. Yellow Cab Corp.*, 130 Nev.
16 Adv. Op. 52, 327 P.3d 518, 521 (2014), *reh'g denied* (Sept. 24, 2014) (applying *expressio unius*
17 *est exclusio alterius* as canon of construction); *Hernandez v. Bennett-Haron*, 128 Nev. Adv. Op.
18 54, 287 P.3d 305, 316 (2012) (similar).

19 Pursuant to this fundamental principle, the Legislature is prohibited from enacting statutes
20 that are inconsistent and conflict with clear Constitutional mandates. The Nevada Supreme Court
21 has expressly held that "[e]very positive direction" in the Nevada Constitution "contains an
22 implication against anything contrary to it which would frustrate or disappoint the purpose of that
23 provision." *Galloway v. Truesdell*, 83 Nev. 13, 26, 422 P.2d 237, 246 (1967) (citation omitted);
24 *see also id.* at 26 (holding that the "affirmation of a distinct policy upon any specific point in a
25 state constitution implies the negation of any power in the legislature to establish a different
26 policy"); *Moore v. Humboldt Cnty.*, 48 Nev. 397, 232 P. 1078, 1079 (1925) (same). The
27 Legislature's obligation under the Nevada Constitution to provide for the education of Nevada's
28 children through the establishment of a uniform system of public schools simultaneously prohibits

1 the Legislature from enacting SB 302, a law that allows for the education of Nevada children
2 through a non-uniform means wholly separate and distinct from the uniform system of public
3 schools.

4 In *Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006), the Florida Supreme Court interpreted that
5 state's constitutional provision requiring the Florida Legislature to create "a uniform, efficient,
6 safe, secure, and high quality system of free public schools," Fla. Const. art. IX, § 1, to forbid the
7 state from establishing a voucher system. *Id.* at 407. The court reasoned that the Florida
8 Constitution "mandates that a system of free public schools is the manner in which the State is to
9 provide a free education to the children of Florida" and that "providing a free education . . . by
10 paying tuition . . . to attend private schools is a 'a substantially different manner' of providing a
11 publicly funded education than . . . the one prescribed by the Constitution." *Id.* (citation omitted).
12 In so holding, the Court expressly relied on the maxim of constitutional interpretation that "where
13 one method or means of exercising a power is prescribed in a constitution it excludes its exercise
14 in other ways." *Id.* (quoting *S & J Transp., Inc. v. Gordon*, 176 So. 2d 69, 71 (1965)). Similarly,
15 the Nevada Constitution mandates a uniform system of public schools, and SB 302, like the
16 voucher law struck down in *Holmes*, provides public funding to educate Nevada children in a
17 "substantially different manner" from the public schools. The Nevada Constitution's requirement
18 that the Legislature maintain a uniform system of public schools necessarily forbids the Legislature
19 from undermining that Constitutional obligation by deliberately siphoning funding from public
20 schools in order to pay for private schools and other programs that are wholly outside of the
21 uniform public school system. SB 302 is, therefore, unconstitutional under Art. XI, section 2, and
22 must be enjoined.

23 **C. Plaintiffs Will Be Irreparably Harmed If a Preliminary Injunction Is Not**
24 **Issued**

25 Because SB 302 violates the Nevada Constitution, the irreparable injury element is
26 satisfied. *City of Sparks v. Sparks Mun. Court*, 129 Nev. Adv. Op. 38, 302 P.3d 1118, 1124 (2013)
27 ("As a constitutional violation may be difficult or impossible to remedy through money damages,
28 such a violation may, by itself, be sufficient to constitute irreparable harm."); *see also Monterey*

1 *Mech. Co. v. Wilson*, 125 F.3d 702, 715 (9th Cir.1997); *Eaves v. Bd. of Clark Cnty. Comm'rs*, 96
2 Nev. 921, 924-25, 620 P.2d 1248 (1980) (finding statute unconstitutional and, thus, ordering trial
3 court to impose preliminary injunction without reaching irreparable harm requirement). That is the
4 end of the analysis.

5 Even if it were necessary to establish irreparable harm, which it is not, irreparable injury to
6 Nevada's public school children is readily established. The amount of funding that the voucher
7 law will divert from school district budgets is not de minimus, but substantial. If the Treasurer
8 diverts public school funding for just the 3,500 that have pre-registered for ESAs, he would deduct
9 over \$17.5 million from the public school districts budgets in the current school year. Further, if
10 all of the over 20,000 students already enrolled in private schools obtained an ESA, the yearly cost
11 to Nevada's public schools of subsidizing their private school education under the voucher law
12 would be over \$102 million. In fact, the Treasurer's Office has estimated that full participation in
13 the voucher program by Nevada's private school and home-based education students would result
14 in the reduction of \$200 million in public school district budgets. Clancy Declaration, Exhibit 8,
15 Education Savings Account – SB 302, Notice of Workshop, Aug. 21, 2015 at 67, Statement of
16 Chief of Staff Grant Hewitt.

17 SB 302 will also necessitate frequent and unpredictable adjustments of public school
18 district budgets to the detriment of students in public schools. Pursuant to NRS 387.124 and SB
19 302, a district's apportionment is established on a quarterly basis based on the number of students
20 in each school district, "minus . . . all the funds deposited in education savings accounts
21 established on behalf of children who reside in the county." SB 302 § 16.1. The deduction of
22 ESA funds from each district's allocation will require quarterly adjustments to school district
23 budgets. NRS 387.124; Johnson Declaration at ¶ 12 (SB 302 will change a district's quarterly
24 enrollment "throughout the year"); *id.* at ¶ 12(a) (a district's "budgetary allotment will be adjusted
25 on a quarterly basis."). As school districts lose funding, they will be forced to make numerous
26 budget cutting decisions that will reduce their ability to adequately serve students. School districts
27 may have to halt necessary services for students, decrease curricular supplies, "eliminate teacher
28 resources and professional development programs which are critical to improving instruction at

1 our schools,” and cut “extra and co-curricular activities like music programs and intramural sports”
2 that provide “substantial benefits to students.” Declaration of Jeff Zander as Exhibit D,
3 Superintendent of the Elko County School District at ¶ 6; *see also* Declaration of Jim McIntosh as
4 Exhibit E, CFO for Clark County School District at ¶ 4 (“McIntosh Declaration”).

5 Further, some school districts may have to begin “seriously considering closing schools”
6 and will be unable to afford to take on or hire new teachers such that “[c]lass sizes . . . would
7 balloon.” Johnson Declaration, at ¶ 11. Even if a school district is able to make budgetary
8 adjustments in the middle of the year or from year-to-year, those changes “would be incredibly
9 disruptive to a school community.” *Id.* at ¶ 13. A school may be required to “revise its course
10 offerings, change student schedules, and move students into different classrooms,” all of which
11 “reduces the quality of education that schools are able to provide.” *Id.*; *see also* McIntosh
12 Declaration, at ¶ 6.

13 SB 302’s diversion of funds further leaves school districts with insufficient means to afford
14 the underlying fixed costs of operating the system. For example, if one student in a classroom of
15 30 leaves a school district after obtaining an ESA, the school district loses \$5,139 to \$5,710, but
16 cannot eliminate the expense of “the teacher salary, as that teacher is still needed for the remaining
17 29 students,” nor “the bus used to transport that child, the custodial staff used to maintain that
18 child’s classroom, or the nutritional staff used to provide food service to that student.” Johnson
19 Declaration at ¶ 9. Accordingly the school district, “does not recoup the funding lost as a result of
20 an ESA through savings of no longer having to serve that student” but rather “retains all of the
21 fixed costs of educating that student.” *Id.* Because fixed costs “cannot be reduced,” school
22 districts will be “forced to eliminate other services, like extracurricular activities that keep students
23 invested in school, in order to make ends meet.” *Id.*; *see also* Zander Declaration at ¶ 5 (noting
24 that fixed costs cannot be adjusted during the school year, especially in rural counties that cannot
25 “easily transfer teachers to other positions or other schools . . . because those schools can be up to
26 100 miles apart”); McIntosh Declaration at ¶ 4.b.

27 Finally, SB 302 will concentrate the highest need students in public schools, increasing the
28 per pupil education cost. Although the voucher amount is fixed at the statewide average basic

1 support guarantee, that amount does not reflect the substantial differences in education need and
2 cost among different student populations. Students with disabilities, English Language Learners,
3 and those from low income households and neighborhoods require additional resources and
4 interventions to achieve Nevada's academic standards. Voucher programs typically result in an
5 exit of students who are less costly to educate from the public schools, while those who are more
6 expensive to educate remain. Lubienski Declaration at ¶¶ 20-23 (explaining that private schools
7 select lower cost students, leaving public schools to serve those more expensive to educate and that
8 due to Nevada's anomalous lack of regulation "the segregative effects typically seen with choice
9 programs may be more pronounced"). By its operation, SB 302 will cause a rise in the average
10 cost-per-pupil for Nevada public school district while simultaneously reducing funding below
11 sufficiency levels.

12 The need for a preliminary injunction to prevent harm to Nevada's public school children is
13 manifest and urgent. As noted above, the Treasurer plans to accept applications for ESAs in
14 January and commence diverting funding from public schools pursuant to SB 302 this school year.
15 Thus, public school districts face the imminent threat of the loss of substantial amounts of
16 guaranteed state funding from their current school year budgets. This threatened disruption of the
17 public education system for hundreds of thousands of Nevada's children also outweighs any
18 hardships that Defendant could claim from delay in implementation of SB 302.

19 Nor will money damages compensate for the educational injury resulting from the
20 depletion of funding, and the budgetary instability, introduced by SB 302. A public school
21 student, whose classroom is disrupted by increased class sizes, reductions in resources, and
22 reduced programming, cannot get that instructional time back, impairing that child's Constitutional
23 right to a public education. Accordingly Plaintiffs have more than demonstrated a threat of
24 irreparable harm if the SB 302 is not enjoined by this court.

25 ///

26 ///

27 ///

28 ///

1 **IV. CONCLUSION**

2 Wherefore, Plaintiffs respectfully request that this Court issue a preliminary injunction
3 enjoining the Defendant State Treasure from implementing SB 302 and its regulations. A
4 proposed order is attached to the Clancy Declaration as Exhibit 13.

5 October 20, 2015

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CERTIFICATE OF SERVICE


I hereby certify that on this 20th day of October, 2015, a true and correct copy of **PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND POINTS AND AUTHORITIES IN SUPPORT THEREOF** was placed in an envelope, postage prepaid, addressed as stated below, in the basket for outgoing mail before 4:00 p.m. at WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP. The firm has established procedures so that all mail placed in the basket before 4:00 p.m. is taken that same day by an employee and deposited in a U.S. Mail box.

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FIRST JUDICIAL DISTRICT COURT

IN AND FOR CARSON CITY, NEVADA

HELLEN QUAN LOPEZ, individually and on behalf of her minor child, C.Q.; MICHELLE GORELOW, individually and on behalf of her minor children, A.G. and H.G.; ELECTRA SKRYZDLEWSKI, individually and on behalf of her minor child, L.M.; JENNIFER CARR, individually and on behalf of her minor children, W.C., A.C., and E.C.; LINDA JOHNSON, individually and on behalf of her minor child, K.J.; SARAH and BRIAN SOLOMON, individually and on behalf of their minor children, D.S. and K.S.,

Plaintiffs,

vs.

DAN SCHWARTZ, IN HIS OFFICIAL CAPACITY AS TREASURER OF THE STATE OF NEVADA,

Defendant.

Case No. 150C002071B

Dept. No.: II

DECLARATION OF THOMAS P. CLANCY
IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION

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DECLARATION OF THOMAS P. CLANCY

I, Thomas P. Clancy, declare as follows:

1. I am over the age of 18 and legally competent to make this declaration.

2. I am an attorney at the law firm of Munger, Tolles & Olson LLP and counsel for Plaintiffs in the above-captioned matter. I have personal knowledge of the facts set forth in this declaration, and, if called as a witness, I could and would testify competently to the matters set forth herein.

3. Attached as Exhibit 1 is a true and correct copy of Senate Bill 302.

4. Attached as Exhibit 2 is a true and correct copy of excerpts from the Official Report of the Debates and Proceedings in the Constitutional Convention of the State of Nevada, dated 1866.

5. Attached as Exhibit 3 is a true and correct copy of an excerpt from the First Annual Message of H.G. Blasdel, Governor of the State of Nevada. The full Message is available at: <http://www.leg.state.nv.us/Division/Research/Library/Documents/HistDocs/Sos/1864.pdf>.

6. Attached as Exhibit 4 is a true and correct copy of the Second Revised Proposed Regulation of the State Treasurer for SB 302, dated October 9, 2015.

7. Attached as Exhibit 5 is a true and correct copy of excerpts from the July 17, 2015 Notice of Workshop regarding Education Savings Account – SB 302. A full copy of this transcript is available at http://www.nevadatreasurer.gov/uploadedFiles/nevadatreasurergov/content/SchoolChoice/2015-07-17_Notice_of_Workshop_Minutes.pdf.

8. Attached as Exhibit 6 is a true and correct copy of a report by the Nevada Department of Education concerning Private Schools in the 2014-2015 school year. This publication is available at: http://www.doe.nv.gov/Private_Schools/Documents/201415PrivateSchoolreports/.

9. Attached as Exhibit 7 is a news release from the Office of the State Treasurer, dated July 9, 2015. This news release is available at: <http://www.nevadatreasurer.gov/PublicInfo/PR/2015/NESAP/2015-07->

09__Treasurer_s_Office_Proposes_Quarterly_Enrollment_Periods_for_Education_Savings_Accou
nts_(SB302)/.

10. Attached as Exhibit 8 is a true and correct copy of excerpts from the August 21,
2015 Notice of Workshop regarding Education Savings Account – SB 302. A full copy of this
transcript is available at:

http://www.nevadatreasurer.gov/uploadedFiles/nevadatreasurer.gov/content/SchoolChoice/2015-08-21_Note_of_Workshop_Minutes.pdf.

11. Attached as Exhibit 9 is a true and correct copy of the first three pages of the online
Early Enrollment form for ESAs. The Early Enrollment form can be accessed at
<https://nevadatreasurer.gov/schoolchoice/default.aspx?appid=esaapp.ascx>.

12. Attached as Exhibit 10 is a true and correct copy of the official twitter page for the
Office of the State Treasurer of Nevada, as accessed on October 19, 2015. The official twitter
page is available at <https://twitter.com/NVTreasury>.

13. Attached as Exhibit 11 is a true and correct copy of excerpts from the Statewide
Ballot Questions for 2006.

14. Attached as Exhibit 12 is a true and correct copy of excerpts from the 2015 Nevada
Education Data Book.

15. Attached as Exhibit 13 is a [Proposed] Decision and Order, Comprising Findings of
Fact and Conclusions of Law.

16. I declare under penalty of perjury that the foregoing is true and correct.

17. Executed on October 19, 2015, at Los Angeles, California.



Thomas P. Clancy

EXHIBIT 2
OFFICIAL REPORT

OF THE

DEBATES AND PROCEEDINGS

IN THE

CONSTITUTIONAL CONVENTION

OF THE

State of Nevada,

ASSEMBLED AT CARSON CITY, JULY 4th 1864.

TO

FORM A CONSTITUTION AND STATE GOVERNMENT.

ANDREW J. MARSH, OFFICIAL REPORTER.



SAN FRANCISCO :
FRANK EASTMAN, PRINTER.

EXHIBIT 2

Respondents' Appendix 000033

Thursday.] BROSXAN—JOHNSON—WARWICK—COLLINS—McCLINTON—HAWLEY.

[July 21.]

Mr. BROSXAN. It will be necessary to use the words "commencing on."

Mr. JOHNSON. No; not "commencing on." The terms of the other officers commence on Tuesday; if you say "from the first Monday," the term will commence on Tuesday, like other officers.

Mr. BROSXAN. Very well; then let it read "from the first Monday in January."

The question was taken on the amendment as modified, and it was adopted.

The question was taken on the adoption of Section 1 as amended, and it was adopted.

SECTARIAN INSTRUCTION.

The SECRETARY read Section 2, as follows:

SEC. 2. The Legislature shall provide for a uniform system of common schools, by which a school shall be established and maintained in each school district, at least six months in every year; and any school district neglecting to establish and maintain such a school, or which shall allow instruction of a sectarian character therein may be deprived of its proportion of the interest of the public school fund during such neglect or infraction, and the Legislature may pass such laws as will tend to secure a general attendance of the children in each school district upon said public schools.

Mr. WARWICK. Will the Chairman of the committee explain a little, as to what is meant here by "sectarian?" It says that any school district "which shall allow instruction of a sectarian character therein, may be deprived of its proportion of the interest of the public school fund," etc. Does that mean that they have no right to maintain Catholic schools, for example?

Mr. COLLINS. This provision has reference only to public schools, organized under the general laws of the State. It is not to be supposed that the laws enacted under it will stand in the way of, or prevent any Catholic school from being organized or carried on; but the provision prevents the introduction of sectarianism into the public schools.

Mr. WARWICK. That is entirely proper, but it seems to me that it might better be worded a little differently. It says, "which shall allow instruction of a sectarian character therein"—not in the school, but in the district. I do not suppose that is the intention.

Mr. COLLINS. You will find that it has reference only to public schools, and to the appropriation of the public funds. If they permit sectarian instruction, they are deprived of the use of the public funds, so that it has direct reference to the public schools, and clearly cannot refer to anything else.

Mr. WARWICK. I would like to examine that a little more carefully.

Mr. McCLINTON. I think all the objection can be easily obviated, and leave the section substantially as it is, by making a very slight change. Suppose we say, "in the public schools of said district."

Mr. WARWICK. That is the idea, exactly. It seems to me, as it now reads, and the gentleman will correct me if I am wrong—that it is not in the school, but in the school district

that shall establish or allow instruction of a sectarian character, that this penalty is to be applied. It says:

"And any school district neglecting to establish and maintain such a school, or which shall allow instruction of a sectarian character therein, may be deprived," etc.

The word "district" evidently governs the sentence, and that is where the change ought to be made, so that the prohibition of sectarian instruction may apply, not to the districts, but to the schools.

Mr. McCLINTON. I will make a motion to amend the section by striking out the word "therein," and inserting instead the words, "in the public schools of said district."

Mr. HAWLEY. I wish to inquire of the gentleman from Lander whether he imagines that the language of the section as it now stands would make any difference in regard to payments of the school-money, under the law, in a case, for instance, where, under the laws of the State, parties may have organized a Catholic school, entirely separate and distinct from the public schools? Does the gentleman think that the mere fact of the existence of that Catholic school in the district could have any possible influence in preventing the payment of the school-money under the law? In other words, I ask him whether he believes that any school district could be held responsible for the action of private parties, in organizing sectarian schools within such district?

Mr. WARWICK. No, sir; that would be manifestly unjust, and that is the reason why I want this amendment. I do not want the school district to lose on account of the establishment of a Catholic school, a Methodist, a Baptist, or any other school, and therefore I say the language should be such as will not be open to the slightest imputation of that construction.

Mr. HAWLEY. Very well; I will consent to the amendment, so far as I am concerned.

Mr. COLLINS. I wish to call the attention of the Convention one moment to the language of the section as it now stands. I desire to make any change that will be an improvement, but if the sentence is already clear, we should certainly take care to avoid tautology. Now I will read the section again, and emphasize the words as I think they ought to be, and gentlemen will see, I think, that a multiplication of those phrases is scarcely necessary, and certainly it would not sound very well. If we can secure the same sense, without a change of phraseology that would destroy the emphasis of the sentence, we should certainly do so, in accordance with the laws of composition. Now let us see how it should read:

"The Legislature shall provide for a uniform system of common schools, by which a school shall be established and maintained in each school district, at least six months in every year."

The subject of the sentence is "common schools," and "a school" to be established "in each school district." These are the words

Thursday.]

BROSNAN—BANKS—DUNNE—HAWLEY.

[July 21.

for the distribution of the school fund to school districts, during the first year of their organization, without reference to the time that a school has been held therein."

The question was taken, and the amendment was not agreed to.

PENALTY FOR NEGLECT.

The question was next stated on the amendment offered by Mr. Banks, as subsequently modified, to strike out the whole of Section 2, and insert instead the following:

"SEC. 2. The Legislature shall provide for a uniform system of common schools, by which a school shall be maintained in each school district, at least six months in every year; but no sectarian instruction shall be allowed in any public school so established."

Mr. BROSNAN. Now, sir, I move to amend that amendment, as just read, by adding thereto the following words, which I find here in the section as reported by the Committee on Education:

"And any school district neglecting to establish and maintain such a school, or which shall allow instruction of a sectarian character therein, may be deprived of its proportion of the interest of the public school fund during such neglect or infraction."

Mr. BANKS. While I do not see any obvious necessity for that, I see no objection to it, and therefore I accept the amendment.

The question was taken on the amendment as thus modified, and it was not agreed to.

The question was taken on the adoption of Section 2 as reported, and it was adopted.

THE SCHOOL FUNDS.

Section 3 was read as follows:

SEC. 3. All lands, including the 500,000 acres of land granted to the new States under an Act of Congress distributing the proceeds of the public lands among the several States of the Union, approved A. D. 1811; the sixteenth and thirty-second sections in every township, donated for the benefit of public schools, set forth in the Act of the thirty-eighth Congress, to enable the people of Nevada Territory to form a State Government; the thirty thousand acres of public lands granted by an Act of Congress, and approved July 2, 1852, for each Senator and Representative in Congress; and all lands and parcels of lands that have been or may hereafter be granted or appropriated by the United States to this State; all estates that may escheat to the State; all of such per cent. as may be granted by Congress on the sale of land; all fines collected under the penal laws of the State; all property given or bequeathed to the State for educational purposes; and all proceeds derived from any or all of said sources, shall be, and the same are hereby solemnly pledged for educational purposes, and shall not be transferred to any other fund for other uses; and the interest thereon shall, from time to time, be apportioned among the several counties, in proportion to the ascertained numbers of the persons between the ages of six and eighteen years in the different counties. And the Legislature shall provide for the sale of floating land-warrants to cover the aforesaid lands, and for the investment of all proceeds derived from any of the above-mentioned sources in United States bonds, or the bonds of this State; *provided*, that the interest only of the aforesaid proceeds shall be used for educational purposes, and any surplus interest shall be added to the principal sum; and *provided further*, that such portion of said interest as may be necessary, may be appropriated for the support of the State University.

STATE UNIVERSITY.

Mr. DUNNE. I wish to speak to the last pro-

viso, which authorizes the appropriation of such portion of the interest on the public school fund as may be necessary for the support of a State University. I find that special provision is made in the next section for a State University, and in a subsequent section there is a provision for levying a special tax for its support. Now I am entirely in favor of taxing the State for a State University, whenever the State can afford it. I believe, however, in turning our undivided attention, in the first place, to the common school system of the State, and I do not think that the interest derived from the school fund should be taken from the common schools and applied to the purpose of building up a State University. Therefore, because there is special provision made elsewhere for a State University, and because we ought to endeavor, in the first place, to secure to our children the advantages of a good common school system, I move that this last proviso in Section 3 be stricken out.

Mr. HAWLEY. Allow me to call the gentleman's attention, and that of the Convention, to the language of that section. It only provides for the appropriation of "such portion of said interest as may be necessary."

Mr. DUNNE. I am aware of that.

The CHAIRMAN. The question is on the amendment to strike out the last proviso in the section.

Mr. HAWLEY. It does seem to me, Mr. Chairman, that this is a matter which should be left discretionary with the Legislature. I do not think there is any danger that a body of men, elected by the people, and convened here to legislate for the interests of the new State, are going so blindly to work as to appropriate at once, and exclusively, the entire sum received for interest on the public school fund to the support of a State University, leaving the common schools entirely unprovided for. The gentleman from Humboldt must be well aware that to create a State University, to build up its various departments, and fill it with professors, is a work of time. It will, of course, be the duty of the Legislature, first, to locate and rear the structure, and it does seem to me that the Legislature will, beyond any doubt or question, agree with the gentleman from Humboldt, and the rest of us, in realizing the paramount necessity of preparing the new State for a University before they build it—of placing both parents and children in such a position, in the first place, that they may be competent to avail themselves of the advantages of a University. Therefore, I trust that the amendment will not prevail.

I desire, further, to call the attention of the gentleman to another provision in Section 6—the section which authorizes the special tax, to which he has referred—a provision which he has evidently overlooked. The section prescribes that this special tax may be appropriated "for the support and maintenance of said University, and common schools." Now I submit

Friday.]

CROSMAN—COLLINS—DUNNE—LOCKWOOD—FRIZELL—CHAPIN.

[July 22,

consideration, and the Chair understood the gentleman from Lyon to offer a substitute. Does he withdraw it, or insist upon it?

Mr. CROSMAN. I do not know that I understand the purport of the amendment proposed by the gentleman from Storey, (Mr. Collins.) Is it different from the report of the committee?

Mr. COLLINS. Yes, sir.

The CHAIRMAN. The Chair will state that there appears to be only a little difference in the language, but no real difference in the meaning.

Mr. DUNNE. I wish to address a remark to the gentleman from Storey. The word "interest" having been stricken out by his amendment, leaves the word "principal" alone. Now would it not be better to use the word "capital"?

The CHAIRMAN. The gentleman is not in order. That amendment will not come up until the section is reached.

Mr. DUNNE. I understood the Chair to state the question on the amendment offered by the gentleman from Storey.

The CHAIRMAN. It is the amendment to Section 4. No other section is now under consideration.

Mr. COLLINS. I will state that my amendment is—although I am more than half inclined to leave the subject entirely to the Legislature—to provide that the Legislature shall appoint a Board of Regents, and said Board of Regents shall prescribe rules and regulations for the State University.

Mr. CROSMAN. Then I do not withdraw my motion. I think this amendment is much more concise and to the purpose, providing that the Legislature shall provide for the University and Mining Department. I want the Legislature simply to provide for the University, and then let it be under the control and management of the Board of Regents, as provided by law.

Mr. LOCKWOOD. I understand that the amendment of the gentleman from Storey (Mr. Collins) provides, in the first place, that the Board of Regents shall prescribe regulations for the University, and that then the section goes on to say, that pupils shall be admitted under the rules and regulations prescribed by that Board. If that is so, it looks to me like tautology.

Mr. DUNNE. It appears to me that this matter is getting very much mixed. I move that the committee rise, and recommend that the report be recommitted to the Committee on Education.

Mr. COLLINS. I think the amendment of the gentleman from Lyon (Mr. Crosmán) is very complete, and all that is required. It is only a moment's work to agree upon it, so as to be satisfactory to all.

The CHAIRMAN. Does the gentleman from Humboldt insist on his motion?

Mr. DUNNE. Yes, sir.

Mr. FRIZELL. I hope it will not prevail. They can get the section perfected in a moment.

The question was taken on the motion that the committee rise, and it was not agreed to.

Mr. COLLINS. This seems now to embrace all that is needed. I will read it:

SEC. 4. The Legislature shall provide for a State University, embracing departments for agriculture, mechanic arts, and mining, to be under the control of a Board of Regents, as may be provided for by law.

Mr. CROSMAN. I accept that.

Mr. LOCKWOOD. I desire to suggest to the gentleman to put in the first line there, the words "for the establishment of." It seems to infer that, as it is, but it will make the language clearer.

Mr. COLLINS. Very well; I will insert that, if there is no objection, and will make another slight correction.

The SECRETARY read the amendment as finally modified, as follows:

SEC. 4. The Legislature shall provide for the establishment of a State University, which shall embrace departments for agriculture, mechanic arts, and mining, to be controlled by a Board of Regents, whose duties shall be prescribed by law.

The question was taken on the adoption of the amendment, as a substitute for the section originally reported by the Committee on Education, and it was adopted.

ESTABLISHMENT OF SCHOOLS.

Section 5 was read, as follows:

SEC. 5. The Legislature shall have power to establish Normal Schools, and such different grades of schools, from the primary department to the University, as in their discretion they may see fit; and all professors in said University, or teachers in said common schools, of whatever grade, shall be required to take and subscribe to the oath as prescribed in Article XVI of this Constitution. No professor or teacher who fails to comply with the provisions of any law framed in accordance with the provisions of this section, shall be entitled to receive any portion of the public moneys set apart for school purposes.

Mr. LOCKWOOD. I do not desire to delay action, but just to take the sense of the Convention, I move to strike out in the second line the words "normal schools." The Legislature is authorized to establish all grades of schools, and it is not necessary to mention normal schools specially.

The question was taken, and the amendment was not agreed to.

The question was taken on the adoption of the section as read, and it was adopted.

SPECIAL SCHOOL TAX.

Section 6 was read, as follows:

SEC. 6. The Legislature shall provide a special tax of one-half of one mill on the dollar of all taxable property in the State, in addition to the other means provided for the support and maintenance of said University and common schools; *provided*, that at the end of ten years they may reduce said tax to one-quarter of one mill on each dollar of taxable property.

Mr. CHAPIN. Before this section is adopted I would like to suggest whether it is not desirable to make one alteration. There seems to be provision made in a previous part of the article

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DENNE CHAPIN COLLINS FRIZZELL NOURSE.

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for a school fund, which may be entirely ample, and I would like to alter this language, where it says the Legislature shall provide a special tax of one-half of one mill on the dollar. I move to strike out the word "shall," and insert, "may in its discretion."

The question was taken, and the amendment was agreed to.

Mr. DENNE. What is the use, now, of the proviso at the end of the section?

Mr. CHAPIN. I move to strike out the proviso also.

Mr. DENNE. I want that word "shall" put in again, and I hope it will be.

Mr. COLLINS. I regret that it has been stricken out, for I am confident the Board of Regents will have great difficulty in getting funds. It is always the case that institutions of this character are embarrassed for the want of funds, and I hope the committee will reconsider that amendment.

Mr. FRIZZELL. There is no doubt that if any funds shall be needed for the State University, or for the support of normal or other schools, they will be provided. There will be American citizens in the Legislature, and if the money is needed, and they may in their discretion appropriate it, the Legislature will vote the required amount of money. There can be no doubt about that. On the contrary, it appears that there is ample provision made by this article, both for the schools and the University, and consequently it may be that no special tax will be needed. Now which horn of the dilemma is it best for us to take? I say we had better leave it to the discretion of the Legislature, because it is certain that the tax will be levied, if it is needed.

Mr. CHAPIN. I hope my amendment will be adopted striking out the proviso. Every gentleman knows that the hearts of our people are set on the common schools; and who can doubt that the Legislature, representing such a people, will levy a tax if there shall be any occasion for it? But I do not believe in compelling the Legislature to burden us with a tax, unless it shall be really needed; therefore I trust that the proviso will be stricken out.

Mr. COLLINS. The committee had in view the difficulties which every new State has encountered in the establishment of State Universities and the maintaining of the common school interest. Now this section contemplates that the Board of Regents will set aside the proceeds of this tax of one half mill upon a dollar for the special purpose of creating a fund to be allowed to accumulate until there shall be money sufficient to lay the foundation of an institution such as the wants of the State may demand. Having the proceeds of the thirty thousand acres for each member of Congress, which will be ninety thousand acres for this State, they may set that apart as a permanent fund for the support and maintenance of professors in the University. If this matter of

the special tax is left to the Legislature, what will be the result? That body will be under a pressure, a terrible pressure I have no doubt, which will impel them to postpone the tax from year to year; whereas, if the tax were levied at once, a small tax that nobody would really feel, it would go on gradually accumulating into a fund of some magnitude, until five, ten, or twenty years hence, as the case may be, it will become sufficient in the aggregate to lay the foundation of an institution that will be a benefit and an honor to the State. I hope we shall not neglect to provide for an important matter like this, while we are still in an embryo state. I do not believe that the Legislature is likely to be as earnest in this matter of education as gentlemen appear to anticipate. The Legislature of last winter demonstrated the fact that it did not possess that degree of earnestness on the subject that I had hoped existed. I trust, therefore, that we shall make such provisions in our Constitution that men coming into our State may come with a full conviction and assurance that a proper foundation has been laid for affording the means of instruction to their children as they grow up, without the necessity of sending them to other States to be educated.

The question was taken on Mr. Chapin's amendment to strike out the proviso, and it was agreed to.

The question was then taken on the adoption of the section as amended, and it was adopted.

THE BOARD OF REGENTS.

Section 7 was read, as follows:

SEC. 7. The Governor, Secretary of State, and the Superintendent of Public Instruction, shall for the next four years, and until their successors are elected and qualified, be a Board of Regents to control and manage the affairs of the University, and the funds of the same, make such regulations as may be provided by law; but the Legislature shall, at the expiration of that time, provide for the election of a Board of Regents, and define their duties.

Mr. CHAPIN. I move that the section be adopted as read.

Mr. NOURSE. I suggest that the words "at the expiration of that time," do not come in at the right place. It seems to me that they should be inserted after the words, "Board of Regents," where they first occur, so as to read: "but the Legislature shall provide for the election of a Board of Regents at the expiration of that time, and define their duties." As it is now, it would seem to imply that the period for any action of the Legislature will not arrive until the expiration of that time.

The CHAIRMAN. Does the gentleman make any motion?

Mr. NOURSE. I will move that the language be transposed so that the words "at the expiration of that time," shall come next after the word "Regents," where it last occurs in the section.

The Secretary read the section as proposed to be amended.

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STURTEVANT—DUNNE—WARWICK—BANKS—HAWLEY.

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Mr. STURTEVANT. I hope the gentleman will bear in mind that the mines are not to be taxed for the support of that school.

The question was taken on the adoption of the amendment proposed by Mr. Brosnan, to strike out the word "two," and it was agreed to.

The question was then taken on the adoption of the section, as amended, and it was adopted.

THE SPECIAL TAX—AGAIN.

Mr. DUNNE. I believe we have now passed through the whole article, and I move a reconsideration of the action of the committee by which the word "shall," and the proviso in regard to a special tax were stricken out of Section 6.

Mr. WARWICK. I will ask the gentleman if he voted in the affirmative on those questions.

Mr. BANKS. I voted in the affirmative, and I will make the motion to reconsider.

[Mr. COLLINS in the chair.]

Mr. HAWLEY. I most sincerely trust that the reconsideration will prevail, and that we shall make it mandatory on the Legislature to provide this special tax. I have read car fully the last published report of the Superintendent of Public Instruction of the State of California, the thirteenth Annual Report, and he lays particular stress upon the difficulty with which the Legislature of California has been prevailed upon to make sufficient appropriations for educational purposes. And at this very day, petitions are in circulation, and have been for some time past, throughout the whole of the State of California, for the purpose of receiving signatures praying the Legislature to impose upon the whole of the taxable property of that State, a tax of five mills on the dollar for educational purposes, instead of one-half of one mill, as we propose in this section. Now if the State of California can afford to pay a tax of five mills, I think the State of Nevada can certainly afford to pay one-half of one mill; and this Convention, taking into consideration its solemn duty towards the rising generation, should at least make it mandatory on the Legislature to impose a tax of that amount.

Time will not permit, nor is it necessary that I should recapitulate the arguments which have already been urged to show that among the first and the highest duties of the State, is the duty of educating the rising generation. Nobody will dispute that proposition, and I submit it to the good sense of the members of the Convention, with only the remark that they will reflect honor upon themselves and upon the new State, by making this provision mandatory, whereas if we shall leave it discretionary with the Legislature, which may be influenced by men in private life, or holding subordinate positions, to withhold the educational appropriations, or take only half-way measures from year to year, neglecting to do

its whole duty, we shall be doing injustice to the rising generation, and a discredit to ourselves, if I may be permitted to use that remark in regard to the action of the Convention. Therefore I hope that the mandatory features of this section, as reported, will be allowed to remain unchanged.

Mr. DUNNE. The principal argument advanced in favor of striking out the mandatory language in this section was, that the Legislature would levy a tax, if necessary, without any question, and therefore it was not necessary to make the provision mandatory—that if the people of the United States, and of Nevada in particular, were firmly impressed with the necessity of any one thing in the general policy of government, it was the necessity of fostering and protecting the common school system. Now this State University is a departure from the general common school system, and it is exactly because it is such a departure that the Legislature may be unwilling to levy this tax, however necessary it may be. There is no doubt that the Legislature would readily levy a tax for the support of the common schools, but there has always been a great prejudice in the minds of many men against applying any portion of the public money to the establishment or maintenance of anything of the character of a college or university. Every possible argument has been advanced to defeat such appropriations, and devote the whole of the public funds to the common schools. Men would say, "Let us give the money to the education of the people, in their common schools, and allow those who want these new-fangled higher grades of learning to pay for such institutions themselves."

That is the reason why I think it may be sought to evade this tax, unless we make it mandatory. If it is left optional with the Legislature, then those who would evade such a tax would have an opportunity to work upon the members, and influence them to prevent the levying of the tax by saying that the measure would be objectionable to the people, and they would gain popularity by opposing it. At the same time, if the subject were left to the people, I think it would pass without question. It is a small tax, of only five cents on each one hundred dollars, but it will go on silently growing and accumulating, without attracting much attention, until at the end of five or six years, perhaps, without any one having sensibly felt it, a fund will have accumulated sufficient to establish the University, or at least to start it upon a substantial basis. After it shall once have been set going, I have no doubt that it will be an object of so much advantage to the State that all men will feel an interest, and take pride in it, and there will be no difficulty in regard to obtaining appropriations for it. The amount of the tax proposed is very small, being only one-tenth of what is now being asked for in California, and I sincerely hope that the reconsideration will

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COLLINS BARKS BROSNAN—FRIZELL—NOURSE.

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prevail, and the section be allowed to stand as originally reported.

[Mr. COLLINS in the chair.]

Mr. COLLINS. One reason why I would urge the propriety of the reconsideration, and letting the proposition stand just as it did in the Constitution adopted last year, is, that we are operating under the law of Congress, ceding or donating these ninety thousand acres for an Agricultural College, and by the terms of that act our mining department cannot receive or enjoy the advantages of that donation; but the fund derived therefrom must be set aside for certain specified objects. Now I ask where are we going to acquire the funds for our mining department? The only fund that we can have is that which will accumulate from year to year from this tax. That is what we must rely upon to supply and sustain this important department from which we hope to derive such great benefits and advantages in the future. I want the action of the Convention reconsidered, because I feel the absolute importance of the matter. We are situated here, far removed from the great seats of learning in the Atlantic States, and unless we make provision at an early day, by which the rising generation of our youths, soon to grow up and develop into manhood, can receive the advantages of education at our own hands, we shall be obliged to spend fifty times the amount that this contemplated institution would cost us, to educate our children at arms' length. It will be the greatest economy we can adopt to devise means and mature plans by which children can be educated in our midst, so that they may have an education corresponding with surrounding life; and in these departments of our State University we shall be able to provide the means by which they can acquire maintenance and good standing, and secure their own advancement.

While we are engaged in laying the foundations of a great and mighty State, do not let us be negligent in such a matter; and by want of a comprehensive foresight on our part, in regard to the great wants of the future, force children to leave the State to acquire education. More than that, by such a course we discourage the immigration of that most valuable class which regards education as the very foundation of the State. We say to them—"Do not come here with your half-grown up boys, to dwell among, and mingle your fortunes with us, because if you do, in a few years you will have to send your boys to the Atlantic States, or over the Sierras to California, to acquire an education, which we engaged here to-day in laying the foundations of a great State, are unwilling to provide for, by requiring the small tax of a half a mill on the dollar to be levied on the taxable property of the State." I trust that those gentlemen who voted for the amendment will look at the consequences, and vote for the reconsideration.

Mr. BARKS. I really hope that this amendment will be reconsidered. Many men feel

that education is something that can be done without, or delayed for a time. Private interests may be in the way, or the times may be dull, and in the Legislature men will agree that for that particular year they will make the taxes light by omitting this tax, hoping, perhaps, that the subject will be attended to the next year, when the times shall be better; and thus the matter will be postponed and neglected from year to year. That is the way it has been in California, and in other States in the Union. The cause of education has been thrust aside for other interests. I hope that no gentleman will vote finally on this subject without first considering that the real issue is this: Shall we, or shall we not, have established here a permanent educational institution, which is indispensably necessary for the permanent prosperity and for the credit of our proposed State?

Mr. BROSNAN. I will merely add a word. The Legislature shall establish the institution—we have determined upon that. Now, if gentlemen are afraid to say that the Legislature shall make this provision, and divide the fund between the University and the common schools; if they think it is too much, and that the funds are ample without a special tax, then I submit that they are not acting prudently about it, unless they reconsider, because they say the Legislature will do this thing—that we need not adopt this provision, because the Legislature is abundantly able without it—and if that is the case, the Legislature may see fit to make the tax even larger than we intend. Therefore, I say that on the ground of caution they should vote to reconsider, because here is a tax provided for which cannot prove to be burdensome.

Mr. FRIZELL. I hope the vote will be reconsidered. I am willing to concede to the opinions of the array of able and good men who are in favor of the reconsideration, and to adopt the reasons which have been assigned by them. The present occupant of the chair (Mr. Chapin) will bear me witness that from the beginning I have been willing to leave anything doubtful or difficult which has arisen from time to time to the Legislature, but yielding to the arguments of good men, whom I know to have the cause of education at heart, I am willing to reconsider.

Mr. NOURSE. I am rather inclined to oppose the motion to reconsider. If the section as proposed by the committee agrees with the section as printed in the old Constitution, and I believe it does substantially, then this tax is a matter to be divided between the University and the common schools, and I am opposed to raising money by a State tax for the support of the common schools, for the reason that, as all experience shows, money to be expended economically, and to the best advantage, should be raised in such a manner as to be brought close home to all the people who are to expend it. If the people have to tax themselves for the money they expend, they will take better

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care of it than they will of the money which they receive from land grants, or otherwise. I have been led to believe, for this reason, that the better policy is to provide that the neighborhood which raises the money shall expend it.

Then comes this question of the college. Sir, I do not anticipate as much advantage from a State College as other gentlemen seem to. It is true that we appear to have peculiar facilities here for a mining college—more probably than in any other place in the world—and if everything here proposed was going to that, I would be strongly in favor of it. But when we come to speak about establishing a college in general, in which the ordinary branches of a collegiate education are taught, I must say, while I would be very glad to see it prosper, that I have but little faith in it. It is too easy to reach other regions, where grass grows, to be trodden under the feet of the pupils, and trees to wave over their heads, and where they do not have to drink in alkali, like the bitter waters of Marah. I do not think, therefore, that a college here would be likely to flourish much. Still, I would like to establish and encourage a mining department, and I think the establishment of such a department is essential, and would be of great advantage to the State, and no doubt it would be well patronized. If the money proposed to be raised by this tax were to go to the mining department exclusively, and not, as I understand it is, to the care of the same men who have charge of the funds for the agricultural department, for which I think this Territory is no proper place, I should be glad to vote for the tax.

Mr. WARWICK. As our time is getting very short, believing that this subject has been fully ventilated, I call for the question.

The question was taken on the motion to reconsider, and it was agreed to.

THE TAX FOR COMMON SCHOOLS.

Mr. NOURSE. I now move to amend Section 6 by striking out the words "and common schools." I understand that the common schools are otherwise abundantly supplied, getting the advantage of all the land grants, and so on. I make the motion mainly for the sake of hearing how they are provided for.

Mr. HAWLEY. Until within the past year the manner in which the school fund was obtained from taxes, has been by the payment of all the taxes assessed in each county, including the tax for school purposes, from which the Territory received its share, and when the Territory had received such share, each county drew its proportion of the school money. That law was repealed at the last session of the Legislature, and now each county levies its own tax for a school fund. Douglas County has this year a school tax of fifteen cents on each one hundred dollars. Now we propose to levy this special State tax, because we think the people may not for some time obtain any benefit or advantage from the school fund derived

from the sale of lands set apart for that fund. In addition to that, we expect that each county will levy a tax sufficient for its own local institutions, and if that is not sufficient to support the common schools, a portion of this State tax of one-half of one mill on the dollar may be appropriated. We expect, moreover, that there will be a balance left which will go towards creating a sinking fund for the benefit of the University, and we do not wish to go along with that at any snail's pace. While we do not desire to impose an onerous tax, which would cause the people to cry out under the burden, yet we do propose to make such provisions as will secure to the State such an institution as is best fitted to prepare its pupils for the duties of life.

Mr. WARWICK. Is it contemplated to set apart any portion of the tax for the purposes of the University?

Mr. HAWLEY. The section provides that the tax shall be levied "for the support and maintenance of said University and common schools."

Mr. WARWICK. Exactly. But that University being in the future, and the schools in the present, would it not be better, I suggest, to set aside some portion of it specially for the purposes of the University?

Mr. HAWLEY. I do not think so. I have already expressed my views on that subject. The first duty of the State, in my opinion, is to support the common schools, and if the fund for that purpose is not sufficient, as a consequence, persons interested will have to contribute to make up the deficiency, as they do at the present time. But if, on the other hand, there shall be more than is necessary, then we leave it discretionary with the Legislature to set apart such surplus as may remain, for the purpose of an endowment of the University. That is the system which we propose to inaugurate.

Mr. WARWICK. As the gentleman from Douglas is School Superintendent of his own county, he must be aware that the wants of any school district are only circumscribed by its means. For instance, a very plain school-house, and the commonest desks, will suffice, as long as the district is so circumscribed as to be unable to afford anything better; but if its means are increased, it must have a better school-house, and more elegant desks, and a larger number and better class of teachers. I admit that these things improve the schools very much, and are desirable, but unless we provide for specially setting apart a small portion of the tax to that object, we shall have no fund at all for the University.

Mr. HAWLEY. Allow me to say that that is left discretionary with the Legislature. The committee did not propose to legislate as to what disposition shall be made of every dime.

Mr. WARWICK. Then I understand that the Legislature has discretionary power to make such use of the fund as it may see fit.

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Mr. COLLINS. I have faith to believe that the Legislature, having the fund in its care, will be disposed to use it to the best possible advantage. Our worthy chairman (Mr Chapin) has suggested that the words "mining department" be substituted for "common schools," proposing to have it read:—"for the support and maintenance of said University and mining department thereof." That might, perhaps, devote this fund more directly and exclusively to the use of the mining department; but I am willing to leave the whole matter open to the Legislature, allowing that body, at any and all times, to be governed by the exigencies of the case. If the common schools are languishing, and there are no other funds to sustain them, of course they should not be permitted to suffer for the benefit of the University. They should receive the first care of the State, and next after them the University, and such branches thereof as the Legislature shall conceive to be most important for immediate development. I prefer to leave it all to the Legislature.

Mr. WARWICK. I attach great importance to the mining department clause in the provision for the establishment of this academy, college, or whatever it may be called, for the reason that I am satisfied there is more in it than gentlemen suppose, who have not examined the subject. I had occasion to investigate it to some extent while I was in California. There is a little college at a place in Europe named Freyburg, one department of which is devoted to the exclusive study of the subject of mines and mining; and that little college now has its students distributed in all parts of the world, wherever mining pursuits are carried on, and their services are in great request. And inasmuch as there is no portion of the world where there are such advantages for a school of that character as in Nevada, I imagine that it would be a paying institution and an honor to the State, and therefore I would like to see it encouraged in its infancy. I have no question but that it will be successful after it has once been fairly started.

Mr. NOURSE. I would like to modify my motion, because I do not wish to be placed in the position of an opponent of the common schools, when there is no one more ardent friend than I am of our common school system. But I find that everything else is provided for, except this poor lone mining department, which really seems to be the most important of all, and therefore I propose to devote to that this half-mill tax, which I think will be none too large for the object. I propose to withdraw my former amendment, and, instead, to amend that portion of the section so as to read:—"for the support and maintenance of the mining department of said University." It seems to me that is the only interest which is not already provided for, and it is the most important one.

The question was stated on Mr. Nourse's amendment as modified.

Mr. DUNNE. I prefer to leave the section

as it is, and I differ with the mover of the amendment now pending, in the proposition which he advanced a short time ago, namely: that it was not, in his opinion, right policy to levy a State tax for the support of the common schools. In his able argument he stated as his reason, that he thought a school fund would be most effective, or that the most good would result from it, if it were to be raised from the immediate vicinity in which it is to be applied. But, sir, I think, in a country like the proposed State of Nevada, there is something due to those living in the outside portions of the country. When people go to those outermost regions, becoming the pioneers of civilization, enduring the hardships inseparable from a life in such a country, taking their families there, and endeavoring to build it up, I believe that some little consideration is due to them, and for that reason I say that a general school tax should be imposed, and the money derived therefrom divided all over the State in proportion to the number of the children in each locality. And the reason for it, in my mind, is this: that the more populous portions of the State ought to contribute somewhat towards the support of education in the outside places.

Now I represent, in part, what might be considered an outside place, and perhaps it may be said that I am open to the charge of being interested; but I explain my position in this way: That such a system works no injustice to the parents of children living in the populous counties, because they draw the same amount of money in proportion to the number of their children that is distributed to the children living in those outskirts of civilization; and the application of the rule is simply that the large capitalists of the metropolis, who have no children, and therefore derive no benefit to their families, or individually, pay their proportion for the education of the children of the whole State. What the capitalist pays goes to the general fund, and is thence distributed, and it works for the interest and advantage of the largely populated communities also, for the reason that they draw from the fund in proportion to the number of children they have, and hence they suffer no injustice. And it works no injury to the capitalist, because under the theory of our government he should be made to pay for the protection of his property, and I suppose it will not be disputed that there are no better means of affording such protection than the support of good common schools. Therefore he cannot complain—or if he does we should pay no attention to his complaints, but continue to levy a small tax upon his wealth, for the support and encouragement of public instruction.

For the reasons which I have stated, I should like to see the section left as it is, so as to permit this fund to remain in the treasury, to be divided among the educational institutions of the State, then leaving its particular disposition to the Legislature. If, upon the recommenda-

APPENDIX

TO

JOURNALS OF SENATE

OF THE

FIRST SESSION OF THE LEGISLATURE

OF THE

STATE OF NEVADA.

CARSON CITY:
JOHN CHURCH, STATE PRINTER.

FIRST ANNUAL MESSAGE
OF
H. G. BLASDEL,
GOVERNOR OF THE STATE OF NEVADA.

You are required to provide for organizing and disciplining the militia of the State; the encouragement of volunteer corps, and the safe keeping of the public arms. The struggle in which the Mother Government is now so nobly contending—the vast expenditures she is making to maintain an unimpaired nationality—the possibility, remote, I trust, of disturbance within our State borders, will admonish and stimulate you to make provision for the preservation of peace and good order, such as the abundant materials at hand afford.

Our isolation and the difficulty of obtaining speedy assistance in the event of trouble, our proximity to Indian tribes not always friendly, are cogent reasons for giving this subject your deliberate consideration. Our people will organize and discipline themselves, if a convenient plan is made and the necessary arms furnished. There must be system, or there will be a lack of efficiency. Expenditures in this behalf will be cheerfully approved by the people, knowing, as they do, that the most effectual mode of avoiding a disturbance is ample means for its suppression.

The fundamental law of the State imposes upon you the duty of providing for a uniform system of common schools, and the founding of a State University. By the bounty of the Federal Government, and the authority invested in the legislative department to levy a special tax for educational purposes, there exists the nucleus for placing the acquirement of a practical education within the reach of every child of the State. The advantages accruing to the body politic, arising from an educated, well-informed thinking population, must be obvious to these into whose hands our people have confided the law-making power. Universal education is no longer an experiment of doubtful policy. Its general diffusion has been found promotive of piety, good order and a becoming regard for the constituted authorities. It induces the citizen to respect himself, and thus command the respect of others. Under that liberal and enlightened system of government which prevades all our institutions, and which guarantees to every citizen, however humble his station in life, a voice in the management and direction of State affairs, too much importance cannot be attached to a judicious inauguration of that system, which is to have such an important bearing upon the future prosperity and reputation of the State. I conjure you, therefore, to give your early and earnest attention to this subject; and by the wisdom of your enactments relating thereto, to lay broad and deep the foundation of that superstructure, on which shall rest the future moral, social and political well-being of our people. Although the General Government has made princely donations of lands which ours has appropriated to educational purposes, the experience of other States, to which the same liberality has been extended, should teach us that the children of the present generation are not likely to receive the full benefit thereof, without further Congressional legislation. The uniform construction of these grants by the Department at Washington, has been that the State cannot convey title to any specific tracts, until the public lands shall have been surveyed, and the selections made by the State, recognized by Federal authority. This will be the work of many years, with such meager appropriations as will probably be made for that object. It is not only highly important for the purposes for which we have dedicated these lands, but for the general prosperity of the State, that our citizens should early become the owners of the soil which they cultivate, and on which they expend large sums in the erection of houses, mills, places of business and manufactories. Nothing tends more to the prosperity and

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SECOND REVISED PROPOSED REGULATION OF

THE STATE TREASURER

LCB File No. R061-15

October 9, 2015

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1-4, section 15 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at page 1831; §§5-7, 9, 12 and 13, sections 7 and 15 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at pages 1826 and 1831; §§8 and 11, sections 9 and 15 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at pages 1828 and 1831; §10, sections 7, 8, 12 and 15 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at pages 1826, 1827, 1830 and 1831; §§14 and 16, sections 10 and 15 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at pages 1829 and 1831; §§15 and 19, sections 7, 8 and 15 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at pages 1826, 1827 and 1831; §§17 and 18, sections 11 and 15 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at pages 1829 and 1831.

A REGULATION relating to education; prescribing the requirements and procedures for applying to establish and establishing an education savings account; establishing the Committee to Review Payments to determine whether certain expenditures of money from an education savings account are authorized; requiring certain examinations administered to a child for whom an education savings account has been established to be selected from a list prescribed by the Department of Education; prescribing the procedure by which an agreement to establish an education savings account may be terminated; requiring the annual audit of certain education savings accounts; establishing the requirements to become a participating entity; prescribing the procedure by which the State Treasurer may terminate the participation of an entity under certain circumstances; requiring certain participating entities to post a bond or provide certain documentation to the State Treasurer; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law allows the parents of a child who is required by law to attend public school and who has been enrolled in a public school for not less than 100 consecutive school days without interruption to establish an education savings account for the child by entering into an agreement with the State Treasurer. (Section 7 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, p. 1826) If a parent enters into such an agreement, a grant of money on behalf of the child must be deposited into the education savings account. (Section 8 of Senate Bill No.

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302, chapter 332, Statutes of Nevada 2015, p. 1827) The parent may use money in the education savings account to pay certain expenses to enable the child to receive instruction from a participating entity, including tuition at a private school, a program of distance education or a college or university. (Section 9 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at p. 1828) **Section 8** of this regulation clarifies the expenses that are considered tuition. If an expense is considered tuition or is another expense authorized in statute, a parent may use money from an education savings account to pay the expense. (Section 9 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at p. 1828)

Existing law requires the State Treasurer to freeze an education savings account during any break in the school year. (Section 7 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, p. 1826) **Section 7** of this regulation provides that any period of 15 or more consecutive days that are not school days will be considered a “break in the school year.”

Section 9 of this regulation requires a parent who wishes to establish an education savings account on behalf of his or her child to submit an application to the State Treasurer during the open enrollment period prescribed by the State Treasurer. **Section 9** provides that the State Treasurer will approve an application made on behalf of any eligible child who has been enrolled in a public school and in one or more qualifying courses at a public school for the 100 school days immediately preceding the date on which the application is received; and (2) unless the State Treasurer authorizes a waiver for extraordinary circumstances, has not been absent from the public school for more than 15 consecutive school days during that period of 100 school days. **Section 9** defines the term “qualifying course” to mean any course offered by a public school to pupils who are enrolled in the public school for credit toward promotion to the next grade or graduation.

Section 10 of this regulation allows a parent whose application has been approved to enter into an agreement with the State Treasurer and establish an education savings account. **Section 10** also prescribes the dates on which the State Treasurer will deposit grants of money into education savings accounts. Additionally, **section 10** states that the State Treasurer will provide a memorandum to each parent who establishes an education savings account that sets forth the procedures to be followed by a parent when making payments from the education savings account. **Section 10** further provides that the State Treasurer will annually provide to the Department a list of children for whom an Education Savings Account has been established. **Section 11** of this regulation establishes the Committee to Review Payments and authorizes the State Treasurer to submit a request to the Committee for a determination on whether an expenditure of money from an education savings account is authorized.

Existing law requires a participating entity to ensure that each child on whose behalf a grant of money has been deposited into an education savings account takes certain examinations. (Section 12 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, p. 1830) **Section 10** requires such examinations to be included on a list of examinations prescribed by the Department of Education.

Existing law provides for the early termination of an agreement to establish an education savings account before the account is scheduled to expire or be renewed. If an agreement is terminated early, existing law prohibits the child from receiving instruction from a public school,

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other than instruction that is authorized under the agreement, until the end of the period for which the last deposit was made into the education savings account. (Section 7 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, p. 1826) **Section 12** of this regulation authorizes a parent to terminate an agreement by providing written notice to the State Treasurer. If a parent provides such notice by not later than the last business day of the calendar quarter for which the most recent deposit was made into the education savings account, **section 12** authorizes the child to enroll in a public school on the first school day of the next calendar quarter. **Section 13** of this regulation provides that, if the State Treasurer reasonably believes that a child for whom an education savings account has been established no longer resides in this State, the State Treasurer will freeze the account and ask the parent of the child for proof that the child resides in this State. If a parent fails to provide such proof, **section 13** provides that the State Treasurer will dissolve the account.

Existing law requires an education savings account to be audited randomly each year by a certified or licensed public accountant. If the State Treasurer determines that there has been a violation of law, regulation or the agreement pursuant to which the account was established or a substantial misuse of funds, the State Treasurer is authorized to freeze or dissolve the account. (Section 10 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, p. 1829) **Section 14** of this regulation provides for the annual random audit of 10 percent of the education savings accounts in existence on January 1 of that calendar year. If 5 percent or more of the audits reveal a violation of law, regulation or the agreement or a substantial misuse of funds, **section 14** requires all education savings accounts to be audited.

Section 15 of this regulation provides that: (1) the State Treasurer will quarterly provide to the Department of Education notice of all agreements that have been terminated; and (2) any money remaining in an education savings account when an agreement is terminated or expires reverts to the State General Fund and must be transferred to the Fund within 10 days after the termination or expiration.

Existing law provides that an education savings account may only be maintained at a financial management firm qualified by the State Treasurer. (Section 7 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, p. 1826) **Section 16** of this regulation provides that the State Treasurer will enter into a contract with one or more financial management firms that meet certain qualifications to manage education savings accounts.

Existing law provides that a private school, a college or university, a program of distance education, a tutor or an accredited tutoring facility or the parent of a child can become eligible to receive money from an education savings account by applying to the State Treasurer. (Section 11 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, p. 1829) **Section 17** of this regulation requires an application submitted by any entity other than the parent of a child to include proof that the entity is qualified to receive such money.

Existing law authorizes the State Treasurer to refuse to allow a participating entity that receives money from an education savings account to continue receiving such money if the entity has failed to provide any educational services required by law to the child for whom the entity receives such money. (Section 11 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, p. 1829) **Section 17** provides that, if the State Treasurer determines that a participating entity

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may have failed to provide such educational services, the State Treasurer will conduct an investigation. If the investigation reveals that the participating entity has failed to provide such services, **section 17** provides that the State Treasurer may, after providing notice and the opportunity for a hearing, terminate the entity's participation in the program.

Existing law authorizes the State Treasurer to require a participating entity that is reasonably expected to receive more than \$50,000 in payments from education savings accounts during any school year to: (1) post a surety bond in an amount equal to the amount the entity receives from education savings accounts; or (2) provide evidence that the entity has unencumbered assets sufficient to pay an amount equal to the amount that it receives from education savings accounts. (Section 11 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, p. 1829) **Section 18** of this regulation provides that such a reasonable expectation will exist and a participating entity will be required to comply with those requirements if more than 10 agreements authorize the entity to receive money from an education savings account.

Section 1. Chapter 385 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 18, inclusive, of this regulation.

Sec. 2. *The provisions of sections 2 to 18, inclusive, of this regulation may be cited as the Education Savings Account Regulations.*

Sec. 3. 1. *The purposes of sections 2 to 18, inclusive, of this regulation are to:*

(a) Award grants of money made available pursuant to section 8 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at page 1827, on behalf of children who qualify for such grants so that the parents of such children have choices concerning the education of the children; and

(b) Make the grants of money described in paragraph (a) available to be awarded on behalf of the largest number of children allowable under sections 2 to 15, inclusive, of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at pages 1826-31.

2. For the accomplishment of these purposes, the provisions of sections 2 to 18, inclusive, of this regulation must be broadly and liberally construed.

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Sec. 4. As used in sections 2 to 18, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 5 and 6 of this regulation have the meanings ascribed to them in those sections.

Sec. 5. “Agreement” means a written agreement between a parent and the State Treasurer to establish an education savings account entered into pursuant to section 7 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at page 1826.

Sec. 6. “School day” means any day, including a partial day, during which a school offers instruction to pupils at the school.

Sec. 7. For the purpose of carrying out the provisions of section 7 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at page 1826, the State Treasurer will construe the term “break in the school year” to mean 15 or more consecutive days that are not school days.

Sec. 8. For the purpose of carrying out the provisions of sections 2 to 15, inclusive, of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at pages 1826-31, the State Treasurer will construe the term “tuition” to include only the cost of enrolling a child in a school or program of distance education that is a participating entity, except that the term does not include:

1. An application fee, entrance fee, parking fee, technology fee, athletic fee, studio fee, laboratory fee or any fee or surcharge imposed in connection with a specific course, whether or not the fee or surcharge is imposed on all children enrolled in the participating entity or the course; or

2. A charge imposed for books, supplies or room and board, whether or not the charge is imposed on all children enrolled in the participating entity.

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Sec. 9. 1. A parent who wishes to establish an education savings account on behalf of his or her child must submit an application to the State Treasurer on a form made available by the State Treasurer during the open enrollment period established pursuant to subsection 2.

2. At least one time each year, the State Treasurer will establish an open enrollment period during which the State Treasurer will accept applications to establish an education savings account. The State Treasurer will announce the dates of the open enrollment period during the fourth quarter of the calendar year immediately preceding the school year for which the open enrollment period applies.

3. The State Treasurer will review each application submitted pursuant to subsection 1 and, not later than 30 days after the date on which the application is received, notify the applicant by certified mail or electronic communication whether the application has been approved or denied. If the application is denied, the notification must include, without limitation, the reasons for the denial.

4. Except as otherwise provided in subsection 5, the State Treasurer will approve an application submitted on behalf of a child required by NRS 392.040 to attend public school if the applicant submits proof that the child was enrolled in a public school and in one or more qualifying courses at the public school for the 100 school days immediately preceding the date on which the application is received, including, without limitation, any school day that the child was not required to attend a qualifying course. The State Treasurer will not approve an application submitted on behalf of a child who has participated only in after-school extracurricular activities at a public school.

5. Except as otherwise provided in subsection 6, the State Treasurer will not approve an application submitted on behalf of a child if, during the 100 school days immediately

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preceding the date on which the application is received, the child was absent from the public school in which the child was enrolled for more than 15 consecutive school days, including, without limitation, any school day that the child was not required to attend a qualifying course.

6. An applicant may apply in writing to the State Treasurer for a waiver of the provisions of subsection 5. Upon a showing that an absence of more than 15 consecutive school days was caused by extraordinary circumstances, which may include, without limitation, the death of a family member of the child or a serious medical condition, the State Treasurer may grant the waiver.

7. As used in this section, “qualifying course” means a course that is offered to pupils who are enrolled in the public school for which the pupils may receive credit toward promotion to the next grade or graduation from high school, including, without limitation, a course that is offered as an elective.

Sec. 10. *1. If the State Treasurer approves an application submitted pursuant to section 9 of this regulation, the State Treasurer will enter into an agreement with the parent who submitted the application. After a parent enters into an agreement with the State Treasurer, the parent may open an education savings account at a financial management firm with which the State Treasurer has entered into a contract pursuant to section 16 of this regulation.*

2. The State Treasurer will:

(a) Deposit money into each education savings account in equal quarterly installments on the dates on which the Superintendent of Public Instruction apportions the State Distributive School Account in the State General Fund pursuant to NRS 387.124.

EXHIBIT 4

(b) Provide each parent who establishes an education savings account on behalf of his or her child with a memorandum outlining the procedures to follow in making payments from the account.

(c) Annually provide the Department with a list of children on behalf of whom education savings accounts have been established on the date prescribed by the Department.

3. An examination administered to satisfy the requirements of section 12 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at page 1830 must be included on the list of examinations prescribed by the Department for that purpose.

Sec. 11. 1. *There is hereby created the Committee to Review Payments consisting of seven members as follows:*

(a) The State Treasurer or his or her designee;

(b) Two voting members appointed by the State Treasurer who are parents of children on behalf of whom an education savings account has been established and who reside in Clark County;

(c) One voting member appointed by the State Treasurer who is the parent of a child on behalf of whom an education savings account has been established and who resides in Washoe County;

(d) One voting member appointed by the State Treasurer who is the parent of a child on behalf of whom an education savings account has been established and who resides in a county other than Clark County or Washoe County; and

(e) Two nonvoting advisory members appointed by the State Treasurer who are educators or administrators at a participating entity, other than the parent of a child.

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2. The members of the Committee serve at the pleasure of the State Treasurer. A member of the Committee serves for a term of 1 year and may be reappointed.

3. The State Treasurer or his or her designee will serve as the Chair of the Committee and will vote only in the case of a tie.

4. The State Treasurer may request the Committee to determine whether an expenditure of money from an education savings account is authorized pursuant to section 9 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at page 1828.

5. The Committee shall:

(a) Meet at the call of the Chair upon the receipt of a request to determine whether an expenditure of money from an education savings account submitted to the Committee by the State Treasurer pursuant to subsection 4 is authorized pursuant to section 9 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at page 1828.

(b) Comply with the provisions of chapter 241 of NRS.

6. As used in this section, “administrator” means the person who directs or manages the affairs of a private school, as defined in NRS 394.103.

Sec. 12. *1. The parent of a child on behalf of whom an education savings account has been established may terminate an agreement with the State Treasurer at any time by providing written notice by certified mail to the State Treasurer.*

2. If an agreement is terminated pursuant to subsection 1, the child on behalf of whom the education savings account was established may enroll in a public school on the first day after the expiration of the quarter for which the last deposit was made into the education savings account of the child.

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Sec. 13. *If the State Treasurer reasonably believes that a child on behalf of whom an education savings account has been established no longer resides in this State, the State Treasurer will freeze the education savings account and send a written notice by certified mail to the parent of the child requesting the parent to submit proof that the child resides in this State. If the parent:*

1. Provides satisfactory proof by not later than 15 business days after the date on which the notice is received, the State Treasurer will remove the freeze on the education savings account.

2. Fails to provide satisfactory proof by not later than 15 days after the date of the notice, the State Treasurer will terminate the agreement pursuant to which the education savings account was established and dissolve the education savings account.

Sec. 14. *1. Each calendar year, the State Treasurer will randomly select not fewer than 10 percent of the education savings accounts in existence on January 1 of that year to be audited.*

2. The State Treasurer will cause an audit to be conducted of each education savings account then in existence if 5 percent or more of the audits conducted pursuant to subsection 1 indicate any of the following irregularities:

(a) Failure to comply with an agreement pursuant to which an education savings account was established, sections 2 to 15, inclusive, of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at pages 1826-31, or sections 2 to 18, inclusive, of this regulation; or

(b) A substantial misuse of money in an education savings account.

EXHIBIT 4

3. If the State Treasurer determines, based on an audit conducted pursuant to subsection 1 or 2, or for any other reason, that an irregularity described in subsection 2 has occurred, the State Treasurer will:

- (a) Freeze the education savings account; and*
- (b) Send to the parent of the child on behalf of whom the education savings account was established by certified mail written notice of the reason that the account is frozen and the manner in which to petition for reconsideration as set forth in subsections 4 and 5.*

4. A parent who receives notice that the State Treasurer has placed a freeze on an education savings account pursuant to subsection 3 may submit a petition for reconsideration by providing to the State Treasurer, not later than 5 business days after receiving the notice, a written explanation of the reasons that the parent believes the determination of the State Treasurer was incorrect. If the State Treasurer does not receive such a petition within that time, the State Treasurer will dissolve the education savings account and terminate the agreement pursuant to which the account was established.

5. Upon receipt of a petition pursuant to subsection 4, the State Treasurer will review the written explanation included in the petition and determine whether an irregularity described in subsection 2 occurred. Not later than 5 business days after receiving the petition, the State Treasurer will notify the parent of the determination. If the State Treasurer determines that:

- (a) An irregularity occurred, the State Treasurer will dissolve the education savings account and terminate the agreement pursuant to which the education savings account was established.*

- (b) No irregularity occurred, the State Treasurer will remove the freeze on the education savings account.*

EXHIBIT 4

Sec. 15. 1. *Each calendar quarter, the State Treasurer will provide to the Department a list of each child for whom an agreement pursuant to which an education savings account was established has been terminated for any reason.*

2. If any money remains in an education savings account after the agreement pursuant to which the account was established is terminated or expires, the money in the account reverts and must be transferred to the State General Fund by the State Treasurer by not later than 10 days after the date of the termination or expiration.

Sec. 16. 1. *The State Treasurer will enter into a contract to manage education savings accounts with one or more financial management firms. Any such firm must:*

(a) Be authorized to accept deposits under the laws of this State or the United States; and
(b) Insure the accounts that it maintains with the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or a private insurer approved pursuant to NRS 678.755.

2. A contract entered into pursuant to subsection 1 must include a provision allowing the State Treasurer to terminate the contract if:

(a) The financial management firm fails to comply with applicable law or the provisions of the contract; or

(b) The State Treasurer determines that the financial management firm is not performing adequately.

3. A financial management firm with whom the State Treasurer enters into a contract pursuant to subsection 1 shall maintain and manage education savings accounts in compliance with generally accepted accounting principles.

EXHIBIT 4

Sec. 17. 1. To become a participating entity, an entity must submit an application to the State Treasurer on a form made available by the State Treasurer.

2. Each applicant, other than the parent of a child, must submit proof that the applicant is eligible to become a participating entity pursuant to section 11 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at page 1829. If an applicant is a tutor or tutoring facility, such proof must include, without limitation, proof that the applicant is accredited by a state, regional or national accrediting agency.

3. If the State Treasurer:

(a) Approves an application submitted pursuant to this section, the State Treasurer will provide notice to the applicant through written or electronic communication to the person designated on the application.

(b) Does not approve an application submitted pursuant to this section, the State Treasurer will provide notice to the applicant by certified mail to the person designated on the application.

4. If the State Treasurer determines, based on the results of the examinations administered pursuant to section 12 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at page 1830, or for any other reason, that a participating entity that accepts payments from the educational savings account of a child may have failed to provide an educational service required by law to the child, the State Treasurer will conduct an investigation. If, after conducting an investigation, the State Treasurer determines that the participating entity has failed to provide an educational service required by law to the child, the State Treasurer may, after providing notice and the opportunity for a hearing, refuse to allow the entity to continue as a participating entity.

EXHIBIT 4

Sec. 18. 1. *If the State Treasurer reasonably expects that a participating entity will receive, from payments made from education savings accounts, an amount that exceeds \$50,000 for a school year, the State Treasurer will:*

(a) Determine the amount reasonably expected to be paid to such a participating entity from education savings accounts during the school year; and

(b) Provide notice to the participating entity of the amount determined pursuant to paragraph (a) and the requirements set forth in subsection 2.

2. *A participating entity that receives a notice pursuant to subsection 1 shall, not more than 10 business days after the next deposit of money into education savings accounts pursuant to section 10 of this regulation:*

(a) Post a surety bond in an amount equal to the amount determined by the State Treasurer pursuant to subsection 1; or

(b) Provide to the State Treasurer documentation of a financial audit demonstrating that the participating entity has unencumbered assets sufficient to pay the State Treasurer an amount equal to the amount determined by the State Treasurer pursuant to subsection 1.

3. *For the purposes of this section and section 11 of Senate Bill No. 302, chapter 332, Statutes of Nevada 2015, at page 1829, a participating entity will be deemed by the State Treasurer to be reasonably expected to receive more than \$50,000 in a school year from education savings accounts if, at the beginning of the school year, 10 or more agreements authorize the participating entity to receive money from an education savings account.*

Sec. 19. Notwithstanding the provisions of section 10 of this regulation, the State Treasurer will begin making deposits of money into education savings accounts pursuant to subsection 2 of section 10 of this regulation on or before May 1, 2016.

EXHIBIT 5

STATE OF NEVADA OFFICE OF THE STATE TREASURER

NOTICE OF WORKSHOP Education Savings Account - SB 302

Conducted On
July 17, 2015 at 9:00 AM

Transcribed By: Always On Time

EXHIBIT 5

1 That's what is going to be what's best for my family. The bill
2 is trying to make it easier for families and that—if they didn't
3 count the kindergarteners, that would make it harder for my
4 family. So, I would ask that you consider counting kindergarten,
5 thank you.

6 SENATOR HAMMOND: This is Senator Hammond. If I could
7 interject just for a second, Treasurer Schwartz. I just want to
8 say that that—the intent of the bill, actually from the very
9 beginning was to allow for kindergarten—people coming into
10 kindergarten to choose. So, these are students who are not yet
11 on the rolls. I believe Section 7 said something to effect of,
12 if you look at the bill it says, anything that's required—
13 kindergarten of course is not required to get into—you know, to
14 start your schooling. So, it's always been my intent to make
15 sure that coming into school that parents be able to make that
16 choice so that the student can start at the school they would
17 like to be at, or the educational system they would like to have
18 delivered to them or anything like that. They could start from
19 fresh. That's my perspective. That's sort of what we've always
20 talked about. That—that being said, I'll go ahead and turn it
21 back over to you.

22 DEANNE LATERNO: Deanne Laterno, I'm a 21 year Clark
23 County resident. I have three girls and we were an eight year
24 private school parent and because of some zoning issues, that's
25

EXHIBIT 6

Nevada Department of Education

Office of Career Readiness, Adult
Learning & Education Options

NEVADA PRIVATE SCHOOLS

End of First School Month

2014-2015 School Year

TOTAL STATE ENROLLMENT BY GRADE

Grade	Male	Female	Totals
Kindergarten	1,381	1,235	2,616
Grade 1	945	981	1,926
Grade 2	880	919	1,799
Grade 3	772	853	1,625
Grade 4	755	794	1,549
Grade 5	756	761	1,517
Grade 6	761	739	1,500
Grade 7	690	729	1,419
Grade 8	639	690	1,329
Grade 9	621	580	1,201
Grade 10	564	592	1,156
Grade 11	553	518	1,071
Grade 12	517	497	1,014
¹ Ungraded	331	182	513
Totals	10,165	10,070	20,235

¹Ungraded refers to
multiple grade grouping.

TOTAL STATE ENROLLMENT BY COUNTY

County	Male	Female	Totals
Carson City	209	249	458
Churchill	34	41	75
Clark	7,789	7,844	15,633
Douglas	80	96	176
Elko	31	26	57
Esmeralda	0	0	0
Eureka	0	0	0
Humboldt	0	0	0
Lander	0	0	0
Lincoln	0	0	0
Lyon	57	14	71
Mineral	0	0	0
Nye	73	71	144
Pershing	0	0	0
Storey	0	0	0
Washoe	1,892	1,729	3,621
White Pine	0	0	0
Totals	10,165	10,070	20,235

EXHIBIT 6

NEVADA DEPARTMENT OF EDUCATION

Office of Career Readiness, Adult Learning & Education Options

Nevada Private Schools, 2014-2015 School Year

Male Enrollment

District	K	1	2	3	4	5	6	7	8	9	10	11	12	Ungraded	Totals
Carson	20	15	25	13	18	14	22	20	26	21	14	9	10	0	227
Churchill	11	7	2	4	3	1	4	1	1	0	0	0	0	0	34
Clark	1,098	765	736	644	635	604	619	522	476	476	413	421	380	0	7,789
Douglas	7	13	4	5	1	6	4	11	11	1	3	7	7	0	80
Elko	4	2	1	1	2	3	1	8	2	1	2	2	2	0	31
Lyon	4	4	1	2	0	0	4	1	1	2	10	13	15	0	57
Nye	10	9	4	6	6	5	4	3	8	8	4	3	3	0	73
Washoe	245	130	107	97	90	123	103	124	114	112	118	98	100	331	1892
Totals	1,399	945	880	772	755	756	761	690	639	621	564	553	517	331	10,183

Female Enrollment

District	K	1	2	3	4	5	6	7	8	9	10	11	12	Ungraded	Totals
Carson	21	17	16	22	22	26	24	25	18	20	17	14	7	0	249
Churchill	3	5	5	7	5	6	5	3	2	0	0	0	0	0	41
Clark	969	820	771	691	637	581	593	561	547	442	451	398	383	0	7,844
Douglas	19	9	9	9	10	8	6	10	4	0	3	3	6	0	96
Elko	4	4	1	2	0	2	2	4	1	3	2	1	0	0	26
Lyon	3	6	0	1	0	1	1	0	0	1	0	1	0	0	14
Nye	9	10	7	12	6	9	5	2	4	2	1	3	1	0	71
Washoe	207	110	110	109	114	128	103	124	114	112	118	98	100	182	1,729
Totals	1,235	981	919	853	794	761	739	729	690	580	592	518	497	182	10,070

EXHIBIT 6

District	Total Enrollment														Totals
	K	1	2	3	4	5	6	7	8	9	10	11	12	Ungraded	
Carson	41	32	41	35	40	40	46	45	44	41	31	23	17	0	476
Churchill	14	12	7	11	8	7	9	4	3	0	0	0	0	0	75
Clark	2,067	1,585	1,507	1,335	1,272	1,185	1,212	1,083	1,023	918	864	819	763	0	15,633
Douglas	26	22	13	14	11	14	10	21	15	1	6	10	13	0	176
Elko	8	6	2	3	2	5	3	12	3	4	4	3	2	0	57
Lyon	7	10	1	3	0	1	5	1	1	3	10	14	15	0	71
Nye	19	19	11	18	12	14	9	5	12	10	5	6	4	0	144
Washoe	452	240	217	206	204	251	206	248	228	224	236	196	200	513	3,621
Totals	2,634	1,926	1,799	1,625	1,549	1,517	1,500	1,419	1,329	1,201	1,156	1,071	1,014	513	20,253

Ungraded for Private Schools refers to multiple grade grouping

EXHIBIT 6

NEVADA DEPARTMENT OF EDUCATION

Office of Career Readiness, Adult Learning & Education Options PRIVATE SCHOOLS

Ten Year Enrollment Comparisons

School Year	Kindergarten	Grades 1-6	Grades 7-12	¹ Ungraded	Totals	Percent Gain/ Loss over	Public School	End of First School Month Private School to Public School
						Prior Year	Enrollment	Enrollment
2005-2006	3,519	9,657	6,074	464	19,714	2.93%	413,252	4.77%
2006-2007	3,518	10,227	6,547	570	20,862	5.82%	426,436	4.89%
2007-2008	3,450	10,566	6,978	588	21,582	3.45%	433,885	4.97%
2008-2009	3,280	10,232	6,944	591	21,047	-2.47%	437,433	4.81%
2009-2010	2,914	10,032	6,972	592	20,510	-2.55%	432,383	4.74%
2010-2011*	1,910	5,920	5,489	579	13,898	-32.23%	433,277	3.20% *Incomplete #
2011-2012	2,960	10,032	6,842	566	20,400	2011-12 compared to 2009-10 -.54%	424,000	4.81% Corrected 11/2012
2012-2013	2,963	9,844	6,735	569	20,283	-0.99%	445,737	4.55%
2013-2014	2,813	10,033	7,072	456	20,374	0.49%	451,805	4.50%
2014-2015	2,666	9,916	7,190	513	20,253	-0.99%	459,152	4.41%

EXHIBIT 6

Number of Schools Licensed by Nevada DOE

Licensed by County	Carson	Churchill	Clark	Douglas	Elko	Lyon	Nye	Washoe	Total
Exempt Private	3	2	45	4	1	2	1	16	74
Private (non-exempt)	1	0	57	1	0	1	2	19	81
									155

Number of School Accredited by Outside Agencies

Accredited by County	Carson	Churchill	Clark	Douglas	Elko	Lyon	Nye	Washoe	Total
Exempt Private	1	0	19	0	0	0	0	0	27
Private (non-exempt)	0	0	18	0	0	0	0	1	21
									48

Number of Teachers Employed

	Carson	Churchill	Clark	Douglas	Elko	Lyon	Nye	Washoe	Total
Exempt Private	23	9	527	11	8	8	11	145	742
Private (non-exempt)	11	0	603	8	0	1	3	129	755
									1497

EXHIBIT 6

Teachers by Qualifications 2014-2015 Incomplete Information

Private (non-exempt)	NV License to Teach	Out-of-state License to Teach	Bachelor's Degree + 3 years Verified Experience	Master's Degree + 1 year Verified Experience
Carson	10	1	0	0
Clark	191	27	121	77
Douglas	8	0	0	0
Lyon	1	0	0	0
Nye	1	1	0	1
Washoe	28	4	9	29

All teachers in Private, non-exempt schools MUST qualify by one of the four categories above.

Exempt Private Schools are not required to report teacher qualifications.

EXHIBIT 7

Dan Schwartz
State Treasurer



STATE OF NEVADA OFFICE OF THE STATE TREASURER

For Immediate Release
7/9/15

Media Contact: Grant Hewitt
775-684-5757

Treasurer's Office Proposes Quarterly Enrollment Periods for Education Savings Accounts (SB302)

Carson City, NV – State Treasurer Dan Schwartz and the STO's Implementation team have proposed the following guidelines for Nevada's Education Savings Accounts (ESA) program's open enrollment and account funding dates.

"Understanding that the final regulations will take several months to enact, Nevada parents are entitled to know when they will be able to apply for an ESA and when those funds would be first available. We are committed to creating an enrollment and funding process that is easy to understand and allows parents the flexibility they need to decide the best time for their child to enroll," said Schwartz. "My office is working diligently to ensure that parents have the tools they need to make informed decisions about their child's educational opportunities while protecting against fraud and abuse," concluded Schwartz.

Nevada's ESA program will have a quarterly open enrollment period, which allows parents to make the decision at any time during the year on the best educational opportunity for their child. A student must meet all eligibility requirements prior to applying for an ESA. The chart below outlines when parents can enroll their child in Nevada's ESA program and the corresponding funding date for those accounts:

Open Enrollment Periods for 2016

January 4 – February 29, 2016
April 1 – May 31, 2016
July 1 – August 31, 2016
October 1 – November 30, 2016

Estimated Account Funding Dates

First week of April 2016
First week of July 2016
First week of October 2016
First week of January 2017

The State Treasurer will be holding a regulations workshop on July 17 at 9:00am in both Las Vegas and Carson City and public hearings in August/September 2015.

Parents and school administrators who continue to have questions pertaining to the implementation of Nevada's Education Savings account program should contact the STO office at 702-486-5101 or NevadaSchoolChoice@NevadaTreasurer.gov.

###

CARSON CITY OFFICE

101 N. Carson Street, Suite 4
Carson City, Nevada 89701-4786
(775) 684-5600 Telephone
(775) 684-5623 Fax

STATE TREASURER PROGRAMS

Governor Guinn Millennium Scholarship Program
Nevada Prepaid Tuition Program
Unclaimed Property
College Savings Plans of Nevada
Nevada College Kick Start Program

LAS VEGAS OFFICE

555 E. Washington Avenue, Suite 4600
Las Vegas, Nevada 89101-1074
(702) 486-2025 Telephone
(702) 486-3246 Fax

Website: NevadaTreasurer.gov

E-mail: StateTreasurer@NevadaTreasurer.gov

EXHIBIT 8

STATE OF NEVADA OFFICE OF THE STATE TREASURER

NOTICE OF WORKSHOP Education Savings Account - SB 302

Conducted On
August 21, 2015

Transcribed By: Always On Time

EXHIBIT 8

Respondents' Appendix 000068

EXHIBIT 8

1 GRANT HEWITT: So, Senator Hammond—this is Grant
2 Hewitt for the record. Senator Hammond spoke to this at the last
3 hearing that the reason behind the 100 days is that for a student
4 to have a qualifying allotment in the distributive school
5 account, which is what funds ESAs, it's also what trickles down
6 to the school district from the State level, you must've been
7 included in the school count in the previous year or that year to
8 have an allotment created. So, if you weren't there for the 100
9 days, then there's no actual budget allotment for your child,
10 thus there would be no ESA funding available. If we let everybody
11 in on the 100 days, as Senator Hammond indicated, you'd have
12 approximately a \$200M whole in the budget.

13 DAN SCHWARTZ: Those are just the reasons that are
14 given. So, as I say, we're trying not to answer questions, but
15 where there's an easy answer, we'll certainly try.

16 CHRISTOPHER BEAUMONT: Is that—thank you.

17 GRANT HEWITT: Thanks. And, please, everybody know—
18 those who have talked to me, you can email
19 NevadaSchoolChoice@NevadaTreasurer.gov. We are very, very good
20 at getting back to people, normally within 24 hours. So, if you
21 have any specific questions, please feel free to direct them
22 there.

23 CHRISTOPHER BEAUMONT: Thank you, thank you all for your
24 work.

EXHIBIT 8

1 2015-16 school year, given that a family did the early
2 application prior to enrolling their son or daughter into private
3 school?

4 GRANT HEWITT: Grant Hewitt for the record. The
5 issue revolves around that the approximately \$5,000 ESA payment,
6 according to SB 302 is to be made in four equal payments over the
7 course of the year. We are making those payments on calendar
8 years. And, our office feels strongly that what we can make sure
9 to deliver on for parents in Nevada is that we will be able to
10 make a first funding payment in April for April, May and June.
11 We don't feel that it's appropriate at this time to commit to a
12 January payment date, because the technology and the processes
13 just might not be in place for that. But, we do know that we can
14 make an April payment date.

15 DAN SCHWARTZ: Jim, the short answer to your question
16 is, payments are mandated quarterly. So, you'll get the full
17 amount, but paid quarterly. Answer your question?

18 JIM FIRZLAFF: Yeah. So, if I understand you
19 correctly then, if there's only one payment for the 15-16 school
20 year, for a family that applied early and followed all the rules,
21 then that would just automatically balloon to the total \$5,000
22 for the year?

23 DAN SCHWARTZ: Yeah, it's—

24 JIM FIRZLAFF: The \$5,000 is—
25

EXHIBIT 9

**EARLY ENROLLMENT****EDUCATION SAVINGS ACCOUNT APPLICATION**

During the process of filling out this application you will be asked to select files for upload. However, the application will not be considered for approval until necessary files have been received by the Treasurer's office.

We ask that you do not attempt to upload cell phone photos.

School District Student ID#			
<input type="text" value="00000"/>			
Student First Name:	Student Last Name:	Current Grade (2014-2015):	Student's Date of Birth:
<input type="text"/>	<input type="text"/>	<input type="text"/> (Please enter a number, i.e., 2,3,4..., use a 0 for kindergarden)	(Date Format MM/DD/YYYY) <input type="text"/>
Physical Address (P.O. Boxes will not be accepted): <input type="text"/>		City: <input type="text"/>	Zip Code: <input type="text"/>
County: <input type="text" value="Select a County"/>		Phone (Include Area Code): <input type="text"/>	
Mailing Address: <input type="checkbox"/> Mailing Address is the Same as the Physical Address <input type="text"/>		City: <input type="text"/>	Zip Code: <input type="text"/>
Applicant Parent First Name:	Parent Last Name:	Parent E-Mail Address:	
<input type="text"/>	<input type="text"/>	<input type="text"/>	
Do you and your child reside in Nevada? Yes <input type="radio"/> No <input type="radio"/>			
Is your child under the age of 7 years? Yes <input type="radio"/> No <input type="radio"/>			
Did the student attend a Nevada public/charter school for 100 school days immediately preceding the date of this application? Yes <input type="radio"/> No <input type="radio"/>			
Was your child a full time student during the required 100 school days immediately preceding the date of this application? Yes <input type="radio"/> No <input type="radio"/>			
During the 100 school days immediately preceding the date of this application did your child miss 15 or more consecutive school days (e.g., illness, special circumstances)? Yes <input type="radio"/> No <input type="radio"/>			
If yes, please attach a detailed explanation of the extended absence.			
<input type="button" value="Next"/>			

EXHIBIT 9

**EARLY ENROLLMENT****EDUCATION SAVINGS ACCOUNT APPLICATION**

During the process of filling out this application you will be asked to select files for upload. However, the application will not be considered for approval until necessary files have been received by the Treasurer's office.

We ask that you do not attempt to upload cell phone photos.

Please list Nevada Public/Charter School(s) and School Code that your child attended for 100 consecutive school days immediately preceding the date of this application.

School District/Charter Sponsor:	Dates of Attendance: (mm/dd/yyyy)
Select a District ▼	<input type="text"/> to <input type="text"/>
Name of Public/Charter School:	
Select a School ▼	
<input type="button" value="Add School"/>	

EXHIBIT 9

**EARLY ENROLLMENT****EDUCATION SAVINGS ACCOUNT APPLICATION**

During the process of filling out this application you will be asked to select files for upload. However, the application will not be considered for approval until necessary files have been received by the Treasurer's office.

We ask that you do not attempt to upload cell phone photos.

<input type="radio"/> Yes <input type="radio"/> No	Is your child a pupil with disabilities? (NRS 388.440) ** "Pupil with a Disability Defined": means (i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and (ii) who, by reason thereof, needs special education and related services..
<input type="radio"/> Yes <input type="radio"/> No	Is your annual household income within 185% of the federally designated poverty level? (http://aspe.hhs.gov/poverty/15poverty.cfm) If yes, provide proof of Annual Household Income. (copy of last year's tax return (first 2 pages) or a current paystub)
REQUIRED DOCUMENTS (ALL documents must be submitted)	
1. Copy of the parent's valid (non-expired) Government issued ID ID File: <input type="text"/> <input type="button" value="Browse..."/>	
2. A certified or verified copy of the student's birth certificate (If unable to provide at the time of this application, you will have 30 days to submit to the (STO) AND Proof of legal guardianship (if you're not the biological parent) Birth Certificate File: <input type="text"/> <input type="button" value="Browse..."/> Guardianship File: <input type="text"/> <input type="button" value="Browse..."/>	
AND one of the following to prove residency: MUST SHOW YOUR CURRENT PHYSICAL ADDRESS	
1. Copy of your most current utility bill (applicant parent name and address) OR Utility Bill File: <input type="text"/> <input type="button" value="Browse..."/>	
2. Copy of current property tax bill, rental lease agreement, or mortgage statement (applicant parent name and address) File: <input type="text"/> <input type="button" value="Browse..."/>	

EXHIBIT 10

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@NVTreasury

Nevada State Treasurer's Office

📍 Carson City, NV

🌐 nevadatreasurer.gov

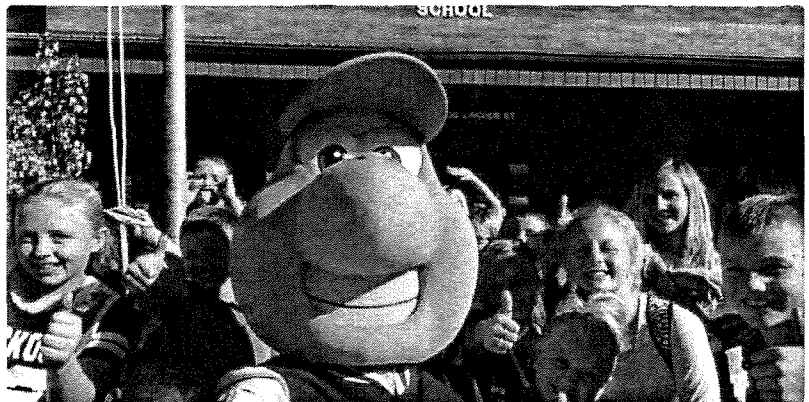
📷 Photos and videos

[Tweets](#) [Tweets & replies](#) [Photos & videos](#)**NVTreasury** @NVTreasury · Oct 14

We are excited to announce that our office has received over 3500 applications for Nevada's #ESA program. #nvleg

[↩](#) [↻ 4](#) [★ 2](#) [⋮](#)**NVTreasury** @NVTreasury · Oct 14

Have you met Sage? He is making his way across #Nevada talking to kids about saving for college! #529 #nvleg

[↩](#) [↻ 1](#) [★](#) [⋮](#)[🔄](#) NVTreasury Retweeted**Grant A. Hewitt** @redptstrategies · Oct 13

@RindelsAP the ask for temporary staff was less than \$50k of today's \$128k ask. The total to ESA thus far is less than \$250k #ESA #NVLEG

[↩](#) [↻ 1](#) [★](#) [⋮](#)

EXHIBIT 10

Respondents' Appendix 000074

State of Nevada

**Statewide
Ballot Questions**

2006



**To Appear on the November 7, 2006
General Election Ballot**

**Issued by
Dean Heller
Secretary of State**

QUESTION NO. 1

Amendment to the Nevada Constitution

CONDENSATION (Ballot Question)

Shall the Nevada Constitution be amended to require the Nevada Legislature to fund the operation of the public schools for kindergarten through grade 12 before funding any other part of the state budget for the next biennium?

Yes.....☐

No.....☐

EXPLANATION (Ballot Question)

The proposed amendment, if passed, would create five new sections to Section 6 of Article 11 of the Nevada Constitution. The amendment would provide that during a regular session of the Legislature, before any appropriation is enacted to fund a portion of the state budget, the Legislature must appropriate sufficient funds for the operation of Nevada's public schools for kindergarten through grade 12 for the next biennium, and that any appropriation in violation of this requirement is void. The appropriation requirement also applies to certain special sessions of the Legislature.

The following arguments for and against and rebuttals for Question No. 1 were prepared by a committee as required by Nevada Revised Statutes (NRS) 293.252.

ARGUMENT IN SUPPORT OF QUESTION NO. 1

Question One seeks a constitutional amendment changing the process by which public school education is funded at the State Legislature.

Education first ensures our state's public school system will be funded, before any other program for the next fiscal biennium, during each legislative session, by an appropriation the Legislature deems to be sufficient to fund the operation of our public schools for the student population reasonably estimated for that biennium.

Education First preserves the Legislature's ability to first fund the cost of the legislative session or an emergency measure demanding immediate action. Education First does not determine the level or source of funding public school education receives, so there is no fiscal impact to the state.

Education First will substantially enhance Nevada's credibility as a stable environment for students and teachers. As the fastest growing state in the nation, that is critical if Nevada is to keep pace with its growing student population.

For example, for the 2002-03 school year, Nevada hired over 2300 new teachers. Most new teachers are hired from out-of-state because Nevada's University and Community College System cannot meet our state's demand for teachers. Teachers make a serious commitment

EXHIBIT 11

when they choose to move and teach here. Education First will help ensure Nevada is equally committed.

The budget deadlock we experienced during the 2003 legislative sessions must never be repeated. The consequences for our schools, our teachers and our children were significant. Schools opened late, new teachers could not be hired, and special programs were jeopardized as those teachers were designated for reassignment to the general classroom. School administrators could not adequately plan for the coming school year, a process that typically begins each January. Education First prevents that from ever happening again.

As long as public school education is allowed to be the last major budget bill considered, special sessions and court intervention could easily become the norm in the legislative process. When education is first, that won't happen, as it did in 2003. Education First will ensure that the funding of education in Nevada will be given the status intended by the framers of our Constitution and will help prevent another Supreme Court ruling that negates the Gibbons tax restraint portion of our Constitution.

Take the politics out of funding Nevada's public schools. A YES vote on Question One will put education and Nevada's children first in line at budget time.

The above argument was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252

REBUTTAL TO ARGUMENT IN SUPPORT OF QUESTION NO. 1

The Education Funding Crisis of the 2003 Legislative session is the first in 73 regular sessions of the Nevada legislature. It was generated for political reasons to push a huge tax increase. Voters have an opportunity in this election to punish those guilty without changing the constitution. One failure in 73 sessions is insufficient reason to change the constitution.

A "NO" vote on Question 1 will force legislators to do the job we elect them to do. A "YES" vote will NOT correct the grave disregard for the Nevada Constitution by the Nevada Supreme Court during 2003. The Court showed blatant disregard for the people's will of the original Gibbons' petition and there is no reason to believe this will improve their attention to their oath of office. Make representative government work by voting "NO" on Question 1.

The above argument was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252

ARGUMENT AGAINST QUESTION NO. 1

The last legislative session showed that education funding can become a political football and few would agree that scenario should ever be repeated; however, a single event should not be a reason to compromise the public health and safety of Nevadans by detrimentally removing the Legislature's and our Governor's ability to determine our state's priorities.

1. The education budget is such a large portion of the budget that it cannot be determined until after the final meeting of the Economic Forum. The Economic Forum is a panel

EXHIBIT 11

of experts appointed by Nevada elected officials to formulate detailed projections regarding our state's revenue. The Economic Forum's projections would not be done until just prior to April 30th.

2. In the normal 120 day legislative process, the small budgets with little or no changes are processed starting weeks before the end of the legislative session. This allows the legislative workload to remain reasonable and matters to be handled in a logical manner. Holding all those budgets until the education budget can be decided may actually impede the process of closing budgets and make special sessions more likely, adding unnecessarily to taxpayer expense. Thus, this measure is likely to cause an adverse fiscal impact.
3. Under the current system the smaller budgets come through early providing lawmakers that do not sit on the Assembly Ways and Means or Senate Finance Committees with the time to review these budgets and ask questions. If those budgets are held until the education budget is decided, then the review by other legislators will be lost in the rush to close the session. Public health, safety and the protection of our environment will necessarily be compromised because of the limited time to review non-education budget matters that are equally important to our state's welfare.
4. Further it might be much easier for a lawmaker on the money committees to add “pork” to some budgets without the check and balance time and review process to stop potential wasteful spending.
5. While we agree that the entire budgeting and funding process in Nevada needs to be reviewed to encourage fiscal responsibility and accountability by the legislators and all with budgets within the executive branch, this measure seems to complicate the matter rather than actually improve and simplify the process.

We urge voters not to make the budget process more difficult by passing this measure.

The above argument was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252

REBUTTAL TO ARGUMENT IN OPPOSITION TO QUESTION NO. 1

1. Public education is one of five major budget bills. According to the Legislative Counsel Bureau, no budget can be closed prior to release of the Economic Forum's final report. This does not change. When budget bills are enrolled, education will be first.
2. The way the state budget is crafted does not change. The legislative workload is unaffected. The process becomes more logical when such a large component is dealt with first. The Legislature is responsible for managing its workload and adhering to a 120-day session. The status quo is more likely to result in special sessions.
3. Lawmakers not on money committees still participate. Issues are engaged in the same manner as now. Any impact should the Legislature not do its job as required by

EXHIBIT 11

the state Constitution is its responsibility. Public health, safety, welfare and the environment are not compromised by Education First.

4. Adding pork will always be tempting. Education First does not make it easier. If checks and balances aren't done, regardless of where in the process, legislators would be derelict in their duties.
5. When public education is no longer the budget's sacrificial lamb, the process is brought into check, improving accountability and simplicity.

The above argument was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252

FISCAL NOTE

FINANCIAL IMPACT – NO.

Approval of the proposal to amend the *Nevada Constitution* would have no adverse fiscal impact

FULL TEXT OF THE MEASURE

Education First Initiative Petition - State of Nevada

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to the funding of public education; amending the Constitution of the State of Nevada to require the Legislature to fund the operation of the public schools for kindergarten through grade 12 before any other part of the state budget for the next biennium is funded; providing that any appropriation enacted in violation of that requirement is void; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS:

Section 1. Section 6 of Article 11 of the Constitution of the State of Nevada is hereby amended to read as follows:

1. In addition to other means provided for the support and maintenance of said university and common schools, the legislature shall provide for their support and maintenance by direct legislative appropriation from the general fund, upon the presentation of budgets in the manner required by law.

2. *During a regular session of the Legislature, before any other appropriation is enacted to fund a portion of the state budget for the next ensuing biennium, the Legislature shall enact one or more appropriations to provide the money the Legislature deems to be sufficient, when combined with the local money reasonably available for this purpose, to fund the operation of the public schools in the State for kindergarten through grade 12 for the next ensuing biennium for the population reasonably estimated for that biennium.*

3. *During a special session of the Legislature that is held between the end of a regular session in which the Legislature has not enacted the appropriation or appropriations required by subsection 2 to fund education for the next ensuing biennium and the first day of that next ensuing biennium, before any other appropriation is enacted other than appropriations required to pay the cost of that*

EXHIBIT 11

special session, the Legislature shall enact one or more appropriations to provide the money the Legislature deems to be sufficient, when combined with the local money reasonably available for this purpose, to fund the operation of the public schools in the State for kindergarten through grade 12 for the next ensuing biennium for the population reasonably estimated for that biennium.

4. During a special session of the Legislature that is held in a biennium for which the Legislature has not enacted the appropriation or appropriations required by subsection 2 to fund education for the biennium in which the special session is being held, before any other appropriation is enacted other than appropriations required to pay the cost of that special session, the Legislature shall enact one or more appropriations to provide the money the Legislature deems to be sufficient, when combined with the local money reasonably available for this purpose, to fund the operation of the public schools in the State for kindergarten through grade 12 for the population reasonably estimated for the biennium in which the special session is held.

5. Any appropriation of money enacted in violation of subsection 2, 3 or 4 is void.

6. As used in this section, "biennium" means a period of two fiscal years beginning on July 1 of an odd-numbered year and ending on June 30 of the next ensuing odd-numbered year.

2015
NEVADA EDUCATION DATA BOOK

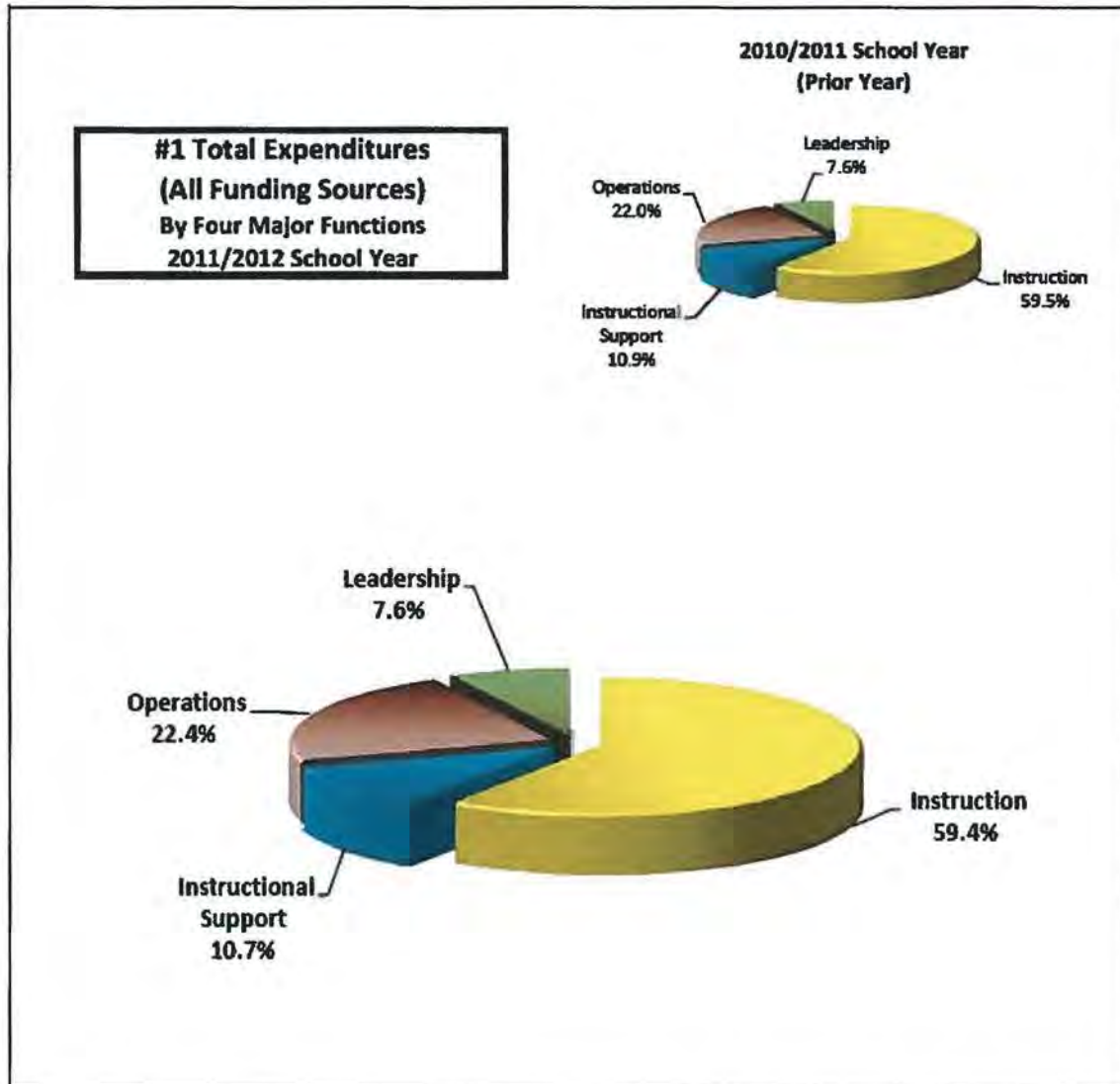


EXHIBIT 12

Chapter 6

Public School Expenditures, In\$ite Financial Analysis System

Nevada School Districts & Charter Schools

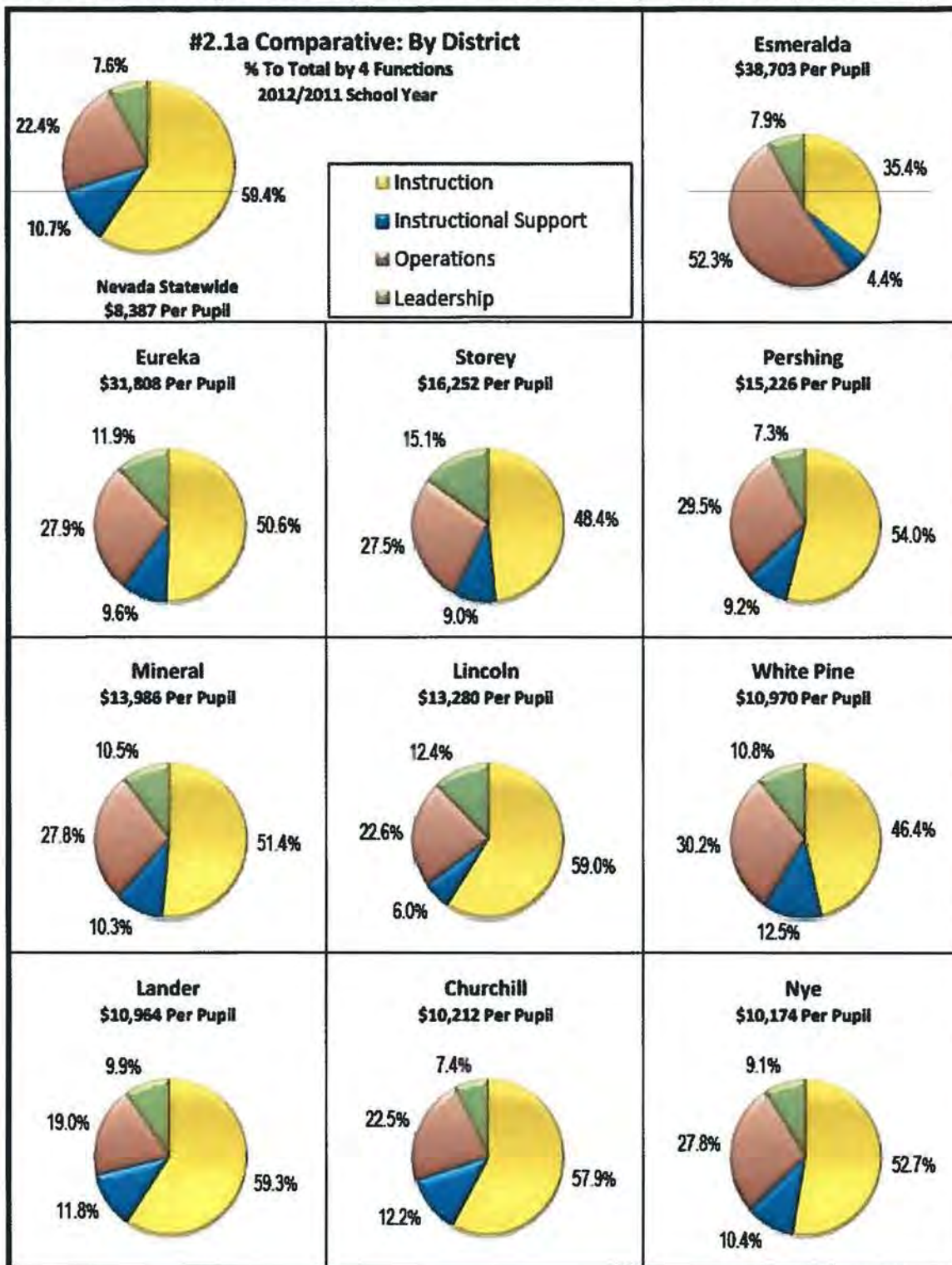


Weighted Enrollment: 422,452	Amount	Per Pupil	%-To-Total
Instruction	\$2,104,257,122	\$4,981	59.4%
Instructional Support	\$379,118,760	\$897	10.7%
Operations	\$791,949,582	\$1,875	22.4%
Leadership	\$267,837,151	\$634	7.6%
Total Expenditures	\$3,543,162,615	\$8,387	100.0%

2012-NV-01-01 (4)

In\$ite, U. S. Patent No. 5,991,741

Source: <http://edmin.com>

Public School Expenditures, In\$ite Financial Analysis System (*continued*)

4-COMP-2.1a

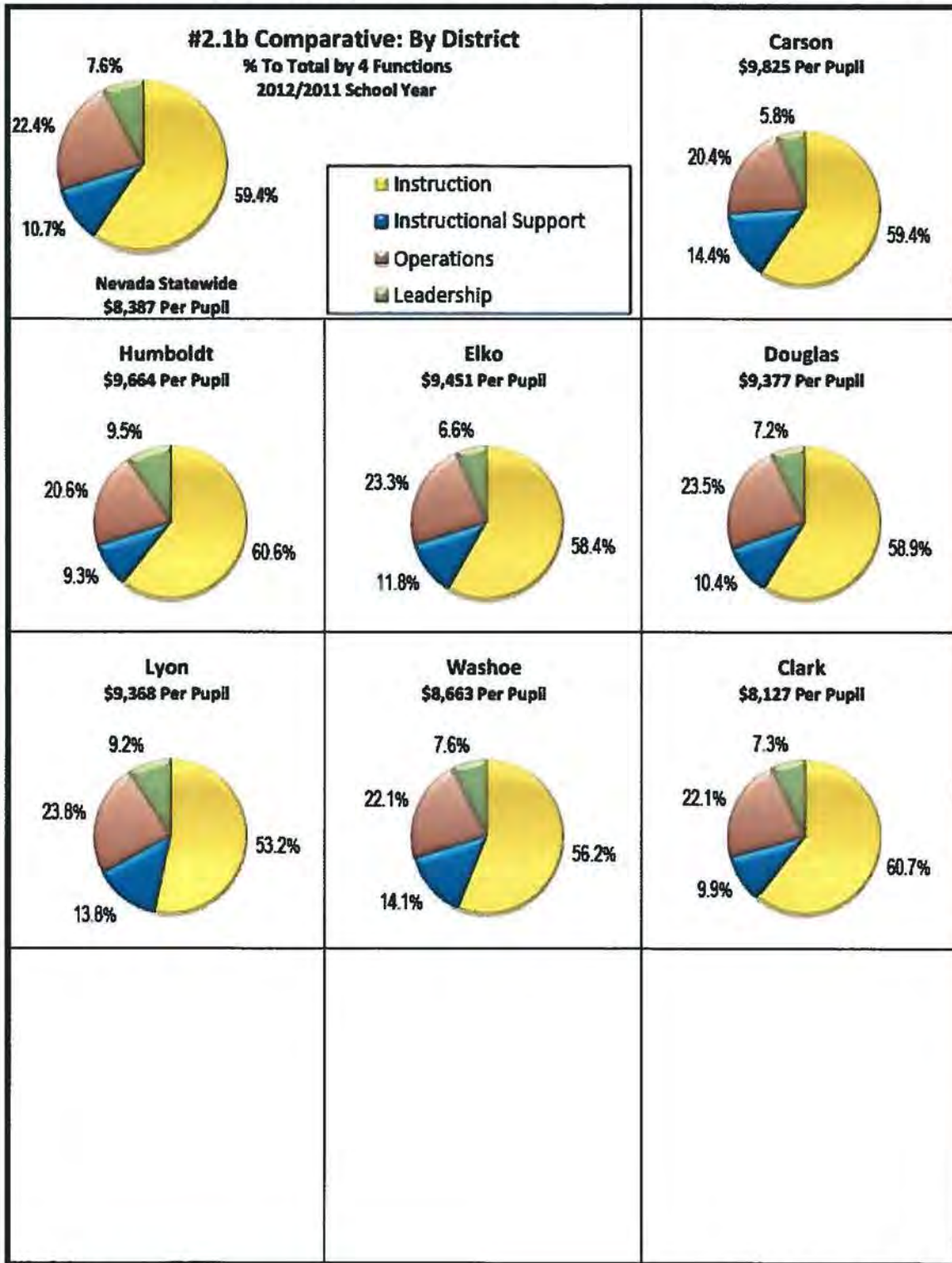
In\$ite, U. S. Patent No. 5,991,741

Source: <http://edmin.com>

EXHIBIT 12

Chapter 6

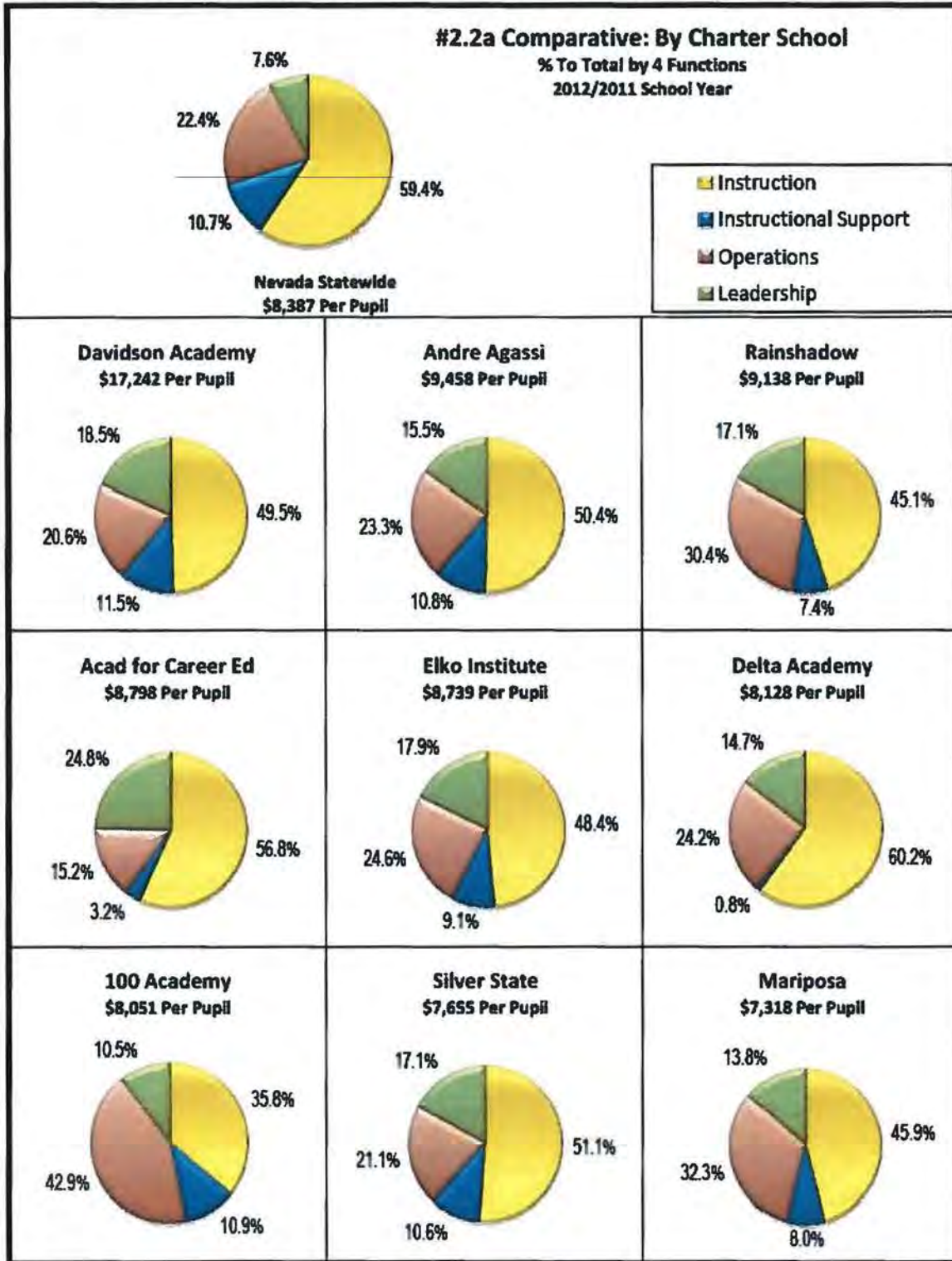
Public School Expenditures, In\$ite Financial Analysis System (*continued*)



4-COMP-2.1b

In\$ite, U. S. Patent No. 5,991,741

Source: <http://edmin.com>

Public School Expenditures, In\$ite Financial Analysis System (*continued*)

4-COMP-2.2a

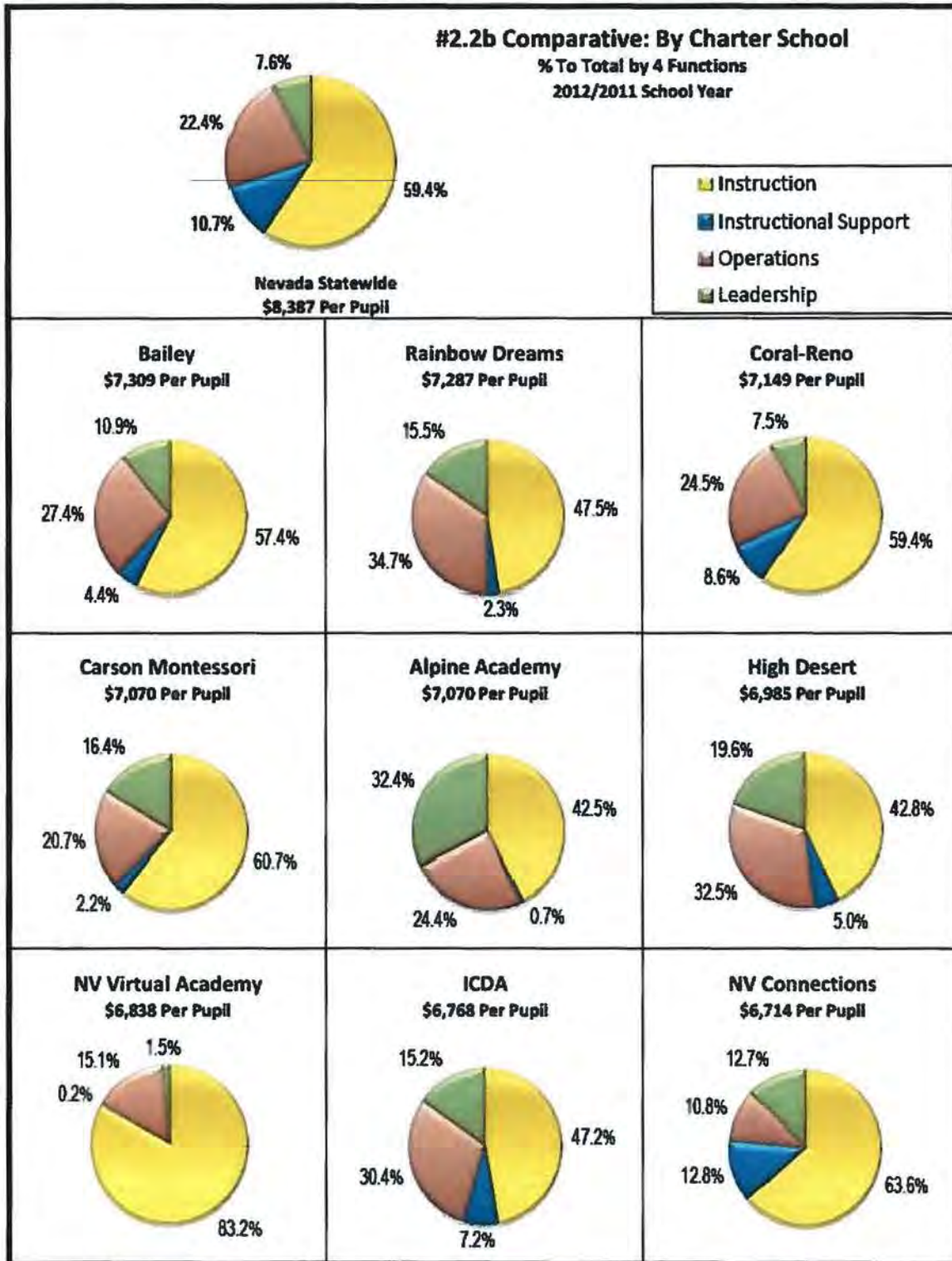
In\$ite, U. S. Patent No. 5,991,741

Source: <http://edmin.com>

EXHIBIT 12

Chapter 6

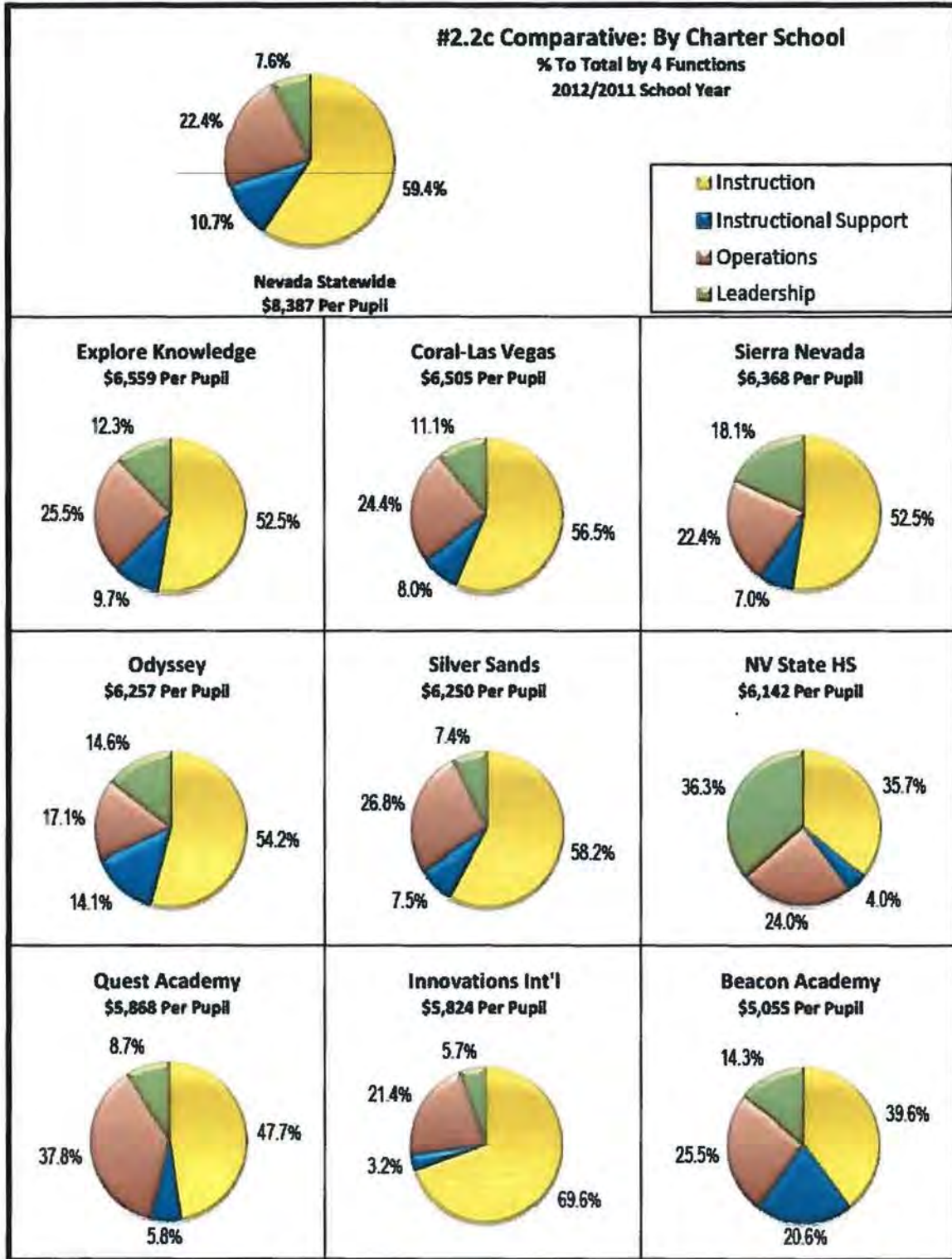
Public School Expenditures, In\$ite Financial Analysis System (*continued*)



4-COMP-2.2b

In\$ite, U. S. Patent No. 5,991,741

Source: <http://edmin.com>

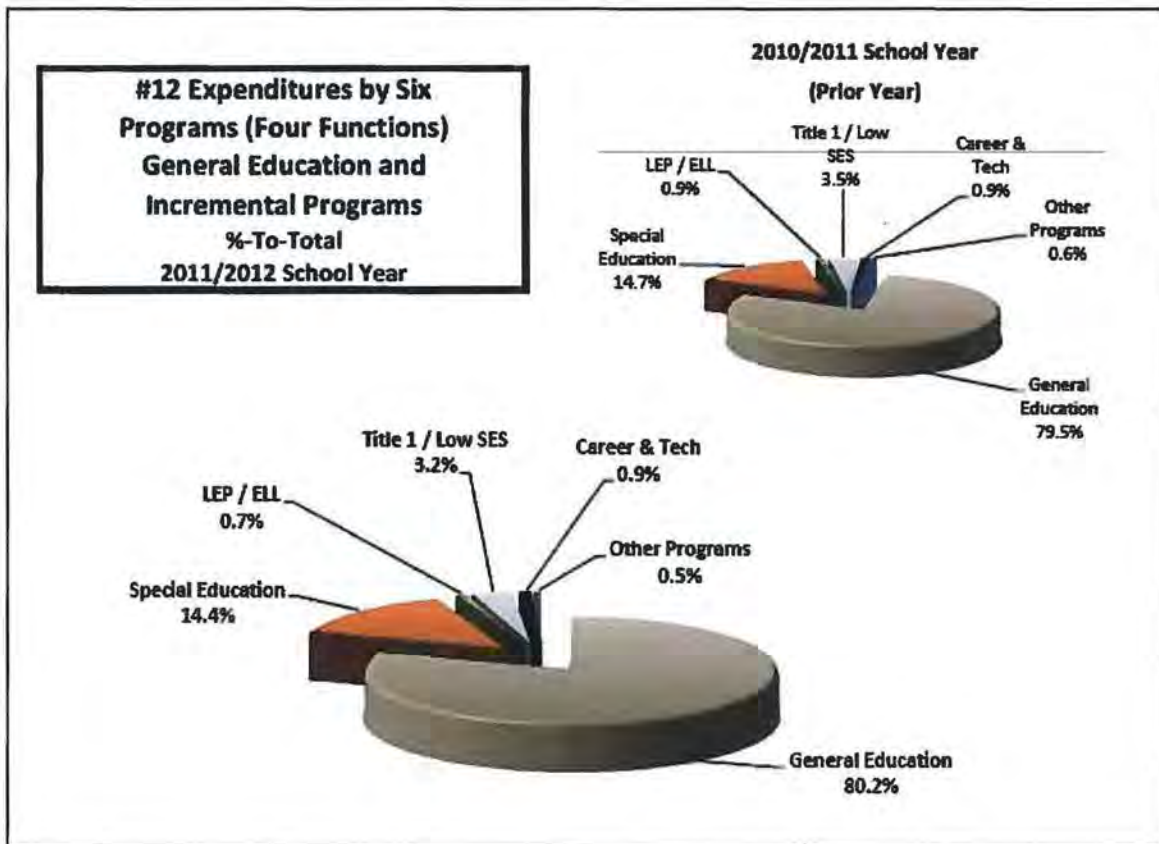
Public School Expenditures, In\$ite Financial Analysis System (*continued*)

4-COMP-2.2c

In\$ite, U. S. Patent No. 5,991,741

Source: <http://edmin.com>

Public School Expenditures, In\$ite Financial Analysis System (continued)
Nevada School Districts & Charter Schools



Program	Program Enrollment ¹	Amount	Incremental \$ Per Pupil ³	Total \$ Per Pupil ³	%To-Total
General Education	422,450.80	\$2,840,125,389	\$6,723	\$6,723	80.2%
Special Education	48,948.00	\$508,801,256	\$10,395	\$17,118	14.4%
LEP / ELL	73,070.00	\$26,087,304	\$357	\$7,080	0.7%
Title 1 / Low SES	102,360.00	\$115,074,034	\$1,124	\$7,847	3.2%
Career & Tech	49,147.00	\$33,635,118	\$684	\$7,407	0.9%
Other Programs ²	N/A	\$19,439,515	N/A	N/A	0.5%
Total	422,452	\$3,543,162,615	N/A	\$8,387	100.0%

2012-NV-15-12 (4)

In\$ite, U. S. Patent No. 5,991,741

- 1 Students are counted as 1.0 in multiple programs. Therefore, the total of programmatic enrollments is greater than "Total District" enrollment. Kindergarten and pre-school students are counted as 0.6 for enrollment because they attend school for only part of the day.
- 2 "Other Programs" does not include a per pupil expenditure because these programs benefit various student populations with a variety of needs, and a per pupil calculation would not be comparable.
- 3 The per pupil programmatic expenditure amounts in the "Incremental \$ Per Pupil" column represent only the incremental program expenditures. The "Total \$ Per Pupil" column represents the total per pupil expenditures for the designated program (the General Education base per pupil amount in bold plus the incremental per pupil amount for each program).

Source: <http://edmin.com>

EXHIBIT 13

FIRST JUDICIAL DISTRICT COURT

IN AND FOR CARSON CITY, NEVADA

HELLEN QUAN LOPEZ, individually and on behalf of her minor child, C.Q.; MICHELLE GORELOW, individually and on behalf of her minor children, A.G. and H.G.; ELECTRA SKRYZDLEWSKI, individually and on behalf of her minor child, L.M.; JENNIFER CARR, individually and on behalf of her minor children, W.C., A.C., and E.C.; LINDA JOHNSON, individually and on behalf of her minor child, K.J.; SARAH and BRIAN SOLOMON, individually and on behalf of their minor children, D.S. and K.S.,

Plaintiffs,

vs.

DAN SCHWARTZ, IN HIS OFFICIAL CAPACITY AS TREASURER OF THE STATE OF NEVADA,

Defendant.

Case No. 150C002071B

Dept. No.: II

**[PROPOSED] DECISION AND ORDER,
COMPRISING FINDINGS OF FACT AND
CONCLUSIONS OF LAW ¹**

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(Nevada Bar No. 8519)
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¹ If any finding herein is in truth a conclusion of law, or if any conclusion stated is in truth a finding of fact, it shall be deemed so.

EXHIBIT 13

1 Before the Court is Plaintiffs' Motion for a Preliminary Injunction, enjoining the
2 implementation of Nevada's recently passed voucher law, Senate Bill 302 ("SB 302"). The
3 motion is opposed by Defendant Dan Schwartz, in his official capacity as Treasurer for the State
4 of Nevada.

5 Plaintiffs are parents whose children attend Nevada's public schools. They filed the
6 original Complaint in this matter on September 9, 2015, alleging that Nevada's recently passed
7 voucher law, Senate Bill 302 ("SB 302"), violates Article XI of the Nevada Constitution ("the
8 Education Article") by diverting funds from public schools to pay for private school tuition and
9 other expenses.

10 Having examined the submissions of both Plaintiffs and Defendant and heard oral
11 argument thereon, this Court is of the opinion that a preliminary injunction should issue, enjoining
12 Defendant Schwartz from implementing SB 302.

13 BACKGROUND

14 In the last legislative session, the Nevada Legislature passed SB 302. This law authorizes
15 the State Treasurer to divert funds from public schools to private accounts, called Education
16 Saving Accounts ("ESAs"), to pay for a wide array non-public education expenses, including
17 private school tuition, tutoring, home-based education curricula, and transportation.

18 Any child who enrolls in a public school for 100 consecutive days may establish an ESA.
19 SB 302 § 7. The 100-day requirement need be met only once in the child's academic career in
20 order for that child to obtain funding every year until he or she matriculates, drops out, or leaves
21 the state.

22 When an ESA is established, SB 302 requires that the State Treasurer deposit into the ESA
23 an amount equal to 90 percent of the statewide average basic support guarantee per pupil, or
24 \$5,139 per pupil for the 2015-16 school year. For children with disabilities and children in
25 households with an income of less than 185 percent of the Federal poverty level, the State
26 Treasurer must transfer 100 percent of the statewide average basic support guarantee per pupil, or
27 \$5,710 per pupil for 2015-16. SB 302 § 8(2).

28

EXHIBIT 13

1 The total amount of the basic support guarantee transferred to ESAs is deducted from the
2 funding appropriated by the Legislature for the operation of the school district in which the eligible
3 children reside. Specifically, the statute directs the State Treasurer to deduct “all the funds
4 deposited in education savings accounts established on behalf of children who reside in the
5 county” from the school district’s “apportionment” of the legislatively appropriated funding
6 “computed on a yearly basis.” SB 302 § 16.1; *see also* SB 302, Legislative Counsel’s Digest (“the
7 amount of the [ESA] must be deducted from the total apportionment to the resident school district
8 of the child on whose behalf the grant is made.”). As such, each ESA established represents a loss
9 to a public school district of the basic support guarantee amount—either \$5,139 or \$5,710 per year.

STANDARD

11 A preliminary injunction issues “upon a showing that the party seeking it enjoys a
12 reasonable probability of success on the merits and that the defendant's conduct, if allowed to
13 continue, will result in irreparable harm for which compensatory damage is an inadequate
14 remedy.” *Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029, 1029 (1987) (citing *Number One*
15 *Rent-A-Car v. Ramada Inns*, 94 Nev. 779, 780 (1978)).

16 Plaintiffs have demonstrated a reasonable probability of success on the merits and have
17 shown that they will suffer irreparable harm if the statute is not enjoined.

REASONABLE PROBABILITY OF SUCCESS ON THE MERITS

19 Plaintiffs argue that SB 302 violates Article XI of the Nevada Constitution in three distinct
20 ways. The Court finds that the Plaintiffs have a reasonable probability of succeeding on the merits
21 of all three claims.

22 First, Plaintiffs argue that SB 302 violates Article XI, sections 3 and 6 of the Nevada
23 Constitution because those provisions prohibit the transfer of funds appropriated for the operation
24 of the public schools to any other use. The Education Article of the Nevada Constitution requires
25 the Legislature to “provide for the[] support and maintenance” of the common or public schools
26 “by direct legislative appropriation from the general fund.” NEV. CONST. art. XI § 6.1. The
27 appropriation for the public schools must occur “before any other appropriation is enacted to fund
28 a portion of the state budget for the next ensuing biennium.” Nev. Const. art XI, § 6.2. The direct

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1 legislative appropriation can only be used “to fund the operation of the public schools in the State
2 for kindergarten through grade 12 for the next ensuing biennium for the population reasonably
3 estimated for that biennium.” NEV. CONST. art. XI, § 6.2. “Any appropriation of money enacted in
4 violation of subsection 2... is void.” Nev. Const. art. XI, § 6.5. Likewise, Article XI, section 3,
5 specifies additional sources of funding for the public schools and also restricts the use of those
6 funds. NEV. CONST. art. XI, § 3 (specifying funds “pledged for educational purposes” and stating
7 that “the money therefrom must not be transferred to other funds for other uses”).

8 From the plain language of Article XI, it is clear that funds appropriated to public
9 education may not be used for any other purpose. The Supreme Court of Nevada so held over a
10 century ago in *State v. Westerfield*, 23 Nev. 468 (1897). As the Supreme Court explained in
11 *Westerfield*, funds appropriated for the public schools under Article XI can only be used for “the
12 support” of the public schools and no portion of those funds can be used to pay a non-public
13 school employee “without disregarding the mandates of the constitution.” *Id.* at 121. Payments of
14 such funds for any other purpose are “unconstitutional, null and void” *Id.*; *see also State ex rel.*
15 *Wright v. Dovey*, 19 Nev. 396, 12 P. 910, 912 (1887) (holding that “neither the framers of the
16 constitution nor the legislature intended to allow public-school moneys to any county for persons
17 not entitled to attend the public schools therein . . .”).

18 SB 302 directs the State Treasurer to transfer into private ESAs the basic support
19 guarantee per-pupil funding appropriated by the Legislature for the operation of the school district
20 in which the ESA-eligible child resides. SB 302 § 16.1 (school districts are entitled to their
21 apportioned funds “minus . . . all the funds deposited in education savings accounts established on
22 behalf of children who reside in the county”). Because SB 302 explicitly authorizes the use of
23 funds appropriated for the public schools for non-public educational purposes, I find that there is
24 substantial likelihood that Plaintiffs will prevail on the merits of their argument that SB 302
25 violates Article XI, sections 3 and 6 of the Nevada Constitution.

26 Second, Plaintiffs argue that because SB 302 removes from the public school
27 system a portion of the amount of funds the Legislature has “deemed sufficient” to maintain and
28

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1 operate the public schools, the law violates section 6.2 of the Education Article of the Nevada
2 Constitution.

3 Article XI, section 6.2, of the Nevada Constitution directs the Legislature to provide
4 the appropriations it “deems to be sufficient,” to fund the operation of Nevada’s public schools for
5 kindergarten through grade 12 for the next ensuing biennium. Article XI, section 6.5 provides that
6 “any appropriation of money enacted in violation of [section 6.2]... is void.” This provision was
7 an amendment to the constitution by a ballot initiative in 2006. The stated purpose of this
8 amendment was “to ensure funding of education be given the status intended” by the constitutions’
9 framers and to “substantially enhance[] Nevada’s credibility as a stable environment for students
10 and teachers.”

11 SB 302, by deducting ESAs from funds appropriated for public schools, reduces the
12 level of funding for the operation of the public schools below that which the Legislature has
13 deemed sufficient in its biennium appropriations for the maintenance and support of Nevada’s
14 public schools. On this basis, I find that there is reasonable probability that Plaintiffs will prevail
15 on the merits of their argument that SB 302 violates Art. XI, section 6.2 and to the extent public
16 school funds are transferred to ESAs, such appropriations are void under Art. XI, section 6.5.

17 Third, Article XI, section 2, of the Nevada Constitution mandates that the
18 Legislature establish a “uniform system of common,” or public, schools. Plaintiffs allege that SB
19 302 creates a non-uniform system of schools and therefore violates Article XI, section 2. Further,
20 they allege that because SB 302 uses public funds to create a system of education other than the
21 type mandated by the Constitution, it is unconstitutional.

22 Article XI, section 2 requires that the Legislature establish and maintain a “uniform
23 system of common schools.” In fulfillment of this mandate, the Legislature has enacted an
24 extensive framework of requirements to ensure the public schools are open to all children. As
25 Plaintiffs have shown, SB 302 allows public school funds to pay for private schools and other
26 entities that are not subject to the requirements applied to public schools. The private schools, on-
27 line programs and parents receiving public school funds under SB 302 do not have to use the State-
28 adopted curriculum taught in public schools. Likewise, private schools and entities that accept

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1 ESA funds do not have to accept all students. These schools and entities may discriminate based
2 on a student's religion or lack thereof, academic achievement, ELL status, disability, homelessness
3 or transiency, gender, gender identity and sexual orientation.

4 Because SB 302 takes funding away from the uniform system of common schools
5 and applies to private educational services that are unregulated and non-uniform I find that there is
6 reasonable probability that Plaintiffs will prevail on the merits of their argument that SB 302
7 violates Article XI, section 2 of the Nevada Constitution.

8 Plaintiffs also allege that in establishing the mandate to support a public school
9 system, the Nevada Constitution has, in the same breath, forbidden the Legislature from
10 establishing a separate alternative system to Nevada's uniform system of public schools. "Nevada
11 follows the maxim 'expressio unius est exclusio alterius,' the expression of one thing is the
12 exclusion of another," *State v. Javier C.*, 128 Nev. Adv. Op. 50, 289 P.3d 1194, 1197 (2012), and
13 "[t]his rule applies as forcibly to the construction of written Constitutions as other instruments."
14 *King v. Bd. of Regents of Univ. of Nev.*, 65 Nev. 533, 556, 200 P.2d 221 (1948).

15 Under this principle, the Legislature may not enact statutes that achieve
16 Constitutional goals by means different from those explicitly provided for in the Constitution. The
17 Nevada Supreme Court has expressly held that "[e]very positive direction" in the Nevada
18 Constitution "contains an implication against anything contrary to it which would frustrate or
19 disappoint the purpose of that provision." *Galloway v. Truesdell*, 83 Nev. 13, 26, 422 P.2d 237,
20 246 (1967) (citation omitted); *see also id.* at 26 (holding that the "affirmation of a distinct policy
21 upon any specific point in a state constitution implies the negation of any power in the legislature
22 to establish a different policy").

23 I therefore find that there is reasonable probability that Plaintiffs will prevail on the
24 merits of their argument that the Constitution's mandate to provide for education through the
25 establishment of a uniform system of public schools prohibits the Legislature from enacting SB
26 302, a law that allows for the education Nevada children through a non-uniform means.

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IRREPARABLE HARM

Because SB 302 violates the Nevada Constitution, Plaintiffs do not need to demonstrate any irreparable injury. *City of Sparks v. Sparks Mun. Court*, 129 Nev. Adv. Op. 38, 302 P.3d 1118, 1124 (2013) (“As a constitutional violation may be difficult or impossible to remedy through money damages, such a violation may, by itself, be sufficient to constitute irreparable harm.”).

Regardless, the Court also finds that Plaintiffs have demonstrated a threat of irreparable injury if SB 302 is not enjoined. As established in Plaintiffs’ papers and the supporting declarations, if SB 302 is not enjoined money will be diverted from the public school system and such a diversion of funds will disrupt the ability of school administrators to provide for quality of education. As set forth by Plaintiffs’ declarants, SB 302 may cause certain school districts to adjust classrooms mid-year, cut extracurricular activities or “non-essentials,” or even potentially close an entire school. Because money damages cannot remedy these harms, Plaintiffs have met the burden of showing an irreparable injury if SB 302 is not enjoined.

IT IS HEREBY ORDERED, therefore, and for good cause appearing, that Plaintiffs’ motion for a preliminary injunction is **GRANTED**;

IT IS FURTHER ORDERED that Defendant Dan Schwartz, in his official capacity as Treasurer of the State of Nevada, is enjoined from implementing Senate Bill 302.

DISTRICT COURT JUDGE

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EXHIBIT 13

Submitted by:

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DECLARATION OF DR. CHRISTOPHER LUBIENSKI

I, Dr. Christopher Lubienski, declare as follows:

1. My name is Christopher Lubienski, Ph.D. My permanent residence is at 705 W. Michigan Avenue, Urbana, Illinois, 61801. I am over 21 years of age, and I am of sound mind, and qualified to give this report. I have never been convicted of a crime that would disqualify me from providing this report, and this report is made on my personal knowledge, based on a review of documents related to this case.

I. Background and Introduction

2. I am currently a Professor of Education Policy at the University of Illinois (Urbana-Champaign). I received my Ph.D. in education policy from Michigan State University in 1999, and subsequently held two post-doctoral fellowships in education policy: one with the National Academy of Education, and the other in the Advanced Studies Fellowship Program at Brown University. I began my academic career as an assistant professor at Iowa State University, where I taught in the Historical, Philosophical and Comparative Studies in Education program. I accepted a position at the University of Illinois in 2004, was tenured in 2007, and promoted to full Professor in 2013. In 2011, I was named a Fulbright Senior Scholar for New Zealand. I also am currently a Sir Walter Murdoch Adjunct Professor in Education Policy at Murdoch University in Perth, Australia. I have been active in the Special Interest Group on School Choice, including as program chair, for the American Educational Research Association. I also co-direct the K-12 Working Group for the Scholars Strategy Network at Harvard University.

3. My research on school choice has been funded by the Federal Institute of Education Science (under the G.W. Bush Administration), the William T. Grant Foundation, the Australian Research Council, the Organisation for Economic Cooperation and Development, the Walton Family Foundation, the Hewlett Foundation, and the Spencer Foundation. I have authored or edited four academic books (one in press) having to do with school choice, charter schools, and vouchers, including an award-winning book in 2014 from the University of Chicago Press on public and private school achievement. I have two more books in preparation on this general topic. I have also published over 80 academic papers, mostly on school choice, the majority of which have been published in peer-reviewed journals.

4. I have been studying voucher and charter school policies since the early 1990s, focusing both on the United States as well as comparable school choice systems in other nations. My key publications relevant to the voucher issue include a 2008 article in the *Brigham Young University Law Review* (with Peter Weitzel) on voucher outcomes, a 2009 article in *Educational Policy* (with Weitzel & Sarah Lubienski) on voucher advocacy, the 2014 book from the University of Chicago Press (with Sarah Lubienski) based on nationally representative federal datasets, and an upcoming article in the *Peabody Journal of Education* (with T. Jameson Brewer) on impacts of vouchers on different populations. Through this research, I have been familiarized with voucher policies throughout the United States. I also examine school choice between public and private schools from an international perspective, using data from the Organisation for Economic Cooperation and Development (OECD).

5. In preparation for developing opinions in the matter of *Lopez v. Schwartz*, Case No. 150C002071B, First District Court in and for Carson City Nevada, I have reviewed the following documents and artifacts:

- a. Original Complaint, *Lopez v. Schwartz*, Case No. 150C0020171B
- b. Senate Bill 302, enacted May 29, 2015 (Nevada’s recently enacted voucher legislation)
- c. September 2, 2015 Proposed Regulations of the State Treasurer
- d. Comparable legislation regarding voucher programs in other states, as well as voucher programs in the District of Columbia and Douglas County, Colorado
- e. Research from Suzanne Eckes and Jessica Ulm, of Indiana University, and Julie Mead, of the University of Wisconsin, to be published in the *Peabody Journal of Education*¹
- f. Compendia of information on voucher programs, as compiled by two pro-voucher advocacy organizations: the Friedman Foundation for Educational Choice,² and the Heritage Foundation³

6. In forming the opinions presented in this report, I relied on my scholarly experience in researching school choice in general, and voucher plans in particular, over a period of more than two decades. This work includes studying voucher programs — including voucher programs that use education savings accounts (“ESAs”) or their equivalents — charter schools, and other school choice programs in the United States, as well studying similar programs in Australia, Chile, England and Wales, Korea, New Zealand, and Sweden. During that time I have compiled a library of some 3,470 articles, books and papers on the topic of vouchers and school choice.

¹ Eckes, S. E., Ulm, J., & Mead, J. (in press). Dollars to Discriminate: The (Un)Intended Consequences of School Vouchers. *Peabody Journal of Education*.

² Friedman Foundation for Educational Choice. (n.d.). *School Choice in America*. Available at: <http://www.edchoice.org/school-choice/school-choice-in-america/>.

³ Heritage Foundation. (n.d.). *School Choice in America*. Available at: <http://www.heritage.org/applications/SchoolChoice.aspx>.

II. Opinions Presented

7. Given the information available to me at this time, I have formed four opinions, based on my knowledge, experience and training that relate to Senate Bill 302 (“SB 302”).

These opinions are outlined in detail below and include:

- a. Opinion 1: Voucher programs in other states are most often made available to children based on their family’s income or to children at academically underperforming schools; many voucher programs also cap the number of recipients of voucher funding per year. Compared to other states, SB 302 is anomalous in that it is not limited to children who have an apparent need for assistance and has no upper bound on the number of recipients per year.
- b. Opinion 2: Voucher programs in other states often impose academic and curricular requirements on institutions receiving the voucher funds. Compared to other states, SB 302 is anomalous in that it includes relatively few restrictions for ESA-eligible institutions. SB 302 does not impose any curricular requirements, has minimal testing requirements, and no performance requirements.
- c. Opinion 3: Voucher programs in other states often impose non-discrimination requirement on institutions receiving voucher funds. Compared to other states, SB 302 is anomalous in that it includes no language prohibiting institutions receiving ESA funds from discriminating against children on a number of bases, including religion, sexual orientation, English Language Learner status, and ability to pay.
- d. Opinion 4: SB 302 represents a move toward what is, relatively speaking, an unregulated system of publicly funded schooling that may lead to more inequitable opportunities and outcomes.

A. Opinion 1: *Voucher programs in other states are most often made available to children based on their family’s income or to children at academically underperforming schools; many voucher programs also cap the number of recipients of voucher funding per year. Compared to other states, SB 302 is anomalous in that it is not limited to children who have an apparent need for assistance and has no upper bound on the number of recipients per year.*

8. Eight other states, along with the District of Columbia and Douglas County, Colorado,⁴ have adopted publicly funded school voucher legislation not targeted only at students with special needs.⁵ All of these states have instituted eligibility requirements for students based on family income or the academic performance of their assigned public school, or have limits on the number or location of students that can enroll in the program. For instance, eligibility for voucher programs in the District of Columbia, Indiana, North Carolina, and Wisconsin is based on the incomes of students' families.⁶ Applicants for the District of Columbia Opportunity Scholarship Program must come from families making no more than 185% of the federal poverty level, or be eligible for the Supplemental Nutrition Assistance Program. Applicants to Indiana's Choice Scholarship Program must come from families making less than 150% of the level set for Free or Reduced Lunch (FRL) eligibility, or 200% of that level under certain circumstances. North Carolina caps eligibility at 133% of the FRL level. Wisconsin's programs are limited to students from families making less than 300% of the federal poverty level in Milwaukee and Racine, or 185% elsewhere, where they must also be eligible for FRL. Louisiana's voucher system takes into account both the income of the student's family and the academic performance of the child's assigned public school. Arizona's program is capped at 0.5% of the previous year's total public school enrollment, and is limited to students with special needs, in low-

⁴ Here I focus on programs that, similar to Nevada's SB 302, budget public funds for private education, as with publicly funded vouchers and education savings accounts. The relevant programs are in the following states: Arizona, Colorado (Douglas County), the District of Columbia, Indiana, Louisiana, Maine, North Carolina, Ohio, Vermont, and Wisconsin. I am not including tax-credit programs that, unlike SB 302, channel *potential* tax revenues directly to private schools or savings accounts.

⁵ Several other states have adopted voucher programs aimed at special needs populations. For example, Florida has the John McKay Scholarship for Students with Disabilities program, and Utah has the Carson Smith Special Needs Scholarship Program, both of which are targeted exclusively at students with special needs.

⁶ Friedman Foundation for Educational Choice. (n.d.). *School Choice in America*. Available at: <http://www.edchoice.org/school-choice/school-choice-in-america/>.

Heritage Foundation (n.d.). *School Choice in America*. Available at: <http://www.heritage.org/applications/SchoolChoice.aspx>.

performing schools, from military families, or from foster families — covering only an estimated 22% of Arizona students.⁷ Programs in Maine and Vermont are targeted only at children in rural areas with no public schools.

9. SB 302 does not place any meaningful requirements, income or otherwise, on families who wish to register for an ESA. SB 302 requires only that students have been enrolled in a public or charter school, even if part-time, for 100 days at some point prior to establishing an account through SB 302. Thus, all children in Nevada are eligible to meet the minimum requirement, even children whose parents' income is otherwise more than sufficient to afford private school payments and children already in the private school sector. No other state-wide program in the US comes anywhere near that level of eligibility.

10. Only the Cleveland Scholarship Program in Ohio, and the Douglas County voucher program established in Colorado (recently ruled to be unconstitutional by the Colorado Supreme Court) approach the almost universal eligibility seen in Nevada with SB 302. Yet both of these local programs are restricted based on local geographic eligibility. Moreover, the Cleveland program gives preference to students from families making less than 200% of the federal poverty level (while other students can apply, they must get approval from the state Superintendent). The Douglas County program was capped for total enrollment and gave preference to low-income students.⁸ None of those eligibility requirements apply in the case of SB 302.

⁷ Friedman Foundation for Educational Choice. (n.d.). *School Choice in America: Arizona*. Available at: <http://www.edchoice.org/school-choice/programs/arizona-empowerment-scholarship-accounts/>.

⁸ Friedman Foundation for Educational Choice. (n.d.). *School Choice in America*. Available at: <http://www.edchoice.org/school-choice/school-choice-in-america/>.

11. Thus, SB 302 is anomalous from all other mainstream voucher programs that I have studied in that it is not targeted at children based on their parents' income, or children at academically underperforming schools, and does not cap the number of recipients of these funds per year.

B. Opinion 2: *Voucher programs in other states often impose academic and curricular requirements on institutions receiving the voucher funds. Compared to other states, SB 302 is anomalous in that it includes relatively few restrictions for ESA-eligible institutions. SB 302 does not impose any curricular requirements, has minimal testing requirements, and no performance requirements.*

12. States that have adopted voucher programs targeted at mainstream populations often impose academic and curricular requirement on schools receiving voucher funds. For instance, Indiana requires that participating private schools be accredited and meet minimum academic standards (administer the state testing program and not receive a D or F rating for two or more years in a row), and conduct criminal background checks on school employees, among other criteria.⁹ Louisiana requires that participating schools be approved by the state, conduct criminal background checks on employees, maintain a quality curriculum equal to that of public schools, and meet academic performance standards based on a "Scholarship Cohort Index."¹⁰ North Carolina specifies that schools accepting vouchers be accredited (by the state, a national or

⁹ Indiana Code §§ 20-51-1.

¹⁰ Friedman Foundation for Educational Choice. (n.d.). *School Choice in America*. Available at: <http://www.edchoice.org/school-choice/school-choice-in-america/>.

Louisiana Department of Education. (2012). Accountability System for Louisiana Scholarship Program Released [Press release] Retrieved from <http://www.louisianabelieves.com/newsroom/news-releases/2012/07/23/accountability-system-for-louisiana-scholarship-program-released>.

regional accreditor, or be active in the North Carolina Association of Independent Schools), and conduct criminal background checks on school employees.¹¹

13. SB 302 does not have similar academic or curricular requirements for entities receiving voucher funding. In SB 302, “participating entities” are eligible if they (a) are licensed or exempt from licensing; (b) are part of the Nevada System of Higher Education or otherwise established in and organized under the laws of Nevada, tax-exempt, and accredited by a recognized regional accrediting agency; (c) are a part of a distance learning program; (d) if a tutoring service, be accredited by state, regional, or national organization (no specification that such be recognized by the government); or (e) are a parent. SB 302 includes no language regarding educational qualifications or standards, criminal backgrounds checks, accreditation standards for distance education or tutoring, or other factors used by other states to preclude the entry of unqualified or even dangerous providers into the program. The only specified academic requirement for participating entities is that they administer a norm-referenced achievement assessment in mathematics and English/language arts each year. SB 302 § 12(1)(a). However, SB 302 does not mandate that these subjects be taught or that participating entities achieve any minimum level of performance on these achievement tests. SB 302 also allows the State Treasurer (not the Department of Education) to review participating entities, but does not specify any criteria for what such a review would consider. SB 302 § 11 (5)(a-b).

14. Thus, as compared to other voucher programs that I have studied throughout the nation, SB 302 is anomalous in its lack of academic and curricular requirements for participating entities that are receiving these funds.

¹¹ Friedman Foundation for Educational Choice. (n.d.). *School Choice in America*. Available at: <http://www.edchoice.org/school-choice/school-choice-in-america/>.

C. Opinion 3: *Voucher programs in other states often impose non-discrimination requirements on institutions receiving voucher funds. Compared to other states, SB 302 is anomalous in that it includes no language prohibiting institutions receiving ESA funds from discriminating against children on a number of bases, including religion, sexual orientation, English Language Learner status, and ability to pay.*

15. Other states that have adopted voucher programs targeted at general populations have required that institutions receiving voucher funds adopt non-discrimination policies. According to legal analyses by Suzanne Eckes and Jessica Ulm at Indiana University, and Julie Mead at the University of Wisconsin, all other states but three include some type of non-discrimination clause(s) for schools participating in their voucher programs.¹² Louisiana requires that schools use a transparent admissions process, and prohibits schools from applying additional admissions criteria to students using vouchers beyond those of the voucher program itself.¹³ Indiana requires the use of “fair” admission standards.¹⁴ Wisconsin specifies limits on capacity as the only legitimate reason for rejecting a voucher student. North Carolina and Wisconsin require that schools participating in a voucher program comply with 42 U.S.C. 2000d, which prohibits discrimination on the basis of “race, color, or national origin.” Four statutes (Indiana, Louisiana, North Carolina, and Ohio) include language regarding requirements that private, voucher-accepting schools serve students with disabilities. Some states have requirements for

¹² Eckes, S. E., Ulm, J., & Mead, J. (in press). Dollars to Discriminate: The (Un)Intended Consequences of School Vouchers. *Peabody Journal of Education*.

¹³ Eckes, S. E., Ulm, J., & Mead, J. (in press). Dollars to Discriminate: The (Un)Intended Consequences of School Vouchers. *Peabody Journal of Education*.

Friedman Foundation for Educational Choice. (n.d.). *School Choice in America*. Available at: <http://www.edchoice.org/school-choice/school-choice-in-america/>.

¹⁴ Eckes, S. E., Ulm, J., & Mead, J. (in press). Dollars to Discriminate: The (Un)Intended Consequences of School Vouchers. *Peabody Journal of Education*.

voucher-enrolling schools regarding the enrollment of students of differing faith traditions, standards for admission, or procedures for over-subscription. For instance, Wisconsin prohibits private schools from requiring voucher-funded students to participate in religious practices.¹⁵

16. SB 302 does not require that participating entities receiving ESA funds adopt non-discrimination policies. Many private schools in Nevada have policies that are discriminatory. For instance, Liberty Baptist Academy in Las Vegas requires parents to “attend all church services including Sunday morning, Sunday night, Wednesday night and special conferences and revivals,” and only accepts students whose parents agree to perform volunteer service for the school — thereby effectively excluding children of working parents lacking the time to perform such service.¹⁶ Faith Christian Academy in Gardnerville explicitly excludes non-Christian students, students who do not have at least one parent who is also a Christian and is in agreement with the school’s statement on human sexuality, as well as students whose academic performance is below average, or have behavioral problems.¹⁷ And while Trinity International School of Las Vegas says it admits students regardless of religious preference, students are required to submit a letter of recommendation from a pastor, and parents must sign an agreement acknowledging the importance of “Christian principles” as taught at the school and regular

¹⁵ The only two exceptions that consistently defy the general pattern of prohibiting institutions from discriminating with tax funding involve old “tuitioning” programs in Vermont and Maine that were designed simply for rural areas with no public schools (and are limited to non-sectarian private schools).

Eckes, S. E., Ulm, J., & Mead, J. (in press). Dollars to Discriminate: The (Un)Intended Consequences of School Vouchers. *Peabody Journal of Education*.

Friedman Foundation for Educational Choice. (n.d.). *School Choice in America*. Available at: <http://www.edchoice.org/school-choice/school-choice-in-america/>.

¹⁶ Liberty Baptist Academy. (n.d.). Student Handbook. Las Vegas, NV. Available at: <http://experienceliberty.com/academy/wp-content/uploads/2013/07/LBA-Handbook.pdf>.

¹⁷ Faith Christian Academy. (2014-15). Handbook. Gardnerville, NV. Available at http://029b4a0.netsolhost.com/pages/fca/Handbook_14-15.pdf.

church attendance.¹⁸ Additionally, Trinity International School charges additional fees of \$525.00 per class per semester for English Language Learners. Nothing in SB 302 prevent schools that discriminate in this manner from receiving funding.

17. Moreover, nothing in SB 302 prevents a private school from charging more than the ESA amount and denying entry to those who are unable to pay the full tuition amount. Other states, such as Ohio and Wisconsin explicitly prohibit schools receiving vouchers from leveraging additional charges that would exclude poor students. Ohio prohibits schools from charging additional tuition or fees beyond the amount of the voucher for students from families at less than 200% of the federal poverty level. In Wisconsin, that level is specified at 220% for high school students. SB 302 makes no such prohibition, and therefore allows schools to exclude students unable to pay additional tuition or fees.

18. Thus, SB 302 is anomalous as compared to other states that I have studied in that it does not impose any non-discrimination requirements on participating entities receiving these funds.

D. Opinion 4: *SB 302 represents a move toward what is, relatively speaking, an unregulated system of publicly funded schooling that may lead to more inequitable opportunities and outcomes.*

19. Voucher programs are often justified on the basis that increased choice and competition will lead to increased efficiency and performance in the school system, thereby increasing access to quality options for all school children. While choice and competition may

¹⁸ Trinity International School. (n.d.). Registration Packet and Parent/Guardian and Student Agreement. Las Vegas, NV. Available at: <http://trinitylv.org/Registration-Packet.pdf>.

produce efficient results in the business sector, such policies often lead to increasingly segregated schools and unevenly distributed opportunities in the education sector.

20. Research on the organizational behavior of schools in choice-based systems suggests that they may embrace policies that lead to inequitable educational opportunities for students. The inequitable effects created by choice-based systems is often explained by the fact that, under these programs, instead of students choosing schools, schools are able to choose their students. The ability to select amongst students typically leads to barriers to entry for higher-cost, lower-scoring, or more-difficult-to-educate students.¹⁹

21. This is perhaps most evident in the difficulty of special education students in finding places in New Orleans' charter/voucher system, where autonomous schools, concerned about test scores and costs, have discouraged higher-cost and more difficult-to-educate students from attending, leaving those students few options other than the public schools.²⁰ Recent research from Johns Hopkins University on Chicago's choice system also finds disadvantaged students have fewer and poorer quality choices for schools in near proximity. Students from Chicago communities where the median household income exceeds \$75,000 typically attend a smaller set of 2-3 schools; when that figure falls below \$25,000, students are dispersed to 13

¹⁹ Fiske, E. B., & Ladd, H. F. (2000). *When Schools Compete: A Cautionary Tale*. Washington, DC: Brookings Institution Press.

Lauder, H., Hughes, D., Watson, S., Waslander, S., Thrupp, M., Strathdee, R., . . . Hamlin, J. 1999). *Trading in Futures: Why Markets in Education Don't Work*. Buckingham, UK: Open University Press.

Lubienski, C., Gulosino, C., & Weitzel, P. (2009). School Choice and Competitive Incentives: Mapping the Distribution of Educational Opportunities across Local Education Markets. *American Journal of Education*, 115(4), 601-647.

²⁰ Merrow, J. (Director). (2013). *Rebirth: New Orleans*. Learning Matters.

schools, on average, and had average commutes that are significantly longer.²¹ Patterns of inequities inherent to such systems are also evident in a 2014 report from the OECD which noted that, in an examination of 11 nations, poorer families in choice systems have less access to information on school quality, and tend to focus on transportation and other costs when choosing schools, while more affluent families are able to absorb costs and put more emphasis on academic quality; thus, in systems where schools have to compete for the choices of families, “schools are often more socially segregated.”²²

22. Under SB 302, which, as explained in Opinions 1-3, is less regulated than any other voucher program in the nation, the segregative effects typically associated with choice programs may be more pronounced. Nevada appears to be moving toward an education marketplace characterized by an uneven playing field between school sectors. District-run public schools are required to serve all students living within the district’s boundaries. Yet, entities participating in SB 302 do not operate under that level of regulation, and are free to include or exclude students with relatively little constraint. However, the Legislature has required that public schools, including charter schools, serve all students, regardless of: (a) Race; (b) Gender; (c) Religion; (d) Ethnicity; or (e) Disability, of a pupil.²³ Moreover, district schools in Nevada are subject to requirements regarding curriculum, testing, and teacher standards. Participating entities in SB 302 do not have to meet these requirements. Despite the fact that

²¹ Rosen, J. (2015, September 2) . Johns Hopkins Sociologist Challenges Common Assumptions About School Choice. *Hub*.

²² Organisation for Economic Co-Operation and Development. (2014). *Pisa 2012 Results: What Makes Schools Successful (Volume Iv)* (Vol. Paris): OECD Publishing.

²³ N.R.S. § 386.580 (3); N.R.S. §§ 388.450; 388.520; 388.405; 388.407.

these two sectors are subject to significantly different regulations and requirements, they are being positioned to compete for students and the portable funding they bring.

23. Virtually all the research of which I am aware on school choice and organizational behavior suggests that this may promote more segregated patterns of student sorting by race, ethnicity, socio-economic status, and academic ability, as autonomous schools are funded and incentivized to serve more advantaged students. Autonomous schools receiving voucher funding compete not by improving educational outcomes, but by capitalizing on their autonomy to select more advantaged and higher performing students, leaving disadvantaged and lower performing students to the public schools required to accept them. SB 302 stands out for its lack of (a) basic measures of quality control for education providers, and (b) safeguards for the equitable treatment of students using these public funds to pursue an education. While other states have put in place non-discrimination requirements and certain academic requirements for educational service providers in voucher systems, SB 302 imposes almost no similar requirements. As such, the segregative effects typically seen with choice programs may be more pronounced under SB 302.

III. Conclusion

24. The opinions presented in this expert's report are presented to a reasonable degree of professional certainty. The opinions offered above are based on the record available to me at this time, and are subject to revision based on review of additional information, data or testimony, as it may become available to me. These opinions are submitted with the knowledge of the penalty for perjury, and are true and correct.

Dated this 19th day of October, 2015.

By: 
DR. CHRISTOPHER LUBIENSKI

FIRST JUDICIAL DISTRICT COURT
IN AND FOR CARSON CITY, NEVADA

HELLEN QUAN LOPEZ, individually and on
behalf of her minor child, C.Q.; MICHELLE
GORELOW, individually and on behalf of her
minor children, A.G. and H.G.; ELECTRA
SKRYZDLEWSKI, individually and on behalf
of her minor child, L.M.; JENNIFER CARR,
individually and on behalf of her minor
children, W.C., A.C., and E.C.; LINDA
JOHNSON, individually and on behalf of her
minor child, K.J.; SARAH and BRIAN
SOLOMON, individually and on behalf of
their minor children, D.S. and K.S.,

Plaintiffs,

vs.

DAN SCHWARTZ, IN HIS OFFICIAL
CAPACITY AS TREASURER OF THE
STATE OF NEVADA,

Defendant.

Case No.: 150C002071B

Dept. No: II

DECLARATION OF PAUL JOHNSON

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I, PAUL JOHNSON, declare as follows:

1 1. I am the Chief Financial Officer (“CFO”) of White Pine County School District
2 (“White Pine”). I have been the CFO of White Pine for over 18 years and have served on a
3 number of panels and task forces to evaluate the funding formula for the Nevada public school
4 system. I make this declaration based on personal knowledge and experience. If called as a
5 witness, I could and would competently testify to the facts set forth herein.

6 2. As CFO of White Pine, I have personal knowledge of the management of White
7 Pine’s yearly budget. I have also read SB 302 and the proposed regulations and analyzed the
8 potential impact of SB 302 on White Pine.

9 3. White Pine is a smaller rural school district serving around 1,200 Nevada students.
10 It is similar in size to Lander and Lincoln counties, serving more students than Esmeralda, Eureka,
11 Mineral, Pershing, Storey, and University, but fewer than Clark County, Elko, Washoe, and
12 others.

13 4. Public schools in Nevada are funded through the “Nevada Plan.” White Pine and
14 other school districts in Nevada receive funding from two sources under the Nevada Plan: (i) the
15 State, via the State Distributive School Account (“DSA”); and (ii) local funds, via the Local
16 School Support Tax and ad valorem taxes. School districts also receive certain funds outside of
17 the Nevada Plan through local and other sources. Under the Nevada Plan, the State determines a
18 guaranteed amount of funding (the “basic support guarantee”) for each local school district. A
19 school district’s total guaranteed support is calculated by multiplying the basic support guarantee
20 per pupil by the average daily enrollment of pupils enrolled in a school district (with different
21 weights given to different students), as calculated and reported on a quarterly basis (on October 1,
22 January 1, April 1, and July 1). The State then appropriates from the DSA to school districts the
23 difference between the total guaranteed support and local funds available to the district. In other
24 words, the DSA covers only a portion of a school district’s per-pupil expenditures. For example,
25 White Pine’s basic support guarantee for fiscal year 2015-2016 is \$7,799 per pupil. Using an
26 enrollment figure of approximately 1212 students for fiscal year 2015-2016, White Pine’s total
27 guaranteed support is \$9,452,388. Of that, around 58 percent, or \$4,485.50 per student, is funded
28 by the state through the DSA.

1 5. SB 302 and its proposed regulations allow students who have been enrolled in one
2 or more classes at a public school for 100 days to become eligible to receive between \$5,139 and
3 \$5,710 in funds originally appropriated for the public schools. A number of damaging scenarios
4 are possible:

5 a. First, students who leave the public schools after obtaining ESAs may no longer be
6 counted towards the school district's quarterly enrollment figure. Despite the fact
7 that those students will not be counted towards the school district's total enrollment
8 figures, funds for ESAs will be deducted from the school district's quarterly
9 apportionment from the DSA. If these assumptions are correct, SB 302 is likely to
10 have grave impacts, particularly on smaller school districts, where small shifts in
11 enrollment have a substantial impact on the operating budget of such districts. For
12 example, in White Pine, a decline of enrollment by 60 students, or about 5 percent,
13 would result in the reduction of White Pine's total guaranteed support by \$467,940
14 (\$7,799 multiplied by 60 students). In addition to a reduction in total guaranteed
15 support as a result of the decline in enrollment, White Pine's apportionment from
16 the DSA would be reduced by the amount of funds deposited in ESAs for those
17 students, or between \$300,000 and \$342,000. This would result in a total reduction
18 of funding of approximately \$783,000 to \$825,000. Total revenue would decline
19 by approximately 6.8 percent to 7.2 percent as the result of a 5 percent migration of
20 students to the voucher system.

21 b. Second, even if students who receive ESAs continue to be included in White Pine's
22 enrollment figure for purposes of calculating White Pine's total guaranteed support
23 (and I have no reason to believe they would), the reduction of funding to White
24 Pine will be significant. White Pine's apportionment from the DSA would still be
25 reduced by between \$5,139 and \$5,710 per pupil receiving an ESA. However, as
26 noted above, the State's portion of the basic support guarantee funding to White
27 Pine is only \$4,485.50 per student. Therefore, White Pine's apportionment from
28 the DSA would be reduced by more than the ordinary per-pupil allotment from the

1 State. In other words, if a child left the district without receiving an ESA, White
2 Pine's budget would be reduced by \$4,485 to reflect the declining enrollment
3 (subject to hold harmless provisions); however, for a student who leaves the district
4 after obtaining an ESA, White Pine's budget will be reduced by between \$5,139 to
5 \$5,710, or approximately an additional \$515 to \$1,215 beyond what it would
6 otherwise lose. Therefore, the loss of a student to an ESA does not result in a net-
7 neutral impact on the public schools, but rather a loss of funding due to a reduction
8 from the DSA apportionment on a more-than per-pupil basis.

9 6. Regardless of the precise mechanism by which ESA funds are removed from the
10 public schools' budgets, SB 302 will harm public schools and the students they serve. For
11 example, a school district will receive less than its projected funding for the year if students who
12 are enrolled in the prior school year elect to apply for an ESA and do not to return to public school
13 the following year. And, for students who enroll in the district for the first 100 days and then
14 leave, the district will receive the basic support guarantee for those students for the first half of the
15 year, but will have its funding reduced once the child leaves the school district. This will result in
16 a mid-year reduction of the district's operating budget.

17 7. Although White Pine's local funding will not be reduced as a result of SB 302,
18 White Pine and its students will still be harmed by the loss of DSA funding as a result of SB 302.
19 This is because if a student were to leave White Pine after obtaining an ESA, White Pine would
20 nevertheless maintain many of the fixed expenditures associated with educating that child.
21 Accordingly, a transfer of funds from a school district into an ESA is not a net neutral impact on
22 the public schools. Instead, if one or a handful of students leaves White Pine after obtaining an
23 ESA, White Pine still must run the same number of buses, employ the same number of
24 administrators, staff the same number of classes, maintain the same square footage of property.
25 These fixed costs remain the same even if certain students leave the school district, and those costs
26 are not recouped if the student leaves the school district.

27 8. For example, the cost of salary and benefits for a typical classroom teacher in
28 White Pine is approximately \$68,208. Imagine that teacher serves a classroom of 30 students, and

1 all of those students leave White Pine to obtain an ESA. In that circumstance, at least \$154,170 to
2 \$171,300 (30 x \$5,139 or 30 x \$5,710) would be deducted from White Pine's operating budget.
3 However, White Pine cannot easily eliminate a teacher in the middle of the school year without
4 significant disruption to the educational process. Also, pursuant to N.R.S. 391.3196, school
5 districts must notify teachers by May 1 if they will be reemployed for the ensuing school year.
6 These staffing decisions are made based on projected enrollment, and cannot be readily adjusted
7 during the school year. Even if White Pine were then able to eliminate the expense of the teacher
8 for that classroom, it would still have to reduce its budget by an additional \$81,792 to \$102,792.
9 Many of the school district's expenditures, however, are not easily reduced on a per-pupil basis.
10 In fact, the only costs which can be eliminated on a per-pupil basis are direct instructional costs.
11 At David E. Norman Elementary School, the average instructional cost for a student is \$2,187. A
12 reduction of revenue by \$5,139 to \$5,710 per pupil would therefore require White Pine to make an
13 additional budget cut of \$2,952 to \$3,523 per pupil across budget items which cannot be reduced
14 on a per-pupil basis. For example, a loss of 30 students may not reduce the need or number of
15 school counselors, school administrators, school resource officers, custodial staff, maintenance
16 personnel, groundskeepers, bus routes, bus drivers, nutrition programs, and other support services.

17 9. Even more challenging is that, in reality, a loss of 30 students would likely not
18 come from one classroom, but rather from a departure of a few students in different grade levels.
19 Demand would then diminish slightly per classroom, but that reduction in demand would not
20 directly correlate to a reduction in demand of one teaching position. For example, if one student
21 in a classroom of 30 leaves White Pine after obtaining an ESA, the school district loses \$5,139 to
22 \$5,710, but retains the full expense of the teacher salary, as that teacher is still needed for the
23 remaining 29 students. Likewise, White Pine cannot eliminate the bus used to transport that child,
24 the custodial staff used to maintain that child's classroom, or the nutritional staff used to provide
25 food service to that student. Accordingly, White Pine does not recoup the funding lost as a result
26 of an ESA through savings of no longer having to serve that student. To the contrary, White Pine
27 retains all of the fixed costs of educating that student. Because of fixed costs that cannot be
28

1 reduced, White Pine would be forced to eliminate other services, like extracurricular activities that
2 keep students invested in school, in order to make ends meet.

3 10. The potential reduction of revenue resulting from SB 302 is particularly daunting
4 for a small school district. White Pine, for example, is currently facing a critical financial time as
5 a result of recent changes in enrollment. White Pine already struggles on its meager budget to
6 provide diverse and interesting academic offerings beyond the core academic subjects to make its
7 schools competitive. White Pine also already lacks funding for instructional materials, technology
8 support, maintenance staff, and student transportation. It has outsourced custodial and nutrition
9 services in order to keep those programs, but those cuts are becoming more and more difficult to
10 make. If White Pine were to lose additional students and funding as a result of SB 302, there
11 would be substantial impacts to students in the district.

12 11. If funding declines in the coming years as a result of SB 302, White Pine will
13 begin seriously considering closing schools because it will not be able to afford the overhead
14 required to maintain those facilities. As one such example, White Pine may be required to close
15 White Pine Middle School, and send students in grades six through eight to either White Pine
16 High School or David E. Norman Elementary School. Class sizes for grades four through twelve
17 would balloon, as White Pine would not be able to afford to take on or hire new teachers, and
18 Nevada law requires White Pine to maintain smaller class sizes in kindergarten through third
19 grade.

20 12. SB 302 will also negatively impact school districts to the extent it causes changes
21 in enrollment during the school year. As noted above, school districts receive, each quarter, an
22 amount calculated based on the quarterly enrollment figure for the immediately preceding quarter
23 of the school year. In part as a result of SB 302, which creates incentives for students to leave the
24 school district after 100 days, a school district's quarterly enrollment figure will change
25 throughout the year. Children who are enrolled for the first 100 days in the district but then leave
26 after receiving ESAs will be counted in the average daily enrollment for the count days on October
27 1 and January 1, but will not be counted on April 1 and July 1. Although there is a hold harmless
28 provision which provides that, if there has been an enrollment decrease from the same quarter of

1 the immediately preceding school year of 5 percent or more, a school district will maintain
2 funding in the amount of for the same quarter of the immediately preceding year, that hold
3 harmless provision will not eliminate the negative impact of SB 302, for three reasons:

- 4 a. First, the hold harmless provision will not protect districts who lose less than 5
5 percent of students as a result of SB 302 because it does not account for reductions
6 of less than five percent enrollment. Accordingly, for school districts that lose less
7 than 5 percent of their enrollment to SB 302, the budgetary allotment will be
8 adjusted on a quarterly basis, without any hold harmless provision for students who
9 leave the district after the first 100 days of school to obtain an ESA. As a result, a
10 school district's budgetary allotment will be reduced when any student applies for
11 and receives an ESA.
- 12 b. Second, quarterly budget fluctuations are likely to occur even for school districts
13 that lose more than 5 percent enrollment as a result of SB 302. If a school district,
14 over the course of the year, loses 5 percent of its students as a result of SB 302 over
15 the course of the year, there may not be a reduction of 5 percent or more in any
16 given quarter. Because the hold harmless provision applies only if there has been a
17 reduction of 5 percent or more from *the same quarter* of the immediately preceding
18 school year but not from the average enrollment for the entire *prior year*, there will
19 still be fluctuations on a quarterly basis that are exacerbated by students leaving the
20 district to obtain ESAs after 100 days.
- 21 c. Third, even if the hold harmless provision applies, the result will be an increased
22 and unbudgeted-for demand on the DSA. That is, if the hold harmless provision
23 applies, the state will be required not only to apportion funds to school districts at a
24 rate that includes the students who have left to obtain ESAs, but also to pay for the
25 ESAs themselves. In other words, if 7 percent of White Pine's students leave to
26 obtain an ESA in a single quarter, the hold harmless provision will apply and the
27 state will be required to apportion funds to White Pine for that 7 percent, or
28 \$380,549.82 (\$4,485.50 [the state DSA per-pupil amount covered by the DSA in

1 White Pine] x 7 percent of 1212 [the approximate enrollment of students in White
2 Pine for fiscal year 2015-2016]). At the same time, and in addition, the state will
3 be required to fund ESAs in an amount between \$435,992.76 and \$484,436.40. As
4 a result, the demand on the DSA will likely exceed the amount appropriated by the
5 Legislature to the DSA. Ultimately, SB 302 will create a funding obligation which
6 competes with funding the public schools.

7 13. In the long term, SB 302 will introduce significant budgeting instability that will
8 harm students. School districts like White Pine will be faced with the prospect of planning for a
9 shifting landscape. As a result, White Pine will face the substantial challenge of projecting and
10 budgeting for changes in enrollment caused on a regular basis and in the middle of the school year
11 by SB 302. Even if White Pine were able to reduce staffing to compensate for declining
12 enrollment caused by SB 302 in the middle of the year, those changes would be incredibly
13 disruptive to a school community. Schools would be required to revise its course offerings,
14 change student schedules, and move students into different classrooms. Schools must also
15 consider whether the teacher certifications of the remaining teachers match the student population
16 need as well as whether the course offerings correspond with the curricular needs of students.
17 Making those changes in the middle of the year, or even from year to year, reduces the quality of
18 education that schools are able to provide.

19 I declare under penalty of perjury under the laws of Nevada that the foregoing is true and
20 correct. Dated this 19 day of October, 2015 in White Pine County, Nevada.

21 By: 

22 PAUL JOHNSON
23
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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, individually and
on behalf of her minor child, C.Q;
MICHELLE GORELOW, individually and
on behalf of her minor children, A.G. and
H.G.; ELECTRA SKRYZDLEWSKI,
individually and on behalf of her minor
child, L.M.; JENNIFER CARR,
individually and on behalf of her minor
children, W.C., A.C., and E.C.; LINDA
JOHNSON, individually and on behalf of
her minor child, K.J.; SARAH and BRIAN
SOLOMON, individually and on behalf of
their minor children, D.S. and K.S.,

Respondents.

Supreme Court No. 69611

District Court No. 15-0C-

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Mar 28 2016 09:50 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

RESPONDENTS' APPENDIX

VOLUME I

BATES RA 000001 through RA 000242

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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of March, 2016, a true and correct copy of the **RESPONDENTS' APPENDIX VOLUME I** was served upon all counsel of record by electronically filing the document using the Nevada Supreme Court's electronic filing system.

By /s/ Danielle Fresquez

Danielle Fresquez, an Employee of
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