

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

NO SOLAR TAX PAC, Appellant,
vs.
CITIZENS FOR SOLAR AND ENERGY
FAIRNESS, and BARBARA CEGAVSKE,
Secretary of State, Respondents.

No. _____

Electronically Filed
Apr 14 2016 08:40 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District First Department I
County Carson City Judge James Todd Russell
District Ct. Case No. 16 OC 00030 1B

2. Attorney filing this docketing statement:

Attorney Kevin Benson Telephone 775-461-3780
Firm White Hart Law
Address 2310 S. Carson Street #6
Carson City, NV 89701

Client(s) Appellant No Solar Tax PAC

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Jim Cavilia Telephone (775) 687-0202
Firm Allison MacKenzie
Address 402 N Division Street
Carson City, NV 89703

Client(s) CITIZENS FOR SOLAR AND ENERGY FAIRNESS

Attorney Lori Story Telephone (775) 684-1114
Firm Attorney General's Office
Address 100 N. Carson Street
Carson City, NV 89701

Client(s) Secretary of State Barbara Cegavske

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|--|--|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input checked="" type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input checked="" type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> Other disposition (specify): <u>NRS 295.061(1)</u> |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None.

8. Nature of the action. Briefly describe the nature of the action and the result below:

This is a challenge to a referendum petition brought pursuant to NRS 295.061 and 295.009. The complaint alleges that the referendum petition is invalid because it seeks to repeal only selected parts of a statute, which constitutes an attempt to "amend" the law instead of request an up or down vote on the law, and it is therefore an initiative petition, not a referendum, despite Nev. Const. Art. 19, § 1, which permits referenda on a statute "or any part thereof."

The complaint also asserted that the referendum petition's description of effect is inaccurate and misleading. See NRS 295.009.

The district court entered a final order finding that the referendum petition is not a valid referendum and is instead must be brought as an initiative. The district court entered declaratory relief that the referendum is invalid, and issued an injunction that it shall not be placed on any ballot.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Nev. Const. Art. 19, § 1 permits the people to run a referendum on a statute "or any part thereof." The principle issue is what the term "any part thereof" means.

This case involves a referendum petition which seeks to repeal those parts of 2015 Stat. Nev. Ch. 379 that authorized the PUC to impose new rates and charges on net metering customers that are different from the rates and charges it imposes on other ratepayers in the same class.

However, those parts of the statute are sprinkled through the law, rather than being neatly contained in their own section. Therefore the referendum attempts to repeal certain words and phrases in the statute that authorize or refer to the new rates and charges.

The district court held that this approach renders the referendum invalid, and that it should be deemed an initiative petition instead.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☒ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☒ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☒ A ballot question

If so, explain: This case involves interpreting the scope of the referendum and initiative powers under the Nevada Constitution, Article 19.

It involves an issue of first impression in Nevada, specifically, what the phrase "any part thereof" means as used in Nev. Const. Art. 19, § 1.

It is an issue of public policy because it will affect the scope of the voters' powers to reject laws they disagree with.

It involves a ballot question that, but for the district court's decision, would appear on the November, 2016 statewide ballot.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This case is presumptively retained in the Supreme Court pursuant to NRAP 17(a)(3), because it involves a ballot issue.

14. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from Apr 7, 2016

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served Apr 8, 2016

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed Apr 8, 2016

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input checked="" type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:
This is an appeal from a final judgment resolving all claims. NRAP 3A(b)(1).

It is also an appeal from an order granting an injunction NRAP 3A(b)(3).

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

CITIZENS FOR SOLAR AND ENERGY FAIRNESS, Plaintiff

NO SOLAR TAX PAC, Defendant

SECRETARY OF STATE, Defendant

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

N/A

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Plaintiff CITIZENS FOR SOLAR AND ENERGY FAIRNESS presented two claims: (1) that the Referendum petition is not a valid referendum, and is an initiative petition instead; and (2) that the Referendum's description of effect is invalid under NRS 295.009.

On April 7, 2016, the district court entered a written order disposing of all claims.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):
N/A

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

No Solar Tax PAC
Name of appellant

Kevin Benson
Name of counsel of record

Apr 11, 2016
Date


Signature of counsel of record

Carson City, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 11 day of April, 2016, I served a copy of this completed docketing statement upon all counsel of record:

- ☒ By personally serving it upon him/her; or
- ☐ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Jim Cavilia, Esq.
Allison MacKenzie
402 N Division Street
Carson City, NV 89703
Counsel for CITIZENS FOR SOLAR AND ENERGY FAIRNESS

Lori Story, Senior Deputy Attorney General
100 N. Carson Street
Carson City, NV 89701
Counsel for BARBARA CEGAVSKE, Nevada Secretary of State

Dated this 11 day of April, 2016


Signature

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REC'D & FILED

2016 FEB 16 PM 2:07

SUSAN MERRIWETHER
CLERK

BY  DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

CITIZENS FOR SOLAR AND
ENERGY FAIRNESS,
a Nevada Committee for Political Action,

Plaintiff,

vs.

NO SOLAR TAX PAC, a Nevada
Committee for Political Action,
BARBARA CEGAVSKE, in her Official
Capacity as the Nevada Secretary of State,

Defendants.

Case No. *160C000301B*

Dept No. *I*

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

(Arbitration exemption: Declaratory and Injunctive Relief Sought)

Plaintiff, CITIZENS FOR SOLAR AND ENERGY FAIRNESS, a Nevada committee for political action ("CSEF"), by and through its counsel, James R. Cavilia, Esq. and Justin Townsend, Esq. of Allison MacKenzie, Ltd. alleges and complains as follows:

GENERAL ALLEGATIONS

Parties and Venue

1. Plaintiff is now, and was at all times relevant herein, a registered committee for political action organized, existing and operating under the laws of the State of Nevada with the authority to

1 advocate for the passage or defeat of a statewide measure proposed by initiative or referendum in the
2 State of Nevada.

3 2. Defendant Barbara Cegavske, in her official capacity as the Secretary of State for the State
4 of Nevada, is the Chief Officer of Elections for the State of Nevada and is responsible for the
5 execution and enforcement of state and federal law relating to elections and initiative petitions in this
6 State.

7 3. NO SOLAR TAX PAC, is a Nevada committee for political action which caused to be
8 filed with the Nevada Secretary of State on January 25, 2016 a referendum petition regarding certain
9 provisions of Chapter 379, Statutes of Nevada (2015) as adopted by Senate Bill 374 from the 2015
10 legislative session, making revisions to Chapter 704 of the Nevada Revised Statutes ("Referendum"
11 or "Petition") (attached hereto as Exhibit 1).

12 4. The Referendum purports to refer to parts of Chapter 379, Statutes of Nevada (2015) to the
13 voters of Nevada.

14 5. Pursuant to NRS 295.061, venue and jurisdiction are appropriate in the First Judicial
15 District Court in Carson City, Nevada.

16 **General Allegations Common to All Claims for Relief**

17 6. The authority of the people of the State of Nevada to propose a referendum is coequal,
18 coextensive, and concurrent with the authority of the Nevada Legislature.

19 7. A petition to submit a statute or a part thereof to a vote of the people is authorized by
20 Subsection 1 of Section 1 of Article 19 of the Nevada Constitution.

21 8. This Petition purports to submit "a part" of a statute to a vote of the people.

22 9. By attempting to select individual clauses and phrases from the law to a vote of the people,
23 the petition amounts to an effort to amend the law not refer it to the voters for approval or
24 disapproval.

25 10. Because the Petition attempts to amend the law it should have been submitted as an
26 initiative petition rather than a referendum petition.

27 11. The Petition therefore violates and is inconsistent with Section 1 of Article 19 the Nevada
28 Constitution, as a referendum.

1 12. The "Explanation" at the beginning of the Petition, in part, provides as follows: "[m]atters
2 that have been **[Bolded, Bracketed and Underlined]** ("BB&U") are parts of Chapter 379, Statutes
3 of Nevada (2015) that are referred to the voters for their approval of disapproval."

4 13. This Explanation is unclear and misleading because there is no explanation or description
5 of what becomes of the parts of the law that are not bolded, bracketed and underlined. If the BB&U
6 language is approved by the voters, presumably defendant, No Solar Tax PAC, believes the language
7 that is not bolded, bracketed and underlined will remain valid and ultimately become statute when
8 codified.

9 14. The Explanation and the Referendum Petition itself fails to include any reference to the
10 portion of SB 374 that deleted portions of NRS 704.773.

11 15. By not including the portions of NRS 704.773 that were deleted by SB 374, the
12 Referendum Petition is ambiguous and misleading.

13 16. Failure to include any reference to the portion of SB 374 that deleted portions of NRS
14 704.773 shows that Petitioner's intent is to amend the law rather than disapprove it.

15 17. If, however, the Referendum is disapproved by the voters, the BB&U language will
16 apparently remain valid and become the law, leaving one to guess whether the language that is not
17 bolded, bracketed and underlined remains a valid or is somehow repealed. An outcome that results
18 in the repeal of the language that is not bolded, bracketed and underlined would make no sense and
19 would provide absolutely no certainty to the State officials charged with regulating public utilities,
20 the utility providers or the customers of an electric utility in Nevada.

21 18. The "Description of Effect" provides potentially signers of the Petition with no explanation
22 of what the effect will be if the Referendum is approved other than to state the BB&U language will
23 be repealed. Without such a clear and concise explanation of that effect, it will be impossible for a
24 signer to make a fully informed decision when presented with this referendum to sign.

25 19. Specifically, the Description of Effect included with the Petition provides:

26 This referendum asks voters to approve or disapprove portions of Chapter 379, Statutes of
27 Nevada (2015), that relate to net metering customers (solar, wind, and hydro-electric
28 customers, collectively "green energy customers"), such as homeowners with rooftop solar
panels. Previously, the Public Utilities Commission was required to treat green energy
customers the same as standard residential customers and ensure that they received a credit
for the excess electricity they produced at the retail rate. Recently, the Commission imposed

1 substantially increased fixed charges on green energy customers, reduced the value of the
2 energy they generate, and made green energy less affordable and even cost prohibitive for
3 some residential customers.

4 Signing this petition is a statement that you support repealing the new green energy rates
5 and charges and preserving net metering as the program has historically been implemented.

6 If a majority of voters disapprove of the new rates and charges imposed on green energy,
7 the bolded, bracketed, and underlined provisions of this referendum will be repealed. This
8 means net metering systems, which produce renewable energy, will continue to be available
9 to energy customers at reasonable rates.

10 20. Pursuant to NRS 295.009(1)(b), the Description of Effect is part of the referendum that
11 must include "a description of the effect of the initiative or referendum if the initiative or referendum
12 is approved by the voters."

13 21. In violation of NRS 295.009(1)(b), the Petition fails to understandably describe the effect
14 of the Referendum if it is approved by the voters.

15 22. The Description of Effect does not clearly explain what approval of the Referendum will
16 accomplish other than to imply that approval of the referendum will repeal the BB&U language.

17 23. The same sentence of the Description of Effect that states the BB&U language will be
18 repealed, begins with "[i]f a majority of voters disapprove of the new rates and charges imposed on
19 green energy rates, . . ."

20 24. This inclusion of "disapproval" language in the same sentence attempting to describe the
21 effect of the Referendum if it is approved by the voters is ambiguous and misleading.

22 25. Additionally, the Description of Effect includes no explanation of the effect of the
23 Referendum if the voters disapprove it.

24 26. A significant effect of approval of the Referendum, not addressed in the Description of
25 Effect, is that non-solar customers of electric utilities in Nevada will be subsidizing solar net
26 metering owners.

27 27. Does disapproval of repealing the BB&U language result in repeal of the language that is
28 not bolded, bracketed and underlined? The answer to this question is impossible to decipher from
either the introductory Explanation or the Description of Effect that are part of the Petition.

29 28. By attempting to amend rather than simply seeking approval or disapproval of a statute or a
distinct part thereof, the Petition is legally insufficient as a referendum under subsection 1 of section
1 of article 19 of the Nevada Constitution.

FIRST CLAIM FOR RELIEF

(Declaratory and Injunctive Relief)

Violation of Nev. Constitution Art. 19 Sec. 1

29. Section 1 of Article 19 of the Nevada Constitution allows for referral of a statute or resolution or part thereof to a vote of the people.

30. The Petition for Referendum described herein, through the selection of individual clauses and subsections of the law to be repealed, attempts to amend the statute rather than simply refer the statute or a part of the statute to a vote of the people.

31. The Petition for Referendum attempts to accomplish by referendum (amendment of a law) what can only be done by Initiative Petition pursuant to Section 2 of Article 19 of the Nevada Constitution.

32. The Petition for Referendum fails to comply with the requirements of Section 1 of Article 19 of the Nevada Constitution.

SECOND CLAIM FOR RELIEF

(Declaratory and Injunctive Relief)

Violation of NRS 295.009(1)(b)

33. NRS 295.009(1)(b) requires that a petition include "in no more than 200 words, a description of the effect of the initiative or referendum if the initiative or referendum is approved by the voters."

34. The Description of Effect in the Petition described herein fails to adequately describe the effect of the Referendum and is misleading to potential signers because the Referendum is actually an attempt to amend the law rather than refer the law or a part of the law to the voters for their approval.

35. Because this Petition is an improper attempt to amend a law by referendum, the Description of Effect is misleading and deficient.

36. Because the Description of Effect fails to comply with NRS 295.009, the Petition is invalid.

///

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. For an order declaring the Petition legally insufficient and invalid because it purports to amend a law by referendum rather than by initiative;
2. For an order declaring the Petition invalid because the Description of Effect in the Petition is misleading and deficient;
3. For an injunction permanently enjoining Defendant, Secretary of State, from taking any action related to the Petition, including, but not limited to, certifying the legal sufficiency of the Petition, verifying any signatures on the Petition or placing the Referendum on any ballot;
4. For attorney's fees and costs incurred pursuing this action; and
5. For such further relief as the Court deems just and proper.


AFFIRMATION

The undersigned does hereby affirm that the preceding document **DOES NOT** contain the social security number of any person.

DATED this 16th day of February, 2016.

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By: _____


JAMES R. CAVILIA, ESQ.
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JUSTIN TOWNSEND, ESQ.
Nevada State Bar No. 12293

Attorneys for Plaintiff,
CITIZENS FOR SOLAR AND
ENERGY FAIRNESS,
a Nevada Committee for Political Action

EXHIBIT

1

REFERENDUM ON CERTAIN PROVISIONS RELATED TO NET METERING
SET FORTH IN 2015 STATUTES OF NEVADA, CHAPTER 379

Explanation -- The following provisions are existing Nevada law. Matters that have been **Bolded, Bracketed, and Underlined** are parts of Chapter 379, Statutes of Nevada (2015) that are referred to the voters for their approval or disapproval.

Sec. 2.3. Chapter 704 of NRS is hereby amended by adding thereto a new section to read as follows:

1. **[Except as otherwise provided in subsection 3,] each utility shall, [in accordance with a tariff filed by the utility and approved by the Commission,] offer net metering to customer-generators who submit applications to install net metering systems within its service territory [after the date on which the cumulative capacity requirement described in paragraph (a) of subsection 1 of NRS 704.773 is met].**

[2. For the purposes of evaluating and approving any tariff filed with the Commission pursuant to subsection 1 and otherwise carrying out the provisions of this section, the Commission:

(a) May establish one or more rate classes for customer-generators.

(b) May establish terms and conditions for the participation by customer-generators in net metering, including, without limitation, limitations on enrollment in net metering which the Commission determines are appropriate to further the public interest.

(c) May close to new customer-generators a tariff filed pursuant to subsection 1 and approved by the Commission if the Commission determines that closing the tariff to new customer-generators is in the public interest.

(d) May authorize a utility to establish just and reasonable rates and charges to avoid, reduce or eliminate an unreasonable shifting of costs from customer-generators to other customers of the utility.

(e) Shall not approve a tariff filed pursuant to subsection 1 or authorize any rates or charges for net metering that unreasonably shift costs from customer-generators to other customers of the utility.

3. In approving any tariff submitted pursuant to subsection 1, the Commission shall determine whether and the extent to which any tariff approved or rates or charges authorized pursuant to this section are applicable to customer-generators who, on or before the date on which the cumulative capacity requirement described in paragraph (a) of subsection 1 of NRS 704.773 is met, submitted a complete application to install a net metering system within the service territory of a utility.]

FILED

JAN 25 2016 KLSM

Sec. 2.5. NRS 704.085 is hereby amended to read as follows:

704.085 1. [Except as otherwise provided in subsection 2,] an electric utility shall not make changes in any schedule or impose any rate, and the Commission shall not approve any changes in any schedule or authorize the imposition of any rate by an electric utility, which requires a residential customer to purchase electric service at a rate which is based on the time of day, day of the week or time of year during which the electricity is used or which otherwise varies based upon the time during which the electricity is used, except that the Commission may approve such a change in a schedule or authorize the imposition of such a rate if the approval or authorization is conditioned upon an election by a residential customer to purchase electric service at such a rate.

[2. The provisions of subsection 1 do not apply to any changes in a schedule or rates imposed on a customer-generator.]

3. As used in this section:

(a) "Customer-generator" has the meaning ascribed to it in NRS 704.768.

(b) "Electric utility" has the meaning ascribed to it in NRS 704.187.

Sec. 2.7. NRS 704.741 is hereby amended to read as follows:

704.741 1. A utility which supplies electricity in this State shall, on or before July 1 of every third year, in the manner specified by the Commission, submit a plan to increase its supply of electricity or decrease the demands made on its system by its customers to the Commission.

2. The Commission shall, by regulation:

(a) Prescribe the contents of such a plan, including, but not limited to, the methods or formulas which are used by the utility to:

(1) Forecast the future demands; and

(2) Determine the best combination of sources of supply to meet the demands or the best method to reduce them; and

(b) Designate renewable energy zones and revise the designated renewable energy zones as the Commission deems necessary.

3. The Commission shall require the utility to include in its plan:

(a) An energy efficiency program for residential customers which reduces the consumption of electricity or any fossil fuel and which includes, without limitation, the use of new solar thermal energy sources.

(b) A comparison of a diverse set of scenarios of the best combination of sources of supply to meet the demands or the best methods to reduce the demands, which must include at least one scenario of low carbon intensity that includes the deployment of distributed generation.

[(c) An analysis of the effects of the requirements of NRS 704.766 to 704.775, inclusive, and section 2.3 of this act on the reliability of the distribution system of

the utility and the costs to the utility to provide electric service to all customers. The analysis must include an evaluation of the costs and benefits of addressing issues of reliability through investment in the distribution system.]

4. The Commission shall require the utility to include in its plan a plan for construction or expansion of transmission facilities to serve renewable energy zones and to facilitate the utility in meeting the portfolio standard established by NRS 704.7821.

5. As used in this section:

(a) "Carbon intensity" means the amount of carbon by weight emitted per unit of energy consumed.

(b) "Renewable energy zones" means specific geographic zones where renewable energy resources are sufficient to develop generation capacity and where transmission constrains the delivery of electricity from those resources to customers.

Sec. 2.95. NRS 704.773 is hereby amended to read as follows:

704.773 1. A utility shall offer net metering[:

(a)] In accordance with the provisions of this section, NRS 704.774 and 704.775, to the customer-generators operating within its service area [until the date on which the cumulative capacity of all net metering systems for which all utilities in this State have accepted or approved completed applications for net metering is equal to 235 megawatts.

(b) After the date on which the cumulative capacity requirement described in paragraph (a) is met, in accordance with a tariff filed by the utility and approved by the Commission pursuant to section 2.3 of this act].

2. If the net metering system of a customer-generator who accepts the offer of a utility for net metering has a capacity of not more than 25 kilowatts, the utility:

(a) Shall offer to make available to the customer-generator an energy meter that is capable of registering the flow of electricity in two directions.

(b) May, at its own expense and with the written consent of the customer-generator, install one or more additional meters to monitor the flow of electricity in each direction.

(c) Except as otherwise provided in subsection 5, shall not charge a customer-generator any fee or charge that would increase the customer-generator's minimum monthly charge to an amount greater than that of other customers of the utility in the same rate class as the customer-generator.

3. If the net metering system of a customer-generator who accepts the offer of a utility for net metering has a capacity of more than 25 kilowatts, the utility:

(a) May require the customer-generator to install at its own cost:

(1) An energy meter that is capable of measuring generation output and customer load; and

(2) Any upgrades to the system of the utility that are required to make the net

metering system compatible with the system of the utility.

(b) Except as otherwise provided in paragraph (c) and subsection 5, may charge the customer-generator any applicable fee or charge charged to other customers of the utility in the same rate class as the customer-generator, including, without limitation, customer, demand and facility charges.

(c) Shall not charge the customer-generator any standby charge.

↳ At the time of installation or upgrade of any portion of a net metering system, the utility must allow a customer-generator governed by this subsection to pay the entire cost of the installation or upgrade of the portion of the net metering system.

4. If the net metering system of a customer-generator is a net metering system described in paragraph (b) or (c) of subsection 1 of NRS 704.771 and:

(a) The system is intended primarily to offset part or all of the customer-generator's requirements for electricity on property contiguous to the property on which the net metering system is located; and

(b) The customer-generator sells or transfers his or her interest in the contiguous property,

↳ the net metering system ceases to be eligible to participate in net metering.

5. A utility shall assess against a customer-generator:

(a) If applicable, the universal energy charge imposed pursuant to NRS 702.160;

(b) Any charges imposed pursuant to chapter 701B of NRS or NRS 704.7827 or 704.785 which are assessed against other customers in the same rate class as the customer-generator; and

(c) The charges or rates, if any, which the Commission determines must be assessed against the customer-generator pursuant to any tariff submitted to and approved by the Commission pursuant to section 2.3 of this act].

↳ For any such charges calculated on the basis of a kilowatt-hour rate, the customer-generator must only be charged with respect to kilowatt-hours of energy delivered by the utility to the customer-generator.

6. The Commission shall adopt regulations prescribing the form and substance for a net metering tariff and a standard net metering contract. The regulations must include, without limitation:

(a) The particular provisions, limitations and responsibilities of a customer-generator which must be included in a net metering tariff with regard to:

(1) Metering equipment;

(2) Net energy metering and billing; and

(3) Interconnection,

↳ based on the allowable size of the net metering system.

(b) The particular provisions, limitations and responsibilities of a customer-generator and the utility which must be included in a standard net metering contract.

(c) A timeline for processing applications and contracts for net metering applicants.

(d) Any other provisions the Commission finds necessary to carry out the provisions of NRS 704.766 to 704.775, inclusive, and section 2.3 of this act.

Sec. 4.5. 1. [Each utility shall, on or before July 31, 2015, file with the Public Utilities Commission of Nevada a tariff required by section 2.3 of this act and a cost-of-service study.

2. The tariff filed pursuant to subsection 1 must establish the terms and conditions for net metering service for customer-generators who submit an application to the utility to install net metering systems within the service territory of the utility after the date on which the tariff takes effect. The terms and conditions of service must include, without limitation, the rates the utility must charge for providing electric service to customer-generators.

3. The rates included in the terms and conditions of service established pursuant to subsection 2 may include, without limitation:

(a) A basic service charge that reflects marginal fixed costs incurred by the utility to provide service to customer-generators;

(b) A demand charge that reflects the marginal demand costs incurred by the utility to provide service to customer-generators; and

(c) An energy charge that reflects the marginal energy costs incurred by the utility to provide service to customer-generators.

↳The charges included pursuant to this subsection must adequately reflect the marginal costs of providing service to customer-generators.

4. The Public Utilities Commission of Nevada shall, in accordance with the provisions of section 2.3 of this act, conduct a review of each tariff filed by a utility pursuant to subsection 1 and issue a written order approving or disapproving, in whole or in part, the proposed tariff not later than December 31, 2015. The Commission may make modifications to the tariff, including modifications to the rate design and the terms and conditions of net metering services to customer-generators. A tariff approved pursuant to this section must not take effect until after the date on which the cumulative capacity requirement described in paragraph (a) of subsection 1 of NRS 704.773 is met.

5. Except as otherwise provided in subsection 6, if for any reason the Commission does not approve a tariff as required by subsection 4 on or before December 31, 2015, and notwithstanding the amendatory provisions of this act to the contrary, for the period beginning January 1, 2016, and ending on the date on which the Commission approves a tariff pursuant to section 2.3 of this act, a utility shall offer net metering to customer-generators in a manner consistent with the provisions of NRS 704.773, 704.774 and 704.775 as those sections existed before the

effective date of this act.

6. If a court of competent jurisdiction issues an order prohibiting the Commission from issuing a written order or approving a tariff as required by subsection 4, or staying or prohibiting the enforcement of a written order or tariff issued or approved pursuant thereto, an electric utility is not required to offer net metering after the date on which the cumulative capacity requirement described in paragraph (a) of subsection 1 of NRS 704.773 is met until after the date on which the order of the court has been lifted.

7. As used in this section:]

(a) "Customer-generator" has the meaning ascribed to it in NRS 704.768.

[(b) "Demand costs" means those costs associated with the maximum load requirement of a customer, such as kilowatt or kilo- volt amperes, and which are typically represented by the electric utility's investment in generating units, transmission facilities and the distribution system.]

(c) "Energy costs" means those costs associated with a customer's requirement for a volume of energy, such as fuel and purchased power costs.

(d) "Fixed costs" means those investments and expenses that do not vary with output and which typically reflect the electric utility's investment in back office systems, customer facilities, customer- related expenses and labor costs.]

(e) "Net metering" has the meaning ascribed to it in NRS 704.769.

(f) "Net metering system" has the meaning ascribed to it in NRS 704.771.

(g) "Utility" has the meaning ascribed to it in NRS 704.772.

DESCRIPTION OF EFFECT

This referendum asks voters to approve or disapprove portions of Chapter 379, Statutes of Nevada (2015), that relate to net metering customers (solar, wind, and hydro-electric customers, collectively "green energy customers"), such as homeowners with rooftop solar panels. Previously, the Public Utilities Commission was required to treat green energy customers the same as standard residential customers and ensure that they received a credit for the excess electricity they produced at the retail rate. Recently, the Commission imposed substantially increased fixed charges on green energy customers, reduced the value of the energy they generate, and made green energy less affordable and even cost prohibitive for some residential customers.

Signing this petition is a statement that you support repealing the new green energy rates and charges and preserving net metering as the program has historically been implemented.

If a majority of voters disapprove of the new rates and charges imposed on green energy, the bolded, bracketed, and underlined provisions of this referendum will be repealed. This means net metering systems, which produce renewable energy, will continue to be available to energy customers at reasonable rates.

County of _____
Petition District: _____

(Only registered voters of this county may sign below)
(Only registered voters of this petition district may sign below)

This space for
Office Use Only

1	PRINT YOUR NAME (first, initial, last)	RESIDENCE ADDRESS ONLY		
	YOUR SIGNATURE DATE / /	CITY	COUNTY	PETITION DISTRICT
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16	PRINT YOUR NAME (first, initial, last)	RESIDENCE ADDRESS ONLY		
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(Only registered voters of this county may sign below)

Petition District: _____

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22	PRINT YOUR NAME (first, initial, last)		RESIDENCE ADDRESS ONLY			
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23	PRINT YOUR NAME (first, initial, last)		RESIDENCE ADDRESS ONLY			
	YOUR SIGNATURE	DATE / /	CITY	COUNTY	PETITION DISTRICT	

AFFIDAVIT OF CIRCULATOR

(To be signed by circulator in the presence of a notary public)

STATE OF NEVADA)

)

County of _____)

I, _____, (print name), being first duly sworn under penalty of perjury, depose and say: (1) that I reside at _____ (print street, city and state); (2) that I am 18 years of age or older; (3) that I personally circulated this document; (4) that all signatures were affixed in my presence; (5) that the number of signatures affixed thereon is _____; and (6) that each person who signed had an opportunity before signing to read the full text of the act or resolution on which the initiative or referendum is demanded.

Signature of Circulator

Subscribed and sworn to or affirmed before me this

_____ day of _____, 2016, by _____.

Notary Public

REC'D & FILED

2016 APR -7 AM 9:41

SUSAN MERRIWETHER

BY

CLERK

DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

CITIZENS FOR SOLAR AND ENERGY
FAIRNESS, a Nevada Committee for
Political Action,

Plaintiff,

vs.

NO SOLAR TAX PAC, a Nevada
Committee for Political Action,
BARBARA CEGAVSKE, in her Official
Capacity as the Nevada Secretary of State,

Defendants.

Case No. 16 OC 00030 1B

Dept No. I

ORDER

A Referendum Petition was filed with the Elections Division of the Nevada Office of Secretary of State on January 25, 2016, by defendant, NO SOLAR TAX PAC, a Nevada committee for political action, purporting to refer portions of Chapter 379, Statutes of Nevada (2015) to Nevada voters for approval or disapproval. On February 16, 2016, Plaintiff, CITIZENS FOR SOLAR AND ENERGY FAIRNESS, a Nevada committee for political action, filed Complaint for Declaratory and Injunctive Relief claiming, among other things, that the subject Referendum Petition fails to qualify as a referendum under Article 19, Section 1 of the Nevada Constitution, and the Referendum Petition's description of effect is misleading and fails to disclose all material effects if it is approved by the voters.

1 Having read all of the pleading and papers on file herein and the relevant law applicable to
2 the issues related to this matter as well as conducting an oral argument March 28, 2015, with all of
3 the parties represented, the Court finds and concludes as follows:

4
5 1. The subject Referendum Petition proposes a substantial change to the law and not a
6 yay or nay vote on a statute or part thereof;

7 2. The subject Referendum Petition does not present a yay or nay vote on a part of a
8 statute, but rather systematic changes to various portions and words of the statute in a piecemeal
9 approach; and

10
11 3. The subject Referendum Petition is not a referendum as provided for in Article 19,
12 Section 1 of the Nevada Constitution, but is actually an attempt to amend the statute which requires
13 an initiative pursuant to Article 19, Section 2 of the Nevada Constitution.

14 BASED UPON the findings herein and good cause appearing, **IT IS HEREBY ORDERED**

15
16 1. That the subject Referendum Petition is invalid as a referendum pursuant to Article
17 19, Section 1 of the Nevada Constitution.

18 2. That the Declaratory Relief and Injunction requested by Plaintiff is hereby
19 GRANTED in its entirety on the merits.

20
21 3. That the Injunction granted herein shall be stayed pending the outcome of an appeal,
22 allowing defendant, NO SOLAR TAX PAC, to obtain signatures on the Petition. Pending the
23 outcome of an appeal of this Order, the Secretary of State and the county clerks and registrars of
24 voters shall not be enjoined from processing the Petition to determine if the Petition has obtained
25 enough signatures to qualify for the ballot.

26 **IT IS SO ORDERED** this 17 day of April, 2016.

27
28 
DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 7th day of April, 2016, I served a true and correct copy of the foregoing Order via email transmission addressed as follows:

Jim Cavilia, Esq.

Justin M. Townsend, Esq.

jcavilia@allisonmackenzie.com; jtownsend@allisonmackenzie.com;

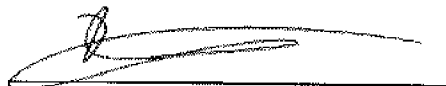
sprice@allisonmackenzie.com

Lori Story, Esq.

lstory@ag.nv.gov; dwright@ag.nv.gov

Kevin Benson, Esq.

kbenson@whitehartlaw.com



Angela Jeffries
Judicial Assistant, Dept. 1

ALLISON MacKENZIE, LTD.
402 North Division Street, P.O. Box 646, Carson City, NV 89702
Telephone: (775) 687-0202 Fax: (775) 882-7918
E-Mail Address: law@allisonmackenzie.com

JAMES R. CAVILIA, ESQ.
Nevada State Bar No. 3921
Email: JCavilia@allisonmackenzie.com
JUSTIN TOWNSEND, ESQ.
Nevada State Bar No. 12293
Email: JTownsend@allisonmackenzie.com
ALLISON MacKENZIE, LTD.
402 North Division Street
Carson City, NV 89703
Telephone: (775) 687-0202
Facsimile: (775) 882-7918

Attorneys for Plaintiff

**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY**

CITIZENS FOR SOLAR AND ENERGY
FAIRNESS, a Nevada Committee for
Political Action,

Plaintiff,

vs.

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BARBARA CEGAVSKE, in her Official
Capacity as the Nevada Secretary of State,

Defendants.

Case No. 16 OC 00030 1B

Dept No. I


NOTICE OF ENTRY OF ORDER

NOTICE IS HEREBY GIVEN that on the 7th day of April, 2016, the Court duly entered an Order. A copy of said Order is attached hereto.

DATED this 8th day of April, 2016.

ALLISON MacKENZIE, LTD.
402 North Division Street
P.O. Box 646
Carson City, NV 89702

By:


JAMES R. CAVILIA, ESQ.
Nevada State Bar No. 3921
Attorneys for Plaintiff,
CITIZENS FOR SOLAR AND ENERGY
FAIRNESS

REC'D & FILED

2016 APR -8 PM 2: 54

SUSAN MERRIWETHER
CLERK

BY  DEPUTY

ALLISON MacKENZIE, LTD.
402 North Division Street, P.O. Box 646, Carson City, NV 89702
Telephone: (775) 687-0202 Fax: (775) 882-7918
E-Mail Address: law@allisonmackenzie.com

CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be served to all parties to this action by:

X Placing a true copy thereof in a sealed postage prepaid envelope in the United States
Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]
 Hand-delivery - via Reno/Carson Messenger Service [NRCP 5(b)(2)(A)]
 Facsimile
X E-Mail
 Federal Express, UPS, or other overnight delivery
 E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures
[NRCP 5(b)(2)(D)]

fully addressed as follows:

Kevin Benson, Esq.
White Hart Law
2310 S. Carson Street #6
Carson City, NV 89701
Email: Kbenson@whitehartlaw.com

Lori M. Story
Senior Deputy Attorney General
100 North Carson Street
Carson City, NV 89701-4717
Email: lstory@ag.nv.gov
Email: dwright@ag.nv.gov

DATED this 8th day of April, 2016.

Susan Price
SUSAN PRICE

REC'D & FILED

2016 APR -7 AM 9:41

SUSAN MERRIWETHER
CLERK

BY [Signature]
DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

CITIZENS FOR SOLAR AND ENERGY
FAIRNESS, a Nevada Committee for
Political Action,

Plaintiff,

vs.

NO SOLAR TAX PAC, a Nevada
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BARBARA CEGAVSKE, in her Official
Capacity as the Nevada Secretary of State,

Defendants.

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ORDER

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1 Having read all of the pleading and papers on file herein and the relevant law applicable to
2 the issues related to this matter as well as conducting an oral argument March 28, 2015, with all of
3 the parties represented, the Court finds and concludes as follows:

4 1. The subject Referendum Petition proposes a substantial change to the law and not a
5 yay or nay vote on a statute or part thereof;

6 2. The subject Referendum Petition does not present a yay or nay vote on a part of a
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9

10 3. The subject Referendum Petition is not a referendum as provided for in Article 19,
11 Section 1 of the Nevada Constitution, but is actually an attempt to amend the statute which requires
12 an initiative pursuant to Article 19, Section 2 of the Nevada Constitution.
13

14 **BASED UPON the findings herein and good cause appearing, IT IS HEREBY ORDERED**

15 1. That the subject Referendum Petition is invalid as a referendum pursuant to Article
16 19, Section 1 of the Nevada Constitution.

17 2. That the Declaratory Relief and Injunction requested by Plaintiff is hereby
18 GRANTED in its entirety on the merits.

19 3. That the Injunction granted herein shall be stayed pending the outcome of an appeal,
20 allowing defendant, NO SOLAR TAX PAC, to obtain signatures on the Petition. Pending the
21 outcome of an appeal of this Order, the Secretary of State and the county clerks and registrars of
22 voters shall not be enjoined from processing the Petition to determine if the Petition has obtained
23 enough signatures to qualify for the ballot.

24 **IT IS SO ORDERED** this 14 day of April, 2016.

25
26 
27 DISTRICT COURT JUDGE
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 7th day of April, 2016, I served a true and correct copy of the foregoing Order via email transmission addressed as follows:

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Justin M. Townsend, Esq.

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sprice@allisonmackenzie.com

Lori Story, Esq.

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Kevin Benson, Esq.

kbenson@whitehartlaw.com



Angela Jeffries

Judicial Assistant, Dept. 1