

# Exhibit D

**A. J. R. 11—Swackhamer, Feb. 23.**

**Summary—Proposes to amend the Nevada Constitution by clarifying the Initiative and Referendum provisions. (BDR C-613)**

**Feb. 23—Read first time. Referred to Committee on Judiciary. To printer.**

**Feb. 24—From printer. To committee.**

**Mar. 10—From committee: Do pass. Declared an emergency measure under the Constitution. Read third time. Passed. Title approved. To Senate.**

**Mar. 11—In Senate. Read first time. Referred to Committee on Judiciary. To committee. From committee: Do pass. Declared an emergency measure under the Constitution. Read third time. Passed. Title approved. To Assembly. In Assembly. To enrollment.**

**Mar. 14—Enrolled and delivered to Secretary of State. File No. 35.**

ASSEMBLY JOINT RESOLUTION NO. 11—  
MR. SWACKHAMER

FEBRUARY 23, 1960

Referred to Committee on Judiciary

SUMMARY—Proposes to amend the Nevada constitution by clarifying the initiative and referendum provisions. (BDR C-613)

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

ASSEMBLY JOINT RESOLUTION—Proposing to amend article XIX of the constitution of the State of Nevada, relating to initiative and referendum, by clarifying the provisions of such article.

1 *Resolved by the Assembly and Senate of the State of Nevada, jointly,*  
2 That article XIX of the constitution of the State of Nevada be  
3 amended to read as follows:

4  
5 [ARTICLE XIX

6 SECTION 1. Whenever ten per centum or more of the voters of this  
7 State, as shown by the number of votes cast at the last preceding  
8 general election, shall express their wish that any law or resolution  
9 made by the Legislature be submitted to a vote of the people, the  
10 officers charged with the duties of announcing and proclaiming elec-  
11 tions and of certifying nominations or questions to be voted on, shall  
12 submit the question of the approval or disapproval of said law or  
13 resolution to be voted on at the next ensuing election wherein a State  
14 or Congressional officer is to be voted for, or wherein any question may  
15 be voted on, by the electors of the entire State.

16 SEC. 2. When a majority of the electors voting at a State election  
17 shall by their votes signify approval of a law or resolution such law  
18 or resolution shall stand as the law of the State and shall not be over-  
19 ruled, annulled, set aside, suspended, or in any way made inoperative  
20 except by the direct vote of the people. When such majority shall so  
21 signify disapproval the law or resolution so disapproved shall be void  
22 and of no effect.

23 SEC. 3. The people reserve to themselves the power to propose laws  
24 and the power to propose amendments to the constitution and to enact  
25 or reject the same at the polls, independent of the legislature, and

1 also reserve the power at their option to approve or reject at the polls,  
2 in the manner herein provided, any act, item, section or part of any  
3 act or measure passed by the legislature, and section one of article  
4 four of the constitution shall hereafter be considered accordingly. The  
5 first power reserved by the people is the initiative. The initiative peti-  
6 tion shall be proposed by not less than ten per cent (10%) of the  
7 qualified electors of each of not less than seventy five per cent (75%)  
8 of the counties in the state, provided, however, that the total number  
9 of qualified electors proposing the said petition shall be not less than  
10 ten per cent (10%) of all of the qualified electors of the State. Every  
11 such petition shall include the full text of the measure so proposed.  
12 Each signer shall affix thereto his or her signature, place of residence  
13 and the county within which he or she is a qualified elector. Each  
14 document comprising the initiative petition filed with the Secretary  
15 of State shall have affixed thereto, an affidavit made by one of the  
16 signers to each of said documents or to the petition, to the effect that  
17 all of the signatures are genuine and that each and every individual  
18 who signed his or her name thereto was at the time that he or she  
19 signed the petition a bonafide qualified elector of the respective county  
20 and the State of Nevada, said affidavit to be executed before a Notary  
21 Public or some officer authorized to administer an oath who possesses  
22 a seal. Initiative petitions, for all but municipal legislation, shall be  
23 filed with the secretary of state not less than thirty (30) days before  
24 any regular session of the legislature; the secretary of state shall trans-  
25 mit the same to the legislature as soon as it convenes and organizes.  
26 Such initiative measure shall take precedence over all measures of the  
27 legislature except appropriation bills, and shall be enacted or rejected  
28 by the legislature, without change or amendment, within forty (40)  
29 days. If any such initiative measure so proposed by petition as afore-  
30 said, shall be enacted by the legislature and approved by the governor  
31 in the same manner as other laws are enacted, same shall become a law,  
32 but shall be subject to referendum petition as provided in sections  
33 one and two of this article. If said initiative measure be rejected by  
34 the legislature, or if no action be taken thereon within said forty (40)  
35 days, the secretary of state shall submit the same to the qualified elec-  
36 tors for approval or rejection at the next ensuing general election;  
37 and if a majority of the qualified electors voting thereon shall approve  
38 of such measure it shall become a law and take effect from the date of  
39 the official declaration of the vote; an initiative measure so approved  
40 by the qualified electors shall not be annulled, set aside or repealed by  
41 the legislature within three (3) years from the date said act takes  
42 effect. In case the legislature shall reject such initiative measure, said  
43 body may, with the approval of the governor, propose a different  
44 measure on the same subject, in which event both measures shall be  
45 submitted by the secretary of state to the qualified electors for approval  
46 or rejection at the next ensuing general election. The enacting clause  
47 of all bills proposed by the initiative shall be: "The people of the State  
48 of Nevada do enact as follows." The total number of votes cast at the  
49 general election last preceding the filing of any initiative petition shall



1 be the basis on which the number of qualified electors required to sign  
2 such petition shall be counted. The second power reserved by the  
3 people is the referendum, which shall be exercised in the manner pro-  
4 vided in sections one and two of this article. The initiative and refer-  
5 endum powers in this article provided for are further reserved to the  
6 qualified electors of each county and municipality as to all local, special  
7 and municipal legislation of every character in or for said respective  
8 counties or municipalities. The legislature may provide by law for  
9 the manner of exercising the initiative and referendum powers as to  
10 county and municipal legislation, but shall not require a petition of  
11 more than 10 per cent (10%) of the qualified electors to order the  
12 referendum, nor more than 15 per cent (15%) to propose any municipi-  
13 pal measure by initiative. If the conflicting measures submitted to the  
14 people at the next ensuing general election shall both be approved by  
15 a majority of the votes severally cast for and against each of said  
16 measures, the measure receiving the highest number of affirmative  
17 votes shall thereupon become a law as to all conflicting provisions. The  
18 provisions of this section shall be self-executing, but legislation may  
19 be especially enacted to facilitate its operation.]

## ARTICLE 19.

### *Initiative and Referendum*

23 SECTION 1. 1. *Whenever a number of registered voters of this*  
24 *state equal to 10 percent or more of the number of voters who voted*  
25 *at the last preceding general election shall express their wish by filing*  
26 *a petition in the form provided for in section 3 of this article that*  
27 *any statute or resolution or any part thereof enacted by the legis-*  
28 *lature be submitted to a vote of the people, the officers charged with*  
29 *the duties of announcing and proclaiming elections and of certifying*  
30 *nominations or questions to be voted upon shall submit the question*  
31 *of approval or disapproval of such statute or resolution or any part*  
32 *thereof to a vote of the voters at the next succeeding election at which*  
33 *such question may be voted upon by the registered voters of the entire*  
34 *state.*

35 2. *If a majority of the voters voting upon the proposal submitted*  
36 *at such election votes approval of such statute or resolution or any*  
37 *part thereof, such statute or resolution or any part thereof shall*  
38 *stand as the law of the state and shall not be amended, annulled,*  
39 *repealed, set aside, suspended or in any way made inoperative except*  
40 *by the direct vote of the people. If a majority of such voters votes*  
41 *disapproval of such statute or resolution or any part thereof, such*  
42 *statute or resolution or any part thereof shall be void and of no*  
43 *effect.*

44 SEC. 2. 1. *Notwithstanding the provisions of section 1 of article*  
45 *4 of this constitution, the people reserve to themselves the power to*  
46 *propose, by initiative petition, statutes and amendments to statutes*  
47 *and amendments to this constitution, and to enact or reject them at the*  
48 *polls.*

49 2 *An initiative petition shall be in the form required by section 3*

1 of this article and shall be proposed by a number of registered voters  
2 equal to 10 percent or more of the number of voters who voted at the  
3 last preceding general election in not less than 75 percent of the  
4 counties in the state, but the total number of registered voters sign-  
5 ing the initiative petition shall be equal to 10 percent or more of  
6 the voters who voted in the entire state at the last preceding general  
7 election.

8 3. If the initiative petition proposes a statute or an amendment to  
9 a statute, it shall be filed with the secretary of state not less than 30  
10 days prior to any regular session of the legislature. The secretary of  
11 state shall transmit such petition to the legislature as soon as the  
12 legislature convenes and organizes. The petition shall take precedence  
13 over all other measures except appropriation bills, and the statute  
14 or amendment to a statute proposed thereby shall be enacted or  
15 rejected by the legislature without change or amendment within 40  
16 days. If the proposed statute or amendment to a statute is enacted by  
17 the legislature and approved by the governor in the same manner as  
18 other statutes are enacted, such statute or amendment to a statute  
19 shall become law, but shall be subject to referendum petition as pro-  
20 vided in section 1 of this article. If the statute or amendment to a  
21 statute is rejected by the legislature, or if no action is taken thereon  
22 within 40 days, the secretary of state shall submit the question of  
23 approval or disapproval of such statute or amendment to a statute to a  
24 vote of the voters at the next succeeding general election. If a majority  
25 of the voters voting on such question at such election votes approval  
26 of such statute or amendment to a statute, it shall become law and  
27 take effect upon completion of the canvass of votes by the supreme  
28 court. An initiative measure so approved by the voters shall not be  
29 amended, annulled, repealed, set aside or suspended by the legislature  
30 within 3 years from the date it takes effect. If a majority of such  
31 voters votes disapproval of such statute or amendment to a statute,  
32 no further action shall be taken on such petition. If the legislature  
33 rejects such proposed statute or amendment, the governor may recom-  
34 mend to the legislature and the legislature may propose a different  
35 measure on the same subject, in which event, after such different meas-  
36 ure has been approved by the governor, the question of approval or  
37 disapproval of each measure shall be submitted by the secretary of  
38 state to a vote of the voters at the next succeeding general election.  
39 If the conflicting provisions submitted to the voters are both approved  
40 by a majority of the voters voting on such measures, the measure  
41 which receives the largest number of affirmative votes shall thereupon  
42 become law.

43 4. If the initiative petition proposes an amendment to the constitu-  
44 tion, it shall be filed with the secretary of state not less than 60 days  
45 before any regular general election at which the question of approval  
46 or disapproval of such amendment may be voted upon by the voters  
47 of the entire state. The secretary of state shall cause to be published  
48 in a newspaper of general circulation, on three separate occasions, in  
49 each county in the state, together with any explanatory matter which

1 shall be placed upon the ballot, the entire text of the proposed amend-  
2 ment. If a majority of the voters voting on such question at such  
3 election votes disapproval of such amendment, no further action shall  
4 be taken on the petition. If a majority of such voters votes approval  
5 of such amendment, the secretary of state shall publish and resubmit  
6 the question of approval or disapproval to a vote of the voters at the  
7 next succeeding general election in the same manner as such question  
8 was originally submitted. If a majority of such voters votes disapproval  
9 of such amendment, no further action shall be taken on such petition.  
10 If a majority of such voters votes approval of such amendment, it shall  
11 become a part of this constitution upon completion of the canvass of  
12 votes by the supreme court.

13 SEC. 3. Each referendum petition and initiative petition shall  
14 include the full text of the measure proposed. Each signer shall affix  
15 thereto his or her signature, residence address and the name of the  
16 county in which he or she is a registered voter. The petition may con-  
17 sist of more than one document, but each document shall have affixed  
18 thereto an affidavit made by one of the signers of such document to the  
19 effect that all of the signatures are genuine and that each individual  
20 who signed such document was at the time of signing a registered voter  
21 in the county of his or her residence. The affidavit shall be executed  
22 before a person authorized by law to administer oaths in the State of  
23 Nevada. The enacting clause of all statutes or amendments proposed  
24 by initiative petition shall be: "The People of the State of Nevada  
25 do enact as follows:".

26 SEC. 4. The initiative and referendum powers provided for in this  
27 article are further reserved to the registered voters of each county and  
28 each municipality as to all local, special and municipal legislation of  
29 every kind in or for such county or municipality. In counties and  
30 municipalities initiative petitions may be instituted by a number of  
31 registered voters equal to 15 percent or more of the voters who voted  
32 at the last preceding general county or municipal election. Referendum  
33 petitions may be instituted by 10 percent or more of such voters.

34 SEC. 5. The provisions of this article are self-executing but the  
35 legislature may provide by law for procedures to facilitate the opera-  
36 tion thereof.



## THE THIRTY-SEVENTH DAY

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CARSON CITY (Tuesday), February 23, 1960.

Assembly called to order at 7:09 a. m.

Mr. Speaker in the Chair.

Roll called.

All present except Messrs. Berrum, Buckingham, Giomi, Harmon, Miss Herr, Messrs. Hunter, Knisley, Monaghan, Nevin, Schouweiler and Young, who were excused.

Prayer by the Chaplain, Reverend Gerald V. Case.

Pledge of allegiance to the flag.

Mr. Evans moved that further reading of the Journal be dispensed with, and the Speaker and Chief Clerk be authorized to make the necessary corrections and additions.

Motion carried.

### MESSAGES FROM THE SENATE

SENATE CHAMBER, Carson City, February 22, 1960.

*To the Honorable the Assembly:*

I have the honor to inform your honorable body that the Senate on this day passed Senate Bills Nos. 35, 121, 128.

Also, I have the honor to inform your honorable body that the Senate on this day passed, as amended, Senate Bills Nos. 34, 97, 111.

Also, I have the honor to inform your honorable body that the Senate on this day passed Assembly Bills Nos. 119, 153.

Also, I have the honor to inform your honorable body that the Senate on this day adopted Senate Concurrent Resolution No. 10.

Also, I have the honor to inform your honorable body that the Senate on this day passed Assembly Joint Resolution No. 4.

Also, I have the honor to inform your honorable body that the Senate on this day concurred in the Assembly amendments to Senate Bill No. 51.

MARGARET F. AMUNDSON,  
*Assistant Secretary of the Senate.*

### MOTIONS, RESOLUTIONS, AND NOTICES

Mr. Swackhamer moved that he be authorized to introduce a resolution relating to a proposal to amend article 19 of the Constitution of the State of Nevada.

Roll call on Mr. Swackhamer's motion:

YEAS—31.

NAYS—None.

Absent—Berrum, Buckingham, Fitz, Frazier, Giomi, Harmon, Herr, Hunter, Knisley, McKissick, Monaghan, Nevin, Pasquale, Revert, Schouweiler, Young—16.

The motion having received a two-thirds majority, Mr. Speaker declared it carried.

By Mr. Swackhamer:

Assembly Joint Resolution No. 11—Proposing to amend article XIX

of the Constitution of the State of Nevada, relating to Initiative and Referendum, by clarifying the provisions of such article.

*Resolved by the Assembly and Senate of the State of Nevada, jointly, That article XIX of the Constitution of the State of Nevada be amended to read as follows:*

[ARTICLE XIX]

Section 1. Whenever ten per centum or more of the voters of this State, as shown by the number of votes cast at the last preceding general election, shall express their wish that any law or resolution made by the Legislature be submitted to a vote of the people, the officers charged with the duties of announcing and proclaiming elections and of certifying nominations or questions to be voted on, shall submit the question of the approval or disapproval of said law or resolution to be voted on at the next ensuing election wherein a State or Congressional officer is to be voted for, or wherein any question may be voted on, by the electors of the entire State.

Sec. 2. When a majority of the electors voting at a State election shall by their votes signify approval of a law or resolution such law or resolution shall stand as the law of the State and shall not be overruled, annulled, set aside, suspended, or in any way made inoperative except by the direct vote of the people. When such majority shall so signify disapproval the law or resolution so disapproved shall be void and of no effect.

Sec. 3. The people reserve to themselves the power to propose laws and the power to propose amendments to the constitution and to enact or reject the same at the polls, independent of the legislature, and also reserve the power at their option to approve or reject at the polls, in the manner herein provided, any act, item, section or part of any act or measure passed by the legislature, and section one of article four of the constitution shall hereafter be considered accordingly. The first power reserved by the people is the initiative. The initiative petition shall be proposed by not less than ten per cent (10%) of the qualified electors of each of not less than seventy five per cent (75%) of the counties in the state, provided, however, that the total number of qualified electors proposing the said petition shall be not less than ten per cent (10%) of all of the qualified electors of the State. Every such petition shall include the full text of the measure so proposed. Each signer shall affix thereto his or her signature, place of residence and the county within he or she is a qualified elector. Each document comprising the initiative petition filed with the Secretary of State shall have affixed thereto, an affidavit made by one of the signers to each of said documents or to the petition, to the effect that all of the signatures are genuine and that each and every individual who signed his or her name thereto was at the time that he or she signed the petition a bona fide qualified elector of the respective county and the State of Nevada, said affidavit to be executed before a Notary Public or some officer authorized to administer an oath who possesses a seal. Initiative petitions, for all but municipal legislation, shall be filed with the secretary of state not less than thirty (30) days before any regular session of the legislature; the secretary of state shall transmit the same to the legislature as soon as it convenes and organizes. Such initiative measure shall take precedence over all measures of the legislature except appropriation bills, and shall be enacted or rejected by the legislature, without change or amendment, within forty (40) days. If any such initiative measure so proposed by petition as aforesaid, shall be enacted by the legislature and approved by the governor in the same manner as other laws are enacted, same shall become a law, but shall be subject to referendum petition as provided in sections one and two of this article. If said initiative measure be rejected by the legislature, or if no action be taken thereon within said forty (40) days, the secretary of state shall submit the same to the qualified electors for approval or rejection at the next ensuing general election; and if a majority of the qualified electors voting thereon shall approve of such measure it shall become a law and take effect from the date of the official declaration of the vote; an initiative measure so approved by the qualified electors shall not be annulled, set aside or repealed by the legislature within three (3) years from the date said act takes effect. In case the legislature shall reject such initiative measure, said



body may, with the approval of the governor, propose a different measure on the same subject, in which event both measures shall be submitted by the secretary of state to the qualified electors for approval or rejection at the next ensuing general election. The enacting clause of all bills proposed by the initiative shall be: "The people of the State of Nevada do enact as follows." The total number of votes cast at the general election last preceding the filing of any initiative petition shall be the basis on which the number of qualified electors required to sign such petition shall be counted. The second power reserved by the people is the referendum, which shall be exercised in the manner provided in sections one and two of this article. The initiative and referendum powers in this article provided for are further reserved to the qualified electors of each county and municipality as to all local, special and municipal legislation of every character in or for said respective counties or municipalities. The legislature may provide by law for the manner of exercising the initiative and referendum powers as to county and municipal legislation, but shall not require a petition of more than 10 per cent (10%) of the qualified electors to order the referendum, nor more than 15 per cent (15%) to propose any municipal measure by initiative. If the conflicting measures submitted to the people at the next ensuing general election shall both be approved by a majority of the votes severally cast for and against each of said measures, the measure receiving the highest number of affirmative votes shall thereupon become a law as to all conflicting provisions. The provisions of this section shall be self-executing, but legislation may be especially enacted to facilitate its operation.]

#### ARTICLE 19.

##### *Initiative and Referendum*

Section 1. *1. Whenever a number of registered voters of this state equal to 10 percent or more of the number of voters who voted at the last preceding general election shall express their wish by filing a petition in the form provided for in section 3 of this article that any statute or resolution or any part thereof enacted by the legislature be submitted to a vote of the people, the officers charged with the duties of announcing and proclaiming elections and of certifying nominations or questions to be voted upon shall submit the question of approval or disapproval of such statute or resolution or any part thereof to a vote of the voters at the next succeeding election at which such question may be voted upon by the registered voters of the entire state.*

*2. If a majority of the voters voting upon the proposal submitted at such election votes approval of such statute or resolution or any part thereof, such statute or resolution or any part thereof shall stand as the law of the state and shall not be amended, annulled, repealed, set aside, suspended or in any way made inoperative except by the direct vote of the people. If a majority of such voters votes disapproval of such statute or resolution or any part thereof, such statute or resolution or any part thereof shall be void and of no effect.*

Sec. 2. *1. Notwithstanding the provisions of section 1 of article 4 of this constitution, the people reserve to themselves the power to propose, by initiative petition, statutes and amendments to statutes and amendments to this constitution, and to enact or reject them at the polls.*

*2. An initiative petition shall be in the form required by section 3 of this article and shall be proposed by a number of registered voters equal to 10 percent or more of the number of voters who voted at the last preceding general election in not less than 75 percent of the counties in the state, but the total number of registered voters signing the initiative petition shall be equal to 10 percent or more of the voters who voted in the entire state at the last preceding general election.*

*3. If the initiative petition proposes a statute or an amendment to a statute, it shall be filed with the secretary of state not less than 30 days prior to any regular session of the legislature. The secretary of state shall transmit such petition to the legislature as soon as the legislature convenes and organizes. The petition shall take precedence over all other measures except appropriation bills, and the statute or amendment to a statute proposed thereby shall be enacted or rejected by the legislature without change or amendment within 40 days. If the proposed statute or amendment to a statute is enacted*

by the legislature and approved by the governor in the same manner as other statutes are enacted, such statute or amendment to a statute shall become law, but shall be subject to referendum petition as provided in section 1 of this article. If the statute or amendment to a statute is rejected by the legislature, or if no action is taken thereon within 40 days, the secretary of state shall submit the question of approval or disapproval of such statute or amendment to a statute to a vote of the voters at the next succeeding general election. If a majority of the voters voting on such question at such election votes approval of such statute or amendment to a statute, it shall become law and take effect upon completion of the canvass of votes by the supreme court. An initiative measure so approved by the voters shall not be amended, annulled, repealed, set aside or suspended by the legislature within 3 years from the date it takes effect. If a majority of such voters votes disapproval of such statute or amendment to a statute, no further action shall be taken on such petition. If the legislature rejects such proposed statute or amendment, the governor may recommend to the legislature and the legislature may propose a different measure on the same subject, in which event, after such different measure has been approved by the governor, the question of approval or disapproval of each measure shall be submitted by the secretary of state to a vote of the voters at the next succeeding general election. If the conflicting provisions submitted to the voters are both approved by a majority of the voters voting on such measures, the measure which receives the largest number of affirmative votes shall thereupon become law.

4. If the initiative petition proposes an amendment to the constitution, it shall be filed with the secretary of state not less than 60 days before any regular general election at which the question of approval or disapproval of such amendment may be voted upon by the voters of the entire state. The secretary of state shall cause to be published in a newspaper of general circulation, on three separate occasions, in each county in the state, together with any explanatory matter which shall be placed upon the ballot, the entire text of the proposed amendment. If a majority of the voters voting on such question at such election votes disapproval of such amendment, no further action shall be taken on the petition. If a majority of such voters votes approval of such amendment, the secretary of state shall publish and resubmit the question of approval or disapproval to a vote of the voters at the next succeeding general election in the same manner as such question was originally submitted. If a majority of such voters votes disapproval of such amendment, no further action shall be taken on such petition. If a majority of such voters votes approval of such amendment, it shall become a part of this constitution upon completion of the canvass of votes by the supreme court.

Sec. 3. Each referendum petition and initiative petition shall include the full text of the measure proposed. Each signer shall affix thereto his or her signature, residence address and the name of the county in which he or she is a registered voter. The petition may consist of more than one document, but each document shall have affixed thereto an affidavit made by one of the signers of such document to the effect that all of the signatures are genuine and that each individual who signed such document was at the time of signing a registered voter in the county of his or her residence. The affidavit shall be executed before a person authorized by law to administer oaths in the State of Nevada. The enacting clause of all statutes or amendments proposed by initiative petition shall be: "The People of the State of Nevada do enact as follows:".

Sec. 4. The initiative and referendum powers provided for in this article are further reserved to the registered voters of each county and each municipality as to all local, special and municipal legislation of every kind in or for such county or municipality. In counties and municipalities initiative petitions may be instituted by a number of registered voters equal to 15 percent or more of the voters who voted at the last preceding general county or municipal election. Referendum petitions may be instituted by 10 percent or more of such voters.

Sec. 5. The provisions of this article are self-executing but the legislature may provide by law for procedures to facilitate the operation thereof.

Mr. Swackhamer moved that the resolution be referred to the Committee on Judiciary.

Motion carried.

Senate Concurrent Resolution No. 10.

Mr. Evans moved the adoption of the resolution.

Resolution adopted unanimously.

#### INTRODUCTION, FIRST READING, AND REFERENCE

By the Committee on Ways and Means:

Assembly Bill No. 239—An Act authorizing and directing the conveyance, without consideration, of certain real property located in Washoe County from the Nevada State Hospital to the State Department of Buildings and Grounds.

Mr. Rowntree moved that the bill be referred to the Committee on Ways and Means.

Motion carried.

Senate Bill No. 111.

Mr. Evans moved that the bill be referred to the Committee on Judiciary.

Motion carried.

Senate Bill No. 34.

Mr. Evans moved that the bill be referred to the Committee on Fish and Game.

Motion carried.

Senate Bill No. 97.

Mr. Evans moved that the bill be referred to the Committee on Roads and Transportation.

Motion carried.

Senate Bill No. 35.

Mr. Evans moved that the bill be referred to the Committee on Fish and Game.

Motion carried.

Senate Bill No. 121.

Mr. Evans moved that the bill be referred to the Committee on Judiciary.

Motion carried.

Senate Bill No. 128.

Mr. Evans moved that the bill be referred to a Select Committee of the Mineral County Delegation.

Motion carried.

#### MOTIONS, RESOLUTIONS, AND NOTICES

Mr. Evans moved that Assembly Bill No. 27 be taken from the Second Reading File and placed on the Second Reading File for the next legislative day.

Motion carried.

## REPORTS OF COMMITTEES

*Mr. Speaker:*

The Committee on Conference concerning Assembly Bill No. 70, consisting of the undersigned members, has met, and reports that it has agreed to recommend that the amendments of the Senate be concurred in.

ALBERT E. PASQUALE,  
ARCHIE POZZI, JR.,  
JACK W. BAY,

FRED H. SETTELMAYER,  
RENE W. LEMAIRE,  
WILLIAM J. FRANK.

*Assembly Committee on Conference.*

*Senate Committee on Conference.*

*Mr. Speaker:*

Your Committee on Judiciary, to which was referred Assembly Joint Resolution No. 11, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

J. ROGER BISSETT, *Chairman.*

## MOTIONS, RESOLUTIONS, AND NOTICES

Mr. Knisley moved that all rules be suspended, Assembly Joint Resolution No. 11 considered engrossed, declared an emergency measure under the Constitution, and placed on third reading and final passage.

Motion carried unanimously.

Mr. Knisley moved that all rules be suspended, Assembly Joint Resolution No. 12 considered engrossed, declared an emergency measure under the Constitution, and placed on third reading and final passage.

Motion carried unanimously.

Mr. Pasquale moved that the Assembly adopt the report of the Committee on Conference concerning Assembly Bill No. 70.

Motion carried.

Mr. Evans moved that the vote whereby Senate Bill No. 85 was passed be rescinded.

Remarks by Messrs. Evans and Rowntree.

Motion carried unanimously.

Mr. Giomi moved that Senate Bill No. 85 be taken from the General File and re-referred to a Joint Committee of Agriculture and Irrigation and Labor.

Motion carried.

Mr. Evans moved that the Assembly recess until 2 p. m.

Motion carried.

Assembly in recess at 12:10 p. m.

## ASSEMBLY IN SESSION

At 2:08 p. m.

Mr. Speaker in the Chair.

Quorum present.

## REPORTS OF COMMITTEES

*Mr. Speaker:*

Your Select Committee of the Mineral County Delegation, to which was referred Assembly Concurrent Resolution No. 18, has had the same under consideration, and begs leave to report the same back with the recommendation: Be adopted.

G. JOE VIANI,  
BRUCE M. PARKS.

## FIFTIETH SESSION

395

## Amendment No. 664.

Amend the bill as a whole by adding thereto a new section to be designated as section 40, which shall immediately follow renumbered section 39 and shall read as follows:

"Sec. 40. This act shall become effective on May 1, 1960."

Mr. Pozzi moved that the Assembly concur in the Senate amendments to Assembly Bill No. 10.

Remarks by Mr. Waters.

Motion carried.

Bill ordered enrolled.

## GENERAL FILE AND THIRD READING

Assembly Joint Resolution No. 11.

Resolution read third time.

Remarks by Messrs. Swackhamer, Knisley and Harmon.

Roll call on Assembly Joint Resolution No. 11:

YEAS—40.

NAYS—None.

Absent—McKissick, Pozzi—2.

Not voting—Frazier, Giomi, Harmon, Herr, Leavitt—5.

Assembly Joint Resolution No. 11 having received a constitutional majority, Mr. Speaker declared it passed, as amended.

Resolution ordered transmitted to the Senate.

## Assembly Joint Resolution No. 12.

Resolution read third time.

Remarks by Mr. Humphrey (Washoe).

Roll call on Assembly Joint Resolution No. 12:

YEAS—42.

NAYS—Ryan.

Absent—Giomi, Nevin, Pozzi—3.

Not voting—Christensen (Washoe).

Assembly Joint Resolution No. 12 having received a constitutional majority, Mr. Speaker declared it passed.

Resolution ordered transmitted to the Senate.

## Assembly Bill No. 270.

Bill read third time.

Remarks by Mr. Bailey.

Roll call on Assembly Bill No. 270:

YEAS—45.

NAYS—None.

Absent—Pozzi.

Not voting—Bay.

Assembly Bill No. 270 having received a constitutional majority, Mr. Speaker declared it passed.

Bill ordered transmitted to the Senate.

## Assembly Bill No. 271.

Bill read third time.

Remarks by Mr. Knisley.



## FIFTIETH SESSION

333

Assembly Bill No. 271.

Senator Whitacre moved that the bill be referred to the Committee on Finance.

Seconded by Senator Slattery.

Motion carried.

Assembly Bill No. 272.

Senator Whitacre moved that the bill be referred to the Committee on Finance.

Seconded by Senator Slattery.

Motion carried.

Assembly Bill No. 273.

Senator Whitacre moved that the bill be referred to the Committee on Finance.

Seconded by Senator Slattery.

Motion carried.

Assembly Bill No. 117.

Senator Whitacre moved that the bill be referred to the Committee on Judiciary.

Seconded by Senator Slattery.

Motion carried.

Assembly Bill No. 156.

Senator Whitacre moved that the bill be referred to the Committee on Finance.

Seconded by Senator Slattery.

Motion carried.

Assembly Bill No. 235.

Senator Whitacre moved that the bill be referred to the Committee on Judiciary.

Seconded by Senator Slattery.

Motion carried.

Assembly Bill No. 245.

Senator Whitacre moved that the bill be referred to the Committee on Aviation, Transportation and Highways.

Seconded by Senator Slattery.

Motion carried.

Assembly Bill No. 274.

Senator Whitacre moved that the bill be referred to the Committee on Finance.

Seconded by Senator Slattery.

Motion carried.

MOTIONS, RESOLUTIONS, AND NOTICES

Assembly Joint Resolution No. 11.

Senator Whitacre moved that the resolution be referred to the Committee on Judiciary.

Seconded by Senator Slattery.  
Motion carried.

Assembly Joint Resolution No. 12.

Senator Whitacre moved that the resolution be referred to the Committee on Federal Affairs.

Seconded by Senator Slattery.  
Motion carried.

Assembly Concurrent Resolution No. 18.

Senator Seevers moved the adoption of the resolution.

Seconded by Senator Slattery.  
Resolution adopted unanimously.

Mr. President instructed the Secretary to read the following communication:

March 11, 1960.

THE HONORABLE SENATE AND ASSEMBLY, *State of Nevada, Carson City, Nevada.*

LADIES AND GENTLEMEN: The McCarran Statue Committee, created by the 1955 Legislature, and directed to produce and have placed in Statuary Hall in the Capitol in Washington a statue of the late Senator Pat McCarran, will have completed its work on March 23, when the statue will be unveiled and presented to the United States Senate.

The members of the Committee are happy to report to you that this assignment has been completed, and we invite you to participate in the ceremonies which are being arranged by Senator Alan Bible and his staff, assisted by Senator Howard Cannon and Representative Walter Baring.

We wish to take this means to thank you, the State Officers past and present, and the many friends of the late and beloved Senator, for your cooperation.

Sincerely,

JOSEPH F. McDONALD, *Chairman*,  
NORMAN BILTZ, *Vice Chairman*,  
REX BELL, *Treasurer*,  
CHARLES RUSSELL,

CYRIL BASTIAN,  
WILLIAM CARTER,  
RALPH DENTON.

#### GENERAL FILE AND THIRD READING

Assembly Bill No. 179.

Bill read third time.

Remarks by Senators Settelmeyer and Lamb.

Roll call on Assembly Bill No. 179:

YEAS—14.

NAYS—Lemaire, Rand, Slattery—3.

Assembly Bill No. 179 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 266.

Bill read third time.

Roll call on Assembly Bill No. 266:

YEAS—16.

NAYS—Monroe.

Assembly Bill No. 266 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Mr. President announced that if there were no objections the Senate would recess subject to the call of the Chair.

Senate in recess at 11:39 a. m.

### SENATE IN SESSION

At 11:40 a. m.

President Bell presiding.

Quorum present.

### MOTIONS, RESOLUTIONS, AND NOTICES

Senator Whitacre moved that the Senate recess until 2 p. m.

Seconded by Senator Black.

Motion carried.

Senate in recess at 11:41 a. m.

### SENATE IN SESSION

At 2:25 p. m.

President Bell presiding.

Quorum present.

### REPORTS OF COMMITTEES

*Mr. President:*

Your Committee on Aviation, Transportation and Highways, to which was referred Assembly Bill No. 245, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

CARL F. DODGE, *Chairman.*

*Mr. President:*

Your Committee on Finance, to which were referred Assembly Bills Nos. 264, 265, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

FRED H. SETTELMAYER, *Chairman.*

*Mr. President:*

Your Committee on Federal Affairs, to which was referred Assembly Joint Resolution No. 12, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

JAMES M. SLATTERY, *Chairman.*

*Mr. President:*

Your Committee on Judiciary, to which was referred Assembly Joint Resolution No. 11, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

WALTER WHITACRE, *Chairman.*

*Mr. President:*

Your Committee on Finance, to which were referred Assembly Bills Nos. 143, 145, 152, 156, 219, 267, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

FRED H. SETTELMAYER, *Chairman.*

*Mr. President:*

Your Committee on Finance, to which were referred Assembly Bills Nos. 270, 271, 272, 273, 274, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

FRED H. SETTELMAYER, *Chairman.*

Assembly Bill No. 264 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 265.

Bill read third time.

Roll call on Assembly Bill No. 265:

YEAS—17.

NAYS—None.

Assembly Bill No. 265 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Joint Resolution No. 12.

Resolution read third time.

Roll call on Assembly Joint Resolution No. 12:

YEAS—17.

NAYS—None.

Assembly Joint Resolution No. 12 having received a constitutional majority, Mr. President declared it passed.

Resolution ordered transmitted to the Assembly.

Assembly Joint Resolution No. 11.

Resolution read third time.

Roll call on Assembly Joint Resolution No. 11:

YEAS—15.

NAYS—Monroe.

Absent—Dial.

Assembly Joint Resolution No. 11 having received a constitutional majority, Mr. President declared it passed.

Resolution ordered transmitted to the Assembly.

Assembly Bill No. 143.

Bill read third time.

Remarks by Senators Settlemeyer and Brown.

Roll call on Assembly Bill No. 143:

YEAS—17.

NAYS—None.

Assembly Bill No. 143 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 145.

Bill read third time.

Roll call on Assembly Bill No. 145:

YEAS—17.

NAYS—None.

Assembly Bill No. 145 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 152.

Bill read third time.

History of Nevada to every civics class in each high school in the State of Nevada and to every American government class in each junior high school in the State of Nevada.

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Assembly Concurrent Resolution No. 17—Mr. Revert

FILE NUMBER 34

ASSEMBLY CONCURRENT RESOLUTION—Expressing congratulations to William Henry Thomas on 40 years of service as sheriff of Nye County.

WHEREAS, William Henry Thomas was born in Austin, Nevada on April 9, 1876; and

WHEREAS, William H. Thomas moved to Tonopah, Nevada in 1902; and

WHEREAS, William H. Thomas was first elected sheriff of Nye County in November 1916; and

WHEREAS, Mr. Thomas faithfully and honorably served the people of Nye County as sheriff for a total of 40 years, the last 38 of which were consecutive; and

WHEREAS, At the time of his retirement in 1958, Sheriff Thomas, at the age of 82, was the oldest living active sheriff in the United States; now, therefore, be it

*Resolved by the Assembly of the State of Nevada, the Senate concurring,* That the legislature of the State of Nevada hereby extends to William Henry Thomas its most hearty congratulations, and acknowledges the pride of the people of our state in his outstanding achievements and many years of service to his county and state; and be it further

*Resolved,* That a certified copy of this resolution be prepared and transmitted forthwith by the legislative counsel to Sheriff William Henry Thomas.

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Assembly Joint Resolution No. 11—Mr. Swackhamer

[To be returned to 1961 Legislature]

FILE NUMBER 35

ASSEMBLY JOINT RESOLUTION—Proposing to amend article XIX of the constitution of the State of Nevada, relating to initiative and referendum, by clarifying the provisions of such article.

*Resolved by the Assembly and Senate of the State of Nevada, jointly,* That article XIX of the constitution of the State of Nevada be amended to read as follows:

[ARTICLE XIX

SECTION 1. Whenever ten per centum or more of the voters of this State, as shown by the number of votes cast at the last preceding



general election, shall express their wish that any law or resolution made by the Legislature be submitted to a vote of the people, the officers charged with the duties of announcing and proclaiming elections and of certifying nominations or questions to be voted on, shall submit the question of the approval or disapproval of said law or resolution to be voted on at the next ensuing election wherein a State or Congressional officer is to be voted for, or wherein any question may be voted on, by the electors of the entire State.

SEC. 2. When a majority of the electors voting at a State election shall by their votes signify approval of a law or resolution such law or resolution shall stand as the law of the State and shall not be overruled, annulled, set aside, suspended, or in any way made inoperative except by the direct vote of the people. When such majority shall so signify disapproval the law or resolution so disapproved shall be void and of no effect.

SEC. 3. The people reserve to themselves the power to propose laws and the power to propose amendments to the constitution and to enact or reject the same at the polls, independent of the legislature, and also reserve the power at their option to approve or reject at the polls, in the manner herein provided, any act, item, section or part of any act or measure passed by the legislature, and section one of article four of the constitution shall hereafter be considered accordingly. The first power reserved by the people is the initiative. The initiative petition shall be proposed by not less than ten per cent (10%) of the qualified electors of each of not less than seventy five per cent (75%) of the counties in the state, provided, however, that the total number of qualified electors proposing the said petition shall be not less than ten per cent (10%) of all of the qualified electors of the State. Every such petition shall include the full text of the measure so proposed. Each signer shall affix thereto his or her signature, place of residence and the county within which he or she is a qualified elector. Each document comprising the initiative petition filed with the Secretary of State shall have affixed thereto, an affidavit made by one of the signers to each of said documents or to the petition, to the effect that all of the signatures are genuine and that each and every individual who signed his or her name thereto was at the time that he or she signed the petition a bonafide qualified elector of the respective county and the State of Nevada, said affidavit to be executed before a Notary Public or some officer authorized to administer an oath who possesses a seal. Initiative petitions, for all but municipal legislation, shall be filed with the secretary of state not less than thirty (30) days before any regular session of the legislature; the secretary of state shall transmit the same to the legislature as soon as it convenes and organizes. Such initiative measure shall take precedence over all measures of the legislature except appropriation bills, and shall be enacted or rejected by the legislature, without change or amendment, within forty (40) days. If any such initiative measure so proposed by petition as aforesaid, shall be enacted by the legislature and approved by the governor in the same manner as other laws are enacted, same shall become a law,

but shall be subject to referendum petition as provided in sections one and two of this article. If said initiative measure be rejected by the legislature, or if no action be taken thereon within said forty (40) days, the secretary of state shall submit the same to the qualified electors for approval or rejection at the next ensuing general election; and if a majority of the qualified electors voting thereon shall approve of such measure it shall become a law and take effect from the date of the official declaration of the vote; an initiative measure so approved by the qualified electors shall not be annulled, set aside or repealed by the legislature within three (3) years from the date said act takes effect. In case the legislature shall reject such initiative measure, said body may, with the approval of the governor, propose a different measure on the same subject, in which event both measures shall be submitted by the secretary of state to the qualified electors for approval or rejection at the next ensuing general election. The enacting clause of all bills proposed by the initiative shall be: "The people of the State of Nevada do enact as follows." The total number of votes cast at the general election last preceding the filing of any initiative petition shall be the basis on which the number of qualified electors required to sign such petition shall be counted. The second power reserved by the people is the referendum, which shall be exercised in the manner provided in sections one and two of this article. The initiative and referendum powers in this article provided for are further reserved to the qualified electors of each county and municipality as to all local, special and municipal legislation of every character in or for said respective counties or municipalities. The legislature may provide by law for the manner of exercising the initiative and referendum powers as to county and municipal legislation, but shall not require a petition of more than 10 per cent (10%) of the qualified electors to order the referendum, nor more than 15 per cent (15%) to propose any municipal measure by initiative. If the conflicting measures submitted to the people at the next ensuing general election shall both be approved by a majority of the votes severally cast for and against each of said measures, the measure receiving the highest number of affirmative votes shall thereupon become a law as to all conflicting provisions. The provisions of this section shall be self-executing, but legislation may be especially enacted to facilitate its operation.]

## ARTICLE 19.

### *Initiative and Referendum*

SECTION 1. 1. *Whenever a number of registered voters of this state equal to 10 percent or more of the number of voters who voted at the last preceding general election shall express their wish by filing a petition in the form provided for in section 3 of this article that any statute or resolution or any part thereof enacted by the legislature be submitted to a vote of the people, the officers charged with the duties of announcing and proclaiming elections and of certifying nominations or questions to be voted upon shall submit the question of approval or disapproval of such statute or resolution or any part*

thereof to a vote of the voters at the next succeeding election at which such question may be voted upon by the registered voters of the entire state.

2. If a majority of the voters voting upon the proposal submitted at such election votes approval of such statute or resolution or any part thereof, such statute or resolution or any part thereof shall stand as the law of the state and shall not be amended, annulled, repealed, set aside, suspended or in any way made inoperative except by the direct vote of the people. If a majority of such voters votes disapproval of such statute or resolution or any part thereof, such statute or resolution or any part thereof shall be void and of no effect.

SEC. 2. 1. Notwithstanding the provisions of section 1 of article 4 of this constitution, the people reserve to themselves the power to propose, by initiative petition, statutes and amendments to statutes and amendments to this constitution, and to enact or reject them at the polls.

2. An initiative petition shall be in the form required by section 3 of this article and shall be proposed by a number of registered voters equal to 10 percent or more of the number of voters who voted at the last preceding general election in not less than 75 percent of the counties in the state, but the total number of registered voters signing the initiative petition shall be equal to 10 percent or more of the voters who voted in the entire state at the last preceding general election.

3. If the initiative petition proposes a statute or an amendment to a statute, it shall be filed with the secretary of state not less than 30 days prior to any regular session of the legislature. The secretary of state shall transmit such petition to the legislature as soon as the legislature convenes and organizes. The petition shall take precedence over all other measures except appropriation bills, and the statute or amendment to a statute proposed thereby shall be enacted or rejected by the legislature without change or amendment within 40 days. If the proposed statute or amendment to a statute is enacted by the legislature and approved by the governor in the same manner as other statutes are enacted, such statute or amendment to a statute shall become law, but shall be subject to referendum petition as provided in section 1 of this article. If the statute or amendment to a statute is rejected by the legislature, or if no action is taken thereon within 40 days, the secretary of state shall submit the question of approval or disapproval of such statute or amendment to a statute to a vote of the voters at the next succeeding general election. If a majority of the voters voting on such question at such election votes approval of such statute or amendment to a statute, it shall become law and take effect upon completion of the canvass of votes by the supreme court. An initiative measure so approved by the voters shall not be amended, annulled, repealed, set aside or suspended by the legislature within 3 years from the date it takes effect. If a majority of such voters votes disapproval of such statute or amendment to a statute,

no further action shall be taken on such petition. If the legislature rejects such proposed statute or amendment, the governor may recommend to the legislature and the legislature may propose a different measure on the same subject, in which event, after such different measure has been approved by the governor, the question of approval or disapproval of each measure shall be submitted by the secretary of state to a vote of the voters at the next succeeding general election. If the conflicting provisions submitted to the voters are both approved by a majority of the voters voting on such measures, the measure which receives the largest number of affirmative votes shall thereupon become law.

4. If the initiative petition proposes an amendment to the constitution, it shall be filed with the secretary of state not less than 60 days before any regular general election at which the question of approval or disapproval of such amendment may be voted upon by the voters of the entire state. The secretary of state shall cause to be published in a newspaper of general circulation, on three separate occasions, in each county in the state, together with any explanatory matter which shall be placed upon the ballot, the entire text of the proposed amendment. If a majority of the voters voting on such question at such election votes disapproval of such amendment, no further action shall be taken on the petition. If a majority of such voters votes approval of such amendment, the secretary of state shall publish and resubmit the question of approval or disapproval to a vote of the voters at the next succeeding general election in the same manner as such question was originally submitted. If a majority of such voters votes disapproval of such amendment, no further action shall be taken on such petition. If a majority of such voters votes approval of such amendment, it shall become a part of this constitution upon completion of the canvass of votes by the supreme court.

SEC. 3. Each referendum petition and initiative petition shall include the full text of the measure proposed. Each signer shall affix thereto his or her signature, residence address and the name of the county in which he or she is a registered voter. The petition may consist of more than one document, but each document shall have affixed thereto an affidavit made by one of the signers of such document to the effect that all of the signatures are genuine and that each individual who signed such document was at the time of signing a registered voter in the county of his or her residence. The affidavit shall be executed before a person authorized by law to administer oaths in the State of Nevada. The enacting clause of all statutes or amendments proposed by initiative petition shall be: "The People of the State of Nevada do enact as follows:"

SEC. 4. The initiative and referendum powers provided for in this article are further reserved to the registered voters of each county and each municipality as to all local, special and municipal legislation of every kind in or for such county or municipality. In counties and municipalities initiative petitions may be instituted by a number of registered voters equal to 15 percent or more of the voters who voted

*at the last preceding general county or municipal election. Referendum petitions may be instituted by 10 percent or more of such voters.*

**SEC. 5.** *The provisions of this article are self-executing but the legislature may provide by law for procedures to facilitate the operation thereof.*

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**Assembly Concurrent Resolution No. 18—Mr. Viani**

**FILE NUMBER 36**

**ASSEMBLY CONCURRENT RESOLUTION—Memorializing Mineral County High School Band for its fine showing at 1960 Olympic Winter Games.**

**WHEREAS,** The greatest event in the history of winter sports, the 1960 Olympic Winter Games, was recently held at Squaw Valley, California; and

**WHEREAS,** An important factor in the spectacular success of the Games was the beautiful and inspiring pageantry with which the Games were officially opened; and

**WHEREAS,** The Mineral County High School Band joined the ranks of many musicians and provided the music that was an indispensable part of the pageantry; and

**WHEREAS,** Under the masterful direction of Kenneth Howat, the Mineral County High School Band was one of the outstanding bands present; and

**WHEREAS,** The members of the Mineral County High School Band have earned the praises of all those who have seen and heard them, and have been a great credit to the United States of America and the State of Nevada; now, therefore, be it

*Resolved by the Assembly of the State of Nevada, the Senate concurring,* That the congratulations of the members of the 50th session of the legislature of the State of Nevada be extended to the Mineral County High School Band and its director Kenneth Howat, for their fine showing at the 1960 Olympic Winter Games; and be it further

*Resolved,* That a certified copy of this resolution be prepared and transmitted forthwith by the legislative counsel to Mineral County High School.

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**Assembly Concurrent Resolution No. 19—Committee on Legislative Functions**

**FILE NUMBER 37**

**ASSEMBLY CONCURRENT RESOLUTION—Expressing the appreciation of the 50th session of the Nevada legislature for the courtesies extended to its members by the city of Carson City and its governing body.**

**WHEREAS,** The city of Carson City and its governing body have generously afforded to the members of the legislature of the State of



**A. J. R. 11 of the 50th Session—Swackhamer.**

**Summary—Proposes to amend the Nevada Constitution by clarifying the initiative and referendum provisions. (BDR C-618)**

**Jan. 23—Read first time. Referred to Committee on Judiciary. To committee.**

**Feb. 14—From committee: Do pass.**

**Feb. 15—Read second time. To engrossment. Engrossed.**

**Feb. 16—Read third time. Passed. Title approved. To Senate.**

**Feb. 17—In Senate. Read first time. Referred to Committee on Judiciary. To committee.**

**Mar. 6—From committee: Do pass. Read second time.**

**Mar. 7—Read third time. Passed. Title approved. To Assembly.**

**Mar. 8—In Assembly. To enrollment.**

**Mar. 9—Enrolled and delivered to Secretary of State. File No. 44.**

## THE EIGHTH DAY

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CARSON CITY (Monday), January 23, 1961.

Assembly called to order at 11:06 a. m.

Speaker Christensen presiding.

Roll called.

All present except Mr. Revert, who was excused.

Prayer by the Chaplain, Reverend Gerald V. Case.

Pledge of allegiance to the flag.

Mr. McElroy moved that further reading of the Journal be dispensed with, and the Speaker and Chief Clerk be authorized to make the necessary corrections and additions.

Motion carried.

### REPORTS OF COMMITTEES

*Mr. Speaker:*

Your Select Committee of the Mineral County Delegation, to which were referred Assembly Bills Nos. 6, 7, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

G. JOE VIANI, *Chairman.*

### MOTIONS, RESOLUTIONS, AND NOTICES

Mr. McElroy moved that the Special Order of Business for January 23, 1961, concerning vetoed Assembly Bill No. 179 of the 50th Session be made a Special Order of Business for Tuesday, January 24, 1961, at 11:30 a. m.

Motion carried.

By Mr. Pozzi:

Assembly Joint Resolution No. 6 of the 50th Session—Proposing to amend section 5 of article 9 and section 1 of article 10 of the constitution of the State of Nevada, relating to the proceeds of certain taxes, licenses and fees and to taxation, by authorizing the legislature to provide for a tax upon motor vehicles in lieu of an ad valorem property tax, and by excepting the proceeds of any such tax from the requirement that the proceeds of certain taxes, licenses, and fees be used in the repair, maintenance and construction of public highways in the state.

Mr. McElroy moved that the resolution be referred to the Committee on Roads and Transportation.

Motion carried.

By Mr. Swackhamer:

Assembly Joint Resolution No. 11 of the 50th Session—Proposing to amend article XIX of the Constitution of the State of Nevada, relating to initiative and referendum, by clarifying the provisions of such article.

Mr. McElroy moved that the resolution be referred to the Committee on Judiciary.

Motion carried.

#### INTRODUCTION, FIRST READING, AND REFERENCE

By Messrs. Von Tobel, Gibson, Tyson, Briare, Hafen, Bunker, Posin and Miss Frazier:

Assembly Bill No. 35—An Act to amend chapter 244 of NRS, relating to county government, by adding a new section authorizing the boards of county commissioners to establish the standard of time for their respective counties; to amend NRS section 237.010, relating to daylight saving time, by providing that a proclamation by the Governor establishing daylight saving time shall apply only to counties where the boards of county commissioners have not established the standard of time; and providing other matters properly relating thereto.

Mr. Von Tobel moved that the bill be referred to the Committee on State, County and City Affairs.

Motion carried.

Mr. McElroy moved that the Assembly recess until 1:30 p. m.

Motion carried.

Assembly in recess at 11:50 a. m.

#### ASSEMBLY IN SESSION

At 1:37 p. m.

Speaker Christensen presiding.

Quorum present.

#### MOTIONS, RESOLUTIONS, AND NOTICES

By Messrs. McKissick and Swackhamer:

Assembly Joint Resolution No. 6—Proposing to repeal section 7 of article 2 of the Constitution of the State of Nevada, relating to the levy of a poll tax.

Mr. McKissick moved that the resolution be referred to the Committee on Taxation.

Motion carried.

By the Committee on Legislative Functions:

Assembly Resolution No. 5—Relating to the employment of an attaché.

Mr. Jones moved the adoption of the resolution.

Resolution adopted.

#### INTRODUCTION, FIRST READING, AND REFERENCE

By Messrs. Schouweiler and Briare:

Assembly Bill No. 36—An Act to amend NRS sections 266.355, 269.170 and 686.020, relating to business licenses and to fees and charges of the Commissioner of Insurance, by prohibiting licensing of insurance agents by cities, towns and counties except for revenue purposes in cities, towns and counties in which the principal places

## THE THIRTIETH DAY

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CARSON CITY (Tuesday), February 14, 1961.

Assembly called to order at 11:07 a. m.

Speaker Christensen presiding.

Roll called.

All present except Mr. Palludan, who was excused.

Prayer by the Chaplain, Reverend Andrew Daughters.

Pledge of allegiance to the flag.

Mr. McElroy moved that further reading of the Journal be dispensed with, and the Speaker and Chief Clerk be authorized to make the necessary corrections and additions.

Motion carried.

### REPORTS OF COMMITTEES

*Mr. Speaker:*

Your Committee on Judiciary, to which were referred Assembly Bills Nos. 20, 173; Senate Bill No. 20; Assembly Joint Resolution No. 11 of the 50th Session, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

J. ROGER BISSETT, *Chairman.*

*Mr. Speaker:*

Your Committee on Roads and Transportation, to which were referred Assembly Bills Nos. 147, 169; Senate Bill No. 71, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

ROBERT REVERT, *Chairman.*

*Mr. Speaker:*

Your Committee on Education, to which was referred Assembly Bill No. 104, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and re-refer to the Committee on Ways and Means.

MAUDE FRAZIER, *Chairman.*

### MESSAGES FROM THE SENATE

SENATE CHAMBER, Carson City, February 13, 1961.

*To the Honorable the Assembly:*

I have the honor to inform your honorable body that the Senate on this day passed Senate Bills Nos. 79, 85, 86.

Also, I have the honor to inform your honorable body that the Senate on this day passed, as amended, Senate Bill No. 25.

Also, I have the honor to inform your honorable body that the Senate on this day passed Assembly Bills Nos. 46, 89, 90, 91, 98.

LEOLA H. ARMSTRONG,  
*Secretary of the Senate.*

### MOTIONS, RESOLUTIONS, AND NOTICES

Mr. Gibson moved that Assembly Bill No. 134 be taken from the Chief Clerk's desk and placed on the Second Reading File.

Remarks by Mr. Gibson.

Motion carried.

Mr. Crawford moved that the bill be referred to the Committee on Fish and Game.

Motion carried.

Senate Bill No. 16.

Mr. McElroy moved that the bill be referred to the Committee on Judiciary.

Motion carried.

#### SECOND READING AND AMENDMENT

Assembly Joint Resolution No. 11 of the 50th Session.

Resolution read second time, ordered engrossed and to third reading.

Speaker pro tempore Giomi presiding.

Assembly Bill No. 20.

Bill read second time, ordered engrossed and to third reading.

Assembly Bill No. 173.

Bill read second time, ordered engrossed and to third reading.

Assembly Bill No. 109.

Bill read second time, ordered engrossed and to third reading.

Senate Bill No. 20.

Bill read second time, and ordered to third reading.

Senate Bill No. 71.

Bill read second time, and ordered to third reading.

#### GENERAL FILE AND THIRD READING

Senate Bill No. 17.

Bill read third time.

Remarks by Mr. Bissett.

Roll call on Senate Bill No. 17:

YEAS—45.

NAYS—None.

Absent—Crawford, Hafen- 2.

Senate Bill No. 17 having received a constitutional majority, Mr. Speaker pro tempore declared it passed, as amended.

Bill ordered transmitted to the Senate.

Senate Bill No. 63.

Bill read third time.

Remarks by Mr. Gibson.

Roll call on Senate Bill No. 63:

YEAS—45.

NAYS—None.

Absent—Bissett, Hafen—2.

Senate Bill No. 63 having received a constitutional majority, Mr. Speaker pro tempore declared it passed.

Bill ordered transmitted to the Senate.

Assembly Bill No. 8.

Bill read third time.

## FIFTY-FIRST SESSION

169

Miss Frazier moved the adoption of the amendments.

Remarks by Miss Frazier.

Amendments adopted.

Bill ordered reprinted, engrossed and to third reading.

Mr. McElroy moved that the Assembly recess until 2 p. m.

Motion carried.

Assembly in recess at 11:51 a. m.

## ASSEMBLY IN SESSION

At 2:06 p. m.

Speaker Christensen presiding.

Quorum present.

## GENERAL FILE AND THIRD READING

Assembly Joint Resolution No. 11 of the 50th Session.

Resolution read third time.

Remarks by Messrs. Swackhamer and Crawford.

Roll call on Assembly Joint Resolution No. 11 of the 50th Session:

YEAS—42.

NAYS—None.

Not voting—Crawford, Frazier, Godbey, Revert, Romeo—5.

Assembly Joint Resolution No. 11 of the 50th Session having received a constitutional majority, Mr. Speaker declared it passed.

Resolution ordered transmitted to the Senate.

Assembly Bill No. 20.

Bill read third time.

Remarks by Messrs. McKissick, Swanson, Revert, Bissett and Knisley.

Roll call on Assembly Bill No. 20:

YEAS—31.

NAYS—Bailey, Berrum, Bunker, Frazier, Gibson, Howard, Pozzi, Revert, Romeo, Swanson, Valentine, Waters—12.

Not voting—Baker, Hafen, Petrini, Mr. Speaker—4.

Assembly Bill No. 20 having received a constitutional majority, Mr. Speaker declared it passed.

Bill ordered transmitted to the Senate.

Assembly Bill No. 109.

Bill read third time.

Remarks by Messrs. Tyson, Kean, Briare, Bastian, Knisley, Gibson, Rowntree and Posin.

Roll call on Assembly Bill No. 109:

YEAS—43.

NAYS—Berrum, Kean, Rowntree, Schouweller—4.

Assembly Bill No. 109 having received a constitutional majority, Mr. Speaker declared it passed.

Bill ordered transmitted to the Senate.

There being no objections, the Speaker and Chief Clerk signed Assembly Concurrent Resolution No. 4.

value of the policy for any loss of 80 percent or more of the property insured; and providing other matters properly relating thereto.

Senator Slattery moved that the bill be referred to the Committee on Banks, Banking and Corporations.

Seconded by Senator Lemaire.

Motion carried.

By the Committee on State, County and City Affairs:

Senate Bill No. 116—An Act to amend NRS section 244.050, relating to county commissioner districts in counties having less than 50,000 population, by establishing a procedure for the abolition of such districts; by changing the procedure for their creation; and providing other matters properly relating thereto.

Senator Dodge moved that the bill be referred to a Joint Committee of State, County and City Affairs and Judiciary.

Seconded by Senator Lemaire.

Motion carried.

Assembly Bill No. 20.

Senator Whitacre moved that the bill be referred to the Committee on Judiciary.

Seconded by Senator Slattery.

Motion carried.

Assembly Bill No. 109.

Senator Whitacre moved that the bill be referred to the Committee on Finance.

Seconded by Senator Slattery.

Motion carried.

#### MOTIONS, RESOLUTIONS, AND NOTICES

##### Assembly Joint Resolution No. 11 of the 50th Session.

Senator Whitacre moved that the resolution be referred to the Committee on Judiciary.

Seconded by Senator Slattery.

Motion carried.

By Senators Slattery and Echeverria:

Senate Concurrent Resolution No. 5—Commending H. S. Bonnemort and Jack Good for their assistance in the Truckee River flood control project.

Senator Slattery moved the adoption of the resolution.

Seconded by Senator Echeverria.

Remarks by Senators Echeverria, Slattery and Lemaire.

Resolution adopted.

#### GUESTS EXTENDED PRIVILEGE OF SENATE FLOOR

On request of Senator Echeverria, the privilege of the floor of the Senate Chamber for this day was extended to Mr. Jim Lorigan.

On request of Senator Gallagher, the privilege of the floor of the Senate Chamber for this day was extended to Mr. Bert Hanks, Mr. and Mrs. Eli Evasovic and Mrs. Mildred Ward.



## THE FIFTIETH DAY

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CARSON CITY (Monday), March 6, 1961.

Senate called to order at 11:25 a. m.

President Bell presiding.

Roll called.

All present except Senator Whitacre, who was excused.

Prayer by the Chaplain, Reverend Clyde E. Teel.

Senator Gallagher moved that further reading of the Journal be dispensed with, and the President and Secretary be authorized to make the necessary corrections and additions.

Seconded by Senator Slattery.

Motion carried.

### REPORTS OF COMMITTEES

*Mr. President:*

Your Committee on Judiciary, to which was referred Senate Bill No. 41, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

CARL F. DODGE, *Chairman.*

*Mr. President:*

Your Committee on Education and State University, to which was referred Senate Joint Resolution No. 8, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

CHARLES D. GALLAGHER, *Chairman.*

*Mr. President:*

Your Committee on Judiciary, to which were referred Senate Bills Nos. 168, 169, 171, 176; Assembly Bills Nos. 96, 221, 251; Assembly Joint Resolution No. 11 of the 50th Session, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

CARL F. DODGE, *Chairman.*

### SECOND READING AND AMENDMENT

Senate Bill No. 41.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 333.

Amend sec. 2, page 2, by striking out lines 23 to 25, inclusive, in their entirety and inserting in lieu thereof the following:

"4. Is of good moral character and has been a resident of the State of Nevada for at least 6 months."

Senator Dodge moved the adoption of the amendment.

Seconded by Senator Slattery.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Joint Resolution No. 8.

Resolution read second time, ordered engrossed and to third reading.

Senate Bill No. 168.

Bill read second time, ordered engrossed and to third reading.

Senate Bill No. 169.

Bill read second time, ordered engrossed and to third reading.

Senate Bill No. 171.

Bill read second time, ordered engrossed and to third reading.

Senate Bill No. 176.

Bill read second time, ordered engrossed and to third reading.

Assembly Bill No. 96.

Bill read second time, and ordered to third reading.

Assembly Bill No. 221.

Bill read second time, and ordered to third reading.

Assembly Bill No. 251.

Bill read second time, and ordered to third reading.

Assembly Joint Resolution No. 11 of the 50th Session.

Resolution read second time, and ordered to third reading.

#### INTRODUCTION, FIRST READING, AND REFERENCE

By the Committee on Public Health:

Senate Bill No. 181—An Act to amend NRS sections 639.070 and 639.310, relating to the powers and duties of the State Board of Pharmacy and to penalties, by allowing such board to adopt a code of ethics; by providing that the regulations of such board have the force and effect of law; by providing penalties; and by providing other matters properly relating thereto.

Senator Slattery moved that the bill be referred to the Committee on Public Health.

Seconded by Senator Lemaire.

Motion carried.

By the Committee on Public Health:

Senate Bill No. 182—An Act to amend NRS sections 639.010, 639.110, 639.240, 639.250, 639.260 and 639.280, which define terms and relate to compounding and dispensing emergency prescriptions, authorization of the State Board of Pharmacy to issue permits to general dealers in rural districts, the sale of drugs by dealers in rural districts, the prohibition against the sale of drugs by general dealers and the use of the word drug in advertising, by adding definitions; by eliminating the provision that a general dealer must be in a rural district to receive a permit from the State Board of Pharmacy; by increasing the fee for such a permit; and by eliminating references to rural districts; to amend chapter 639 of NRS by adding a new section prohibiting the furnishing by manufacturers and wholesalers of samples of certain drugs; and providing other matters properly relating thereto.

Assembly Bill No. 96 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 221.

Bill read third time.

Roll call on Assembly Bill No. 221:

YEAS—16.

NAYS—None.

Absent—McGowan.

Assembly Bill No. 221 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 251.

Bill read third time.

Roll call on Assembly Bill No. 251:

YEAS—15.

NAYS—Slattery.

Absent—McGowan.

Assembly Bill No. 251 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Joint Resolution No. 11 of the 50th Session.

Resolution read third time.

Roll call on Assembly Joint Resolution No. 11 of the 50th Session:

YEAS—12.

NAYS—Brown, Echeverria, Fransway, Monroe, Slattery—5.

Assembly Joint Resolution No. 11 of the 50th Session having received a constitutional majority, Mr. President declared it passed.

Resolution ordered transmitted to the Assembly.

#### UNFINISHED BUSINESS

##### CONSIDERATION OF ASSEMBLY AMENDMENTS

Senate Bill No. 71.

The following Assembly amendments were read:

Amendment No. 268.

Amend section 1, page 1, by striking out line 12 in its entirety and inserting in lieu thereof the following: "50,000 population, and in the amount of [\$7,500] \$5,000 if such place of business".

Amendment No. 269.

Amend section 1, page 2, by striking out line 6 in its entirety and inserting in lieu thereof the following: "liability on the bond shall be limited to the payment of \$1,000 or [\$7,500,] \$5,000,".

Amendment No. 270.

Amend the title of the bill by striking out the last line of the title in its entirety and inserting in lieu thereof the following: "located; by reducing the amount of the bond required by dealers and manufacturers in counties having 50,000 or more population; and by providing other matters properly relating thereto."

Assembly Joint Resolution No. 11 of the 50th Session—Mr. Swackhamer

[To be voted on in 1962]

## FILE NUMBER 44

ASSEMBLY JOINT RESOLUTION—Proposing to amend article XIX of the constitution of the State of Nevada, relating to initiative and referendum, by clarifying the provisions of such article.

*Resolved by the Assembly and Senate of the State of Nevada, jointly,*  
That article XIX of the constitution of the State of Nevada be amended to read as follows:

## [ARTICLE XIX

SECTION 1. Whenever ten per centum or more of the voters of this State, as shown by the number of votes cast at the last preceding general election, shall express their wish that any law or resolution made by the Legislature be submitted to a vote of the people, the officers charged with the duties of announcing and proclaiming elections and of certifying nominations or questions to be voted on, shall submit the question of the approval or disapproval of said law or resolution to be voted on at the next ensuing election wherein a State or Congressional officer is to be voted for, or wherein any question may be voted on, by the electors of the entire State.

SEC. 2. When a majority of the electors voting at a State election shall by their votes signify approval of a law or resolution such law or resolution shall stand as the law of the State and shall not be overruled, annulled, set aside, suspended, or in any way made inoperative except by the direct vote of the people. When such majority shall so signify disapproval the law or resolution so disapproved shall be void and of no effect.

SEC. 3. The people reserve to themselves the power to propose laws and the power to propose amendments to the constitution and to enact or reject the same at the polls, independent of the legislature, and also reserve the power at their option to approve or reject at the polls, in the manner herein provided, any act, item, section or part of any act or measure passed by the legislature, and section one of article four of the constitution shall hereafter be considered accordingly. The first power reserved by the people is the initiative. The initiative petition shall be proposed by not less than ten per cent (10%) of the qualified electors of each of not less than seventy five per cent (75%) of the counties in the state, provided, however, that the total number of qualified electors proposing the said petition shall be not less than ten per cent (10%) of all of the qualified electors of the State. Every such petition shall include the full text of the measure so proposed. Each signer shall affix thereto his or her signature, place of residence and the county within which he or she is a qualified elector. Each document comprising the initiative petition filed with the Secretary of State shall have affixed thereto, an affidavit made by one of the signers to each of said documents or to the petition, to the effect that all of the signatures are genuine and that each and every individual

who signed his or her name thereto was at the time that he or she signed the petition a bonafide qualified elector of the respective county and the State of Nevada, said affidavit to be executed before a Notary Public or some officer authorized to administer an oath who possesses a seal. Initiative petitions, for all but municipal legislation, shall be filed with the secretary of state not less than thirty (30) days before any regular session of the legislature; the secretary of state shall transmit the same to the legislature as soon as it convenes and organizes. Such initiative measure shall take precedence over all measures of the legislature except appropriation bills, and shall be enacted or rejected by the legislature, without change or amendment, within forty (40) days. If any such initiative measure so proposed by petition as aforesaid, shall be enacted by the legislature and approved by the governor in the same manner as other laws are enacted, same shall become a law, but shall be subject to referendum petition as provided in sections one and two of this article. If said initiative measure be rejected by the legislature, or if no action be taken thereon within said forty (40) days, the secretary of state shall submit the same to the qualified electors for approval or rejection at the next ensuing general election; and if a majority of the qualified electors voting thereon shall approve of such measure it shall become a law and take effect from the date of the official declaration of the vote; an initiative measure so approved by the qualified electors shall not be annulled, set aside or repealed by the legislature within three (3) years from the date said act takes effect. In case the legislature shall reject such initiative measure, said body may, with the approval of the governor, propose a different measure on the same subject, in which event both measures shall be submitted by the secretary of state to the qualified electors for approval or rejection at the next ensuing general election. The enacting clause of all bills proposed by the initiative shall be: "The people of the State of Nevada do enact as follows." The total number of votes cast at the general election last preceding the filing of any initiative petition shall be the basis on which the number of qualified electors required to sign such petition shall be counted. The second power reserved by the people is the referendum, which shall be exercised in the manner provided in sections one and two of this article. The initiative and referendum powers in this article provided for are further reserved to the qualified electors of each county and municipality as to all local, special and municipal legislation of every character in or for said respective counties or municipalities. The legislature may provide by law for the manner of exercising the initiative and referendum powers as to county and municipal legislation, but shall not require a petition of more than 10 per cent (10%) of the qualified electors to order the referendum, nor more than 15 per cent (15%) to propose any municipal measure by initiative. If the conflicting measures submitted to the people at the next ensuing general election shall both be approved by a majority of the votes severally cast for and against each of said measures, the measure receiving the highest number of affirmative votes shall thereupon become a law as to all conflicting provisions. The



provisions of this section shall be self-executing, but legislation may be especially enacted to facilitate its operation. ]

## ARTICLE 19.

### *Initiative and Referendum*

SECTION 1. 1. Whenever a number of registered voters of this state equal to 10 percent or more of the number of voters who voted at the last preceding general election shall express their wish by filing a petition in the form provided for in section 3 of this article that any statute or resolution or any part thereof enacted by the legislature be submitted to a vote of the people, the officers charged with the duties of announcing and proclaiming elections and of certifying nominations or questions to be voted upon shall submit the question of approval or disapproval of such statute or resolution or any part thereof to a vote of the voters at the next succeeding election at which such question may be voted upon by the registered voters of the entire state.

2. If a majority of the voters voting upon the proposal submitted at such election votes approval of such statute or resolution or any part thereof, such statute or resolution or any part thereof shall stand as the law of the state and shall not be amended, annulled, repealed, set aside, suspended or in any way made inoperative except by the direct vote of the people. If a majority of such voters votes disapproval of such statute or resolution or any part thereof, such statute or resolution or any part thereof shall be void and of no effect.

SEC. 2. 1. Notwithstanding the provisions of section 1 of article 4 of this constitution, the people reserve to themselves the power to propose, by initiative petition, statutes and amendments to statutes and amendments to this constitution, and to enact or reject them at the polls.

2. An initiative petition shall be in the form required by section 3 of this article and shall be proposed by a number of registered voters equal to 10 percent or more of the number of voters who voted at the last preceding general election in not less than 75 percent of the counties in the state, but the total number of registered voters signing the initiative petition shall be equal to 10 percent or more of the voters who voted in the entire state at the last preceding general election.

3. If the initiative petition proposes a statute or an amendment to a statute, it shall be filed with the secretary of state not less than 30 days prior to any regular session of the legislature. The secretary of state shall transmit such petition to the legislature as soon as the legislature convenes and organizes. The petition shall take precedence over all other measures except appropriation bills, and the statute or amendment to a statute proposed thereby shall be enacted or rejected by the legislature without change or amendment within 40 days. If the proposed statute or amendment to a statute is enacted by

*the legislature and approved by the governor in the same manner as other statutes are enacted, such statute or amendment to a statute shall become law, but shall be subject to referendum petition as provided in section 1 of this article. If the statute or amendment to a statute is rejected by the legislature, or if no action is taken thereon within 40 days, the secretary of state shall submit the question of approval or disapproval of such statute or amendment to a statute to a vote of the voters at the next succeeding general election. If a majority of the voters voting on such question at such election votes approval of such statute or amendment to a statute, it shall become law and take effect upon completion of the canvass of votes by the supreme court. An initiative measure so approved by the voters shall not be amended, annulled, repealed, set aside or suspended by the legislature within 3 years from the date it takes effect. If a majority of such voters votes disapproval of such statute or amendment to a statute, no further action shall be taken on such petition. If the legislature reject such proposed statute or amendment, the governor may recommend to the legislature and the legislature may propose a different measure on the same subject, in which event, after such different measure has been approved by the governor, the question of approval or disapproval of each measure shall be submitted by the secretary of state to a vote of the voters at the next succeeding general election. If the conflicting provisions submitted to the voters are both approved by a majority of the voters voting on such measures, the measure which receives the largest number of affirmative votes shall thereupon become law.*

*4. If the initiative petition proposes an amendment to the constitution, it shall be filed with the secretary of state not less than 60 days before any regular general election at which the question of approval or disapproval of such amendment may be voted upon by the voters of the entire state. The secretary of state shall cause to be published in a newspaper of general circulation, on three separate occasions, in each county in the state, together with any explanatory matter which shall be placed upon the ballot, the entire text of the proposed amendment. If a majority of the voters voting on such question at such election votes disapproval of such amendment, no further action shall be taken on the petition. If a majority of such voters votes approval of such amendment, the secretary of state shall publish and resubmit the question of approval or disapproval to a vote of the voters at the next succeeding general election in the same manner as such question was originally submitted. If a majority of such voters votes disapproval of such amendment, no further action shall be taken on such petition. If a majority of such voters votes approval of such amendment, it shall become a part of this constitution upon completion of the canvass of votes by the supreme court.*

*SEC. 3. Each referendum petition and initiative petition shall include the full text of the measure proposed. Each signer shall affix thereto his or her signature, residence address and the name of the*

county in which he or she is a registered voter. The petition may consist of more than one document, but each document shall have affixed thereto an affidavit made by one of the signers of such document to the effect that all of the signatures are genuine and that each individual who signed such document was at the time of signing a registered voter in the county of his or her residence. The affidavit shall be executed before a person authorized by law to administer oaths in the State of Nevada. The enacting clause of all statutes or amendments proposed by initiative petition shall be: "The People of the State of Nevada do enact as follows:".

SEC. 4. The initiative and referendum powers provided for in this article are further reserved to the registered voters of each county and each municipality as to all local, special and municipal legislation of every kind in or for such county or municipality. In counties and municipalities initiative petitions may be instituted by a number of registered voters equal to 15 percent or more of the voters who voted at the last preceding general county or municipal election. Referendum petitions may be instituted by 10 percent or more of such voters.

SEC. 5. The provisions of this article are self-executing but the legislature may provide by law for procedures to facilitate the operation thereof.

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Senate Concurrent Resolution No. 12—Senator Settlemeyer

FILE NUMBER 45

SENATE CONCURRENT RESOLUTION—Giving final legislative approval to the state park commission to accept a gift of real property.

*Resolved by the Senate of the State of Nevada, the Assembly concurring,* That final legislative approval, as required by subsection 5 of NRS 407.070, is hereby given to the state park commission to accept a gift of real property from Douglas County within the present confines of Mormon Station historic state monument, such property being lot 17, block 13 of the Town of Genoa, County of Douglas.

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Senate Concurrent Resolution No. 13—Senator Settlemeyer

FILE NUMBER 46

SENATE CONCURRENT RESOLUTION—Approving acceptance of a gift of money to state park commission.

WHEREAS, The American Women's Voluntary Service has offered a gift of \$285.32 to the state park commission; and

# **SUPPLEMENTAL MATERIALS**

## **BALLOT QUESTION TEXT AND VOTES FROM THE 1962 GENERAL ELECTION**

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**Constitutional Amendments To Be Voted  
Upon in State of Nevada at General  
Election, November 6, 1962**

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138

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vehicle resides must be used. If Question No. 1 is approved, a uniform and equal tax rate for motor vehicles may be established throughout the State. The present motor vehicle personal property tax cannot exceed five cents on one dollar of assessed valuation and is not required to be used for public highways. Similarly, the new uniform tax could not exceed five cents on one dollar of assessed valuation and would not be required to be used for public highways.

## **QUESTION NO. 2**

### **Amendment to the Constitution**

Article 19 of the Constitution of the State of Nevada now reads as follows:

SECTION 1. Whenever ten per centum or more of the voters of this State, as shown by the number of votes cast at the last preceding general election, shall express their wish that any law or resolution made by the Legislature be submitted to a vote of the people, the officers charged with the duties of announcing and proclaiming elections and of certifying nominations or questions to be voted on, shall submit the question of the approval or disapproval of said law or resolution to be voted on at the next ensuing election wherein a State or Congressional officer is to be voted for, or wherein any question may be voted on, by the electors of the entire State.

SEC. 2. When a majority of the electors voting at a State election shall by their votes signify approval of law or resolution such law or resolution shall stand as the law of the State and shall not be overruled, annulled, set aside, suspended, or in any way made inoperative except by the direct vote of the people. When such majority shall so signify disapproval the law or resolution so disapproved shall be void and of no effect.

SEC. 3. The people reserve to themselves the power to propose laws and the power to propose amendments to the constitution and to enact or reject the same at the polls, independent of the legislature, and also reserve the power at their option to approve or reject at the polls, in the manner herein provided, any act, item, section or part of any act or measure passed by the legislature, and section one of article four of the constitution shall hereafter be considered accordingly. The first power reserved by the people is the initiative. The initiative petition shall be proposed by not less than ten per cent (10%) of the qualified electors of each of not less than seventy five per cent (75%) of the counties in the state, provided, however, that the total number of qualified electors proposing the said petition shall be not less than ten per cent (10%) of all of the qualified electors of the State. Every such petition shall include the full text of the measure so proposed. Each signer shall affix thereto his or her signature, place of residence and the county within which he or she is a qualified elector. Each document comprising the initiative petition filed with the Secretary of State shall have

affixed thereto, an affidavit made by one of the signers to each of said documents or to the petition, to the effect that all of the signatures are genuine and that each and every individual who signed his or her name thereto was at the time that he or she signed the petition a bona fide qualified elector of the respective county and the State of Nevada, said affidavit to be executed before a Notary Public or some officer authorized to administer an oath who possesses a seal. Initiative petitions, for all but municipal legislation, shall be filed with the secretary of state not less than thirty (30) days before any regular session of the legislature; the secretary of state shall transmit the same to the legislature as soon as it convenes and organizes. Such initiative measure shall take precedence over all measures of the legislature except appropriation bills, and shall be enacted or rejected by the legislature, without change or amendment, within forty (40) days. If any such initiative measure so proposed by petition as aforesaid, shall be enacted by the legislature and approved by the governor in the same manner as other laws are enacted, same shall become a law, but shall be subject to referendum petition as provided in sections one and two of this article. If said initiative measure be rejected by the legislature, or if no action be taken thereon within said forty (40) days, the secretary of state shall submit the same to the qualified electors for approval or rejection at the next ensuing general election; and if a majority of the qualified electors voting thereon shall approve of such measure it shall become a law and take effect from the date of the official declaration of the vote; an initiative measure so approved by the qualified electors shall not be annulled, set aside or repealed by the legislature within three (3) years from the date said act takes effect. In case the legislature shall reject such initiative measure, said body may, with the approval of the governor, propose a different measure on the same subject, in which event both measures shall be submitted by the secretary of state to the qualified electors for approval or rejection at the next ensuing general election. The enacting clause of all bills proposed by the initiative shall be: "The people of the State of Nevada do enact as follows." The total number of votes cast at the general election last preceding the filing of any initiative petition shall be the basis on which the number of qualified electors required to sign such petition shall be counted. The second power reserved by the people is the referendum, which shall be exercised in the manner provided in sections one and two of this article. The initiative and referendum powers in this article provided for are further reserved to the qualified electors of each county and municipality as to all local, special and municipal legislation of every character in or for said respective counties or municipalities. The legislature may provide by law for the manner of exercising the initiative and referendum powers as to county and municipal legislation, but shall not require a petition of more than 10 per cent (10%) of the qualified electors to order the referendum, nor more than 15 per cent (15%) to propose

any municipal measure by initiative. If the conflicting measures submitted to the people at the next ensuing general election shall both be approved by a majority of the votes severally cast for and against each of said measures, the measure receiving the highest number of affirmative votes shall thereupon become a law as to all conflicting provisions. The provisions of this section shall be self-executing, but legislation may be especially enacted to facilitate its operation.

If Question No. 2 is approved, Article 19 will be amended to read as follows:

SECTION 1. 1. Whenever a number of registered voters of this state equal to 10 percent or more of the number of voters who voted at the last preceding general election shall express their wish by filing a petition in the form provided for in section 3 of this article that any statute or resolution or any part thereof enacted by the legislature be submitted to a vote of the people, the officers charged with the duties of announcing and proclaiming elections and of certifying nominations or questions to be voted upon shall submit the question of approval or disapproval of such statute or resolution or any part thereof to a vote of the voters at the next succeeding election at which such question may be voted upon by the registered voters of the entire state.

2. If a majority of the voters voting upon the proposal submitted at such election votes approval of such statute or resolution or any part thereof, such statute or resolution or any part thereof shall stand as the law of the state and shall not be amended, annulled, repealed, set aside, suspended or in any way made inoperative except by the direct vote of the people. If a majority of such voters votes disapproval of such statute or resolution or any part thereof, such statute or resolution or any part thereof shall be void and of no effect.

SEC. 2. 1. Notwithstanding the provisions of section 1 of article 4 of this constitution, the people reserve to themselves the power to propose, by initiative petition, statutes and amendments to statutes and amendments to this constitution, and to enact or reject them at the polls.

2. An initiative petition shall be in the form required by section 3 of this article and shall be proposed by a number of registered voters equal to 10 percent or more of the number of voters who voted at the last preceding general election in not less than 75 percent of the counties in the state, but the total number of registered voters signing the initiative petition shall be equal to 10 percent or more of the voters who voted in the entire state at the last preceding general election.

3. If the initiative petition proposes a statute or an amendment to a statute, it shall be filed with the secretary of state not less than 30 days prior to any regular session of the legislature. The secretary of state shall transmit such petition to the legislature as soon as the legislature convenes and organizes. The petition shall take precedence over all other measures except

appropriation bills, and the statute or amendment to a statute proposed thereby shall be enacted or rejected by the legislature without change or amendment within 40 days. If the proposed statute or amendment to a statute is enacted by the legislature and approved by the governor in the same manner as other statutes are enacted, such statute or amendment to a statute shall become law, but shall be subject to referendum petition as provided in section 1 of this article. If the statute or amendment to a statute is rejected by the legislature, or if no action is taken thereon within 40 days, the secretary of state shall submit the question of approval or disapproval of such statute or amendment to a statute to a vote of the voters at the next succeeding general election. If a majority of the voters voting on such question at such election votes approval of such statute or amendment to a statute, it shall become law and take effect upon completion of the canvass of votes by the supreme court. An initiative measure so approved by the voters shall not be amended, annulled, repealed, set aside or suspended by the legislature within 3 years from the date it takes effect. If a majority of such voters votes disapproval of such statute or amendment to a statute, no further action shall be taken on such petition. If the legislature reject such proposed statute or amendment, the governor may recommend to the legislature and the legislature may propose a different measure on the same subject, in which event, after such different measure has been approved by the governor, the question of approval or disapproval of each measure shall be submitted by the secretary of state to a vote of the voters at the next succeeding general election. If the conflicting provisions submitted to the voters are both approved by a majority of the voters voting on such measures, the measure which receives the largest number of affirmative votes shall thereupon become law.

4. If the initiative petition proposes an amendment to the constitution, it shall be filed with the secretary of state not less than 60 days before any regular general election at which the question of approval or disapproval of such amendment may be voted upon by the voters of the entire state. The secretary of state shall cause to be published in a newspaper of general circulation, on three separate occasions, in each county in the state, together with any explanatory matter which shall be placed upon the ballot, the entire text of the proposed amendment. If a majority of the voters voting on such question at such election votes disapproval of such amendment, no further action shall be taken on the petition. If a majority of such voters votes approval of such amendment, the secretary of state shall publish and resubmit the question of approval or disapproval to a vote of the voters at the next succeeding general election in the same manner as such question was originally submitted. If a majority of such voters votes disapproval of such amendment, no further action shall be taken on such petition. If a majority of such voters votes approval of such amendment, it shall become a part

of this constitution upon completion of the canvass of votes by the supreme court.

SEC. 3. Each referendum petition and initiative petition shall include the full text of the measure proposed. Each signer shall affix thereto his or her signature, residence address and the name of the county in which he or she is a registered voter. The petition may consist of more than one document, but each document shall have affixed thereto an affidavit made by one of the signers of such document to the effect that all of the signatures are genuine and that each individual who signed such document was at the time of signing a registered voter in the county of his or her residence. The affidavit shall be executed before a person authorized by law to administer oaths in the State of Nevada. The enacting clause of all statutes or amendments proposed by initiative petition shall be: "The People of the State of Nevada do enact as follows:".

SEC. 4. The initiative and referendum powers provided for in this article are further reserved to the registered voters of each county and each municipality as to all local, special and municipal legislation of every kind in or for such county or municipality. In counties and municipalities initiative petitions may be instituted by a number of registered voters equal to 15 percent or more of the voters who voted at the last preceding general county or municipal election. Referendum petitions may be instituted by 10 percent or more of such voters.

SEC. 5. The provisions of this article are self-executing but the legislature may provide by law for procedures to facilitate the operation thereof.

#### **Explanation of the Purpose of the Proposed Amendment to Article 19 of the Constitution of Nevada**

Article 19 presently provides the procedure by which the people exercise their power to propose laws and amendments to the Constitution and to have laws and resolutions passed by the Legislature submitted to them for their approval or rejection. This first power is called "initiative"; the second power is referred to as "referendum."

Although entirely rewritten to clarify its provisions, the proposed amendment leaves Article 19 substantially unchanged, except that the method of amending the Constitution by the people is different.

In order to amend the Constitution pursuant to the present Article 19, the initiative petition containing the required number of signatures is presented to the Legislature for approval or rejection. If approved by the Legislature and the Governor, the Constitution is then amended without the people having had an opportunity to express their approval or disapproval of the change in the Constitution. Only when the Legislature does not approve the people's initiative petition to amend the Constitution is the question required to be placed on the ballot at the next general election for the approval or disapproval of the people.



The proposed Article 19 provides that the people's initiative petition proposing a constitutional amendment would not be presented to the Legislature or Governor at all, but would appear on the ballot at the next general election, and, if approved, would again be submitted to the voters at the following general election (two years later). If twice approved by the voters at two successive general elections, the amendment would then become part of the Constitution of Nevada.

It should be noted that there are two methods of amending the Constitution. First, pursuant to Article 16, and second, pursuant to Article 19. When Article 16 is employed, the Constitution is amended when two successively elected Legislatures have approved by resolution an amendment to the Constitution. The then proposed amendment is submitted to a vote of the people for approval or disapproval at the next general election and, if approved, the proposed amendment becomes a part of the Constitution.

It should be noted that when Article 16 is employed, the Legislature, not the people, must first propose a change in the Constitution.

If Question No. 2 is approved, then when Article 19 is employed to amend the Constitution, the proposed change will be initiated by the people and become a part of the Constitution after the voters have approved the proposed change at the next two successive general elections.

#### **Statements for the Printed Ballots and Voting Machines**

The following language should appear on the printed ballots and voting machines:

Question No. 2.

Amendment to the Constitution.

Shall—Article 19 of the Constitution be amended so as to clarify its provisions and change the method of amending the Constitution by the people's initiative by eliminating the requirement of presenting the proposed change in the Constitution to the Legislature and Governor, and requiring instead that the question proposing the constitutional amendment be submitted to the voters at two successive general elections?

Yes	38,188	<input type="checkbox"/>
No	29,352	<input type="checkbox"/>

#### **(Explanation of Question No. 2)**

Presently an initiative petition proposing amendment to the Constitution under Article 19 is presented to the Legislature and, if approved by the Legislature and Governor, the Constitution stands amended. If Question No. 2 is approved, the people's initiative petition proposing an amendment to the Constitution would not be presented to the Legislature or Governor at all, but would appear on the general election ballot at the next two general elections and if twice approved by the voters, the amendment would become a part of the Constitution.

Section 293.253 of Nevada Revised Statutes places a duty upon the Secretary of State as well as upon the County Clerks. NRS 293.253 provides:

1. *The secretary of state shall provide each county clerk with copies of any proposed constitution, constitutional amendment or question on or before the 1st Monday in August of the year in which such constitution, amendment or question will appear on the general election ballot.*

2. *On or before the 4th Friday in October, each county clerk shall post one such copy at each polling place in the county outside the limits of incorporated cities.*

3. Each county clerk shall cause a copy of any such constitution, amendment or question to be published in a newspaper of general circulation in the county three times at 10-day intervals, the first publication to be on or before the 1st Monday in October. If no such newspaper is published in the county, then such publication may be made in a newspaper of general circulation published in the nearest Nevada county.

(Italics supplied.)

Pursuant to NRS 293.247, the Secretary of State has promulgated rules and regulations for the conduct of elections. Rule 62a and b read as follows:

62. a. Whenever any question is to be submitted to the vote of the people, it shall be printed upon the ballot in such manner as to enable the electors to vote "Yes" or "No" upon the question submitted in the manner provided by law. The words "Yes" and "No" separated by a lightface rule, with a square after each of the size prescribed by law, shall be printed upon the ballot after each question, with a brief statement of the purport of such question, in plain, ordinary language which may be readily understood by the ordinary lay person.

b. Before every question or constitutional amendment to be voted upon there shall be placed a number, to be designated by the Secretary of State, in boldface type not smaller than 24-point.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State, at my office in Carson City, Nevada, this first day of June, 1962.

(SEAL)

  
Secretary of State.

# Exhibit E

energy would be subject to the prior and new tariffs, or what the basic service charge would be.

(Ex. 132A at 16-17.)

## **V. COMMISSION DISCUSSION AND FINDINGS**

252. Pursuant to NAC 703.801(1), a petition for reconsideration shall:

(a) Identify each portion of the challenged order which the petitioner deems to be unlawful, unreasonable or based on erroneous conclusions of law or mistaken facts; and

(b) Cite those portions of the record, the law or the rules of the Commission which support the allegations in the petition. The petition may not contain additional evidentiary matter or require the submission or taking of evidence.

253. The petitioners do not direct the Commission to any misstatement of fact or fact that is missing from the recounting of the record. In most instances, the petitioners ask the Commission to simply reweigh the evidence in the record and come to a different conclusion. Except as discussed herein, the Petitions for Reconsideration are denied.

254. Nevada legislators prophetically explained during one of the hearings on SB 374 that solar installation/financing companies' business models would need to change as cost shifts or subsidies are reduced:

When these things [subsidies] go away, you do have to change your business model somewhat. If you have made billions of dollars the last few years, you should be able to afford to do that. While we will have some people disagree with that, that is exactly what we believe. Some of these industries will have to change their business model to fit what Nevada is going to be doing.

(Minutes of May 20, 2015 Meeting of the Assembly Committee on Commerce and Labor, at 50.)

The Commission's decisions in these proceedings reduce and ultimately eliminate the unreasonable cost shifts between NEM ratepayers and non-NEM ratepayers over time.

255. Cost-based rates that may increase costs for NEM systems relative to other renewable technologies will encourage private investment in other renewable technologies such as large-scale solar PV and storage technologies, which will stimulate the economic growth of

Nevada and enhance the continued diversification of the energy resources used in Nevada. The Commission has consistently pursued the least-cost renewable energy options that benefit all ratepayers in Nevada (i.e. rejection of the large-scale solar PV PPA in late 2014 at over \$110/MWh and approval of five large-scale solar PV PPAs in 2015 and 2016 at under \$50/MWh based on the levelized cost of energy). In the last five months alone, the Commission has approved 329 MW of large-scale solar projects.

256. The NEM rates encourage small-scale (rooftop) solar PV vendors to compete more evenly (the 30 percent Federal Investment Tax Credit has been extended for wind and solar companies) in the marketplace with other renewable energy resources, especially with large-scale solar PV developers. Unfortunately, the exodus of small-scale (rooftop) solar vendors in Nevada in the past two months demonstrates that their business models are premised on subsidies from non-NEM ratepayers. As long as those subsidies exist in other states, there is no reason for these businesses to adapt in Nevada. This is a short-sighted business strategy that is harmful to the long-term viability of solar energy. Fortunately, large-scale solar developers have developed a viable long-term strategy in Nevada, as evidenced by the Commission's approval of the five 20-year solar PV PPAs in 2015 and 2016. These low PPA prices are passed on to all ratepayers. This is in stark contrast to the significant subsidies that non-NEM ratepayers are being asked to pay to NEM ratepayers who install NEM systems on their premises.

#### **NEM LEGISLATION**

257. Prior to the enactment of SB 374, the old NEM regime was in place for nearly 20 years, having first been adopted as a pilot program in 1997. The cost shifting is the product of a 1997 pilot program that required NV Energy to provide service to NEM ratepayers with a specific rate structure designed to encourage what was then a new technology and a nascent

industry. In 2015, the Nevada Legislature for the first time authorized the Commission to address the cost shifts associated with the old NEM rates. The text of SB 374 shows that one of the primary objectives of the statute was to reduce and eliminate the subsidies created by the old NEM rates. Subsection 2(e) of Section 2.3 of SB 374 provides that the Commission “[s]hall 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.” Subsection 2(d) of Section 2.3 of SB 374 also expressly gives the Commission the authority to establish rates and charges for customer-generators that “avoid, reduce or eliminate” the “unreasonable shifting of costs from customer-generators to other customers of the utility” that occurs under the old NEM rates.

258. The Commission notes that the small-scale (rooftop) solar industry supported SB 374. Mr. Robert S. Uithoven, representing TASC (which included SolarCity and Sunrun at the time), stated “. . . we are happy to be here in support of the legislation.” (Minutes of the Assembly Committee on Commerce and Labor, May 25, 2015, at 6.)

#### **AUTHORITY TO ESTABLISH DIFFERENT RATES**

259. Pursuant to Section 2.3(2)(a) of SB 374, the Commission may establish one or more rate classes for NEM ratepayers in this proceeding. There are generally three ways to differentiate ratepayers into classes: cost differentiation, usage differentiation, or a combination of the two. Partial-requirements service, including electric service for NEM ratepayers, presents both a cost issue and a rate design issue (and revenue recovery issue) in this proceeding. The issue is the relationship between reduced consumption and the cost to provide service. As the Commission stated in the December 23<sup>rd</sup> Order, the reduction in the amount of electricity delivered to the NEM ratepayer after the installation of the NEM system does not result in a



proportional decline to the cost of providing service. As a result, NEM ratepayers are underpaying, and the difference has to be collected from non-NEM ratepayers (eventually via reallocation in the next general rate case) if NEM ratepayers are not in separate rate classes. By placing NEM ratepayers in a separate class, the Commission can design and implement rates that effectively collect those costs through an alternative rate structure that treats everyone in that class the same. Separate rate classes will address the inequity between NEM and non-NEM ratepayers that exists under the old NEM framework.

### **RISK OF RATE CHANGES**

260. NEM ratepayers have installed NEM systems over the last 17 years under the old NEM rates. All ratepayers (including NEM ratepayers) bear the risks and rewards of making investment decisions based on existing electric rates and tariffs with the knowledge that electric rates and tariffs can change at any time based on changed circumstances. The State of Nevada, through the Solar Program, has already designated \$255 million in incentives (funded by ratepayers) paid to most NEM ratepayers to help mitigate these risks to encourage small-scale (rooftop) solar development in Nevada.

261. The Commission notes that all NEM ratepayers must sign an interconnection agreement with NV Energy. NEM ratepayers and the system owners (where the NEM ratepayers are not the system owners) are required to execute a standard form letter agreement addressing their interconnections. Since 2004, each iteration of the interconnection agreement includes the governing authority (Section 9), which states that the NEM tariffs may be amended by the Commission at any time. From 2004-2008, Section 9 stated:

Utility's distribution tariffs may be amended by the PUCN at any time.

From 2009-present, Section 9 stated:

This Agreement shall be governed and construed under the laws of the State of Nevada as they may be amended or superseded from time to time. The Public Utilities Commission of Nevada . . . or the Utility may amend its tariffs upon Commission approval, which amendments are subject to public noticing requirements.

262. Evidence presented in these proceedings suggests that the small-scale (rooftop) solar vendors (with the exception of Bombard) failed to inform these customers of the potential changes to the old NEM rates as contemplated by SB 374.<sup>11</sup> The vendors' failure to properly inform their customers is particularly egregious because many small-scale (rooftop) solar vendors, including SolarCity and Sunrun, were at the Legislature for the hearings on SB 374 and supported SB 374 in its final version, which included language at Section 2.3(3) clearly explaining that new rates (that eliminate cost shifts) will potentially apply to all NEM customers:

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.

Regardless, by moving forward with the installations and submission of completed applications, NEM ratepayers specifically assumed the risks that NEM rates could change pursuant to SB 374.

#### **PERPETUITY**

263. Only GBSC and Vote Solar argue that NEM1 ratepayers should never move to cost-based rates, instead arguing that NEM1 ratepayers should remain on the old NEM rates for the life of the NEM systems. This is unreasonable. The actions of a ratepayer should not be used to prevent the Commission from establishing just and reasonable rates for all ratepayers. Further, the size of the annual subsidy, currently at over \$16 million, will cumulatively grow

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<sup>11</sup> The Commission notes that NV Energy began in July to provide such disclosures regarding SB 374 in the interconnection agreements that every NEM1 ratepayer signed.

unreasonably larger over time. GBSC intimates that NEM system lives “could easily stretch out beyond 40 years” based on NEM1 ratepayers’ anticipated recovery of their NEM system investments. At 40 years, not only is a system’s viability questionable, but also the subsidy borne by non-NEM ratepayers will have grown to \$640 million. This is a perpetual cost shift with inaccurate price signals that prolongs old NEM rates already in place for nearly 20 years. The Commission is establishing rates in this proceeding, and system life has nothing to do with establishing just and reasonable rates.

### **NO CHANGE FOR 8-10 OR 20 YEARS**

264. In this proceeding, the Commission has revised the rates and terms of NEM service on a prospective basis. A wholesale change immediately for NEM1 ratepayers would result in rate shock. Similarly, an abrupt change at 8-10 years (as originally proposed by BCP) or 20 years (as proposed by BCP, NV Energy, SEIA, TASC, and Vote Solar) would also result in rate shock. These proposals simply delay the necessary correction identified by the Commission by “kicking the can down the road.” At the end of the time period, arguments to continue the old NEM rates for an even longer period are inevitable due to the impending rate shock of suddenly transitioning to cost-based rates. While TASC characterizes these proposals as a smooth transition from the old NEM rates to the new NEM rates, these proposals are anything but smooth; a rate cliff is not a smooth transition.

265. These proposals will only forestall the argument again when after NEM1 ratepayers have had 8, 10, or 20 years of bills unreflective of actual costs and accurate price signals. Such a delay is unreasonable. These proposals do nothing to address the problem of antiquated rates that were instituted nearly 20 years ago to jumpstart an industry. The old NEM rates are not reflective of accurate price signals or actual costs to serve. As the number of NEM

systems has exploded in the last year, the subsidy has become unreasonable. That subsidy is borne by non-NEM ratepayers who are predominantly middle and low income families.

266. Several parties point to the 20-year periods instituted in Arizona (Arizona Public Service Company), California, and Hawaii in an attempt to demonstrate that NEM ratepayers had an expectation that Nevada would follow suit with these other states.<sup>12</sup> Hawaii cannot be included because its decision was made in October, after the 235 MW threshold was met, so none of the NEM1 ratepayers would have known about Hawaii's decision at the time these NEM1 ratepayers signed up for NEM service. As SEIA previously stated, NEM is available in 43 states, so there are 40 states, including Nevada, which have not adopted such 20-year proposals.

267. Rates and rate structures change over time in electric utility ratemaking. While all ratepayers would like to lock in rates and rate structures to insulate themselves from change over 20+ years, electric utility ratemaking cannot work in this manner—otherwise, ratepayers left out of such schemes will be forced to pay ever-increasing incremental costs as the number of ratepayers increases and the ongoing costs to serve those ratepayers increases over time. Non-NEM ratepayers should not be required to subsidize NEM1 ratepayers for the decisions that NEM1 ratepayers made any longer than is reasonably necessary to move NEM ratepayers to cost-based rates over a period of time.

268. Proposals that introduce a rate cliff at 8-10 or 20 years do nothing to address the unreasonable \$16 million annual subsidy that would be borne by non-NEM ratepayers to preserve the old rates for NEM1 customers. Over 8-10 years, the subsidy grows to \$128-160

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<sup>12</sup> The Commission also notes that the language of SB 374 stating that the Commission “[s]hall 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” is unique language to Nevada.

million. Over 20 years, the subsidy grows to \$320 million. A cost shift of this size is unreasonable. The annual subsidy equates to a 1.7 percent annual rate increase for the average single-family residential ratepayer in NPC's service territory.

## **PAYBACK**

269. The small-scale (rooftop) solar interests argue that the Commission should grandfather NEM1 ratepayers in order to guarantee a return on their NEM system investments. All investments come with risk. Non-NEM ratepayers should not be asked to act as a safety net to fund the unreasonable cost shifts needed to guarantee a return on NEM investments. The goal of moving to cost-based rates should be to balance the interests of all ratepayers, existing NEM ratepayers, future NEM ratepayers, and non-NEM ratepayers, not to preserve individual or even average payback periods on NEM ratepayers' investments.

270. Payback periods cannot be reliably calculated. Payback periods will vary from customer to customer and are not a reasonable basis for imposing new tariffs. The terms and conditions of the contractual commitments governing rooftop solar installations are extremely variable, accomplished through one of three primary commercial structures: purchase/installs, power purchase agreements, and leases. There is no uniformity in the costs of equipment or installations, the duration of financing agreements, or interest rates or other terms and conditions. It is impossible to identify a typical purchase/install transaction. Also, for some NEM ratepayers, the economics matter, while for others they do not. NEM ratepayers utilize their NEM systems to produce their own energy, reducing their carbon footprint, saving money on their electric utility bill, and/or enhancing the value of their home. The Commission is establishing rates in this proceeding, and NEM system paybacks have nothing to do with establishing just and reasonable rates.

271. A review of the information provided in this proceeding demonstrates broadly different economic payback periods promoted by the solar industry in web-based promotions (Bombard (5-10 years), SolarCity (7-10 years), SunWorks (5-7 years)) compared to the figures in the sworn testimony of witnesses in this proceeding (BCP (14 years), GBSC (11.85years), TASC (16 years), and Staff (16 years)). It appears that some small-scale (rooftop) solar vendors advertised unrealistic payback periods.

### **TRANSITION TO COST-BASED RATES**

272. The Commission selects a process for first reducing and then eliminating the cost shifting that occurs under the old NEM rates.

273. Utility rates for all ratepayers (not just NEM ratepayers) are subject to change. This is the nature of rate regulation. However, the magnitude of such changes has historically been moderated by principles of gradualism. Gradualism is the concept used by utility regulatory commissions to manage change associated with moving utility prices to reflect new or changing rate structures of costs of service.

274. Without gradualism, there is no move to accurate, cost-based price signals. Currently, the average NEM ratepayer uses just 58 percent (in NPC's service territory) and 51 percent (in SPPC's service territory) of the energy generated from his/her NEM system on-site. The rest is physically delivered to the electric grid. This is an inefficient use of the energy generated by the NEM systems that places all of the cost burden of the unreasonable subsidy on remaining ratepayers. A gradual move to cost-based rates over time will allow NEM ratepayers to make informed decisions on how to maximize the output of their NEM systems, particularly with the option of TOU rates.

275. NEM ratepayers will need time to adapt to the new NEM rates. At the same time,



the growing cost shift will be borne by non-NEM ratepayers who will be subsidizing NEM ratepayers. Therefore, the Commission must balance these competing ratepayer interests. Under a laddering approach, incremental steps (rate changes) can be made over a period of time. The first step was implemented on January 1, 2016. One step every year over a four-year period minimizes the subsidy to \$27 million but does not provide much opportunity for NEM ratepayers to adapt in between rate changes. One step every two years over an eight-year period doubles the subsidy to \$54 million but provides a better opportunity for NEM1 ratepayers to adapt in between rate changes. One step every three years over a twelve-year period raises the subsidy to \$81 million which is very large, but NEM ratepayers have three years in between steps, which mirrors the timeframe that all other ratepayers have between rate changes in NV Energy's three-year GRC cycle.<sup>13</sup> One step every four years over a sixteen-year period raises the subsidy to \$109 million, with NEM ratepayers having four years between steps, which is more time than all other ratepayers have between rate changes in NV Energy's three-year GRC cycle. The longer it takes to migrate NEM ratepayers to cost-based rates, the higher the subsidy that will be paid by non-NEM ratepayers.<sup>14</sup>

277. Consistent with the principle of bill stability, the Commission finds that it is in the public interest to establish a time frame in which to gradually move to the revised rate structure in order to prevent rate shock and allow current and future NEM ratepayers time and opportunity to adjust their current usage patterns. All NEM customers, regardless of when their

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<sup>13</sup> For instance, the Commission authorized a period of time (1983-1992) for the migration of rates for Elko residents to the higher system-wide rates for the corresponding rate classes in SPPC's territory, with step changes implemented after each GRC--any increase in rates resulting from the GRCs was increased by an additional 17.5 percent until the rates for Elko residents reached parity with all other SPPC ratepayers in the same rate classes. (See Docket No. 83-111, Stipulation Regarding Rate Increases for the Elko District of Sierra Pacific Power Company, May 10, 1983; Docket Nos. 91-7079, 91-7080, and 91-7081, Order issued January 31, 1992, at 128-130.)

<sup>14</sup> The estimated subsidies are based on 235MW of installed NEM system capacity. If new installations result in capacity exceeding 235MW, the subsidies will be larger.

solar energy systems were installed, will benefit from a gradual approach toward cost-based rates. This approach will create a path to developing sustainable practices in the small-scale rooftop solar industry that will allow companies and NEM ratepayers the opportunity to review and revise their business models to compete without NEM subsidies. The Commission reiterates from its December 23<sup>rd</sup> Order that it is in the public interest to apply the same rates and tariffs to all NEM ratepayers, regardless of the vintage of the NEM system (whether or not their completed NEM applications were submitted prior to the 235 MW cap being met). NV Energy is generally not allowed to discriminate between similarly-situated ratepayers but is allowed to differentiate between classes of ratepayers if either the costs to serve or the usage patterns are sufficiently different. There will be no difference between NEM ratepayers in NV Energy's costs to serve them or their usage patterns. The ratemaking principle of horizontal equity supports treating equals (all NEM ratepayers) equally. Also, providing different price signals, through different rates and tariffs, to similar ratepayers is illogical and potentially confusing. Treating all NEM ratepayers the same will reduce the costs of administering two separate schedules for similarly-situated ratepayers, while eliminating confusion regarding eligibility. All NEM customers will transition to cost-based rates over the next 12 years. During that period there will be a total of five step changes to NEM1 rates: (1) January 1, 2016, (2) January 1, 2019, (3) January 1, 2022, (4) January 1, 2025, and (5) January 1, 2028. The adoption of a five-step ladder for managing change over a period of time reflects the principle of gradualism, gradually increasing prices and reducing net excess energy credits, achieving cost-based rates (thereby eliminating the unreasonable cost shift) in 12 years, by January 1, 2028. A 12-year timeframe *for all NEM customers to date* represents *approximately* represents an approximately \$100 million subsidy that non-NEM ratepayers will have to pay to cover the costs to serve NEM

ratepayers that are not recovered from NEM ratepayers during the transition period. It is reasonable to transition NEM ratepayers to cost-based rates over this time period in order to mitigate rate shock.

278. One step every three years is the most reasonable in balancing the interests of NEM ratepayers and non-NEM ratepayers regarding the period of time for NEM ratepayers to adapt to the new NEM rates and the amount of the continued subsidy that must be paid by non-NEM ratepayers over that same period of time. A step change every three years is also consistent with the time period between rate changes for electric utilities through general rate cases. All ratepayers should expect this. Further, the timing of the three-year steps provides NEM ratepayers with an unprecedented preview of future rates (actual amounts will vary due to intervening quarterly BTER and DEAA filings). The actual NEM rates will be revised during each subsequent GRC. For SPPC the rates from its 2016 GRC will be known by January 1, 2017, but NEM ratepayers in SPPC's service territory will not experience the corresponding step change until January 1, 2019, a full two years later. For NPC, the NEM rates for its 2017 GRC will be known by January 1, 2018, but NEM ratepayers in NPC's service territory will not experience the corresponding step change until January 1, 2019, a full year later.

278. The 12-year timeframe enables NEM ratepayers to maximize the value of their NEM systems by providing time to adjust usage patterns to maximize use of energy on their premises while allowing more time for new technologies (battery storage, etc.) to become viable add-ons. The 12-year timeframe also helps implement the Legislature's goal of allocating the full \$255 million in incentives under the Solar Program for 235 MW of small-scale (rooftop) solar in Nevada by December 31, 2021 (see NRS 701B.005(1).) Installations were progressing at a relatively steady pace to reach that goal (which is still almost six years away) until the

massive run-up over the last 18 months.

279. TASC's own calculations demonstrate that NEM ratepayers paying NEM rates still experience average savings of 33 percent on their electric utility bills after the full phase-in period. These rates reflect the cost of providing service to this class of ratepayers and are in line with how rates are set for all ratepayers.

280. The transition period also acknowledges the investment NEM ratepayers have made in their NEM systems. While not a reason for the 12-year timeframe, the 12-year timeframe has the effect of providing a much greater opportunity for NEM ratepayers to *achieve a more reasonable or expected payback for certain systems while reducing the estimated \$320 million cost to non-NEM ratepayers by two-thirds.*

#### **TRANSPARENCY**

281. In an effort to provide transparency regarding the costs of the NEM subsidy that all residential and small commercial non-NEM ratepayers will pay over the next 12 years, NV Energy is directed to include a separate line item entitled "NET ENERGY METERING SUBSIDY" on all non-NEM ratepayers' monthly electric bills. NV Energy will include the line item calculations for approval in the 2016 SPPC GRC and 2017 NPC GRC and every subsequent GRC until the NEM1 ratepayers have transitioned to NEM2 rates on January 1, 2028.

#### **FAIRNESS**

282. While the 12-year transition period is fair to all ratepayers, NV Energy states that the rates also have to be "perceived" as fair. Under normal circumstances, the Commission agrees that perception (customer acceptance) is another tenet of rate design to be weighed amongst sometimes competing principles. In all cases, accurate and timely information regarding rates, rate changes, statutes, and statutory changes are necessary for individuals to

make informed choices that best meet their individual needs and circumstances. In this instance, a major rate change affecting all ratepayers was under consideration in this proceeding.

Unfortunately, with few exceptions, timely and accurate information was not provided to ratepayers by small-scale (rooftop) solar advocates or the utility. Moreover, the Commission cannot base its decisions on misperceptions that are largely the product of an active effort to mislead ratepayers through the dissemination of inaccurate information.

283. TASC, SolarCity, and SunRun, as well as others, have engaged in an all-out campaign to influence public perception of the Commission's ratemaking process by claiming repeatedly that the Commission is subject to regulatory capture by NV Energy and that the Commission's decisions in this proceeding are illegal, all while the proceedings before the Commission were ongoing. The lack of customer acceptance was compounded by the complete lack of any information provided by the small-scale (rooftop) solar vendors (except Bombard) to potential solar customers that NEM rates may change pursuant to SB 374. Such actions by TASC, SolarCity, SunRun, and other small-scale (rooftop) solar vendors have effectively eliminated any possibility of customer acceptance. However, this Commission will not allow such actions by TASC, SolarCity, SunRun, and other small-scale (rooftop) solar vendors to dictate a certain outcome in this proceeding. The Commission has reviewed all of the evidence admitted into the record in these proceedings and makes its decisions based on that evidence in compliance with the relevant laws and regulations.

284. BCP and NV Energy also failed to provide timely information to existing and potential NEM ratepayers. BCP, who represents NEM ratepayers in this proceeding, made no observable effort to educate or inform existing and potential NEM ratepayers of the potential that NEM rates may change pursuant to SB 374. BCP has also made no observable efforts to

investigate the marketing practices of the small-scale (rooftop) solar industry.<sup>15</sup> Likewise, NV Energy failed to update its website in a timely manner regarding the new NEM rates. NV Energy only did so upon direction from the Presiding Officer in the form of Procedural Order No. 7, issued January 8, 2016, approximately two weeks after the December 23<sup>rd</sup> Order approving the new NEM rates was issued. NV Energy should be required to provide, as a compliance, information regarding its NEM rate education efforts. Within 10 days of this Order, NV Energy shall submit a report of its efforts to date to educate ratepayers of the NEM rate changes and its plans to continue these efforts over the next 12 months. This effort shall include information and other resources to assist existing NEM ratepayers in understanding how to improve their energy use patterns and practices to maximize the benefits of the NEM systems under the new rate structure.

### **MISREPRESENTATIONS**

285. The narrative of the small-scale (rooftop) solar interests that the Commission must honor the expectations of NEM ratepayers to “lock-in” rates over a period of time is based on a false premise. Many of the small-scale (rooftop) solar vendors appear to have offered prospective customers forecasts that do not account for future uncertainty, thereby overstating expected savings. The Commission will not reward the bad behavior of some small-scale (rooftop) solar vendors by requiring non-NEM ratepayers to subsidize NEM ratepayers for longer than is necessary to avoid rate shock.

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<sup>15</sup> It should be noted that during the 2015 Nevada Legislature, BCP supported Assembly Bill (“AB”) 330, which would have instituted certain customer protections. (Minutes have not been posted.) BCP’s comments regarding the need for oversight of the small-scale (rooftop) solar industry may be viewed at 1:40:43 of the March 27, 2015 meeting of the Assembly Commerce and Labor during which BCP expressed concerns regarding the marketing practices of small-scale (rooftop) solar installers and marketers. The hearing on AB 330 starts at 1:15:44. It is unclear whether BCP’s concerns with the marketing practices of small-scale (rooftop) solar installers and marketers have changed since March of 2015.



## **CHANGES TO NEM SYSTEMS**

286. In adopting a transition process that treats all NEM customers the same, the Commission avoids the need to address the logistics of changes to NEM systems. Equal treatment of all NEM customers means that there are no separate eligibility requirements for receiving the subsidized transition to cost-based rates.

## **POLICIES OF THIS STATE**

287. Some have questioned the State's commitment as well as the Commission's commitment encouraging private investment in renewable energy resources, stimulating the economic growth of this State, and enhancing the continued diversification of the energy resources used in this State. The Commission can answer these questions unequivocally by stating that the Commission has and will continue to carry out all of the State's policies involving utility regulation pursuant to NRS Chapters 701B, 703, 704, and 704B, not just a subset of those provisions. The Commission simply cannot promote NEM in Nevada at any cost; the Legislature expressly prohibited the Commission from adopting rates that unreasonably promote NEM and authorized the Commission to avoid, reduce, or eliminate an unreasonable shifting of costs from NEM ratepayers to non-NEM ratepayers.

288. The State has spent an enormous amount on renewable energy. The costs for the NEM subsidy paid by non-NEM ratepayers will be in addition to the \$255 million for incentives paid by ratepayers for the period between 2010 and 2025 for solar programs mandated by NRS 701B.005(2)(b). Also, both NPC and SPPC have entered into numerous renewable contracts to meet Nevada's RPS requirements. For NPC's ratepayers over the 12-month period ending September 30, 2015, the costs for these renewable contracts was \$212 million. (Docket No. 15-01009, Monthly Deferred Energy Reports for September 2015, Exhibit E-4.) NPC estimates

renewable contracts costs of \$296 million for 2016 (*see* Docket No. 15-06015, NPC Comments filed August 5, 2015). The value of these renewable contracts is more than \$6 billion over the next 25 years (*see* Docket No. 15-05006, Order issued January 20, 2016, at Attachment 2). For SPPC's ratepayers over the 12-month period ending September 30, 2015, the costs for these renewable contracts was approximately \$65 million. The vintage of these particular contracts varies, but assuming that SPPC will continue at this level over the next 25 years or so to ensure continued compliance with the RPS, expenditures for SPPC's ratepayers will exceed \$1.5 billion.

289. The costs for these renewable energy contracts are borne by all ratepayers, and the NEM1 subsidy will be added to these costs for the residential and small commercial ratepayers in Nevada. Nevada's ratepayers generously support renewable energy resource in this State every month through their electric utility bills.

**THEREFORE, it is ORDERED that:**

1. The Petitions for Reconsideration of the Attorney General's Bureau of Consumer Protection, Solar Energy Industries Association, Southern Nevada Homebuilders Association, The Alliance for Solar Choice, and Vote Solar in Docket Nos. 15-07041 and 15-07042 are **GRANTED IN PART AND DENIED IN PART.**

2. The final Order issued on December 23, 2015, in Docket Nos. 15-07041 and 15-07042 is **MODIFIED** on reconsideration and rehearing as discussed herein.

**Compliances:**

3. Within 10 days of the effective date of this Order, Nevada Power Company d/b/a NV Energy shall file with the Commission a report of its efforts to date to educate ratepayers of the net energy metering rate changes and its plans to continue these efforts over the next 12 months.

4. Within 10 days of the effective date of this Order, Sierra Pacific Power Company d/b/a NV Energy shall file with the Commission a report of its efforts to date to educate ratepayers of the net energy metering rate changes and its plans to continue these efforts over the next 12 months.

**Directives:**

5. In Nevada Power Company d/b/a NV Energy's next general rate case filing with the Commission, Nevada Power Company d/b/a NV Energy shall propose a line item entitled "NET ENERGY METERING SUBSIDY" that will calculate the subsidy that each non-net metering ratepayer pays each month to subsidize net metering ratepayers. Nevada Power Company d/b/a NV Energy will include the same proposals in every subsequent general rate case filing with the Commission until the net energy metering 1 ratepayers have been migrated to net energy metering 2 rates on January 1, 2028.

6. In Sierra Pacific Power Company d/b/a NV Energy's next general rate case filing with the Commission, Sierra Pacific Power Company d/b/a NV Energy shall propose a line item entitled "NET ENERGY METERING SUBSIDY" that will calculate the subsidy that each non-net metering ratepayer pays each month to subsidize net metering ratepayers. Sierra Pacific Power Company d/b/a NV Energy will include the same proposals in every subsequent general rate case filing with the Commission until the net energy metering 1 ratepayers have been migrated to net energy metering 2 rates on January 1, 2028.

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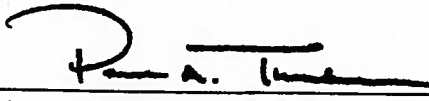
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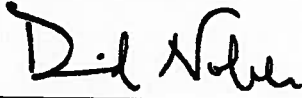
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7. The Commission may correct any errors that have occurred in the drafting or issuance of this Order without further proceedings.

By the Commission,

  
\_\_\_\_\_  
PAUL A. THOMSEN, Chairman

  
\_\_\_\_\_  
ALAINA BURTENSHAW, Commissioner

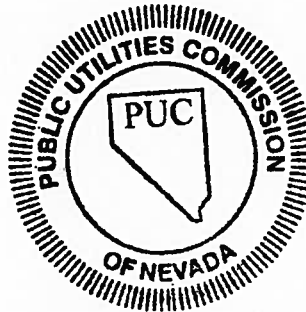
  
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DAVID NOBLE, Commissioner and  
Presiding Officer

Attest:   
\_\_\_\_\_  
TRISHA OSBORNE,  
Assistant Commission Secretary

Dated: Carson City, Nevada

2.17.16

(SEAL)



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**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:

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DATED this 9th day of March, 2016.

Susan Price  
SUSAN PRICE

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FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY  
BEFORE THE HONORABLE JAMES T. RUSSELL,  
DISTRICT COURT JUDGE

-oOo-

CITIZENS FOR SOLAR AND ENERGY      Case No. 16 OC 00030 1B  
FAIRNESS, a Nevada Committee  
for Political Action,                      Dept. No. I

Plaintiffs,

vs.

NO SOLAR TAX PAC, a Nevada  
Committee for Political Action;  
BARBARA CEGAVSKE, in her official  
capacity as Nevada Secretary of  
State,

Defendants.

=====

TRANSCRIPT OF HEARING

Monday, March 28, 2016

Carson City, Nevada

TRANSCRIPT PREPARED BY:  
SHANNON L. TAYLOR, CCR, CSR, RMR  
Certified Court/Shorthand and Registered Merit Reporter  
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Senior Deputy Attorney General  
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Carson City, NV 89701

1 MONDAY, MARCH 28, 2016, 2:57 P.M.

2 -oOo-

3 THE BAILIFF: All rise for Judicial  
4 District Court, Department 1, the Honorable Todd Russell  
5 presiding.

6 THE COURT: Please be seated.

7 For the record, this is Case Number  
8 16 OC 00030, Citizens for Solar and Energy Fairness vs.  
9 No Solar Tax PAC.

10 Mr. Jim Cavilia and Joel Locke are representing  
11 Citizens for Solar and Energy Fairness. No Solar Tax  
12 PAC, Mr. Kevin Benson.

13 The Secretary of State was also named. So.  
14 They're not here at all, Mr. Benson?

15 MR. BENSON: I have not seen Ms. Story yet,  
16 Your Honor.

17 THE COURT: Okay. I was wondering whether --  
18 we're a few minutes early -- whether we should wait. Or  
19 do you know if she's coming or not coming?

20 MR. BENSON: I don't know for certain. My  
21 understanding was that she would be here. But I don't  
22 know that for sure.

23 THE COURT: Usually they're here on these  
24 matters. That's why I kind of thought. We're a few  
25 minutes early. I didn't know if she was coming or not

1 coming. We'll see. We can call downstairs to see if  
2 anybody's coming in.

3 Okay. Well, again, this is the time set in  
4 respect to -- there's a complaint for declaratory relief  
5 and injunctive relief filed in respect to this  
6 particular matter. This is the time set for a hearing  
7 in respect to this particular case, in regards to this  
8 matter.

9 So at this time, Mr. Cavilia or Mr. Locke,  
10 who's making the argument?

11 MR. CAVILIA: I'm making the argument, Your  
12 Honor.

13 THE COURT: Mr. Cavilia.

14 MR. CAVILIA: Thank you, Judge Russell.

15 Rather than simply read our brief or go through  
16 all of that again for you -- I'm sure you've read it and  
17 you're prepared -- I'd just like to hit on a couple of  
18 the most relevant points, I think.

19 The defendant has taken the position that the  
20 plain language of Section 1, Article 19, of the  
21 Constitution allows for a referendum on any part of a  
22 statute.

23 I think, we need to look, first, at the plain  
24 language of what, what the meaning of the word "part"  
25 is. And if we go to Miriam Webster's Dictionary, "part"

1 is defined as "subdivisions into which something is or  
2 is regarded as divided," also described as "one of  
3 constituent elements." Dictionary.com, because we have  
4 to do everything by dot-com today, describes a "part" as  
5 "a portion or division of a whole that is separate or  
6 distinct."

7 I would submit that individual words or phrases  
8 are not subdivisions of the law or subdivisions of this  
9 bill. They're not separate or distinct divisions of the  
10 statute.

11 MR. STORY: Pardon me, Your Honor.

12 THE COURT: That's fine.

13 MR. CAVILIA: If this were the case, Your  
14 Honor, I think, we'd go to the extreme that individual  
15 letters or pieces of punctuation within a statute could  
16 be submitted to the voters by referendum. And if that  
17 were the case, one would be allowed to effectively  
18 rewrite a statute or write a new statute by referendum.  
19 That's certainly not, I don't believe, what the  
20 Constitution provides for.

21 Such a conclusion is clearly not a reading of  
22 the constitution as a whole. And that's what's called  
23 for we Nevada case law, as provided for in the briefs,  
24 that the Constitution should be read as a whole so as to  
25 give effect to and harmonize each provision of the

1 Constitution.

2 If Section 1 is read as broadly as the  
3 defendant would like in this case, Section 2 would be  
4 nearly meaningless. Section 2 provides, by initiative,  
5 that statutes may be amended.

6 If Section 1 allows for the amendment of  
7 referendum, which is effectively what's being requested  
8 in this case, Section 2, I guess, would only be  
9 effective if somebody were trying to add words to a  
10 statute as opposed to amend them.

11 So, you know, that's where, I think, this boils  
12 down to. Is this an amendment, or is it the referendum  
13 of a statute or a part of a statute to the voters for  
14 approval or disapproval?

15 THE COURT: What's the real distinction between  
16 a referendum and an initiative?

17 MR. CAVILIA: The real, the real distinction,  
18 Your Honor, as you well know, is that an initiative is  
19 required to go back to the Legislature first for its  
20 consideration before it's submitted to the voters for a  
21 vote of the people.

22 So in this case, if this is, if this amendment  
23 were proposed by initiative, the adequate number of  
24 signatures were obtained, that initiative would then be  
25 submitted to the Nevada Legislature in 2017. The

1 Legislature would then have the opportunity to act upon  
2 that initiative before it's sent to the voters the  
3 following -- the following general election.

4 THE COURT: Is there some mechanism whereby --  
5 let's say I accept your argument, hypothetically, and  
6 that this is truly an initiative rather than a  
7 referendum, to some extent. Can they somehow go forward  
8 with this referendum as an initiative under the format,  
9 or do they have to go back and refile?

10 MR. CAVILIA: Well, I think, under an  
11 initiative, they have adequate time to refile, because  
12 the dates are later, and I don't know them off the top  
13 of my head. But there's a greater period of time to  
14 obtain the signatures for an initiative.

15 So they would certainly have adequate time to  
16 reconfigure this as an in initiative, add the additional  
17 words to make what they're proposing actually make  
18 sense, to punctuate it correctly, to organize it  
19 appropriately. Clearly, there's time to do that as an  
20 initiative, Your Honor.

21 THE COURT: Wasn't that the Herbst case?  
22 Basically, the Herbst case started out as a referendum,  
23 and then, basically, it was determined by the Supreme  
24 Court to be, truly be an initiative to some extent.

25 MR. CAVILIA: That's --



1 THE COURT: Is that correct?

2 MR. CAVILIA: That's correct, Your Honor.

3 And, I think, the Secretary of State's -- at  
4 least the instructions that they give on their website  
5 with respect to initiatives and referendum is consistent  
6 with this, this sort of reading these, these sections in  
7 harmony.

8 The specific instructions on the Secretary of  
9 State's website with respect to referenda and  
10 initiatives describe a referendum as something "seeking  
11 to approve or disapprove an existing state or local  
12 law." It goes on to describe an initiative as "seeking  
13 to create a new law or amend an existing state or local  
14 law."

15 So, I think, this is all consistent with how  
16 this has been applied. I think, it's the proper way to  
17 apply the Constitution as a whole as called for by the  
18 case law.

19 THE COURT: To some extent, and looking at some  
20 of the research in that, doesn't the public have a right  
21 to vote yea or nay on this issue, though?

22 MR. CAVILIA: Absolutely, Your Honor. If  
23 brought to the voters appropriately as a clear yea or  
24 nay, approve just what, just what the -- just what  
25 Section 1 of Article 19 provides for, approve or

1 disapprove of a statute, absolutely, the voters have a  
2 right to do that if the requisite number of signatures  
3 are gained.

4 And we would not argue against that at all,  
5 Your Honor. It just needs to be brought forward  
6 appropriately.

7 As this is brought forward, it's, frankly,  
8 confusing, when you're taking piecemeal words and  
9 sentences or phrases out of a statute. Or in this case,  
10 a bill, as a whole, it ends up confusing. I don't think  
11 it's clear, when somebody signs this petition, what,  
12 what they are supporting. Are they supporting the  
13 deletion of this bracketed language? It's difficult to  
14 see what's being approved.

15 And the statute calls for that when the  
16 referendum -- the description must include what is the  
17 impact of the approval of this petition? And it's just  
18 simply, it's not provided for in this description of  
19 effect. It's NRS 295.009 that requires a description  
20 set forth, quote, the effect of the referendum if the  
21 referendum is approved by the voters.

22 The language in this case talks about  
23 disapproval of particular words. So, I think, it's very  
24 confusing to the voters.

25 THE COURT: Well, doesn't it say in the

1 description of effects, though, that signing this  
2 petition is a statement that you support repealing the  
3 new green energy rates and charges and preserving net  
4 metering as the program has historically been  
5 implemented; isn't that kind of the catch-all phrase  
6 that's kind of inclusive as to what really is happening,  
7 to some extent?

8 MR. CAVILIA: To some extent, Your Honor. But  
9 it's not clear that if you approve -- and I'm still not  
10 sure. If you approve this petition, are we deleting  
11 those bracketed and bolded words and ending up with a  
12 statute that says what's left, or are we approving of  
13 those words?

14 This approval talks about a -- that you support  
15 a broad concept of repealing the new green energy rates,  
16 whatever that means, Your Honor. Clearly, the statute,  
17 or the bill in this case doesn't talk please green  
18 energy rates. It takes, I guess, some outside  
19 information to try to glean what it is they mean by  
20 that. And, I guess, we all read the papers, and maybe  
21 we can figure that out. And if you're in the solar  
22 business, I presume you can figure that out.

23 But it's certainly not clear enough to meet the  
24 standard of the statute for a description of effect.

25 THE COURT: Thank you.

1 MR. CAVILIA: Thanks.

2 THE COURT: Mr. Benson.

3 MR. BENSON: Thank you, Your Honor.

4 I'm going to kind of go back to the very  
5 beginning on these type of cases and start with what the  
6 burden of proof is in these types of cases.

7 According to the Las Vegas Taxpayer  
8 Accountability case, and reiterated recently by the  
9 Supreme Court in the Education Initiative case, it's the  
10 plaintiffs that bear the burden of proof to show that  
11 the petition is clearly invalid. And that applies to  
12 both claims in this case both the description of effect  
13 and this claim that it's not a valid referendum.

14 So I'm going to start with that first claim,  
15 and then I'll talk about the description of effect a  
16 little bit.

17 And going back to the beginning on that, too,  
18 let's -- basics of statutory construction. You always  
19 start with the plain language of the Constitution.

20 And as Your Honor can see, the plain language  
21 of the Constitution in Nevada, Article 19, Section 1,  
22 says that the people can run a referendum on any part of  
23 a statute.

24 THE COURT: Well, what does that mean, "a part  
25 of"? I mean I'm having trouble with that, Mr. Benson,

1 because "a part of," you'd -- I went to Webster's  
 2 dictionary, and I went to Black's Law Dictionary, and I  
 3 looked at everything in respect to that. And, you know,  
 4 it means something less than the whole in respect to  
 5 that. Can you then just take out little pieces and  
 6 systematically go through and take out what you want  
 7 here and there; is that what it means?

8 MR. BENSON: Yes, that is what it means, Your  
 9 Honor. Because, "part," as you noticed from that  
 10 definition, means something less than the whole.

11 And it's an indefinite part. It's not a  
 12 section. If they had meant section, they would have  
 13 said "section." They didn't say that. They said  
 14 "part." And then, in front of "part," they put "any,"  
 15 which is also indefinite.

16 And, therefore, you can repeal any part of a  
 17 statute, according to the plain language of the  
 18 Constitution. And that's all we're asking the Court to  
 19 do in this case, is to apply the plain language of the  
 20 Constitution.

21 THE COURT: But aren't you, in that process,  
 22 really, the way you went about it, really kind of  
 23 amending the -- amending that legislative portion and  
 24 everything out? You're not really asking for a vote of  
 25 yea or nay on a certain portion or certain statute or

1 anything else. You're really kind of inclusively  
2 bringing everything under that particular "any part of"  
3 in order to effectuate what you come to.

4 And, I guess, I'm asking, isn't that really an  
5 amendment?

6 MR. BENSON: I disagree, Your Honor. We  
7 absolutely are running a referendum on just a part of  
8 the statute. And what that part is, is the specific  
9 part of Chapter 379 which allowed the PUC to impose  
10 these new different rates on net metering customers.  
11 That is the part.

12 Unfortunately, it's not neatly drafted into its  
13 own separate subsection or anything like that. And in  
14 order to do that, we had to write it the way we did.  
15 That's the only reason we wrote it that way, is because,  
16 to address that particular part of the statute, which  
17 we're entitled to do under the plain language of the  
18 Constitution, we had to draft it that way.

19 THE COURT: Could you have drafted it in any  
20 other way; could you have said "We want a referendum on  
21 whether or not" -- I'm just coming up with some  
22 language. Couldn't you have just a referendum in  
23 respect to whether or not the State of Nevada should,  
24 basically, adopt and allow for the prior system that  
25 existed prior to giving a benefit to the solar

1 ratepayers, versus changing it the way you did it?

2 MR. BENSON: If what you're asking, Your Honor,  
3 could we have repealed the entire bill, yes, I think, we  
4 could have. But that renders the words "any part  
5 thereof" completely meaningless. Because, obviously,  
6 that's repealing the entire statute.

7 And we, obviously, have a right to repeal any  
8 part thereof. And that's the part that we're trying to  
9 repeal. We're not trying to go back to what it was  
10 before. We're only trying to disapprove one part, which  
11 is clearly what the Constitution permits in this case.

12 So all we're asking you to do is to apply that  
13 plain, that plain language.

14 Instead, in this case, the plaintiffs, on the  
15 other hand, they're asking you to create a completely  
16 new rule, that has never been announced by the Nevada  
17 Supreme Court or any other court, as far as I can tell,  
18 that --

19 THE COURT: Is there any authority that  
20 supports your position on going through each particular  
21 broad statute like that and gerrymandering this portion,  
22 that portion, taking this portion out, adding this  
23 portion, changing this word, or anything else?

24 MR. BENSON: We're not adding anything, Your  
25 Honor. And all the authority would be --



1 THE COURT: Well, I know you're not adding.

2 MR. BENSON: All the authority that we need is  
3 in the Constitution where it says "any part thereof."  
4 The plain meaning of that is what it says, "any part."  
5 That could be a word; that could be a phrase; that could  
6 be a section, a subsection, et cetera.

7 Like I said, it doesn't -- it just so happens  
8 that this particular statute was not drafted in a way  
9 that we could say, "Oh, this subsection," and that's it.  
10 If it was, that would be fantastic, and we would have  
11 done it that way. But, unfortunately, that's not the  
12 way it's drafted.

13 And the people's right to run a referendum, to  
14 reject something that the Legislature did, cannot depend  
15 on how a statute just happens to be drafted. That, that  
16 is, I think, precisely why it says "any part thereof."  
17 Because, otherwise, what you could do is you can make  
18 certain provisions, essentially, referendum-proof simply  
19 by log-rolling popular provisions together with  
20 unpopular provisions in the same statute. You could  
21 make it all one big run-on sentence if you wanted to.

22 And that would effectively prevent the people  
23 from exercising their right to a referendum. Because  
24 they would be forced to make the choice of repealing  
25 things that they agree with, that they want to keep, in

1 order to repeal the things that they don't.

2 That is an absurd result, Your Honor. And that  
3 is contrary to the plain language of the Constitution.

4 So what we're asking you to do is simply to  
5 apply that plain language.

6 The plaintiffs, on the other hand, want you to  
7 make a completely new rule out of whole cloth that  
8 conflicts with that plain language, that restricts the  
9 right to the referendum process, and that doesn't  
10 provide any meaningful guidance either to the Court or  
11 to people doing, trying to draft these petitions.

12 So let me go through the kind of -- the  
13 statutory construction analysis that they give this  
14 Court.

15 I'll start with this idea of harmonizing  
16 Section 1 and Section 2, the referendum provisions and  
17 the initiative provisions.

18 And according to them, these, these two are in  
19 conflict, and it's necessary to somehow harmonize the  
20 two of them together. But, I think, what we're seeing  
21 here is that they're trying to generate a conflict  
22 where, in fact, none exists.

23 A conflict exists where there are two  
24 provisions of law, and you cannot apply both of them to  
25 the same factual situation. Now, take, in contrast to

1 that, a situation like in the Destavo -- Destav --  
 2 DeStefano -- I can never say that; excuse me -- vs.  
 3 Berkus case, 121 Nevada 627. That was a case involving  
 4 candidate qualifications to get to the ballot.

5 There are two different statutes that govern  
 6 how you bring a challenge to disqualify a candidate from  
 7 the ballot. One allows the district attorney or the  
 8 attorney general to bring that challenge, the other  
 9 allows a person to bring, a private party to bring a  
 10 private lawsuit, both with the result of removing the  
 11 person from the ballot.

12 The court in that case said there's no conflict  
 13 here. Just because two statutes apply to the same  
 14 factual situation doesn't mean that there's a conflict.  
 15 It's a choice, either/or. The same exact situation  
 16 here.

17 THE COURT: Well, you could have brought an  
 18 initiative, couldn't you?

19 MR. BENSON: We could have. But we're not  
 20 required to. Because what does "amendment" mean?  
 21 "amendment" means adding language, deleting language, or  
 22 modifying language, which, of course, is a combination  
 23 of the first two.

24 So you can do all three of those through the  
 25 initiative power. You can only delete things through

1 the referendum power.

2 And so is there overlap there? Yes, there is.  
3 But there's no conflict.

4 And, I think, we saw that in the Herbst case,  
5 where in the Herbst case it did not start as a  
6 referendum. It was an initiative petition. And the  
7 argument in that case -- because what they did -- that  
8 was the indoor smoking act. They brought some new  
9 language to make it more restrictive on where you could  
10 smoke indoors. And then they also had a provision in  
11 there that said "And all these other prior existing laws  
12 are null and void."

13 And so the challengers that brought this  
14 argument said, "Well, that's really a referendum. And  
15 so they have to comply with the referendum provisions."  
16 And the Nevada Supreme Court said, "No. No, they don't.  
17 This is that, this is that overlap, and they can do it  
18 all through an initiative if that's the way they choose  
19 to do it."

20 So, I think, the Herbst case demonstrates that  
21 there is some overlap here. But that's not a problem.  
22 There is no conflict. If you could do one or the other,  
23 it's your choice.

24 And the plaintiffs have conceded in this case  
25 that all we do in this petition is delete "any part of a

1 statute." That complies with the plain language of  
2 Article 19, Section 1.

3 so let's -- so their next, kind of their next  
4 argument is that, well, if we allow petitions like this  
5 one to go forward, then what that means is the  
6 referendum process is going to, you know, make the  
7 initiative meaningless, that it's going to displace it.

8 Well, first of all, as I just discussed, you  
9 can amend language through their initiative by adding  
10 things, by modifying language, or by deleting things.  
11 Through the referendum, you can only delete things.

12 So the power through the initiative is vastly  
13 greater than it is under the referendum.

14 So to say that the referendum power, even if  
15 you -- if you allow this petition to go forward, to say  
16 that that is somehow going to displace what you can do  
17 through an initiative, I think, is just not realistic.

18 THE COURT: Isn't the purpose of a referendum,  
19 though, is to allow parties to vote yea or nay on a  
20 specific proposal or legislation?

21 MR. BENSON: It is to allow the people to vote  
22 yea or nay on a statute or any part thereof.

23 THE COURT: See, and that's where I'm having a  
24 little trouble. And I appreciate your argument on that.  
25 Because you're really, to a large extent, expanding that

1 a little bit, aren't you? Because you're going to a  
 2 whole statutory scheme in that and changing parts all  
 3 the way through that. And that, I just don't know if  
 4 that's the purpose of a referendum on allowing people to  
 5 vote on that kind of flow in respect to that.

6 So keep going. I just want to hear why that  
 7 makes sense.

8 MR. BENSON: Certainly. And, I think, it makes  
 9 sense, Your Honor, one, to avoid that log-rolling  
 10 problem that I mentioned earlier, that if you're not  
 11 permitted to do this, then you could make certain  
 12 statutes, essentially, referendum-proof by putting  
 13 together popular provisions with unpopular provisions.

14 And the other reason is why not? If this  
 15 qualifies and goes to the ballot, it takes a 50 percent  
 16 plus vote of the people to decide whether they want this  
 17 or not. If, if they say, "No, we don't want it," then  
 18 that's their choice.

19 There is simply no purpose -- obviously, a  
 20 referendum has to be on a law that's already enacted by  
 21 the Legislature. There is simply no purpose in delaying  
 22 the people to be able to do that, to go back to debate  
 23 something the Legislature has already done.

24 THE COURT: What is the purpose of an  
 25 initiative is, to some large extent, if it was an

1 initiative, go back to the Legislature, allow it to go  
2 through that process so that they at least have an  
3 opportunity to revisit and make a determination on that?

4 MR. BENSON: Well, and you know what, that  
5 makes wonderful sense when you're adding whole new  
6 language. But you can't do that through a referendum.  
7 The Legislature has already debated. They've already  
8 decided. Now it's the people's opportunity to say, "No,  
9 we disagree."

10 And that is what the referendum is all about.  
11 That is its entire purpose.

12 THE COURT: But that --

13 MR. BENSON: There's no reason to go back to  
14 the Legislature and make the people wait. And, also,  
15 the Legislature, if it disagrees with that petition, it  
16 has an opportunity to run an alternative to that  
17 petition, which will compete with it on the ballot.

18 So when an initiative petition goes to the  
19 ballot, the Secretary of State writes a neutral  
20 explanation, and the Secretary of State appoints  
21 committees of people who are either opposed or for the  
22 petition, to write arguments for and against. And the  
23 people have that when they look at the sample ballots  
24 and decide how they're going to vote on this.

25 When the Legislature does an alternative, the



1 Legislature writes the explanation, and they write all  
2 the arguments for and against.

3 And we saw this in the Arena case. In the  
4 Arena case, they ran an initiative to deal with funding  
5 of a stadium down in Las Vegas. And then the  
6 Legislature enacted an alternative to that, which was  
7 designed to go on the ballot to compete with it.

8 Now, what was interesting about that case is  
9 the alternative that they proposed had nothing to do  
10 with building arenas. It simply said "You can't use  
11 this kind of funding mechanism that you're trying to use  
12 in this petition." Period.

13 And so there's no reason, under the referendum,  
14 to require the people to go back through that process,  
15 which the plaintiffs have recognized is more expensive,  
16 more time-consuming, more risk, when really the  
17 Legislature has already decided something and now it's  
18 up to the people to say yes or no. There's simply no  
19 reason to go through that.

20 And so, to kind of get back on track a little  
21 bit, Your Honor, this argument that it's going to  
22 displace it is simply not reasonable. There's not  
23 enough overlap legally for that to actually happen.

24 And, second, just look at, you know,  
25 historically, it's not borne out, either. We have had,

1 I believe, a sum total of five referenda in the entire  
2 history of the state. We can have that many initiatives  
3 in a single election cycle.

4 So to say that it's going to displace it is  
5 simply not, not realistic.

6 Now, like I said, this, this kind of idea that  
7 it's somehow an absurd result or it's problematic to,  
8 you know, let the people say yes or no -- and I'm a  
9 little bit, I'm a little bit baffled by that really.  
10 Because if you can't do a referendum on a part of a  
11 statute, you're going to have this log-rolling problem.  
12 But I just, I just don't see --

13 THE COURT: I'm not, I'm not disagreeing with a  
14 portion of the statute. But can you have multiple parts  
15 and where, systematically, you go through and you pick  
16 and choose, taking this out, taking that? That's the  
17 question that I'm having a problem of, because you're  
18 not a part of, you're not taking a little part of this,  
19 that, whatever, you're taking multiple parts of  
20 different areas in respect to that in order to fit your  
21 purpose.

22 And, again, that, that's the issue that I'm  
23 having a problem with, on whether or not you can  
24 actually do that by and through when the Legislature, I  
25 mean the Constitution says "or part thereof," meaning a

1 part of a statute or part of a resolution specifically,  
2 not systematically picking all kind of different parts  
3 throughout that particular statute.

4 MR. BENSON: And, I think, first, the response  
5 to that, Your Honor, is --

6 THE COURT: And there's no case on it, I'm  
7 going to tell you.

8 MR. BENSON: There's no case on it. And, I  
9 think, the main response is, well, why not? Either way,  
10 it takes a 50 percent plus vote of the people. How you  
11 accomplish it, like I said, it's a choice. It's one or  
12 the other.

13 THE COURT: But isn't the intent really to have  
14 a very clear vote, yea or nay, in respect to a specific  
15 issue, rather than this multiple aspect of taking this,  
16 taking that out?

17 MR. BENSON: I don't think that that's  
18 necessarily the standard. And that's actually what  
19 we're trying to do here. We're trying to get the issue  
20 of these rates, these charges, that's what we're trying  
21 to get on the ballot. That's what we're asking people  
22 to say yea or nay to.

23 In order for us to do that, we have to draft  
24 the petition the way that we did. Like I said, if we  
25 could have just said this section comes out, and we're

1 done, that would be fantastic, and we would have  
2 absolutely drafted it that way. But, unfortunately, the  
3 law is not drafted that way.

4 And so why does our right to say yea or nay on  
5 that particular issue depend on the way that the law is  
6 drafted? That is a substantial restriction on the right  
7 to referendum. And it's not borne out. It's in  
8 conflict with what the Constitution says.

9 And so that's our problem. Like I said, if it  
10 had been easy, and we just say, you know, subsection 5  
11 is out, and we're done, wonderful, not a problem. But,  
12 unfortunately, because of the way the law is drafted,  
13 that simply wasn't possible.

14 But that is the issue that we're trying to get  
15 on the ballot, is this issue of the rates and charges.  
16 So, yes, we're trying to do exactly what you said.  
17 We're trying to get the people to vote yes or no on  
18 that. That's all we're asking to do. That's all we're  
19 asking the Court to do, is to apply that plain language  
20 so that we can do that.

21 THE COURT: Do you think that's clear under  
22 your description of effect as that's exactly what you're  
23 trying to do?

24 MR. BENSON: Well, I think, I think, it is.  
25 And if I could, I want to just finish this real quick,

1 because I think there's a couple little points. And I'm  
2 going to pin it to the description of effect.

3 But I want to, want to highlight the -- what I  
4 see as the major problem with the plaintiff's position  
5 in this case. And the biggest problem, I think, is that  
6 if you say that "any part thereof" means something other  
7 than what it actually says, we're going to have a  
8 completely unworkable standard.

9 And, you know, for example, their theory on  
10 this, I'm not sure if they thought through exactly what  
11 it is that they're asking the Court to do here. Because  
12 in their opening brief they suggest that it's okay if we  
13 would have referred a subsection of the statute. I  
14 don't know if that's okay, if that means we refer a  
15 sub-subsection or just a section or a  
16 sub-sub-sub-subsection. I'm not sure how that works.

17 But then, in their reply, they kind of move  
18 away from that, and they -- and, instead, they say that  
19 what it should mean is "a distinct and severable aspect  
20 of a statute that lends itself to removal."

21 Now, I don't know about you, Your Honor, but I  
22 have no idea what that means, "a distinct and severable  
23 aspect of a statute that lends itself to removal."  
24 that kind of rule provides absolutely no guidance to  
25 somebody who's trying to draft a petition. Unless

1 you're trying to repeal an entire statute, you will have  
2 no idea whether your petition is valid or not.

3 The only thing that, I think, is certain about  
4 that is that it will generate litigation. Because  
5 except for a petition that repeals an entire statute,  
6 there will absolutely be a legal challenge as to whether  
7 it is "a distinct and severable aspect that lends itself  
8 to removal."

9 But yet that rule provides the Court with no  
10 guidance in how to review those challenges and how to  
11 review the petitions.

12 And so just that kind of uncertainty by itself  
13 substantially restricts the right to referendum.  
14 Because -- and that, it provides no guidance, trying to  
15 draft it, to the drafters or to the Court.

16 And, to me, that is the biggest problem here,  
17 is because without that kind of a clear standard, you  
18 know, we're going to be here all the time on these, and  
19 people are not going to be drafting --

20 THE COURT: You've indicated there's only been  
21 five referendums in the history of -- from your  
22 standpoint, in respect to that. Did all five of those  
23 particular referendums, did they all deal with just a  
24 specific statute, a resolution, or a part of that  
25 specific statute?

1 MR. BENSON: To my knowledge, there was one  
2 referendum on a part with a statute, and that was the  
3 1934 referendum on part of the Fish and Game Act, that  
4 they attempted to repeal the section that had -- that  
5 required you to get a deer tag before you could shoot a  
6 deer.

7 THE COURT: It dealt with just a section of  
8 that particular statute?

9 MR. BENSON: Correct. And so that -- so, like  
10 I said, the problem that we have here is that if "any  
11 part thereof" doesn't mean what it says, then we're not  
12 going to have any guidance in how we draft these  
13 petitions, nor is the Court going to have any guidance  
14 in how it reviews these.

15 And I want to give just a very quick reference  
16 to this notion of severance in here, that when they talk  
17 about "a distinct and severable aspect," I'm assuming  
18 what they're alluding to is kind of the generic  
19 severance analysis that you go through when part of a  
20 statute is declared void or unconstitutional or  
21 something like that.

22 And that, I submit, is a completely  
23 inappropriate standard when you're dealing with a  
24 referendum. Because the basic touchstone of that  
25 analysis, the severance analysis, is would the



1 Legislature have intended part A to stand without  
2 part B? And the very purpose of a referendum is to  
3 reject something the Legislature did, even though they  
4 specifically intended to do that.

5 So legislative intent can have no place in this  
6 analysis. It's simply inappropriate, because the entire  
7 purpose of the referendum is to reject what the  
8 Legislature intended.

9 So with regard to that argument, this very -- a  
10 couple more things. I'm going to try and wrap this up.  
11 I know we've spent a lot of time on it.

12 Finally, they're -- they make this argument  
13 about legislative history. And, of course, they have to  
14 first demonstrate that this is ambiguous, where we don't  
15 even look at legislative history. You don't even go  
16 there unless it's ambiguous. So we probably really  
17 shouldn't be talking about it at all.

18 But the basic gist of their argument is that  
19 it's inconsistent with the 1962 changes and, therefore,  
20 the legislative, you know, history demonstrates that it  
21 doesn't mean what it says, which is "any part."

22 But even the plaintiffs themselves concede that  
23 the legislative history is completely silent on this  
24 point.

25 And so in order to overcome the plain language

1 of the statute, I think, you've got to have quite a bit  
2 more than that, than simply silent legislative history.

3 So that really doesn't support their argument  
4 at all. And, in fact, I think, if you look at what the  
5 1962 changes actually did, you'll see that, if anything,  
6 they made changing the law through a referendum easier.  
7 Because what it did is it changed the threshold. Under  
8 the previous law, it took a majority of voters voting in  
9 the election to repeal or approve a statute. They  
10 changed that to a majority of voters voting on the  
11 question.

12 So they actually made it considerably easier to  
13 change the law through a referendum petition.

14 And so, if you step back and look at it,  
15 it's -- I don't know how they make this argument that it  
16 somehow restricts the right to referendum, or something  
17 like that. I think, it actually makes that it was  
18 intended to make the right to referendum easier.

19 So, you know, in short, again, what we're  
20 asking the Court to do is simply to apply the plain  
21 language of the Constitution, that "any part thereof"  
22 means any part thereof.

23 And the Nevada Supreme Court has never held  
24 otherwise. No other court, as far as I can tell, has  
25 ever held otherwise. This language is very common in

1 other states' constitutions. And, I think, it's one of  
2 those things that people just don't litigate over,  
3 because the language is clear.

4 The rule that they're asking the Court to make  
5 is a whole new rule completely out of whole cloth, which  
6 is contrary to that plain language. And that rule would  
7 restrict the people's right to referendum. And it would  
8 create an unworkable standard, both for people who are  
9 trying to draft petitions and for the courts trying to  
10 review them.

11 And let's, finally, not forget the burden of  
12 proof here. The burden of proof -- this is not a 50/50,  
13 who's kind of more right than the other sort of  
14 situation. The plaintiffs have to show that this  
15 petition is clearly invalid. That's their burden of  
16 proof here. And what they're asking the Court to do is  
17 to substantially restrict people's right to referendum,  
18 through a new rule that is contrary to the plain  
19 language of the Constitution. And that would create an  
20 unworkable standard both for petitioners and for the  
21 courts going forward.

22 So for all of those reasons, the Court must  
23 reject their first argument, their first claim that this  
24 is an invalid referendum and, instead, allow the voters  
25 simply to have their chance to say yea or nay on that

1 issue that we're trying to put forth.

2 THE COURT: Ms. Story, do you have anything to  
3 add on behalf of the Secretary of State in respect to  
4 this particular matter?

5 MS. STORY: Thank you, Your Honor. We don't  
6 have anything to add.

7 THE COURT: You don't have a position whether  
8 this is a referendum or initiative or the statute, or  
9 the implication of that, on behalf of the Secretary of  
10 State?

11 MS. STORY: Well, Your Honor, I --

12 THE COURT: Don't you think the Secretary of  
13 State should take a position, because you're the office  
14 that, basically, determines whether or not to allow for  
15 a referendum or initiative to go forward? You know, I'm  
16 just curious.

17 MS. STORY: I appreciate your --

18 THE COURT: I don't mean to put you on the  
19 spot, but it appears to me that the Secretary of State's  
20 Office at least should have a position.

21 MS. STORY: Well, Your Honor, I believe that  
22 the Secretary of State would find that this is, in fact,  
23 a referendum, that it has proposed that language that  
24 the Legislature has considered and enacted be provided  
25 and presented to the citizens of the state for their

1 acceptance or rejection.

2 I think that the Constitution does reference  
3 quite clearly any part of a statute. And I think that  
4 the Court is bound by that constitutional verbiage.

5 THE COURT: Do you think you can have a  
6 referendum whereby you have multiple different changes  
7 to a statute, not just a portion of a statute, but  
8 multiple changes of different portions, in respect to  
9 that? Do you think that's clear?

10 MS. STORY: I --

11 THE COURT: Don't take anything by my question.  
12 I ask everybody --

13 MS. STORY: Sure, sure.

14 THE COURT: -- tough questions.

15 MS. STORY: No. I believe that taking this,  
16 the petition in front of the Court today, and looking at  
17 it, I mean the Legislature made those amendments in that  
18 particular fashion. And I think that extracting those  
19 changes doesn't result in a statute that's unclear. It  
20 reverts it back to the statute as it was. And I believe  
21 that the description of effect explains that rather  
22 clearly.

23 THE COURT: Okay. Mr. Cavilia, let me ask you  
24 a question, because it's kind of -- if Mr. Benson's  
25 correct from the standpoint in his argument that you're

1 allowed to have -- take little portions of this statute  
 2 and that statute in and out, because they're -- the way  
 3 it was drafted, there's no other way to get to this  
 4 particular solution, do you think that has an effect in  
 5 regards to whether or not you can -- this is a  
 6 referendum or initiative?

7 MR. CAVILIA: I don't think it does, Your  
 8 Honor, because I think what he points out leads to the  
 9 extreme example that creates the absurdity that you  
 10 could pick individual words out of a statute and submit  
 11 them to referendum and effectively rewrite the statute  
 12 completely.

13 You're talking about additional litigation as a  
 14 result of our position. If you take that position,  
 15 we're going to litigate every single referendum ever, if  
 16 it results in picking and choosing individual words  
 17 or -- or punctuation and, effectively, writing a new  
 18 law.

19 The initiative process allows for what it is  
 20 they're trying to do in this case. Write the law how  
 21 you'd like it. Send it back to the Legislature. If you  
 22 don't like it, it gets to go to the vote of the people  
 23 for a yea or a nay.

24 You know, I don't think what we're asking you  
 25 to do is outside the plain language. As we've discussed

1 earlier, the description of "a part" includes "a  
2 division or a portion that is separate or distinct."  
3 These are not separate or distinct. This is a picking  
4 of a phrase here and a word there and cutting it out of  
5 this, not even a statute in this case, Your Honor. This  
6 petition has gone forward prior to this statute even  
7 being codified. We're really being asked to do a -- run  
8 a referendum on a law, on a bill, that is not -- it had  
9 not yet been codified.

10 So how that's going to look in terms of the  
11 law, you can't, you honestly can't tell from this  
12 referendum, this petition that is made on, effectively  
13 on the bill and not the codified statute.

14 THE COURT: Well, it's not codified yet, but  
15 it's also been adopted by the Legislature and becomes  
16 part of the law of the Legislature.

17 MR. CAVILIA: Right, but --

18 THE COURT: But I understand, but it hasn't  
19 been put in the context of where it fits in the  
20 statutes.

21 MR. CAVILIA: It makes it very difficult to  
22 understand.

23 MR. BENSON: Can I respond briefly to that,  
24 Your Honor?

25 THE COURT: Yeah.



1 MR. BENSON: You're correct that the right of  
2 the referendum doesn't depend on whether LCB has gotten  
3 around to codifying the statutes or not. And we are  
4 entitled to run a referendum on any statute, which we've  
5 done.

6 But this is notion of how -- of the words and  
7 the phrases and all that, you know, for example, if you  
8 look at page -- it's page three of the petition, which  
9 is attached as Exhibit A to the plaintiff's complaint.  
10 That's section 2.95 of the statute. And as I mentioned,  
11 what -- the issue that we're trying to get a yes or no  
12 vote on is this issue of the new different rates and  
13 charges to be imposed on net metering customers.

14 So if you look at 2.95, it says a utility shall  
15 offer net metering, subsection A, in accordance with the  
16 provisions of this section and NRS 704, 774, and so on,  
17 until the date, and so forth. And that is the part that  
18 allows, you know, net metering to continue after that  
19 date.

20 And then it says, at the bottom, subsection B,  
21 it says "pursuant to the section of 2.3 of this act."  
22 So if you go back and look at 2.3 of the act, that's the  
23 part that allows the Commission to set these new rates  
24 and charges.

25 So are we permitted to repeal subsection A and

1 B of subsection 1? Or it seems to me, it would make a  
 2 lot more sense to do it the way we did, which is just to  
 3 remove the parts that have to do with the new rates and  
 4 charges and leave the rest of the statute alone. But,  
 5 like I said, because it's not in its nice neat own  
 6 little subsection by itself, we can't do that. That's  
 7 why we did it this way.

8 And so it's this -- it's not like we're just  
 9 picking and choosing random words. We're trying to get  
 10 at this issue. And we just happened to have to do it  
 11 the way we did because of the way that the statute is  
 12 currently written.

13 So, you know, that I really don't think is --  
 14 like I said, the way the statute happens to be drafted,  
 15 you can't defeat the constitutional right of doing a  
 16 referendum.

17 And, well, I do intend to get to the  
 18 description of effect, also, Your Honor. I hope that --

19 THE COURT: I took your comments.

20 MR. BENSON: -- you'll allow me on that.

21 This -- and I just wanted to briefly note this. This  
 22 issue that they make of not including the deleted  
 23 language, I'm just going to say, I think, you get this.  
 24 But, correct, we don't delete -- include it, because  
 25 it's been deleted. It's no longer a current statute.

1           And so we're not trying to bring it back.  
2       We're not trying to do anything with it. It stays  
3       deleted. And, I think, that's very clear in the way  
4       that we've written this petition. When it finally does  
5       get codified in the NRS, obviously, that deleted  
6       language isn't going to be in there.

7           And so I just want to say, that's why we don't  
8       put it in. There's no obligation for us to put it in.  
9       I don't think it renders it in any way confusing or  
10      misleading.

11           So with that, I...

12           THE COURT: Okay. Thank you.

13           MR. CAVILIA: Your Honor, with respect to, just  
14      with respect to codification, a simple call to the  
15      Legislative Counsel Bureau and requesting them to  
16      provide us with a copy of the codification, they  
17      provided it.

18           And in my understanding, had they been asked to  
19      do it earlier as a result of a pending petition or  
20      initiative, or initiative or referendum, they would have  
21      done so.

22           So, I think, that certainly would make this a  
23      much cleaner and clearer process.

24           THE COURT: Okay. Thank you.

25           MR. BENSON: We would have loved to do that,

1 Your Honor, if it had been available to us at the time.  
 2 But, as you know, the deadline to start the referendum  
 3 process is August, August 1st. And so the chances of it  
 4 being codified at that point are just not -- very low.  
 5 But, anyhow, that's a minor matter. I want to move on  
 6 to the description of effect.

7 And so with regard to the description of  
 8 effect, again, I'm going to start at the beginning,  
 9 which is the burden of proof. And, again, the  
 10 plaintiffs bear the burden of proof of showing the  
 11 description of effect is clearly in --

12 THE COURT: I'm not sure. I don't have a major  
 13 problem with the description of effect. So I'm going  
 14 to -- you can -- I just think it's -- to me, it's not  
 15 unclear, to a large extent. It kind of goes through  
 16 that process in respect to that. And I know, under the  
 17 Education case, it's kind of pretty clear now that it's  
 18 not as tight as it used to be under the statutory  
 19 constraints under the Supreme Court rules in respect to  
 20 that.

21 Again, I'm going to allow you, if you want to  
 22 take some time to argue it. But, again, I'm not as  
 23 concerned about that as I am about in respect to this  
 24 part, you know, this language in respect to this, which  
 25 is clear, in respect to the Court's mind, "or part

1    thereof."    I mean that's where I am, and that's where  
2    I'm trying to figure this out, to a large extent.    So.

3               MR. BENSON:    Okay.    Let me it up just on a  
4    couple brief things with regard to the description of  
5    effect.

6               I'm glad Your Honor said that.    I'm not going  
7    to waste a lot of time.    Obviously, we fundamentally  
8    disagree with this idea that there's any kind of  
9    subsidy.    We think the PUC decision was flawed and based  
10   on flawed data.    And it's not binding on this Court in  
11   any event.    It's up on judicial review right now and  
12   could be reversed.    So that's clearly not -- doesn't  
13   meet their standard of proof in this case.

14              One thing that they talk about a lot in their  
15   briefs are this notion of approval and disapproval.    And  
16   I went back and I looked at the statute, at 295.009.  
17   And it says that you have to write a description of  
18   effect that describes the effect if the petition, either  
19   initiative or referendum, is approved.

20              Now, that's the only place I could find  
21   anywhere in the law that talks about approving the  
22   petition as opposed to approving or disapproving the  
23   law.

24              And, I think, some of the confusion is what  
25   does it mean to approve a referendum petition; is that

1 the same thing as approving the statute, or does that  
2 mean repealing the statute?

3 And to be perfectly honest, I think, the  
4 statute is ambiguous on that point. I have never really  
5 noticed it before, until they pointed out. I went back  
6 and looked at it. And I thought to myself, you know,  
7 that's probably a legislative oversight, the way that  
8 that was drafted.

9 We think the description of effect is fairly  
10 clear on that point about what it -- because what we're  
11 really asking the people to do is to disapprove a part  
12 of the statute. Which, of course, is what causes a  
13 change when you're talking about a referendum petition,  
14 as opposed to an initiative. When you approve an  
15 initiative, that's pretty straightforward. You're  
16 approving the new language, and that's what causes the  
17 change.

18 So if the Court thinks that that's a problem,  
19 then we'd be happy, you know, to change that language in  
20 the description of effect to make that a little bit more  
21 clear. I'm not sure how we do that, honestly. But we'd  
22 be more than happy to try and put something forward to  
23 do that.

24 So that's -- that was the one thing like that I  
25 said that I thought was a little bit unclear in the

1 statute.

2           The other thing I'm not a little -- I'm not a  
3 hundred percent clear on the statute. I don't think  
4 this is the intent behind the statute. I don't think we  
5 have to describe in the description of effect what  
6 happens if you approve the statute, which is that it can  
7 no longer be changed by the Legislature.

8           That doesn't change the law. But, arguably, I  
9 could see that that is something that the voters would  
10 also want to be informed of. And it's a little bit  
11 unclear to me whether that's something that 295.009  
12 requires. I tend to think it's not, because that's a  
13 legal mechanism that applies to all petitions, not just  
14 this one. But, again, if it's something that the Court  
15 thinks would clarify and ought to go in there, then  
16 we're more than happy to do that.

17           So that is basically it, to wrap up on -- with  
18 regard to the bigger issue on whether this is a  
19 referendum or a petition, as I mentioned, I think that  
20 what they're asking the Court to do is to create a whole  
21 new rule, that has no basis and is contrary to the plain  
22 language of the statute.

23           And there's no harm in allowing people to do  
24 these kind of referenda. There's significant harm in  
25 preventing it, because what you're doing is putting the

1 people through significantly more expensive,  
2 time-consuming, difficult and risky process. And  
3 there's simply no reason to do that.

4 All we're asking the Court to do is apply the  
5 plain language of the Constitution, to let the people go  
6 forward and have a yes or no vote on this particular  
7 issue.

8 The fact that it happened to be drafted the way  
9 it is, because that's the way the statute happens to be  
10 drafted, can't defeat the constitutional language.

11 And the greater difficulty here would be  
12 accepting the plaintiff's position, which is going to  
13 mean that the Constitution doesn't mean what it says and  
14 that we're going to have this very amorphous standard of  
15 trying to figure out what a valid petition is or not.

16 And I would not know how to draft a petition  
17 under that kind of standard. I don't know how the  
18 courts would review a petition under that standard. But  
19 I do know that we would see a lot more litigation over  
20 it, because there is no guidance. And that uncertainty  
21 itself is not fair to people trying to draft a petition.  
22 That itself significantly restricts the right.

23 And so, in sum, all we're asking the Court to  
24 do is to apply the plain language of the Constitution,  
25 say that this is a valid referendum petition, and allow



1 us to go forward onto the ballot so that the people can  
2 have their say.

3 THE COURT: Is there any final comment?

4 MR. CAVILIA: Very briefly.

5 What the defendant's asking for is the same  
6 thing, that the Court apply the Constitution as a whole,  
7 both sections 1 and section 2.

8 My major concern with allowing referendums to  
9 go forward on individual words and phrases, we talk  
10 about additional litigation. As you know, adopted  
11 statutes or revisions adopted by vote of the people  
12 cannot be amended by the Legislature. So are we now  
13 going to see this side, the Legislature can adopt -- can  
14 make more modifications -- can't make modifications to  
15 particular words and phrases because they've been  
16 adopted, but other portions they can?

17 I think, we're going to create more confusion,  
18 not less, if we don't create a definition and a standard  
19 of what "a part" is.

20 THE COURT: Thank you.

21 Well, again, I've tried to go through and read  
22 everything and go through and read it all in regards to  
23 that.

24 First of all, I think, the sole issue before  
25 me, the Court, concerns whether or not we are concerned

1 with a referendum as asserted by the defendants or an  
2 initiative as asserted by the plaintiffs, to some  
3 extent.

4 And the second issue is whether or not the  
5 description of effect is valid in respect to this  
6 particular matter.

7 Additionally, I'm making no comment, nor do I  
8 intend to make any comment on solar versus other types  
9 of energy. That's not my purpose, and that's not what's  
10 before me in respect to this matter.

11 Here we have a substantial change, in the  
12 Court's opinion, to the legislation in respect to this  
13 particular matter, not a part thereof. And we're not  
14 creating a new rule or anything else in respect to that.  
15 "Part thereof" means something less than the whole to  
16 what it belongs. And that's out of Webster's  
17 Dictionary.

18 Here, the document and issue is not changing a  
19 part of the statute, but it's a systematic change of  
20 various portions thereof and words to effect a change  
21 thereof. It's a piecemeal approach.

22 This is not a referendum, not asking for a yea  
23 or nay vote on the legislation on a question, but it is  
24 really an amendment to the statute requiring an  
25 initiative under Article 19, Section 2.

1           Therefore, the Court's going to go ahead and  
2 grant the declaratory judgment, issue an injunction in  
3 respect to this particular matter. I believe that this  
4 is not an initiative but, in fact -- not a referendum,  
5 but is more in tune to an initiative.

6           Mr. Benson.

7           MR. BENSON: Thank you, Your Honor.

8           With regard to that, I would like, if the Court  
9 would indulge me, to make an oral motion that you stay  
10 that injunction pending a potential appeal.

11           Because, as you know, we're facing a very short  
12 deadline to turn in signatures. And if we are not able  
13 to go forward and have those signatures submitted and  
14 processed, then my client could be irreparably harmed if  
15 we were to go up on appeal and have that overturned.

16           So I'd ask that you stay that --

17           THE COURT: But make it moot, in other words,  
18 because you wouldn't have time to get it done?

19           MR. BENSON: Correct, Your Honor. And so I'm  
20 asking that you stay that ruling pending the appeal, so  
21 that we can at least go forward with that process. And  
22 if the Supreme Court says it's not an initiative, then,  
23 then, obviously, we're done. But at least we'd have the  
24 opportunity to continue to pursue that in the meantime.

25           THE COURT: Without personalizing you at all?

1 MR. BENSON: Correct, Your Honor.

2 THE COURT: Do you have any comment on that?

3 MR. CAVILIA: Obviously, we'd oppose that.

4 But, you know, I think, because it's an initiative, he  
5 has until November 8th to gain signatures for an  
6 initiative.

7 THE COURT: Well, I'm going to go ahead and  
8 allow, essentially, to go forward. I'm not going to go  
9 ahead. I'm stay the fact from the standpoint in regards  
10 to enjoining anything in respect to this matter. You  
11 can go forward and try to get your signatures. Because  
12 I don't want to penalize anybody.

13 Because, I think, this is an interesting issue.  
14 I don't think it's clear. I really don't. But I do  
15 believe that you can't turn around, and, again, very  
16 clearly, piecemeal what you're trying to get out of a  
17 particular statute and that. Otherwise, you're going to  
18 create a huge problem in the future and, we expect, the  
19 future legislation in doing that in respect to that.

20 So, Mr. Cavilia, if you will prepare the order  
21 for the Court in respect to this particular matter.

22 And, again, Mr. Benson, you can go forward and  
23 with your collection of any signatures or whatever you  
24 need in respect to that particular matter. The Court's  
25 not going to preclude that. It's just indicating that I

1 believe this clearly doesn't come under the referendum.

2 MR. BENSON: Thank you, Your Honor. And I  
3 appreciate that.

4 I just wanted to clear up, in terms of the  
5 timing on getting the order done, today is Monday. I  
6 was hoping that we could get that.

7 Do you think you could have a draft to us  
8 very -- within the next couple days, or?

9 MR. CAVILIA: Of course.

10 THE COURT: Well, you can have five judicial  
11 days to get it to us and get it to him to review it in  
12 respect to that.

13 MR. BENSON: Judicial days? Okay. Thank you,  
14 Your Honor.

15 THE COURT: That's a reasonable time.  
16 Thank you. Court's in recess.

17 \* \* \* \* \*

18 (The Hearing adjourned at 3:50 p.m.)

19 -oOo-

20

21

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25

TRANSCRIBER'S CERTIFICATE

I, SHANNON L. TAYLOR, a Nevada Certified Court Reporter, Nevada CCR #322, do hereby certify:

That I was provided by Kevin Benson, Esq., with a CD containing a Hearing held on Monday, March 28, 2016, in the First Judicial District Court of the State of Nevada, in and for Carson City, regarding Case No. 16 OC 00030 1B, and that I thereafter transcribed, to the very best of my ability, the contents of said Hearing on said CD;

That the within transcript, consisting of pages 1 through 49, is the transcription of said Hearing;

I further certify that I am not an attorney or counsel for any of the parties, nor a relative or employee of any attorney or counsel connected with the action, nor financially interested in the action.

DATED at Carson City, Nevada, this 11th day of April, 2016.

SHANNON L. TAYLOR  
Nevada CCR #322, RMR

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

26  
27  
28   
DISTRICT COURT JUDGE



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Kevin Benson, Esq.  
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JA 0228

copy

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5 *Attorney for Defendant No Solar Tax PAC*

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2016 APR -8 PM 12:36  
SUSAN MERRIWETHER  
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BY V. Alegria  
DEPUTY

6  
7 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
8 **IN AND FOR CARSON CITY**

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

11 Plaintiffs,

12 vs.

13 NO SOLAR TAX PAC, a Nevada Committee  
14 for Political Action;  
15 BARBARA CEGAVSKE, in her official  
capacity as Nevada Secretary of State,

16 Defendants.

Case No.: 16 OC 00030 1B

Dept. No.: I

**NOTICE OF APPEAL**

17 Notice is hereby given that the No Solar Tax PAC, the Defendant named above, appeals to the  
18 Nevada Supreme Court from the final judgment entitled "Order" entered in this action on April 7, 2016.

19 DATED this 8 day of April, 2016.

20  
21 **WHITE HART LAW, LLC**

22  
23   
24 KEVIN BENSON, ESQ.  
Nevada Bar No. 9970  
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2310 S. Carson Street #6  
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27 *Attorneys for Defendant No Solar Tax PAC*

28 JA 0229

WHITE HART LAW  
2310 S. CARSON ST. #6  
CARSON CITY, NV 89701

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I am an employee of White Hart Law, LLC, and that on the  
8 day of April, 2016, a true and correct copy of the above NOTICE OF APPEAL was served  
on the parties by electronic mail, pursuant to all parties' consent, to the following email addresses:

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Justin M. Townsend, Esq.

Allison MacKenzie

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*Attorney for Plaintiff Citizens for Solar and Energy Fairness*

Lori Story

Senior Deputy Attorney General

lstory@ag.nv.gov; DWright@ag.nv.gov

*Attorney for Defendant Secretary of State*

  
KEVIN BENSON, ESQ.

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Attorneys for Plaintiff

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2016 APR -8 PM 2: 54

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  
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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 7<sup>th</sup> day of April, 2016, the Court duly entered an Order. A copy of said Order is attached hereto.

DATED this 8<sup>th</sup> 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

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## 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.  
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100 North Carson Street  
Carson City, NV 89701-4717  
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Email: [dwright@ag.nv.gov](mailto:dwright@ag.nv.gov)

DATED this 8<sup>th</sup> 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  
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

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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  
7 statute, but rather systematic changes to various portions and words of the statute in a piecemeal  
8 approach; and  
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

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

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

26 **IT IS SO ORDERED** this 14 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 7<sup>th</sup> 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.  
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



## **CERTIFICATE OF SERVICE**

Pursuant to NRAP 25(d), I declare that I am an employee of White Hart Law, LLC and on this 6th day of May, 2016, I served a copy of the foregoing Joint Appendix by Nevada Supreme Court CM/ECF Electronic Filing to:

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jcavilia@allisonmackenzie.com

Nevada Attorney General's Office  
Attn: Lori Story, Senior Deputy Attorney General  
100 N. Carson Street  
Carson City, NV 89701  
LStory@ag.nv.gov

/s/ Kevin Benson

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*Attorney for Defendant No Solar Tax PAC*

REC'D & FILED

2016 MAR -2 PM 3: 52

SUSAN MERRIWETHER  
CLERK

BY V. Alegria  
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  
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Plaintiffs,

vs.

NO SOLAR TAX PAC, a Nevada Committee  
for Political Action;  
BARBARA CEGAVSKE, in her official  
capacity as Nevada Secretary of State,

Defendants.

Case No.: 16 OC 00030 1B

Dept. No.: I

**DEFENDANT NO SOLAR TAX PAC's**

**ANSWERING BRIEF**

Defendant No Solar Tax PAC, by and through counsel, Kevin Benson, Esq. of White Hart Law, LLC, submits this Answering Brief in opposition to Plaintiff's Points and Authorities in Support of its Complaint for Declaratory and Injunctive Relief.

**I. Introduction**

The Nevada Constitution explicitly authorizes the voters to repeal "any part" of a law through a referendum petition. Nev. Const. Art. 19, § 1. Plaintiff's arguments that this Petition is not a valid referendum must be rejected because they conflict with the plain language of the Nevada Constitution. Plaintiff is merely attempting to prevent the voters from exercising their express constitutional right to run a referendum because Plaintiff disagrees with the underlying policy of the Petition.

The purpose of the description of effect is to summarize, in no more than 200 words, what the Petition seeks to achieve, and how it will do so. A description of effect need not include speculative or hypothetical effects, nor must it describe general legal requirements set forth in other laws. This

JA 0043

Petition's Description of Effect is a succinct and accurate description of what the Petition will do: repeal the costly new net metering rates and charges that have effectively killed rooftop solar in Nevada.

**II. The Petition is a Valid Referendum Because the Plain Language of the Nevada Constitution Expressly Permits Referenda on a Statute or "Any Part Thereof."**

The Nevada Constitution explicitly reserves to the people their right to run a referendum on a statute or "any part thereof." Nev. Const. Art. 19, § 1. Accordingly, the people are expressly empowered to change the law, even dramatically so, through a referendum petition. Plaintiff's arguments that this is an invalid referendum petition must be rejected because they ignore the plain language of the Nevada Constitution.

**A. The plain meaning of the Nevada Constitution shows that the people have a constitutional right to run a referendum on only a part of a statute.**

Plaintiff's primary argument is that this Petition is not a referendum petition because it seeks approval or disapproval of words or phrases within a statute, rather than whole sections or subsections. This is a novel proposition for which Plaintiff cites no supporting authority. The lack of authority is not surprising, because this argument is foreclosed by the plain text of Nevada's Constitution.

When unambiguous, the plain meaning of the words in the Constitution is controlling. *We the People Nevada ex rel. Angle v. Miller*, 124 Nev. 874, 881, 192 P.3d 1166, 1171 (2008). A provision is only ambiguous if it can be interpreted in two or more reasonable, but inconsistent, ways. *Gallagher v. City of Las Vegas*, 114 Nev. 595, 599, 959 P.2d 519, 521 (1998). Furthermore, the Constitution must be read in a way to avoid unreasonable or absurd results. *Nevada Power Co. v. Haggerty*, 115 Nev. 353, 364, 989 P.2d 870, 877 (1999).

Nev. Const. Art. 19, § 1(1) states that the people may "circulate a petition that a statute or resolution **or part thereof** enacted by the legislature be submitted to a vote of the people..." (Emphasis added.) Subsection 1(2) of Nev. Const. Art. 19 goes on to direct the elections officials to place the question on the ballot whenever "a petition in the form provided for in Section 3 of this Article that any statute or resolution **or any part thereof** enacted by the legislature be submitted to a vote of the people..." (Emphasis added.) Finally, subsection 1(3) provides in relevant part: "If a majority of such

1 voters votes disapproval of such statute or resolution or **any part thereof**, such statute or resolution or  
2 **any part thereof** shall be void and of no effect.” Nev. Const. Art. 19, § 1(3) (emphasis added).

3 The Nevada Constitution authorizes referenda on only a part of a statute by using the plain  
4 language “a statute ... or part thereof.” Nev. Const. Art. 19, § 1(1). The phrase “part thereof” is not  
5 qualified in any way. In fact, the Constitution repeatedly refers to referenda on statutes “or *any* part  
6 thereof.” Nev. Const. Art. 19, § 1(2), 1(3). “Any part thereof” means just what it says: that *any* part of a  
7 statute may be subject to referendum. *See W. Sur. Co. v. ADCO Credit, Inc.*, 251 P.3d 714, 716 (Nev.  
8 2011) (term “any person” in statute means that *any* person, not just a consumer, could bring an action  
9 under the statute).

10 The phrase “part thereof” is not ambiguous. It cannot be reasonably interpreted to mean only a  
11 section or subsection of a statute, but not certain words or phrases within a statute. Nothing in the  
12 Nevada Constitution limits the term, or even suggests that the word “part” is so limited. Indeed, such a  
13 construction is foreclosed because Article 19, § 1 twice uses the term “*any* part thereof.” The Nevada  
14 Constitution must be given its plain meaning, which is that *any* part of a statute can be subject to  
15 referendum, whether that is a section, a subsection, or but a single word within a statute.

16 Plaintiff’s arguments that this Petition is not a valid referendum petition must be rejected for the  
17 basic reason that each argument ultimately conflicts with the plain and unambiguous language of the  
18 Nevada Constitution. Since the language of the Constitution is unambiguous, the Court need not  
19 consider Plaintiff’s argument any further. *We the People Nevada*, 124 Nev. at 881, 192 P.3d at 1171.  
20 Nevertheless, Defendant will address each of Plaintiff’s arguments in turn to further show why they  
21 lack merit.

22 **B. The Nevada Constitution allows referendum petitions that change the meaning or**  
23 **policy of the law.**

24 Plaintiff’s basic contention is that any petition which effectively changes the meaning or policy  
25 of a law, even if it does so solely by deleting certain words or phrases, is tantamount to enacting new  
26 law and is therefore an initiative, not a referendum. Plaintiff argues that “deletion of individual words  
27 throughout a statute, while superficially appearing to constitute referral of a ‘part’ of the statute, could  
28 contort a statute into an unrelated shell of itself.” Opening Brief, p. 8. Plaintiff concludes that such

1 changes are impermissible in a referendum petition, and must be run by initiative instead. *Id.*

2 This theory is inconsistent with the plain language of Nev. Const. Art. 19, § 1, as discussed  
3 above. Furthermore, it would create an unworkable standard. Article 19, § 1 undeniably allows the  
4 people to use the referendum process to repeal a “part” of a statute, which will *always* change the policy  
5 or meaning of the statute to some degree. But at what point does a referendum change the meaning of a  
6 statute *too much*, and thus become an initiative petition? Plaintiff offers no workable answer to this  
7 question.

8 Without articulating any substantive reasons why, Plaintiff insists that the Petitioners must run  
9 an initiative instead. But even Plaintiff itself acknowledges that this would involve the additional time  
10 and risk of first submitting an initiative petition to the Legislature, and then waiting to see if the  
11 Legislature rejects it or not. Opening Brief, p. 5, ll. 4-6. To make matters even worse, the Legislature  
12 could theoretically propose an alternative designed to compete with the Petition on the ballot. *See Nev.*  
13 *Const. Art. 19, § 2(3).* Yet Plaintiff insists that the Petitioners are somehow trying “to short cut the  
14 proper process” by running a referendum petition. Opening Brief, p. 5, ll. 6-8.

15 Plaintiff’s arguments have it backwards. There is absolutely nothing improper about the  
16 Petitioners seeking the quickest way to achieve their goal. The people, not the Legislature, are the  
17 ultimate sovereign. *We People Nevada ex rel. Angle v. Miller*, 124 Nev. 874, 887, 192 P.3d 1166, 1174,  
18 n. 39 (2008). It is the people’s right and prerogative to bypass the Legislature by disapproving any part  
19 of a law they disagree with, even if that would change state policy. *Id.*; Nev. Const. Art. 19, § 1.

20 Nothing in Nev. Const. Art. 19, § 1 limits referenda petitions to only those that *do not* cause any  
21 significant changes in the law. Such a right would be largely illusory. Instead, the Constitution  
22 expressly authorizes repeal of “any part” of a statute, with no limitations on that authority. The only  
23 “abuse” going on here is Plaintiff’s attempt to prevent the people from exercising that constitutional  
24 right.

25 **C. Under Nevada Supreme Court precedent, this Petition is a referendum, not an**  
26 **initiative.**

27 Plaintiff asserts that this Petition is essentially an initiative, not a referendum, because the  
28 Petition “amends” the law rather than asking the voters to approve or disapprove of a statute. This

JA 0046

1 argument fails because nothing in the Petition adds new language to the law, therefore under current  
2 binding precedent, the Petition is a referendum.

3 The difference between a referendum and an initiative is that only an initiative can add new  
4 material to the law. As Plaintiff recognizes: "Referendum is the electorate's power to approve or  
5 disapprove already-enacted legislation, while initiative is the electorate's power to directly enact  
6 legislation by popular vote." *Garvin v. Ninth Judicial Dist. Court ex rel. Cty. of Douglas*, 118 Nev. 749,  
7 753, 59 P.3d 1180, 1183 (2002); *accord Forman v. Eagle Thrifty Drugs & Markets, Inc.*, 89 Nev. 533,  
8 537, 516 P.2d 1234, 1236 (1973); *see* Opening Brief, p. 4.

9 In *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 892, 141 P.3d 1224, 1234 (2006), the Nevada  
10 Supreme Court rejected the argument that an initiative petition was actually a referendum. The court  
11 noted that the initiative petition clearly created new law that did not previously exist, even though it  
12 also would declare old laws which conflicted with the new language "null and void." *Id.* The court held  
13 that the petition was clearly an initiative because it did not seek to only reject the current anti-smoking  
14 laws, but would enact new provisions into the law that would more broadly ban smoking. *Id.*

15 As these cases make clear, an initiative adds new language to the law, while a referendum only  
16 approves or disapproves of all or part of an existing law. Plaintiff concedes that in this case the Petition  
17 does not propose to enact any new language. Opening Brief, p. 8, ll. 6-7. The Petition only asks voters  
18 to approve or disapprove certain parts of existing law. Accordingly, under *Garvin*, *Foreman*, and  
19 *Herbst Gaming*, the Petition is a referendum, not an initiative.

20 **D. Plaintiff's other arguments cannot be used to limit the constitutional right to run a**  
21 **referendum on any part of a statute.**

- 22 1. The people's constitutional right to run a referendum cannot be impaired because  
23 some words in the statute might be approved by the voters.

24 Plaintiff argues that it is "impractical[]" to allow a referendum on certain words or phrases in a  
25 statute because, if the provisions are approved, they cannot be amended by the Legislature in the future.  
26 Opening Brief, p. 8, ll. 7-11.

27 Nev. Const. Art. 19, § 1(3) provides that if a statute "or any part thereof" submitted to the  
28 people by referendum is approved, then "such statute or resolution or any part thereof shall stand as



1 the law of the state and shall not be amended, annulled, repealed, set aside, suspended or in any way  
2 made inoperative except by the direct vote of the people.” (Emphasis added.)

3 Once again, Plaintiff’s argument is defeated by the plain language of the Constitution. Article  
4 19, § 1(3) states that the statute “or any part thereof” cannot be amended by the Legislature.  
5 “Impractical” or not, this result is not only allowed, but demanded, by the Constitution. The framers of  
6 Article 19, and the voters who enacted it, have already determined that, any concerns of practicality  
7 aside, the parts of a statute approved by the voters must stand until the voters themselves say otherwise.

8 Furthermore, on a more general level, even if approval of the statute would require careful  
9 drafting of bills in the future, such administrative concerns are insufficient to deprive the people of a  
10 constitutional right. The history of the Sales and Use Tax Act of 1955 demonstrates that these types of  
11 concerns do not pose any insurmountable barriers that would prevent the people from exercising their  
12 right to a referendum. The Sales and Use Tax Act of 1955 was approved by referendum at the 1956  
13 general election, effectively locking those provision into statute, pursuant to Nev. Const. Art. 19, § 1(3).  
14 See Question 8 (1956).<sup>1</sup> Although that referendum was on an entire statute, the voters have approved  
15 changes to it through a number of ballot questions. See e.g., Question 8 (1970),<sup>2</sup> Question 8 (2006)<sup>3</sup>.  
16 This shows that there is no reason to believe that the Legislature or the people are incapable of dealing  
17 with statutes or parts of statutes that have been approved by referendum.

18 2. The Petition need not include any reference to language that is no longer existing  
19 law.

20 Senate Bill 374 repealed certain language from the statutes, including for example, from NRS  
21 704.773. See Section 2.95. Plaintiff argues that the Petition is somehow ambiguous or invalid because it  
22 “leaves out” any reference to language that was deleted from the law by Senate Bill 374. See Opening  
23 Brief, pp. 6-7. This argument should be rejected for several reasons.

24 First, Plaintiff fails to explain how this causes any confusion or ambiguity. The repealed

25 <sup>1</sup> Available at: <https://leg.state.nv.us/Division/Research/VoteNV/BallotQuestions/1956.pdf>

26 <sup>2</sup> Available at: <https://leg.state.nv.us/Division/Research/VoteNV/BallotQuestions/1970.pdf> Question 8 amended the Sales  
27 and Use Tax Act to exempt prescription medications and to repeal an exemption for certain magazines. Although not a true  
referendum, the measure inserts some words and phrases, and repeals other words and phrases within the text of the Act.

28 <sup>3</sup> Available at: <https://leg.state.nv.us/Division/Research/VoteNV/BallotQuestions/2006.pdf> Question 8 amended the Sales  
and Use Tax Act to exempt used vehicles turned in on trade and certain farm equipment.

1 language has been repealed and is no longer law. The Petition does not change that, which is exactly  
2 what one would expect of a referendum petition. If the Petition *included* the deleted language, *that*  
3 would cause confusion. Does “disapproving” repealed language effectively re-enact the repealed  
4 language, the same way a double negative makes a positive? *Cf.* Nev. Const. Art. 19, § 1(3). Moreover,  
5 a referendum, by definition, can only be run on *existing* law. Nev. Const. Art. 19, § 1(1) provides that a  
6 referendum petition must be on “a statute or resolution or part thereof enacted by the legislature.” It  
7 makes no sense to run a referendum petition on language that is not law. There is no requirement to  
8 include deleted language in a referendum petition.

9       Second, Plaintiff’s position would create a catch-22 for petitioners. On the one hand, Plaintiff  
10 argues that it creates confusion and ambiguity for the Petition to “leave out” the text that was deleted by  
11 the Legislature. Opening Brief, p. 6. But then Plaintiff asserts that if the Petition *did* include the deleted  
12 portions of the statute, this “would unequivocally make this Petition an initiative (amendment of  
13 statute) and not a referendum.” Opening Brief, p. 7, ll. 3-5.

14       Thus Plaintiff’s theory would make it impossible to run a referendum on a statute if the  
15 Legislature has repealed part of that statute. According to Plaintiff, the petitioner must include the  
16 repealed language in the petition, to avoid confusion and ambiguity, yet by doing so, transforms the  
17 petition into an initiative. This is an absurd outcome and cannot be the law.

18       This Petition correctly leaves out any reference to language that is not currently law. It does not  
19 attempt to re-enact anything; it only seeks approval or disapproval of existing parts of a statute. It is  
20 therefore a valid referendum petition pursuant to Nev. Const. Art. 19, § 1.

21               3. Whether a statute is organized into sections or subsections cannot defeat the people’s  
22               constitutional right to a referendum.

23       Plaintiff argues that Petitioners are *prohibited* from referring the selected portions of Subsection  
24 1 of Section 2.3, but suggests that Petitioners could have and should have referred *all* of Subsection 1 of  
25 Section 2.3 to the voters. *See* Opening Brief, p. 5, ll. 21-22. If Plaintiff were to prevail, it would mean  
26 that certain statutes, or certain parts thereof, would be completely off-limits to a referendum petition,  
27 depending entirely on how the statute happens to be structured, organized, or worded.



1 Plaintiff fails to articulate any reason why it matters whether a whole subsection is referred to  
2 the voters, versus certain words or phrases within the subsection. More specifically, Plaintiff fails to  
3 explain why the term “any part thereof” in Nev. Const. Art. 19, § 1 refers only to whole subsections or  
4 sections of a statute, but does not refer to individual words or phrases.

5 Here, the law is drafted such that the provisions allowing the continuation of net metering are  
6 not neatly placed into sections or subsections that are separate from the provisions allowing the PUC to  
7 impose the new rates and charges. If they had been, then according to Plaintiff’s theory, they would be  
8 “parts” that would be subject to referendum. But the law was not drafted that way, so according to  
9 Plaintiff, the people cannot run a referendum, and must run an initiative instead. Such a rule is absurd  
10 because it would elevate the form of a statute over its substance and impair the people’s constitutional  
11 right to referendum, all for no apparent reason.

12 Finally, if the phrase “any part thereof” is not given its plain meaning, then we are inviting  
13 significant mischief in the future. The Legislature could craft and organize laws to make certain  
14 provisions practically referendum-proof by simply drafting them so that they are included in the same  
15 subsection as other, popular provisions. The people would have to either repeal the entire law, including  
16 the parts they approve of and want to keep, or pursue a riskier, more time-consuming and complicated  
17 initiative process. This is directly contrary to the plain language of Nev. Const. Art. 19, § 1 allowing  
18 referenda on a statute or “any part thereof.”

19 4. Plaintiff’s contentions regarding grammar and capitalization cannot defeat the  
20 people’s constitutional right to run a referendum petition.

21 Finally, Plaintiff complains that allowing a referendum on certain words or phrases in a statute  
22 would cause incorrect capitalization of words, and incorrect numbering of paragraphs or subsections.  
23 See Opening Brief, p. 6, ll. 8-9, n 1. Once again, Plaintiff is arguing that minor concerns with the form  
24 of a law should trump the people’s constitutional rights.

25 These are exactly the kinds of matters that the Legislative Counsel Bureau is authorized and  
26 directed to fix during the codification and revision of the statutes. See NRS 220.120(5) (providing that  
27 LCB may “renumber sections and parts of sections thereof, ... change capitalization for the purpose of  
28 uniformity, ... correct manifest clerical or typographical errors,” etc.).

1 Accordingly, if the Petition succeeds in disapproving the referred parts of the statute, any  
2 numbering, capitalization, or other typographical issues will be addressed when LCB codifies the law  
3 into the NRS. These matters are trivial. Plaintiff cannot be allowed to use such measures to defeat or  
4 limit the people's constitutional right to run a referendum on any part of a statute.

5 The Court should find, consistent with the plain language of the Nevada Constitution, that this  
6 Petition is a valid referendum petition.

7 **III. The Petition's Description of Effect is Straightforward and Accurate.**

8 **A. Legal standard for reviewing the Description of Effect after *Education Initiative*.**

9 The Nevada Supreme Court recently clarified how courts should analyze a petition's description  
10 of effect in *Educ. Init. v. Comm. to Protect Nev. Jobs*, 129 Nev. Adv. Op. 5, 293 P.3d 874, 879 (2013).  
11 First, the court reiterated that the opponent of a ballot measure bears the burden of showing that the  
12 petition does not meet the standard and is "clearly invalid." *Id.*; *Las Vegas Taxpayer Comm. v. City*  
13 *Council*, 125 Nev. 165, 176, 208 P.3d 429, 436 (2009). To meet this standard, the opponent must do  
14 more than simply "identify some perceived effect of [the petition] that is not explained by the  
15 description of effect" because this would "block the people's right to the [petition] process." *Education*  
16 *Initiative*, 293 P.3d at 882. Instead, the opponent must show that the description of effect is deceptive,  
17 misleading or materially inaccurate in a way that renders the petition "clearly invalid." *Id.* at 878; *Las*  
18 *Vegas Taxpayers*, 125 Nev. at 184, 208 P.3d at 441.

19 The court also reaffirmed that a description of effect must be "straightforward, succinct, and  
20 nonargumentative," and of course it must not be "deceptive or misleading." *Educ. Init. v. Comm. to*  
21 *Protect Nev. Jobs*, 129 Nev. Adv. Op. 5, 293 P.3d 874, 879 (2013) (internal quotations omitted). But it  
22 need not be the "best possible statement of a proposed measure's intent." *Herbst Gaming, Inc. v. Heller*,  
23 122 Nev. 877, 889, 141 P.3d 1224, 1232 (2006)

24 In *Education Initiative*, the Nevada Supreme Court observed that the description of effect does  
25 not appear on the ballot; rather, its purpose is limited to gathering signatures. 293 P.3d at 880. The  
26 description of effect must simply identify what the petition proposes, and how it intends to accomplish  
27 that objective, all within a limit of 200 words. *Id.* at 879. Furthermore, if the measure qualifies for the  
28 ballot, the voters will receive a neutral explanation written by the Secretary of State, as well as

1 arguments for and against the measure, which will further flesh-out the various issues raised by the  
2 petition. *Id.* at 881; NRS 293.252.

3 Accordingly, “the district court must take a holistic approach to determine whether the  
4 description is a straightforward, succinct, and nonargumentative summary of an [petition’s] purpose  
5 and how that purpose is achieved” and that it “is correct and does not misrepresent what the [petition]  
6 will accomplish.” *Education Initiative*, 293 P.3d at 883 (internal citations omitted). The court clarified  
7 that it is inappropriate to apply hyper-technical or statutory construction-style analysis to the description  
8 of effect, as this could unnecessarily impede, rather than facilitate, the voters’ right to petition. 293 P.3d  
9 at 882-83; 879.

10 **B. The Description of Effect need not contain all possible speculative or hypothetical**  
11 **effects of the Petition.**

12 A description of effect need not include speculative or hypothetical consequences of the  
13 petition. *Education Initiative*, 293 P.3d at 882. The court in *Education Initiative* recognized that “[m]ost  
14 ballot initiatives will have a number of different effects if enacted, many of which are hypothetical in  
15 nature.” *Id.* It also recognized that “any opponent of a ballot initiative could identify some perceived  
16 effect of an initiative that is not explained by the description of effect, challenge the initiative in district  
17 court, and block the people’s right to the initiative process.” *Id.* As a result, the court emphasized that  
18 laws enacted to *facilitate* the petition process, like the description of effect requirement in NRS  
19 295.009, “cannot be interpreted so strictly as to halt the process.” *Id.*

20 Plaintiff’s main argument is that the Description of Effect is inaccurate or misleading because it  
21 does not tell voters that SB 374 removed the cap on net metering, and that the Petition does not restore  
22 the cap. *See* Opening Brief, pp. 10-11. Thus, Plaintiff asserts, if the Petition succeeds in repealing the  
23 PUC’s ability to impose a special rates and charges on net metering customers, this would lead to “the  
24 need for virtually limitless subsidies from electric users in this state to support the net metering  
25 customers.” Opening Brief, p. 11, ll. 11-15. Plaintiff characterizes this as a “significant and devastating  
26 effect.” *Id.*

27 The first problem with this argument is that, even assuming Plaintiff’s assertions are true, it is  
28 not the Petition that would cause “limitless subsidies.” Instead, as Plaintiff acknowledges, it was the

1 *Legislature* that removed the cap. 2015 Stat. Nev. Ch. 379, § 2.3(1). The description of effect is not  
2 required to describe something that the Legislature, not the Petition, did. *See* NRS 295.009.

3 Second, the Plaintiff bears the burden of demonstrating that the description of effect is “clearly  
4 invalid” because it is materially inaccurate, misleading, or deceptive. *Education Initiative*, 293 P.3d at  
5 879; *Las Vegas Taxpayers*, 125 Nev. at 176, 208 P.3d at 436. Plaintiff has not met its burden in this  
6 case. It has not demonstrated that the Petition will cause any “significant and devastating effect.”  
7 Plaintiff has only asserted, but not proven, that the Petition would cause non-net metering customers to  
8 subsidize net metering customers. It has not calculated the extent of any such subsidy, or proven that it  
9 would be “devastating” to anyone, or that any subsidy is not outweighed by other factors, like the  
10 benefits of providing more renewable energy to the grid or reducing distribution and transmission costs.

11 This is similar to the opponent’s argument in *Education Initiative* that the petition might not  
12 result in any actual increase in the net amount of funds available for education. *Education Initiative*,  
13 293 P.3d at 883. The court rejected that argument, finding that the description of effect accurately stated  
14 that the money generated by the initiative would help “support” education, and that was sufficient for  
15 the limited purpose of the description of effect. *Id.* at 883-84.

16 As the court explained in *Education Initiative*, a petition’s description of effect need only  
17 describe what the petition attempts to do, and how it will achieve that goal. 293 P.3d at 883. It need not  
18 include speculative or hypothetical effects, nor must it contain an explanation of every potential  
19 consequence. *Id.* at 882. Finally, the Petition’s Description of Effect is not required, under NRS  
20 295.009, to describe the effect of something the Legislature did.

21 This Petition’s description of effect accurately states that it would simply require that net  
22 metering customers be treated the same as other ratepayers in the same class, just as they were before.  
23 Although the Legislature removed the cap on net metering systems, the Petition does not enact new  
24 incentives to install a net metering system. Accordingly, Plaintiff has failed to show that its concerns of  
25 some “devastating effect” is anything more than hypothetical or speculative. Finally, Plaintiff will have  
26 an opportunity to raise these kinds of concerns in the argument against the Petition that is included on  
27 the sample ballot, after it qualifies for the ballot. *See id.* at 881; NRS 293.252.

1           **C. The Description of Effect accurately uses the terms “approve” and “disapprove.”**

2           Plaintiff also argues that the Description of Effect is confusing with regard to whether it asks  
3 voters to “approve or disapprove” certain portions of Ch. 379, Statutes of Nevada (2015) pertaining to  
4 net metering. Plaintiff asserts that the Description alternates between how it uses “approve” and  
5 “disapprove.” This is incorrect.

6           All referendum petitions ask the voters to approve or disapprove of a statute, or part thereof. *See*  
7 Nev. Const. Art. 19, § 1(2) (requiring election officials to “**submit the question of approval or**  
8 **disapproval of such statute or resolution or any part thereof** to a vote of the voters at the next  
9 succeeding election...” (emphasis added).

10          If the voters *disapprove* of parts of the statute, those parts “shall be void and of no effect.” Nev.  
11 Const. Art. 19, § 1(3). By contrast, if the voters *approve* of the statute, the statute remains the same,  
12 except that it can only be amended or repealed in the future by another vote of the people. *Id.* The  
13 question that will actually appear on the ballot will be something like: “Shall certain provisions of  
14 Chapter 379, Statutes of Nevada (2015) pertaining to net metering **be approved?**” *See* NRS  
15 295.045(3).

16          Accordingly, the first sentence of the Description of Effect accurately sets forth what the  
17 Petition does: “This referendum asks voters to approve or disapprove portions of Chapter 379, Statutes  
18 of Nevada (2015), that relate to net metering customers...”

19          Plaintiff argues: “At this point, a voter might presume that approval of the Referendum Petition  
20 signifies approval of the new statute, when Petitioner’s apparent goal is to re-write the law.” Opening  
21 Brief, p. 9, ll. 24-26. Plaintiff appears to believe that voting “yes” or “approval” will change the law.  
22 That is incorrect. If a majority of voters vote “yes,” then the law remains the same. NRS 295.045(3);  
23 Nev. Const. Art. 19, § 1(3). So a voter *correctly* presumes that approval of the statute will keep the law  
24 as it currently exists.

25          The Description of Effect also accurately states that if “a majority of voters disapprove of the  
26 new rates and charges... the bolded, bracketed, and underlined provisions of this referendum will be  
27 repealed.” (Emphasis added.) This is the result dictated by Nev. Const. Art. 19, § 1(3). There is nothing  
28 confusing or inconsistent about how “approval” or “disapproval” are used in the Description of Effect.



1 To the extent Plaintiff is arguing that “approval” of the *referendum* means something different  
2 than approval of the *statute or part thereof*, that argument should be rejected. NRS 295.009(1)(b)  
3 requires the description of effect to state the effect if the “referendum” is “approved” by voters. Clearly  
4 the intent behind NRS 295.009(1)(b) is to inform the voters how the petition proposes to *change* the  
5 law, regardless of whether that is through “approving” or “disapproving” the petition or the statute.  
6 Also, it would be burdensome for Petitioners to be forced to use up some of their precious 200 words to  
7 describe the legal process of approval or disapproval of a statute, since that is already clearly set forth in  
8 the Nevada Constitution.

9 Nevertheless, should the Court find that NRS 295.009 requires it, and to aid in the swift  
10 resolution of this matter, Petitioners are willing to add some language to the Description of Effect  
11 describing the effect of approving the parts of the statute. However, this will require Petitioners to  
12 delete other parts of the Description of Effect, in order to remain under the 200 word limit. Petitioners  
13 will prepare an alternate description of effect for the Court’s consideration.

14 **D. The Description of Effect accurately describes that the Petition seeks to prohibit and**  
15 **abolish the new charges and rates imposed on net metering customers.**

16 Next, Plaintiff argues that the Petition does not repeal the new tariff, since that was set by the  
17 PUC, not by SB 374, and therefore the Description of Effect is inaccurate. *See* Opening Brief, p. 11, ll.  
18 4-7. Plaintiff also mischaracterizes the Petition as somehow stripping the PUC entirely of all authority.  
19 For example, it argues that the Petition is “repealing the Legislature’s decision to designate PUCN  
20 oversight on net metering,” while leading voters “to believe that they are rejecting the controversial and  
21 highly publicized new rates.” *See* Opening Brief, p. 11, ll. 4-10.

22 Plaintiff is correct that SB 374 did not itself set a new rate for net metering customers. However,  
23 it did specifically authorize the PUC to enact new rates and charges that treat net metering customers  
24 differently from other ratepayers in the same rate class. *See e.g.*, § 2.5(2) (allowing variable rates based  
25 on time of day, week, or year for net metering customers, when that is prohibited for other residential  
26 ratepayers); § 2.95(5)(c) (authorizing special charges to be imposed against net metering customers  
27 only).

1 The Petition seeks to repeal the parts of the statute that authorized this new discriminatory  
2 treatment of net metering customers, which will have the practical effect of abolishing the new tariff,  
3 which imposes higher fees only on net metering customers.<sup>4</sup> That the Petition will abolish the new  
4 tariff is explained clearly in the Description of Effect. As the court explained in *Education Initiative*, a  
5 hyper-technical analysis of the description of effect is not appropriate. 293 P.3d at 882-83. Forcing  
6 Petitioners to explain the administrative law distinction between the PUC adopting a new tariff and the  
7 authorization to do so in the statute is exactly the kind of technical, statutory construction-style analysis  
8 that the court said is not permitted. *Id.* Nor is it possible to do so within the limits of 200 words and still  
9 adequately describe the purpose of the Petition.

10 This Description of Effect is valid because it succinctly and accurately describes what this  
11 Petition would do (repeal the new rates and charges imposed on net metering customers) and how it  
12 proposes to do it (by repealing the portions of Chapter 379 which authorized the PUC to treat net  
13 metering customers differently). It does all this within the 200 words allowed by NRS 295.009. The  
14 Description is valid and Petitioners should be permitted to proceed to gathering signatures.

15 ////

16 ////

17 ////

18 ////

19 ////

20 ////

21 ////

22 ////

23 ////

24 ////

25  
26 <sup>4</sup> Contrary to Plaintiff's suggestion otherwise (Opening Brief, p. 10, ll. 8-12), this does not raise any issues of including  
27 administrative details in a petition. The Petition seeks to repeal the legislative authority granted to the PUC to impose the  
28 special, higher rates and charges just on net metering customers. Whether to allow such rates and charges in the first place  
(regardless of whether or how that authority is exercised) is a policy decision that is well within the scope of the petition  
power. See *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 915, 141 P.3d 1235, 1249 (2006).

This Petition is a valid referendum because it refers to the voters a part of a statute, which is expressly authorized by the plain language of the Nevada Constitution. The Petition's Description of Effect is a straightforward and accurate description of what the Petition will accomplish, and how it will do so. Accordingly, the Petition is valid in all respects and Petitioners respectfully request that Plaintiff be denied all relief requested in its Complaint.

DATED this 2nd day of March, 2016.

  
KEVIN BENSON, ESQ.  
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Attorneys for Defendant No Solar Tax PAC



CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I am an employee of White Hart Law, LLC, and that on the 2nd day of March, 2016, a true and correct copy of the above ANSWER was served on the parties by electronic mail, pursuant to all parties' consent, to the following email addresses:

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*Attorney for Defendant Secretary of State*

  
KEVIN BENSON, ESQ.



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SUSAN HERRIWETHER

CLERK

By O. Cooper

DEPUTY

Case No. 16 OC 00030 1B

Dept. No. I

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.

ANSWER

Defendant, BARBARA CEGAVSKE, in her official capacity as Secretary of State for the State of Nevada ("Secretary"), by and through counsel, Nevada Attorney General Adam Paul Laxalt and Senior Deputy Attorney General Lori M. Story, hereby Answers the Complaint for Declaratory and Injunctive Relief as follows:

GENERAL ALLEGATIONS

PARTIES AND VENUE

1. The Secretary admits the allegations set forth in paragraph 1.
2. The Secretary admits the allegations set forth in paragraph 2.
3. As to paragraph 3, the Secretary admits that NO SOLAR TAX PAC is a Nevada committee for political action and that, on January 25, 2016, it filed with the Nevada Secretary of State a referendum petition (the "Petition"). As to the remaining allegations in this paragraph, the Secretary asserts that the text of the Petition speaks for itself.

1           4.     As to paragraph 4, the Petition speaks for itself.

2           5.     The Secretary admits the allegations set forth in paragraph 5.

3                   **GENERAL ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

4           6.     This paragraph states a legal conclusion, to which no response is required.

5           7.     The cited provision of the Nevada State Constitution speaks for itself.

6           8.     The Petition speaks for itself and no response is required.

7           9.     To the extent this paragraph characterizes the substance of the Petition, the  
8 Petition speaks for itself and the Secretary need not respond. To the extent this paragraph  
9 sets forth a legal conclusion, no response is required. As to any facts otherwise alleged, the  
10 Secretary is without sufficient information to admit or deny them and on that basis denies  
11 the same.

12          10.    To the extent this paragraph characterizes the substance of the Petition, the  
13 Petition speaks for itself and the Secretary need not respond. To the extent this paragraph  
14 sets forth a legal conclusion, no response is required.

15          11.    To the extent this paragraph characterizes the substance of the Petition, the  
16 Petition speaks for itself and the Secretary need not respond. To the extent this paragraph  
17 sets forth a legal conclusion, no response is required.

18          12.    The extent this paragraph characterizes the substance of the Petition, the  
19 Petition speaks for itself and the Secretary need not respond.

20          13.    The extent this paragraph characterizes the substance of the Petition, the  
21 Petition speaks for itself and the Secretary need not respond. As to any facts otherwise  
22 alleged, the Secretary is without sufficient information to admit or deny them and on that basis  
23 denies the same.

24          14.    To the extent this paragraph characterizes the substance of the Petition, the  
25 Petition speaks for itself and the Secretary need not respond.

26          15.    To the extent this paragraph characterizes the substance of the Petition, the  
27 Petition speaks for itself and the Secretary need not respond. To the extent this paragraph  
28 sets forth a legal conclusion, no response is required.

1           16. To the extent this paragraph characterizes the substance of the Petition, the  
2 Petition speaks for itself and the Secretary need not respond. As to any facts otherwise  
3 alleged, the Secretary is without sufficient information to admit or deny them and on that basis  
4 denies the same.

5           17. To the extent this paragraph characterizes the substance of the Petition, the  
6 Petition speaks for itself and the Secretary need not respond. As to any facts otherwise  
7 alleged, the Secretary is without sufficient information to admit or deny them and on that basis  
8 denies the same.

9           18. To the extent this paragraph characterizes the substance of the Petition, the  
10 Petition speaks for itself and the Secretary need not respond. As to any facts otherwise  
11 alleged, the Secretary is without sufficient information to admit or deny them and on that basis  
12 denies the same.

13           19. The Petition speaks for itself and no response is required

14           20. The Secretary admits the allegations set out in this paragraph.

15           21. The Secretary denies this allegation.

16           22. The Secretary denies this allegation.

17           23. The Petition speaks for itself and no response to this paragraph is required.

18           24. To the extent this paragraph states a legal conclusion, no response is required.  
19 As to any allegations in this paragraph requiring a response, the Secretary is without sufficient  
20 knowledge or information to form a belief about the truth of the allegations and therefore  
21 denies the same.

22           25. The Petition speaks for itself and no response to this paragraph is required.

23           26. The Secretary is without sufficient knowledge or information to form a belief  
24 about the truth of the allegations and therefore denies the same.

25           27. To the extent this paragraph states a conclusion, no response is required. As  
26 any allegations requiring a response, the Secretary is without sufficient knowledge or  
27 information to form a belief about the truth of the allegations and therefore denies the same.

28           28. To the extent this paragraph states a legal conclusion, no response is required.

**FIRST CLAIM FOR RELIEF  
Declaratory and Injunctive Relief  
Violation of Nev. Constitution Art. 19 Sec. 1**

29. Article 19, section 1, of the Nevada Constitution speaks for itself and no response to this paragraph is required.

30. The Secretary is without sufficient knowledge or information to form a belief about the truth of the allegations in this paragraph and therefore denies the same.

31. To the extent this paragraph states a legal conclusion, no response is required.

32. To the extent this paragraph states a legal conclusion, no response is required.

**SECOND CLAIM FOR RELIEF  
Declaratory and Injunctive Relief  
Violation of NRS 295.009(1)(b)**

33. NRS 295.009(1) speaks for itself and no response to this paragraph is required.

34. To the extent this paragraph states a legal conclusion, no response is required.

35. To the extent this paragraph states a legal conclusion, no response is required.

36. To the extent this paragraph states a legal conclusion, no response is required.

**AFFIRMATIVE DEFENSES**

1. The Secretary was not personally involved nor the cause in fact of any of Plaintiff's alleged deprivations.

2. The Secretary at all times acted in good faith toward Plaintiff and is thus entitled to qualified immunity from damages.

3. The Secretary is immune from liability as a matter of law, including under Chapter 41 of the Nevada Revised Statutes.

4. All possible affirmative defenses may not have been alleged pending the development of sufficient facts after reasonable inquiry; the Secretary therefore reserves the right to amend this Answer to allege additional affirmative defenses if warranted by subsequent investigation.

///

///

///

**PRAYER FOR RELIEF**

1. That judgment be rendered in accordance with the law;
2. That the Secretary be awarded costs of suit, including reasonable attorneys' fees; and
3. That the Secretary be awarded any other and further relief the Court deems proper and just.

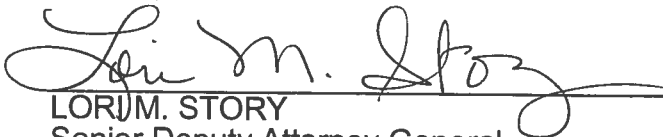
**AFFIRMATION (Pursuant to NRS 239B.030)**

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

DATED this 4th day of March, 2016.

ADAM PAUL LAXALT  
Attorney General

By:

  
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Nevada Secretary of State*

**CERTIFICATE OF SERVICE**

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this 4th day of March, 2016, I served a true and correct copy of the foregoing ANSWER, by electronic service and by placing said document in the U.S. Mail, postage prepaid, addressed to:

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7 Attorneys for Plaintiff

8  
9 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
10 **IN AND FOR CARSON CITY**

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

13  
14 Plaintiff,

15 vs.

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

18 Defendants.  
19

Case No. 16 OC 00030 1B

Dept No. I

20 **PLAINTIFF'S REPLY BRIEF IN SUPPORT OF ITS**  
21 **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

22 Plaintiff, CITIZENS FOR SOLAR AND ENERGY FAIRNESS, a Nevada committee for  
23 political action ("Plaintiff"), by and through its counsel, James R. Cavilia, Esq. and Justin  
24 Townsend, Esq. of Allison MacKenzie, Ltd., hereby replies to the Answering Brief of Defendant,  
25 NO SOLAR TAX PAC ("Defendant"). This Reply is made and based on the following  
26 Memorandum of Points and Authorities as well as all other papers and pleadings on file herein.

27 ///

28 ///



## MEMORANDUM OF POINTS AND AUTHORITIES

### **I.**

#### INTRODUCTION

Plaintiff initiated this action on February 16, 2016 challenging the validity of a Referendum Petition purporting to refer portions of Chapter 379, Statutes of Nevada (2015)<sup>1</sup> to Nevada voters for approval or disapproval (the "Referendum Petition") proposed by Defendant. The proposed Referendum Petition does not pass Nevada Constitutional muster because it seeks to amend the law rather than refer the same to voters for approval or disapproval. When Nevada voters seek to amend Nevada statutes, they must go through the initiative process set forth in Article 19, Section 2 of the Nevada Constitution rather than the referendum process of Section 1.

Additionally, the Referendum Petition contains a Description of Effect that fails to comply with the requirements of NRS 295.009. Simply put, the Description of Effect fails to inform voters what a vote to approve the referendum will mean. The Referendum Petition paints a confusing picture for potential voters such that an understanding of the effect of a vote to approve the referendum is impossible to ascertain.

### **II.**

#### ARGUMENT

##### **A. Defendant's Proffered Construction of Section 1 of Article 19 is Improper Because it Renders the Initiative Process Meaningless.**

The issue before the Court is whether Defendant's proposed Referendum, through selective editing, amends a statute rather than merely asks voters to approve or disapprove of it. Defendant argues that Plaintiff's "basic contention is that any petition which effectively changes the meaning or policy of a law, even if it does so solely by deleting certain words or phrases, is tantamount to enacting new law and is therefore an initiative, not a referendum." Answering Brief at p. 3, ll. 24-26. This mischaracterizes Plaintiff's basic contention. The difference between a referendum and an initiative is not based on whether a policy is changed but whether voters are being asked to repeal a

---

<sup>1</sup> Chapter 379, Statutes of Nevada was created by Senate Bill 374 (2015).

1 statute or amend it. Plaintiff contends that any petition that seeks to amend a statute by deleting  
2 particular words or phrases, rather than submitting distinct sections of a statute to a vote of the  
3 people, is obviously an attempt to amend a statute, which should be governed by the initiative  
4 provisions of Article 19, Section 2 of the Nevada Constitution.

5 Defendant's position, on the other hand, relies on procedure rather than substance. In  
6 Defendant's view, any single word or words of a statute can be cobbled together and submitted for  
7 referendum. Thus, even if the purpose *and result* is to create an entirely new statute rather than  
8 repeal the existing statute, so long as voters are only "repealing" certain words or phrases, the  
9 process must be a referendum. Defendant's argument, however, is in violation of well-established  
10 precepts of constitutional construction, which are that "the Nevada Constitution should be read as a  
11 whole, so as to give effect to and harmonize each provision." We the People v. Miller, 124 Nev.  
12 874, 881, 192 P.3d 1166, 1171 (2008) (citing Nevadans for Nevada v. Beers, 122 Nev. 930, 944, 142  
13 P.3d 339, 348 (2006)).

14 Defendant's argument runs afoul of We the People in several respects. First, Defendant's  
15 construction of the referendum process embodied in Section 1 of Article 19 conflicts with and, in  
16 many cases, renders moot the initiative process outlined in Section 2 of Article 19. Defendant's  
17 construction ignores that Article 19 provides *two* separate and distinct processes. Section 1 may be  
18 used only to approve or disapprove a statute or a part thereof. If voters disapprove, the statute at  
19 issue is repealed and is void. No new laws or statutes are created in the process. On the other hand,  
20 Section 2 provides that the initiative process must be used when voters desire to amend a statute.  
21 This process, if approved by the voters, results in a new or revised law.

22 While both processes can result in change, they remain distinct because, under Nevada's  
23 Constitution, there is a meaningful difference between removing or repealing a statute and changing  
24 or amending it. However, in construing Sections 1 and 2, the Court must harmonize both provisions.  
25 Any construction of the referendum process that allows it to overlap, intrude or replace the initiative  
26 process runs afoul of the Supreme Court's holding in We the People.

27 Yet this is exactly what Defendant asks this Court to do. Defendant argues for an unlimited  
28 (and unsupported) construction of the phrase "or any part thereof" of Section 1, Article 19 of the

1 Nevada Constitution. Pursuant to this language, Defendant argues that a *single* word could be  
2 submitted for referendum even if the effect of doing so is to amend a statute rather than repeal it.  
3 Taken to its conclusion, Defendant argues that the initiative process is unnecessary so long as one is  
4 amending a statute merely by deleting some discrete word or words.

5 Defendant's proffered construction is not permitted under existing law. The language of  
6 Section 1 of Article 19 of the Nevada Constitution ("a part thereof") cannot be applied so broadly as  
7 to render the language of Section 2 of Article 19 ("proposes a statute or an amendment to a statute")  
8 meaningless. A plain reading of the phrase, "amendment to a statute," cannot be limited exclusively  
9 to making additions to a statute, but must also apply to deletions and modifications thereof.  
10 Similarly, the "any part thereof" language of Section 1 cannot be read so broadly as to replace the  
11 amendment process. A more logical and reasonable construction is that the phrase applies to a  
12 distinct and severable aspect of a statute that lends itself to removal.

13 A simple example makes this point. A statute reads as follows: "Assault is punishable by a  
14 jail term of one to five years." Under Defendant's logic, the statute could be amended to mandate a  
15 flat one year jail term for assault simply by seeking a "referendum" on the words "to" and "five" and  
16 the letter "s" on "years." (Defendant's construction of "or any part thereof," to be consistent, must  
17 apply to single letters as well). The end result is an amended statute; not one that was repealed. Yet  
18 no words were added.

19 As this example illustrates, Defendant's argument that an initiative is only required when  
20 voters desire to add language to a statute rather than remove language is flawed. See Answering  
21 Brief at p. 4, l. 27 to p. 5, l. 19. A statute can be amended by selectively deleting certain portions of  
22 it. This is precisely what Defendant seeks to do through its Petition.

23 First, the Petition is not a referendum on SB 374, as it claims. The full language of SB 374,  
24 to which Defendant's Petition refers, is attached as Exhibit "A." As can be seen, SB 374 contains  
25 language added and removed by the Legislature to certain provisions of NRS Chapter 704.  
26 However, Defendant's Petition omits some of the deleted language in SB 374 and, therefore, is not a  
27 referendum on SB 374 as claimed.  
28

1 Second, the portions of SB 374 that are not referenced in the Petition are important for  
2 understanding what Defendant actually seeks to change (*e.g.*, removal of the cap on net metering,  
3 which is discussed in detail below).<sup>2</sup> As a result, Defendant's Petition is not seeking to repeal SB  
4 374 or any distinct and severable portion of it. Instead, through a process of editing, Defendant is  
5 trying to reshape (*i.e.* amend) the law into something entirely different and for its own pecuniary  
6 gain. For purposes of comparison against SB 374, a copy of Defendant's Petition is attached as  
7 Exhibit "B" and a draft of the text of the new law that Defendant apparently seeks to create is  
8 attached as Exhibit "C".<sup>3</sup>

9 Defendant's efforts, if allowed by the Court, would mean that the referendum process could  
10 be utilized to amend a statute so long as the amendment does not involve the addition of language.  
11 Apart from a flawed reading of the text, such an application of Section 1 of Article 19 of the Nevada  
12 Constitution would render Section 2 of that same Article almost meaningless. In contrast, Plaintiff's  
13 proffered construction is supported by the text of the two provisions as well as construing them  
14 together. The initiative and referendum provisions must be applied together such that the language  
15 "amendments to statute" of Section 2 is given its plain meaning but is also harmonized with the "any  
16 part thereof" of Section 1. This is done by construing the amendment process embodied in Section 2  
17 to include petitions that seek to amend a law by deleting various portions of an existing law's text.

18 The term "amendment" in Section 2 supports this construction. "Amendment" is defined as  
19 follows:

20 A formal revision or addition proposed or made to a statute, constitution,  
21 pleading, order, or other instrument: spec... a change made by addition,  
**deletion**, or correction: esp...an alteration in wording.

22 <sup>2</sup> It is important to understand Defendant's intent in its "selective" rejection of portions of SB 374. During the 2015  
23 legislative session, Defendant lobbied the Legislature to expand the net metering cap. Ultimately, the Legislature adopted  
24 SB 374, which removed the net metering cap and authorized the Public Utilities Commission of Nevada ("PUCN") to adopt  
25 new net metering rates to ensure non-net metering customers were not unfairly subsidizing net metering customers.  
26 Defendant agreed to SB 374 and participated at the PUCN hearings. However, dissatisfied with the outcome at the PUCN,  
27 and already rejected by the Legislature, Defendant carefully crafted this referendum to accomplish its 2015 goals – Remove  
28 the net metering cap but have no regulatory oversight. The Referendum is not disapproving of SB 374. Instead, it is  
amending the law to achieve Defendant's business objectives.

<sup>3</sup> Exhibit "C" is the result of simply deleting the bolded, bracketed and underlined words and phrases from Defendant's  
Petition.

1 Black's Law Dictionary 89, (8<sup>th</sup> ed. 2004) (emphasis added). Here, Defendant seeks to revise the  
2 existing law by making specific deletions of words and phrases contained therein. There is no  
3 question that what Defendant seeks to do is amend the law as enacted in SB 374 by the deletion of  
4 words and phrases.

5 Similarly, the "any part thereof" language of Section 1 is properly construed as referring to a  
6 distinct and severable portion of a statute. This is consistent with the text of the Section as well  
7 applicable law. It is well settled that a "statute's construction is governed by legislative intent, and  
8 we discern this intent from the entire statute, not from a single provision. In determining the  
9 legislature's intent, [the Court] should consider what reason and public policy indicate was intended,  
10 and we should avoid reaching absurd results." Williams v. Clark County Dist. Attorney, 118 Nev.  
11 473, 484, 50 P.3d 536, 543 (2002) (emphasis added). This basic rule of construction is equally  
12 applicable to provisions of the Nevada Constitution. Defendant's primary argument in this matter is  
13 that the phrase "part thereof" permits a referendum on any word (or even a single letter) of a statute.  
14 However, when considering the entirety of Article 19 and the public policy it supports, Defendant's  
15 position produces an absurd and unreasonable result, which is improper. Glover v. Concerned  
16 Citizens for Fuji Park and Fairgrounds, 118 Nev. 488, 492, 50 P.3d 546, 548 (2002) (The language  
17 of a statute or the constitution "should not be read to produce absurd or unreasonable results.")

18 Finally, the Court's rejection of Defendant's proffered construction does not deprive  
19 Defendant of its right to ask voters to amend or change SB 374. It merely means that Defendant  
20 must exercise that right in the form of an initiative, rather than referendum. This is consistent with  
21 the Nevada Constitution and ensures that both Sections 1 and 2 of Article 19 are given their full  
22 meaning.

23 **B. Defendant's literal application of the language of Section 1 of Article 19 of the**  
24 **Nevada Constitution is inconsistent with Article 19 as a whole and its history.**

25 In addition to the text itself, the legislative history of Section 1 of Article 19 of the Nevada  
26 Constitution supports Plaintiff's construction. The phrase "part thereof" first appeared in Article 19  
27 of the Nevada Constitution in 1962 as part of an entire re-write and clarification of Article 19. In the  
28 legislative action proposing this revision of Article 19 in 1960, an *Explanation of the Purpose of the*

1 *Proposed Amendment to Article 19 of the Constitution of Nevada* was prepared and provided to the  
2 voters when the amendment was voted on in the 1962 general election. In pertinent part, the  
3 *Explanation of the Purpose of the Proposed Amendment* provided as follows:

4           Although entirely rewritten to clarify its provisions, the proposed  
5           amendment leaves Article 19 substantially unchanged, except that the  
6           method of amending the Constitution by the people is different.

7 See Question No. 2 page 45 (1962).<sup>4</sup> A copy of the Legislative History of the 1962 Amendment of  
8 Article 19 of the Nevada Constitution as prepared by the Nevada Legislative Counsel Bureau is  
9 attached as Exhibit "D" and incorporated by this reference as if fully set forth herein.

10           Nowhere in the *Explanation* of this 1962 entire re-write of Article 19 is the addition to  
11 Article 19 of the phrase "part thereof" addressed. Indeed, it appears, by the foregoing language, that  
12 there was no intent to alter the manner in which voters approved or disapproved of statutes enacted  
13 by the legislature, which was not by piecemeal deletion of words and phrases as Defendant seeks  
14 now to do. Prior to the 1962 Amendment, Article 19 of the Nevada Constitution provided that ten  
15 percent of the voters of Nevada could petition that "any law or resolution made by the Legislature be  
16 submitted to a vote of the people." See p. 41 of the Exhibit "D" Legislative History. There is  
17 simply no indication that the Nevada Legislature or the voters for that matter ever intended that the  
18 referendum process was to be expanded beyond its historical application as a way for the voters to  
19 approve or disapprove of a law, not of individual words or phrases within a law. Such an expansion  
20 of the referendum process would run afoul of the initiative process that specifically provides for the  
21 amendment of existing law.

22           **C. Defendant's Cited Authorities Do Not Support Its Position.**

23           In an effort to bolster its strained interpretation, Defendant relies on several inapplicable  
24 cases and a discussion of the Sales and Use Tax of 1955. Neither provides any support for  
25 Defendant's position. Defendant's reliance on Garvin v. Ninth Judicial Dist. Court ex rel. Cty. Of  
26 Douglas, 118 Nev. 749, 59 P.3d 1180 (2002) is misplaced. In Garvin, the Nevada Supreme Court  
27 answered the questions of (1) whether an initiative could be used to enact zoning legislation and (2)

28 <sup>4</sup>See, [http://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/Pre1965/AJR11.1960\\_1961.pdf](http://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/Pre1965/AJR11.1960_1961.pdf)

1 whether a zoning measure was legislative rather than administrative and thus permissibly placed on  
2 the ballot. There is no discussion in Garvin of what constitutes an amendment to statute. The plain  
3 reading of Article 19, Section 2 is that an initiative may accomplish two things: first, enacting new  
4 legislation (e.g., adding new provisions to the code); and second, amending existing statutes. Garvin  
5 deals only with the former while, here, Defendant seeks to amend an existing statute.

6 The Supreme Court answered substantially similar questions in Forman v. Eagle Thrifty  
7 Drugs & Markets, Inc., 89 Nev. 533, 516 P.2d 1234 (1973), although the Court reached different  
8 conclusions than those it did in Garvin, which overruled Forman. Neither of these cases addressed  
9 the question at issue here, which is whether Defendant seeks to amend an existing statute rather than  
10 approve or disapprove already-enacted legislation.

11 Defendant also relies upon Herbst Gaming, Inc. v. Heller, 122 Nev. 877, 141 P.3d 1224  
12 (2006), which discussed an initiative petition that sought both to repeal existing anti-smoking laws  
13 and to add a new anti-smoking law. The Court held that such a petition was actually an initiative  
14 rather than a referendum. In Herbst Gaming, the Court specifically acknowledged that “the initiative  
15 clearly does not seek simply to reject Nevada’s current anti-smoking statute, but to enact one with  
16 broader coverage.” Id. at 892, 141 P.3d at 1234. The petition being proposed in this matter  
17 similarly does not seek simply to reject the solar net metering statute adopted by the Legislature, but  
18 to enact an entirely different statutory scheme with regard to net metering. Because Defendant’s  
19 petition seeks to fundamentally change the law with regard to net metering rather than seeking  
20 simply to approve or disapprove of the existing law it must be viewed as an initiative rather than a  
21 referendum just as the petition in Herbst Gaming was viewed.

22 Finally, Defendant attempts to utilize an explanation of the Nevada Sales and Use Tax of  
23 1955 as a basis for justifying the amendment of a statute via the referendum process. Defendant  
24 correctly explains that Sales and Use Tax Act of 1955 was approved by referendum in the 1956  
25 general election and that the referendum involved the voters’ approval of an entire statute, not a part  
26 thereof or individual words or phrases within the statute.<sup>5</sup> Defendant then goes on to explain how  
27

28 <sup>5</sup> <https://leg.state.nv.us/Division/Research/VoteNV/BallotQuestions/1956.pdf>

1 amendments to the Sales and Use Tax were subsequently considered and approved by the voters.<sup>6</sup>  
2 What defendant fails to clearly explain, however, is that those subsequent amendments were not  
3 approved by referendum, but were rather submissions of proposed statutory amendments from the  
4 Nevada Legislature to a vote of the people.

5 Proposed statutory amendments are regularly submitted to the voters by the Legislature. See  
6 Footnotes 5 and 6 regarding proposed amendments to the Sales and Use Tax Act. None of the  
7 examples cited by Defendant involves the amendment of a statute by means of the referendum  
8 process because statutory amendment by such a process is simply not permitted by the Nevada  
9 Constitution. A statute may be amended by the voters via the initiative process of Section 2 of  
10 Article 19 of the Nevada Constitution or when an amendment is specifically submitted to the voters  
11 by the Nevada Legislature.

12 As described above, the Sales and Use Tax Act of 1955 was approved by the voters in 1956  
13 in its entirety, and therefore has been subject to amendment only with the approval of the voters.  
14 This is an example of submitting entire statutes to the voters, meaning that any amendment to any  
15 part of the referred statutes requires voter approval. The Defendant's Petition, if approved, would  
16 allow for amendment by the Nevada Legislature of some words and phrases within particular  
17 sentences, but would require approval of the voters to amend other words and phrases in the same  
18 sentences. By way of example, see Section 2.3 of SB 374, attached as Exhibit "A", and Defendant's  
19 Referendum attached as Exhibit "B". Defendant's contention that random, disconnected individual  
20 words can be considered a "part" of a statute subject to a referendum petition leads to this absurd  
21 result. If the Defendant wishes to alter a statute by deleting selected words and phrases, it must be  
22 accomplished by an initiative petition, as the proposal is an amendment to the law.

23 **D. The Description of Effect contained in the Referendum Petition fails to satisfy the**  
24 **requirements of NRS 295.009.**

25 NRS 295.009(1)(b) specifically provides that the petition must set forth "the effect of the  
26 initiative or referendum if the initiative or referendum is approved by the voters." This is extremely

27 <sup>6</sup> <https://leg.state.nv.us/Division/Research/VoteNV/BallotQuestions/1970.pdf>  
28 <https://leg.state.nv.us/Division/Research/VoteNV/BallotQuestions/2006.pdf>



1 critical in this case because Defendant has proposed that selected words and phrases be removed,  
2 leaving a voter to compose the full meaning and effect of the remaining statute. Here the  
3 Description of Effect simply does not state what the effect of approval of this Referendum will be.  
4 Instead, the Description of Effect adds to the confusion by stating that the Referendum “asks voters  
5 to approve or disapprove portions” of the statute and then proceeds to state that “[i]f a majority of  
6 voters disapprove of the new rates and charges imposed on green energy” the bolded, bracketed and  
7 underlined portions of the law will be repealed. (emphasis added). This is both confusing and  
8 inaccurate. The referendum is not simply about “disapproving” of the “new rates and charges on  
9 green energy” but results in a substantial amendment to SB 374.

10 The Petition seeks repeal of certain language of SB 374 that authorizes the Public Utilities  
11 Commission of Nevada (“PUCN”) to impose rates on net metering customers. That authority was  
12 given to the PUCN in conjunction with the Legislature’s repeal of a previously imposed legislative  
13 cap on net metering. The Legislature enacted SB 374 with this twofold approach in mind, however,  
14 the Petition only repeals the PUCN’s authority to impose new rates, but keeps intact the  
15 Legislature’s repeal of the net metering cap. Thus, where Defendant seeks by its Petition only to  
16 remove one piece of SB 374, the Description of Effect must set forth the effect of leaving in the  
17 other piece.

18 First, the referendum will have the effect of ensuring that non-net metering customers will  
19 continue to subsidize net metering customers. Second, the removal of the net metering cap will  
20 make this effect even more devastating because now non-net metering customers will subsidize net  
21 metering customers *without limit*. These are not hypothetical effects. Indeed, the purpose of  
22 removing the legislated cap on net metering was, in part, to shift oversight of net metering customers  
23 from the Legislature to the PUCN. Defendant would have oversight of net metering customers  
24 removed almost entirely.

25 Further, the PUCN’s February 17, 2016, Order sets out the devastating effect of non-net  
26 metering customers subsidizing net metering customers. Specifically, the PUCN concluded that the  
27 subsidy provided by non-net metering customers is currently more than \$16 million annually, and  
28 estimated that the subsidy would grow to over \$640 million annually over the next 40 years under

1 the previous rate system applied to net metering customers.<sup>7</sup> A copy of the Commission Discussion  
2 and Conclusions of the PUCN's February 17, 2016 Order is attached as Exhibit "E" and  
3 incorporated by this reference as if fully set forth herein.

4 In addition, the PUCN acted, at least in part, to impose rates on net metering customers that  
5 would prevent the subsidy from growing so large. Removing the PUCN's authority to impose rates  
6 without reinstating a cap on net metering as previously existed will have the effect of causing the  
7 subsidy of net metering customers to grow exponentially. This is not a hypothetical. Failure to  
8 disclose this \$640 million dollar effect to the voters is not only deceptive and misleading, but once  
9 again demonstrates what was being proposed by the Defendant is an amendment of the statute and  
10 not a vote to approve or disapprove of the statute.

11 Defendant argues that it should not be forced to use some of its "precious 200 words to  
12 describe the legal process of approval or disapproval."<sup>8</sup> Defendant's Answering Brief, p. 13, 11. 6-  
13 7. Plaintiff contends that the very purpose of the 200 words is to "accurately identify the  
14 consequences of the referendum's passage." Las Vegas Taxpayer Accountability Comm., 125 Nev.  
15 165, 184, 208 P.3d 429, 441. The language of NRS 295.009(1)(b) could not be more clear. The  
16 Defendant must set forth the effect of approval of the Referendum Petition. The Description of  
17 Effect in this case does not state what the effect of approval of the Referendum will be. This  
18 confusion with the use of "disapprov[al] of the new rates and charges" versus approval or  
19 disapproval of the Referendum Petition highlights the problems with attempting to have a  
20 referendum on individual words and phrases and makes it ever more clear that Defendant is seeking  
21 to amend the existing statute not simply to approve or disapprove the statute.

22 Defendant also argues that deletion of provisions from section 2.95 of SB 374 does not cause  
23 any confusion or ambiguity. Absence of provisions from the Petition is misleading because it hides  
24 the substantive impact of the section the Defendant purports to submit to the voters: the deletion of  
25 the 3 percent cap on net metering. The Petition does not indicate that it is submitting words and

26 <sup>7</sup> [http://pucweb1.state.nv.us/PDF/AxImages/DOCKETS\\_2015\\_THRU\\_PRESENT/2015-7/9690.pdf](http://pucweb1.state.nv.us/PDF/AxImages/DOCKETS_2015_THRU_PRESENT/2015-7/9690.pdf); see ¶ 263 at pp. 106-  
27 07.

28 <sup>8</sup> Rather than utilizing its precious 200 words to describe the effect to the Petition, Defendant uses a number of those words  
to advocate for the Defendant's position by using politically-charged jargon like "green energy customers" and "green  
energy rates," neither of which are terms used in SB 374, or in the industry.

1 phrases from a post-codification version of a bill, rather the petition claims to be submitting  
2 provisions "set forth in 2015 Statutes of Nevada, Chapter 379." It simply does not do as claimed.  
3 Section 2.95 of chapter 379, Statutes of Nevada 2015 (and section 2.7, though the deletions are not  
4 substantive), includes the bracketed language deleted by the Legislature. In addition to being  
5 fundamentally flawed by purporting to refer a section of Statutes of Nevada that is not accurately  
6 reproduced, the Petition misleads voters by creating the impression that the omitted language was  
7 never a part of the legislation.

### 8 III.

### 9 CONCLUSION

10 Applying the relevant provisions of the Nevada Constitution as a whole and in harmony with  
11 each other makes it clear that the petition in this matter is an effort to amend an existing law and as  
12 such is invalid as referendum. Additionally, the tortured explanation of effect of this Petition only  
13 reinforces the fact that what is being proposed is an amendment of the law and cannot be  
14 accomplished by referendum. Plaintiff respectfully requests that this Court invalidate the  
15 Referendum Petition pursuant NRS 295.061.

16 ///

17 ///

18 ///

19 ///

20 ///

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IV.

**AFFIRMATION**

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

DATED this 9<sup>th</sup> day of March, 2016.

**ALLISON MacKENZIE, LTD.**  
402 North Division Street  
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By: 

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Nevada State Bar No. 12293

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

# Exhibit A

CHAPTER.....

AN ACT relating to energy; revising provisions relating to certain energy conservation standards adopted by the Director of the Office of Energy and the governing body of a local government; providing that certain design professionals are not subject to disciplinary action for complying with certain energy conservation standards; providing that the adoption of certain energy conservation standards by the Director and the governing body of a local government shall not be deemed to prohibit the Director or governing body from approving and implementing certain energy efficiency programs; revising provisions relating to net metering systems; requiring electric utilities in this State to submit to the Public Utilities Commission of Nevada certain proposed tariffs pursuant to which an electric utility is required to offer net metering to certain customers of the electric utility; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law requires the Director of the Office of Energy and the governing body of a local government to adopt certain standards for the conservation of energy in buildings. (NRS 701.220) **Section 1** of this bill prohibits the Director and a governing body from adopting certain standards mandating requirements for air changes per hour. **Sections 1, 3 and 4** of this bill provide that certain design professionals are not subject to disciplinary action by their respective licensing boards for complying with the energy conservation standards adopted by a governing body pursuant to **section 1**. **Section 1** further provides that the adoption of certain energy conservation standards by the Director and a governing body shall not be deemed to prohibit the Director or governing body from approving and implementing certain energy efficiency programs related to new residential construction.

Existing law requires electric utilities to offer net metering to the customer-generators operating within the service area of the utility until the cumulative capacity of all net metering systems operating in this State is equal to 3 percent of the total peak capacity of all electric utilities in this State. (NRS 704.773) **Section 2.95** of this bill revises the amount of cumulative capacity for which utilities are required to offer net metering in accordance with existing law. **Section 2.3** of this bill requires each electric utility to offer net metering to customers who submit an application to the utility to install net metering systems after the date on which such revised cumulative capacity requirement is met in accordance with a tariff filed by the electric utility and approved by the Public Utilities Commission of Nevada. **Section 2.3** sets forth the authority of the Commission relative to the approval of such tariffs and authorizes the Commission to determine whether and the extent to which any tariff is applicable to existing customer-generators. **Section 4.5** of this bill requires each electric utility to submit to the Commission the proposed tariff required by **section 2.3** not later than July 31, 2015, and requires the Commission to review and approve or disapprove each such proposed tariff not later than December 31, 2015. **Section 4.5** provides that a tariff approved by the Commission



cannot take effect until after the date on which the cumulative capacity requirement prescribed by **section 2.95** is met. **Section 4.5** also requires an electric utility, in the event that the Commission does not approve a tariff on or before December 31, 2015, to offer net metering to customer-generators in accordance with applicable provisions of law as such provisions existed before the effective date of this bill for the period beginning January 1, 2016, and ending on the date on which the Commission approves a tariff, unless a court has issued an order staying or prohibiting the enforcement or issuance of a written order or tariff approved by the Commission.

Existing law prohibits an electric utility from making changes in any schedule or imposing any rate on residential customers 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. (NRS 704.085) **Section 2.5** of this bill provides that this prohibition does not apply to residential customers who are users of net metering systems.

Existing law requires each electric utility to submit to the Commission every 3 years a plan to increase the utility's supply of electricity or decrease the demands made on its system by its customers. Existing law provides that the plan must include certain components, including: (1) an energy efficiency program for residential customers; and (2) a comparison of a diverse set of scenarios to address issues relating to customer demand, which must include at least one scenario of low carbon intensity. (NRS 704.741) **Section 2.7** of this bill requires that the scenario of low carbon intensity must include the deployment of distributed generation. Additionally, **section 2.7** requires that the plan include an analysis of the effects of net metering on the reliability of the distribution system of the electric utility and the costs to the electric utility to provide electric service to all customers.

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

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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1.** NRS 701.220 is hereby amended to read as follows:

701.220 1. The Director shall adopt regulations for the conservation of energy in buildings, including manufactured homes. ~~{Such}~~ *Except as otherwise provided in subsection 5, such* regulations must include the adoption of the most recent version of the International Energy Conservation Code, issued by the International Code Council, and any amendments to the Code that will not materially lessen the effective energy savings requirements of the Code and are deemed necessary to support effective compliance and enforcement of the Code, and must establish the minimum standards for:

- (a) The construction of floors, walls, ceilings and roofs;
- (b) The equipment and systems for heating, ventilation and air-conditioning;
- (c) Electrical equipment and systems;
- (d) Insulation; and



(e) Other factors which affect the use of energy in a building.

→ The regulations must provide for the adoption of the most recent version of the International Energy Conservation Code, and any amendments thereto, every third year.

2. The Director may exempt a building from a standard if the Director determines that application of the standard to the building would not accomplish the purpose of the regulations.

3. The regulations must authorize allowances in design and construction for sources of renewable energy used to supply all or a part of the energy required in a building.

4. The standards adopted by the Director are the minimum standards for the conservation of energy and energy efficiency in buildings in this State. The governing body of a local government that is authorized by law to adopt and enforce a building code:

(a) Except as otherwise provided in paragraph (b), shall incorporate the standards adopted by the Director in its building code;

(b) ~~May~~ *Except as otherwise provided in subsection 5, may* adopt higher or more stringent standards and must report any such higher or more stringent standards, along with supporting documents, to the Director; and

(c) Shall enforce the standards adopted.

5. *The Director or the governing body of a local government shall not adopt a standard which mandates a requirement for air changes per hour that is outside the following ranges:*

(a) *Less than 4 1/2 or more than 7 air changes per hour for an attached residence or any residence for which fire sprinklers are installed; or*

(b) *Less than 4 or more than 7 air changes per hour for any residence other than a residence described in paragraph (a).*

6. *A design professional who complies with the standards adopted by the Director or the governing body of a local government pursuant to this section is not subject to disciplinary action by the State Board of Architecture, Interior Design and Residential Design pursuant to paragraph (f) of subsection 1 of NRS 623.270 or the State Board of Professional Engineers and Land Surveyors pursuant to NRS 625.410.*

7. *Nothing in this section shall be deemed to prohibit the Director or the governing body of a local government from approving and implementing a program for the purpose of increasing energy efficiency in new residential construction through the use of sample inspections.*





8. The Director shall solicit comments regarding the adoption of regulations pursuant to this section from:

- (a) Persons in the business of constructing and selling homes;
- (b) Contractors;
- (c) Public utilities;
- (d) Local building officials; and
- (e) The general public,

➔ before adopting any regulations. The Director must conduct at least three hearings in different locations in the State, after giving 30 days' notice of each hearing, before the Director may adopt any regulations pursuant to this section.

9. *As used in this section, "design professional" means a person who holds a professional license or certificate issued pursuant to chapter 623 or 625 of NRS.*

Sec. 2. (Deleted by amendment.)

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.*

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

704.085 1. ~~[An]~~ *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 ~~[, "electric"]~~ :*

*(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. ~~{; and}~~

(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. 2.8.** NRS 704.766 is hereby amended to read as follows:

704.766 It is hereby declared to be the purpose and policy of the Legislature in enacting NRS 704.766 to 704.775, inclusive, *and section 2.3 of this act* to:

1. Encourage private investment in renewable energy resources;

2. Stimulate the economic growth of this State;

3. Enhance the continued diversification of the energy resources used in this State; and

4. Streamline the process for customers of a utility to apply for and install net metering systems.



**Sec. 2.9.** NRS 704.767 is hereby amended to read as follows:

704.767 As used in NRS 704.766 to 704.775, inclusive, *and section 2.3 of this act*, unless the context otherwise requires, the words and terms defined in NRS 704.7675 to 704.772, inclusive, have the meanings ascribed to them in those sections.

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

704.773 1. A utility shall offer net metering ~~[, as set forth in] :~~

*(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 ~~operating in this State is equal to 3 percent of the total peak capacity of~~ 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; ~~and~~

(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~~; 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. 3.** NRS 623.270 is hereby amended to read as follows:

623.270 1. ~~{The}~~ *Except as otherwise provided in subsection 6 of NRS 701.220, the* Board may place the holder of any certificate of registration issued pursuant to the provisions of this chapter on probation, publicly reprimand the holder of the certificate, impose a fine of not more than \$10,000 against him or her, suspend or revoke his or her license, impose the costs of investigation and prosecution upon him or her or take any combination of these disciplinary actions for any of the following acts:

(a) The certificate was obtained by fraud or concealment of a material fact.

(b) The holder of the certificate has been found guilty by the Board or found guilty or guilty but mentally ill by a court of justice of any fraud, deceit or concealment of a material fact in his or her professional practice, or has been convicted by a court of justice of a crime involving moral turpitude.

(c) The holder of the certificate has been found guilty by the Board of incompetency, negligence or gross negligence in:

(1) The practice of architecture or residential design; or

(2) His or her practice as a registered interior designer.

(d) The holder of a certificate has affixed his or her signature or seal to plans, drawings, specifications or other instruments of service which have not been prepared by the holder of the certificate or in his or her office, or under his or her responsible control, or has permitted the use of his or her name to assist any person who is not a registered architect, registered interior designer or residential designer to evade any provision of this chapter.

(e) The holder of a certificate has aided or abetted any unauthorized person to practice:

(1) Architecture or residential design; or

(2) As a registered interior designer.

(f) The holder of the certificate has violated any law, regulation or code of ethics pertaining to:



- (1) The practice of architecture or residential design; or
- (2) Practice as a registered interior designer.
- (g) The holder of a certificate has failed to comply with an order issued by the Board or has failed to cooperate with an investigation conducted by the Board.

2. The conditions for probation imposed pursuant to the provisions of subsection 1 may include, but are not limited to:

- (a) Restriction on the scope of professional practice.
- (b) Peer review.
- (c) Required education or counseling.
- (d) Payment of restitution to each person who suffered harm or loss.

3. An order that imposes discipline and the findings of fact and conclusions of law supporting that order are public records.

4. The Board shall not privately reprimand the holder of any certificate of registration issued pursuant to this chapter.

5. As used in this section:

(a) “Gross negligence” means conduct which demonstrates a reckless disregard of the consequences affecting the life or property of another person.

(b) “Incompetency” means conduct which, in:

- (1) The practice of architecture or residential design; or
- (2) Practice as a registered interior designer,

↪ demonstrates a significant lack of ability, knowledge or fitness to discharge a professional obligation.

(c) “Negligence” means a deviation from the normal standard of professional care exercised generally by other members in:

- (1) The profession of architecture or residential design; or
- (2) Practice as a registered interior designer.

**Sec. 4.** NRS 625.410 is hereby amended to read as follows:

625.410 ~~{The}~~ *Except as otherwise provided in subsection 6 of NRS 701.220, the* Board may take disciplinary action against a licensee, an applicant for licensure, an intern or an applicant for certification as an intern for:

1. The practice of any fraud or deceit in obtaining or attempting to obtain or renew a license or cheating on any examination required by this chapter.

2. Any gross negligence, incompetency or misconduct in the practice of professional engineering as a professional engineer or in the practice of land surveying as a professional land surveyor.

3. Aiding or abetting any person in the violation of any provision of this chapter or regulation adopted by the Board.



4. Conviction of or entry of a plea of nolo contendere to any crime an essential element of which is dishonesty or which is directly related to the practice of engineering or land surveying.

5. A violation of any provision of this chapter or regulation adopted by the Board.

6. Discipline by another state or territory, the District of Columbia, a foreign country, the Federal Government or any other governmental agency, if at least one of the grounds for discipline is the same or substantially equivalent to any ground contained in this chapter.

7. Practicing after the license of the professional engineer or professional land surveyor has expired or has been suspended or revoked.

8. Failing to comply with an order issued by the Board.

9. Failing to provide requested information within 30 days after receipt of a request by the Board or its investigators concerning a complaint made to the Board.

**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 kilovolt 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.

**Sec. 5.** This act becomes effective upon passage and approval.



# Exhibit B

**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**

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**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			
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County of \_\_\_\_\_

**(Only registered voters of this county may sign below)**

Petition District: \_\_\_\_\_

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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)

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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 \_\_\_\_\_

**(Only registered voters of this county may sign below)**

Petition District: \_\_\_\_\_

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

This space for  
Office Use Only

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**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

# Exhibit C

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

1. each utility shall, offer net metering to customer-generators who submit applications to install net metering systems within its service territory.

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

704.085 1. 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.

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.

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



In accordance with the provisions of this section, NRS 704.774 and 704.775, to the customer-generators operating within its service area.

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

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.**

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

4815-3886-7759, v. 1

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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.

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. *160C 000301B*  
Dept No. *I*

**PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES**  
**IN SUPPORT OF ITS COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiff, CITIZENS FOR SOLAR AND ENERGY FAIRNESS, a Nevada committee for political action ("Plaintiff"), by and through its counsel, James R. Cavilia, Esq. and Justin Townsend, Esq. of Allison MacKenzie, Ltd., hereby submits its Memorandum of Points and Authorities in Support of its Complaint for Declaratory and Injunctive Relief.

///

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///

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2016 FEB 16 PM 2:08  
SUSAN MERRIWETHER  
CLERK  
BY *[Signature]*  
DEPUTY

## TABLE OF CONTENTS

1	MEMORANDUM OF POINTS AND AUTHORITIES.....	3
2		
3	I. INTRODUCTION.....	3
4		
5	II. ARGUMENT.....	3
6		
7	A. The Referendum Petition seeks to amend SB 374 rather than disapprove it, which disqualifies it as a referendum under Article 19, Section 1 of the Nevada Constitution. ....	3
8		
9	B. The Description of Effect Contained in the Referendum Petition fails to satisfy the requirements of NRS 295.009.....	8
10		
11	III. CONCLUSION.....	11
12		
13	IV. AFFIRMATION .....	12
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

## MEMORANDUM OF POINTS AND AUTHORITIES

### I.

#### INTRODUCTION

On January 25, 2016, Defendant, NO SOLAR TAX PAC, a Nevada committee for political action ("Petitioner"), filed with the Elections Division of the Nevada Office of Secretary of State a Referendum Petition purporting to refer portions of Chapter 379, Statutes of Nevada (2015) to Nevada voters for approval or disapproval (the "Referendum Petition"). However, in an attempt to create Petitioner's "perfect law," Petitioner presents a flawed and illegal Referendum Petition.

First and foremost, the Referendum Petition fails to qualify as a referendum under Article 19, Section 1 of the Nevada Constitution. The Referendum Petition seeks to amend the language of Chapter 379, Statutes of Nevada (2015) as adopted by Senate Bill 374 from the 2015 legislative session, making revisions to Chapter 704 of the Nevada Revised Statutes, rather than refer the same to voters for approval or disapproval. When Nevada voters seek to amend Nevada statutes, they must go through the initiative process set forth in Article 19, Section 2 of the Nevada Constitution rather than the referendum process of Section 1. Petitioner strategically describes the Referendum Petition as a "disapproval" of current law, when in fact, Petitioner abuses the referendum process and is actually attempting to amend current law.

Finally, in contravention of the requirements set forth in NRS 295.009, the Referendum Petition contains a Description of Effect that is wholly inadequate to inform voters what a vote to approve the referendum will mean. The Referendum Petition paints a confusing picture for potential voters such that an understanding of the effect of a vote to approve the referendum is impossible to ascertain.

### II.

#### ARGUMENT

- A. The Referendum Petition seeks to amend SB 374 rather than disapprove it, which disqualifies it as a referendum under Article 19, Section 1 of the Nevada Constitution.

Section 1 of Article 19 of the Nevada Constitution empowers Nevada voters to refer a statute or resolution or a part thereof enacted by the legislature for a vote to approve or disapprove the

1 same. A referendum petition that acquires the number of signatures required by the Constitution  
2 may be placed on the ballot at the next general election. The referendum power of the people does  
3 not, however, allow for enacting or amending Nevada statutes.

4 Instead, the voters' authority to enact or amend Nevada statutes is set forth in Section 2 of  
5 Article 19 of the Nevada Constitution. In order to enact or amend Nevada statutes, Nevada voters  
6 must circulate an initiative petition, which may propose statutes or amendments to statutes for  
7 enacting or rejection at the polls. However, Section 2 of Article 19 adds the extra step of first  
8 referring the initiative petition to the Nevada Legislature for its consideration. See Nevada Const.  
9 art. XIX, § 2(3). If the Legislature rejects the initiative petition, only then is the initiative placed on  
10 the ballot at the next general election.

11 The Nevada Supreme Court recognizes that "[r]eferendum is the electorate's power to  
12 approve or disapprove already-enacted legislation, while initiative is the electorate's power to  
13 directly enact legislation by popular vote." Garvin v. Ninth Judicial Dist. Court ex rel. County of  
14 Douglas, 118 Nev. 749, 753, 59 P.3d 1180, 1183 (2002). Further, page 1 of the Nevada Secretary of  
15 State's own Initiative & Referendum Guide for 2016 provides a clear distinction between initiatives  
16 and referenda:

#### 17 WHAT ARE INITIATIVES & REFERENDA?

18 Initiatives are a device by which voters enact state or local laws.  
19 Referenda are a device by which voters approve or disapprove of existing  
20 state or local laws. They are both methods of involving voters directly in  
the legislative process of government.

21 Specifically, an initiative petition can do one of the following:

- 22 1. Propose a new state statute;
- 23 2. Amend an existing state statute;
3. Amend the Nevada Constitution;
4. Propose a new county or municipal ordinance; or
5. Amend an existing county or municipal ordinance

24 A referendum petition can only approve or disapprove a statute,  
25 resolution, or ordinance that was enacted by the State Legislature, Board  
of County Commissioners, or City Council.

26 Petitioner seeks to draft its preferred law and to avoid the extra step of having its proposed  
27 amendments to SB 374 considered by the Nevada Legislature by attempting to improperly use the  
28 referendum process to effectuate a change in the law, instead of properly using the initiative process

1 to effectuate such a change. Petitioner's reason for selecting the referendum process is simple. A  
2 referendum petition signed by the appropriate number of voters may be placed on the ballot for the  
3 November 2016 general election and, if approved by the voters, has the immediate effect of being  
4 the law, whereas an initiative would not be considered by the Legislature until the 2017 legislative  
5 session where, if it were rejected, it would not be placed on the ballot until November 2018, thereby  
6 adding time and risk to Petitioner's objective. Put simply, this is an effort to short cut the proper  
7 process to effectuate the interests of the Petitioner more quickly. This improper use of the  
8 referendum process must not be allowed.

9 Petitioner seeks unquestionably to amend SB 374 rather than disapprove it, therefore  
10 rendering its proposed action an initiative rather than a referendum. However, Petitioner is not free  
11 to choose in this instance between using a referendum versus using an initiative. For instance,  
12 Section 2.3 of SB 374, which would add a new section to NRS Chapter 704, is not set out in the  
13 Referendum Petition for disapproval. Instead, Petitioner seeks to alter the language of Section 2.3  
14 by removing portions of sentences contained therein. Section 2.3 of SB 374 reads in pertinent part  
15 as follows:

16 Chapter 704 of NRS is hereby amended by adding thereto a new section to  
17 read as follows:

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

24 Instead of referring Subsection 1 of Section 2.3 of SB 374 to the voters for disapproval,  
25 Petitioner asks voters to approve an amended version thereof as follows:

26 Chapter 704 of NRS is hereby amended by adding thereto a new section to  
27 read as follows:

28 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.]**



1 As provided in Petitioner's Description of Effect, the bolded, bracketed, and underlined portions of  
2 Section 2.3 are to be deleted from SB374 if the referendum is approved, leaving the section to read  
3 as follows:

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

6 1. each utility shall offer net metering to customer-generators who submit  
applications to install net metering systems within its service territory.

7 There is no doubt that what the Petitioner seeks to do is to amend Section 2.3 of SB 374 rather than  
8 disapprove of the same. Moreover, the amended provision would contain a sentence that begins  
9 with a subsection number (1)<sup>1</sup> and an uncapitalized word, problems that are left wholly unaddressed  
10 by the Referendum Petition because to address it would be to clearly concede that Petitioner seeks to  
11 amend SB 374 rather than refer it to the voters for approval. Nevertheless, the result of the  
12 Referendum Petition, if approved, would be an amendment of SB 374 and more broadly NRS  
13 Chapter 704, which cannot legally be accomplished by a referendum but must be part of an initiative  
14 petition instead.

15 Similar surgical-style amendments are proposed to portions of Section 2.95 of SB 374,  
16 leaving in this instance a capitalized word in the middle of a sentence. Further, Section 2.95 of SB  
17 374 seeks to amend an existing provision of NRS Chapter 704 (NRS 704.773) by both adding to and  
18 deleting portions thereof. However, the Referendum Petition leaves out any reference to the portions  
19 of SB 374 that deleted portions of NRS 704.773.<sup>2</sup> The result of these legislative omissions is,  
20 therefore, left up in the air. Leaving out the portions of NRS 704.773 that were deleted by SB 374  
21 would further indicate Petitioner's intent to amend SB 374 rather than disapprove it. If this  
22 Referendum Petition is considered by the voters and approved, the ambiguity as a result of this  
23 piece-meal deletion of phrases and words in the Referendum Petition itself will undoubtedly lead to  
24 uncertainty in interpreting and applying the outcome.

26 \_\_\_\_\_  
27 <sup>1</sup> If adopted, the approved language of the Referendum would include a subsection 1 and no other subsections, only adding  
to the ambiguity of this proposal.

28 <sup>2</sup> The relevant portion of NRS 704.773 deleted by SB 374 was a previously imposed cap on the total capacity of all net  
metering systems in the state to 3% of the total peak capacity of all utilities in the State.



1 By failing to address the portions of NRS 704.773 that were deleted by SB 374, the  
2 Referendum inaccurately gives voters the impression that approval of the Referendum will restore  
3 the prior status quo. This is simply not the case because the Referendum does not address the  
4 deleted portions of the statute and Petitioner does not attempt to address this because to do so would  
5 unequivocally make this Petition an initiative (amendment of statute) and not a referendum. Based  
6 upon the substance of that portion of the statute deleted by SB 374 (a 3% cap on net metering),  
7 failure to address that fact in this Referendum is extremely misleading and prejudicial to voters  
8 should they be presented with this Referendum in November.

9 Since the enactment of SB 374, the PUCN has taken several actions in furtherance of the  
10 requirements of SB 374 and the protection of Nevada ratepayers. Specifically, the Public Utilities  
11 Commission of Nevada ("PUCN") has issued orders adopting new tariffs, which set rates and  
12 procedures that govern net-metering systems. See PUCN Order, Docket No. 15-0704, filed on  
13 December 23, 2015, relevant portions of which are attached as Exhibit "A" and incorporated by this  
14 reference as if fully set forth herein. Such tariffs were adopted at the Legislature's direction in SB  
15 374 and the PUCN has exercised the statutory authority and responsibility to set just and reasonable  
16 rates for all Nevada utilities, including rates for net metering customers. See NRS 704.040. See  
17 paragraphs 110, 181, 193 and 200 of the attached Exhibit "A" PUCN Order.

18 If this Referendum is ultimately adopted by the voters, pre-SB 374 provisions such as the 3%  
19 net metering cap will not be revived because that portion of the law is not addressed by the  
20 Referendum. Approval of this Referendum will very likely result in non-solar customers of electric  
21 utilities in Nevada being unfairly forced to subsidize solar net metering owners, potentially to the  
22 tune of hundreds of millions of dollars over the coming decades. This is not an abuse of the  
23 referendum process that the residents of Nevada can afford. If the issue of net metering is to put  
24 before the voters, it should occur through an initiative, not through a referendum in an attempt to  
25 shortcut the process for the economic benefit of certain interested persons.

26 Discriminatory deletion of individual words or phrases as proposed in the Referendum Petition  
27 must be considered an amendment rather than a referendum on the deleted words because treating the  
28 as a referendum will lead to absurd results, which are always disfavored in statutory or constitutional

1 interpretation. Whenever possible, courts interpret “statutes within a statutory scheme harmoniously  
2 with one another to avoid an unreasonable or absurd result.” Great Basin Water Network v. State  
3 Eng’r, 126 Nev. 187, 196, 234 P.3d 912, 918 (2010) (quoting Allstate Insurance Co. v. Fackett, 125  
4 Nev. 132, 138, 206 P.3d 572, 576 (2009)). The deletion of individual words throughout a statute,  
5 while superficially appearing to constitute referral of a “part” of the statute, could contort a statute into  
6 an unrelated shell of itself. Such changes are “amendments,” even if they are accomplished solely  
7 through the deletion of words. The impracticality is illustrated by assuming the referred statute is  
8 approved: the Nevada Constitution prohibits amendments to statutes that are approved by referendum  
9 without a vote of the people, see Nevada Const. art. XIX, § 1(3) which means that the Legislature  
10 would be able to amend some words in a sentence without a vote of the people but would need such a  
11 vote to amend other words in the same sentence.

12 The proposed changes to selected provisions of the statute must be considered as proposed  
13 amendments to the statutes, subject to the procedure for amendment of statutes by initiative petition.  
14 Accordingly, The Referendum Petition must be deemed invalid.

15 **B. The Description of Effect contained in the Referendum Petition fails to satisfy the**  
16 **requirements of NRS 295.009.**

17 NRS 295.009 provides in pertinent part that a referendum petition must “[s]et forth, in not  
18 more than 200 words, a description of the effect of the...referendum if the ...referendum is approved  
19 by the voters.” The Referendum Petition at issue here contains the following Description of Effect:

20 **DESCRIPTION OF EFFECT**

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

1 systems, which produce renewable energy, will continue to be available to  
2 energy customers at reasonable rates.

3 The significance of the required Description of Effect cannot be understated. The Nevada  
4 Supreme Court has recognized that “this descriptive language is what appears directly above the  
5 signature lines, as registered voters decide the threshold issue of whether they even want the  
6 initiative placed on the ballot.” Nevadans for Nevada v. Beers, 122 Nev. 930, 940, 142 P.3d 339,  
7 346 (2006). Additionally, the Supreme Court has explained that the required Description of Effect  
8 “is significant as a tool to help ‘prevent voter confusion and promote informed decisions.’” Las  
9 Vegas Taxpayer Accountability Comm. V. City Council of City of Las Vegas, 125 Nev. 165, 183,  
10 208 P.3d 429, 441 (2009) (quoting Beers, 122 Nev. at 939, 142 P.3d at 345). The Description of  
11 Effect is critical to ensuring “the people’s right to meaningfully engage in the initiative process.”  
12 Beers, 122 Nev. at 940, 142 P.3d at 345.

13 The Description of Effect must “accurately identify the consequences of the referendum’s  
14 passage.” Las Vegas Taxpayer Accountability Comm., 125 Nev. at 184, 208 P.3d at 441. While the  
15 Description of Effect need not explain hypothetical effects or mention every possible effect of the  
16 Referendum Petition, it “must be straightforward, succinct, and nonargumentative, and it must not be  
17 deceptive or misleading.” Educ. Initiative PAC v. Comm. to Protect Nev. Jobs, 129 Nev. Adv. Op.  
18 5, 293 P.3d 874, 879 (2013).

19 The Description of Effect in this matter fails in each instance to accomplish the purposes for  
20 which its inclusion is required on the Referendum Petition. The primary problem with the  
21 Description of Effect is the confusion it is sure to create among potential signers and Nevada voters.  
22 The Description alternates between using “approve” and “disapprove” in such a way as to create  
23 ambiguity about what vote it is asking voters to cast. The Description begins by stating that it “asks  
24 voters to approve or disapprove portions of Chapter 379, Statutes of Nevada (2015).” At this point,  
25 a voter might presume that approval of the Referendum Petition signifies approval of the new  
26 statute, when Petitioner’s apparent goal is to re-write the law. Does approval of the Referendum  
27 Petition equate to approval of the law? Or, does approval of the Referendum Petition equate to a  
28 vote to repeal the law or Petitioner’s carefully selected portions thereof?

1 Interpretation of this first sentence of the Description of Effect is left to the voters. Any two  
2 voters might have the same stance with regard to the subject of the law but may cast opposite votes  
3 because of the confusion caused by the Description of Effect.

4 The Description of Effect goes on to state that if “a majority of voters disapprove of the new  
5 rates and charges imposed on green energy, the bolded, bracketed, and underlined provisions of this  
6 referendum will be repealed.” (emphasis added). Again, it is not clear whether Petitioner may be  
7 inviting voters to disapprove the referendum itself, the new law as passed by the Legislature, or the  
8 rates approved by the PUCN in implementing the law. This last possibility of attempting to weigh in  
9 on the PUCN’s administration of the law is not even something that can be accomplished through  
10 the referendum or initiative process. Garvin, 118 Nev. at 751, 59 P.3d at 1181 (“The initiative and  
11 referendum powers reserved to the people, although broad . . . do not extend to administrative  
12 matters.”). Clearly one voter’s interpretation of the Description of Effect will almost certainly run  
13 contrary to another voter’s view of it because the words “approve” and “disapprove” are not clearly  
14 associated with what Petitioner is asking voters to do. Voters will not be in a position to make an  
15 informed decision because the decision they are asked to make is not set forth clearly in the  
16 Description of Effect.

17 Further, the Description of Effect fails to set forth the material effects of approving the  
18 proposed referendum or repealing parts of the law as Petitioner seeks. The Description of Effect  
19 recites that repealing the law in the way the Referendum Petition describes will result in “preserving  
20 net metering as the program has historically been implemented.” This is simply not true.

21 Section 2.95 of the statute as adopted removed a cap on the net metering program in  
22 conjunction with installing new programs to be implemented and administered by the PUCN. Prior  
23 to adoption of SB 374, NRS 704.773 provided that net metering would only be offered to customer-  
24 generators “until the cumulative capacity of all net metering systems in this State is equal to 3  
25 percent of the total peak capacity of all utilities in this State.” The Legislature had increased this cap  
26 on two prior occasions and determined that the net metering program could be more efficiently  
27 administered by the PUCN. The Legislature has now removed the net metering cap and enacted a  
28 provision to enable the PUCN to approve tariffs specific to net metering customers. Through this



1 Referendum Petition, Petitioner seeks only to revise the law by deleting the PUCN's authority to  
2 approve tariffs for net metering customers, while apparently attempting to retain the Legislature's  
3 removal of the net-metering cap.

4 Instead of notifying voters of this significant material effect, the Referendum Petition asks  
5 voters to "disapprove of the new rates and charges imposed [by the PUCN] on green energy." SB  
6 374 did not create a new rate for net metering customers. On the contrary, it required the PUCN to  
7 adopt new rates. The Description of Effect is misleading because potential signers are led to believe  
8 that they are rejecting the controversial and highly publicized new rates, when in fact they are  
9 apparently repealing the Legislature's decision to designate PUCN oversight on net metering while  
10 not addressing at all the previously applied cap on net metering.

11 A primary and material effect of removing the cap entirely and simultaneously precluding the  
12 PUCN from regulating net metering customers would be the need for virtually limitless subsidies  
13 from electric users in this state to support the net metering customers. No mention of this significant  
14 and devastating effect is provided, which renders the Description of Effect, to the extent it is  
15 understandable at all, deceptive and misleading.

16 In addition to not addressing this financial and important underlying effect of the  
17 Referendum Petition on most of the citizens of Nevada, non-solar customers of electric utilities in  
18 Nevada, the Description of Effect includes the phrase "new green energy rates" with no attempt to  
19 define the phrase. This phrase is not included in the existing law, is not defined in the Description of  
20 Effect, and it is not a phrase generally used in the industry. The inclusion of this sort of politically  
21 correct, undefined phrase is not only misleading, but it is truly prejudicial when attempting to  
22 determine what the tangible effect of this Referendum Petition will be if approved.

23 The Description of Effect included with this Referendum Petition fails to satisfy the  
24 requirements of NRS 295.009 and should be deemed invalid.

### 25 III.

### 26 CONCLUSION

27 Plaintiff does not oppose the people's right to use the referendum and initiative powers  
28 granted by the Nevada Constitution. Instead, plaintiff seeks to ensure that Nevada voters are clearly

1 informed with regard to important decisions they are asked to make. The Referendum Petition does  
2 not refer a statute or part thereof to the voters for approval. The Referendum Petition clearly  
3 proposes to amend the statute as enacted by SB 374 and, therefore, is invalid as a referendum. In  
4 order to amend the statute as Petitioner wishes, Petitioner must use the initiative process outlined in  
5 Section 2 of Article 19, of the Constitution. Furthermore, Petitioner fails to clearly and accurately  
6 set forth what material effects of approval of this Referendum will be. Based upon the Petition itself  
7 and the Description of Effect, it is simply impossible to know what the impact and effect of approval  
8 will be. Plaintiff respectfully requests that this Court invalidate the Referendum Petition pursuant  
9 NRS 295.061.

10 IV.

11 **AFFIRMATION**

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

14 DATED this 16<sup>th</sup> day of February, 2016.

15 **ALLISON MacKENZIE, LTD.**  
16 402 North Division Street  
17 Carson City, NV 89703

18 By: 

19 JAMES R. CAVILIA, ESQ.  
20 Nevada State Bar No. 3921  
21 JUSTIN TOWNSEND, ESQ.  
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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,

v.

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

Defendant. /

Case No. 16 CL 000301B

Dept. No. I

*Additional*  
SUMMONS

THE STATE OF NEVADA SENDS GREETINGS TO THE ABOVE-NAMED DEFENDANT:

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS.

READ THE INFORMATION BELOW.

TO THE DEFENDANT: A civil Complaint has been filed by the plaintiff against you.

1. If you wish to defend this lawsuit, you must, within 20 days after this Summons is served on you, exclusive of the day of service, file with this Court a written pleading\* in response to this Complaint.
2. Unless you respond, your default will be entered upon application of the plaintiff and this Court may enter a judgment against you for the relief demanded in the Complaint\*\*, which could result in the taking of money or property or the relief requested in the Complaint.
3. If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.
4. You are required to serve your response upon plaintiff's attorney, whose address is

Justin M. Townsend, Esq.  
ALLISON MacKENZIE, LTD.  
402 North Division Street  
Carson City, NV 89703  
Phone: (775) 687-0202

SUSAN MERRIWETHER, Clerk of Court

By:   
Deputy Clerk

Date: February 16 2016  
-2015.

JA 0031

First Judicial District Court

Citizens for Solar and Energy Fairness

Plaintiff,

Case No:16OC000301B

vs.

No Solar Tax Pac

Defendant

**DECLARATION OF SERVICE**

STATE OF NEVADA  
COUNTY OF WASHOE

ss.:



**JOHN LEE**, being duly sworn says: That at all times herein affiant was and is a citizen of the United States over 18 years of age, not a party to nor interested in the proceedings in which this affidavit is made.

The affiant received copy(ies) of the **Summons, Complaint for Declaratory and Injunctive Relief, Plaintiff's Memorandum of Points and Authorities**, on **02/16/2016** and served the same on **02/17/2016 at 10:40 AM** by delivering and leaving a copy with:

**DENISE RAPP, MEMBER SERVICES REP.** who stated he/she is authorized to accept service on behalf of **Barbara Cegavske, in her Official Capacity as the Nevada Secretary of State.**

Service address: NEVADA STATE CAPITOL BUILDING 202 N. CARSON ST CARSON CITY, NV 89701

A description of **DENISE RAPP** is as follows:

Sex	Color of skin/race	Color of hair	Age	Height	Weight
Female	Caucasian	BLK	44	5'6	140
Other Features:					

Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Sworn to and subscribed before me on  
02/17/2016

by JOHN LEE



JOHNNO LAZETICH  
Notary Public - State of Nevada  
Appointment Recorded in Washoe County  
No: 04-89542-2 - Expires January 28, 2020

Notary Public

X

JOHN LEE

Registration#: R-004475

Reno/Carson Messenger Service(Lic# 322)

85 Martin Street

Reno, NV 89509

775.322.2424

Atty File#: 13506-01



\*73780\*



JAMES R. CAVILIA, ESQ.  
Nevada State Bar No. 3921  
JUSTIN M. TOWNSEND, ESQ.  
Nevada State Bar No. 12293  
ALLISON MacKENZIE, LTD.  
402 N. Division Street  
P.O. Box 646  
Carson City, NV 89702  
Telephone: (775) 687-0202  
Facsimile: (775) 882-7918

REC'D & FILED  
2016 FEB 25 AM 11:17  
SUSAN MERRIWETHER  
CLERK  
BY V. Alegria  
DEPUTY

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,

Case No. 16OC000301B

Dept. No. I

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

**SUMMONS**

Defendant. /

THE STATE OF NEVADA SENDS GREETINGS TO THE ABOVE-NAMED DEFENDANT:

**NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS.**

**READ THE INFORMATION BELOW.**

TO THE DEFENDANT: A civil Complaint has been filed by the plaintiff against you.

1. If you wish to defend this lawsuit, you must, within 20 days after this Summons is served on you, exclusive of the day of service, file with this Court a written pleading\* in response to this Complaint.
2. Unless you respond, your default will be entered upon application of the plaintiff and this Court may enter a judgment against you for the relief demanded in the Complaint\*\*, which could result in the taking of money or property or the relief requested in the Complaint.
3. If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.
4. You are required to serve your response upon plaintiff's attorney, whose address is

Justin M. Townsend, Esq.  
ALLISON MacKENZIE, LTD.  
402 North Division Street  
Carson City, NV 89703  
Phone: (775) 687-0202

SUSAN MERRIWETHER, Clerk of Court

By: [Signature]  
Deputy Clerk

Date: February 17 2015.

JA 0033

First Judicial District Court

Citizens for Solar and Energy Fairness

Plaintiff,

Case No:16OC000301B

vs.

No Solar Tax Pac

Defendant

DECLARATION OF SERVICE

STATE OF NEVADA  
COUNTY OF CARSON CITY ss.:



**LISA MORLAN**, being duly sworn says: That at all times herein affiant was and is a citizen of the United States over 18 years of age, not a party to nor interested in the proceedings in which this affidavit is made.

The affiant received copy(ies) of the **Summons, Complaint for Declaratory and Injunctive Relief, Plaintiff's Memorandum of Points and Authorities**, on 02/17/2016 and served the same on 02/18/2016 at 11:11 AM by delivering and leaving a copy with:

**CHELSEA MASCARI, OF THE OFFICE OF THE ATTORNEY GENERAL** who stated he/she is authorized to accept service on behalf of **Adam Laxalt, Office of the Attorney General**.

Service address:100 North Carson Street Carson City, NV 89701


A description of **CHELSEA MASCARI** is as follows:

Sex	Color of skin/race	Color of hair	Age	Height	Weight
Female	Caucasian	Blonde	20-30	5ft 3in	141-150lbs
Other Features:					

Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Sworn to and subscribed before me on  
02/19/2016  
by **LISA MORLAN**

Notary Public  **JOHNNO LAZETICH**  
Notary Public - State of Nevada  
Appointment Recorded in Washoe County  
No: 04-89542-2 - Expires January 28, 2020

X   
**LISA MORLAN**  
Registration#: R-062428  
Reno/Carson Messenger Service(Lic# 322)  
185 Martin Street  
Reno, NV 89509  
775.322.2424  
Atty File#: 13506-01



\*73824\*

JAMES R. CAVILIA, ESQ.  
Nevada State Bar No. 3921  
JUSTIN M. TOWNSEND, ESQ.  
Nevada State Bar No. 12293  
ALLISON MacKENZIE, LTD.  
402 N. Division Street  
P.O. Box 646  
Carson City, NV 89702  
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Facsimile: (775) 882-7918

REC'D & FILED  
2016 FEB 25 AM 11:17  
SUSAN MERRIWETHER  
CLERK  
BY V. Alegria DEPUTY

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,

Case No. 160C000301B

Dept. No. I

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

SUMMONS

Defendant. /

THE STATE OF NEVADA SENDS GREETINGS TO THE ABOVE-NAMED DEFENDANT:

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS.

READ THE INFORMATION BELOW.

TO THE DEFENDANT: A civil Complaint has been filed by the plaintiff against you.

1. If you wish to defend this lawsuit, you must, within 20 days after this Summons is served on you, exclusive of the day of service, file with this Court a written pleading\* in response to this Complaint.
2. Unless you respond, your default will be entered upon application of the plaintiff and this Court may enter a judgment against you for the relief demanded in the Complaint\*\*, which could result in the taking of money or property or the relief requested in the Complaint.
3. If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.
4. You are required to serve your response upon plaintiff's attorney, whose address is

Justin M. Townsend, Esq.  
ALLISON MacKENZIE, LTD.  
402 North Division Street  
Carson City, NV 89703  
Phone: (775) 687-0202

SUSAN MERRIWETHER, Clerk of Court

By: [Signature]  
Deputy Clerk

Date: February 16, 2016

JA 0035

First Judicial District Court

Citizens for Solar and Energy Fairness

Plaintiff,

Case No:16OC000301B

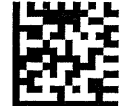
vs.

No Solar Tax Pac

Defendant

**DECLARATION OF SERVICE**

STATE OF NEVADA  
COUNTY OF CARSON CITY ss.:



**LISA MORLAN**, being duly sworn says: That at all times herein affiant was and is a citizen of the United States over 18 years of age, not a party to nor interested in the proceedings in which this affidavit is made.

The affiant received copy(ies) of the **Summons, Complaint for Declaratory and Injunctive Relief, Plaintiff's Memorandum of Points and Authorities**, on **02/16/2016** and served the same on **02/18/2016** at **10:53 AM** by delivering and leaving a copy with:

**KEVIN BENSON, RESIDENT AGENT**, pursuant to **NRS 14.020** who stated he/she is authorized to accept service on behalf of **NO SOLAR TAX PAC, a Nevada Committee for Political Action**.

Service address:2310 S. Carson Street #6 Carson City, NV 89701

A description of **KEVIN BENSON** is as follows:

Sex	Color of skin/race	Color of hair	Age	Height	Weight
Male	Caucasian	Brown	40'S	5ft 6in	171-180lbs
Other Features:					

Pursuant to NRS 239B.030 this document does not contain the social security number of any person.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Sworn to and subscribed before me on  
02/19/2016  
by LISA MORLAN



JOHNNO LAZETICH  
Notary Public - State of Nevada  
Appointment Recorded in Washoe County  
No: 04-89542-2 - Expires January 23, 2020

*Lisa Morlan*  
LISA MORLAN  
Registration#: R-062428  
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Notary Public

185 Martin Street  
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775.322.2424  
Atty File#: 13506-01



\*73779\*

WHITE HART LAW  
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CARSON CITY, NV 89701

KEVIN BENSON, ESQ.  
Nevada Bar No. 9970  
White Hart Law  
2310 S. Carson Street #6  
Carson City, NV 89701  
Telephone: (775) 461-3780  
Email: [kbenson@whitehartlaw.com](mailto:kbenson@whitehartlaw.com)

*Attorney for Defendant No Solar Tax PAC*

REC'D & FILED  
2016 MAR -2 PM 3:49  
SUSAN HERRIWETHER  
CLERK  
BY V. Alegria  
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,  
  
Plaintiffs,  
  
vs.  
  
NO SOLAR TAX PAC, a Nevada Committee  
for Political Action;  
BARBARA CEGAVSKE, in her official  
capacity as Nevada Secretary of State,  
  
Defendants.

Case No.: 16 OC 00030 1B  
Dept. No.: I

**DEFENDANT NO SOLAR TAX PAC's**  
**ANSWER**

Defendant No Solar Tax PAC, by and through counsel, Kevin Benson, Esq. of White Hart Law, LLC, submits this Answer to Plaintiff's Complaint for Declaratory and Injunctive Relief.

**GENERAL ALLEGATIONS**

**Parties and Venue**

1. Admit.
2. Admit.
3. Admit that Defendant No Solar Tax PAC is a duly registered Nevada political action committee and that it caused to be filed with the Nevada Secretary of State a referendum petition on certain provisions in Chapter 379, Statutes of Nevada (2015) pertaining to net metering, Exhibit 1 to the Complaint ("Petition"). As to the balance of the allegations, Defendant denies them.
4. Admit that the Petition refers parts of Chapter 379, Statutes of Nevada (2015) to the voters of Nevada.

1 5. Admit.

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

3 6. This allegation is a legal conclusion to which no admission or denial is required.

4 7. Admit.

5 8. Admit.

6 9. Deny.

7 10. Deny.

8 11. Deny.

9 12. Admit that the Petition contains an "Explanation" that is substantially similar to that contained  
10 in this allegation. Deny that they are identical.

11 13. Deny that the Explanation is unclear or misleading. Admit that Defendant believes that the  
12 language that is *not* bolded, bracketed and underlined will remain valid if the voters also  
13 approve of the bolded, bracketed, and underlined language, and that it will ultimately be  
14 codified into the NRS.

15 14. Admit.

16 15. Deny.

17 16. Deny.

18 17. Deny.

19 18. Deny.

20 19. Admit.

21 20. Admit.

22 21. Deny.

23 22. Deny.

24 23. Admit.

25 24. Deny.

26 25. Deny.

27 26. Deny.

28

1 27. This allegation is a question, not an assertion of fact, and therefore the Defendant cannot admit  
2 or deny the same. Deny the balance of the allegation.

3 28. Deny.

4 **FIRST CLAIM FOR RELIEF**  
5 **(Declaratory and Injunctive Relief)**  
6 **Violation of Nev. Constitution Art. 19 Sec. 1**

7 29. Admit.

8 30. Deny.

9 31. Deny.

10 32. Deny.

11 **SECOND CLAIM FOR RELIEF**  
12 **(Declaratory and Injunctive Relief)**  
13 **Violation of NRS 295.009(1)(b)**

13 33. Admit.

14 34. Deny.

15 35. Deny.

16 36. Deny.

17 Any allegations set forth in the Complaint that were not specifically addressed above are hereby denied.

18 ////

19 ////

20 ////

21 ////

22 ////

23 ////

24 ////

25 ////

26 ////

27 ////

28 ////

1 **WHEREFORE**, Defendant No Solar Tax PAC respectfully requests that the Court enter an order that:

- 2 1. The Plaintiff take nothing by way of its complaint;  
3 2. That Defendant No Solar Tax PAC be awarded its attorneys fees and costs incurred as a result  
4 of this action; and,  
5 3. For such further and other relief as the Court deems just.

6 DATED this 2nd day of March, 2016.

7  
8 **WHITE HART LAW, LLC**

9  
10   
11 KEVIN BENSON, ESQ.  
12 Nevada Bar No. 9970  
13 White Hart Law  
14 2310 S. Carson Street #6  
15 Carson City, NV 89701  
16 Telephone: (775) 461-3780  
17 Email: [kbenson@whitehartlaw.com](mailto:kbenson@whitehartlaw.com)

18 *Attorneys for Defendant No Solar Tax PAC*  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



**AFFIRMATION**

**Pursuant to NRS 239B.030/603A.040**

**(Initial Appearance)**

The undersigned does hereby affirm that upon the filing of additional documents in the above matter, an Affirmation will be provided ONLY if the document contains a social security number (NRS 239B.030) or "personal information" (NRS 603A.040), which means a natural person's first name or first initial and last name in combination with any one or more of the following data elements:

1. Social Security number.
2. Driver's license number or identification card number.
3. Account number, credit card number or debit card number, in combination with any required security code, access code or password that would permit access to the person's financial account.

The term does not include publicly available information that is lawfully made available to the general public.

The purpose of this initial affirmation is to ensure that each person who initiates a case, or upon first appearing in a case, acknowledges their understanding that no further affirmations are necessary unless a pleading which is filed contains personal information.

DATED this 2nd day of March, 2016.

**WHITE HART LAW, LLC**

  
\_\_\_\_\_  
KEVIN BENSON, ESQ.  
Nevada Bar No. 9970  
White Hart Law  
2310 S. Carson Street #6  
Carson City, NV 89701  
Telephone: (775) 461-3780  
Email: [kbenson@whitehartlaw.com](mailto:kbenson@whitehartlaw.com)

*Attorneys for Defendant No Solar Tax PAC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I am an employee of White Hart Law, LLC, and that on the 2 day of March, 2016, a true and correct copy of the above ANSWER was served on the parties by electronic mail, pursuant to all parties' consent, to the following email addresses:

Jim Cavilia, Esq.

Justin M. Townsend, Esq.

Allison MacKenzie

JCavilia@allisonmackenzie.com; jtownsend@allisonmackenzie.com; SPrice@allisonmackenzie.com

*Attorney for Plaintiff Citizens for Solar and Energy Fairness*

Lori Story

Senior Deputy Attorney General

lstory@ag.nv.gov; DWright@ag.nv.gov

*Attorney for Defendant Secretary of State*

  
KEVIN BENSON, ESQ.

**IN THE SUPREME COURT OF NEVADA**

NO SOLAR TAX PAC, a Nevada  
political action committee,

Appellant,

vs.

CITIZENS FOR SOLAR AND  
ENERGY FAIRNESS, a Nevada  
political action committee; and,  
THE HONORABLE BARBARA K.  
CEGAVSKE, in her official capacity as  
Secretary of State of the State of Nevada,

Respondents.

---

Electronically Filed  
May 06 2016 01:44 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court  
**CASE NO. 70146**

First Judicial Dist. Ct. 16 OC 00030 1B

**JOINT APPENDIX**

WHITE HART LAW  
Kevin Benson, Esq.  
Nevada Bar No. 9970  
2310 S. Carson Street #6  
Carson City, Nevada 89701  
(775) 461-3780  
[kbenson@whitehartlaw.com](mailto:kbenson@whitehartlaw.com)

*Attorney for Appellant*

## Joint Appendix Index

### Alphabetical

Name	Date	Pages
Complaint for Declaratory and Injunctive Relief	02-16-2016	1-18
No Solar Tax PAC's Answer	03-02-2016	37-42
No Solar Tax PAC's Answering Brief	03-02-2016	43-58
Notice of Appeal	04-08-2016	229-230
Notice of Entry of Order	04-08-2016	231-235
Order	04-07-2016	226-228
Plaintiff's Opening Brief	02-16-2016	19-30
Plaintiff's Reply Brief	03-09-2016	65-176
Proof of Service on Attorney General	02-25-2016	33-34
Proof of Service on No Solar Tax PAC	02-25-2016	35-36
Proof of Service on Secretary of State	02-23-2016	31-32
Secretary of State's Answer	03-04-2016	59-64

### Chronological

Date	Document	Pages
02-16-2016	Complaint for Declaratory and Injunctive Relief	1-18
02-16-2016	Plaintiff's Opening Brief	19-30
02-23-2016	Proof of Service on Secretary of State	31-32
02-25-2016	Proof of Service on Attorney General	33-34
02-25-2016	Proof of Service on No Solar Tax PAC	35-36
03-02-2016	No Solar Tax PAC's Answer	37-42
03-02-2016	No Solar Tax PAC's Answering Brief	43-58
03-04-2016	Secretary of State's Answer	59-64
03-09-2016	Plaintiff's Reply Brief	65-176
03-28-2016	Transcript of Hearing	177-225
04-07-2016	Order	226-228
04-08-2016	Notice of Appeal	229-230

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

REC'D & FILED

2016 FEB 16 PM 2:07

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  
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 16<sup>th</sup> day of February, 2016.

**ALLISON MacKENZIE, LTD.**  
402 North Division Street  
Carson City, NV 89703  
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By: 

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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

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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		
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County of \_\_\_\_\_

(Only registered voters of this county may sign below)

Petition District: \_\_\_\_\_

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

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	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