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IN THE SUPREME COURT OF THE STATE OF NEVADA

NO SOLAR TAX PAC, a Nevada political action committee,

Appellant,

Case No. 70146

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.
_______________________________________/

ANSWERING BRIEF OF RESPONDENT, CITIZENS FOR SOLAR AND ENERGY FAIRNESS

JAMES R. CAVILIA, ESQ.
Nevada State Bar No. 3921
JUSTIN M. TOWNSEND, ESQ.
Nevada State Bar No. 12293
ALLISON MacKENZIE, LTD.
402 North Division Street
Carson City, NV 89703-4168
Telephone: (775) 687-0202
Facsimile: (775) 882-7918
E-mail:
jcavilia@allisonmackenzie.com
jtownsend@allisonmackenzie.com

ROBERT L. EISENBERG, ESQ.
Nevada State Bar No. 950
LEMONS, GRUNDY & EISENBERG
6005 Plumas St., 3rd Floor
Reno, NV 89519
Telephone: (775) 786-6868
Facsimile: (775) 786-9716
E-mail: rle@lge.net

Attorneys for Respondent,
CITIZENS FOR SOLAR AND ENERGY FAIRNESS

NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Respondent, Citizens for Solar and Energy Fairness ("Energy Fairness") has no publicly held owner and does not have a parent corporation. The law firms who have appeared for Energy Fairness are:

Allison MacKenzie, Ltd.

Lemons, Grundy & Eisenberg

DATED this 6th day of June, 2016.

ALLISON MacKENZIE, LTD.
402 North Division Street
Carson City, NV 89703
(775) 687-0202

By: /s/ James R. Cavilia
JAMES R. CAVILIA, NSB 3921
jcavilia@allisonmackenzie.com
JUSTIN M. TOWNSEND, NSB 12293
jtownsend@allisonmackenzie.com

Attorneys of record for Respondent,
CITIZENS FOR SOLAR AND
ENERGY FAIRNESS

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I.

JURISDICTIONAL STATEMENT

Respondent, Energy Fairness, agrees with the Jurisdictional Statement contained in the Opening Brief filed by Appellant, No Solar Tax PAC ("No Solar").

II.

ROUTING STATEMENT

This case is presumptively retained by the Supreme Court pursuant to NRAP 17(a)(3) because it is a case involving ballot questions.

III.

STATEMENT OF ISSUES

A. The District Court did not err in concluding that No Solar's Referendum Petition was invalid as a referendum pursuant to Article 19, Section 1 of the Nevada Constitution where it found that the Petition did not seek approval or disapproval of a statute or any part thereof, rather it sought to amend a statute by systematic deletion of words and phrases in a piecemeal approach, which can only be accomplished via an initiative petition pursuant to Article 19, Section 2 of the Nevada Constitution.

B. Even if this Court does not agree with the District Court's reasoning that the Referendum Petition must fail for reason of not satisfying Article 19,

Section 1 of the Nevada Constitution, the District Court reached the proper result. Although the District Court declined to rule on the issue of whether No Solar's Description of Effect, which is required by NRS 295.009, was deficient, this Court must conclude that the Referendum Petition is invalid because the Description of Effect is inaccurate and incomplete where it fails to notify potential signers and voters of the significant effects the Petition would have on non-net metering customers in the State of Nevada if the referred language is rejected, and totally fails to describe the effect of approval of the referred language.

IV.

STATEMENT OF THE CASE

No Solar appeals from an April 7, 2016, Order of the First Judicial District Court of Nevada in which the District Court found that No Solar's Referendum Petition failed to qualify as a Referendum pursuant to Article 19, Section 1 of the Nevada Constitution.

On January 25, 2016, No Solar filed a Referendum Petition with the Nevada Secretary of State in which No Solar would amend portions of Senate Bill 374 ("SB 374") and modify existing provisions of NRS Chapter 704, by piecemeal deletion of selective individual words and phrases. JA 0008 to 0013. The portions of SB 374 that offend No Solar are those portions that vested in the Public Utilities Commission of Nevada ("PUCN") significant authority to oversee and establish policy relative to net metering associated with solar energy generation in Nevada. It should be noted, SB 374 was a compromise piece of legislation that the solar industry agreed to in the 2015 legislative session that vested the authority with the PUCN.

On February 16, 2016, Energy Fairness filed a Complaint for Declaratory and Injunctive Relief pursuant to NRS 295.009 and NRS 295.061, in which it asserted that the Referendum Petition really sought to amend SB 374 rather than submit it for approval or disapproval and that, therefore, it must fail as a

referendum. Energy Fairness also asserted that the Description of Effect required by NRS 295.009 was deficient in that it failed to accurately describe the effects of approval or disapproval of the Referendum Petition and failed to notify voters of significant effects in the event the referred language was rejected. JA 0001 to 0018. Energy Fairness filed a Memorandum in Support of its Complaint on February 16, 2016, in which it cited authority to support the rejection of No Solar's Petition. JA 0019 to 0030.

No Solar filed its Answer and Answering Brief on March 2, 2016. JA 0037 to 0058. On March 28, 2016, the District Court held a hearing and issued a verbal order rejecting No Solar's Petition and finding that the Petition failed to qualify as a Referendum pursuant to Article 19, Section 1 of the Nevada Constitution.

A written order outlining the District Court's findings and conclusions of law was issued on April 7, 2016. On April 8, 2016, No Solar filed a Notice of Appeal.

V.

STATEMENT OF FACTS

No Solar is a political action committee formed to promote the Referendum, which allegedly is requesting voters to reject provisions of Senate Bill 374. JA 0002. No Solar was created and is funded by Solar City, which is a large-scale developer and operator of rooftop solar systems. Solar City's business model, and

that of other large rooftop solar companies that lease solar panels to homeowners, relies heavily on subsidies from non-solar users. JA 0157.

The issue in this matter began during the 2015 legislative session. JA 0159. Prior to 2015, Nevada law provided a cap on the amount of net metering systems that could be installed in the state at three percent (3%) of the total peak capacity of all utilities in the state. JA 0158-0159. Net metering is a metering mechanism that credits solar energy system owners for the electricity they add to the grid. For example, if a residential customer has a solar system on the home's rooftop, it may generate more electricity than the home uses during daylight hours, and the homeowner is provided a credit on its bill from the local electric utility. As the three percent cap neared capacity, No Solar lobbied the Nevada Legislature to expand the net metering cap. Id. The Legislature explored the issue of net metering caps, but noted that solar companies needed to change their business models. JA 0157. Specifically, State Senator Atkinson stated:

> 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.

Id.

Ultimately, the Legislature adopted SB 374, which was a comprehensive settlement between No Solar, the power company and other interested parties that removed the net metering cap and authorized the PUCN to adopt new net metering rates to ensure non-net metering customers were not unreasonably subsidizing net metering customers. JA 0159. In fact, No Solar supported SB 374, and stated on the record at the Assembly Committee on Commerce and Labor that "we are happy to be here in support of the legislation." Id.

On July 31, 2015, a docket was opened at the PUCN to determine the new rates for net metering systems. The PUCN allowed interested parties to conduct discovery, file testimony in support of their position, participate in a hearing and reviewed numerous petitions for reconsideration. No Solar actively participated throughout the PUCN process. JA 0156-0175.

On February 17, 2016, the PUCN issued its Final Modified Order, and the new net metering rates took effect as of January 1, 2016. Id. However, dissatisfied with the outcome at the PUCN, and already rejected by the Legislature, No Solar carefully crafted this Referendum in an attempt to accomplish its 2015 goals – remove the net metering cap but have no regulatory oversight. Although No Solar portrays the Referendum as a public disapproval of SB 374, in reality, it is amending Nevada law to create a new net metering policy that achieves No Solar's business objectives.

VI.

SUMMARY OF ARGUMENT

Article 19 of the Nevada Constitution provides two separate mechanisms that allow for voters to affect the laws of the State of Nevada. The first is referred to as a referendum and may be used only to put a statute or a distinct and severable part of a statute to the voters for an up or down vote. The second mechanism is the initiative, which must be used when the voters desire to add or amend statutes.

No Solar's construction of Article 19 of the Constitution, which is that an initiative is only required when adding language, but not deleting language, violates sound principles of constitutional construction, which are that provisions of the Nevada Constitution must be read together to give effect and harmonize each provision. No Solar's construction of the referendum process, laid out in Article 19 of the Constitution, would render the initiative provisions meaningless and result in an entirely new law in Nevada. An amendment is not only the addition of language to a statute but also the deletion of language, which can only be accomplished through the initiative process.

Appellant, No Solar improperly attempts to use the referendum process to amend SB 374 by referring single, inseparable words and phrases thereof for a vote of the people. The referendum process may not be used to amend existing statutes. Further, the law that would result from No Solar's piecemeal amendment by

deletion of words and phrases contains ambiguities and nonsensical grammar issues that are left wholly unaddressed by No Solar's Referendum.

While the District Court invalidated No Solar's Referendum on the basis that it did not qualify as a referendum, the District Court declined to render judgment on the issue of whether the Referendum's required Description of Effect met the statutory standard set forth in NRS 295.009. Nevertheless, even if this Court determines that the District Court's reasoning for invalidating the Referendum was incorrect, this Court should uphold the District Court's conclusion on the basis that the Description of Effect is invalid.

A Description of Effect must set forth the effect of approval of the Referendum in clear and concise terms. No Solar's Description of Effect completely fails to describe the effect of approval of the referred words and phrases. In addition, it fails to describe significant effects that will result if the referred words and phrases are disapproved – namely, that the Referendum seeks to remove all administrative oversight of solar rates and subsidies while also leaving in place the legislature's removal of the previously imposed cap on subsidies. The effect is that non-solar customers will be faced with subsidizing solar customers without limit over the next several decades. The PUCN estimated that, unchecked, this subsidy would grow to approximately $640 million. Failure to disclose this effect is fatal to the Referendum.

Furthermore, counsel for No Solar indicated in pleadings and at the hearing before the District Court that the Description of Effect may be deficient, and offered to rewrite the Description of Effect. The District Court did not require No Solar to rewrite the Description of Effect, because it invalidated the Referendum on the basis that it failed to qualify as a referendum. Nevertheless, the deficiencies in the Description of Effect are reason to invalidate the Referendum.

VII.

STANDARD OF REVIEW

Judgments involving injunctions where factual issues are not disputed are reviewed de novo. Nevadans for Nevada v. Beers, 122 Nev. 930, 942, 142 P.3d 339, 347 (2006). Issues of statutory and constitutional construction are also reviewed de novo. Nevadans for Prop. Rights v. Sec'y of State, 122 Nev. 894, 901, 141 P.3d 1235, 1240 (2006).

VIII.

ARGUMENT

A. The Referendum seeks to amend SB 374 rather than approve or 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 same. A referendum petition that acquires the

number of signatures required by the Constitution may be placed on the ballot at the next general election. The referendum power of the people does not, however, allow for enacting or amending Nevada statutes.

Instead, the voters' authority to enact or amend Nevada statutes is set forth in Section 2 of Article 19 of the Nevada Constitution. In order to enact or amend Nevada statutes, Nevada voters must circulate an initiative petition, which may propose statutes or amendments to statutes for enactment or rejection at the polls. However, Section 2 of Article 19 adds the extra step of first referring the initiative petition to the Nevada Legislature for its consideration. See Nevada Const. art. XIX, § 2(3). If the Legislature rejects the initiative petition, only then is the initiative placed on the ballot at the next general election.

1. A Referendum is limited to the approval or disapproval of already enacted legislation.

The Nevada Supreme Court recognizes that "[r]eferendum is the electorate's power to approve or disapprove already-enacted legislation, while initiative is the electorate's power to directly enact legislation by popular vote." Garvin v. Ninth Judicial Dist. Court ex rel. County of Douglas, 118 Nev. 749, 753, 59 P.3d 1180, 1183 (2002). The difference between a referendum and an initiative is whether voters are being asked to repeal a statute or amend one. The issue here is whether the proposed Referendum, through a process of selective editing, amends a statute rather than merely asking voters to approve or disapprove of it. The district court

determined that the measure at issue in the present case was an initiative, not a referendum. That ruling was correct.

The analysis required in determining whether to seek action through initiative or referendum is also set forth on page 1 of the Nevada Secretary of State's Initiative & Referendum Guide for 2016, which provides a clear distinction between initiatives and referenda:

> WHAT ARE INITIATIVES & REFERENDA?
>
> Initiatives are a device by which voters enact state or local laws. Referenda are a device by which voters approve or disapprove of existing state or local laws. They are both methods of involving voters directly in the legislative process of government.
>
> Specifically, an initiative petition can do one of the following:
>
> 1. Propose a new state statute;
> 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
>
> A referendum petition can only approve or disapprove a statute, resolution, or ordinance that was enacted by the State Legislature, Board of County Commissioners, or City Council.

Appellant, No Solar, seeks to draft its preferred law and to avoid the extra step of having its proposed amendments to SB 374 considered by the Nevada Legislature by attempting to improperly use the referendum process to effectuate

creating a new law, instead of properly using the initiative process to effectuate such a change. The rationale for why No Solar is employing the referendum process is simple. A referendum petition signed by the appropriate number of voters may be placed on the ballot for the November 2016 general election and, if the referred words and phrases are disapproved by the voters, has the immediate effect of being the law. Whereas, an initiative would be considered by the Legislature during the 2017 legislative session where, if it were rejected, it would not be placed on the ballot until November 2018, thereby adding time and risk to No Solar's objective. Put simply, this is an effort to shortcut the appropriate process to amend a statute to effectuate the interests of No Solar more quickly. This improper use of the referendum process must not be allowed.

2. No Solar's selective editing is an effort to amend SB 374 and thus is an initiative, not a referendum.

No Solar seeks unquestionably to amend SB 374 rather than approve or disapprove it, therefore rendering its proposed action an initiative rather than a referendum. No Solar is not free to choose between using a referendum versus using an initiative. First, examining the proposed referendum clearly illustrates that it is an effort to amend the law, not repeal it. Illustrating this point is the fact that Section 2.3 of SB 374, which would add a new section to NRS Chapter 704, is not set out in the Referendum for approval or disapproval. Instead, No Solar seeks

to alter the language of Section 2.3 by removing portions of sentences contained therein. Section 2.3 of SB 374 reads in pertinent part as follows:

> 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.

Instead of referring subsection 1 of Section 2.3 of SB 374 to the voters for approval or disapproval, No Solar asks voters to consider an amended version thereof as follows:

> 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]**.

As provided in No Solar's Description of Effect, the bolded, bracketed, and underlined portions of Section 2.3 are to be deleted from SB 374 if the referred language is disapproved, leaving the section to read as follows:

> 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.

There is no doubt that what the No Solar seeks to do is to amend Section 2.3 of SB 374 rather than approve or disapprove of the same. No Solar's systematical deletion of words in SB 374 creates an entirely new law (no net metering cap or oversight on net metering rates) that was never contemplated by the Legislature or existed in NRS Chapter 704 prior to the enactment of SB 374.

Moreover, the amended provision would contain a sentence that begins with a subsection number (1)[1] and an uncapitalized word and includes a grammatically incorrect comma, problems that are left wholly unaddressed by the Referendum because to address it would be to clearly concede that No Solar seeks to amend SB 374 rather than refer it to the voters for approval. Nevertheless, the result of the Referendum, if the referred words and phrases are disapproved, would be an amendment of SB 374 and more broadly NRS Chapter 704, which cannot legally be accomplished by a referendum but must be part of an initiative petition instead.

Indeed, if the Legislature were to take up a similar revision to Section 2.3 of SB 374, it would amend the section, bracketing out discarded language, and adding

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[1] If the referred words and phrases are disapproved, the resulting section would include a subsection 1 and no other subsections, only adding to the ambiguity of this proposal.

new language. In addition to the deletions noted in the Referendum, the Legislature would delete the word "each" and add it back as new language, properly capitalized. Amendments are the legislative counterpart to initiative, whereas repeal is the legislative counterpart to referendum, and the Legislature would make these changes by amendment.

Similar surgical-style amendments are proposed to portions of Section 2.95 of SB 374, leaving in this instance a capitalized word in the middle of a sentence. If the referred language is disapproved, Section 2.95 would read as follows:

> **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.

Leaving out the portions of NRS 704.773 that were deleted by SB 374 would further indicate No Solar's intent to amend SB 374 rather than disapprove it. If this Referendum is considered by the voters and approved, the ambiguity as a result of this piecemeal deletion of phrases and words in the Referendum itself will undoubtedly lead to future litigation dealing with the hopeless confusion and uncertainty in interpreting and applying the amended statutes.

///

///

3. **By failing to address portions of the statute deleted by SB 374 and attempting to delete individual words and phrases, No Solar's Petition is not a Referendum of SB 374.**

By failing to address the portions of NRS 704.773 that were deleted by SB 374, the Referendum inaccurately gives voters the impression that disapproval of the referred words and phrases will restore the prior status quo. This is simply not the case because the Referendum does not address the deleted portions of the statute and No Solar does not attempt to address this, because to do so would unequivocally make this Referendum an initiative (amendment of statute). Based upon the substance of that portion of the statute deleted by SB 374 (a 3% cap on net metering), failure to address that fact in this Referendum is extremely misleading and prejudicial to petition signers and voters.

First, if the referred words and phrases are ultimately disapproved by the voters, pre-SB 374 statutory protections such as the 3% net metering cap will not be revived because that portion of the law is not addressed by the Referendum. Thus an entirely new law and policy will be created, resulting in non-solar customers of electric utilities in Nevada being unfairly forced to subsidize solar net metering owners, potentially in the amount of hundreds of millions of dollars over the coming decades. JA 0157 to 0173. This is an abuse of the referendum process that the residents of Nevada cannot afford.

No Solar tries to hide this fact by arguing that it is merely "requesting a yay or nay vote on a part of the statute[.]" Opening Br. at 14. This is incorrect. No Solar seeks to amend the statute by altering the way net metering operates in Nevada. The proposed referendum does not merely remove an enacted statutory principle. Instead, as discussed above, it fundamentally changes the net metering program. Net metering is *amended* to operate in a different manner. This is consistent with the effect of an initiative and not a referendum.

Second, selective deletion of individual words or phrases, creating new laws, must be considered an amendment rather than a referendum on the deleted words, because treating this as a referendum will lead to absurd results, which are always disfavored in statutory or constitutional interpretation. Indeed, No Solar's position that "repealing" certain individual words of a statute falls within the purview of the referendum process is in violation of well-established precepts of constitutional construction, which are that "the Nevada Constitution should be read as a whole, so as to give effect to and harmonize each provision." We the People v. Miller, 124 Nev. 874, 881, 192 P.3d 1166, 1171 (2008)(citing Nevadans for Nevada v. Beers, 122 Nev. 930, 944, 142 P.3d 339, 348 (2006)). Whenever possible, courts interpret "statutes within a statutory scheme harmoniously with one another to avoid an unreasonable or absurd result." Great Basin Water Network v. State

Eng'r, 126 Nev. 187, 196, 234 P.3d 912, 918 (2010) (quoting Allstate Insurance Co. v. Fackett, 125 Nev. 132, 138, 206 P.3d 572, 576 (2009)).

No Solar's argument runs afoul of We the People in several respects. First, No Solar's construction of the referendum process embodied in Section 1 of Article 19 conflicts with and, in many cases, renders moot the initiative process outlined in Section 2 of Article 19. No Solar's construction ignores that Article 19 provides *two* separate and distinct processes.

Article 19, Section 1 provides in pertinent part as follows:

> 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 with the secretary of state, not less than 120 days before the next general election, 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.

In contrast, Article 19, Section 2 provides in pertinent part as follows:

> [T]he 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.

Section 1 may be used only to approve or disapprove a statute or a part thereof. If voters disapprove, the statute at issue is repealed and is void. No new laws or statutes are created in the process. On the other hand, Section 2 provides that the initiative process must be used when voters desire to amend a statute. This process, if approved by the voters, results in a new or revised law.

While both processes can result in change, they remain distinct because, under Nevada's Constitution, there is a meaningful difference between removing or repealing a statute and changing or amending it. However, in construing Sections 1 and 2, the Court must harmonize both provisions. Any construction of the referendum process that allows it to overlap, intrude or replace the initiative process runs afoul of the Supreme Court's holding in We the People.

Third, the deletion of individual words throughout a statute could contort a statute into an unrelated shell of itself. Such changes are "amendments," even if they are accomplished solely through the deletion of words. The impracticality is illustrated by assuming the referred statute is approved: If the voters approve a statute in a referendum, the Nevada Constitution prohibits future amendments to the statute without a vote of the people, see Nevada Const. art. XIX, § 1(3), which means that the Legislature would be able to amend some words in a sentence without a vote of the people but would need such a vote to amend other words in the same sentence.

The proposed changes to selected provisions of the statute must be considered as proposed amendments to the statute, subject to the procedure for amendment of statutes by initiative petition. Accordingly, The Referendum Petition must be deemed invalid.

Fourth, No Solar's proffered construction is not permitted under existing law. The language of Section 1 of Article 19 of the Nevada Constitution ("a part thereof") cannot be applied so broadly as to render the language of Section 2 of Article 19 ("proposes a statute or an amendment to a statute") meaningless. A plain and common-sense reading of the phrase "amendment to a statute" cannot be limited exclusively to making additions to a statute, but must also apply to deletions and modifications thereof. Similarly, the "any part thereof" language of Section 1 cannot be read so broadly as to replace the amendment process. The only logical and reasonable construction is that the phrase applies to a distinct and severable portion of a statute that lends itself to removal.

A simple example makes this point. Suppose a statute reads as follows: "Assault is punishable by a jail term of one to five years." Under No Solar's logic, the statute could be amended to mandate a flat one year jail term for assault simply by seeking a "referendum" to delete the words "to" and "five" and the letter "s" on "years." (No Solar's construction of "or any part thereof," to be consistent, must

apply to single letters as well.) The end result is an amended statute, not one that was repealed. Yet no words were added.

As this example illustrates, No Solar's argument that an initiative is only required when voters desire to **add** language to a statute rather than remove language is flawed and illogical. JA 0046 to 0047. A statute can be amended by selectively deleting certain portions of it. This is precisely what No Solar seeks to do through its Petition. The measure of a referendum versus an initiative should not be how ingenious one is with the deletion key; instead the measure should be whether the petition is an up/down vote on a statute or a part of a statute (referendum) or whether the petition seeks to modify the meaning of the law (initiative). In this case, it is clear that No Solar's intent is to modify the law with respect to net metering in Nevada, resulting in an initiative.

Further, No Solar expressly concedes this point in its Opening Brief where it notes that the deletion of the word "not" from a smoking ban would "truly reverse the meaning of [the] statute," resulting in a referendum that crosses the line from rejecting a statute to enacting one. Opening Br. at 22. No Solar contends that this is not happening here. But, it clearly is happening here. The purpose of SB 374 was a comprehensive settlement to allow net metering to continue in Nevada, but not at the expense of non-net metering ratepayers. No Solar's referendum unquestionably reverses the meaning and purpose of SB 374 by removing the

insurance that non-net metering rate payers will not unreasonably subsidize net metering customers without transferring it back to the Legislature while simultaneously leaving those portions of SB 374 that remove the cap on net metering. As a result, the Referendum creates a new net meter law and policy in Nevada, which will have significant effects on energy rates. Such a change in law should not be allowed to occur through a referendum vote, it should instead go through the more rigorous initiative process to ensure the people of Nevada understand and have the opportunity to consider this important policy issue.

The Petition is not a referendum on SB 374, as it claims. The full language of SB 374 is found at JA 0078 to 0091. SB 374 contains language added and removed by the Legislature to certain provisions of NRS Chapter 704. However, No Solar's Petition omits some of the deleted language in SB 374 and, therefore, is not a referendum on SB 374 as claimed. For instance, Section 2.95 of SB 374 provides in pertinent part as follows:

> **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.

The bolded and italicized portions of Section 2.95 are portions of NRS 704.773 that the Legislature added. The portions set forth above that have been stricken are those that the Legislature deleted. These are the markings that are included in SB 374 so that the reader can understand what changes the Legislature has made. Instead of including these markings and the language deleted from NRS 704.773, No Solar's purported referendum on Sec. 2.95 of SB 374 reads as follows:

> **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]**.

No Solar omits the deleted language that is referenced in SB 374. Again, what No Solar claims to be Section 2.95 of SB 374 is not actually that without the deleted language. If No Solar wanted to refer the post-codification version of NRS 704.773, they should have referred NRS 704.773 rather than Section 2.95 of SB 374. The portions of SB 374 that are not referenced in the Petition are important for understanding what No Solar actually seeks to change (*e.g.,* removal of the cap on net metering, which is discussed in detail below). As a result, No Solar's Petition is not seeking to repeal SB 374 or any distinct and severable portion of it. Instead, through a process of selective editing, No Solar is trying to reshape (*i.e.* amend) the law into something entirely different and for its own pecuniary gain. For purposes of comparison against SB 374, a copy of No Solar's Petition may be found at JA 0092 to 0103 and a draft of the text of the new law that No Solar apparently seeks to create may be found at JA 0104 to 0107.[2]

Finally, among the provisions referred to the voters is a "transitory" provision, Section 4.5 of SB 374, which refers to events that have already occurred. Would rejection of these provisions undo such events? Again it is clear that the objective of No Solar can be achieved only through an initiative petition that also addresses the impact of actions taken since the passage of SB 374.

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[2] The document found at JA 0104 to 0107 is the result of simply deleting the bolded, bracketed and underlined words and phrases from No Solar's Petition.

4. **Accepting No Solar's argument will create a policy change that makes Section 2 of Article 19 meaningless.**

No Solar's efforts, if allowed by the Court, would mean that the referendum process could be utilized to drastically amend a statute and create new policy so long as the amendment does not involve the addition of language. Apart from a flawed reading of the text, such an application of Section 1 of Article 19 of the Nevada Constitution would render Section 2 of that same Article almost meaningless. In contrast, Energy Fairness's proffered construction is supported by the text of the two provisions as well as construing them together. The initiative and referendum provisions must be applied together such that the language "amendments to statute" of Section 2 is given its plain meaning but is also harmonized with the "any part thereof" of Section 1. This is done by construing the amendment process embodied in Section 2 to include petitions that seek to amend a law by deleting various portions of an existing law's text.

The term "amendment" in Section 2 supports this construction. "Amendment" is defined as follows:

> A formal revision or addition proposed or made to a statute, constitution, pleading, order, or other instrument: spec… a change made by addition, **deletion**, or correction: esp...an alteration in wording.

Black's Law Dictionary 89, (8th ed. 2004) (emphasis added). Here, No Solar seeks to revise the existing law by making specific deletions of words and phrases

contained therein. There is no question that what No Solar seeks to do is amend the law as enacted in SB 374 by the deletion of words and phrases, as the district court correctly found.

Similarly, the "any part thereof" language of Section 1 is properly construed as referring to a distinct and severable portion of a statute. This is consistent with the text of the Section as well as applicable law. It is well settled that a "statute's construction is governed by legislative intent, and we discern this intent from the entire statute, not from a single provision. In determining the legislature's intent, [the Court] should consider what reason and public policy indicate was intended, and we should avoid reaching absurd results." Williams v. Clark County Dist. Attorney, 118 Nev. 473, 484, 50 P.3d 536, 543 (2002) (emphasis added). This basic rule of construction is equally applicable to provisions of the Nevada Constitution. No Solar's primary argument in this matter is that the phrase "part thereof" permits a referendum on any single word or group of words (or, for that matter, even a single letter in a word) of a statute. However, when considering the entirety of Article 19 and the public policy it supports, No Solar's position produces an absurd and unreasonable result, which is improper. Glover v. Concerned Citizens for Fuji Park and Fairgrounds, 118 Nev. 488, 492, 50 P.3d 546, 548 (2002) (The language of a statute or the constitution "should not be read to produce absurd or unreasonable results.")

5. **<u>Applicable law requires No Solar to seek its proposed statutory amendment through the initiative process</u>.**

Finally, the Court's rejection of No Solar's proffered construction does not deprive No Solar of its right to ask voters to amend or change SB 374. It merely means that No Solar must exercise that right in the form of an initiative, rather than referendum. This is consistent with the Nevada Constitution and ensures that both Sections 1 and 2 of Article 19 are given their full meaning.

In addition to the text itself, the legislative history of Section 1 of Article 19 of the Nevada Constitution supports Energy Fairness's construction. The phrase "part thereof" first appeared in Article 19 of the Nevada Constitution in 1962 as part of an entire re-write and clarification of Article 19. In the legislative action proposing this revision of Article 19 in 1960, an *Explanation of the Purpose of the Proposed Amendment to Article 19 of the Constitution of Nevada* was prepared and provided to the voters when the amendment was voted on in the 1962 general election. In pertinent part, the *Explanation of the Purpose of the Proposed Amendment* provided as follows:

> 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.

See Question No. 2 page 45 (1962).[3] A copy of the Legislative History of the 1962 Amendment of Article 19 of the Nevada Constitution as prepared by the Nevada Legislative Counsel Bureau may be found at JA 0108 to 0155.

Nowhere in the *Explanation* of this 1962 entire re-write of Article 19 is the addition to Article 19 of the phrase "part thereof" addressed. Indeed, it appears, by the foregoing language, that there was no intent to alter the manner in which voters approved or disapproved of statutes enacted by the Legislature, which was not by piecemeal deletion of words and phrases as No Solar seeks now to do. Prior to the 1962 Amendment, Article 19 of the Nevada Constitution provided that ten percent of the voters of Nevada could petition that "any law or resolution made by the Legislature be submitted to a vote of the people." See p. 41 of the Exhibit "D" Legislative History. There is simply no indication that the Nevada Legislature or the voters for that matter ever intended that the referendum process was to be expanded beyond its historical application as a way for the voters to approve or disapprove of a law, not of individual words or phrases within a law. Such an expansion of the referendum process would run afoul of the initiative process that specifically provides for the amendment of existing law.

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[3] See, http://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/Pre1965/AJR11,1960_1961.pdf

In an effort to bolster its strained interpretation, No Solar has relied on several inapplicable cases and three inapposite attorney general's opinions from other states. None of these sources provide support for No Solar's position. No Solar's reliance on Garvin v. Ninth Judicial Dist. Court ex rel. Cty. Of Douglas, 118 Nev. 749, 59 P.3d 1180 (2002), at Opening Br. at 18, is misplaced. In Garvin, the Nevada Supreme Court answered the questions of (1) whether an initiative could be used to enact zoning legislation and (2) whether a zoning measure was legislative rather than administrative and thus permissibly placed on the ballot. There is no discussion in Garvin of what constitutes an amendment to statute. The plain reading of Article 19, Section 2 is that an initiative may accomplish two things: first, enacting new legislation (e.g., adding new provisions to the code); and second, amending existing statutes. Garvin deals only with the former while, here, No Solar seeks to amend an existing statute.

This court answered substantially similar questions in Forman v. Eagle Thrifty Drugs & Markets, Inc., 89 Nev. 533, 516 P.2d 1234 (1973), although the Court reached different conclusions than those it did in Garvin, which overruled Forman. Neither of these cases addressed the question at issue here, which is whether No Solar seeks to amend an existing statute rather than approve or disapprove already-enacted legislation.

No Solar also relies upon Herbst Gaming, Inc. v. Heller, 122 Nev. 877, 141 P.3d 1224 (2006), Opening Br. at 19, which discussed an initiative petition that sought both to repeal existing anti-smoking laws and to add a new anti-smoking law. The Court held that such a petition was actually an initiative rather than a referendum. In Herbst Gaming, the Court specifically acknowledged that "the initiative clearly does not seek simply to reject Nevada's current anti-smoking statute, but to enact one with broader coverage." Id. at 892, 141 P.3d at 1234. The petition being proposed in this matter similarly does not seek simply to reject the solar net metering statute adopted by the Legislature, but to enact an entirely different statutory scheme and policy with regard to net metering. Because No Solar's petition seeks to fundamentally change the law with regard to net metering rather than seeking simply to approve or disapprove of the existing law, it must be viewed as an initiative rather than a referendum just as the petition in Herbst Gaming was viewed.

The dearth of Nevada law to support No Solar's strained interpretation of applicable Nevada constitutional provisions has led to No Solar's desperate citation to three non-Nevada attorney general's opinions. That No Solar must resort to these outside, non-precedential sources is indicative of how far No Solar must go to stretch the boundaries of constitutional construction.

Further, the cited attorney general's opinions are entirely distinguishable from the facts at issue here. For instance, No Solar concedes that the Michigan Attorney General, in the early 1940s, recognized that a referendum on a single sentence or parts of subsections within a statute was allowable.[4] Opening Br. at 10-11. That is not what is happening here, where No Solar is attempting to refer single words and phrases within sentences.

In addition, in Ariz. Op. Atty. Gen. 156 (Oct. 19, 1989), cited at Opening Br. at 12, 18, 21 and 23, the Attorney General's definition of "part" of a statute falls squarely in line with Energy Fairness's proffered definition, which is that "part" means a "separable clause, sentence, or provision." The definition does not include single words or inseparable phrases.

No Solar also cites 32 Or. Op. Atty. Gen. 156 (March 16, 1965), Opening Br. at 13, in support of its contention that single words and phrases may be referred to the voters for approval. In that instance, the Oregon Attorney General was opining on an Oregon bill that included a provision that no part of the bill could be referred to the voters for approval unless the entire bill was referred for a vote. This was held to be unconstitutional because the Oregon Constitution, like Nevada's, allows for referral of a part of a statute. The Oregon Attorney General

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[4] Energy Fairness was unable to retrieve a copy of Mich. Op. Atty. Gen. 1941-42, No. 20573, P. 266, as it is not available on Westlaw or on the Michigan Attorney General's Website.

makes no reference to what constitutes a "part" of a statute, but does note that "[o]ne real problem with referral of a section or item is whether the bill is severable and operable if the referred section is defeated." Id. This "real problem" identified by the Oregon Attorney General is amplified where the proposed measure deals with isolated single words and phrases, as in the present case. The District Court here properly concluded that the Referendum Petition is not a referendum at all, but is an attempt to amend a statute, which can be accomplished by initiative rather than referendum. JA 0226-0227. Therefore, Energy Fairness respectfully requests that this Court affirm the April 7, 2016, Order of the District Court.

Energy Fairness urges this Court to apply the interpretation of Article 19, Section 1 that makes sense. The interpretation of the phrase "part thereof" that makes sense is that the Constitution contemplates an up or down vote on a distinct, severable portion of a law – a portion of a law that is logically capable of being excised from the law without creating a law or the law becoming nonsensical. The Referendum proposed by No Solar is not an up or down vote on a statute or a severable portion thereof, it creates a new net metering law, and the resulting language is not capable of standing on its own in a logical way if enacted – i.e., the resulting language includes ambiguities, formatting issues, and grammar issues that are left unaddressed by the Referendum.

B. <u>The Description of Effect contained in the Referendum Petition fails to satisfy the requirements of NRS 295.009</u>.

The District Court declined to render judgment on or analyze whether No Solar's Description of Effect satisfied mandatory statutory requirements, although Energy Fairness raised this issue below. JA 0026 to 0029; JA 0073 to 0076. Even if this Court disagrees with the District Court's reasoning with regard to the question of whether No Solar's petition is properly couched as a referendum, this Court should still uphold the District Court's rejection of No Solar's petition on the grounds that the required Description of Effect is deficient. <u>See</u> <u>Las Vegas Convention and Visitors Authority v. Miller</u>, 124 Nev. 669, 689 n. 58, 191 P.3d 1138, 1151 n. 58 (2008) (noting that the Supreme Court "will affirm the district court if it reaches the right result, even when it does so for the wrong reason.") Indeed, counsel for No Solar made concessions concerning the deficiency of the Description of Effect and offered to rewrite the same. JA 0055; JA 0216 to 0218. The District Court did not ask No Solar to rewrite the Description of Effect, however, because it invalidated the Referendum on other grounds.

1. <u>The Description of Effect fails to provide voters with a clear and understandable explanation of the Referendum's effect</u>.

NRS 295.009 provides in pertinent part that a referendum petition must "[s]et forth, in not more than 200 words, a description of the effect of the…referendum if the …referendum is approved by the voters." This is

extremely critical in this case because No Solar has proposed that selected words and phrases be removed, leaving a voter to compose the full meaning and effect of the remaining statute. Here, the Description of Effect simply does not give voters a clear and understandable explanation of what the effect of either approval or disapproval of this Referendum will be.

The significance of a required Description of Effect cannot be understated. The Nevada Supreme Court has recognized that "this descriptive language is what appears directly above the signature lines, as registered voters decide the threshold issue of whether they even want the initiative placed on the ballot." Nevadans for Nevada v. Beers, 122 Nev. 930, 940, 142 P.3d 339, 346 (2006). Additionally, this court has explained that an accurate Description of Effect "is significant as a tool to help 'prevent voter confusion and promote informed decisions.'" Las Vegas Taxpayer Accountability Comm. v. City Council of City of Las Vegas, 125 Nev. 165, 183, 208 P.3d 429, 441 (2009) (quoting Beers, 122 Nev. at 939, 142 P.3d at 345). An accurate and complete Description of Effect is critical to ensuring "the people's right to meaningfully engage in the initiative process." Beers, 122 Nev. at 940, 142 P.3d at 345.

A Description of Effect must "accurately identify the consequences of the referendum's passage." Las Vegas Taxpayer Accountability Comm., 125 Nev. at 184, 208 P.3d at 441. While a Description of Effect need not explain hypothetical

effects or mention every possible effect of the Referendum Petition, it "must be straightforward, succinct, and nonargumentative, and it must not be deceptive or misleading." Educ. Initiative PAC v. Comm. to Protect Nev. Jobs, 129 Nev. Adv. Op. 5, 293 P.3d 874, 879 (2013).

The Referendum Petition at issue here contains the following Description of Effect:

> **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.

Instead of simply stating the effect of approval or disapproval of this Referendum, the Description of Effect adds to the confusion by stating that the Referendum "asks voters to approve or disapprove portions" of the statute and then proceeds to state that "[i]f a majority of voters disapprove of the new rates and charges imposed on green energy" the bolded, bracketed and underlined portions of the law will be repealed. This is misleading, confusing and inaccurate. The Referendum is not simply about "disapproving" of the "new rates and charges on green energy," but instead, it results in a substantial amendment to SB 374 and other previously existing provisions of NRS Chapter 704.

The Petition seeks repeal of certain language of SB 374 that authorizes the PUCN to oversee the rates on net metering customers. That authority was given to the PUCN in conjunction with the Legislature's repeal of a previously imposed legislative cap on net metering. The Legislature enacted SB 374 with this twofold approach in mind; however, the Petition repeals the PUCN's authority to set new rates, but keeps intact the Legislature's repeal of the net metering cap. However, the Description of Effect is silent on this effect if the referred words and phrases are rejected and therefore it is misleading.

2. <u>The Description of Effect does not address the effect of approval of the Referendum.</u>

The Description inadequately describes the effect of disapproval of the referred language, but does not describe the effect of approval at all, though NRS

295.009 specifically requires the description to set forth "the effect of the initiative or referendum if the initiative or referendum is *approved* by the voters." NRS 295.009(1)(b) (emphasis added). The effect is that the referred words and phrases "shall not be amended, annulled, repealed, set aside, suspended or in any way made inoperative except by the direct vote of the people." Nevada Const. art. XIX, § 1(2). It is particularly important to describe this effect when the proposed referendum would result in some words within a sentence being subject to this limitation while other words in the same sentence are not. Omission of this substantial and incongruous impact of the proposal renders the Description of Effect fatally deficient.

3. The Description of Effect does not address the actual impact on non-net metering customers or the removal of the cap on net-metering.

First, if the referred words and phrases are rejected, it will have the effect of ensuring that non-net metering customers will continue to subsidize net metering customers without any regulatory oversight or limitations, but the Description of Effect does not mention this effect. Second, the removal of the net metering cap will make this effect even more significant because, if the referred language is rejected, non-net metering customers will subsidize net metering customers *without limit*, locking in the vast majority of Nevadans without rooftop solar and net metering into the payment of subsidies without any ability to obtain relief without again taking the issue to a vote of the people. But again, the Description

of Effect ignores this effect. These are not hypothetical effects. Indeed, the purpose of removing the legislated cap on net metering was, in part, to shift oversight of net metering customers from the Legislature to the PUCN. No Solar proposes to remove all regulatory oversight and statutory limitations, but does not mention these material effects and impacts in its Description of Effect.

Further, the PUCN's February 17, 2016, Order sets out the significant effect of non-net metering customers subsidizing net metering customers. Specifically, after a full public process and extensive study and analysis of the substantial evidence submitted, the PUCN concluded that the subsidy provided by non-net metering customers is currently more than $16 million annually, and estimated that the subsidy would grow to over $640 million over the next 40 years under the previous rate system applied to net metering customers.[5] A copy of the Commission Discussion and Conclusions of the PUCN's February 17, 2016 Order may be found at JA 0156 to 0175.

In addition, the PUCN acted, at least in part, to impose rates on net metering customers that would prevent the subsidy from growing so large. Removing the PUCN's authority to impose rates without reinstating a cap on net metering as previously existed will have the effect of causing the subsidy of net metering

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5 http://pucweb1.state.nv.us/PDF/AxImages/DOCKETS_2015_THRU_PRESENT/2015-7/9690.pdf; see ¶ 263 at pp. 106-07.

customers to grow exponentially. This is not a hypothetical. Failure to disclose this $640 million dollar effect, as determined by the PUCN, to the voters is not only deceptive and misleading, but once again demonstrates what was being proposed by the No Solar is an amendment of the statute and not a vote to approve or disapprove of the statute.

No Solar has argued that it should not be forced to use some of its "precious 200 words to describe the legal process of approval or disapproval."[6] JA 0055. The very purpose of the 200 words is to "accurately identify the consequences of the referendum's passage." Las Vegas Taxpayer Accountability Comm., 125 Nev. 165, 184, 208 P.3d 429, 441. The language of NRS 295.009(1)(b) could not be more clear. No Solar must set forth an accurate and understandable description of the effect of approval of the Referendum. The Description of Effect in this case does not state what the effect of approval of the Referendum will be. This confusion with the use of "disapprov[al] of the new rates and charges" versus approval or disapproval of the Referendum highlights the problems with attempting to have a referendum on individual words and phrases and makes it

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[6] Rather than utilizing its "precious" 200 words to describe the effect to the Petition, No Solar uses a number of those words to advocate for No Solar's position by using politically-charged jargon like "green energy customers" and "green energy rates," neither of which are terms actually used in SB 374, NRS Chapter 704 or in the industry.

ever more clear that No Solar is seeking to amend the existing statute not simply to approve or disapprove the statute.

No Solar also argued in the district court that deletion of provisions from section 2.95 of SB 374 does not cause any confusion or ambiguity. JA 0052 to 0053. Absence of provisions from the Referendum is misleading because it hides the substantive impact of the section that No Solar purports to submit to the voters: the deletion of the 3 percent cap on net metering. The Description of Effect does not indicate that No Solar is submitting words and phrases from a post-codification version of a bill, rather, the petition claims to be submitting provisions "set forth in 2015 Statutes of Nevada, Chapter 379." It simply does not do as claimed. Section 2.95 of Chapter 379, Statutes of Nevada 2015 (SB 374) (and Section 2.7, though the deletions are not substantive), includes the bracketed language deleted by the Legislature. In addition to being fundamentally flawed by purporting to refer a section of Statutes of Nevada that is not accurately reproduced, the Description of Effect is affirmatively misleading to voters by creating the incorrect impression that the omitted language was never a part of the legislation.

The Description of Effect in this matter fails in each instance to accomplish the purposes for which its inclusion is required on the Referendum Petition. No Solar offered to revise the Description of Effect in its pleadings in the District Court. JA 0055. Indeed, counsel for No Solar expressly conceded at the hearing

in the District Court that the Description of Effect may have been deficient in describing the effects of approval of the Petition and, therefore, offered to rewrite the Description of Effect. JA 0216 to 0218. The Description of Effect included with this Referendum Petition fails to satisfy the requirements of NRS 295.009 and should be deemed invalid.

IX.

CONCLUSION

No Solar's Referendum fails to qualify as a referendum as it seeks to amend existing law rather than submit it for an up or down vote. Further, the Description of Effect is deficient under NRS 295.009. For these reasons, Energy Fairness respectfully requests that this Court uphold the order of the District Court, which invalidated No Solar's Referendum.

DATED this 6th day of June, 2016.

ALLISON MacKENZIE, LTD.
402 North Division Street
Carson City, NV 89703
(775) 687-0202

By: /s/ James R. Cavilia
JAMES R. CAVILIA, NSB 3921
jcavilia@allisonmackenzie.com
JUSTIN M. TOWNSEND, NSB 12293
jtownsend@allisonmackenzie.com

LEMONS, GRUNDY & EISENBERG
ROBERT L. EISENBERG, NSB 950
rle@lge.net
6005 Plumas St., 3rd Floor
Reno, NV 89519
(775) 786-6868

Attorneys for Respondent,
CITIZENS FOR SOLAR AND ENERGY FAIRNESS

CERTIFICATE OF COMPLIANCE (BASED UPON NRAP FORM 9)

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2007 in 14 point Times New Roman type style.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 9,423 words.

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

///

DATED this 6th day of June, 2016.

LEMONS, GRUNDY & EISENBERG	**ALLISON MacKENZIE, LTD.**
6005 Plumas St., 3rd Floor	402 North Division Street
Reno, NV 89519	Carson City, NV 89703
(775) 786-6868	(775) 687-0202

By: /s/ Robert L. Eisenberg
ROBERT L. EISENBERG, NSB 950
rle@lge.net

By: /s/ James R. Cavilia
JAMES R. CAVILIA, NSB 3921
jcavilia@allisonmackenzie.com
JUSTIN M. TOWNSEND, NSB 12293
jtownsend@allisonmackenzie.com

Attorneys for Respondent,
CITIZENS FOR SOLAR AND ENERGY FAIRNESS

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(1)(c), 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 on all parties as outlined below:

_✓_ Via Court's E-Flex Electronic Filing System:

as follows:

Lori Story, Esq.
Adam Laxalt, Esq.
Kevin Benson, Esq.

DATED this 6th day of June, 2016.

/s/ Nancy Fontenot
NANCY FONTENOT

4849-1164-6770, v. 1