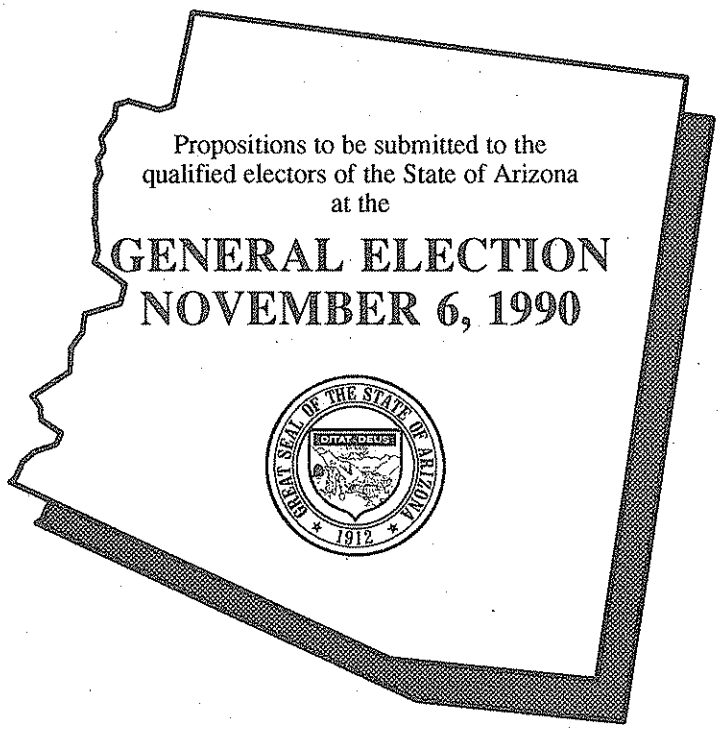
Addendum 2

Arizona

PUBLICITY PAMPHLET



Propositions to be submitted to the
qualified electors of the State of Arizona
at the

GENERAL ELECTION
NOVEMBER 6, 1990

Compiled and issued by

JIM SHUMWAY
Secretary of State

PROPOSITION 301 WILL NOT APPEAR ON THE GENERAL ELECTION BALLOT IF **PROPOSITION 302** DOES NOT QUALIFY, WITH SUFFICIENT VALID SIGNATURES, FOR THE BALLOT. PLEASE REVIEW THE SAMPLE BALLOT TO BE DELIVERED TO YOUR HOUSEHOLD BEFORE THE GENERAL ELECTION TO DETERMINE WHETHER OR NOT **PROPOSITION 301** WILL APPEAR ON THE BALLOT.

PROPOSITION 301

OFFICIAL TITLE

REFERENDUM ORDERED BY PETITION OF THE PEOPLE

ORDERING THE SUBMISSION TO THE PEOPLE OF AN ACT RELATING TO GENERAL PROVISIONS; PROVIDING THAT THE THIRD MONDAY IN JANUARY IS A LEGAL HOLIDAY KNOWN AS MARTIN LUTHER KING, JR. DAY, AND AMENDING SECTION 1–301, ARIZONA REVISED STATUTES.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 1–301, Arizona Revised Statutes, is amended to read:

1–301. Holidays enumerated

A. The following days shall be holidays:

1. Sunday of each week.
2. January 1, "New Year's Day".
3. THIRD MONDAY IN JANUARY, "MARTIN LUTHER KING, JR. DAY".
~~3.~~ 4. Second Monday in February, "Lincoln Day".
~~4.~~ 5. Third Monday in February, "Washington Day".
~~5.~~ 6. Second Sunday in May, "Mothers' Day".
~~6.~~ 7. Last Monday in May, "Memorial Day".
~~7.~~ 8. Third Sunday in June, "Fathers' Day".
~~8.~~ 9. July 4, "Independence Day".
~~9.~~ 10. First Sunday in August, "American Family Day".
~~10.~~ 11. First Monday in September, "Labor Day".
~~11.~~ 12. September 17, "Constitution Day".
~~12.~~ 13. Second ~~Monday~~ SUNDAY in October, "Columbus Day".
~~13.~~ 14. November 11, "Veterans' Day".
~~14.~~ 15. Fourth Thursday in November, "Thanksgiving Day".
~~15.~~ 16. December 25, "Christmas Day".

B. When any of the holidays enumerated in subsection A falls on a Sunday, the following Monday shall be observed as a holiday, with the exception of the holidays enumerated in subsection A, paragraphs 1, ~~5, 7, 9~~ 6, 8, 10, ~~and 11~~ 12 AND 13.

C. When any of the holidays enumerated in subsection A, paragraphs 2, ~~8, 13~~ 9, 14 and ~~15~~ 16 falls on a Saturday, the preceding Friday shall be observed as a holiday.

D. When the holiday enumerated in subsection A, paragraph ~~11~~ 12 falls on a day other than Sunday, the Sunday preceding September 17 shall be observed as such holiday.

ANALYSIS BY LEGISLATIVE COUNCIL

(In compliance with A.R.S. section 19–124)

This proposition establishes a Martin Luther King, Jr. paid state legal holiday and changes the Columbus Day holiday from a paid legal holiday to an unpaid legal holiday.

The next proposition, Proposition 302, deals with a Martin Luther King, Jr./Civil Rights Day holiday. In order to avoid the possible confusion between these two propositions and how they affect each other, the following vote combinations are suggested:

If you favor a:	**Proposition 301**	**Proposition 302**
1. Martin Luther King, Jr./ Civil Rights paid holiday and Columbus paid holiday	NO	YES
2. Martin Luther King, Jr. paid holiday but no Columbus paid holiday	YES	NO
3. Columbus paid holiday but no Martin Luther King, Jr. paid holiday	NO	NO

LEGISLATIVE COUNCIL ARGUMENTS FAVORING PROPOSITION 301

The passage of Proposition 301 would honor Martin Luther King, Jr. for his contributions to the civil rights movement and to the development of racial equality in this nation and this state.

A Martin Luther King, Jr. holiday would remind us on a yearly basis to honor all those persons who work to better our society.

The passage of Proposition 301 would not cost the state additional money because the number of paid holidays would remain the same. Columbus Day would become an unpaid holiday.

A Martin Luther King, Jr. holiday would benefit the state economically by encouraging businesses, visitors, conventioneers and special events to come to a state that recognizes the achievements of Martin Luther King, Jr.

All but two states in the nation have a Martin Luther King, Jr. holiday. Arizona will no longer be seen as a racist state if Proposition 301 is passed.

LEGISLATIVE COUNCIL ARGUMENTS OPPOSING PROPOSITION 301

Martin Luther King, Jr.'s life and work are too recent in our memory to know what his true place in history will be. We should wait at least another 25 years to see how history judges him before we honor him with a holiday.

Martin Luther King, Jr. was just one of many people involved in the civil rights movement. Instead of singling him out, the holiday should be for "civil rights" day or "equality" day to honor everyone involved in the civil rights movement.

The passage of Proposition 301 would make Columbus Day an unpaid holiday. This state has had a paid legal holiday honoring Columbus and his achievements for years. It is wrong to substitute this well–deserved and long standing holiday for a Martin Luther King, Jr. Day. All existing holidays should remain intact. Further, Proposition 301 fails to consider that this state already has an unpaid Sunday Martin Luther King, Jr. holiday by a governor's proclamation.

BALLOT FORMAT

PROPOSITION 301

REFERENDUM ORDERED BY PETITION OF THE PEOPLE

OFFICIAL TITLE

A REFERENDUM ORDERED BY PETITION OF THE PEOPLE ORDERING THE SUBMISSION TO THE PEOPLE OF AN ACT RELATING TO GENERAL PROVISIONS; PROVIDING THAT THE THIRD MONDY IN JANUARY IS A LEGAL HOLIDAY KNOWN AS MARTIN LUTHER KING, JR. DAY, AND AMENDING SECTION 1–301, ARIZONA REVISED STATUTES.

DESCRIPTIVE TITLE

ESTABLISHING THE MARTIN LUTHER KING, JR. PAID HOLIDAY ON THE THIRD MONDAY OF JANUARY AND REMOVING COLUMBUS DAY AS A PAID STATE HOLIDAY.

PROPOSITION 301

A "yes" vote shall have the effect of creating a paid state holiday known as Martin Luther King, Jr. Day and removing Columbus Day as a paid state holiday. — YES

A "no" vote shall have the effect of retaining the existing state paid holidays including Columbus Day but not enacting a paid Martin Luther King, Jr. holiday. — NO

THE SIGNATURES ON THE REFERENDUM PETITIONS SEEKING TO PUT **PROPOSITION 302** ON THE BALLOT HAD NOT BEEN CERTIFIED AT THE TIME OF THE PRINTING OF THIS PAMPHLET. PLEASE REVIEW THE SAMPLE BALLOT TO BE DELIVERED TO YOUR HOUSEHOLD BEFORE THE GENERAL ELECTION TO DETERMINE WHETHER OR NOT **PROPOSITION 302** HAS QUALIFIED FOR THE BALLOT.

PROPOSITION 302

OFFICIAL TITLE

REFERENDUM ORDERED BY PETITION OF THE PEOPLE

ORDERING THE SUBMISSION TO THE PEOPLE OF AN ACT RELATING TO GENERAL PROVISIONS; PROVIDING THAT THE THIRD MONDAY IN JANUARY IS A LEGAL HOLIDAY KNOWN AS MARTIN LUTHER KING, JR./CIVIL RIGHTS DAY; PRESERVING ALL OTHER HOLIDAYS AS THEY EXISTED BEFORE 1989; REPEALING 1989 HOLIDAY LEGISLATION WHICH ESTABLISHED MARTIN LUTHER KING, JR. DAY AND WHICH CHANGED COLUMBUS DAY FROM THE SECOND MONDAY TO THE SECOND SUNDAY IN OCTOBER; AMENDING SECTION 1–301, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1987, CHAPTER 6, SECTION 1, AND REPEALING SECTION 1–301, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1989, FIRST SPECIAL SESSION, CHAPTER 4, SECTION 1.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 1–301, Arizona Revised Statutes, as amended by Laws 1987, Chapter 6, Section 1, is amended to read:

1–301. Holidays enumerated

A. The following days shall be holidays:

1. Sunday of each week.
2. January 1, "New Year's Day".
3. THIRD MONDAY IN JANUARY, "MARTIN LUTHER KING, JR./CIVIL RIGHTS DAY".
~~3.~~ 4. Second Monday in February, "Lincoln Day".
~~4.~~ 5. Third Monday in February, "Washington Day".
~~5.~~ 6. Second Sunday in May, "Mothers' Day".
~~6.~~ 7. Last Monday in May, "Memorial Day".
~~7.~~ 8. Third Sunday in June, "Fathers' Day".
~~8.~~ 9. July 4, "Independence Day".
~~9.~~ 10. First Sunday in August, "American Family Day".
~~10.~~ 11. First Monday in September, "Labor Day".
~~11.~~ 12. September 17, "Constitution Day".
~~12.~~ 13. Second Monday in October, "Columbus Day".
~~13.~~ 14. November 11, "Veterans' Day".
~~14.~~ 15. Fourth Thursday in November, "Thanksgiving Day".
~~15.~~ 16. December 25, "Christmas Day".

B. When any of the holidays enumerated in subsection A falls on a Sunday, the following Monday shall be observed as a holiday, with the exception of the holidays enumerated in subsection A, paragraphs 1, ~~5,~~ 6, ~~7,~~ 8, 9 10, and ~~11~~ 12.

C. When any of the holidays enumerated in subsection A, paragraphs 2, ~~8,~~ 9, ~~13~~ 14 and ~~15~~ 16 falls on a Saturday, the preceding Friday shall be observed as a holiday.

D. When the holiday enumerated in subsection A, paragraph ~~11~~ 12 falls on a day other than Sunday, the Sunday preceding September 17 shall be observed as such holiday.

Section 2. Repeal

Section 1-301, Arizona Revised Statutes, as amended by Laws 1989, first special session, chapter 4, section 1, is repealed.

ANALYSIS BY LEGISLATIVE COUNCIL

(In compliance with A.R.S. section 19-124)

This proposition establishes a Martin Luther King, Jr./Civil Rights day paid state legal holiday. This proposition leaves Columbus Day as a paid holiday.

The previous proposition, proposition 301, deals with a Martin Luther King, Jr. holiday and the Columbus Day holiday. In order to avoid the possible confusion between these two propositions and how they affect each other, the following vote combinations are suggested:

If you favor a:	Proposition 301	Proposition 302
1. Martin Luther King, Jr./ Civil Rights paid holiday and Columbus paid holiday	NO	YES
2. Martin Luther King, Jr. paid holiday but no Columbus paid holiday	YES	NO
3. Columbus paid holiday but no Martin Luther King, Jr. paid holiday	NO	NO

LEGISLATIVE COUNCIL ARGUMENTS FAVORING PROPOSITION 302

The passage of Proposition 302 would honor Martin Luther King, Jr. for his contributions to the Civil Rights movement, and more importantly, would honor the Civil Rights movement itself and its goal of equality for all citizens regardless of race, creed or color. The passage of Proposition 302 would help heal the state's wounds by affirming that Arizona is a place where freedom and equality for all races are respected and revered.

The passage of Proposition 302 would benefit the state economically by encouraging businesses, visitors, conventioneers and special events to come to a state in which the achievements of Martin Luther King, Jr. and the Civil Rights movement are recognized with a paid state holiday.

A Martin Luther King, Jr./Civil Rights day holiday has a wide spectrum of support in this state. Passing Proposition 302 would put to rest the idea that Arizona is a racist state.

It is time for Arizona to establish a paid Martin Luther King, Jr./Civil Rights day holiday and joint the ranks of the federal government and the vast majority of states which have established holidays in Martin Luther King, Jr.'s honor.

LEGISLATIVE COUNCIL ARGUMENTS OPPOSING PROPOSITION 302

Martin Luther King, Jr.'s life and work are too recent in our memory to know what his true place in history will be. We should wait at least another 25 years to see how history judges him before we honor him with a holiday.

Martin Luther King, Jr. was just one of many people involved in the civil rights movement. Instead of singling him out, the holiday should be for "civil rights" day or "equality" day to honor everyone involved in the civil rights movement.

If Proposition 302 passes, state expenses would increase because the state would have to pay for an additional holiday that would only benefit state employees. State employees already have enough holidays.

Taxpayers would not get the day off and would end up paying for the extra holiday in terms of lost work by state employees.

This state already has an unpaid Sunday Martin Luther King, Jr. holiday by a governor's proclamation.

ARGUMENT "FOR" PROPOSITION 302

Dr. King was a drum major for justice, a giant whose life was a testament to the American ideal, that one man can make a difference.

In a sermon on the eve of his assassination, he surely described his own mission when he asked, "Who is it that is supposed to articulate the longings and aspirations of the people more than the preacher? Somehow the preacher must be Amos, and say, 'Let justice roll down like waters and righteousness like a mighty stream.'"

Martin Luther King Jr., did exactly that. He gave eloquent voice and powerful leadership to the long-cherished hopes of millions as he headed a crusade to end bigotry, segregation, and discrimination in our land; to foster equal opportunity, and to make universal America's promise of liberty and justice for all.

Dr. King's work is not done, but neither is his witness stilled. He urged again and again that all of us come to love and befriend one another, to live in brotherhood and reconciliation, to nourish each generation with the lessons of justice and charity that Dr. King taught with his unflinching determination, his complete confidence in the redeeming power of love, and his utter willingness to suffer, to sacrifice, and to serve.

We must and we can all be drum majors for justice. That is our duty and glory as Americans.

I hope that all Arizonans agree with me and join me in supporting a holiday to commemorate these ideals to which Dr. King dedicated his life.

RONALD REAGAN
Former President of the
United States

Martin Luther King Better America Committee; John Rhodes, Bruce Babbitt, Co-chairmen

Addendum 1

in an instance where there were more than one person in the district with the same surname.

For cases dealing generally with the accuracy with which names of candidates must be written in on the ballot, see:

People ex rel. Attorney General v. Tisdale, 1 Doug. 59;
People ex rel. Lake v. Higgins, 3 Mich. 233;
People ex rel. Williams v. Cicott, 16 Mich. 283;
Jochim v. Kennedy, 37 Mich. 67;
Tobey v. McNeal, 63 Mich. 294; and
Ott v. Brisette, 137 So. 17.

3. Section 7451 of the Compiled Laws of 1929 requires the secretary of the board of education to prepare and have the official ballots printed. The statute provides in part:

> "At the head of each ballot shall be printed the following words: 'For members of the board of education. Vote for .....(Here insert the member to be elected.)'"

Apparently the word "member" as used in the foregoing, should have been "number" and the printed instructions should, of course, have indicated the number of candidates to be voted for. However, this would appear to be an irregularity only, and would probably be insufficient to invalidate the election, as mistakes of the election officials should not be construed to deprive the electors of their votes, especially where such mistakes have not affected the result.

Abbott v. Board of Canvassers of Montcalm County, 172 Mich. 416;
Groesbeck v. Board of State Canvassers, 251 Mich. 286;
Attorney General ex rel. Miller v. Miller, 266 Mich. 127.

And see *People ex rel. Pellow v. Byrne*, 272 Mich. 284, which involved the validity of a school election where it was alleged that the notices of the same did not comply with the statute. Here it must be said that the electors were charged with notice of the number of persons to be elected to the office of trustee of the board of education for the term of three years.

The ballot furnished with your letter of inquiry is enclosed.

Very truly yours,
HERBERT J. RUSHTON,
Attorney General.

JAB:rb

REFERENDUM—Referendum can be submitted to electors on single sentences or parts of a public act.

July 30, 1941.

20573

HONORABLE JAMES B. STANLEY, *State Representative,*
610 National Bank Building,
Kalamazoo, Michigan.

DEAR MR. STANLEY:

You have requested an opinion on the question of the submission of a referendum on single sentences or parts of sections of an act. You specifically ask whether a referendum can be submitted to the electors on Section 1-a (b) of Chapter III of Act 356, Public Acts of 1941, which reads:

> "Bluegills and sunfish from the 25th day of June to the 31st day of December, provided that it shall be unlawful to take bluegills and sunfish through the ice or have in possession on the ice between the hours

of six o'clock in the evening and six o'clock in the morning, eastern standard time,"

and also, that portion of Section 6 of Chapter V which reads as follows:

"All commercial minnow and wiggler licenses issued under authority of this section shall be revocable at the pleasure of the director of conservation, and, if not sooner revoked, shall automatically expire on December 31 following the date of issue:"

Article V, Section 1, of the Constitution of Michigan provides in part as follows:

"Upon presentation to the secretary of state within ninety days after the final adjournment of the legislature, of a petition certified to as herein provided, as having been signed by qualified electors equal in number to five per cent of the total vote cast for all candidates for governor at the last election at which a governor was elected, asking that any act, section or part of any act of the legislature, be submitted to the electors for approval or rejection, the secretary of state, after canvassing such petition as above required, and the same is found to be signed by the requisite number of electors, shall submit to the electors for approval or rejection such act or section or part of any act at the next succeeding general election; and no such act shall go into effect until and unless approved by a majority of the qualified electors voting thereon."

With reference to that portion of Article V which reads as follows:

"asking that any act, section or part of any act of the legislature, be submitted to the electors for approval or rejection,"

it is our opinion that a referendum can be submitted to the electors on both of the questions referred to.

Very truly yours,
HERBERT J. RUSHTON,
Attorney General.

HWJ:ms

WELFARE—NOTICE OF SUPPORT—Where notice of support has been given and is acknowledged, no new notice need be given, unless intervening circumstances indicate change of settlement.

18867 August 1, 1941.

MR. MENSO R. BOLT,
Prosecuting Attorney,
Grand Rapids, Michigan.

Attention: Mr. Adrian W. Verspoor, Ass't. Prosecuting Attorney.

DEAR SIR:

This will acknowledge receipt of your letter of February 12, in which you state:

"The general poor laws of the state, in Section 8276 of the Compiled Laws of 1929, provide that a notice of support must be given to the county sought to be charged by the county granting relief.

"In many cases, after such notice has been given and the county sought to be charged acknowledges settlement of the individual named in such notice, and after relief has been given the individual for a period of time, such relief is discontinued by reason of the lack of necessity therefor.

"The individual may have been employed on W.P.A., or some other

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
Jun 23 2016 09:53 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

CASE NO. 70146

First Judicial Dist. Ct. 16 OC 00030 1B

APPELLANT'S REPLY BRIEF

KEVIN BENSON
White Hart Law
Nevada Bar No. 9970
2310 S. Carson Street #6
Carson City, Nevada 89701
(775) 461-3780
kbenson@whitehartlaw.com

Attorney for Appellant

NRAP 26.1 DISCLOSURE

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.

1. Appellant No Solar Tax PAC is a committee for political action ("PAC") registered with the Nevada Secretary of State. It has no parent corporation and has no stock issued.
2. Kevin Benson, Esq., Nevada Bar No. 9970, of White Hart Law, LLC, represents No Solar Tax PAC in this Court and also appeared for Solar in the district court.

TABLE OF CONTENTS

Statement of Facts

Solar disagrees with CSEF's statement of facts in many respects. Solar supported SB 374 because it would raise the cap on net metering, which would soon be reached. However, no one – not Solar, nor the thousands of customers who had already installed systems – anticipated at the time that the PUC would cut the rate and raise fees so drastically as to completely destroy the rooftop solar industry and put existing customers into "financial distress."[1] Obviously, had this been known at the time, Solar would not have supported SB 374.

Also, CSEF's statements that the Referendum would result in "no regulatory oversight" of net metering is misleading. *See* Answering Brief, p. 4. The Referendum simply removes the ability of the PUC to set the new rates and charges, which returns the net metering program to how it was before SB 374. *See* NRS 704.766 – 704.775; NAC 704.881 – 704.8825. The only difference is that the Referendum does not re-enact the cap that SB 374 repealed.

This does not mean that there will be a new wild west of net metering, as CSEF seems to suggest. CSEF is being disingenuous by suggesting that the Referendum somehow forever exempts net metering from any and all oversight.

---

[1] "There will absolutely be people who are put in financial distress." PUC Chairman Paul Thomsen, appearing on *Ralston Live*, 15:30m (3-17-2016). Available at: http://www.pbs.org/video/2365692428/ (Last visited May 1, 2016). The Court may take judicial notice of the existence of this quote. NRS 47.130.

ARGUMENT

The Referendum is a Valid Referendum Petition

In this Reply, Solar will first address two overarching issues: (1) the plain language and burden of proof; and (2) that the correct rule for determining the validity of a referendum petition is the plain language of the Nevada Constitution, not legislative intent. This Reply will then address each of CSEF's arguments in turn.

A. The Referendum is valid under the plain language of Nev. Const. Art. 19, § 1.

The Referendum complies with the plain language of the Nevada Constitution, and therefore it is a valid referendum. As discussed in the Opening Brief, Nev. Const. Art. 19, § 1 expressly permits referenda on a statute "or ***any part*** thereof." (Emphasis added.) The meaning of this language is plain and unambiguous. Thus there is no room for interpretation or construction. *Ex parte Rickey*, 31 Nev. 82, 100 P. 134, 141 (1909). Instead, the Court should simply apply the plain language of the Constitution and hold that the Referendum is a valid referendum petition.

In its answering brief, CSEF conspicuously avoids discussing the plain language of Nev. Const. Art. 19, § 1. Instead, it asks the Court to adopt a theory

that conflicts with this plain language and would drastically impair the people's constitutional right to referendum.

No court in the nation (save the district court in this case) has ever held that a referendum is invalid because it results in "amending" the statute, as CSEF urges here. Instead, the few authorities that address the issue have applied the plain meaning of "part" to uphold the validity of referenda like the one at issue here. 1989 Ariz. Op. Atty. Gen. 156 (Oct. 19, 1989); 32 Or. Op. Atty. Gen. 156 (March 16, 1965); Mich. Op. Atty. Gen. 1941-42, No. 20573, p. 266.[2]

Tellingly, CSEF would have this Court ignore this, and grapple with the question in the dark. *See* Answering Brief, p. 28. Instead, the Court should follow the guidance from other states and uphold the Referendum because it complies with the plain language of the constitution. To hold otherwise would render the words "or any part thereof" meaningless and superfluous. *See In re George J.*, 279 P.3d 187, 190 (Nev. 2012) (courts avoid a construction that renders the language meaningless or superfluous).

As the challenger to a petition, CSEF bears the burden of showing that the petition is "clearly invalid." *Educ. Init. v. Comm. to Protect Nev. Jobs*, 293 P.3d 874, 879 (Nev. 2013); *Las Vegas Taxpayers*, 125 Nev. at 176, 208 P.3d at 436. CSEF has not met this burden. The district court even stated that the issue was "not

[2] A copy is attached hereto as Addendum 1.

clear." (JA 223) But if it is "not clear," then CSEF has not met its burden under *Las Vegas Taxpayers*. Therefore it was error for the district court to invalidate the Referendum. The Referendum in this case compiles with the plain meaning of Nev. Const. Art. 19, § 1, therefore the decision of the district court must be reversed.

B. Legislative intent is irrelevant in determining whether a referendum is valid; the correct rule is the plain meaning of "any part thereof."

1. The right to referendum will be unconstitutionally restricted if the Legislature's intent in passing the statute is allowed to dictate the validity of the referendum petition.

Nev. Const. Art. 19, § 1 provides for referenda on a statute "or any part thereof." This is a right that is coequal, coextensive, and concurrent with the power of the Legislature. *Nevadans for the Prot. of Prop. Rights, Inc. v. Heller*, 122 Nev. 894, 914, 141 P.3d 1235, 1248 (2006). For this right to have substance, the people's right to repeal laws does not, and cannot, depend on the intent of the Legislature in passing the laws the people wish to repeal through the referendum. Otherwise, the people's right would be conditioned on the Legislature's intent. CSEF would have the Court adopt a position that would unconstitutionally grant the Legislature this authority.

According to CSEF, "The difference between a referendum and an initiative is whether voters are being asked to repeal a statute or amend one." Answering Brief, p. 8. More, specifically, CSEF's argument is that the Legislature would

never have repealed the cap on net metering, but for the authorization of the new rates and charges. *See* Answering Brief, p. 15. Thus, according to CSEF, the difference between "repealing" and "amending" a statute relates strictly to the intent of the Legislature in passing a bill. As CSEF's logic goes, because the Referendum would result in something the Legislature did not originally intend, the Referendum is invalid.

This argument must be rejected because a referendum, by definition, is a mechanism to reject all or part of something the Legislature intended. Nev. Const. Art. 19, § 1.

Consider the example from the Opening Brief, p. 24, where the Legislature enacts a law that provides: "Candidates shall not use campaign contributions for personal use, except that campaign contributions may be used to pay for rent or mortgage, clothing, college tuition or other educational expenses, and automobiles for the candidate, and his or her spouse and children, regardless of whether the same is related to the campaign or official duties of the candidate."

Suppose the legislative history is crystal clear that the Legislature would not have enacted the statute, but for the exceptions included. Under CSEF's theory, a referendum to strike all the exceptions is void, since this would be an "amendment." It is an "amendment" because the remaining law is something that

the Legislature would not have passed: a full prohibition on personal use of campaign contributions.

According to CSEF, the people would instead be forced to go through the absurd exercise of returning to the Legislature with an initiative petition (in exactly the same form as the referendum), and risk having the Legislature pass an alternative to compete with the measure on the ballot, all two years later than if the people could simply run a referendum.

This is contrary to the plain language of Nev. Const. Art. 19 § 1 which permits referenda on "any part" of a statute, exactly so that referenda can reach this type of situation. Adopting CSEF's position would dangerously restrict the referendum power so that it cannot perform its intended function as a check on the legislative power. The Oregon Attorney General spoke directly to this problem in 32 Or. Op. Atty. Gen. 156 (March 16, 1965). That opinion arose when the legislature overtly attempted to thwart a referendum on only a part of a worker's compensation bill. *Id.* The legislature attempted this by including a provision in the law that stated that if a partial referendum was filed, the entire bill must be submitted for approval or rejection. *Id.*

The Oregon Attorney General opined that this part of the law was invalid because it conflicted with the Oregon Constitution which, like Nevada's, authorizes referenda on a "part" of an act. *Id.* Additionally, the Oregon Attorney

General recognized that the people are "coordinate in legislative powers" and therefore "have power to delete by referendum any item, section or part of an Act which the legislature could itself have deleted in the legislative process." *Id.* In short, even though that opinion arose in a different context than this case, it demonstrates that the referendum power is equal to the legislative power, and must be so, if it is to serve its *raison d'etre* as a check on legislative power.

The Arizona Attorney General agreed: "The Legislature certainly has the power to adopt legislation which repeals only a part of a section of a statute and, therefore, so do the people." 1989 Ariz. Op. Atty. Gen. 156 (Oct. 19, 1989). "To conclude that the people may not repeal part of a section would mean that the people could not exercise their full right of referendum over a single section act. This is an absurd result which we conclude the framers of our constitution could not have intended." *Id.* (emphasis added).

The Arizona referendum would strike the part of the law that moved Columbus Day to a Sunday, while keeping the part that enacted Martin Luther King Jr. Day as a new paid state holiday, effectively "creating" an additional paid holiday.[3] *Id.* This is a clear example of a partial referendum that "amended" the law (to use CSEF's parlance) from what the Legislature originally intended. Yet it was a valid referendum because the Arizona Constitution permits referenda on

[3] A copy is attached as Addendum 2.

only a part of the law. *Id.* The Arizona Attorney General recognized that any other construction of the constitution would lead to restricting the referenda power more generally, which would lead to absurd results. *Id.*

2. Because the Nevada Constitution expressly permits a referendum on "any part" of a statute, severability is not a proper test for determining whether a referendum is valid.

CSEF also suggests that "any part thereof" should be read as allowing only "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." Answering Brief, p. 30.

This argument must also be rejected. Traditional severability analysis is rooted largely in legislative intent. *See Sierra Pac. Power v. State Dep't of Tax.*, 338 P.3d 1244, 1247 (Nev. 2014) (severability requires courts to determine if: (1) "the remainder of the statute, standing alone, can be given legal effect" and if so, (2) "whether preserving the remaining portion of the statute accords with legislative intent."). To apply that analysis to invalidate a referendum would perversely elevate legislative intent over a constitutional mechanism that is specifically designed to reject that legislative intent.

CSEF asserts that the instant Referendum is invalid because "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." Answering Brief, p. 30.

There are three major problems with this argument. First, whether the remainder of the statute, standing alone, can be given legal effect is not an appropriate pre-election challenge to a referendum. This does not go to the procedure or the subject matter of the petition, and therefore is not ripe pre-election. *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 883, 141 P.3d 1224, 1228 (2006). It would also deprive the voters and the government of the political utility of allowing a vote on the matter. *Greater Las Vegas Chamber of Commerce v. Del Papa*, 106 Nev. 910, 917, 802 P.2d 1280, 1282 (1990).

Second, CSEF's assertion that this Referendum "creates a new net metering law" is a reiteration of its argument that the Legislature would not have repealed the cap, but for the authority of the PUC to set the new rates and charges. As explained above, this cannot be the law, because allowing the Legislature's intent to control the validity of a referendum would render the right to referendum virtually meaningless.

Third, the theory fails as applied to this Referendum in any event. CSEF's assertion that, if the Referendum succeeds, "the law is not capable of standing on its own in a logical way" is simply false. While CSEF asserts that there would somehow be "ambiguity," it never explains what that ambiguity is – because there

is none. Indeed, CSEF itself had no trouble whatsoever perceiving exactly how the law would operate, and even how the language would end up. *See* Answering Brief, pp. 11-12. Clearly the law is capable of standing on its own and would operate in a logical way. CSEF just disagrees with the *policy* that net metering would be restored, but without re-enacting the 3% cap.

3. Applying the plain language of Nev Const. Art. 19, § 1 safeguards the people's right to referendum.

To safeguard the people's right to referendum, that right cannot be restricted to only those cases where the result is within the realm of what the Legislature originally intended. That would eviscerate the referendum process because it would be unable to reach cases where the Legislature clearly intended the most objectionable part, and would not have enacted the law without it. It would make the words "or part thereof" meaningless in many cases.

The better rule is that followed by other states: simply apply the plain language of the constitution. As discussed in the Opening Brief, p. 24-26, the plain language of Nev. Const. Art. 19, § 1 provides a clear and bright-line rule that is easy to understand and apply, for both courts and petition proponents. If a referendum petition seeks only to repeal a statute or any part thereof, it is a valid referendum petition.

CSEF's position would cause litigation in virtually every case involving a referendum that does not repeal an entire statute, because there would always be

room to argue over what the Legislature intended or whether the referendum is really an "amendment" or "substantial change" not. It would give no guidance to courts or to petition proponents as to when a partial referendum is valid. It would also make the words "**any** part thereof" meaningless.

Save the district court in this case, no other court in the nation has ever held a referendum to be invalid based on the theory CSEF now urges this Court to adopt. This Court should reject CSEF's theory, and should instead follow the guidance from Arizona, Oregon, and Michigan and apply the plain language of the constitution to uphold the right to a referendum on any part of a statute. Under the plain language of Nev. Const. Art. 19, § 1, the Referendum is valid and the district court should be reversed.

C. None of CSEF's other arguments are sufficient to overcome the plain language of the Nevada Constitution and restrict the right to referendum.

1. It is the people's right and prerogative to take the shortest path to the ballot box.

CSEF first attempts to paint this Referendum as somehow improper because Solar seeks to have the matter put in front of voters at the 2016 election, instead of the 2018 election. Answering Brief, p. 10. They argue that Solar is trying to avoid going through what even CSEF acknowledges is the longer, more expensive, and riskier initiative process. Answering Brief, p. 10, JA 23.

Unless there truly is a clear violation of the Nevada Constitution, there is no reason to force petitioners to take a longer, more difficult path. This is because the people, not the Legislature, are the ultimate sovereign. *We People Nevada ex rel. Angle v. Miller*, 124 Nev. 874, 887, 192 P.3d 1166, 1174, n. 39 (2008). It is the people's right and prerogative to bypass the Legislature by disapproving any part of a law they disagree with. *See id.*; Nev. Const. Art. 19, § 1. As discussed in the Opening Brief, p. 21, all referenda change policy to some degree by repealing, either in part or in whole, an act of the Legislature. That is the very nature and purpose of every referendum petition.

CSEF ignores the people's express rights under the Nevada Constitution and tries to delay and obstruct the voters from repealing the unpopular part of the law.

2. A referendum may repeal "any part" of a statute, including sentences or phrases within a section of a statute.

CSEF's second argument is that the Referendum attempts to repeal only certain clauses within Section 2.3 and Section 2.95 of SB 374, and therefore this demonstrates that the Referendum seeks to "amend" the law. Answering Brief, pp. 10-13.

This argument must be rejected because it attempts to elevate the form of the statute over its substance. It is plain that all the phrases that the Referendum attempts to repeal are related to a singular concept (or "part") of the law: the

authority to impose new rates and charges on net metering customers. It is this substance that matters, not how the statute was drafted.

A "part" of a statute can refer to something that is merely mechanical, like a section or a sentence. But the words "any part" can also refer to an idea, policy, or objective - regardless of how that idea, policy, or objective is mechanically drafted into the statute.

Had the unpopular part of SB 374 (the new rates and charges) been neatly encapsulated into a single section of the statute, it could easily have been removed by referring only that one section. However, the language referring to the rates and charges happens to be scattered throughout the statute. The Referendum carefully excises the objectionable part of the law. That it must do so by removing certain phrases or subsections is immaterial. To call this Referendum "surgical" is to praise it. By using the phrase "a statute … or *any part* thereof," the Nevada Constitution permits the use of a scalpel, not just a cleaver. Nev. Const. Art. 19, § 1 (emphasis added).

According to CSEF, the fact that the objectionable parts are scattered throughout the statute is, by itself, sufficient to defeat the right to a referendum on the objectionable part (the new rates and charges). The absurdity of this position is demonstrated by the trifling concerns CSEF raises.

For example, CSEF argues that the Referendum would result in a section that does not start with a capitalized letter, contains a "grammatically incorrect comma," and has only one subsection. Answering Brief, p. 12.

According to CSEF, the fact that a partial referendum would result in a statute with an "ungrammatical comma" or incorrect capitalization is sufficient to render the referendum completely invalid. But capitalization, section numbers, etc., are all issues the Legislative Counsel Bureau is both authorized and directed to address when it codifies statutes. NRS 220.120(5). Thus none of these "problems" will make it into the statute books in any event. These types of minor issues are insufficient to defeat a constitutional right.

3. <u>There is no requirement to include in the Referendum language that was deleted by the Legislature.</u>

Next, CSEF argues that the Referendum is invalid because it does not include the portions of the law that Senate Bill 374 repealed. Answering Brief, p. 14.

However, there is no requirement that the Referendum include language the Legislature repealed. Yet CSEF argues: "Solar does not attempt to address this, because to do so would unequivocally make this Referendum an initiative (amendment of statute)." Answering Brief, p. 14.

CSEF's position would create a catch-22 for petitioners. CSEF's theory would make it impossible to run a referendum on a statute if the Legislature has

repealed part of that statute. According to CSEF, the petitioner must include the repealed language in the petition, to avoid confusion and ambiguity, yet by doing so, transforms the petition into an initiative. Answering Brief, p. 14. This is an absurd outcome and cannot be the law.

It appears that CSEF is conflating this argument with its Description of Effect argument regarding the supposed cost shift that will allegedly result by having no cap on net metering. Answering Brief, p. 14. That argument is addressed in Part II of this brief.

4. There is no conflict between the referendum and initiative sections of Article 19 of the Nevada Constitution.

CSEF next tries to manufacture a conflict between Section 1 and Section 2 of the Nevada Constitution, where in fact no conflict exists. It argues: "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*." Answering Brief, p. 17.

This argument should be rejected because CSEF's theory violates the statutory construction tenets it purports to apply: that constitutional provisions should be harmonized to avoid conflict whenever possible. *Lorton v. Jones*, 322 P.3d 1051, 1058 (Nev. 2014). Ironically, adopting CSEF's position would cause the initiative to "intrude [into] or replace" the referendum process, in exactly the same way CSEF argues is not permissible.

Through the initiative process, it is possible to do three things: add entirely new language, change existing language, or repeal language. A referendum can only repeal all or part of a statute. *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 892, 141 P.3d 1224, 1234 (2006). Thus when it comes to repealing language, there is obvious and intentional overlap between initiatives and referenda: both can be used to repeal a law or part of a law. But the fact that there is overlap does not mean that there is a conflict.

As this Court explained in *DeStefano v. Berkus*, 121 Nev. 627, 629-30, 119 P.3d 1238, 1240 (2005), two laws can apply to the same subject, without being in conflict. In such cases, courts attempt to construe the statutes harmoniously whenever possible, to avoid a conflict. *Id.*

CSEF is attempting to stretch the word "amend" in the initiative process to include all referenda that result in something the Legislature did not intend. But there are no such limits anywhere in Article 19. Both referenda and initiatives are *presumed* to change the law if successful. Thus, whether a "change" occurs is not the correct test to distinguish between the two. The Arizona referendum, for example, would clearly change the law to "create" an extra paid holiday. 1989 Ariz. Op. Atty. Gen. 156 (Oct. 19, 1989). But that did not make it an initiative petition. *Id.*

Contrary to CSEF's assertion, the people *are* free to choose between a referendum and an initiative if they only seek to repeal all or part of a law. Either type of petition is permissible under the plain language of Article 19. We do not bar voters from pursuing a constitutional initiative petition if we believe a "better" route is through a statutory change, or vice-versa. The voters are free to choose the method they prefer. The same holds true in this case.

Nor is there any danger whatsoever that the initiative process will become obsolete if the Court upholds this Referendum. The initiative process offers much more flexibility to change the language of a statute, and is obviously much more powerful. The referendum process, by contrast can only operate on existing law and it can only repeal language. Given these substantial limitations, the referendum process is simply not capable of making the initiative process obsolete or meaningless.

Finally, it is critical that the right to referendum is not restricted as CSEF urges, to ensure that it can function as a meaningful check on the legislative power. Accordingly, CSEF's argument that this Referendum conflicts with the initiative must be rejected.

5. There is no legislative history that shows that the words "any part thereof" do not mean what they say.

CSEF next resorts to the "legislative history" of Article 19 to try to avoid the plain meaning of the Constitution. This argument fails because it violates several tenets of statutory construction.

As an initial matter, when the words of the constitution are plain and unambiguous, there is no room for construction, and it is not appropriate to consult legislative history. *Williams v. United Parcel Servs.*, 302 P.3d 1144, 1147 (Nev. 2013). The words "or any part thereof" are not ambiguous, so the Court should not even be considering legislative history in this case.

CSEF argues that prior to 1962, Article 19 did not allow referenda on a part of a statute, and the summary of the 1962 amendment stated that no substantial change was intended to Article 19, except for in the method of amending the constitution. Answering Brief, p. 25.

The 1962 amendment made a seismic change to the process of amending the Nevada Constitution through the initiative process: instead of the initiative going to the Legislature for approval, it now bypasses the Legislature entirely, but must be approved by the voters in two sequential elections. Question No. 2 (1962). Thus the explanation of the amendment focused on that particular change.

However, the 1962 amendment made two substantial changes to the referendum process. The first was to add the words at issue here: that "any part" of

a statute could be repealed by referendum. The second was that the threshold for approval or repeal of a statute was changed from a majority of voters voting *in the election* to a majority of voters voting *on the question*. This had the practical effect of making it much easier to repeal or approve a statute through the referendum process. Accordingly, the 1962 changes actually did make substantial changes to the referendum process. That fact cannot be negated because the Secretary of State happened to focus on the change to the constitutional initiative instead.

As CSEF acknowledges, the 1962 history is silent on the question of what "any part thereof" means. Answering Brief, p. 26. To overcome the plain meaning, there must be something more than silence on the issue in the legislative history. We also presume that the amendment created a change in the law. *Pub. Employees' Benefits Program v. Las Vegas Metro. Police Dep't*, 124 Nev. 138, 156, 179 P.3d 542, 554 (2008). Thus CSEF cannot meet its burden of showing that the plain meaning of "any part thereof" was "clearly *not* intended." *In re Contrevo*, 123 Nev. 20, 23, 153 P.3d 652, 653 (2007) (emphasis added).

Finally, all of the 1962 amendments gave more power to the voters, and less power to the Legislature. It would be inconsistent with the whole approach of the 1962 amendments to construe "any part thereof" in any way other than its plain meaning.

D. Conclusion: the Referendum is valid because it complies with the plain language of Nev. Const. Art. 19, § 1.

CSEF urges this Court to ignore the plain language of the Nevada Constitution and adopt an unprecedented rule that would greatly restrict the ability of the referendum to act as an effective check on legislative power. The correct rule is that applied in other states, which is to simply apply the plain meaning of the constitution which allows a referendum on a "statute … or **any part** thereof." Nev. Const. Art. 19, § 1. Under the correct rule, this Referendum is valid and the district court's decision must be reversed.

The Description of Effect is valid

A. There is no requirement for the Description of Effect to describe a change to the law made by the Legislature.

CSEF's first argument appears to be essentially a reiteration of its argument that the Referendum is in fact an initiative. It argues: "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." Answering Brief, p. 34.

Actually, the Referendum *is* simply about disapproving the new rates and charges. That is what the Referendum would do, and that is accurately described in the Description of Effect.

CSEF contends: "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."

In essence, CSEF is arguing that the DOE must also describe how the *Legislature* (not the Referendum) changed the law when the Legislature repealed the cap on net metering. However, there is no requirement in NRS 295.009 or elsewhere that requires the description of effect to describe something the Legislature did. NRS 295.009 only requires the Description of Effect to state what the Referendum itself does.

The Description of Effect is valid because, contrary to CSEF's arguments, there is no requirement to describe the "effect" of "keep[ing] intact the Legislature's repeal of the net metering cap." Really, the substance of CSEF's argument is that repealing the new rates and charged, combined with the lack of a cap on net metering, will cause an alleged cost shift from solar customers to non-solar customers. That contention is addressed next.

B. The Description of Effect need not include effects that are speculative or hypothetical.

This Court recently clarified how a petition's description of effect should be analyzed. *Educ. Init. v. Comm. to Protect Nev. Jobs*, 129 Nev. Adv. Op. 5, 293

P.3d 874, 879 (2013). First, this Court reiterated that the opponent of a ballot measure bears the burden of showing that the petition does not meet the standard and is "clearly invalid." *Id.*; *Las Vegas Taxpayer Comm. v. City Council*, 125 Nev. 165, 176, 208 P.3d 429, 436 (2009). To meet this standard, the opponent must do more than simply "identify some perceived effect of [the petition] that is not explained by the description of effect" because this would "block the people's right to the [petition] process." *Education Initiative*, 293 P.3d at 882.

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

CSEF argues that the PUC found that, unless it imposed the new rates and charges, there would be a cost shift from non-NEM customers to NEM customers of $640 million over the next 40 years. Answering Brief, p. 36. It argues that,

without the cap on net metering systems, the cost shift will "grow exponentially." *Id.* at pp. 36-37. CSEF's sole support for its arguments is the December 2015 and February 2016 orders of the PUC in which it enacted the new rates and charges.[4] But as discussed below, simply pointing to these orders fails to meet CSEF's burden of proving that the Description of Effect is "clearly invalid."

The PUC determined that there is currently a cost shift from non-NEM customers to NEM customers of approximately $16 million per year. PUC February Order, ¶ 263.[5] The $640 million comes from simply multiplying that number by 40 years. *Id.* That looks like a large cost shift, but that figure is misleading. The PUC itself did not find that there would be such a cost shift, and doubted whether a net metering system is even viable that long. *Id.* Furthermore, such a conclusion presumes: (1) that a cost shift exists in the first place, and (2) that nothing will change in energy generation, costs or rates over the next *forty* years, a proposition that is, at its very best, speculative and hypothetical.

The PUC's determination that there is currently a cost shift is based entirely on the Marginal Cost of Service Study ("MCSS") prepared by the utility. Virtually all parties to the PUC proceedings pointed out that the study was flawed. Specifically, the Attorney General's Bureau of Consumer Protection asserted that

[4] The PUC's decisions are currently being appealed and could be reversed.
[5] Available at: http://pucweb1.state.nv.us/PDF/AxImages/DOCKETS_2015_THRU_PRESENT/2015-7/9690.pdf (Last visited: June 12, 2016).

the PUC's December 23, 2015 order "incorrectly concludes that there is an unreasonable cost shift, since **this alleged cost shift is based solely on the data presented in the flawed MCSS**." PUC February Order, ¶ 23 (emphasis added). The BCP also noted that the MCSS failed to account for the benefits of solar. *Id.*

Even the PUC's own staff stated that the study was flawed, and urged the Commission not to rely on it. PUC December Order, ¶ 32. Ignoring its staff and the Bureau of Consumer Protection, the PUC expressly refused to consider 9 of the 11 factors for valuing the electricity produced by net metering customers, simply because, it said, there wasn't sufficient time or data to do so in that proceeding. PUC December Order, ¶ 194. The PUC suggested that it might consider all the 11 factors later, in a general rate case, recognizing the impact they were likely to have. *Id.* Recently, the Brookings Institute found that there is no cost shift and that in fact net metering produces a net benefit for all electric customers.[6]

As this Court has repeatedly held, the burden of proof is on the plaintiff to demonstrate that the description of effect is "clearly invalid." *Education Initiative*, 293 P.3d at 882; *Las Vegas Taxpayers*, 125 Nev. at 184, 208 P.3d at 441. CSEF

[6] *See* "Rooftop solar: Net metering is a net benefit," available at: http://www.brookings.edu/research/papers/2016/05/23-rooftop-solar-net-metering-muro-saha (Last visited: June 12, 2016). Solar recognizes that this Court is not the appropriate venue to litigate the factual question of whether any cost shifts result from rooftop solar. Instead, Solar requests the Court to take judicial notice of the study for the more limited purpose of showing that, contrary to CSEF's claims, it is far from settled that there is in fact any cost shift at all.

has not met that burden here, and cannot meet it by simply pointing to the PUC's decision, because the decision itself shows that it is speculative whether any cost-shift exists currently, let alone that one will exist in the future if the Referendum succeeds. The parties to the proceeding, including the BCP and the PUC's own staff, pointed out that the study that formed the basis for the PUC's finding that there was a cost shift was flawed, and urged the PUC not to rely on it. Yet the PUC ignored them. Thus the PUC's conclusion that there is any significant cost shift is itself speculative and hypothetical.

As this Court observed in *Education Initiative*, the description of effect does not go on the ballot; rather, its purpose is limited to gathering signatures. 293 P.3d at 880. If the measure qualifies for the ballot, the voters will receive a neutral explanation written by the Secretary of State, as well as arguments for and against the measure. *Id.* at 881; NRS 293.252. CSEF is free to include whatever arguments about cost shifts that it can factually support in its arguments against the Referendum. It is not, however, entitled to force Solar to include inaccurate, speculative, or hypothetical effects in the Description of Effect.

C. The Description of Effect accurately describes approval or disapproval of the statute.

CSEF also argues that the DOE is inadequate because it does not describe the effect if the Referendum is "approved" by the voters. Answering Brief, pp. 34-35. CSEF argues that "approval" *of the referendum* is the same thing as approving

the statute, and therefore the Description of Effect is invalid because it does not state that, if the statute is approved, it cannot be amended by the Legislature without a direct vote of the people, pursuant to Nev. Const. Art. 19, § 1(3). Answering Brief, p. 35. This argument is incorrect and would lead to absurd results.

NRS 295.009 states in relevant part:

> 1. Each petition for initiative or referendum must:
> …
> (b) Set forth, in not more than 200 words, a description **of the effect of the** initiative or **referendum if the** initiative or **referendum is approved by the voters**. The description must appear on each signature page of the petition.

NRS 295.009(1)(b) (emphasis added).

If "approving the referendum" means the same thing as "approving the statute," then all NRS 295.009 requires is that the description of effect simply recite Nev. Const. Art. 19, § 1(3), which says that the statute cannot be amended by the Legislature without a vote of the people. Solar would have no obligation whatsoever to describe what happens if the voters *repeal* the parts of the statute subject to the Referendum. That is because there is nothing in NRS 295.009 requiring the description of effect to describe what happens if the referendum is *disapproved*, which under CSEF's theory would mean that the statute or part thereof is repealed. This cannot be what the Legislature intended.

It is apparent that the policy, purpose, and intent of NRS 295.009 is that the description of effect must describe how the petition would *change* the law from its current state. When a statute is approved by referendum, the *only* thing that changes is that the statute can no longer be amended by the Legislature without a vote of the people. The law itself stays the same. This is the opposite of an initiative, where approving the initiative enacts new law. However, NRS 295.009 lumps them both together.

This statute is the only place in Nevada law that speaks of "approving" the *referendum*, as opposed to approving the *statute*. *See e.g.* Nev. Const. Art. 19, § 1(3) ("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…") (emphasis added). The question that will actually appear on the ballot is whether the *statute* should be approved. NRS 295.045(3).

In short, this is simply a drafting error. NRS 295.009 does not require a referendum's description of effect to recite procedural provisions that apply to all referenda. Likewise, there is no requirement that the description of effect for an

initiative state that the Legislature cannot amend or set aside the law for three years after it is enacted. *See* Nev. Const. Art. 19, § 2(3).[7]

Finally, CSEF's assertions that counsel for Solar conceded the Description of Effect was inadequate are false. Counsel argued that NRS 295.009's language is ambiguous, for the reasons discussed above. *Id.* Counsel merely expressed that, because of the ambiguity, if the district court felt it was necessary to include a description of *approving the statute*, then Solar would be willing to do so, even though it felt it was unnecessary, was not the intent of the statute, and would be a waste of some of the 200 words allowed. JA 218, ll. 2-7. The point was simply that Solar viewed this as a trifling issue that it would be willing to comply with, even though it felt it was unnecessary, in the interest of ending the litigation and moving forward with its Referendum.

D. Repealing a statute or part thereof through a referendum does not "lock in" those changes.

Finally, CSEF is mistaken regarding the effect of repealing statutes through the referendum process generally. CSEF argues that if the Referendum succeeds in repealing the part of SB 374 allowing for the new rates and charges, then "non-net

[7] Nor is it "impractical" to allow a referendum on certain words or phrases in a statute because, if the provisions are approved, they cannot be amended by the Legislature in the future. Answering Brief, p. 17. The numerous changes made to the Sales and Use Tax Act of 1955 demonstrate that the Legislature and the people are perfectly capable of dealing with this situation. *See e.g.*, Question 8 (1970), which amended only certain words and phrases.

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**." Answering Brief, p. 35 (bold emphasis added).

This statement is wrong on several levels, as discussed above. But most basically, it is legally incorrect. *Repealing* a statute through the referendum does not prevent the Legislature from reenacting the statute, or other, similar statutes. *See* Nev. Const. Art. 19, § 1. It is only *approving* the statute that prevents the Legislature from amending or repealing it, or making it inoperable. Nev. Const. Art. 19, § 1(3).

Accordingly, all of CSEF's arguments that this Referendum will somehow "lock in" or "ensure" a supposed subsidy (*see* Answering Brief, pp. 35-36) should be rejected, because that is simply not the case, as a matter of law.

/ / / /

/ / / /

/ / / /

/ / / /

/ / / /

/ / / /

/ / / /

CONCLUSION

For the foregoing reasons, the Referendum is a valid referendum petition in all respects. Solar respectfully requests this Court to REVERSE the decision of the district court.

DATED this 22nd day of June, 2016.

WHITE HART LAW, LLC

By: /s/ *Kevin Benson*
KEVIN BENSON, ESQ.
Nevada Bar No. 9970
2310 S. Carson Street #6
Carson City, NV 89701
Telephone: (775) 461-3780
Email: kbenson@whitehartlaw.com
Attorneys for Appellant

CERTIFICATE OF COMPLIANCE

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). This brief has been prepared in a proportionally space typeface using Word 2013 in 14 font size and in Times New Roman.

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 does not exceed 6,994 words.

3. Finally, I hereby certify that I have read this appellate 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 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 22nd day of June, 2016.

WHITE HART LAW, LLC

By: /s/ *Kevin Benson*
KEVIN BENSON, ESQ.
Nevada Bar No. 9970
2310 S. Carson Street #6
Carson City, NV 89701
Telephone: (775) 461-3780
Email: kbenson@whitehartlaw.com
Attorneys for Appellant

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(d), I declare that I am an employee of White Hart Law, LLC and on this 22nd day of June, 2016, I served a copy of the foregoing Appellant No Solar Tax PAC's Reply Brief by Nevada Supreme Court CM/ECF Electronic Filing to:

James R. Cavilia, Esq.
Allison MacKenzie, Ltd.
402 N. Division Street
Carson City, NV 89703
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