

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

RUBY DUNCAN, an individual; RABBI  
MEL HECHT, an individual; *et al.*,

Appellants,

vs.

THE STATE OF NEVADA OFFICE OF  
THE STATE TREASURER; THE STATE  
OF NEVADA DEPARTMENT OF  
EDUCATION; *et al.*,

Respondents,

and

AIMEE HAIRR, an individual, *et al.*,

Respondent-Intervenors.

Supreme Court Case No. 70648

District Court No. A-15-723703-C  
Electronically Filed  
Jun 29 2016 04:02 p.m.

Tracie K. Lindeman  
Clerk of Supreme Court

**RESPONDENT-INTERVENORS  
MOTION TO CORRECT PARTY  
INFORMATION**

MATTHEW T. DUSHOFF, ESQ.  
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LISA J. ZASTROW, ESQ.  
Nevada Bar No. 009727  
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\*Admitted *Pro Hac Vice* below;  
applications forthcoming

*Attorneys for Respondent-Intervenors.*

**RESPONDENT-INTERVENORS' MOTION TO CORRECT PARTY  
INFORMATION**

**Memorandum of Points and Authorities**

Respondent-Intervenors, Aimee Hairr, Aurora Espinoza, Elizabeth Robbins, Lara Allen, Jeffrey Smith, and Trina Smith (“Respondent-Intervenors”), hereby request the Clerk of the Nevada Supreme Court correct C-Track, the Court’s Appellate Case Management System in order to accurately reflect the names and addresses of trial counsel for Respondent-Intervenors.

On December 3, 2015, a Notice of Substitution of Counsel for Intervenor Defendants was filed with the Eighth Judicial District Court by Kolesar & Leatham (see attached, **Exhibit 1**). At that time, Matthew T. Dushoff, Esq. and Lisa J. Zastrow, Esq. of the law firm of Kolesar & Leatham substituted in as counsel for Respondent-Intervenors in place of Mark A. Hutchison, Esq., Jacob A. Reynolds, Esq. and Robert T. Stewart, Esq. of Hutchison & Steffen, LLC. Item 3 of Appellants’ Case Appeal Statement as filed in the Eighth Judicial District Court on June 17, 2016 erroneously lists Hutchison & Steffen, LLC as trial counsel for Respondent-Intervenors in addition to Respondent-Intervenors’ actual trial counsel Kolesar & Leatham and the Institute for Justice (see attached, **Exhibit 2**).

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## Conclusion

Respondent-Intervenors' Notice of Substitution of Counsel was filed December 3, 2015 evidencing a change of local counsel for Respondent-Intervenors. Therefore, Respondent-Intervenors respectfully request that this Court update C-Track and the Court's E-Service system to reflect that Hutchison & Steffen, LLC is no longer counsel for Respondent-Intervenors.

Respectfully submitted this 29th day of June, 2016 by:

### **KOLESAR & LEATHAM**

*/s/ Matthew T. Dushoff, Esq.* \_\_\_\_\_

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-and-

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applications forthcoming  
*Attorneys for Respondent-Intervenors*

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of Kolesar & Leatham, and that on the 29<sup>th</sup> day of June, 2016, I caused to be served a true and correct copy of the foregoing **Respondent-Intervenors' Motion to Correct Party Information** with the Clerk of the Court for the Nevada Supreme Court by using the appellate CM/ECF system.

The following participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

**Attorney General of the State of Nevada**

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Joseph Tartakovsky  
Ketan D. Bhirud  
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*Attorneys for Respondents*

**American Civil Liberties Union of Nevada**

Amy Rose, Esq.  
rose@aclunv.org  
*Attorneys for Appellants*

I further certify and affirm that I caused this document to be deposited via

USPS first class mail, the following parties:

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*Attorneys for Appellants*

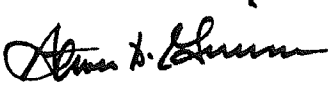
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*Attorneys for Appellants*

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*/s/ Kristina R. Cole*  
\_\_\_\_\_  
An Employee of KOLESAR & LEATHAM

# **EXHIBIT 1**

# **EXHIBIT 1**

  
CLERK OF THE COURT

1 MATTHEW T. DUSHOFF, ESQ.  
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2 LISA J. ZASTROW, ESQ.  
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\*Admitted *Pro Hac Vice*

*Attorneys for Intervenor Defendants*

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DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*

18 RUBY DUNCAN, an individual; RABBI MEL  
HECHT, an individual; LEORA OLIVAS, an  
19 individual; ADAM BERGER, an individual,

20 Plaintiffs,

21 vs.

22 STATE OF NEVADA *ex rel.*, THE OFFICE  
OF THE STATE TREASURER OF NEVADA  
23 AND THE DEPARTMENT OF EDUCATION;  
DAN SCHWARTZ, NEVADA STATE  
24 TREASURER, in his official capacity; STEVE  
CANAVERO, INTERIM SUPERINTENDENT  
25 OF PUBLIC INSTRUCTION, in his official  
capacity,

26 Defendants.  
27  
28

CASE NO. A-15-723703-C  
DEPT NO. XX

**NOTICE OF SUBSTITUTION OF  
COUNSEL FOR INTERVENOR  
DEFENDANTS**



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and  
AIMEE HAIRR; AURORA ESPINOZA;  
ELIZABETH ROBBINS; LARA ALLEN;  
JEFFREY SMITH; and TRINA SMITH,  
Parent Intervenors.

NOTICE IS HEREBY GIVEN that Matthew T. Dushoff, Esq. and Lisa J. Zastrow, Esq., of Kolesar & Leatham are substituted in as co-counsel of record for Intervenor Defendants Aimee Hairr, Aurora Espinoza, Elizabeth Robbins, Lara Allen, Jeffrey Smith, and Trina Smith in the above-captioned matter. Mr. Dushoff and Ms. Zastrow of Kolesar & Leatham are being substituted in place of Mark A. Hutchison, Esq., Jacob A. Reynolds, Esq., and Robert T. Stewart, Esq. of Hutchison & Steffen, LLC. Intervenor Defendants Aimee Hairr, Aurora Espinoza, Elizabeth Robbins, Lara Allen, Jeffrey Smith, and Trina Smith have consented to this substitution, as indicated by the signatures below.

Please direct all future pleadings, orders and any other materials related to this case to the following:

Matthew T. Dushoff, Esq.  
Lisa J. Zastrow, Esq.  
Kolesar & Leatham  
400 S. Rampart Blvd., Suite 400  
Las Vegas, NV 89145  
Telephone: (702) 362-7800 • Facsimile: (702) 362-9472  
E-Mail: [mdushoff@klnevada.com](mailto:mdushoff@klnevada.com); [lzastrow@klnevada.com](mailto:lzastrow@klnevada.com)

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NOTICE IS FURTHER GIVEN that Timothy D. Keller, Esq. and Keith E. Diggs, Esq. of Institute for Justice, will remain as co-counsel for Intervenor Defendants Aimee Hairr, Aurora Espinoza, Elizabeth Robbins. Lara Allen, Jeffrey Smith, and Trina Smith.

DATED this \_\_\_\_ day of November, 2015.

HUTCHISON & STEFFEN

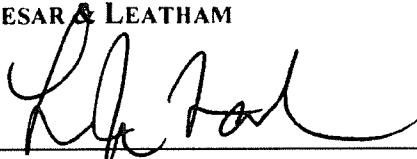
By: \_\_\_\_\_

JACOB A. REYNOLDS, ESQ.  
Nevada Bar No. 010199  
ROBERT T. STEWART, ESQ.  
Nevada Bar No. 013770  
10080 West Alta Drive, Suite 200  
Las Vegas, Nevada 89145

DATED this 12 day of November, 2015.

KOLESAR & LEATHAM

By: \_\_\_\_\_



MATTHEW T. DUSHOFF, ESQ.  
Nevada Bar No. 004975  
LISA J. ZASTROW, ESQ.  
Nevada Bar No. 009727  
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1 NOTICE IS FURTHER GIVEN that Timothy D. Keller, Esq. and Keith E. Diggs,  
2 Esq. of Institute for Justice, will remain as co-counsel for Intervenor Defendants Aimee  
3 Hairr, Aurora Espinoza, Elizabeth Robbins, Lara Allen, Jeffrey Smith, and Trina Smith.

4 DATED this 13<sup>th</sup> day of November, 2015.

5 **HUTCHISON & STEFFEN**

6 By: RS

7 JACOB A. REYNOLDS, ESQ.  
8 Nevada Bar No. 010199  
9 ROBERT T. STEWART, ESQ.  
10 Nevada Bar No. 013770  
11 10080 West Alta Drive, Suite 200  
12 Las Vegas, Nevada 89145

13 DATED this 12 day of November, 2015.

14 **KOLESAR & LEATHAM**

15 By: [Signature]

16 MATTHEW T. DUSHOFF, ESQ.  
17 Nevada Bar No. 004975  
18 LISA J. ZASTROW, ESQ.  
19 Nevada Bar No. 009727  
20 400 South Rampart Boulevard, Suite 400  
21 Las Vegas, Nevada 89145

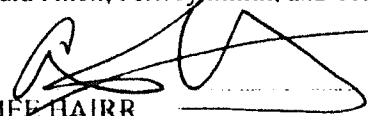
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**CONSENT**

Intervenor Defendants Aimee Hairr, Aurora Espinoza, Elizabeth Robbins, Lara Allen, Jeffrey Smith, and Trina Smith, being fully informed in the premises, hereby consent to the substitution of Matthew T. Dushoff, Esq. and Lisa J. Zastrow, Esq. and the law firm of Kolesar & Leatham in place of Mark A. Hutchison, Esq., Jacob A. Reynolds, Esq., and Robert T. Stewart, Esq. of Hutchison & Steffen, LLC on behalf of Intervenor Defendants Aimee Hairr, Aurora Espinoza, Elizabeth Robbins, Lara Allen, Jeffrey Smith, and Trina Smith.

By:   
AIMEE HAIRR

By: \_\_\_\_\_  
AURORA ESPINOZA

By: \_\_\_\_\_  
ELIZABETH ROBBINS

By: \_\_\_\_\_  
LARA ALLEN

By: \_\_\_\_\_  
JEFFREY SMITH

By: \_\_\_\_\_  
TRINA SMITH

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By: \_\_\_\_\_  
AIMEE HAIRR

By:  \_\_\_\_\_  
AURORA ESPINOZA

By: \_\_\_\_\_  
ELIZABETH ROBBINS

By: \_\_\_\_\_  
LARA ALLEN

By: \_\_\_\_\_  
JEFFREY SMITH

By: \_\_\_\_\_  
TRINA SMITH

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By: \_\_\_\_\_  
AIMEE HAIRR

By: \_\_\_\_\_  
AURORA ESPINOZA

By: Elizabeth Robbins  
ELIZABETH ROBBINS

By: \_\_\_\_\_  
LARA ALLEN

By: \_\_\_\_\_  
JEFFREY SMITH

By: \_\_\_\_\_  
TRINA SMITH

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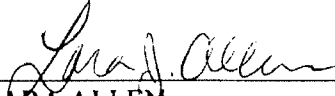
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By: \_\_\_\_\_  
AIMEE HAIRR

By: \_\_\_\_\_  
AURORA ESPINOZA

By: \_\_\_\_\_  
ELIZABETH ROBBINS

By:  \_\_\_\_\_  
LARA ALLEN

By: \_\_\_\_\_  
JEFFREY SMITH

By: \_\_\_\_\_  
TRINA SMITH

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By: \_\_\_\_\_  
AIMEE HAIRR

By: \_\_\_\_\_  
AURORA ESPINOZA

By: \_\_\_\_\_  
ELIZABETH ROBBINS

By: \_\_\_\_\_  
LARA ALLEN

By: Jeffrey Smith  
JEFFREY SMITH

By: Trina Smith  
TRINA SMITH



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**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of Kolesar & Leatham, and that on the 3 day of December, 2015, I caused to be served a true and correct copy of foregoing **NOTICE OF SUBSTITUTION OF COUNSEL FOR INTERVENOR DEFENDANTS** in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

(UNITED STATES MAIL) For those parties not registered pursuant to Administrative Order 14-2, service was made in the following manner: By depositing a copy of the above-referenced document for mailing in the United States Mail, first-class postage prepaid, at Las Vegas, Nevada, to the parties listed below at their last-known mailing addresses, on the date above written:

Adam Paul Laxalt  
Lawrence VanDyke  
Joseph Tartakovsky  
Ketan Bhirud  
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*Attorneys for Defendants  
State of Nevada, et al.*

Amy Rose, Esq.  
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*Attorneys for Plaintiff*

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*Attorneys for Defendants  
State of Nevada, et al.*

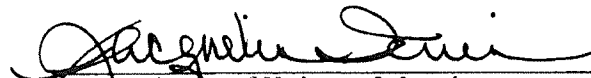
Jeffrey F. Barr, Esq.  
**ASHCRAFT & BARR**  
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*Attorneys for The Becket Fund for Religious  
Liberty*

**KOLESAR & LEATHAM**  
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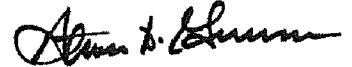
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Jacob A. Reynolds, Esq.  
Robert T. Stewart, Esq.  
**HUTCHISON & STEFFEN**  
10080 W. Alta Dr., Suite 200  
Las Vegas, Nevada 89145

  
An Employee of Kolesar & Leatham

# **EXHIBIT 2**

# **EXHIBIT 2**



CLERK OF THE COURT

1 ASTA  
2 Amy M. Rose (SBN 12081)  
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5 Las Vegas, Nevada 89106  
6 Telephone: (702) 366-1536  
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8 Daniel Mach\*  
9 Heather L. Weaver\*  
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12 Washington, D.C. 20005  
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14 hweaver@aclu.org

15 Richard B. Katskee\*  
16 AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE  
17 1901 L Street NW, Suite 400  
18 Washington, DC 20036  
19 katskee@au.org

20 Nitin Subhedar\*  
21 Samuel Jacob Edwards\*  
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23 One Front Street, 35th Floor  
24 San Francisco, California 94111-5356  
25 nsubhedar@cov.com

26 Anupam Sharma\*  
27 COVINGTON & BURLING LLP  
28 333 Twin Dolphin Dr., Suite 700  
Redwood Shores, CA 94065  
asharma@cov.com

\*Admitted via Pro Hac Vice

DISTRICT COURT  
CLARK COUNTY, NEVADA

20 Ruby Duncan, an individual; Rabbi Mel Hecht, an  
21 individual; Howard Watts III, an individual; Leora  
22 Olivas, an individual; Adam Berger, an individual,  
23 Plaintiffs,

24 v.

25 State of Nevada *ex rel*, the Office of the State Treasurer  
26 of Nevada and the Nevada Department of Education;  
27 Dan Schwartz, Nevada State Treasurer, in his official  
28 capacity; Steve Canavero, Interim Superintendent of  
Public Instruction, in his official capacity,

Defendants,

and

Case No.: A-15-723703-C  
Dept. No.: 20

**APPELLANTS' CASE APPEAL STATEMENT**

1  
2 Aimee Hairr; Aurora Espinoza; Elizabeth  
3 Robbins; Lara Allen; Jeffrey Smith; and  
4 Trina Smith,  
5 Parent-Intervenors.

6  
7 **APPELLANTS' CASE APPEAL STATEMENT**

8 PETITIONERS Ruby Duncan, Rabbi Mel Hecht, Howard Watts III, Leora Olivas, and Adam  
9 Berger, by and through their attorneys file this Case Appeal Statement pursuant to NRAP 3(f).

10  
11 **1. The name of the judge who entered the order or judgment being appealed:**

12 The Honorable Judge Eric Johnson

13  
14 **2. The name of each appellant and the name and address of counsel for each appellant:**

15 **Name of Appellants:** Ruby Duncan, an individual; Rabbi Mel Hecht, an individual; Howard  
16 Watts III, an individual; Leora Olivas, an individual; and Adam Berger, an individual.

17  
18 **Name And Address Of Counsel For All Appellants:**

19 Amy M. Rose (SBN 12081)  
20 American Civil Liberties Union Of Nevada  
21 601 S. Rancho Drive, Suite B-11  
22 Las Vegas, Nevada 89106

23 Daniel Mach (Admitted via Pro Hac Vice)  
24 Heather L. Weaver (Admitted via Pro Hac Vice)  
25 American Civil Liberties Union Foundation  
26 915 15th Street NW, Ste. 600  
27 Washington, D.C. 20005

28 Richard B. Katskee (Admitted via Pro Hac Vice)  
AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE  
1901 L Street NW, Suite 400  
Washington, DC 20036

Nitin Subhedar (Admitted via Pro Hac Vice)  
Samuel Jacob Edwards (Admitted via Pro Hac Vice)

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2 One Front Street, 35th Floor  
3 San Francisco, California 94111-5356

4 Anupam Sharma (Admitted via Pro Hac Vice)  
5 Covington & Burling LLP  
6 333 Twin Dolphin Dr., Suite 700  
7 Redwood Shores, CA 94065

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3. The name of each respondent and the name and address of appellate counsel, if known, for each respondent, but if the name of a respondent's appellate counsel is not known, then the name and address of that respondent's trial counsel:

**Names of Respondent:** State of Nevada *ex rel*, the Office of the State Treasurer of Nevada and the Nevada Department of Education; Dan Schwartz, Nevada State Treasurer, in his official capacity; Steve Canavero, Interim Superintendent of Public Instruction, in his official capacity.

**Names and Addresses of Trial Counsel for Respondent:**

Adam Laxalt  
Lawrence VanDyke  
Joseph Tartakovsky  
Ketan Bhirud  
Office of the Nevada Attorney General  
100 North Carson Street  
Carson City, NV 89701

**Names of Respondent-Intervenors:** Aimee Hairr; Aurora Espinoza; Elizabeth Robbins; Lara Allen; Jeffrey Smith; and Trina Smith

**Names and Addresses of Trial Counsel for Respondent-Intervenors:**

Mark A. Hutchison  
Jacob A. Reynolds  
Robert T. Stewart  
Hutchison & Steffen, LLC  
10080 West Alta Drive, Suite 200  
Las Vegas, NV 89145

Timothy D. Keller  
Keith E. Diggs  
Institute For Justice  
398 South Mill Ave., Ste. 301  
Tempe, AZ 85281

1 Lisa Zastrow  
2 Matthew Dushoff  
3 Kolesar and Leatham  
4 400 N Rampart #400  
5 Las Vegas, NV 89145

- 6 **4. Whether an attorney identified in response to 3 or 4 is not licensed to practice law in Nevada, and if so, whether the district court granted that attorney permission to appear under SCR 42, including a copy of any district court order granting that permission.**

7 The following counsel are not licensed to practice law in Nevada and were granted permission to  
8 practice for the purposes of this proceeding by the district court. All orders are attached.

9 Daniel Mach  
10 Heather L. Weaver  
11 Richard B. Katskee  
12 Nitin Subhedar  
13 Samuel Jacob Edwards  
14 Anupam Sharma  
15 Timothy D. Keller  
16 Keith E. Diggs

- 17 **5. Whether the appellant was represented by appointed counsel in the district court, and whether the appellant is represented by appointed counsel on appeal.**

18 No appellant was represented by appointed counsel in the district court.

- 19 **6. Whether the district court granted the appellant leave to proceed in forma pauperis, and if so, the date of the district court's order granting that leave.**

20 No appellant was granted leave to proceed in forma pauperis.

- 21 **7. The date that the proceedings commenced in the district court**

22 Proceedings commenced on August 27, 2015.

- 23 **8. A brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court.**

24 **Description of the Nature of the Action:** Appellants brought suit because the voucher program  
25 established under Senate Bill 302 (2015) violates both Section 2 and Section 10 of Article 11 of  
26 the Nevada Constitution. Appellants alleged that, if allowed to proceed, the voucher program will,  
27  
28

1 in violation of Article 11, Section 10 divert millions of dollars in public-education funds to private  
2 schools—the majority of which are religious—and that this program will allow those taxpayer  
3 funds to be used for religious education, indoctrination, and discrimination. Appellants also alleged  
4 that the voucher program will, in violation of Article 11, Section 2, create a non-uniform and  
5 competing system of private schools by providing public funding to private and religious schools  
6 that (1) are not open and accessible to all Nevada children and teachers due to discriminatory  
7 admissions and employment practices, and (2) use curricula, instruction, and educational standards  
8 that diverge dramatically from those in public schools. Appellants also alleged that the voucher  
9 program further violates Article 11, Section 2 because—by diverting funds from public schools  
10 and bolstering a system of competing private and religious schools—it will undermine the public  
11 school system that the State is constitutionally required to provide. Appellants appeal the district  
12 court’s dismissal of both the Section 2 and Section 10 claims.  
13

14 **Result in District Court:** Respondents filed a motion to dismiss for lack of jurisdiction and for  
15 failure to state a claim on October 19, 2015. Respondent-Intervenors filed a joinder to this motion  
16 on October 26, 2015. Appellants filed an opposition on November 10, 2016. On May 18, 2016  
17 the District Court granted this motion to dismiss and dismissed Appellants’ case.  
18

19 **9. Whether the case has previously been the subject of an appeal to or original writ**  
20 **proceeding in the Supreme Court and, if so, the caption and Supreme Court docket**  
21 **number of the prior proceeding.**

22 This case has not previously been the subject of an appeal or original write proceeding in the  
23 Supreme Court.

24 **10. Whether the appeal involves child custody or visitation.**

25 This appeal does not involve child custody or visitation.

26 ...

27 ...  
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1 **11. In civil cases, whether the appeal involves the possibility of settlement.**

2 Although Appellants are open to discussion of settlement, it is not likely this case will be resolved  
3 through settlement.

4  
5 DATED this June 17th, 2016

6 Respectfully Submitted,

7  
8 /s/ Amy M. Rose

9 Daniel Mach\*  
10 Heather L. Weaver\*  
11 AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
915 15th Street NW, Ste. 600  
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asharma@cov.com  
19 Attorneys for Plaintiffs

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 17<sup>th</sup> of June, 2016, I served a true and correct copy of the foregoing Appellants' Case Appeal Statement upon the following parties hereto, by the WIZNET electronic service provided by the court and via depositing it in the U.S. Mail:

Adam Laxalt  
Lawrence VanDyke  
Joseph Tartakovsky  
Ketan Bhirud  
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Carson City, NV 89701

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Jacob A. Reynolds  
Robert T. Stewart  
Hutchison & Steffen, LLC  
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398 South Mill Ave., Ste. 301  
Tempe, AZ 85281

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Matthew Dushoff  
Kolesar and Leatham  
400 N Rampart #400  
Las Vegas, NV 89145

/s/ Tamika Shauntee  
An employee of the ACLU of Nevada