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

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RUBY DUNCAN, RABBI MEL HECHT, HOWARD WATSON,
LEORA OLIVAS, AND ADAM BERGER,
Appellants,

vs.

STATE OF NEVADA *EX REL*, THE OFFICE OF THE STATE TREASURER OF NEVADA;
NEVADA DEPARTMENT OF EDUCATION; DAN SCHWARTZ, NEVADA STATE
TREASURER, IN HIS OFFICIAL CAPACITY; AND STEVE CANAVERO, INTERIM
SUPERINTENDENT OF PUBLIC INSTRUCTION, IN HIS OFFICIAL CAPACITY.

Respondents.

On Appeal from a Final Judgment of the
District Court for Clark County, Nevada
Case No. A-15-723703-C, Hon. Eric Johnson

**BRIEF OF THE FRIEDMAN FOUNDATION FOR
EDUCATIONAL CHOICE, INC. AS *AMICUS CURIAE*
IN SUPPORT OF THE RESPONDENTS**

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NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that *amicus* Friedman Foundation for Educational Choice, Inc., is an entity as described in NRAP 26(a) and must be disclosed. This representation is made in order that the judges of this Court may evaluate possible disqualifications or recusal.

Amicus has no partner corporations, and no publicly-held company owns 10 percent or more of its stock. John P. Sande and Victor Salcido are the only attorneys appearing for *amicus* in this case, and no others are expected to appear in this Court in this case. The Sande Law Group is the only law firm whose partners or associates have appeared for the *amicus* in the case or are expected to appear in this Court in this case.

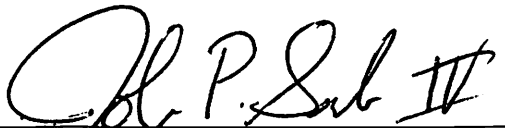
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Statement of Identity and Interest of *Amicus Curiae*

The Friedman Foundation for Educational Choice, Inc. (the “Foundation”), a 501(c)(3) nonprofit and nonpartisan organization founded in 1996 by Milton and Rose D. Friedman, is dedicated to advancing its founders’ vision of school choice for all children. The Foundation’s goal is to advance a K–12 education system in which all parents, regardless of race, origin, or family income, are free to choose a learning environment—public or private, near or far, religious or secular—that works best for their children. The Friedman Foundation, a national leader in school choice research, policy development, and educational training and advocacy, continues its founders’ mission of promoting school choice as the most effective and equitable way to improve K–12 education in the United States.

In support of the Respondents, the Foundation provides this brief summarizing recent social science research to update its *amicus* brief filed in the trial court.

Introduction

The Foundation submits this brief to update the *amicus* brief accepted by the trial court on October 26, 2015, summarizing the significant body of social science research providing empirical evidence that supports Respondents and the rationale behind SB 302 in five key ways:

- School choice improves academic outcomes for participating students;
- Public schools exposed to school choice have improved academic outcomes;
- School choice saves taxpayers money;
- Students utilizing school choice move from more segregated schools to less segregated schools; and
- School choice has a positive impact on civic values and practices.

The Foundation recently issued a fourth edition of its leading systematic review of available empirical research of school choice programs. Greg Forster, *A Win-Win Solution: The Empirical Evidence on School Choice*, Friedman Found. for Educ. Choice (4th ed. May 2016) (“2016 *Win-Win* Report”), available at <http://www.edchoice.org/research/win-win-solution/> (last visited July 20, 2016). For effects on school choice participants, Dr. Forster reviews only those studies that meet the highest standard of academic rigor: random assignment. For all other outcomes, to counter accusations of “cherry picking” only favorable studies and

because there are no or very few random assignment studies looking at these outcomes, he included all empirical studies. Overall, he reviewed 100 studies, and the evidence continues to point clearly in one direction: in favor of school choice.

Critics suggest that the literature is not yet sufficiently clear on the benefits of educational choice, or alternatively argue that some studies have shown such benefits are minimal. The gist of such arguments is that Nevada should not undertake educational choice reform as long as any doubt remains as to the size of the benefits of educational choice, despite the now significant empirical research on the subject. To suggest the legislature’s best course of action is to not undertake this proven form of educational reform—in a state that ranks last or near last among the 50 states in educational rankings¹—is to ask the legislature to abandon its constitutional and moral responsibility to encourage the education of its citizenry by “all suitable means.” Nev. Const. art 11, § 1.

The Foundation disagrees with this know-nothingism. Educational choice is a proven tool for maximizing quality learning opportunities for all children. Since the first school voucher program was enacted in 1990, no state that has

¹ A 2016 *Education Week* study found that Nevada ranks last in the nation. Quality Counts 2016: State Report Cards Map, Education Week, <http://www.edweek.org/ew/qc/2016/2016-state-report-cards-map.html> (last visited July 20, 2016). In another study by the non-partisan Annie E. Casey Foundation, Nevada was 48th overall. 2014 Kids Count Profile: Nevada, The Annie E. Casey Foundation, http://www.aecf.org/m/databook/2014KC_profile_NV.pdf (last visited July 20, 2016).

implemented school choice has subsequently eliminated it. One or more states have enacted a new school choice program every year since 2003, with well over half the states having some form of educational choice today. *See* America’s School Choice Programs by Dates Enacted and Launched, Friedman Found. for Educ. Choice, <http://www.edchoice.org/school-choice/enacted-and-launched-table/> (last visited July 20, 2016). That existing empirical evidence supports school choice is clear-cut from the social science research cited in the original *amicus* brief and below.

Argument

The 2016 *Win-Win* Report reviews the latest studies in the five areas summarized in the Foundation’s trial-court *amicus* brief. This brief provides updated data from the systematic review of relevant research provided in that report and from other recent publications on school choice. The available empirical evidence continues to demonstrate that school choice has a positive impact in all areas in which empirical research has been conducted.² This brief also summarizes

² Indeed, even opponents of school choice appear to increasingly admit that research shows positive effects of school choice. A press release by Christopher Lubienski and the National Educational Policy Center (stalwart opponents of school choice) responding to the latest edition of *Win-Win* and another recent global meta-analysis of school choice began: “The degree to which students benefit from voucher programs, which allow parents to use taxpayer dollars to send their children to private schools, has been debated for years. Most studies have found only modest benefits, at best.” National Education Policy Center, “Reports Lack

data from a Foundation survey of Nevada’s private schools, which established the ability of the private sector to increase educational opportunities, and from Foundation surveys of national and Nevada public opinion, which demonstrate widespread support for educational choice.

A. “Gold-standard” research demonstrates that school choice improves academic outcomes for participating students.

To date, 18 empirical studies have examined academic outcomes for school choice participants using random assignment, the “gold standard” of social science.³ 2016 *Win-Win* Report at 1. Of those, 14 find choice improves student outcome: six find all students benefit and eight find some students benefit while others are not affected. *Id.* Two studies find no visible effect, and two studies of Louisiana’s voucher program find that the program—where most eligible schools chose not to participate due to an expectation of hostile future regulatory action—had a negative effect. *Id.*; Brian Kisida, Patrick Wolf, and Evan Rhinesmith,

Compelling Evidence of Voucher Benefits,” (June 30, 2016), *available at* <http://nepc.colorado.edu/newsletter/2016/06/meta-analysis>. In other words, these opponents apparently concede that empirical research shows benefits do indeed exist.

³ Random-assignment studies are possible where there are more applicants for a choice program than there are slots, generally resulting in a random lottery for the slots. Students who win the lottery and are offered choice can be compared to those who were not offered choice; any systemic differences can be attributed to the offer of choice alone because nothing separates the group but the offer of choice and randomness. 2016 *Win-Win* Report at 10.

“Views from Private Schools: Attitudes about School Choice Programs in Three States,” (Jan. 2015) at 14, *available at* <https://www.aei.org/wp-content/uploads/2015/01/Views-from-Private-Schools-7.pdf> (last visited July 20, 2016).

Three of the six random-assignment studies first reviewed in the 2016 edition find that school choice has a positive effect on college enrollment and attainment rates for some or all participating students in various New York City voucher programs and no negative effect for any student group. 2016 *Win-Win* Report at 11.⁴ One previously unexamined study from 2006 shows no visible effect of a Toledo school-choice program on math scores. *Id.* at 12.⁵

⁴ Citing Paul E. Peterson and William G. Howell, “Voucher Research Controversy,” *Education Next* 4, no. 2 (Spring 2004) at 73-78; Matthew M. Chingos and Paul E. Peterson, “The Impact of School Vouchers on College Enrollment,” *Education Next* 13, no. 3 (Summer 2013) at 59-64; Matthew M. Chingos and Paul E. Peterson, “Experimentally Estimated Impacts of School Vouchers on College Enrollment and Degree Attainment,” *Journal of Public Economics* 122 (Feb. 2015) at 1-12; Marianne P. Bitler, Thurston Domina, Emily K. Penner, and Hilary W. Hoynes, “Distributional Effects of a School Voucher Program: Evidence from New York City,” 8 *Journal of Research on Educational Effectiveness* (July-Sept. 2015) at 419-50.

⁵ Citing Eric Bettinger and Robert Slonim, “Using Experimental Economics to Measure the Effects of a Natural Educational Experiment on Altruism,” *Journal of Public Economics* 90 (2006) at 1625-48.

Two random-assignment studies find negative effects on academic outcomes for participants in the Louisiana Scholarship Program. *Id.* at 12.⁶ Dr. Forster attributed the most likely explanation for the anomalous findings (unusually large negative effects in various subjects and up to a 50 percent increase in a student’s chance of receiving a failing grade) to low private school participation due to poor program design. In sharp contrast to other choice programs, only a small minority of eligible private schools participated in Louisiana; less than one-third participated in its first year. *Id.* at 12-13. The authors of one of the studies noted that most of the participating schools had experienced rapid enrollment decline prior to entering the program, indicating the program may attract “private schools struggling to maintain enrollment.” *Id.* at 13. In contrast to Louisiana, a survey of Nevada’s private schools indicates that an overwhelming majority intend to participate in Nevada’s ESA program. *See* Andrew Catt, *Exploring Nevada’s Private Education Sector*, Friedman Found. for Educ. Choice (August 2015), *available at* <http://www.edchoice.org/research/exploring-nevadas-private->

⁶ Citing Atila Abdulkadiroglu, Parag A. Pathak, and Christopher R. Walters, “School Vouchers and Student Achievement: First-Year Evidence from the Louisiana Scholarship Program,” NBER Working Paper 21839 (2015) and Jonathan N. Mills and Patrick J. Wolf, *The Effects of the Louisiana Scholarship Program on Student Achievement After Two Years*, Louisiana Scholarship Program Evaluation Report 1 (2016).

education-sector/ (last visited July 20, 2016) (“Catt Report”) (discussed further at pages 16-17, *infra*).

The available empirical evidence using “gold-standard” studies continues to demonstrate a positive effect on participating students, with 14 of 18 studies showing positive effects for some or all students. 2016 *Win-Win* Report at 14. While one program (Louisiana’s) appears to have significant regulatory issues that inhibited successful application of school choice, the empirical evidence as a whole supports Nevada’s decision to offer educational choice to families who feel they are not well served by a low-performing public school system.

B. The empirical evidence demonstrates that public schools exposed to school choice have improved academic outcomes.

Empirical studies show that the positive effect of school choice on public school performance is at least as strong as the effect on children who are offered school choice. Of the 33 total studies that now exist, 31 find school choice improves public schools, one finds no visible effect, and one finds a negative effect.⁷ *Id.* at 16.

⁷ These studies did not use the random-assignment method discussed above. But this presents less of a problem when studying the effect of choice on public schools, because those studies only need to compare schools whose students are offered a choice with schools whose students are not, “which is usually an easier methodological barrier to overcome.” 2016 *Win-Win* Report at 16.

The majority of these studies examined Milwaukee’s voucher program or Florida’s voucher and tax-credit scholarship programs. Ten additional studies of the academic effect of school choice on public schools have been conducted since the 2013 edition of *Win-Win*. Several of the newest studies provided intriguing positive results. For example, a study of Florida’s tax-credit scholarship program used new variables to measure private school competition (e.g., using the number of nearby houses of worship as a proxy for private school competition). It found a positive effect on public schools in both reading and math for all five separate measures of private school competition. *Id.* at 17.⁸ Another new study found that when low-performing schools became eligible for vouchers, changes in the schools’ institutional practice resulted in improved test scores. *Id.*⁹

One new study found that the designation of a school as “failing” in Florida had a positive effect on student performance, but that the removal of voucher eligibility did not reduce this positive effect. This was a negative finding for vouchers, because reading scores increased where voucher eligibility was

⁸ Citing David N. Figlio and Cassandra M.D. Hart, “Does Competition Improve Public Schools? New Evidence from the Florida Tax-Credit Scholarship Program,” *Education Next* 11, no. 1 (Winter 2011) at 74-80.

⁹ Citing Cecilia E. Rouse, Jane Hannaway, Dan Goldhaber, and David N. Figlio, “Feeling the Florida Heat: How Low Performing Schools Respond to Voucher and Accountability Pressure,” *American Economic Journal: Economic Policy* 5, no. 2 (May 2013) at 251-81.

eliminated. *Id.*¹⁰ Dr. Forster found this “hard to explain” given that nine previous studies had found a positive effect from the same voucher program. *Id.*

Twelve studies have analyzed school choice in places other than Milwaukee or Florida, with eleven of them finding improvements in public schools’ academic outcomes. Half of these studies were conducted after the 2013 edition of *Win-Win*. No matter how the studies are divided and analyzed, the overwhelming majority of the studies continue to find that school choice positively impacts the academic performance of public schools exposed to choice. *Id.* at 19 (showing 31 of 33 such studies indicated positive effects).

C. The empirical evidence demonstrates that school choice saves taxpayers money.

Among the most strident claims of school-choice opponents is that school choice is a fiscal catastrophe for the public schools. This claim is entirely unsupported by the empirical evidence. On the contrary, studies have shown that school choice programs save money, which benefits both the public schools and taxpayers. SB 302 will similarly increase the amount of money per pupil available to public schools, putting them in a better position to educate those students that choose to remain in the public schools.

¹⁰ Citing Daniel Bowen and Julie Trivitt, “Stigma Without Sanctions: The (Lack of) Impact of Private School Vouchers on Student Achievement,” *Education Policy Analysis Archives* 22, no. 87 (Aug. 2014) at 1-19.

The 2016 edition of *Win-Win* reviews 28 empirical studies of the fiscal impact of school choice. *Id.* at 21.¹¹ Twenty-five of those studies found that school choice saves money and three found that such programs are revenue neutral. *Id.* Eleven of the studies are new since the 2013 edition of *Win-Win*, with 10 of those being from a single publication that analyzed the fiscal effects of 10 different school choice programs. *Id.* at 22.

Two of the revenue-neutral programs are century-old “town tuitioning” programs in Maine and Vermont, designed to cover school tuition for children living in small towns that do not have public schools. *Id.* at 22-23. Because the local entities have no public schools, these programs are savings and revenue neutral. The third revenue-neutral program was a small voucher program for students with special needs in Utah that directs 100 percent of the spending for each student into the program. *Id.* at 23.

All the remaining studies have found a net positive fiscal effect on funding for public schools exposed to choice. The latest comprehensive study examined ten school choice programs from 1990 to 2011. Jeff Spalding, *The School Voucher Audit: Do Publicly Funded Private School Choice Programs Save Money?*,

¹¹ The previous edition of *Win-Win* cited to six studies of fiscal impact. In the latest edition, one of those studies was redefined as being 12 separate studies, as it contained 12 distinct analyses of 12 separate programs. Therefore the increase in available studies is actually from 17 to 28, rather than six to 28. 2016 *Win-Win* Report at 22.

Friedman Found. for Educ. Choice (2014), *available at* <http://www.edchoice.org/wp-content/uploads/2015/07/The-School-Voucher-Audit-Do-Publicly-Funded-Private-School-Choice-Programs-Save-Money.pdf> (last visited July 20, 2016). The study looked at aggregate savings to state and local government by subtracting the per-student cost of a school choice program from the per-student reduction in variable educational costs. It found that all ten programs saved taxpayers money—a total of \$1.7 billion from 1990 through 2011. 2016 *Win-Win* Report at 23. What is remarkable is not only the aggregate savings, but also the fact that every single program created net fiscal benefits for public school funding and taxpayers combined.

These savings have been repeatedly confirmed when looking at state and local funding. Federal funding (typically approximately ten percent of all spending on schools) is more static and does not vary much with enrollment. *Id.* at 21-22. An empirical study of schools nationwide found that on average, a total of \$12,450 was spent per student in 2008-09, of which 64 percent (\$7,967) was attributable to short-run variable costs that change with enrollment. *Id.* at 22.¹² Therefore, on average, school choice increases a public school's overall revenue-per-student when less than that per-student amount follows a child to a different school. In a

¹² Citing Benjamin Scafidi, *The Fiscal Effects of School Choice Programs on Public School Districts*, Friedman Found. for Educ. Choice (2012).

separate analysis of Nevada data, Foundation researchers found this state’s short-run variable education costs to be \$6,453 per student.¹³ Given that SB 302 provides that a maximum of \$5,139 per student will be transferred to the student’s ESA (or \$5,710 for low-income students and students with disabilities), Nevada’s educational-choice program is likely to increase available per-student funding to Nevada’s public schools.

With over two decades of results now in, there has yet to be a study demonstrating that school choice programs have, on net, negative fiscal effects on the funding of public schools. Yet opponents of school choice continue to raise the specter of financial ruin for public schools, but notably without providing evidence to support such assertions. *See, e.g., Appellants’ Opening Brief* at 53-54 (claiming that SB 302 would cause “irreparable harm” by “drain[ing] [] public-education funding”, result in funding at “the paltriest of levels” and “divert the lion’s share” of funding to private education). Such arguments tend to veer away from the concrete and into the speculative for one simple reason—there is no empirical

¹³ This analysis used a cautious, highly conservative definition of short-run variable costs including expenditures for Instruction, Student/Instruction Support Services, Other Support Services, and Fringe Benefits. This excludes fixed and semi-fixed costs such as Total Operational Expenditures, Total Property Expenses, Assets/Reserves, Debt Service, Transfers, and other miscellaneous expenses. Martin Lueken, “The Fiscal Impact of Nevada’s ESA Program,” Friedman Found. for Educ. Choice (Mar. 17, 2016), <http://www.edchoice.org/blog/fiscal-impact-nevadas-esa-program>.

evidence to support them. No study has found net negative fiscal effects from any school-choice program. 2016 *Win-Win* Report at 21.

D. The empirical evidence demonstrates that school choice moves students from more segregated schools to less segregated schools.

Studying the effect of school choice on segregation is more complex than studying fiscal impact and academic results, as there are many factors at work in determining segregation levels and many different ways of measuring it. *Id.* at 26. However, public schools have grown more racially segregated in recent decades, even as residential segregation has declined. *Id.* Therefore any indication that school choice can have a remedying effect on this troubling trend is important.

The 2016 edition of *Win-Win* cites a total of 10 studies that have used valid empirical methods to examine school choice and racial segregation. *Id.* at 26-28. Of those studies, nine find school choice moves students to less racially segregated classrooms, while one finds no visible effect. No studies have shown that school choice increases racial segregation. As with fiscal impact, opponents of school choice often raise the peril of increased racial segregation despite the absence of empirical evidence for their position.

The 2016 *Win-Win* Report cites two new studies of racial segregation, both examining the Louisiana voucher program. The first found that student transfers from public to private schools under the voucher program reduced segregation in both the public schools and the private schools (i.e., both public and private

schools moved closer to the racial composition of the surrounding metropolitan area). *Id.* at 28. The second study found a significant net positive effect of reducing segregation in affected public schools, with a small net increase in segregation in participating private schools. *Id.* The overall net effect on racial segregation was therefore positive.

While racial segregation studies are not conclusive due to the many variables that affect segregation, the available empirical data shows an overall reduction in segregation where school choice is offered. Integration of Nevada's racially and culturally diverse communities is likely to be increased, rather than decreased, by the policy choices reflected in SB 302.

E. The empirical evidence demonstrates that school choice has a positive impact on civic values and practices.

A final intriguing area of school-choice research examines the impact of school choice on civic values and practices. To date, eight studies find school choice has a positive impact on civic concerns, three studies show no visible impact, and no study has ever shown school choice to have a negative effect. 2016 *Win-Win* Report at 30. Since the 2013 edition of *Win-Win*, Dr. Forster has reviewed four additional empirical studies in this area, which reinforce the positive effect indicated by previous studies. *Id.*

In one of the new studies, researchers found modestly higher level of political tolerance, civic skills, future political participation, and volunteerism in

participants in the Milwaukee voucher program when compared to public school students. *Id.* at 31.¹⁴ The study found the positive effect to be significantly stronger in religious schools than in other private schools. *Id.*

In a second new study, researchers analyzed the long-term impact of the school-choice program in Milwaukee (one of the largest and longest-running in the country) on students' criminal records. *Id.*¹⁵ The study found that participation in the voucher program decreased participants' criminal activities, especially for men. *Id.* The longer students remained in the voucher program, the more this positive finding was visible across multiple measures of criminal records. *Id.* at 31-32.

Males who remained in the program throughout high school had better outcomes than their peers in public schools on all measures, including a 79 percent reduction in felonies, a 93 percent reduction in drug offenses, and an 87 percent reduction in theft. *Id.* at 32.

A third study, from 2006 but not reviewed in *Win-Win* until 2016, assessed the effects of a privately-funded school choice program in Toledo on altruistic behaviors. The study found that voucher program participants donated more money

¹⁴ Citing David J. Fleming, William Mitchell, and Michael McNally, "Can Markets Make Citizens? School Vouchers, Political Tolerance, and Civic Engagement," *Journal of School Choice* 8, no. 2 (2014) at 213-36.

¹⁵ Citing Corey DeAngelis and Patrick J. Wolf, "The School Choice Voucher: A 'Get Out of Jail' Card?" EDRE Working Paper 2016-03 (2016).

to charities (in an experimental setting) than their public-school peers. *Id.* at 31.¹⁶

A final new study, based on a phone survey of Louisiana voucher program applicants, found no visible difference in respect for the rights of others between those who were and those who were not offered a voucher. *Id.*¹⁷

F. Nevada’s private school sector can support a productive and diverse use of the ESA program without decimating public school enrollment.

The Foundation’s work on educational choice research has included in-depth analyses of the private school sector of several states. The analysis of Nevada, published in 2015, reflects a private school sector well-structured to provide a wide array of educational opportunities to all students, as SB 302 hopes to do. *See* Catt Report. Unlike in Louisiana (see page 5-6, *supra*), 79 percent of Nevada private schools said they would participate in an ESA program. *Id.* at 2. Eighty-one percent of respondent schools require students to take a nationally norm-referenced test or the state assessment to measure academic performance. *Id.*

¹⁶ Citing Eric Bettinger and Robert Slonim, “Using Experimental Economics to Measure the Effects of a Natural Educational Experiment on Altruism,” *Journal of Public Economics* 90 (2006) at 1625-48.

¹⁷ Citing Jonathan N. Mills, Albert Cheng, Collin E. Hitt, Patrick J. Wolf, and Jay P. Green, *Measures of Student Non-Cognitive Skills and Political Tolerance After Two Years of the Louisiana Scholarship Program*, Louisiana Scholarship Program Evaluation Report 2 (Univ. of Ark., School Choice Demonstration Project, 2016).

The private school sector in Nevada is already engaged in educating students from a wide range of backgrounds and educational needs. Over one-third of private school students belong to at least one racial minority group. *Id.* at 3. Seventy-one percent of respondent schools enroll at least one student with special needs, half of the respondent schools have five percent or more of students with special needs, and three respondent schools primarily serve students with special needs. *Id.* at 2.

According to Nevada Department of Education statistics, there are 146 private K-12 schools in Nevada, serving 19,837 students (compared to 461,975 K-12 students in public schools).¹⁸ In line with these Department of Education statistics, the Foundation’s report estimates that Nevada’s private schools have enough empty seats to increase private school enrollment by only 33 percent. *Id.* at 2. This limited capacity to absorb ESA applicants, combined with SB 302’s “hold harmless” clause, which funds a public school based on prior year enrollment if a school district’s enrollment declines by more than five percent (*see* NRS 387.1233(3) as amended, SB 508, §9), makes it extremely unlikely that public

¹⁸ 2015 Private School Directory, Nev. Dep’t of Educ., http://www.doe.nv.gov/Private_Schools/Documents/2015-2016_Directory_webpage_5_19_16 (last visited July 20, 2016); 2015 School Year Enrollment, Nev. Dep’t of Educ., <http://www.doe.nv.gov/DataCenter/Enrollment/2015-2016SchoolYearStudentCountsasof10012015rev/> (last visited July 20, 2016).

schools will experience fiscal “shock treatment” from a precipitous drop in enrollment.

G. Public opinion in Nevada, as in the rest of the United States, indicates strong support for educational choice.

The empirical research showing positive effects of school choice supports Nevada’s decision to implement school-choice reforms. Constituent interest in increased educational options for their children also supports the decision. The Foundation conducts regular surveys of public opinion about educational choice and other educational issues at the state and national level, as summarized below.

1. Nevada survey results

The Foundation conducted a Nevada public opinion survey in January 2015. Paul DiPerna, *Nevada: K-12 and School Choice Survey: What Do Voters Say About K-12 Education?*, Friedman Found. for Educ. Choice (Mar. 2015), available at <http://www.edchoice.org/research/nevada-k-12-and-school-choice-survey/> (last visited July 20, 2016).¹⁹ Predictably, given Nevada’s severely low public school rankings, Nevadans ranked education as the most important issue in the state by a plurality of respondents (33%), rare for the Foundation’s state polls. *Id.* at 8. Fewer than one in four respondents gave positive ratings to the state’s public school

¹⁹ The Nevada survey consisted of 602 telephone interviews in January 2015, with a margin of sampling error of ± 4.0 percentage points.

system. *Id.* at 9. By contrast, 58% of respondents gave a high grade to local private schools and 47% gave a high grade to public charter schools. *Id.* at 11.

Many respondents expressed a preference to send their children to private school. When asked for a preferred school, 43% said they would choose a private school as a first option, 24% chose a regular public school, 20% chose a public charter school, and 9% chose homeschooling. *Id.*

Over six out of 10 Nevada respondents (61%) said they support school vouchers, while only one in three were opposed. *Id.* at 14. The demographics most likely to favor school choice are low-income earners (+38 point margin of support over oppose), Republicans (+37 point margin), and African Americans (+36 point margin). *Id.* No observed group saw more opposition than support.

A similar percentage (58%) of Nevadans said they support an ESA system. *Id.* at 15. The strongest support was among Latinos (74%), young voters (72%), and low-income earners (67%). *Id.* Seven of 10 respondents said they agree with the statement that ESAs “should be available to all families, regardless of incomes and special needs.” *Id.* at 16.

2. National survey results

In the most recent national survey,²⁰ conducted in April-May 2015, 60% of respondents said K-12 education is on the “wrong track.” Paul DiPerna, *2015 Schooling in America Survey: Perspectives on School Choice, Common Core, and Standardized Testing*, Friedman Found. for Educ. Choice (June 2015) at 11, 13, available at <http://www.edchoice.org/research/2015-schooling-in-america-survey/> (last visited July 20, 2016). Many parents expressed a preference for private schools, with a plurality of respondents (41%) choosing private school as the first option for their child, 36% choosing a regular public school, 12% choosing a public charter school, and 9% choosing homeschooling. *Id.* at 23. Despite these preferences, about 85% of K-12 students attend public schools, and only 8% enroll in private school. *Id.*

When it came to educational choice, more than six in 10 Americans (62%) said they support ESAs. *Id.* at 47. This preference crossed many demographic boundaries, with well over half of respondents supporting ESAs among Republicans and Democrats; suburbanites, urbanites, and small-town residents; low-income and high-income earners; and young and middle-age adults. *Id.* The

²⁰The national survey consisted of 1,002 telephone interviews in April-May 2015, with a margin of sampling error for the national sample of ± 3.1 percentage points. The related Latino study included 125 interviews from the national sample plus 407 from additional sampling, providing a margin of sampling error of ± 4.2 percentage points.

clear preference of respondents was for ESAs to be universally available, with two out of three supporting ESAs for all children regardless of family income or special needs. *Id.*

3. Latino survey results

A key benefit of educational choice is providing traditionally underserved populations with the same access to educational options that exists for the rest of the population. The Foundation's 2015 survey intentionally oversampled Latinos to allow for a separate study of Latino opinion of education issues. Paul DiPerna, *Latino Perspectives on K-12 Education & School Choice*, Friedman Found. for Educ. Choice (Sept. 2015), available at <http://www.edchoice.org/research/latino-perspectives-on-k-12-education-school-choice/> (last visited July 20, 2016). This allowed a targeted assessment of the views of a traditionally underserved population that often has particular educational needs for children raised in Spanish-speaking households. More than one in five Latino respondents (22%) said "education was the most important issue facing the country." *Id.* at 8. Forty-six percent said they would select a private school as the first choice for their child, signaling a disconnect with actual Latino enrollment patterns: about 92% of Latino K-12 students in the United States attend public school. *Id.* at 11.

More than seven in ten Latinos said they favor ESAs, with only 22% opposing them. *Id.* at 38. This is a significantly higher figure than the national

average of 62%. *Id.* All demographics within the Latino “oversample” expressed highly positive views of ESAs, with the largest margins (between positive and negative views) among rural residents, young Latinos, Democrats, those living in America’s West, and low-income earners. *Id.* African Americans sampled in the overall study said they support ESAs somewhat less than Latinos (63% in favor and 28% opposed), while Asian Americans voice even higher support (81% in favor and 14% opposed). *Id.*

When asked what state governments could do to intervene in low-performing schools, a majority of Latino respondents (53%) said supplying vouchers/scholarships to families would be useful. *Id.* at 18. This was preferred over other options, such as converting district schools to charter schools (33%), dismissing school personnel (28%), or closing a school (25%). *Id.* Both Latinos (53%) and African Americans (55%) are significantly more likely than white respondents (35%) to say that “supply[ing] a voucher, scholarship, or ESA” is more useful to families than other options for dealing with low-performing schools. *Id.*

Conclusion

Recognizing the need for significant education reform, Nevada’s legislature wisely decided to adopt a broadly-available ESA program as part of the solution. This decision is supported by strong empirical evidence of the benefits of

educational choice. Critics of educational choice have no such empirical evidence to support their arguments; instead they rely on speculative harms and fear-mongering to justify their resistance to change. But that is one purpose of the social sciences—to allow policymakers to make evidence-based decisions on how to best serve their constituents.

In this case, the legislature decided that the families of Nevada would be well-served by exerting more control over their educational choices. The intent of SB 302 is solely educational, not sectarian. Empirical evidence demonstrates that school choice improves academic outcomes for both the students exercising that choice and the students choosing to remain in public schools, saves taxpayers money, and has a positive effect on racial integration and civic values. Furthermore, Nevadans have registered a strong desire for an overhaul of the education system and support educational choice as a primary element of that reform. The legislature heard these concerns and crafted SB 302 to expand the range of educational options available to Nevada families, with the ultimate goal of providing Nevada's children with access to a world of educational resources, previously out of reach for most, that will afford them the greatest opportunity to learn at a level that will empower them to lead successful adult lives.

By adopting school choice through SB 302, the State of Nevada has embraced an innovative, nation-leading approach to addressing its crisis in public

education. The Supreme Court should affirm the decision of the trial court to dismiss Plaintiffs' complaint and affirm the constitutionality of SB 302.

Dated this 22nd day of July, 2016.

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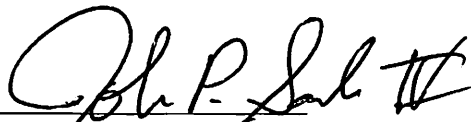
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CERTIFICATE OF COMPLIANCE

Pursuant to NRAP 28.2, I certify that I have read this 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, including the requirement of NRAP 28(e) that every assertion in the briefs regarding matters in the record be supported by a reference to the page and volume number where the matter relied on is to be found.

I further certify that this brief complies with the formatting requirements of NRAP 32(a)(4)-(6) because this brief has been prepared using Microsoft Word 2010 in Times New Roman, 14-point font, a proportionally spaced font. I certify that this brief complies with the type-volume limitation of NRAP 28(e) and 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(c), it contains 5,496 words.

I understand that I may be subject to sanctions in the event that this *amicus* brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **BRIEF OF THE FRIEDMAN FOUNDATION FOR EDUCATIONAL CHOICE, INC. AS AMICUS CURIAE IN SUPPORT OF THE RESPONDENTS** by the method indicated:

_____ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document(s).

_____ **BY E-MAIL:** by transmitting via e-mail the document(s) listed above to the email addresses set forth below and/or included on the Court's Service List for the above-referenced case.

_____ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.

_____ **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.

_____ **BY PERSONAL DELIVERY:** by causing personal delivery via messenger service of the document(s) listed above to the person(s) at the address(es) set forth below.

 X _____ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

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