

other than carrying out the legitimate functions of the Nevada Children's Foundation, Inc., the same shall be taxed.

*Eleventh—Notwithstanding any other provisions of this act or any section or subsection thereof; all claims for tax exemptions on real property shall be filed on or before the second Monday of July of the year for which the exemption is claimed.*

SEC. 2. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

SEC. 3. This act shall be in effect immediately upon its passage and approval.

Senate Bill No. 182—Committee on Finance

### CHAPTER 304

AN ACT establishing a permanent commission for the revision, compilation, annotation, and publishing of the laws of the State of Nevada and certain laws of the United States; prescribing certain duties of a temporary nature; prescribing certain duties of a permanent nature; making an appropriation therefor, and other matters properly connected therewith.

[Approved March 22, 1951]

*The People of the State of Nevada, represented in Senate and Assembly,  
do enact as follows:*

SECTION 1. There is hereby created a commission of the State of Nevada, to be known as the "commission for revision and compilation of Nevada laws," hereinafter referred to as the commission. Such commission shall be composed of three members, and said members shall be the three justices of the supreme court. The members of such commission shall have the powers and duties prescribed by this act, and shall each receive such salary for their services as shall be prescribed by this act, and subsequent enactments.

SEC. 2. As soon as practicable after the effective date hereof the commission shall commence the preparation of a complete revision and compilation of the constitution and the laws of the State of Nevada of general application, together with brief annotations and marginal notes to sections thereof. Such compilation when completed shall be known as "Revised Laws of Nevada," and the year of first publication shall be filled in the blank space of such title, for brevity such title may be cited as "Rev. Laws."

SEC. 3. In preparing such compilation the commission is hereby authorized to adopt such system of numbering as it deems practical, to cause said compilation to be published in such number of volumes, but such volumes shall not exceed 750 pages, as shall be deemed convenient, and to cause such volumes to be bound in loose-leaf binders of good, and so far as possible, permanent quality. The pages of such compilation shall conform in size and printing style to the pages of the Statutes of Nevada, except that if necessary for marginal notes, the same may be of greater width, and roman style type only, shall

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be used. In general, it is recommended, but not required, that such compilation should follow the plan of organization used in the compilation heretofore made and known as the "Revised Laws of Nevada, 1912," as authorized by chapter CCXXXVI, Statutes of 1909.

Sec. 4. Upon completion of each portion of said "Revised Laws," the commission is authorized and directed to have the same printed at the state printing office, and upon completion of the final printing the separate volumes shall be bound as heretofore required and forwarded to the secretary of state for safekeeping and disposition as set forth hereinafter. Sufficient copies of each page shall be printed so that there shall be bound 2,500 copies of each volume of said "Revised Laws." A master copy of said "Revised Laws of Nevada," shall be kept in the office of the commission, and such master copy shall not be removed from said office except in the custody of a member of the commission.

Sec. 5. In complying with the provisions of this act, and within the limitation of available appropriations, the commission is authorized to employ such clerical assistance as it deems necessary, to be compensated at the same rate as other state employees of comparable position, and such assistants in drafting and research as may be necessary, and shall be familiar with methods of compilation and drafting of laws. The terms of the employment and compensation of such assistants shall be fixed by the commission.

Sec. 6. The commission shall reimburse the state printer from the appropriation hereby made for the cost of printing and binding required by this act.

Sec. 7. From and after the completion of "Revised Laws of Nevada," and the delivery of the same to the secretary of state, the said secretary of state shall forward one set of the same to the office of each elected or appointed state officer, and take the official receipt of said officer therefor, thirty sets shall be reserved at all times for the exclusive use of the legislature, one set shall be furnished to each county of the state for the use of the district judge and district attorney of that county, one set shall be furnished to each library in the state maintained by public funds, and such number of sets as may be necessary, not to exceed 50 sets, shall be made available to the state librarian for reciprocal trading with state libraries of sister states and federal territories. The remaining sets shall be sold by the secretary of state at a price of \$10 per volume, and all proceeds of such sales shall be deposited in the general fund.

Sec. 8. The compilation herein authorized to be made, shall be accompanied by as complete an index as it shall be practical to prepare, which index shall be printed and bound in the same manner and style as the "Revised Laws."

Sec. 9. The secretary of state shall make available to the commission all records of his office which are or may be of use to the commission, and any books or statutes in the custody of the said secretary shall likewise be made available to said commission.

Sec. 10. Upon request of the commission, the superintendent of

EXHIBIT "1" pg. 2

buildings and grounds shall assign and make available to the commission suitable and convenient rooms or space for the use of the commission and its employees.

SEC. 11. The commission is authorized to purchase or otherwise secure, necessary supplies and equipment.

SEC. 12. Upon the completion of "Revised Laws of Nevada, \_\_\_\_\_," the commission is authorized and directed to prepare and have printed such replacement and supplementary pages for such laws, as may from time to time be necessary. In any event, said commission shall prepare the replacement and supplementary pages made necessary by the sessions of the legislature, as soon as possible after each such session. The intent of this section is that such "Revised Laws" shall be kept current insofar as may be possible. Distribution of the same is to be made as for the original volumes, and prices shall be set by the commission as near as possible to the cost of preparing and printing, provided, that where distribution of the original volumes was without charge, no charge shall be made for replacement.

SEC. 13. Upon completion, "Revised Laws of Nevada, \_\_\_\_\_," may be cited as prima-facie evidence of the law in all of the courts of this state. Such evidence may be rebutted by proof that the same differ from the official Statutes of Nevada.

SEC. 14. The commission shall, from time to time, make recommendations for clarification of specific statutes, for elimination of obsolete statutes, and calling the attention of the legislature to conflicting statutes, and such other matter as it deems necessary.

SEC. 15. The members of the commission shall each receive a salary of one hundred twenty-five dollars (\$125) per month, paid as are the salaries of other state officers, and out of the appropriation hereby made, for the period commencing on the effective date hereof, and expiring June 30, 1953.

SEC. 16. There is hereby appropriated from the general fund, for the purposes of this act, the sum of seventy-five thousand dollars (\$75,000). Claims against this appropriation shall be allowed and paid in the same manner as are other claims against the state.

SEC. 17. This act shall be effective from and after May 1, 1951.

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Chapter	Title	Page
material for state Bill No. 178— March 22, 1951	defining their powers and duties and other matters related thereto; making an appropriation therefor, and repealing acts in conflict herewith," approved March 22, 1948. Senate Bill No. 308—Committee on Finance. Approved March 22, 1951	445
board of county ads. to purchase, line, extending California power apla, to the town as to the town of branches thereof; line as a public levy and collec- matters relating to Bill No. 188— March 22, 1951	801 An Act to amend an act entitled "An act concerning the estates of deceased persons," approved March 26, 1941. Senate Substitute for Senate Bill No. 14—Committee on Judiciary. Approved March 22, 1951	446
prohibiting the laims against any no funds in said ment, or employes ation thereof, and ed April 2, 1939, March 22, 1951	802 An Act to amend an act entitled "An act to regulate traffic on the high-ways of this state, to provide punishment for violations thereof, to make exceptions in certain cases, and other matters properly connected therewith," approved March 31, 1935, as amended. Assembly Bill No. 78—Mr. Folsom. Approved March 22, 1951	447
relation to public he state board of matters relating conflict herewith, No. 190—Senators Budelman, Monk,	803 An Act to amend an act entitled "An act to provide revenue for the support of the government of the State of Nevada, providing penalties for the violation thereof, and to repeal certain acts relating thereto," approved March 28, 1931, as amended. Senate Bill No. 98—Senator Lovelock. Approved March 22, 1951	448
proceedings in civil relation thereto," a 113—Committee	804 An Act establishing a permanent commission for the revision, compilation, annotation, and publishing of the laws of the State of Nevada and certain laws of the United States; prescribing certain duties of a temporary nature; prescribing certain duties of a permanent nature; making an appropriation therefor, and other matters properly connected therewith. Senate Bill No. 182—Committee on Finance. Approved March 22, 1951	449
define and regulate d dollars or less; such business; to rate than lenders of charge which administration and lations and orders and investigations for a review of a act fund for the providing for the cess under certain all acts and parts elate to the same onsistent with the ate Bill No. 188— Approved March	805 An Act to amend an act entitled "An act relating to aeronautics; providing for acquisition, construction, maintenance, operation, and regulation by municipalities and counties of airports and air navigation facilities; within or without the state, and declaring such to be a public purpose; authorizing eminent domain proceedings; providing tax exemptions for municipal airports and income thereof; authorizing leasing of airports, supplying of services in airport operation, and liens to secure payment therefor; granting extra territorial jurisdiction; authorizing penalties for violation of municipal ordinances and regulations; providing for appropriation, levying of taxes, issuance of bonds, and acceptance of federal aid; and state aid; validating prior acquisitions, actions and bond issues; authorizing joint action by municipalities and other public agencies; providing for mutual aid between municipalities; and to make uniform the law with reference to public municipal airports," approved March 31, 1947. Assembly Bill No. 102—Messrs. Byers and Francovich. Approved March 22, 1951	450
or the government uary 28, 1881, as lietary. Approved	806 An Act to amend an act entitled "An act relating to unemployment compensation, creating unemployment compensation and administration funds and providing for the administration thereof; making an appropriation therefor; defining unemployment and providing compensation therefor; requiring contributions by employers to the unemployment compensation fund; creating the office of director, a board of review, and providing for other officers and employees and defining their powers and duties; providing for the levy of assessment; and other matters relating thereto," approved March 28, 1937, as amended. Assembly Bill No. 263—Mr. Folsom. Approved March 22, 1951	451
r a state board of ities and granting essional engineer- board of registered ing for forfeiture, professional engi- professional engi- nd surveying as a s for the forfeiture, a land surveying; dities of land sur- thorizing land sur- f all persons who seals; providing all acts in conflict ," approved March s Reid, Budelman,	807 An Act to amend an act entitled "An act to create a water district in the Las Vegas valley, Clark County, Nevada; to provide for the procure-ment, storage, distribution and sale of water and rights in the use thereof from Lake Mead for industrial, irrigation, municipal, and domestic uses; to provide for the conservation of the ground-water resources of the Las Vegas valley, and to create authority to purchase, acquire and construct the necessary works to carry out the provisions of this act; to provide for the issuance of district bonds; to provide for the levy of taxes for the payment of operation and maintenance expenses and to supplement other revenues available for the payment of principal of and interest on such bonds of said district; granting said district the franchise to carry on its operations in municipal corporations within its boundaries; exempting the property and bonds of said district from taxation; validating the creation and organiza-tion of said district; and for other purposes related thereto," approved March 27, 1947, as amended. Assembly Bill No. 115—Mr. Coulthard. Approved March 22, 1951	452
s and local councils ouncil of defense;	808 An Act to amend an act entitled "An act creating an industrial insurance commission; providing for its creating and disbursement of funds for the compensation and care of workmen injured in the course of employ-ment; relating to the compensation of injured workmen and the com-pensation of their dependents where such injuries result in death; mak-ing premium payments by certain employers compulsory; authorizing the commission created by the act to make such rules and regulations	453

EXHIBIT "1" pg 4

BARBARA K. CEGAVSKE  
*Secretary of State*

GAIL J. ANDERSON  
*Deputy Secretary for Southern Nevada*

CADENCE MATLJEVICH  
*Deputy Secretary for Operations*

STATE OF NEVADA



OFFICE OF THE  
SECRETARY OF STATE

SCOTT W. ANDERSON  
*Chief Deputy Secretary of State*

KIMBERLEY PERONDI  
*Deputy Secretary for Commercial Recordings*

WAYNE THORLEY  
*Deputy Secretary for Elections*

September 28, 2017

3723 Southern Light Dr.  
Las Vegas, NV 89115

*Re: Certified Copy - Senate Bill 182, Chapter 304 - Approved March 22, 1951*

Dear Mr. Cabrera:

Pursuant to your public records request referenced above, please find enclosed a copy of SB 182, approved March 22, 1951. I was able to locate the bill in our Statutes of Nevada, 1951 volume (copy enclosed). If you require an official certified copy of the actual bill, please contact:

Nevada State Library and Archives  
100 North Stewart Street, Suite 200  
Carson City, NV 89701

Telephone: (775) 684-0135  
Fax: (775) 684-0118

Please be aware there may be a fee for certified copy requests. I hope you find this information helpful. Thank you for contacting the Secretary of State Elections Division.

Sincerely,

Barbara K. Cegavske  
Secretary of State

By:

*Janet Stokes*  
Janet Stokes, Elections Division

/jfs

Enclosure

EXHIBIT "1" pg 5

NEVADA STATE CAPITOL  
101 N. Carson Street, Suite 3  
Carson City, Nevada 89701-3714

MEYERS ANNEX  
COMMERCIAL RECORDINGS  
202 N. Carson Street  
Carson City, Nevada 89701-4201

LAS VEGAS OFFICE  
555 E. Washington Avenue, Suite 5200  
Las Vegas, Nevada 89101-4890

NYCOS ROY

139

# CONSTITUTION OF THE STATE OF NEVADA Art. 3, § 1

Statute permitting disqualification of judge in civil action without filing of affidavit of bias or grounds for disqualification held unconstitutional. Former statute which established peremptory challenge procedure permitting any party in civil action to disqualify judge without filing affidavit of bias or otherwise alleging any grounds for disqualifi-

cation (see sec. 2 of ch. 398, Stats. 1977, codified as former NRS 1.240), constituted unwarranted interference with courts in exercise of judicial function and violated doctrine of separation of powers and therefore was unconstitutional. *Johnson v. Goldman*, 94 Nev. 6, 575 P.2d 929 (1978)

Section. 1. Three separate departments; separation of powers. The powers of the Government of the State of Nevada shall be divided into three separate departments,—the Legislative,—the Executive and the Judicial; and no persons charged with the exercise of powers properly belonging to one of these departments shall exercise any functions, appertaining to either of the others, except in the cases herein expressly directed or permitted.

## —ANNOTATIONS—

### Constitutional Debates.

Nevada Constitutional Debates and Proceedings, pp. 138, 246, 787, 836.

### Nevada Cases.

Exercise of judicial function by board of county commissioners is constitutional. Exercise of judicial function by board of county commissioners is not violation of Nev. Art. 3, § 1, which provides for separation of legislative, executive and judicial powers, because that section is limited by Nev. Art. 4, § 26, which provides that legislature shall prescribe duties of boards of county commissioners. *State ex rel. Mason v. Board of County Comm'rs*, 7 Nev. 392 (1872)

Construction to be placed on act can be determined only by courts, not legislature. Construction to be placed on act can be determined only by courts, and attempted exercise of this power by legislature, in providing that nothing in act authorizing raffle should be construed as authorizing lottery contrary to provisions of constitution, was assumption of functions of judiciary in violation of Nev. Art. 3, § 1, and was disregarded by court. *Ex parte Blanchard*, 9 Nev. 101 (1874)

Separation of powers provision of Nevada constitution. Under Nev. Art. 3, § 1, state government is divided into executive, legislative and judicial departments, and no person charged with exercise of powers properly belonging to one of these departments may exercise any functions appertaining to either of the others, except in cases expressly directed or permitted by constitution. *Ex parte Blanchard*, 9 Nev. 101 (1874)

Legislative appointment of officers. The offices and agencies of a municipal corporation, through which its affairs are administered, are created by the legislature, and persons to fill such offices are chosen or appointed in the mode prescribed by the law of incorporation. Nev. Art. 3, § 1, which separates powers and duties of respective branches of state government, does not prevent legislative appointment because that power is not generally conferred upon executive, and Nev. Art. 15, § 10, exclusively authorizes legislature to provide for election or appointment. *State ex rel. Rosenstock v. Swift*, 11 Nev. 128 (1876)

Legislature cannot adjudicate claims where only private interests are involved. Where only private interests are involved, legislature cannot adjudicate upon disputed claims, and statute directing city treasurer to set apart certain amount of money as special fund and to pay certain enumerated indebtednesses against city, insofar as it undertook to fix amount due listed persons, was attempt by legislature to exercise judicial powers and repugnant to Nev. Art. 3, § 1, pertaining to separation of powers. *State ex rel. Arick v. Hampton*, 13 Nev. 439 (1878)

Statute providing for reduction of jail time is void insofar as it attempts to commute any portion of sentence imposed by courts before time act took effect. Ch. 78, Stats. 1881 (cf. NRS 209.433), relating to government of state prison, insofar as it attempts to commute any portion of sentence imposed by courts prior to time act took effect,



# Art. 6, § 11. CONSTITUTION OF THE STATE OF NEVADA

provisions. State ex rel. Coffin v. Atherton, 19 Nev. 332, 10 Pac. 901 (1886)

Statute's provision allowing judges necessary expenses actually paid in traveling did not violate section. Where statute redistricted state into one judicial district, and provided for election in such district of three judges having equal and concurrent jurisdiction, fact that statute allowed judges, in addition to their salary, necessary expenses actually paid by them in traveling by public conveyance in going to and from place of holding court, did not violate Nev. Art. 6, § 10, which prohibits judicial officers from receiving to their own use any fees or perquisites of office. State ex rel. Coffin v. Atherton, 19 Nev. 332, 10 Pac. 901 (1886)

Compensation allowed trustee under statute not prohibited fee or perquisite. Under sec. 7, ch. 28, Stats. 1869, as amended by sec. 3, ch. 82, Stats. 1871 (cf. NRS 325.070), which authorizes trustee of townsite on public land to charge fee for his time and services while employed in such trust, fact that person became trustee by virtue of his office as district judge did not prevent his making charge for his services as trustee, because compensation allowed trustee under statute is not fee or perquisite of office of district judge, and therefore does not come within prohibi-

tion of Nev. Art. 6, § 10, which forbids judicial officers to receive to his own use any fees or perquisites of office. State ex rel. Jennett v. Stevens, 34 Nev. 128, 116 Pac. 601 (1911)

Statute prohibiting justices of the peace from solemnizing marriages in certain townships did not violate provision requiring uniform system of county and township government. NRS 122.080, which prohibits justices of the peace from solemnizing marriages in certain townships in populous counties did not violate Nev. Art. 4, § 25, which requires uniform system of county and township government, because classification of townships had reasonable basis and did not constitute unconstitutional denial of perquisites of office, because Nev. Art. 6, § 10, which prohibits other judicial officers from accepting fees, did not give justices of the peace any right to marriage fees or limit power of legislature under former provisions of Nev. Art. 6, § 8, to fix their powers, duties and responsibilities. Reid v. Wooster, 88 Nev. 378, 498 P.2d 361 (1972), cited, State ex rel. Brennan v. Bowman, 89 Nev. 330, at 334, 512 P.2d 1321 (1973), Anthony v. State, 94 Nev. 337, at 341, 580 P.2d 919 (1978). County of Clark v. City of Las Vegas, 97 Nev. 260, at 264, 628 P.2d 1120 (1981)

Sec. 11. Justices and judges ineligible for other offices. The justices of the supreme court and the district judges shall be ineligible to any office, other than a judicial office, during the term for which they shall have been elected or appointed; and all elections or appointments of any such judges by the people, legislature, or otherwise, during said period, to any office other than judicial, shall be void.

[Amended in 1950. Proposed and passed by the 1947 legislature; agreed to and passed by the 1949 legislature; and approved and ratified by the people at the 1950 general election. See: Statutes of Nevada 1947, p. 878; Statutes of Nevada 1949, p. 684.]

## -ANNOTATIONS-

### Constitutional Debates.

Nevada Constitutional Debates and Proceedings, pp. 537, 676, 728, 802, 843.

### Nevada Cases.

District judge not prevented from becoming trustee of townsite on public land. Under Nev. Art. 6, § 11, which provides that justices of supreme court and judges of district court shall be ineligible to any office, other than judicial office, during term for which they

shall have been elected or appointed, district judge was not prevented from becoming trustee of townsite on public land, because even though he became trustee by virtue of his office of district judge, and certain of his duties as trustee were judicial in character, his trusteeship was at all times separate and distinct from his office of district judge. State ex rel. Jennett v. Stevens, 34 Nev. 128, 116 Pac. 601 (1911)

Curtis L. Downing

SDCC

#18675

PO BOX 208

Indian Springs NV 89410-0208

Dino Titus

United States Representative (D)

401 Cannon House Office

Building

Washington DC 20515-0001

Re: Senate Bill 182- Committee on Finance CHAPTER 304 Approved  
March 22, 1951, by the Legislature of the State of Nevada  
May 6, 2016

Representative Titus,

I am Curtis L. Downing, I am currently restrained of my liberty,  
in the Nevada Department of Corrections (NDOC), in Indian Springs  
Nevada, at Southern Desert Correctional Center (SDCC).

I address this missive to you, for your immediate necessary  
attention, you should act with immediacy!

The Constitution of the State of Nevada (Const. of Nev.), Article 3,  
§1, as concerns Three separate departments; separation of  
powers; and Art. 6, §11, Justices ... ineligible for other offices,  
have been contravened, violated, by an illegal, unconstitutional  
Act of the Legislature of the State of Nevada (Legis. of Nev.), via  
Senate Bill (S.B.) No. 182- Committee on Finance CHAPTER  
304 [Approved March 22, 1951]. I have enclosed a copy for  
your review and highlighted the appropriate areas.

This bill S.B. No. 182 contravened Art. 3, §1, of the Const. of Nev.,  
by "mandating" that Art. 6, Justices of the Supreme Court of  
Nevada (Sup. Ct. of Nev.), "shall have the powers and 'duties'  
prescribed by this act, ...."

EXHIBIT "4" pg. 1



What powers and duties prescribed by the act? The power and duties as a commission for "revision and compilation of Nevada laws."

Additionally, S.B. No. 182 also contravenes Art. 6, § 11, of the Const. of Nev., by "mandating" that the Justices of the Sup. Ct. of Nev. be in the office of the "commission for revision and compilation of Nevada laws," (referred to as the commission).

Representative Titus, the people of the State of Nevada in 1950, ratified the proposed and passed amendment of Art. 6, to include Sec. 11 by the legislature 1947; agreed to and passed by the 1949 legislature.

Mrs. Titus, this matter "demands" your immediate attention, as the contravention of the Const. of Nev., has a direct affect on the State of Nevada's tripartite government, also having a direct affect on the Government of the United States of America. Especially as this Nation is preparing to elect the next president and vice president of the United States of America, not to mention electing senators and representatives to Congress, that are significant to the electoral college.

Mrs. Titus, this missive is being sent to your other office, being e-mailed to you and your constituents of Congress.

I have all the facts, exhibits, and law. In fact your attention is directed to Bible v. Malone, 68 Nev. 32, 43-44, 231 P.2d 599, 602-03 (1951); Porch v. Patterson, 39 Nev. 251, 268, 156 P. 439, 445 (1916); Livingston v. Washoe County By and Through Sheriff of Washoe County, 112 Nev. 477, 482, 916 P.2d 163, 166 (1996); and Matthews v. Murray, 70 Nev. 116, 120-21, 258 P.2d 982, 983-84 (1953), just to present you with a few cases relevant to this missive.

Mrs. Titus, I am very, very hopeful to read from you, or your office in the very near future.

Mrs. Titus, should you have any questions please do not hesitate to ask them.

Representative Titus, documents are being prepared for filing in the appropriate courts of this Nation, it is hoped that you Representative Titus, will now take all necessary just and legal action, steps to apprise the appropriate State authority, including federal authority of the legal action that this missive demands to be taken, in accordance to your oath of office.

I sincerely appreciate your time and attention, and your response to this missive.

Cordially

Curtis Downing

cc: file; csd; rcb; emb; nw; as; congress; president obama;  
united states supreme court

-3- EXHIBIT "4" pg. 3



DINA TITUS  
MEMBER OF CONGRESS  
1ST DISTRICT NEVADA

CONGRESS OF THE UNITED STATES  
HOUSE OF REPRESENTATIVES  
WASHINGTON, D.C.

COMMITTEE ON  
TRANSPORTATION &  
INFRASTRUCTURE

COMMITTEE ON  
VETERANS' AFFAIRS

May 18, 2016

Mr. Curtis L. Downing #18675  
Southern Desert Correctional Center  
P.O. Box 208  
Indian Springs, NV 89070-0208

Dear Mr. Downing,

Thank you for contacting me regarding the problem you are having while at the Southern Desert Correctional Center.

As much as I would like to assist you, I am limited in what I can do because this facility comes under the direct authority of the State of Nevada. Because I am a representative in the federal government, I have no jurisdiction in state matters.

For your convenience, I am forwarding your letter to Governor Brian Sandoval. I have asked him to assist you and to respond directly to you. You may also wish to contact him at: 555 E. Washington Street, Suite 5100, Las Vegas, NV 89101 and phone: 1-702-486-2500.

Please let me know if you have any questions or if I can be of service with a federal matter.

Sincerely,

Dina Titus  
Member of Congress

EXHIBIT "4" pg. 4



### CERTIFICATE OF ELECTION

This is to certify that at a general election held in the State of Nevada on Tuesday, the fourth day of November, two thousand fourteen

### BRIAN SANDOVAL

was duly elected to the office of Governor of the State of Nevada, for the term of four years from and including the first Monday in January, two thousand fifteen;

Now, Therefore, I Brian Sandoval, Governor of the State of Nevada, by the authority vested in me by the Constitution and laws thereof, do hereby

### COMMISSION

him, the said BRIAN SANDOVAL, as Governor of the State of Nevada, and authorize him to discharge the duties of said office according to law, and to hold and enjoy the same, together with all powers, privileges and emoluments thereunto appertaining.

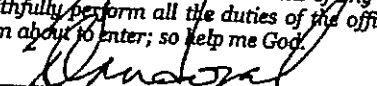


In Testimony Whereof, I have hereunto set my hand and caused the Great Seal of the State of Nevada to be affixed at the State Capitol at Carson City, Nevada on this 9th day of December, two thousand fourteen.

  
Governor of the State of Nevada

  
Secretary of the State of Nevada

I, BRIAN SANDOVAL, do solemnly swear that I will support, protect and defend the constitution and government of the United States, and the constitution and government of the State of Nevada, against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance and loyalty to the same, any ordinance, resolution or law of any state notwithstanding, and that I will well and faithfully perform all the duties of the office of Governor of the State of Nevada, on which I am about to enter; so help me God.

  
BRIAN SANDOVAL

Subscribed and sworn to before me this 5<sup>th</sup> day of January, A.D., two thousand fifteen.



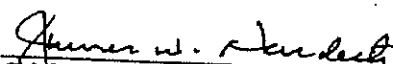
  
Chief Justice of the Supreme Court

EXHIBIT "5" pg. 1

Option 3. A reduced service retirement allowance payable during his life, with the provision that it continue after his death at one-half the rate paid to him and be paid for the life of the beneficiary which he nominates by written designation duly acknowledged and filed with the retirement board at the time of retirement should the beneficiary survive him.

Senate Bill No. 188—Committee on Judiciary.

### CHAPTER 280

AN AOT to amend the title of and to amend an act entitled, "An act establishing a permanent commission for the revision, compilation, annotation, and publishing of the laws of the State of Nevada and certain laws of the United States; prescribing certain duties of a temporary nature; prescribing certain duties of a permanent nature; making an appropriation therefor, and other matters properly connected therewith," approved March 22, 1951.

[Approved March 27, 1951]

*The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:*

SECTION 1. The title of the above-entitled act, being chapter 304, Statutes of Nevada 1951, is hereby amended to read as follows:

An act establishing a permanent commission for the revision, compilation, annotation and publication of the laws of the State of Nevada; prescribing certain duties of a temporary and permanent nature; making an appropriation therefor, and other matters properly connected therewith.

Sec. 2. Section 1 of the above-entitled act, being chapter 304, Statutes of Nevada 1951, is hereby amended to read as follows:

Section 1. There is hereby created a commission of the State of Nevada, to be known as the "statute revision commission," hereinafter referred to as the commission. Such commission shall be composed of three members, and said members shall be the three justices of the supreme court. The members of such commission shall have the powers and duties prescribed by this act, and shall each receive such salary for their services as shall be prescribed by this act, and subsequent enactments.

Sec. 3. Section 2 of the above-entitled act, being chapter 304, Statutes of Nevada 1951, is hereby amended to read as follows:

Section 2. As soon as practicable after the effective date hereof the commission shall commence the preparation of a complete revision and compilation of the laws of the State of Nevada of general application, and a compilation of the constitution of the State of Nevada, together with brief annotations to sections thereof. Such revision when completed shall be known as *Nevada Revised Statutes*, and the year of first publication shall be filled in the blank space of such title. For brevity such title may be cited as *NRS*.

The revision shall contain:

1. The constitution of the United States;

3. The constitution of
3. The laws of this state
4. Citations to decisions
5. A digest of cases decided
6. A full and accurate
7. Such annotations, court rules and other information to include.

Sec. 4. Section 3 of the Statutes of Nevada 1951,

Section 3. In preparing authorized to adopt such to cause said revision to be shall be deemed convenient loose-leaf binders of good, The pages of such revision the pages of the Statutes be used. The commission statute laws in logical order to be such as will enable one general head, with notes the supreme court, history arranged in such manner as fulness thereof.

The commission, in preparing alter the sense, meaning, renumber sections and paragraphs of headnotes, rearrange sections to agree with renumbered "chapter" for "article" and words and vice versa, conformity, and correct manifest

Sec. 5. Section 4 of the Statutes of Nevada 1951, is hereby

Section 4. Upon completion commission is authorized an printed or reproduced by any and upon completion of the separate volumes shall be bound to the secretary of state for hereinafter. Sufficient copies shall be Nevada Revised Statutes.

Statutes, shall be kept master copy shall not be removed a member of the commission

Sec. 6. Section 5 of the Statutes of Nevada 1951, is hereby

EXHIBIT 6 pg. 1

2. The constitution of the State of Nevada;
3. The laws of this state of general application;
4. Citations to decisions of the Nevada supreme court and federal courts construing each statute and constitutional provision;
5. A digest of cases decided by the Nevada supreme court;
6. A full and accurate index of the statute laws; and
7. Such annotations, historical notes, supreme court and district court rules and other information as the commission deems appropriate to include.

Sec. 4. Section 3 of the above-entitled act, being chapter 304, Statutes of Nevada 1951, is hereby amended to read as follows:

Section 3. In preparing such revision the commission is hereby authorized to adopt such system of numbering as it deems practical, to cause said revision to be published in such number of volumes as shall be deemed convenient, and to cause such volumes to be bound in loose-leaf binders of good, and so far as possible, permanent quality. The pages of such revision shall conform in size and printing style to the pages of the Statutes of Nevada, and roman style type only shall be used. The commission shall classify and arrange the entire body of statute laws in logical order throughout the volumes, the arrangement to be such as will enable subjects of a kindred nature to be placed under one general head, with necessary cross-references. Notes of decisions of the supreme court, historical references and other material shall be arranged in such manner as the commission finds will promote the usefulness thereof.

The commission, in preparing Nevada Revised Statutes shall not alter the sense, meaning or effect of any legislative act, but may renumber sections and parts of sections thereof, change the wording of headnotes, rearrange sections, change reference numbers or words to agree with renumbered chapters or sections, substitute the word "chapter" for "article" and the like, substitute figures for written words and vice versa, change capitalisation for the purpose of uniformity, and correct manifest clerical or typographical errors.

Sec. 5. Section 4 of the above-entitled act, being chapter 304, Statutes of Nevada 1951, is hereby amended to read as follows:

Section 4. Upon completion of the Nevada Revised Statutes, the commission is authorized and directed to have the same printed, lithographed or reproduced by any other process at the state printing office, and upon completion of the final printing or other reproduction the separate volumes shall be bound as heretofore required and forwarded to the secretary of state for safekeeping and disposition as set forth hereinafter. Sufficient copies of each page shall be printed or reproduced so that there shall be bound 2,500 copies of each volume of said Nevada Revised Statutes. A master copy of said Nevada Revised Statutes, shall be kept in the office of the commission, and such master copy shall not be removed from said office except in the custody of a member of the commission or the director thereof.

Sec. 6. Section 5 of the above-entitled act, being chapter 304, Statutes of Nevada 1951, is hereby amended to read as follows:

EXHIBIT "6" pg. 2



Section 5. In complying with the provisions of this act, and within the limitations of available appropriations, the commission is authorized to appoint a reviser of statutes who shall be known as the director of the statute revision commission. The commission shall fix the compensation of the director and he shall serve at the pleasure of the commission. The director shall perform such duties as may be required by the commission in connection with its duties under this act. The commission is authorized to employ such clerical assistance as it deems necessary, to be compensated at the same rate as other state employees of comparable position, and such assistants in drafting and research as may be necessary, and shall be familiar with methods of compilation and drafting of laws. The terms of the employment and compensation of such assistants shall be fixed by the commission.

Sec. 7. Section 6 of the above-entitled act, being chapter 304, Statutes of Nevada 1951, is hereby amended to read as follows:

Section 6. The commission shall reimburse the state printer from the appropriation hereby made or hereafter made for the cost of printing or reproduction required by this act.

Sec. 8. Section 7 of the above-entitled act, being chapter 304, Statutes of Nevada 1951, is hereby amended to read as follows:

Section 7. From and after the completion of Nevada Revised Statutes and the delivery of the same to the secretary of state, he shall sell each set at a price to be set by the commission as near as possible to the cost of preparing, printing and binding, and all proceeds of such sales shall be deposited in the general fund.

Sec. 9. Section 8 of the above-entitled act, being chapter 304, Statutes of Nevada 1951, is hereby repealed.

Sec. 10. Section 12 of the above-entitled act, being chapter 304, Statutes of Nevada 1951, is hereby amended to read as follows:

Section 12. Upon the completion of Nevada Revised Statutes, the commission is authorized and directed to prepare and have printed or reproduced such replacement and supplementary pages for such laws as may from time to time be necessary. In any event, said commission shall prepare the replacement and supplementary pages made necessary by the sessions of the legislature as soon as possible after each such session. The intent of this section is that such Nevada Revised Statutes shall be kept current insofar as may be possible. Prices shall be set by the commission as near as possible to the cost of preparing and printing and reproduction.

Sec. 11. Section 13 of the above-entitled act, being chapter 304, Statutes of Nevada 1951, is hereby amended to read as follows:

Section 13. Upon completion, Nevada Revised Statutes, may be cited as prima-facie evidence of the law in all of the courts of this state. Such evidence may be rebutted by proof that the same differ from the official Statutes of Nevada.

Sec. 12. Section 15 of the above-entitled act, being chapter 304, Statutes of Nevada 1951, is hereby amended to read as follows:

Section 15. The members of the commission shall each receive a salary of one hundred twenty-five dollars (\$125) per month, paid as are the salaries of other state officers, and out of the appropriation

hereby made or hereafter effective date hereof, and  
Sec. 18. This act shall

Senate Bill No. 107—Comm

AN ACT to amend an act of this state, to provide for certain cases, approved March 21, 19

The People of the State of

SECTION 1. The above Nevada 1925, and being as amended, is hereby amended section 2184, which shall read as follows:

Section 2184. Any warrant, may seize and operated with improper reason to believe has a manufacturer's number or obliterated.

Any officer of the station of such vehicle shall and shall hold the vehicle action should be taken:

Sec. 2. This act shall

Senate

AN ACT to amend an act governing of local improvement of power plants, systems for rural cooperation and distribution in connection therewith, and matter 4, 1928, as amended

The People of the State of

SECTION 1. The above 1929, and section 3459.0:

EXHIBIT "6" pg. 3

hereby made or hereafter made, for the period commencing on the effective date hereof, and expiring June 30, 1955.

Sec. 13. This act shall be effective on passage and approval.

Senate Bill No. 107—Committee on Aviation, Transportation and Highways.

#### CHAPTER 281

AN ACT to amend an act entitled, "An act to regulate traffic on the highways of this state, to provide punishment for violation thereof, to make exceptions in certain cases, and other matters properly connected therewith," approved March 21, 1925, as amended.

[Approved March 27, 1953]

*The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:*

SECTION 1. The above-entitled act, being chapter 166, Statutes of Nevada 1925, and being sections 4350 to 4373, inclusive, 1929 N.O.L., as amended, is hereby amended by adding thereto a new section, designated section 213 $\frac{1}{2}$ , which shall immediately follow section 213 $\frac{1}{2}$ , and which shall read as follows:

Section 213 $\frac{1}{2}$ . Any officer of the state highway patrol, without a warrant, may seize and take possession of any vehicle which is being operated with improper registration, or which the patrol officer has reason to believe has been stolen, or on which any motor number, manufacturer's number or identification mark has been defaced, altered or obliterated.

Any officer of the state highway patrol so seizing or taking possession of such vehicle shall immediately notify the patrol of such action and shall hold the vehicle until notified by the patrol as to what further action should be taken regarding the disposition of the vehicle.

Sec. 2. This act shall be effective upon passage and approval.

Senate Bill No. 189—Senator Johnson.

#### CHAPTER 282

AN ACT to amend an act entitled, "An act to provide for the organization and governing of local improvement districts for the construction or acquisition of power plants, electrical transmission lines, sewer and water systems for rural communities and unincorporated towns, and for the acquisition and distribution of electrical energy or water or other property in connection therewith, and for the operation and maintenance of such works, and matters properly connected therewith," approved February 4, 1928, as amended.

[Approved March 27, 1953]

*The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:*

SECTION 1. The above-entitled act, being sections 3455-3495, N.O.L. 1928, and section 3459.01, 1929 N.O.L. 1941 Supp., is hereby amended

EXHIBIT "6" pg. 4

banks, Banking and Corporations

R 247

act to require foreign corporations to  
in this State, regulating and pre-  
scribes pertaining thereto, and repeal-  
," approved March 20, 1907.

1907, 1908]

resented in Senate and Assembly,  
follows:

entitled act, being section 1841,  
er 144, Statutes of Nevada 1951,  
id as follows:

nized under the laws of another  
ia, a dependency of the United  
hereafter enter this state for the  
st, before commencing or doing  
office of the secretary of state of  
its articles of incorporation, or  
; or executive, or governmental  
by which it was created, and of  
amendatory thereof, suppl-  
o any of the aforesaid instru-  
to the laws of the place of its  
orded therein; and which have  
its creation and to the date of  
of state of the State of Nevada  
d instruments for the purpose  
state; and submit with such  
thereof, conformed in every  
rtification by the secretary of  
orporation in the office of the  
ncipal place of business in this

orporate papers shall be made  
f the place of creation of such  
orporate papers or records;  
foreign country, such official's  
ed in such manner as may, in  
papers certified therein which  
untry.

transact business in this state  
creation of any paper, docu-  
pplemental to, or otherwise  
and which, pursuant to the  
filed or recorded therein shall  
of this state a copy thereof,  
same shall have been filed in

the place of its creation, in the manner heretofore prescribed and set  
forth in this section.

If any such corporation shall fail so to file any of the papers referred  
to in the preceding paragraph of this section, in the manner and at  
the time therein prescribed, and the secretary of state shall have knowl-  
edge that the same have not been thus filed in his office but are of  
record in the place wherein the corporation was created, he shall refuse  
to file any such papers thereafter submitted for filing until such corpo-  
ration shall first cause to be filed in his office and pay the filing fee  
applicable thereto, such papers as the corporation has failed previously  
to file as provided in the preceding paragraph of this section.

In the event the papers by this section required to be filed in this  
state are of record in the place of its creation in a foreign language,  
such certified papers in such foreign language, shall be accompanied  
by a verified translation thereof into the English language.

The secretary of state shall not file the articles of incorporation  
of any foreign corporation whose name is the same as, or deceptively  
similar to, the name of any corporation formed or incorporated in this  
state or any other foreign corporation authorized to transact business  
within this state or a name reserved for the use of any proposed corpo-  
ration under section 4a of chapter 177, Statutes of Nevada 1925.

Sec. 2. This act shall become effective upon passage and approval.

Senate Bill No. 218—Committee on Finance

# CHAPTER 248

AN ACT to amend an act entitled "An Act establishing a permanent commis-  
sion for the revision, compilation, annotation and publication of the laws  
of the State of Nevada; prescribing certain duties of a temporary and  
permanent nature; making an appropriation therefor, and other matters  
properly connected therewith," approved March 22, 1951.

[Approved March 26, 1955]

The People of the State of Nevada, represented in Senate and Assembly,  
do enact as follows:

SECTION 1. The above-entitled act, being chapter 304, Statutes of  
Nevada 1951, at page 470, is hereby amended by adding thereto a new  
section to be designated as section 4.5, which shall immediately follow  
section 4 and shall read as follows:

Section 4.5. Notwithstanding any of the provisions of chapter 294,  
Statutes of Nevada 1953, at page 460, any unexpended balance of the  
appropriation made to the statute revision commission by section 41  
of chapter 294, Statutes of Nevada 1953, at page 463, shall not revert  
to the general fund on July 1, 1955, but shall be placed to the credit  
of the statute revision commission in the state treasury in a fund  
hereby created and designated as the statute revision commission  
printing and binding fund, which fund shall be used only for the

EXHIBIT "7" pg. 1

printing and binding of the Nevada Revised Statutes in the manner provided by this act.

Sec. 2. Section 15 of the above-entitled act, being chapter 304, Statutes of Nevada 1951, at page 472, as amended by chapter 280, Statutes of Nevada 1953, at page 390, is hereby amended to read as follows:

Section 15. The member of the commission who is chief justice of the supreme court for the period from the effective date of this act to January 1, 1957, shall receive an annual salary of \$8,500. The member of the commission who is chief justice of the supreme court for the period from January 1, 1957, to July 1, 1957, shall receive an annual salary of \$8,500. The member of the commission who is senior justice of the supreme court for the period from the effective date of this act to January 1, 1957, shall receive an annual salary of \$6,500. The member of the commission who is senior justice of the supreme court for the period from January 1, 1957, to July 1, 1957, shall receive an annual salary of \$1,500. The member of the commission who is junior justice of the supreme court for the period from the effective date of this act to January 1, 1957, shall receive an annual salary of \$1,500. The member of the commission who is junior justice of the supreme court for the period January 1, 1957, to July 1, 1957, shall receive an annual salary of \$1,500. The salaries herein provided for shall be paid out of any appropriation heretofore or hereafter made by direct legislative appropriation from the general fund.

Sec. 3. This act shall become effective upon passage and approval.

Senate Bill No. 229—Committee on Education and State University

#### CHAPTER 249

AN ACT providing for the acceptance of benefits of emergency federal assistance to the states and territories in the construction of public elementary and secondary school facilities; designating the state board of education, as the state agency charged with the responsibilities of administering this act and complying with the requirements of the Federal Government; authorizing the state treasurer to receive and be custodian of any funds received hereunder; and other matters properly relating thereto.

[Approved March 26, 1955]

*The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:*

SECTION 1. The State of Nevada hereby accepts any and all benefits proffered to it under and by virtue of that act of the Congress of the United States entitled "An Act to provide financial assistance to the States and Territories in the construction of urgently needed public elementary and secondary school facilities, and for other purposes."

Sec. 2. The state board of education is hereby designated as the state agency charged with the responsibilities of administering this act and complying, on behalf of the State of Nevada, with any requirements established by law incident to the receipt of funds from the

Federal Government inated.

Sec. 3. The state funds received pursuant to and in the custody of the state board of education shall be paid out on claims in the manner provided by this act.

Sec. 4. This act

Sent

AN ACT to amend an act for the regulation of its duties and powers, March 28, 1919.

*The People of the State*

SECTION 1. Section 10, N.O.L. 1929, is hereby amended to read as follows: Section 10. Every person who is employed by the state and who is engaged in the transaction of business and who is required to render to the state a report in such form as the accounts of every person shall be filed not later than annually on the first day of January, shall be provided for the state at any time call for such information is

Any commissioner of the state shall have ten minutes, and papers relating to their correctness with the rules and regulations provided, where any person who is employed by the state government shall be followed, also

Sec. 2. Section 3, N.O.L. 1929, is hereby

Section 32. All rules and regulations fixed by the commission shall be lawful from the date of the commission, or in pu

EXHIBIT "7" pg. 2

# LAWS OF THE STATE OF NEVADA

Passed at the

## FORTY-EIGHTH SESSION OF THE LEGISLATURE

1957

Senate Bill No. 1—Senator Johnson

### CHAPTER 1

AN ACT creating a legislative fund.

[Approved January 22, 1957]

*The People of the State of Nevada, represented in Senate and Assembly,  
do enact as follows:*

SECTION 1. For the purpose of paying the salaries, mileage, and the postage and stationery allowances of members of the 1957 Nevada legislature, the salaries of the attachés, and the incidental expenses of the respective houses thereof, and the unpaid expenses incurred by the 1956 special session of the Nevada legislature, the state treasurer is hereby authorized and required to set apart, from any money now in the general fund not otherwise appropriated, the sum of \$150,000, which shall constitute the legislative fund.

Sec. 2. The state controller is hereby authorized and required to draw his warrants on the legislative fund in favor of the members and employees of the senate and assembly for per diem, mileage, stationery allowances, compensation, and incidental expenses of the respective houses, when properly certified in accordance with law, and the state treasurer is hereby authorized and required to pay the same.

Sec. 3. Any unexpended portion of the legislative fund shall revert to the general fund on December 31, 1959.

Sec. 4. This act shall become effective upon passage and approval.

Senate Bill No. 2—Committee on Judiciary

### CHAPTER 2

AN ACT to revise the laws and statutes of the State of Nevada of a general or public nature; to adopt and enact such revised laws and statutes, to be known as the Nevada Revised Statutes, as the law of the State of Nevada; to repeal all prior laws and statutes of a general, public and permanent nature; providing penalties; and other matters relating thereto.

[Approved January 22, 1957]

*The People of the State of Nevada, represented in Senate and Assembly,  
do enact as follows:*

SECTION 1. Enactment of Nevada Revised Statutes. The Nevada Revised Statutes, being the statute laws set forth after section 9 of this act, are hereby adopted and enacted as law of the State of Nevada.

EXHIBIT "8" pg. 1

Sec. 2. Designation and Citation. The Nevada Revised Statutes adopted and enacted into law by this act, and as hereafter amended and supplemented and printed and published pursuant to law, shall be known as Nevada Revised Statutes and may be cited as "NRS" followed by the number of the Title, chapter or section, as appropriate.

Sec. 3. Repeal of Prior Laws. Except as provided in section 5 of this act and unless expressly continued by specific provisions of Nevada Revised Statutes, all laws and statutes of the State of Nevada of a general, public and permanent nature enacted prior to January 21, 1957, hereby are repealed.

Sec. 4. Construction of Act.

1. The Nevada Revised Statutes, as enacted by this act, are intended to speak for themselves; and all sections of the Nevada Revised Statutes as so enacted shall be considered to speak as of the same date, except that in cases of conflict between two or more sections or of any ambiguity in a section, reference may be had to the acts from which the sections are derived, for the purpose of applying the rules of construction relating to repeal or amendment by implication or for the purpose of resolving the ambiguity.

2. The provisions of Nevada Revised Statutes as enacted by this act shall be considered as substituted in a continuing way for the provisions of the prior laws and statutes repealed by section 3 of this act.

3. The incorporation of initiated and referred measures is not to be deemed a legislative reenactment or amendment thereof, but only a mechanical inclusion thereof into the Nevada Revised Statutes.

4. The various analyses set out in Nevada Revised Statutes, constituting enumerations or lists of the Titles, chapters and sections of Nevada Revised Statutes, and the descriptive headings or catchlines immediately preceding or within the texts of individual sections, except the section numbers included in the headings or catchlines immediately preceding the texts of such sections, do not constitute part of the law. All derivation and other notes set out in Nevada Revised Statutes are given for the purpose of convenient reference, and do not constitute part of the law.

5. Whenever any reference is made to any portion of Nevada Revised Statutes or of any other law of this state or of the United States, such references shall apply to all amendments and additions thereto now or hereafter made.

Sec. 5. Effect of Enactment of NRS and Repealing Clause.

1. The adoption and enactment of Nevada Revised Statutes shall not be construed to repeal or in any way affect or modify:

- (a) Any special, local or temporary laws.
- (b) Any law making an appropriation.
- (c) Any law affecting any bond issue or by which any bond issue may have been authorized.
- (d) The running of the statutes of limitations in force at the time this act becomes effective.
- (e) The continued existence and operation of any department, agency or office heretofore legally established or held.
- (f) Any bond of any public officer.

(g) Any taxes, fees imposed.

(h) Any statutes accepting any compact with the United States or any

2. All laws, rights section shall continue Statutes had not been

3. The repeal of this act shall not affect or established, nor at the time when such every case shall continue Statutes.

4. All the provisions of this act shall be deemed to have taken effect when they began to take effect, agency, office, limitation, or any right tract already affected provisions.

5. No fine, forfeiture existing prior to the act shall be affected by repeal of such fines and shall be effected as if effect.

6. When an offense under Nevada Revised Statutes takes effect, the statute in effect when the offense was committed shall continue in effect.

7. No law or statute shall be repealed by the repeal of the law.

8. The repeal by this act of any previous acts, contracts or such acts, contracts shall be valid as if there had been no repeal.

9. If any provision of this act, derived from a statute, is held unconstitutional, the act shall not prevent the statute from appearing to have been repealed.

Sec. 6. Severability. If any provision of the Nevada Revised Statutes or to any person, thing shall not affect the Statutes or such an invalid provision or Nevada Revised Statutes shall be severable.

Sec. 7. Effective

EXHIBIT "8" pg. 2



(g) Any taxes, fees, assessments or other charges incurred or imposed.

(h) Any statutes authorizing, ratifying, confirming, approving or accepting any compact or contract with any other state or with the United States or any agency or instrumentality thereof.

2. All laws, rights and obligations set forth in subsection 1 of this section shall continue and exist in all respects as if Nevada Revised Statutes had not been adopted and enacted.

3. The repeal of prior laws and statutes provided in section 3 of this act shall not affect any act done, or any cause of action accrued or established, nor any plea, defense, bar or matter subsisting before the time when such repeal shall take effect; but the proceedings in every case shall conform with the provisions of Nevada Revised Statutes.

4. All the provisions of laws and statutes repealed by section 3 of this act shall be deemed to have remained in force from the time when they began to take effect, so far as they may apply to any department, agency, office, or trust, or any transaction, or event, or any limitation, or any right, or obligation, or the construction of any contract already affected by such laws, notwithstanding the repeal of such provisions.

5. No fine, forfeiture or penalty incurred under laws or statutes existing prior to the time Nevada Revised Statutes take effect shall be affected by repeal of such existing laws or statutes, but the recovery of such fines and forfeitures and the enforcement of such penalties shall be effected as if the law or statute repealed had still remained in effect.

6. When an offense is committed prior to the time Nevada Revised Statutes take effect, the offender shall be punished under the law or statute in effect when the offense was committed.

7. No law or statute which heretofore has been repealed shall be revived by the repeal provided in section 3 of this act.

8. The repeal by section 3 of this act of a law or statute validating previous acts, contracts or transactions shall not affect the validity of such acts, contracts or transactions, but the same shall remain as valid as if there had been no such repeal.

9. If any provision of the Nevada Revised Statutes as enacted by this act, derived from an act that amended or repealed a preexisting statute, is held unconstitutional, the provisions of section 3 of this act shall not prevent the preexisting statute from being law if that appears to have been the intent of the legislature or the people.

Sec. 6. Severability of Provisions. If any provision of the Nevada Revised Statutes or amendments thereto, or the application thereof to any person, thing or circumstance is held invalid, such invalidity shall not affect the provisions or application of the Nevada Revised Statutes or such amendments that can be given effect without the invalid provision or application, and to this end the provisions of Nevada Revised Statutes and such amendments are declared to be severable.

Sec. 7. Effective Date. This act, and each and all of the laws and

EXHIBIT "8" pg. 3

statutes herein contained and hereby enacted as the Nevada Revised Statutes, shall take effect upon passage and approval.

Sec. 8. Omission From Session Laws. The provisions of NRS 1.010 to 710.590, inclusive, appearing following section 9 of this act shall not be printed or included in the Statutes of Nevada as provided by NRS 218.500 and NRS 218.510; but there shall be inserted immediately following section 9 of this act the words: "(Here followed NRS 1.010 to 710.590, inclusive.)"

Sec. 9. Content of Nevada Revised Statutes. The following laws and statutes attached hereto, consisting of NRS sections 1.010 to 710.590, inclusive, constitute the Nevada Revised Statutes:

(Here followed NRS 1.010 to 710.590, inclusive.)

Senate Bill No. 3—Committee on Judiciary

CHAPTER 3

AN ACT to amend NRS section 218.310 relating to drafting of bills, and to amend NRS sections 220.100, 220.130, 220.160 and 220.170 relating to the duties of the statute revision commission.

(Approved January 26, 1961)

*The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:*

SECTION 1. NRS 218.310 is hereby amended to read as follows:

218.310 1. Bills to amend existing general statutes and all bills to enact new statutes of a general, public and permanent nature shall be deemed amendments to NRS and shall contain reference to [sections of] NRS. [In the body of the bill rather than in the title.]

2. New matter shall be indicated by underscoring in the typewritten copy and italics in the printed copy [.] except in bills to add new chapters or Titles to NRS and which do not amend existing sections of NRS.

3. Matter to be omitted shall be indicated by brackets in the typewritten copy and brackets or strike-out type in the printed copy.

4. In the drafting and printing of bills all matter appearing as omitted and bracketed in previously enacted and printed statutes shall be omitted entirely.

Sec. 2. NRS 220.100 is hereby amended to read as follows:

220.100 1. As soon as practicable after May 1, 1961, the commission shall commence the preparation of a complete revision and compilation of the laws of the State of Nevada of general application, and a compilation of the constitution of the State of Nevada, together with brief annotations to sections thereof.

2. The revision when completed shall be known as Nevada Revised Statutes [ ], and the year of first publication shall be filled in in the blank space of the title. For brevity the title may be cited as NRS [ ] and may be cited as NRS followed by the number of the Title, chapter or section, as appropriate.

Sec. 3. NRS 220.130

220.130 1. Upon completion the commission is authorized to print or reproduce the printed or reproduced office. Sufficient copies of that there shall be for the Revised Statutes.

2. Upon completion the separate volumes shall be forwarded to the secretary of state. The secretary of state shall commission as near as possible, binding, and all proceeds fund.

3. A master copy shall be kept in the office of the secretary of state and be removed from the office of the commission or the director of the State Library.

Sec. 4. NRS 220.16

220.160 1. Upon completion

[ ], the commission shall have printed or reproduced pages for such laws as event, the commission shall make necessary pages, made necessary possible after each session.

2. The intent of this chapter and, in the preparation and and supplementary pages.

3. Prices shall be cost of preparing, printing.

Sec. 5. NRS 220.1

220.170 Upon completion

be cited as prima facie state. Such evidence from the official state Revised Statutes, as 220.130, shall contain each section thereof which Nevada Revised Statutes the sections in the printed and bound a copy of the certificate.

2. Each set of the revision shall be in accordance with the copy of Nevada Revised Statutes of the director of the original section of the changes authorized

EXHIBIT "8" pg. 4

Curtis L. Downing

SDEC  
#18675

P.O. Box 208  
Indian Springs NV 89070-0208

Brian Sandoval  
Governor of the State of Nevada  
555 E. Washington Ave.  
Suite 5100  
Las Vegas NV 89101

Re: Notice to Cease-And-Desist arrests, prosecutions and/or  
any and/or all Governmental operations facilitated by and/or  
through the Nevada Revised Statutes

Date: 2016 JUN 17

Governor Sandoval,

You were forwarded a missive, or a copy thereof, from Congress-  
woman, Dina Titus, and Representative Titus, specifically asked  
you to contact Curtis L. Downing, #18675, whom is presently  
incarcerated at Southern Desert Correctional Center (SDEC), to  
address the specific nature of the content of his May 6th, 2016,  
missive to Representative Titus.

Mr. Sandoval, I as a Sovereign of the State of Nevada, and of  
the United States of America, it is put specifically, and set forth  
that you as Governor of the Great State of Nevada, issue an Order,  
Directive, etc.; to all Counties of the State of Nevada, to Cease-And-  
Desist any and/or all arrests, or prosecutions in the State of  
Nevada under criminal statutes known as the Nevada Revised  
Statutes (NRS).

Additionally, that you suspend by way of Order, Directive  
etc., to all Counties of the State of Nevada to, Cease-

And-Desist; any and/or all governmental operations facilitated by and/or through the NRS.

That, you, Governor Sandoval notify the United States Government of the immediate necessity to "Cease-And-Desist; any and/or all governmental operations facilitated by and/or through the NRS of the State of Nevada," specifically that you, Governor Sandoval notify Senator Dean Heller, Senator Harry Reid, Representative Dina Titus; Representative Joe Heck, Representative Mark Amodei; and President Hardy, of the immediate need to Cease-And-Desist operations of the State of Nevada.

The need to issue the Order, Directive to Cease-And-Desist, is due to facts as will be set forth that, the State of Nevada is "not" in full possession of its faculties as a member of the Union (of the United States of America); and its legislative, executive, and judicial departments are "not" peacefully operating by the orderly well settled methods prescribed by its fundamental, paramount law, i.e. the Constitution of the State of Nevada (Const. of Nev.), and has not done so since 1951, there having been a complete collapse of the "constitutionally mandated tripartite government of the State of Nevada."

That, due to the collapse of the State of Nevada's tripartite government, the State of Nevada is not maintaining a Republican form of Government. The guarantee of the United States Constitution Article IV Section, 4.

That, effectively, due to the collapse of the tripartite government of the State of Nevada, I have been illegally seized, and my due process, and equal protection of law rights, as to the Fourth (4th), and Fourteenth (14th), Amendments of the United

States Constitution respectively, have been violated, as well as the private rights of the State of Nevada, and those rights as appertain to the Const. of Nev. i.e. Article (Art.), 1, § 8.

The collapse of Nevada's tripartite government occurred when there was collusion, and conspiracy of member's of Nevada's departments of government, legislative, executive, and judicial; individually, and collectively contravened the Const. of Nev. Art. 3, § 1, and Art. 6, § 11.

The collapse of Nevada's tripartite government is specifically due to Senate Bill (S.B.), No. 182 - Committee on Finance CHAPTER 304 Approved March 22, 1951.

That, due to a sufficient readily discernable, obvious, willful, deliberate, aforethought contravention of Art. 6, § 11, of the Const. of Nev. The contravention of Art. 6, § 11, of the Const. of Nev. is brought forth first.

The history of Art. 6, § 11, is as follows: In 1947, it was proposed and passed to amend Art. 6, to include Section 11, to Art. 6.

In 1949, it was agreed to and passed to amend Art. 6, to include Section 11, to Art. 6.

In 1950, during the general election the people of the State of Nevada ratified that Art. 6, be amended and Section 11 be included.

Art. 6, § 11, reads in part as follows: The justices of the Supreme Court, ... shall be ineligible to any office, other than a judicial office, during the term for which they have been elected or appointed; and all elections or appointments of any such judges by the people, Legislature, or otherwise, during said period, to any office other than judicial, shall be void.

That, S.B. No. 182, of 1951, Section 1. reads as follows:

"There is hereby created a commission of the State of Nevada, to be known as the 'commission for revision and compilation of Nevada laws,' hereinafter referred to as the commission. Such commission shall be the three justices of the supreme court. The members of such commission shall have the powers duties prescribed by this act, and shall each receive such salary for their services as shall be prescribed by this act, and subsequent enactments."

That, in 1951, then Justices of the Supreme Court of the State of Nevada (Sup. Ct. of Nev.), Justice Milton B. Badt (J. Badt), Justice Edgar Father (J. Father), and Justice Charles M. Merrill (J. Merrill), were Art. 6, justices of the Sup. Ct. of Nev.

That, from their own opinion in *State ex rel. Mathews v. Murray*, 70 Nev. 116, 120-21, 258 P.2d 982, 983-84 (1953), said justices knew that the commission they were mandated to, constituted an "office," as prohibited by Art. 6, § 11, of the Const. of Nev., for their work on the revision and compilation of Nevada laws.

There was, is willful, deliberate collusion, and conspiracy of the tripartite departments of government to, deliberately, willfully contravene Art. 6, § 11, of the Const. of Nev. The Legislature of the State of Nevada approved and passed in the Senate and Assembly, S.B. No. 182, the then governor of the State of Nevada signed into law S.B. No. 182, and the justices of the Sup. Ct. of Nev. filled the office of the commission from 1951 to 1963.

Now, the deliberate, willful, aforethought contravention of Art. 3, § 1, of the Const. of Nev.

Art. 3, § 1, of the Const. of Nev. in its clear, plain and unambiguous language reads: "...; and no persons charged with the exercise of powers properly belonging to one of these depart-



ments shall exercise 'any functions' appertaining to either of the others, ...."

That, S.B. No. 182 attempted to give power to the said justices of the Sup. Ct. of Nev., power to perform duties of the Act. S.B. No. 182 of revising and compiling Nevada laws.

Revising and compiling Nevada laws, is a core function of the Legislature of the State of Nevada (Legis. of Nev.). The function of revising and compiling does not relate back to any function of the Judicial Department, Art. 6, of the Const. of Nev.

The contravention of Art. 3, § 1, of the Const. of Nev. by the Legis. of Nev. and the Judicial Department (Jud. Dept.), was willful, and specifically deliberate act.

That, J. Bart; Justice Eather, and Justice Merrill, by their opinion in *Bible v. Malone*, 68 Nev. 32, 41, 231 P.2d 599, 603 (1951), "knew," that an unconstitutional act cannot create an office, for an act is no law. It confers no rights, imposes no duties, affords no protections, furnishes no shield, and gives no authority. It is in legal contemplation to be regarded as never having been possessed of any legal force or effect, and is always to be treated as though it never existed.

The NRS are the product of an unconstitutional, deliberate act, completely contravening the Const. of Nev. Art. 3, § 1; and 6, § 11; wherefore, the NRS are always to be treated as though they never existed!!

Governor Sandoval, without carefully constructed laws, without obedience to the Rule of law, the State of Nevada will simply end up replacing one form of tyranny with another.

This Country is based on the Rule of Law, and this principle must be defended.

Governor Sandoval, "Facts are stubborn things; and whatever may our wishes, our inclinations, or the dictates of our passions, they cannot alter the state of the facts and evidence."

Governor Sandoval, you need to decide what to do concerning the deficiencies of S.B. No. 182 based on the law and not your prejudices. Although the people of the State of Nevada, by their constitution, have delegated the exercise of sovereign powers to the several departments, they have not thereby divested themselves of the sovereignty. They retain in their own hands, so far as they have thought it needful to do so, a power to control governments they create, and the three departments are responsible to, and subject to be ordered, directed, changed, or abolished by them. Yet, this control and direction must be exercised in the legitimate mode previously agreed upon. The voice of the people, in their sovereign capacity, can only be of legal force when expressed at the times and under the conditions which they themselves have prescribed and pointed out by the constitution, or which, consistently with the constitution, have been prescribed and pointed out for them by statute; and if any portion of the people, however large, an attempt should be made to interfere with the regular working of the agencies of government at any other time or in any other mode than as allowed by existing law, either constitutional or statutory, it would be revolutionary in character, and must be resisted and repressed by the officers who, for the time being, represent legitimate government.

The laws of the State of Nevada still in legal force are the Nevada Compiled laws, as they were not "legally, constitutionally," repealed by a legitimate act of the legis. of Nev.

Wherefore, Governor Sandoval, in review of the above and

Foregoing, its easy and readily discernible, to determine that S.B. No. 182, is "unconstitutional," being in complete contravention of the paramount law of the State of Nevada, the Const. of Nev. Art. 3, § 1; and Art. 6, § 11.

Governor Sandoval, factual information is also readily available that sets forth, other contraventions of the Const. of Nev., that being Art. 4, § 17; Art. 4, § 23; and Art. 5, § 20.

The contravention of Art. 4, § 17; and Art. 4, § 23; of the Const. of Nev. stems from **Senate Bill (S.B.) No. 2-Committee on Judiciary Approved January 25, 1957**. Through S.B. No. 2, the Legislature of the State of Nevada (Legis. of Nev.), attempted to enact the NRS as the law of the State of Nevada.

Governor Sandoval, in times past, you were informed of the problems with the NRS.

Additionally, other actions were brought in the court's of the State of Nevada, seeking to bring this monumental catastrophe to the attention of the government of the State of Nevada. Be it although not of this magnitude!!

Thus, Governor Sandoval, it is readily discernible that it is now more than incumbent upon you, as the governor of the State of Nevada, to issue the Order, Directive to Cease-And-Desist "all governmental operations of the State of Nevada, Facilitated via the NRS."

That, the Nevada Compiled Laws (NCL), be reinstituted, re-enacted, etc, as not having been "lawfully repealed."

That, steps in compliance with the paramount law of the State of Nevada, the Const. of Nev., then be taken to lawfully enact the NRS as the law of the State of Nevada.

However, currently, it must be declared that the NRS do not legally, lawfully, constitutionally exist!!

Governor Sandoval, I would appreciate a response from you, or someone authorized to do so on your behalf; as soon as possible.

Governor Sandoval, FYI, other avenues are at the ready to be utilized, to enforce, and to protect my federal, and state constitutional rights, any and all private rights; to protect the government of the State of Nevada, that the governing Government of the United States of America, not be disrupted, the Republican form of Government be maintained. That, this matter be resolved, prior to the November presidential elections.

Thank you for your time, and your "immediate attention" to this missive.

Cordially yours

Curtis L. Downing

cc: file; dina titus; harry reid; dean heller; united states attorney general.

AFFIDAVIT OF PETITIONER

STATE OF NEVADA )

IN AND FOR NYE County ) SS

I, Gary Costa Agnes, being first duly sworn, do hereby depose and state, set forth as follows;

Pursuant to the penalty of perjury:

1. That, Affiant came to the knowledge of the "facial unconstitutionality," of Senate Bill No.182 Committee on Finance CHAPTER 304 Statutes of Nevada 1951, Approved March 22, 1951 (S.B. No. 182), via personal work of Affiant as pertains to S.B. No.182, having assisted Curtis L. Downing (Mr. Downing), with research on S.B.182, as set forth in the Petition for Writ of Mandamus (Writ), as well as this Affidavit.

2. Affiant alleges that S.B. No.182 SECTION 1, is a "facially unconstitutional Legislative Act," that no set of circumstances exists under which the Act would be valid, i.e. that the law is unconstitutional in all of its application.

3. In 1951, the Legislature of the State of Nevada (Legis. of Nev.), via S.B.No.182 sought to create the commission of revision and compilation of Nevada law (commission). See Exhibit "1" attached to Writ.

4. S.B. No. 182 mandated as follows: "Such commission shall be composed of three members, and said members shall be the three Justices of the Supreme Court." See Exhibit "1" SECTION 1.

5. This mandate in mandatory language of "shall" mandating members of the Supreme Court, as members of the commission is contrary to, and repugnant to the Constitution of the State of Nevada (Const. of Nev.), Article (Art.) 6, §311, plain and unambiguous mandatory language, a legislative Act of people in their sovereign capacity; during the General Election of "1950." See Exhibit "3" attached to the Writ.

6. The revision, compilation work, functions performed actually encroached upon the function of the Legislation of Nevada. Thus, the function of revision and compilation of Nevada completed by the commission was improper.

7. The Justices of the Supreme Court weren't just merely on the commission. See Exhibit "A" attached to this AFFIDAVIT FOREWARD, see also Exhibit "A-1" LEGISLATIVE COUNSEL'S PREFACE.

1 8. The commission concluded that the enactment of the revised statutes as law, rather than the mere  
2 adoption thereof as evidence of the law, would be the more desirable course of action. See Exhibit "A-1" attached  
3 hereto.

4 9. S.B. No. 182 further mandated as follows: "The members of such commission shall have the power and  
5 duties prescribed by this act", ... See Exhibit "1" attached to the Writ.

6 10. This mandate in mandatory language of "shall," mandating members of the commission shall have the  
7 power and duties prescribed by the act, i.e. the function of revision and compilation of Nevada law, is contrary to,  
8 and repugnant to the Const. of Nev. Art.3, §1, plain and unambiguous mandatory language.

9 11. S.B. No. 182 is a legislative Act that the Legis. of Nev. in its present form should not have created, nor  
10 passed. Its construction, application, etc., is "facially unconstitutional," facially contrary to, and repugnant to  
11 constitutional mandates of the Const. of Nev.; the aforesaid constitutional articles.

12 12. S.B. No. 182 is a "facially unconstitutional" legislative act that, Governor Charles H. Russell (Gov.  
13 Russell), under the prohibitive mandatory language of Art.3, §1, and Art.6, §11, of the Const. of Nev.; should not  
14 have ever approved on March 22, 1951.

15 13. S.B. No.182 is a "facially unconstitutional" legislative Act that, members, Justices of the Supreme  
16 Court should not have ever took as a function to perform, under the clear prohibitive mandatory language of Act.3,  
17 §1, and Art.6, §11 of the Const. of Nev.

18 14. Neither Department of Nevada" tripartite government constitutionally upheld the provisions of the  
19 Const. of Nev. Art.3, §1, or Art.6, §11, the supreme law of the State of Nevada.

20 15. Neither Department of Nevada's tripartite government honored, upheld "Expressio unius est exclusio."  
21 A legislative mandate, act of the people themselves in their sovereign capacity.

22 16. That, Governor Brian Sandoval (Gov. Sandoval), "knew, and or should have known," "that the  
23 separation of powers is 'probably the most important single principle of government declaring and guaranteeing  
24 the liberties of the people.'" "

25 17. Gov. Sandoval "Knew and or should have known," "The separation of powers; the independence of one  
26 branch from the others; the requirement that one department cannot exercise the powers of the other two is  
27 fundamental in our system of government." (The State of Nevada).



1 18. Gov. Sandoval "knew or should have known," "...there can be no liberty\*\*\* if the power of judging be  
2 not separated from the legislative and executive powers.\*\*\* were the power of judging joined with the legislative,  
3 the life and liberty of the subject would be exposed to arbitrary control, for the judge would be the legislator."

4 19. Gov. Sandoval "knew or should have known," "whether the judicial branch could perform legislative  
5 functions," that the Supreme Court of the State of Nevada has "soundly" rejected such a notion, finding that such  
6 conduct would violate the principle of separation of powers contained in Article 3, §1.

7 20. Gov. Sandoval became very aware of Affiants concerns as to S.B. No. 182, separation of powers  
8 violation, and the judicial department, justices, being in another office violation after receiving Mr. Downings'  
9 missive. See Exhibit "9" attached to the Writ.

10 21. Gov. Sandoval was contacted by Congress Woman Dina Titus, concerning Mr. Downings' concerns of  
11 the aforesaid violations of the Const. of Nev. See Exhibit "9".

12 22. Gov. Sandoval knew and or should have known that the "facial unconstitutionality," of S.B. No.182  
13 affects "SUBJECT MATTER JURISDICTION," of the district courts of the State of Nevada as concerns the  
14 constitutionality of the Nevada Revised Statutes (NRS).

15 23. Gov. Sandoval knew and or should have known that under the law of the State of Nevada that  
16 "SUBJECT MATTER JURISDICTION," can be raised at any time.

17 24. Gov. Sandoval knew and or should have known that the Writ of Habeas Corpus is available to allow the  
18 presentation of questions of law which cannot otherwise be reviewed, or that are so important as to render ordinary  
19 procedure inadequate and justify the extra ordinary remedy.

20 25. Gov. Sandoval knew and or should have known that a constitutional challenge to the validity of a  
21 "Statute," Act, under which a person is incarcerated is a proper subject for Habeas Corpus.

22 26. Gov. Sandoval knew and or should have known that no authority need be cited for the proposition that  
23 when a court lacks jurisdiction, any judgement rendered by it is void and unenforceable.

24 27. Gov. Sandoval knew and or should have known that a conviction under an unconstitutional law is not  
25 merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment.

26 28. Gov. Sandoval knew and or should have known that it follows, as a general principle, that a court has  
27 no authority to leave in place a conviction or sentence that violates a substantive rule, regardless of whether the  
28

1 conviction or sentence became final before the rule was announced.

2 29. Gov. Sandoval knew and or should have known due to the "facial unconstitutionality," of S.B. No. 182, the State  
3 has, had no power to proscribe the conduct for which Affiant was imprisoned, it could not, cannot constitutionally  
4 insist that Affiant remain in jail.

5 30. Gov. Sandoval knowing and or should have known all of the factors, allegations as number 2 through  
6 29, that upon receipt of Downings' missive Exhibit "9" attached to the Writ, that Gov. Sandoval pursuant Art.5, § 7,  
7 as well as Art.15, §2 of the Const. of Nev.; knew and or should have known that he had a duty to act.

8 31. That, the fact, allegations, etc., as set forth herein, and as especially as concerns S.B. No.182, Gov.  
9 Sandoval knew and or should have known, of his duty to act pursuant to Art.5, §7, to enforce the mandatory  
10 provisions of Art.3, §1 and Art.6, §11 of the Const. of Nev.

11 32. Gov. Sandoval has failed to act pursuant to Art.5, §7, of the Const. of Nev., after being shown a duty to  
12 act.

13 33. Gov. Sandoval has failed to act after having been requested to do so, by a party whom has a public  
14 right, and has a legal or special interest in the results, as S.B. No.182 is "facially unconstitutional," and is "plainly"  
15 and palpably, and beyond all question, in violation of the fundamental law of the Const. of Nev.

16 34. Affiant states and alleges that Affiant has no other adequate, or speedy, or plain remedy in the ordinary  
17 course of law.

18 35. Affiant alleges that significant issue as concerns S.B. No. 182, its "facial unconstitutionality," is  
19 deserving of this Writ being issued against Gov. Sandoval, as it concerns Affiant's rights of Due Process of the  
20 United States Constitution (U.S. Const.), Fourteenth (14<sup>th</sup>), Amendment; as well as the Due Process Clause of the  
21 Const. of Nev. Art.1, §8.

22 36. Affiant alleges, states that Affiant must not be made to suffer under every sophistry of the state, to  
23 avoid resolution of the "facial unconstitutionality," of S.B. No.182.

24 Further your Affiant Sayeth Naught.

25  
26   
27 AFFIANT PRO SE  
28

VERIFICATION (Without Notary) 1.

Affiant under penalty of perjury under lawful constitutional law of the State of Nevada, sets forth that, Affiant is incarcerated in Nevada Department of Corrections (NDDS), that Affiant is the person named in the foregoing Affidavit; that, Affiant is the person named in the foregoing Affidavit; that, Affiant has read, or had same read to Affiant and knows the contents thereof, that statements, etc., made herein are true and correct, to the best of Affiant's knowledge, and or belief. That, as to such matters made upon belief, Affiant believes them to be true correct.

Executed at Southern Desert Correctional Center (SDCC), on this 10 day of July, 2018.

  
AFFIANT PRO SE

1. Affiant does not know the Nevada Compiled Law (NCL), Statute for the penalty of perjury. It's alleged that the NCL's are the constitutional laws of Nevada.

CERTIFICATE OF SERVICE BY MAILING

I, Gary Costa Ayres, hereby certify, pursuant to NRCP 5(b), that on this 10  
day of July, 2018, I mailed a true and correct copy of the foregoing, "

Petition for writ of mandamus"

by placing document in a sealed pre-postage paid envelope and deposited said envelope in the  
United State Mail addressed to the following:

NYE County Clerk's Office  
1520 East Basin Ave  
Pahrump, NV 89060

NYE County District Attorney  
P.O. Box 39  
Pahrump, NV 89041

CC:FILE

DATED: this 10 day of July, 2018.

Gary Costa Ayres  
Gary Costa Ayres

# 1128354

/In Propria Personam

Post Office Box 208, S.D.C.C.  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS:

**AFFIRMATION**  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding \_\_\_\_\_

\_\_\_\_\_  
(Title of Document)

filed in District Court Case number 7476, 7877A, 7878

☒ Does not contain the social security number of any person.

**-OR-**

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

**-or-**

B. For the administration of a public program or for an application  
for a federal or state grant.

Gary Costa Ayres  
Signature

7/10/18  
Date

Gary Costa Ayres  
Print Name

\_\_\_\_\_  
Title

1 Gary Costa Aynes #1128354

2 In Propria Personam  
3 Post Office Box 208, S.D.C.C.  
4 Indian Springs, Nevada 89018

FILED  
FIFTH JUDICIAL DISTRICT COURT

JUL 25 2018

NYE COUNTY DEPUTY CLERK  
DEPUTY 

5 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
6 IN AND FOR THE COUNTY OF NYE

8  
9 Gary Costa Aynes

10 Plaintiff,

11 vs.

12 STATE OF NEVADA

13 Defendant.

7876,  
Case No. 7871A, 7878

Dept. No. 2

Docket \_\_\_\_\_

16 **NOTICE OF APPEAL**

17 NOTICE IS HEREBY GIVEN, That the Petitioner/Defendant,  
18 Gary Costa Aynes, in and through his proper person, hereby  
19 appeals to the Supreme Court of Nevada from the ORDER denying and/or  
20 dismissing the

21 Petition for writ of Habeas Corpus (Post Conviction)

22 \_\_\_\_\_  
23 ruled on the 24 day of June, 20 18

25 Dated this 11 day of July, 20 18

26 Respectfully Submitted,

27 Gary Costa Aynes  
28

Gary Costa Ayres, 1128354  
Petitioner/In Propria Persona  
Post Office Box 208, SDCC  
Indian Springs, Nevada 89070-0208

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF NYE

Gary Costa Ayres  
Plaintiff,

vs.

STATE OF NEVADA  
Defendant.

CASE No. CR. 7876, 78774, 7828  
DEPT. No. 2

DESIGNATION OF RECORD ON APPEAL

TO: Supreme Court of NEVADA  
201 S. Carson Street, Suite 201  
Carson City, NV 89701  
Office of the Clerk

The above-named Plaintiff hereby designates the entire record of the above-entitled case, to include all the papers, documents, pleadings, and transcripts thereof, as and for the Record on Appeal.

DATED this 11 day of July, 20 18.

RESPECTFULLY SUBMITTED BY:

Gary Costa Ayres  
Gary Costa Ayres # 1128354  
Plaintiff/In Propria Persona



**CERTIFICATE OF SERVICE BY MAILING**

I, Gary Costa Ayres, hereby certify, pursuant to NRCP 5(b), that on this 11  
day of July, 2018, I mailed a true and correct copy of the foregoing, "

NOTICE OF APPEAL

by placing document in a sealed pre-postage paid envelope and deposited said envelope in the  
United State Mail addressed to the following:

Supreme Court of NEVADA  
Office of the Clerk  
201 S. Carson Street, Suite 201  
Carson City, NV 89401

CC:FILE

DATED: this 11 day of July, 2018.

Gary Costa Ayres  
Gary Costa Ayres

# 1129354

In Propria Personam

Post Office Box 208, S.D.C.C.  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS:

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding \_\_\_\_\_

NOTICE OF APPEAL  
(Title of Document)

filed in District Court Case number 7876, 7877A, 7878

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

-or-

B. For the administration of a public program or for an application  
for a federal or state grant.

Gary Costa Ayres  
Signature

7/11/18  
Date

Gary Costa Ayres  
Print Name

\_\_\_\_\_  
Title

JUL 25 2018

NYE COUNTY DEPUTY CLERK  
DEPUTY

Case No. CR 7877A

Dept. No. 2

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF NYE

Gary Acosta Ayres,  
Appellant,

vs.

State of Nevada,  
Respondent,

)  
)  
)  
)  
)  
)

CASE APPEAL STATEMENT

1. Name of the appellant filing the case appeal statement: **Gary Costa Ayres.**
2. Identify the judge issuing the decision, judgment, or order appealed from:  
**This case has been assigned to Honorable Robert W. Lane. The Appellant is appealing the decision of the District Court Judge, Robert W. Lane's on the Court Order, filed on July 2, 2018.**
3. Identify each appellant and the name and address of counsel for each appellant:  
**Gary Costa Ayres is the only Appellant, in proper person The appellant's address is:**

**Gary Costa Ayres #1128354  
S.D.C.C.  
P.O. Box 208  
Indian Springs, NV 89018**

4. Identify each respondent and the name and address of appellate counsel, if unknown, for each respondent (if the name of the respondent's appellate counsel is unknown, indicate as much and provide the name and address of the respondent's trial counsel): **State of Nevada. The representative for the State of Nevada is the Nye County District Attorney. The address for the Nye County District Attorney is:**

**Nye County District Attorney  
1520 E. Basin Road, Suite 107  
Pahrump, NV 89060**

5. Indicate whether any attorney identified above in response to question 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 (attach a copy of any district court order granting such permission): **All attorneys are licensed to practice law in the State of Nevada.**
6. Indicate whether appellant was represented by appointed or retained counsel in the district court: **The Appellant does not have an appointed nor retained counsel.**
7. Indicate whether appellant is represented by appointed or retained counsel on appeal: **Appellant does have an appointed nor retained counsel.**
8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave: **The Petitioner/Appellant has filed an Application to Proceed In Forma Pauperis on 07/18/18.**
9. Indicate the date the proceedings commenced in the district court (e.g., date complaint, indictment, information, or petition was filed): **On 06/03/14, A Bindover Order, initiated the case.**
10. Provide a brief description of the nature of the action and result in the district

1  
2 court, including the type of judgment or order being appealed and the relief  
3 granted by the district court: **The Appellant is appealing that the decision of**  
4 **the District Court ruling that Court Order denying and/or dismissing the**  
5 **Petition for Writ of Habeas Corpus (Post Conviction) ruled on 7/2/18.**

6 11. Indicate whether the case has previously been the subject of an appeal to or  
7 original writ proceeding in the Supreme Court and, if so, the caption and  
8 Supreme Court docket number of the prior proceeding: **The appellant has**  
9 **filed a Notice of Appeal for this case, on March 11, 2015. Gary Marion**  
10 **Costa-Ayres, Appellant, vs. The State of Nevada, Respondent. Supreme**  
11 **Court No. 67553**

12 12. Indicate whether this appeal involves child custody or visitation: **N/A**

13 13. If this is a civil case, indicate whether this appeal involves the possibility of  
14 Settlement: **N/A**

15 Dated this 23<sup>th</sup> day of July, 2018

16 SANDRA L. MERLINO  
17 NYE COUNTY CLERK

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

19 Marianne Yoffee  
20 Nye County Clerk's Office  
21 1520 E. Basin Ave.  
22 Pahrump, NV 89060

23 (775) 751-7040  
24  
25

FILED  
FIFTH JUDICIAL DISTRICT

JUL 31 2018

Nye County Clerk  
Deputy

1 APPL

2 Gary Costa Ayres # 1128354

3 NAME

4 P.O. Box 208

5 ADDRESS

6 Indiansprings, NV 89070

7 CITY, STATE, ZIP CODE

8 TELEPHONE

9 IN PROPER PERSON

10 IN THE FIFTH JUDICIAL DISTRICT COURT OF  
11 THE STATE OF NEVADA IN AND FOR THE  
12 COUNTY OF NYE

13 Gary Costa Ayres  
14 Plaintiff,

15 VS.

16 STATE OF NEVADA

17 Defendant

Case No.: Cr 7876, 7877A, 7878

Dept. No.: 2

18 ORDER TO PROCEED IN FORMA PAUPERIS  
(Filing Fees/Service Only)

19 Upon consideration of Gary Costa Ayres's Application to Proceed in Forma  
20 Pauperis and it appearing that there is not sufficient income, property, or resources with  
21 which to maintain the action and good cause appearing therefore:

22 IT IS HEREBY ORDERED,

23 1. That Plaintiff Gary Costa Ayres, shall be permitted to proceed In  
24 Forma Pauperis with this action as permitted by NRS 12.015.

25 2. That Gary Costa Ayres shall proceed without the prepayment costs or  
26 fees or the necessity of giving security, and the Clerk of the Court may file or issue any  
27 necessary writ, pleading or paper without charge.

28 3. That the Sheriff or other appropriate officer within this State shall make  
personal service of any necessary writ, pleading or paper without charge.

1 4. That if the Plaintiff, Gary Costa Ayres, prevails in this  
2 action, the Court shall enter an Order pursuant to NRS 12.015 requiring the opposing  
3 party to pay into the court, within five (5) days, the costs which would have been  
4 incurred by the prevailing party, and those costs must then be paid as provided by law.

5 ~~IT IS HEREBY ORDERED~~ that Gary Costa Ayres's request to waive fees  
6 and costs is **DENIED** for the following reason:

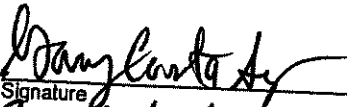
7 A. The Party is not indigent.

8 B. Other:

9  
10 DATED this 31<sup>st</sup> day of July, 2018.

11  
12 **ROBERT W. LANE**  
13 **DISTRICT COURT JUDGE**

14 Respectfully submitted by:

15  
16 

17 Signature

18 Gary Costa Ayres #1128354

19 PRINT NAME

20 P.O. Box 208

21 ADDRESS

22 Indian Springs, NV 89070

23 CITY, STATE, ZIP CODE

24 TELEPHONE

25 **IN PROPER PERSON**





FILED  
FIDICIAL DISTRICT

JUL 31 2018

Nye County Clerk  
Deputy

CR 7876; 7877; 7878  
Dept. No. 2

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
IN AND FOR NYE COUNTY

GARY MARION COSTA-AYERS,

Petitioner,

v.

STATE OF NEVADA,

Respondent

CO ORDER

On July 18, 2018, Petitioner filed a Petition for Writ of Habeas Corpus in the above matters.

**I. Facts**

- On June 3, 2014, Petitioner was bound up to the Fifth Judicial District Court in all three matters.
- On June 9, 2014, a Guilty Plea Agreement was filed in all the above matters.
- On June 9, 2014, an Arraignment Hearing was held in the above matters with the Petitioner canvassed by the Court regarding the Guilty Pleas.
- On October 13, 2014, a Sentencing Hearing was held in the above matters
- On October 15, 2014, the judgments of convictions in the above matters were filed.



- On February 3, 2015, Petitioner filed Motions for Modification of Sentence in the above matters. The motions were denied by the Court on February 11, 2015, and the decisions affirmed by the Court of Appeals of the State of Nevada on May 19, 2015.
- On June 26, 2018, Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction). On July 2, 2018, the Court issued a Court Order denying the petition because it lacked merit. Petitioner filed his Notice of Appeal on July 25, 2018.

## II. Discussion

Mandamus is an extraordinary remedy. The decision as to whether an application for a writ of mandate will be entertained lies within the discretion of the court. State ex rel. List v. County of Douglas, 90 Nev. 272, 524 P.2d 1271 (1974). Pursuant to NRS 34.170 a writ shall be issued where there is not a plain, speedy and adequate remedy in the ordinary course of law. The district court or a judge of the district court may issue these writs. NRS 34.160.

After the Court's review of the above files and the arguments in Petitioner's Writ of Mandamus, the Court finds that Petitioner is merely attempting to reargue his Petition for Writ of Habeas Corpus filed on June 26, 2018, in the Writ of Mandamus. Petitioner previously argued that he was actually innocent and that the Court lacked subject matter jurisdiction of the matter pursuant to alleged issues caused by Senate Bill No. 182 which was approved on March 22, 1951. The Court previously found that this argument lacked merit and denied his Petition for Writ of Habeas Corpus, which Petitioner is currently

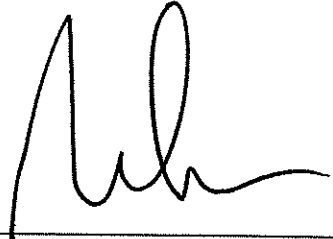


1  
2 appealing. As such, because there is a process to challenge the validity of one's sentence,  
3 which the Petitioner is currently utilizing, there is a plain, speedy and adequate remedy at  
4 law to address his concerns, and as such a writ of mandamus should not be issued.

5 Good cause appearing,

6  
7 **IT IS HEREBY ORDERED** that Petitioner's Petition for Writ of Mandamus  
8 filed on July 18, 2018, is DENIED.

9 DATED this 31<sup>st</sup> day of July, 2018.

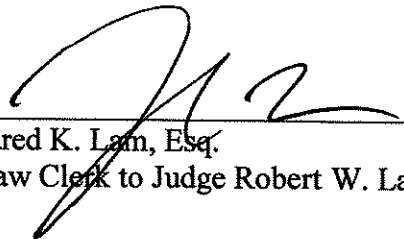
10  
11   
12 \_\_\_\_\_  
13 Hon. Robert W. Lane  
14 District Court Judge  
15  
16  
17  
18  
19  
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21  
22  
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24  
25  
26  
27  
28

**CERTIFICATION OF SERVICE**

The undersigned hereby certifies that on the 31<sup>st</sup> day of July 2017, he mailed  
copies of the foregoing Court Order to the following:

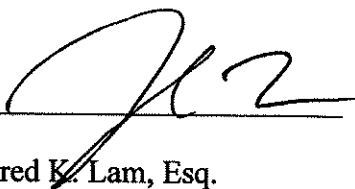
GARY MARION COSTA AYRES #1128354  
Southern Desert Correctional Center  
P.O. Box 208  
Indian Springs, NV 89070

NYE COUNTY DISTRICT ATTORNEY  
PO Box 39  
Pahrump, NV 89041  
(Hand Delivered)

  
Jared K. Lam, Esq.  
Law Clerk to Judge Robert W. Lane

**AFFIRMATION**

The undersigned hereby affirms that this Court Order does not contain the social  
security number of any person.

  
Jared K. Lam, Esq.  
Law Clerk to Judge Robert W. Lane



IN THE SUPREME COURT OF THE STATE OF NEVADA  
OFFICE OF THE CLERK


GARY MARION COSTA-AYRES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

Supreme Court No. 76531  
District Court Case No. CR 7877A

**FILED**  
FIFTH JUDICIAL DISTRICT

RECEIPT FOR DOCUMENTS

AUG - 1 2018

TO: Gary Marion Costa-Ayres  
Nye County District Attorney \ Angela A. Bello, Kirk Vitto   
Sandra L. Merlino, Nye County Clerk ✓ **Nye County Clerk Deputy**

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

07/30/2018 Appeal Filing Fee waived. Criminal.

07/30/2018 Filed Notice of Appeal/Proper Person. Appeal docketed in the Supreme Court this day.

DATE: July 30, 2018

Elizabeth A. Brown, Clerk of Court  
lh

1 Gary Costa Ayres  
2 1129354 . In Propria Personam  
3 Post Office Box 208, S.D.C.C.  
4 Indian Springs, Nevada 89018

**FILED**  
**FIFTH JUDICIAL DISTRICT**

**AUG 20 2018**

*Donnell* Nye County Clerk  
Deputy

5 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
6  
7 IN AND FOR THE COUNTY OF NYE

9 Gary Costa Ayres  
10 Plaintiff,  
11 vs.  
12 State of NEVADA  
13 Defendant.  
14

*CV 39496*  
Case No. *CR 7876, 7878*  
Dept. No. 2  
Docket  
*CR* *7876*  
*7878*  
*7878* D2

16 **NOTICE OF APPEAL**

17 NOTICE IS HEREBY GIVEN, That the Petitioner/Defendant,  
18 \_\_\_\_\_, in and through his proper person, hereby  
19 appeals to the Supreme Court of Nevada from the ORDER denying and/or  
20 dismissing the

21 PETITION FOR WRIT OF MANDAMUS

22 \_\_\_\_\_  
23 ruled on the 18 day of July, 20 18

25 Dated this 9 day of August, 20 18

26 Respectfully Submitted.

27 *Gary Costa Ayres*  
28

Gary Costa Agnys, #128354  
Petitioner/In Propria Persona  
Post Office Box 208, SDCC  
Indian Springs, Nevada 89070-0208

FILED  
FIFTH JUDICIAL DISTRICT

AUG 20 2018

Nye County Clerk  
Deputy

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF NYE

DEBRA BENNETT

Gary Costa Agnys  
Plaintiff,

vs.

STATE OF NEVADA  
Defendant.

~~W 394912~~

2

CASE No. Cr 7876, 7877A, 7878  
DEPT. No. 2

CR

7876

7877

7878

DESIGNATION OF RECORD ON APPEAL

TO: NEVADA SUPREME COURT  
201 S CARSON STREET  
Suite 201  
CARSON CITY, NV 89701

The above-named Plaintiff hereby designates the entire record of the above-entitled case, to include all the papers, documents, pleadings, and transcripts thereof, as and for the Record on Appeal.

DATED this 9<sup>th</sup> day of August, 20 18.

RESPECTFULLY SUBMITTED BY:

Gary Costa Agnys  
#128354  
Plaintiff/In Propria Persona



**CERTIFICATE OF SERVICE BY MAILING**

I, Gary Costa Ayres, hereby certify, pursuant to NRCP 5(b), that on this 9  
day of August, 20 18, I mailed a true and correct copy of the foregoing, "Petition for writ of mandamus",

by placing document in a sealed pre-postage paid envelope and deposited said envelope in the  
United State Mail addressed to the following:

NYE COUNTY COURT CLERK  
1520 E Basin Ave.  
Pahrump, NV 89060

CC:FILE

DATED: this 9 day of August, 20 18.

Gary Costa Ayres  
Gary Costa Ayres # 1128354  
In Propria Personam  
Post Office Box 208, S.D.C.C.  
Indian Springs, Nevada 89018  
**IN FORMA PAUPERIS:**

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding \_\_\_\_\_

PETITION FOR WRIT OF MANDAMUS  
(Title of Document)

CU 39496

filed in District Court Case number C-7876, 7877A, 7878 D2

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

-or-

B. For the administration of a public program or for an application  
for a federal or state grant.

Gary Costa Agnes  
Signature

1/9/18  
Date

Gary Costa Agnes  
Print Name

\_\_\_\_\_  
Title

FILED  
FIFTH JUDICIAL DISTRICT

AUG 24 2018

Nye County Clerk  
Deputy

Case No. CR 7877

Dept. No. 2

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF NYE

GARY MARION COSTA-AYERS )

Appellant, )

vs. )

CASE APPEAL STATEMENT

THE STATE OF NEVADA )

Respondent, )

1. Name of the appellant filing the case appeal statement:

GARY MARION COSTA-AYERS

2. Identify the judge issuing the decision, judgment, or order appealed from:

This case has been assigned to the Honorable Judge Robert W. Lane, 5<sup>TH</sup>  
Judicial District Court, Department 1. The Appellant is appealing the Court  
Order filed on July 31st, 2018 denying. Petition for Writ of Mandamus.

3. Identify each appellant and the name and address of counsel for each appellant:

GARY MARION COSTA-AYERS is the only Appellant, in proper person. The  
Appellant's address is:

Gary Marion Costa-Ayers  
PO Box 208 S.D.C.C.  
Indian Springs, NV 89018  
#1128354

- 1 4. Identify each respondent and the name and address of appellate counsel, if  
2 known, for each respondent (if the name of the respondent's appellate  
3 counsel is unknown, indicate as much and provide the name and address of the  
4 respondent's trial counsel): **The State of Nevada is the Respondent. The**  
5 **representative for the State of Nevada is the Nye County District Attorney.**  
6 **The address for the Nye County District Attorney is:**

7 **Nye County District Attorney**  
8 **1520 E. Basin Road, Suite 107**  
9 **Pahrump, NV 89060**

- 10 5. Indicate whether any attorney identified above in response to question 3 or 4 is  
11 not licensed to practice law in Nevada and, if so, whether the district court  
12 granted that attorney permission to appear under SCR 42 (attach a copy of any  
13 district court order granting such permission): **All attorneys are licensed to**  
14 **practice law in the State of Nevada.**
- 15 6. Indicate whether appellant was represented by appointed or retained counsel in  
16 the district court: **Appellant was represented by appointed counsel, Nathan**  
17 **L. Gent, during criminal proceedings in the district court in CR7877.**
- 18 7. Indicate whether appellant is represented by appointed or retained counsel on  
19 appeal: **Appellant filed a Notice of Appeal in proper person.**
- 20 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and  
21 the date of entry of the district court order granting such leave: **Appellant filed**  
22 **an Application to Proceed in Forma Pauperis on 7/18/2018 and Order to**  
23 **Proceed in Forma Pauperis was entered on 7/31/2018.**
- 24 9. Indicate the date the proceedings commenced in the district court (e.g., date  
25 complaint, indictment, information, or petition was filed): **This case, CR7877,**  
**commenced by filing of a Bindover Order on 06/03/14. Appellant filed a**  
**post-conviction Petition for Writ of Mandamus on July 18, 2018.**

1  
2 10. Provide a brief description of the nature of the action and result in the district  
3 court, including the type of judgment or order being appealed and the relief  
4 granted by the district court: **This is an appeal of the Court Order filed July**  
5 **31, 2018. Appellant is appealing the court decision to dismiss the Petition**  
6 **for Writ of Mandamus. The court determined that the Appellant's Petition**  
7 **for Writ lacks merit and is summarily denied.**


8 11. Indicate whether the case has previously been the subject of an appeal to or  
9 original writ proceeding in the Supreme Court and, if so, the caption and  
10 Supreme Court docket number of the prior proceeding: **Petitioner/Appellant**  
11 **previously filed a Notice of Appeal on 7/30/18 which was transmitted to the**  
12 **Supreme Court and given a Docket No. of 76531 COSTA-AYRES(GARY)**  
13 **VS. STATE, on 1/05/2017 which was transmitted to the Supreme Court and**  
14 **given a Docket No.72051 COSTA-AYRES (GARY) VS. STATE.**

15 12. Indicate whether this appeal involves child custody or visitation: **N/A**

16 13. If this is a civil case, indicate whether this appeal involves the possibility of  
17 Settlement: **Unknown**

18 Dated this 24th day of August, 2018.

19 SANDRA L. MERLINO  
20 NYE COUNTY CLERK

21 By:   
22 Debra Bennett, Deputy Clerk  
23 Nye County Clerk's Office  
24 1520 E. Basin Ave.  
25 Pahrump, Nevada 89060  
(775)-751-7040

IN THE SUPREME COURT OF THE STATE OF NEVADA  
OFFICE OF THE CLERK

GARY MARION COSTA-AYRES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

Supreme Court No. 76810  
District Court Case No. CR7877

**FILED**  
FIFTH JUDICIAL DISTRICT

SEP - 4 2018

RECEIPT FOR DOCUMENTS

TO: Gary Marion Costa-Ayres  
Nye County District Attorney \ Angela A. Bello, Kirk Vitto  
Sandra L. Merlino, Nye County Clerk ✓

Nye County Clerk  
Elizabeth A. Brown Deputy

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

08/29/2018 Appeal Filing Fee waived. Criminal.

08/29/2018 Filed Notice of Appeal/Proper Person. Appeal docketed in the Supreme Court this day.

DATE: August 29, 2018

Elizabeth A. Brown, Clerk of Court  
lh

SEP 24 2018

IN THE SUPREME COURT OF THE STATE OF NEVADA

Nye County Clerk  
**Debra L. Melott** Deputy

No. 76809

CR-78.77

GARY MARION COSTA-AYRES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 76810 ✓

GARY MARION COSTA-AYRES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 76811

GARY MARION COSTA-AYRES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

FILED

SEP 19 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY **12** DEPUTY CLERK

**ORDER DIRECTING TRANSMISSION OF RECORDS  
AND REGARDING BRIEFING**

This court has concluded that its review of the complete records is warranted. See NRAP 10(a)(1). Accordingly, the clerk of the district court shall have 30 days from the date of this order to transmit to the clerk of this court certified copies of the complete trial court records of these appeals (district court case nos. CR 7876, CR 7877, CR 7878, PC 7876, PC 7877, and PC 7878). See NRAP 11(a)(2). The records shall include copies of documentary exhibits submitted in the district court proceedings, but shall not include any physical, non-documentary exhibits or the original documentary exhibits. The records shall also include any presentence



investigation reports submitted in a sealed envelope identifying the contents and marked confidential. See NRS 176.156(5).

Within 120 days, appellant may file either (1) briefs that comply with the requirements in NRAP 28(a) and NRAP 32; or (2) the "Informal Brief Form for Pro Se Parties" provided by the supreme court clerk. NRAP 31(a)(1). If no briefs are submitted, these appeals may be decided on the records on appeal. NRAP 34(g).

It is so ORDERED.

*Dryden*, C.J.

cc: Gary Marion Costa-Ayres  
Attorney General/Carson City  
Nye County District Attorney  
Nye County Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA  
FIFTH JUDICIAL DISTRICT

FILED

OCT 04 2018

No. 76530  
Nye County Clerk

FILED

OCT 02 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

GARY MARION COSTA-AYRES,  
Appellant,

vs.

THE STATE OF NEVADA,  
Respondent.

GARY MARION COSTA-AYRES,  
Appellant,

vs.

THE STATE OF NEVADA,  
Respondent.

GARY MARION COSTA-AYRES,  
Appellant,

vs.

THE STATE OF NEVADA,  
Respondent.

No. 76531

No. 76532

*ORDER CONSOLIDATING APPEALS, DIRECTING TRANSMISSION  
OF RECORDS, AND REGARDING BRIEFING*

These are appeals from a single district court order denying a petition for writ of habeas corpus (post-conviction) that was filed in district court case numbers CR 7876, CR 7877A and CR 7878. We elect to consolidate these appeals for all appellate purposes. NRAP 3(b).

This court has concluded that its review of the complete records is warranted. See NRAP 10(a)(1). Accordingly, the clerk of the district court shall have 30 days from the date of this order to transmit to the clerk of this court certified copies of the complete trial court records of these appeals. See NRAP 11(a)(2). The records shall include copies of documentary exhibits submitted in the district court proceedings, but shall not include any physical, non-documentary exhibits or the original documentary exhibits. The records shall also include any presentence investigation

reports submitted in a sealed envelope identifying the contents and marked confidential. See NRS 176.156(5).

Within 120 days, appellant may file either (1) a single brief that complies with the requirements in NRAP 28(a) and NRAP 32; or (2) the "Informal Brief Form for Pro Se Parties" provided by the supreme court clerk. NRAP 31(a)(1). If no brief is submitted, these appeals may be decided on the records on appeal. NRAP 34(g).

It is so ORDERED.

, C.J.

cc: Gary Marion Costa-Ayres  
Attorney General/Carson City  
Nye County District Attorney  
Nye County Clerk

## **CERTIFICATION OF COPY**

### **STATE OF NEVADA COUNTY OF NYE**

I, **SANDRA L. MERLINO**, the duly elected, qualifying and acting Clerk of Nye County, in the State of Nevada, and Ex-Officio Clerk of the District Court, do hereby certify that the foregoing is a true, full and correct copy of the original:

**Documents Filed in CR7877:** CRIMINAL COMPLAINT, filed 04/08/14; AFFIDAVIT AND APPLICATION FOR APPOINTMENT OF COUNSEL, filed 04/28/14; CONDITIONAL/UNCONDITIONAL WAIVER OF PRELIMINARY HEARING, filed 05/08/14; BINDOVER ORDER, filed 06/03/14; INFORMATION, filed 06/04/14; GUILTY PLEA AGREEMENT, filed 06/09/14; ORDER RE-SETTING HEARING, filed 6/13/14; TRANSCRIPT OF: ARRAIGNMENT HEARING, filed 06/16/14; PRESENTENCE INVESTIGATION REPORT, filed 10/06/14; JUDGMENT OF CONVICTION, filed 10/15/14; TRANSCRIPT OF: SENTENCING HEARING, filed 10/22/14; NOTICE OF MOTION/MOTIONS FOR MODIFICATION OF SENTENCE, filed 02/03/15; ORDER DENYING MOTION FOR MODIFICATION OF SENTENCE, filed 02/11/15; NOTICE OF APPEAL, filed 03/11/15; CASE APPEAL STATEMENT, filed 03/11/15; RECEIPT FOR DOCUMENTS, filed 03/16/15; ORDER DIRECTING TRANSMISSION OF RECORD, filed 03/23/15; ORDER TRANSFERRING TO COURT OF APPEALS, filed 04/13/15; ORDER OF AFFIRMANCE, filed 05/22/15; PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION), filed 06/26/18; COURT ORDER, filed 07/02/18; APPLICATION TO PROCEED INFORMA PAUPERIS, filed 07/18/18; PETITION FOR WRIT OF MANDAMUS, filed 07/18/18; NOTICE OF APPEAL, filed 07/25/18; CASE APPEAL STATEMENT, filed 07/25/18; ORDER TO PROCEED INFORMA PAUPERIS, filed 07/31/18; COURT ORDER, filed 07/31/18; RECEIPT FOR DOCUMENTS, filed 08/01/18; NOTICE OF APPEAL, filed 08/20/18; DESIGNATION OF RECORD ON APPEAL, filed 08/20/18; CASE APPEAL STATEMENT, filed 08/24/18; RECEIPT FOR DOCUMENTS, filed 09/04/18; ORDER DIRECTING TRANSMISSION OF RECORDS AND REGARDING BRIEFING, filed 09/24/18; ORDER CONSOLIDATING APPEALS, DIRECTING TRANSMISSION OF RECORDS, AND REGARDING BRIEFING, filed 10/04/18;

THE STATE OF NEVADA

vs

GARY MARION COSTA-AYERS

---

)

)

)

)

DC Case # CR 7877

now on file and of record in this office.

**IN WITNESS THEREOF**, I have hereunto  
set my hand and affixed The Seal of the Court  
at my office, Tonopah, Nevada, this 30<sup>th</sup>  
day of **October, 2018** A.D.

**SANDRA L. MERLINO, CLERK**

By:   
Amy Dowers, Deputy Clerk/Tonopah

Gary Costa Ayres, 1128354  
Petitioner/In Propria Persona  
Post Office Box 208, SDCC  
Indian Springs, Nevada 89070

**FILED**  
FIFTH JUDICIAL DISTRICT

JUN 26 2018

J Nye County Clerk  
Deputy

IN THE FIFTH JUDICIAL DISTRICT COURT OF  
THE STATE OF NEVADA IN AND FOR THE  
COUNTY OF NYE

Gary Costa Ayres;

Petitioner,

vs.

STATE OF NEVADA

Respondent(s).

Case No. 7876, 7871A, 7878

Dept. No. 2

Docket

**EVIDENTIARY HEARING REQUESTED**  
**ACTUAL INNOCENCE**

**PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)**

**INSTRUCTIONS:**

- (1) This petition must be legibly handwritten or typewritten signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the department of corrections, name the warden or head of the institution. If you are not in a specific institution of the department within its custody, name the director of the department of corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction and sentence.

1 Failure to raise all grounds in this petition may preclude you from filing future petitions  
2 challenging your conviction and sentence.

3 (6) You must allege specific facts supporting the claims in the petition you file seeking relief  
4 from any conviction or sentence. Failure to allege specific facts rather than just conclusions may  
5 cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of  
6 counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which  
7 you claim your counsel was ineffective.

8 (7) If your petition challenges the validity of your conviction or sentence, the original and one  
9 copy must be filed with the clerk of the district court for the county in which the conviction  
10 occurred. Petitions raising any other claim must be filed with the clerk of the district court for the  
11 county in which you are incarcerated. One copy must be mailed to the respondent, one copy to the  
12 attorney general's office, and one copy to the district attorney of the county in which you were  
13 convicted or to the original prosecutor if you are challenging your original conviction or sentence.  
14 Copies must conform in all particulars to the original submitted for filing.

### 15 PETITION

16 1. Name of institution and county in which you are presently imprisoned or where and who you  
17 are presently restrained of your liberty: Southern Desert Correctional Center

18 2. Name the location of court which entered the judgment of conviction under attack: FIFTH JUDICIAL DISTRICT COURT, NVE COUNTY

19 3. Date of judgment of conviction: OCTOBER 15, 2014

20 4. Case number: 7876, 7877A, 7878

21 5. (a) Length of sentence: 24-60mos; 24-60mos; 19-48mos All terms  
22 Consecutive

23 (b) If sentence is death, state any date upon which execution is scheduled: N/A

24 6. Are you presently serving a sentence for a conviction other than the conviction under attack in  
25 this motion:

26 Yes ☐ No ☒ If "Yes", list crime, case number and sentence being served at this time: \_\_\_\_\_

27 7. Nature of offense involved in conviction being challenged: Attempted trafficking in a  
28 Schedule one Controlled Substance; Offer Attempt or Commission of  
unauthorized acts relating to Controlled Substance (first offense) and  
"C" Felony, NRS 453.3325

1 8. What was your plea? (Check one)

2 (a) Not guilty ~~✓~~

3 (b) Guilty ✓

4 (c) Nolo contendere \_\_\_\_\_

5 9. If you entered a guilty plea to one count of an indictment or information, and a not guilty plea  
6 to another count of an indictment or information, or if a guilty plea was negotiated, give details: \_\_\_\_\_  
7 \_\_\_\_\_  
8 \_\_\_\_\_

9 10. If you were found guilty after a plea of not guilty, was the finding made by: (check one)

10 (a) Jury \_\_\_\_\_

11 (b) Judge without a jury ✓

12 11. Did you testify at trial? Yes \_\_\_\_\_ No \_\_\_\_\_

13 12. Did you appeal from the judgment of conviction?

14 Yes \_\_\_\_\_ No ✓

15 13. If you did appeal, answer the following:

16 (a) Name of court:

17 (b) Case number or citation:

18 (c) Result:

19 (d) Date of appeal:

20 (Attach copy of order or decision, if available).

21 14.) If you did not appeal, explain briefly why you did not: I pled guilty to the  
22 changes in these ~~changes~~ Case numbers  
23 \_\_\_\_\_

24 15. Other than a direct appeal from the judgment of conviction and sentence, have you previously  
25 filed any petitions, applications or motions with respect to this judgment in any court, state or  
26 federal? Yes \_\_\_\_\_ No ✓  
27  
28



1 16. If your answer to No 15 was "Yes", give the following information:

2 (a) (1) Name of court: N/A

3 (2) Nature of proceedings: \_\_\_\_\_

4 \_\_\_\_\_  
5 (3) Grounds raised : \_\_\_\_\_

6 \_\_\_\_\_  
7 \_\_\_\_\_  
8 (4) Did you receive an evidentiary hearing on your petition, application or motion?

9 Yes \_\_\_\_\_ No ☒

10 (5) Result: \_\_\_\_\_

11 (6) Date of result: \_\_\_\_\_

12 (7) If known, citations of any written opinion or date of orders entered pursuant to each  
13 result: \_\_\_\_\_

14 (b) As to any second petition, application or motion, give the same information:

15 (1) Name of Court: N/A

16 (2) Nature of proceeding: \_\_\_\_\_

17 (3) Grounds raised: \_\_\_\_\_

18 (4) Did you receive an evidentiary hearing on your petition, application or motion?

19 Yes \_\_\_\_\_ No ☒

20 (5) Result: N/A

21 (6) Date of result: \_\_\_\_\_

22 (7) If known, citations or any written opinion or date of orders entered pursuant to each  
23 result: \_\_\_\_\_

24 (c) As to any third or subsequent additional application or motions, give the same  
25 information as above, list them on a separate sheet and attach.  
26  
27  
28

1 (d) Did you appeal to the highest state or federal court having jurisdiction, the result or action  
2 taken on any petition, application or motion?

3 (1) First petition, application or motion?

4 Yes \_\_\_ No ☒

5 Citation or date of decision: N/A

6 (2) Second petition, application or motion?

7 Yes \_\_\_ No ☒

8 Citation or date of decision: N/A

9 (e) If you did not appeal from the adverse action on any petition, application or motion,  
10 explain briefly why you did not. (You may relate specific facts in response to this question. Your  
11 response may be included on paper which is 8 1/2 x 11 inches attached to the petition. Your response  
12 may not exceed five handwritten or typewritten pages in length). \_\_\_\_\_

13 \_\_\_\_\_  
14 N/A

15 17. Has any ground being raised in this petition been previously presented to this or any other  
16 court by way of petition for habeas corpus, motion or application or any other post-conviction  
17 proceeding? If so, identify:

18 (a) Which of the grounds is the same: none

19 \_\_\_\_\_  
20 (b) The proceedings in which these grounds were raised: N/A

21 \_\_\_\_\_  
22 (c) Briefly explain why you are again raising these grounds. (You must relate specific facts  
23 in response to this question. Your response may be included on paper which is 8 1/2 x 11 inches  
24 attached to the petition. Your response may not exceed five handwritten or typewritten pages in  
25 length). \_\_\_\_\_

26 N/A  
27 \_\_\_\_\_  
28 \_\_\_\_\_

1 18. If any of the grounds listed in Nos. 23(a), (b), (c), and (d), or listed on any additional pages  
2 you have attached, were not previously presented in any other court, state or federal, list briefly what  
3 grounds were not so presented, and give your reasons for not presenting them. (You must relate  
4 specific facts in response to this question. Your response may be included on paper which is 8 1/2 x  
5 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten  
6 pages in length). N/A

7  
8 19. Are you filing this petition more than one (1) year following the filing of the judgment of  
9 conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay.  
10 (You must relate specific facts in response to this question. Your response may be included on  
11 paper which is 8 1/2 x 11 inches attached to the petition. Your response may not exceed five  
12 handwritten or typewritten pages in length). YES, this is an "Actual Innocence"  
13 petition for Writ of Habeas Corpus (Post-Conviction) raising claim of  
14 "lack of subject-matter Jurisdiction"

15 20. Do you have any petition or appeal now pending in any court, either state or federal, as to the  
16 judgment under attack?

17 Yes ☐ No ☒

18 If "Yes", state what court and the case number: N/A

19  
20 21. Give the name of each attorney who represented you in the proceeding resulting in your  
21 conviction and on direct appeal: NATHAN GENT

22  
23  
24 22. Do you have any future sentences to serve after you complete the sentence imposed by the  
25 judgment under attack?

26 Yes ☐ No ☒ If "Yes", specify where and when it is to be served, if you know:

1 "WARNING"

2 Petitioner has submitted for filing a Petition For Writ of Habeas Corpus (Post-Conviction), Actual  
3 Innocence (Writ), challenging the constitutionality of Senate Bill No.182 – Committee of Finance CHAPTER 304  
4 [Approved March 22, 1951] Statutes of Nevada 1951 (S>B> No. 182), and subsequent acts as set forth in SECTION  
5 1 of S.B. No. 182.

6 Petitioner regards it as just and necessary to give fair warning to this court of the consequences of  
7 its failure to follow the Constitution of Nevada and uphold its oath and duty in this matter, being that it can result in  
8 this court committing acts of TREASON, SURPATION, and TYRANNY. Such trespasses would be clearly evident  
9 to the public, especially in light of the Constitution Articles that are involved here which leave no room for  
10 construction, and in light of the numerous adjudications upon them as herein stated.

11 The failure to uphold these clear and plain provisions of our Constitution cannot be regarded as  
12 mere error in judgment, yet "DELIBERATE USURPATION".

13 To assume jurisdiction, or to assume that this court had jurisdiction, etc., in this case would result  
14 in TREASON. Chief Justice John Marshall once stated: We [judges] have no more right to decline the exercise of  
15 jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the  
16 constitution. Cohens v. Virginia, 6 Wheat. (19 U.S.) 264,404 (1821).

17 Should this Court depart from the clear meaning of the Constitution of the State of Nevada King v.  
18 Board of Regents, 65 Nev.542, 565, 200 P.2d 221 (1948), it will be regarded as a blatant act of TYRANNY.

19 It has been said, with much truth, "Where the law ends, tyranny begins." Merritt v. Welsh, 104  
20 U.S. 694, 702 (1881).

21 "An arbitrary or capricious exercise of discretion is one founded on prejudice or preference rather  
22 than on reason, or contrary to the evidence or established rules of law." State v. Eighth Judicial Dist. Court,  
23 (Armstrong), 127 Nev. 927, 931-32, 267 P.3d 777,780 (2011) (Citation omitted) (internal quotation marks omitted).  
24 This court is "specifically" reminded of well-established decisions of the Supreme Court of the State of Nevada  
25 (Sup. Ct. of Nev.), that are germane and very pertinent to the ground and sub-grounds, issues brought forth in this  
26 Writ.

1 In Fernley v. State, 132 Nev. Adv. Rep. 4,366 P.3d 699, 706 (2016), the Sup. Ct. of Nev. Held:  
2 Although the statute of limitations may time-bar a claim, it does not prohibit this court from reviewing the  
3 constitutionality of an enacted statute. See Black v. Ball Janitorial Sera.,Inc.,1986 OK75, 730 P.2d 510,515  
4 (Okla.1986) (reaching the merits of a special legislation constitutional challenge even after holding the statute of  
5 limitations had passed); King v. Bd. of Regents of Univ. of Nev., 65 533, 542, 200 P.2d, 221, 225,(1948) (“It is  
6 undoubtedly the duty of courts to uphold statutes passed the legislature, unless their unconstitutionality clearly  
7 appears, in which case it is equally their duty to declare them null.” (quoting State v. Arrington, 18 Nev. 412, 4P.  
8 735, 737 (1884))).

9 The Legislature has considerable Law-making authority, but it is not unlimited. Clean Water  
10 Coal., 127 Nev. At 309, 255 P.3d at 253(interpreting the constitutionality of legislation under Nev. Const. art. 433  
11 20-21); We the People Nev. ex e l. Angel V. Miller, 124 Nev. 874, 890 n.555, 192 P3d 1166, 1177 n.55 (2008).  
12 “The Nevada Constitution is the “supreme law of the state,” ‘which’ control[s] over any conflicting statutory  
13 provisions. “Thomas v. Nev. Yellow Cab Corp., 130 Nev. Adv. Op. 52, 327 P.3d 518, 521 (2014) (quoting Clean  
14 Water Coal., 127 Nev. at 309, 255 P.3d at 253). “It is fundamental to our federal, constitutional system of  
15 government that a state legislature ‘has not the power to enact any law conflicting with the federal constitution, the  
16 laws of congress, or the constitution of its particular state.” “Thomas, 130 Nev., Adv. Op. 52, 327 P.3d at 520—21  
17 (quoting State v. Rhodes, 3 Nev., 240, 3 Nev. 247, 250 (1867). While this court will try to construe statutes to be in  
18 harmony with the constitution, if the “statute’ is irreconcilably repugnant’ to a constitution al amendment, the statute  
19 is deemed to have been impliedly repealed by the amendment.” Thomas, 130 Nev. Adv. Op. 52, 327 P.3d at 521  
20 (quoting Mengelkamp v. List, 88 Nev. 542, 545046, 501 P.2<sup>nd</sup> 1032, 1034 (1972)). “If the Legislature could change  
21 the Constitution by ordinary enactment, no longer would the Constitution be superior paramount law, unchangeable  
22 by ordinary means. It would be on a level with ordinary legislative acts, and, like other acts, alterable when the  
23 legislature shall please to alter it.” Id. at 522 (internal quotations omitted). Therefore, “the principle of  
24 constitutional supremacy prevents the Nevada Legislature from creating exceptions to the rights and privileges  
25 protected by Nevada’s Constitution.” Id.

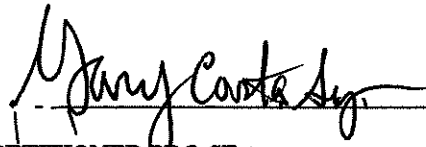
1 The Supreme court of the United States of America in Yick Wo v Hopkins, 118 U.S. 36, 373-74  
2 (1886) (holding that laws that are administered with an "unequal hand" and an "evil eye" are unconstitutional).

3 Each of these cases cited above are applicable to the petition submitted, these cases and the  
4 argument of Petitioner in the grounds, sub-grounds, issues must guide this court in the resolution of Petitioner's  
5 Writ.

6 Additionally, may this court be sufficiently warned that failure to uphold the aforesaid, and to  
7 provide Petitioner the Due Process of the Fourteenth (14<sup>th</sup>) Amendment of the United States Constitution of America  
8 (USCA), the application of these and other decisions of the Sup. Ct. of Nev., and the Supreme Court of the United  
9 States of America (Sup. Ct. U.S.A.), will be regarded as a blatant act of TYRANNY.

10  
11 Respectfully submitted:

12 Dated this 22 day of June, 2018

13  
14  
15   
16 PETITIONER PRO SE

1 **23. GROUND ONE:**

2       Petitioner does hereby raise a claim of “actual innocence,” as is more fully set forth in the Supporting  
3 Facts below.

4 **23. SUPPORTING FACTS:** The Supreme Court of Nevada (Sup. Ct. of Nev.), has iterated: A colorable showing  
5 of actual innocence may overcome procedural bars under the fundamental miscarriage of justice standard. Pellegrini  
6 v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001); House v. Bell, 547 U.S. 518, 536-37 (2006); Schlup v. Delo,  
7 513 U.S. 298, 327 (1995); Coleman v. Thompson, 510 U.S. 722, 750 (1991); and Murray v. Carrier, 477 U.S. 478,  
8 495-96 (1986). In Berry v. State, 131 Nev. \_\_\_, \_\_\_, 363 P. 3d 1148, 1155 (2015), the Sup. Ct. of Nev. held a  
9 petitioner claiming actual innocence is entitled to an “evidentiary hearing” on a claim of actual innocence if he  
10 presents “specific factual allegations that, if true, and not belied by the record, would show that it is more likely than  
11 not that no reasonable juror would have convicted him beyond a reasonable doubt given the new evidence.” In  
12 deciding whether the petitioner has made such a showing, the district court must “evaluate whether the new  
13 evidence presents specific facts that are not elide by the record and the, if so, to evaluate whether the new evidence  
14 presents specific facts that are not belied by the record and then, if so, to evaluate whether the new evidence,  
15 considered in light of all the evidence atrial, would support a conclusion that petitioner has be the actual-innocence  
16 test.” *Id.*

17       The following sections below will set forth factual allegations not belied by the record, supporting no  
18 “reasonable” juror would have convicted Petitioner beyond a reasonable doubt.

19 **THE FOLLOWING SPECIFIC FACTUAL ALLEGATIONS ARE NOT BELIED BY THE RECORD (A)**

20       Petitioner submits that no “reasonable” juror would have convicted Petitioner pursuant to laws that do not  
21 exist, or that are made criminal only by an unconstitutional law via an unconstitutional legislative act. Kelly v.  
22 Meyers, 261, P.903, 905 (Ore. 1928), see also Bible v. Malone, 68 Nev. 32, 44, 231 P. 2d 599, 603 (1951);  
23 Norton v. Shelby County, 118 U.S. 425, 442 (1886); and State ex rel. Stevenson v. Tuffy, 20 Nev. 427, 22P. 1054.

24       This is based upon the following: In 1951, the Legislature of the State of Nevada (Legis. Of Nev.), created  
25 and passed Senate Bill (S.B.), No. 182 – Committee on finance CHAPTER 304 Approved March 22, 1951 (See  
26 Exhibit “1”) (S.B. No. 182, 1951).

27       Petitioner states that S.B. NO. 182, SECTION 1, is facially unconstitutional, contravenes and is repugnant

1 **GROUND ONE CONTINUED:**

2 to the Constitution of the State of Nevada (Const. of Nev.) article (art.) 3, § 1, and art. 6, § 11, plain and  
3 unambiguous language.

4 *Art. 3, § 1, reads in part as follows:*  
5 *..., "and no persons charged with the exercise of powers properly*  
6 *Belonging to one of these departments shall exercise 'any functions,*  
7 *appertaining to either of the others,' .... "*

7 (See Exhibit "2"), and

8 *Art. 6, § 11, reads in part as follows:*  
9 *"The justices of the Supreme Court and the...shall be ineligible to any*  
10 *office other than a judicial office, during the term of which they shall*  
11 *have been elected or appointed; and all elections or appointments of*  
12 *any such judges by the people, Legislature, or otherwise, during said*  
13 *period, to any office other than judicial, shall be void."*

12 (See Exhibit "3"), and

13 When construing constitution provisions the Supreme Court of Nevada (Sup. Ct. of Nev.), utilizes  
14 the same rules of construction used to interpret statutes. See Nevada Mining Assn. v. Erodes, 117 Nev. 531, 538, 26  
15 P.3d 753, 757 (2001); Barrios-Lomeli v State, 114 Nev.779,780,961 P. 2d 750,751 (1998); and Del Papa v. Board of  
16 Regents, 114 Nev. 388, 956 P.2d 770, 773-74 (1998).

17 "A legislative enactment is presumed to be constitutional absent a 'clear showing to the  
18 contrary.' "See Halverson v. Secretary of State, 124 Nev. 484, 487, 186 P.3d 893, 896 (2008); Nevadans for Nevada  
19 v. Beers, 122 Nev. 930, 939, 142 P. 3d 339, 345 (2006); and Starlets Int'l v. Christensen, 106 Nev. 732, 735,  
20 801 P.2d 13433, 1344 (1990).

21 **THE FOLLOWING IS A CLEAR SHOWING TO THE CONTRARY THAT THE LEGISLATIVE**  
22 **ENACTMENT S.B. NO. 182, 1951, SECTION 1, IS FACIALLY UNCONSTITUTIONAL (B)**

23 S.B. No.182, 1951, SECTION 1, being facially an unconstitutional legislative act, no "reasonable" juror  
24 would have convicted Petitioner pursuant to laws that don't exist Bible, 68 Nev. at 44, 231 P.2d at 603; Norton, 118  
25 U.S. at 442; or under laws that are made criminal only by an unconstitutional law via an unconstitutional legislative  
26 act. Kelly, 263 P. at 905.



1 **GROUND ONE CONTINUED:**

2 Section 1, of S.B. No. 182, 1951, reads in part as follows:

3 *"There is hereby created a commission of the State of Nevada,*  
4 *to be known as the 'commission for revision and compilation of Nevada laws',*  
5 *hereinafter referred to as the commission. Such commission shall be composed*  
6 *of three members, and said members shall be the three justices of the supreme court.*  
7 *The members of such commission shall have the powers and duties prescribed by*  
8 *this act, and shall each receive such salary for their services as shall be prescribed*  
9 *by this act, and subsequent enactments."*

7 (Emphasis added to original) (Exhibit "1").

8 The three justices of the Sup. Ct. of Nev. in 1951, appointed to the commission were Milton B. Badt  
9 (Justice Badt); Edgar Eather (Justice Eather); and Charles M. Merrill (Justice Merrill). That this commission  
10 continued until July 1, 1963.

11 First, S.B. No. 182, 1951, Section 1, is facially unconstitutional, contravenes, and is repugnant to the Const.  
12 of Nev. Art. 6, §11, plain and unambiguous language, by mandating that art. 6, justices of the Sup. Ct. of Nev. be  
13 appointed, etc., to another office other than a judicial office, see art.6, §, via legislative enactment.

14 Art.6, of the Const. of Nev. was approved to be amended by the people of Nevada, to add SECTION II.  
15 Exhibit "3" which reads: Proposed and passed by the 1947 Legislature; agreed to and passed by the 1949  
16 Legislature, and approved and ratified by the people at the 1950 General Election, see: Statutes of Nevada 1947,  
17 p.878; Statutes of Nevada 1949, p 684).

18 The commission was an office (another office other than a judicial), as it was created by "legislative  
19 enactment." In State ex rel. Kendall v Cole, 38 Nev. 215, 219, 148 P. 5551, 552 (1915), the Sup. Ct. of Nev.  
20 iterated: "An office does not spring into existence spontaneously. It is brought into existence, either under the terms  
21 of the 'constitution, by 'legislative enactment," or by some municipal body, pursuant to authority delegated to it."  
22 See also Mathews v. Murray, 70 Nev. 116, 120-21, 258 P.2d 982, 983-84 (1953).

23 Wherefore, the commission with the mandatory placement of the three justices of the Sup. Ctt. Of Nev. on  
24 the commission, is within the prohibited unambiguous language of art. 6, §11 of the Const. of Nevada.

25 Thus, appointment by the Legis. Of Nev. of these justices to the commission was, and shall forever have  
26 been "void". Const. of Nev. art. 6, §11.

1 **GROUND ONE CONTINUED:**

2 This factor alone is enough to find S.B. No. 182, 1951, SECTION 1 to be a facially unconstitutional legislative act.  
3 Yet, another fact establishes that S.B. No. 182, 1951, SECTION 1, to be an unconstitutional legislative act,  
4 mandating art. 6, justices to another office. Should the commission by some stretch of the imagination been a  
5 judicial office, etc., the justices would not have to have been given a "salary" for the work they performed, other  
6 than their salary as Supreme Court justices.

7 **THE JUSTICES WERE NOT JUST "MERELY" ON THE COMMISSION (C)**

8 A review of (Exhibits "4" FOREWARD, and Exhibit "4A" LEGISLATIVE COUNSEL'S PREFACE),  
9 demonstrates the active participation of Justice Badt, Justice Bather, and Justice Merrill, as members of the  
10 commission, in the revision and compilation of Nevada laws.

11 Exhibit "4" As the work progressed, Mr. McDonald submitted drafts of chapter after chapter as recompiled  
12 and revised, and "the members of the commission individually and in conference meticulously checked all  
13 revisions." In the vast majority of cases these revisions were promptly approved. Many required further  
14 conferences with the director. Some were modified and redrafted.

15 Exhibit "4A", lists further work completed by the commission, see numbers 1-5.

16 **SECOND BASIS THAT S.B. NO. 182, 1951, SECTION 1 IS FACIALLY UNCONSTITUTIONAL (D)**

17 Second, S.B. No. 182, SECTION 1, is facially unconstitutional, contravenes, and is repugnant to the const.  
18 of Nev. art. 3, §1, by mandating that art. 6, justices of the Sup. Ct. of Nev., shall have the powers and duties  
19 prescribed by the act. (Exhibit "1").

20 The powers and duties prescribed by the act S.B. No. 182, 1951, SECTION 1, are the powers and duties  
21 (functions), of revision and compiling Nevada laws. (See Exhibit "1").

22 Providing art. 6, justices of the const. of Nev. with the powers and duties of revising and compiling, as  
23 mandated in S.B. No. 182, 1951, SECTION 1, contravenes and is repugnant to art. 3, § 1, of the Const. of Nev.,  
24 which specifically prohibits persons charged with the exercise of powers properly belonging to one of these  
25 departments from exercising "any functions," appertaining to either of the others, ....

26 This point is effectively made clear in the Sup. Ct. of Nev.'s ruling, opinion of Galloway v. Truesdell, 83  
27 Nev. 13, 19, 422 P. 2d 237, 241-42 (1967), the court held:

1 **GROUND ONE CONTINUED:**

2 "The Constitution confirms and firmly fixes this principle of separation of governmental powers by creating, in  
3 Article 4, Article 5, and Article 6, a legislature, an executive and a judiciary. 'In the opening words of' each Articles  
4 first section the whole power there 'granted' is 'lodged in that branch,'....'"1 d.

5 Galloway, also holds: "The separation of powers, the independence of one branch from the others; the  
6 'requirement that one department' 'can not exercise the powers of the other two' is 'fundamental' in our system of  
7 government."

8 This fundamental requirement to the system of government, to Nevada's tripartite government has been  
9 trampled upon, in S.B.No.182, 1951, SECTION 1.

10 In King V. The Board of Regents, 65 Nev. 535,556,200 P.2d 221, 232 (1948), the Sup. Ct. of Nev. Opined:

11 *"A Constitution being the paramount law of a state, designed to separate*  
12 *the powers of government and to define their extent and limit their exercise*  
13 *by the several departments, as well as to secure and protect private rights,*  
14 *no other instrument is of equal significance. 'It has been very properly defined*  
15 *to be a legislative act of the people themselves in their sovereign capacity, and*  
16 *when the people have declared by it that certain powers shall be possessed and,*  
17 *duties performed by a particular officer or department their exercise and discharge*  
18 *by any other office or department are 'forbidden' 'by a necessary and unavoidable*  
19 *implication. Every positive delegation of power to one officer or department implies*  
20 *negation of its exercise by any other officer, department, or person.' "*

21 S.B. No. 182, 1951, to unlawfully, unconstitutionally, contravene, violate the plain and unambiguous  
22 language of art. 3, § 1, of the Const. of Nev.; such that S.B. No.182, 1951, is and has been an unconstitutional  
23 legislative act, and is always to be treated as though it never existed. Bible, 68 Nev. at 44, 231 P.2d at 603; Norton,  
24 118 U.S. at 442; Stevenson, 20 Nev. 427, 22 P. 1054.

25 **S.B. NO. 182, 1951, IS FACIALLY AN UNCONSTITUTIONAL LEGISLATIVE ACT, IT CREATED NO**  
26 **OFFICE, IT IS TO ALWAYS BE TREATED AS THOUGH IS NEVER EXISTED. ANY LEGISLATIVE**  
27 **ACT AMEDING S.B. NO. 182, CHAPTER 304 STATUTES OF NEVADA 1951, MUST ALSO BE**  
28 **TREATED AS THOUGH THEY NEVER EXISTED (E)**

29 The Sup. Ct. of Nev. in Bible, 68 Nev. at 44, 231 P.2d at 603 citing Walcott v. Wells, 21 Nev. 47,55,24 P.  
30 367,370, 91>R>A 59, the court states: "We admit that there can be no officer, either de jure or defacto, if there be  
31 no office to fill; that an office attempted to be created by an unconstitutional law has no legal existence, is without  
32 any validity, and that any person attempting to fill such a pretended office, whether by appointment or

1 **GROUND ONE CONTINUED:**

2 Otherwise, is a usurper, whose acts would be absolutely null and void, and could be questioned by any private  
3 suitor, in any kind of action or proceedings. It would be a misnomer of terms to call a person an 'officer' who holds  
4 no office. A public office cannot exist without authority of law. An office cannot be created by an unconstitutional  
5 act, for such an act is no law. It confers no right, imposes no duties, affords no protection, furnished no shield, and  
6 gives no authority. It is in legal contemplation to be regarded as never having been possessed of any legal force or  
7 effect, and is always to be treated as though it never existed." Stevenson, 20 Nev. 427, 22P. 1054; Norton, 118 U.S.  
8 at 442.

9 Any decision concerning the commission, must rest on the finding that Justice Badt, Justice Eather, and  
10 Justice Merrill, were appointed, mandated to a whole nonexistent office known as the commission, pursuant to an  
11 unconstitutional legislative act; which could not constitutionally create such an office, and they were guilty of  
12 usurping, intruding into an unconstitutional legislative act; which could not constitutionally create such an office,  
13 and they were guilty of usurping, intruding into and unlawful holding or exercising the office of the commission.  
14 That, any revision and compilation of Nevada laws performed by them is void art. 6, § 11 and does not exist!  
15 Norton, 118 U.S. at 442.

16 It is elementary that an unconstitutional law is no law at all. Meagher v. Storey County, 5 Nev. 244;  
17 Stevenson, 20 Nev. 427, 22P. 1054. Hence it must follow that an unconstitutional law cannot create an office.

18 The tripartite government of the State of Nevada cannot exculpate themselves from the "facts", the  
19 exhibits, evidence, setting forth the contravention of the Const. of Nev. via S.B. No.182, 1951, SECTION 1, which  
20 was a deliberate, willfully, contemplated act by the tripartite government of the State of Nevada of 1951.

21 The only thing that exists in the State of Nevada are alleged laws named the Nevada Revised Statutes  
22 (NRS), which are made criminal only by an unconstitutional law via an unconstitutional legislative act. Bible, 68  
23 Nev. at 44, 231 P. 2d at 603; Kelley, 263 P. at 905; Norton, 118 U.S. at 442.

24 **THIS COURT MUST PROVIDE PROTECTGION TO PETITIONERS FEDERAL CONSTITUTIONAL**  
25 **RIGHTS (F)**

26 In Morrissey v. Brewer, 408 U.S. 471, 481 (1972), the Supreme Court of United States delineated:  
27 recognizing that "due to process is flexible and calls for such procedural protections as the particular  
28

1 **GROUND ONE CONTINUED:**

2 Situation demands." See also *Burleigh v. State Bar*, 98 Nev. 140, 145, 643 P2d 1201, 1204 (1982).

3 In *Taylor v. Beckham*, 178 U.S. 548, 570 (1900), the Court held: The constitutional provision that no state  
4 shall deprive any person life... without due process of law is a protection to the individual and every right he has,  
5 against arbitrary spoliation by a state. Additionally, this court can enforce the provisions of the federal Constitution  
6 by declaring null and void an alleged arbitrary action of the Legis. of Nev., denying those rights when such action is  
7 sought to be judicially enforced.

8 Unconstitutional laws, derived from an unconstitutional legislative act(s) of the Legis. of Nev. have been  
9 used against Petitioner to deprive him of his right to life and liberty. These laws have been judicially enforced upon  
10 Petitioner, and other sovereigns of the State of Nevada.

11 The guarantee of due process protects citizens against "deliberate" harm from government officials. See  
12 *Daniels v Williams*, 474 U.S. 317, 337 (1986); see also *Gant v. Bowels*, 2005 U.S. Dist. Lexis 44462.

13 The ultimate inquiry in any substantive due process case is whether the "behavior of the government officer  
14 is so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience" or "interferes with  
15 rights implicit in the concept of ordered liberty." See *County of Sacramento v. Lewis*, 523 U.S. 833, 847 (1999)  
16 (§ n8) (Emphasis added to original).

17 In the instant matter before this court the facts, exhibits, evidence, establish that the Legis. of Nev. during  
18 the 45<sup>th</sup> Session of the Legislature of Nevada 1951, made an "egregious, outrageous mistake of law," in creating,  
19 passing S.B. No.182, 1951, SECTION 1, with the mandatory placement of art. 6, justices of the Sup. Ct. of Nev. on  
20 the commission;" contrary to the plain and unambiguous language of art. 6, § 11, of the Const. of Nev. This  
21 mistake of law shocks the contemporary conscience of any reasonable juror, and interferes with right implicit in the  
22 concept of ordered liberty. *Lewis*, 523 U.S. at 847. (See Exhibits "1" § "3").

23 Additionally, this mistake of law, was compounded in S.B. No. 182, 1951, SECTION 1, by the mandatory  
24 language that, "The members of such commission shall have the powers and duties prescribed by this act, .)."

25 Again, the powers, duties (functions), prescribed by the act were "revision and compilation of Nevada  
26 laws, ...".

1 **GROUND ONE CONTINUED:**

2 This mistake of law is contrary to the plain and unambiguous language of art.3, § 1, of the Const. of Nev. and was  
3 completely egregious, outrageous, to fairly be said to shock the contemporary conscience of any reasonable juror;  
4 and interfered with rights implicitly in the concept of ordered liberty, Lewis, 523 U.S. at 847 (§n.8).

5 In Peugh v. United States, 569 U.S. \_\_\_, 133 Sup. Ct. 2072, 186 LED 2d 84 (2013), the High Court held:  
6 The Clause ensures that individuals have fair warning of applicable laws and guard against vindictive legislative  
7 action.

8 Here the mistake of law, that is S.B. No. 182, 1951, SECTION 1, can only be found to be vindictive  
9 legislative action, based upon a clear showing that the legislative action took place, after the people of Nevada  
10 ratified at the 1950, General Election that, art. 6, would be amended to add SECTION 11. Peugh, supra, that must  
11 be found to contravene the Const. of Nev. art. 6, § 11, to also include art. 3, § 1.

12 In Carmell v. Texas, 529 U.S. 5113, 533 (2000), the High Court opined: There is plainly a fundamental  
13 fairness interest, even apart from any claim of reliance or notice, in having the government abide by the rules of law  
14 it establishes to govern the circumstances under which it can deprive an person of his or her liberty of life.

15 The 45<sup>th</sup> Session of the Legis. of Nev. did not abide by the paramount law of the state, the Const. of Nev.  
16 art. 3, § 1; and art. 6 § 11; when it created and passed S.B. No. 182, 1951, Section 1. The const. of Nev., its articles  
17 are the rules of law established in the State of Nevada by which the tripartite government is to abide, in creating  
18 laws of the state.

19 The tripartite government of the State of Nevada has not, did not abide by the Const. of Nev., in  
20 establishing laws to govern the circumstances under which it could deprive Petitioner of his life or liberty. Carmell,  
21 529 U.S. at 533. The state had no power to proscribe the conduct for which petitioner was imprisoned, it cannot  
22 constitutionally insist that Petitioner remain in jail. See Desist v. United States, 394 U.D. 244, 261, n.2 (1969).

23 In Ex parte Siebold, 100 U.S. 371, 376 (1880), explained that is "this position is well taken, it affects the  
24 foundation of the whole proceedings." A conviction under an unconstitutional law

25 *"is not merely erroneous, but it is illegal and void, and cannot be a legal cause of*  
26 *Imprisonment. It is true, if no writ of error lies, the judgement may be final, in the*  
27 *Sense that there may be no means of reversing it. But...if the laws are unconstitutional*  
28 *And void, the circuit court acquired no jurisdiction of the cases." Id., at 376-377...*

1 **GROUND ONE CONTINUED:**

2 (*"Broadly speaking, the original sphere for collateral attack on a conviction was*  
3 *Where the tribunal lacked jurisdiction either in the usual sense or because the statute*  
4 *Which the defendant had been prosecuted was unconstitutional..." (footnotes omitted)*  
5 *A conviction or...imposed in violation of a substantive rule is not just erroneous but*  
6 *contrary to law and, as a result, void, see Siebold, 100 U.S. at 376. It follows, as a*  
7 *general principle, that a court has no authority to leave in place a conviction or...*  
8 *that violates a substantive rule, regardless of whether the conviction...."*

9 S.B. No. 182, 1951, SECTION 1, is "facially unconstitutional" which logically follows that all legislative  
10 acts amending from S.B. No. 182, 1951, chapter 304, are also unconstitutional legislative acts. That, Petitioner's  
11 conviction under an unconstitutional legislative act, law, is not merely erroneous, but is illegal and void, and cannot  
12 be a legal cause of imprisonment. Siebold, 100 U.S. at 376-377; see also Desist, 394 U.S. at 261, n2.

13 The State of Nevada had no power to proscribe illegal the conduct for which Petitioner has been  
14 imprisoned Desist, 394 U.S. at 261, n.2, in that the lawful laws of the State of Nevada, the Nevada Compiled  
15 Laws (NCL), have been illegally, and unconstitutionally repealed, via unconstitutional legislative act. Norton, 118  
16 U.S. at 442.

17 An unconstitutional legislative act cannot be amended for the legislative act sought to be amended is no  
18 law at all. Bible, 68 Nev. at 44, 231 P.2d at 603; Norton, 118 U.S. at 442.

19 Thus, Petitioner must be allowed the opportunity to challenge the unconstitutional legislative act,  
20 S.B. No. 182, 1951, SECTION 1, this opportunity is necessary because the privilege of bringing every law to the  
21 test of the constitution belongs to the humblest citizen, who owes no obedience to any legislative act which  
22 transcends constitutional limits. See Levingston v. Washoe County By and Through Sheriff of Washoe County,  
23 112 Nev. 479, 482, 916 P.2d 163, 166 (Nev. 1996).

24 Facially, S.B. No. 182, 1951, SECTION 1, transcends constitutional limits of art. 3, § 11, of the Const. of  
25 Nev. that Petitioner owed, owes no obedience to S.B. No. 182, 1951, CHAPTER 304 Statutes of Nevada, 1951; nor  
26 to chapter 280, statutes of Nevada 1953; chapter 248, Statutes of Nevada 1955; and chapter 2, Statutes of Nev. 1957.

27 This state recognizes that Due Process Clause requires that a person have the opportunity to "establish 'any  
28 fact'" which would be "protection to him,".... The Due Process Clause of the Const. of Nev. art.1, §38, not only  
requires that a person shall be properly brought into court (subject matter jurisdiction), yet that he shall have  
opportunity to "establish 'any fact'" which according to usages of common law or provisions of Constitution,

1 **GROUND ONE CONTINUED:**

2 would be protection to him.... (Emphasis added to original). See Wright v. Cradlebaugh, 3 Nev. 341 (1867); cited  
3 Persing v. Reno Stock Brokerage Co., 30 Nev. 342, 34 Pac. 1054 (1908).

4 Petitioner is before this court via his claim of "actual innocence," to establish that he is actually innocent,  
5 as the State of Nevada had no power to proscribe the conduct for which Petitioner is imprisoned, and cannot  
6 constitutionally insist that he remain in jail. Desist, 394 U.S. at 261, n.2.

7 **THE LEGISLATURE OF THE STATE OF NEVADA SOUGHT TO UTILIZE A SOPHISTICATED MODE**  
8 **OF INFRINGING ON CONSTITUTIONAL PROTECTIONS OF PETITIONERS FEDERAL AND STATE**  
9 **CONSTITUTIONAL RIGHTS (G)**

10 In Lane v. Wilson, 307 U.S. 268, 275 (1939), the Court delineated as follows: The Constitution nullifies  
11 sophisticated modes of infringing on constitutional protections.

12 Pursuant to the Const. of Nev. the legislative, executive, and judicial departments are separate and co-equal  
13 branches of the state government. Blackjack Bonding v. Las Vegas Municipal Court, 116 Nev. 1213, 1218, 14 P. 3d  
14 1275, 1279 (2000). Accordingly, no branch of government may exercise "functions" appertaining to either of the  
15 others. Const. of Nev. art.3, § 1. The United States Constitution contains substantially similar divisions of power  
16 between the legislative, executive, and judicial departments of the federal government. See, U.S. Const. art. 1, § 1;  
17 id., art. 2, § 1; art. 3, § 1; Mistretta v. United States, 488 U.S. 361, 380 (1989) ("Each of the three general  
18 departments of government [must remain] entirely free from the control or coercive influence, direct or indirect, of  
19 either of the others.") (Quoting Humphrey's Executor v. U.S., 295 U.S. 602, (1935)), 555 ct 869, 79 L. Ed. 1611  
20 (second alteration in original).

21 As previously iterated above, the people of the State of Nevada via the Legis. of Nev. amended art. 6, of the  
22 Const. of Nev., to add SECTION 11, which was proposed and passed by the 1947 Legislature; agreed to and passed  
23 by the 1949 Legislature; and approved and notified by the people at the 1950 General Election. (See Exhibit "3").

24 The amendment of the Const. of Nev. to add to art.6, SECTION 11, was a legislative act of the people  
25 themselves in their sovereign capacity,, and when the people have declared it that certain powers shall be possessed  
26 and, duties performed by a particular officer or department, their exercise and discharge by 'any other office or  
27 department are "forbidden" by a necessary and unavoidable implication. King, 65 Nev. at 556, 200 P2d. at 232.



1 **GROUND ONE CONTINUED:**

2 Here the members of the 45<sup>th</sup> Session of the Legis. of Nev. clandestinely, created and passed S.B. NO. 182, 1951,  
3 which was approved by the then governor of Nevada, on March 22, 1951, and became effective after May 1<sup>st</sup>, 1951.

4 Yet, before the commission began any work of revision and compilation, chapter 304, statutes of Nevada  
5 1951, was amended via chapter 280, Statutes of Nevada 1953, and chapter 248, Statutes of Nevada 1955, which  
6 ultimately led to chapter 2, Statutes of Nevada 1957, after the work of revision and compilation was completed.

7 It is believed that the members of legislature, the governor(s), and the justice(s), all knew and or should  
8 have known that each and every legislative act iterated above was, is contrary to, contravened, and is repugnant to  
9 the aforesaid articles of the Const. of Nev.

10 It is believed that Justice Badt, Justice Eather, Justice Merrill, and subsequent justices of the Sup. Ct. of  
11 Nev., knew that their participation as members on the commission was contrary to Art. 6, § 11, of the Const. of Nev.  
12 This is believed based upon the fact that Justice Badt wrote the opinion in King, supra, while Justice Eather  
13 dissented, and Justice Eather wrote the opinion in Bible, supra, in which Justice Badt, C.J., and Justice Merrill,  
14 concur, that, in Mathews, supra, Justice Merrill wrote the opinion, I which Justice Eather, C.J., and Justice Badt,  
15 concur.

16 Each of these cases relate to specific matters relative to S.B. No. 182, 1951, SECTION 11, being an  
17 unconstitutional legislative act, and or violation of, contravention art. 3, §; and art. 6, § 11; of the Const. of Nev.

18 Substantially these justices, members of the commission, had more than a working knowledge of what  
19 constituted an illegal, unlawful office, and an unconstitutional legislative act, additionally city the United States  
20 Supreme Court decision of Norton, 118 U.S. at 442, in their opinion of Bible, supra.

21 **SINCE PETITIONER WAS NOT CHARGED UNDER THE NEVADA COMPILED LAWS THE**  
22 **DISTRICT COURT LACKED SUBJECT MATTER JURISDICTION (H)**

23 Structural error plagues the plagues the proceedings of Petitioner's conviction, which affects the foundation  
24 of the whole proceedings. Siebold, 100 U.S. at 376-377. See also Arizona v. Fulminante, 499 U.S. 279 (1991)  
25 (structural error as error that obstructs the entire trial process. Gideon v. Wainwright, 372 U.S. 335, 83 S. Ct. 792,  
26 9L.Ed. 29; Tumey v. Ohio, 273 U.S. 510, 47 C. Ct. 473, 71 L. Ed. 749, distinguished.

1 **GROUND ONE CONTINUED:**

2 Constitutional legislative acts, laws, clothed courts with authority to act, render valid judgements, decrees,  
3 orders, etc. See Valley v. Northern Fires & Marin Ins. Co., 254 U.S. 348,353-54 (1920) (Courts are constituted by  
4 authority, and they cannot go beyond that authority, and certainly not in contravention of it, their judgments and  
5 orders are regarded as nullities. They are not voidable, but simply void and this even prior to reversal.) Elliot v.  
6 Peirsol, 1 Pet. 328, 340.

7 Subject –Matter jurisdiction defines the courts authority to hear a given type of case. United States v.  
8 Morton, 467 U.S. 822, 828 (1984).

9 Where a court has jurisdiction, it has a right to decide every question which occurs in the cause, and  
10 whether its decision be correct or otherwise, its judgment, until reversed, is regarded as binding in every other court.  
11 But if it act without authority, its judgments and orders are nullities; they are not voidable, but simply void, and form  
12 no bar to recovery sought, even prior to a reversal, in-opposition to them; they constitute no justification, and all  
13 persons concerned in executing such judgments, or sentences, are considered in law as trespassers. (Williamson v.  
14 Berry, 8 How. 495, 540 (1850); see also Gschwind v. Cessna Air Craft Co., 232 F. 3d 1342, 1347 (10<sup>th</sup> Cir. 2000);  
15 Hooker v. Boles, 346 F. 2d 285, 286 (1965) (“No authority need be cited for the proposition that when a court lacks  
16 jurisdiction, any judgment rendered by it is void and unenforceable.”).

17 Additionally, the conviction of Petitioner is rebutted by showing that the conviction had been obtained by  
18 some type of fraud Crescent City Live Stock Co. v. Butchers’ Union Slaughter-House Co., 120 U.S. 141, 150-51  
19 (1887).

20 Again, Petitioner iterates that he is actually innocent as the State has no power to proscribe the conduct for  
21 which Petitioner is imprisoned Desist, 394 U.S. at 261, n.2, Petitioner was not arrested, charged pursuant to the  
22 NCL’s, which were illegally, and unconstitutionally repealed; via an unconstitutional legislative act of the Legis. of  
23 Nev., which legislative act is to always be treated as though it never existed. Norton 118, U.S. at 442.  
24 In Montgomery v. Louisiana, 136 S. Ct. 718, 732-32 (2016), which has also cited Desist, supra, and Siebold, supra,  
25 the Court iterated: If a State may not constitutionally insist that a prisoner remain in jail on federal habeas review, it  
26 may not constitutionally insist on the same result in its own post-conviction proceedings. Under the Supremacy  
27 Clause of the Constitution, state collateral review courts have no greater power than federal habeas courts to

1 **GROUND ONE CONTINUED:**

2 mandate that a prisoner continue to suffer punishment barred by the Constitution. If a state collateral proceeding is  
3 open to claim controlled by federal law, the state court "has a duty to grant relief that federal law requires".

4 Yates v. Aiken, 484 U.S. 211, 218 (1988).

5 The fourteenth (14<sup>th</sup>) Amendment to the United States Constitution reads: SECTION 1. All persons born or  
6 naturalized in the United State, and subject to the jurisdiction thereof, are citizens of the United States and of the  
7 State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities  
8 of citizens for the United States; nor shall any State deprive any person of life, liberty, or property without due  
9 process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

10 Federal law requires states to abide the 14<sup>th</sup> amendment. See Duncan v. Louisiana, 391 U.S. 145, 147-48  
11 (1968).

12 The unconstitutional legislative enactment of S.B. No. 182, 1951, SECTION 1, was, is a severe mistake of  
13 law by the Legis. of Nev., and violates the federal requirement under the 14<sup>th</sup> amendment, and is an arbitrary  
14 spoliatio by the state Taylor, 178 U.S. at 570, to which Petitioner is to be protected from Daniels, 474 U.S. at 337,  
15 and is so egregious, outrageous, as to be fairly said to shock the contemporary conscience; and has interfered with  
16 Petitioners rights implicit in the concept of ordered liberty. Lewis, 523 U.S. at 847, such that Petitioner's conviction  
17 is rebutted by the facts, and the new evidence. Crescent City Live Stock Co., 120 U.S. at 150-51.

18 As to the Supremacy Clause, Art. VI, cl. 2 reads:

19 "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof;  
20 and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of  
21 the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to  
22 the Contrary notwithstanding." It is apparent that this Clause creates a rule of decision: Courts "shall" regard the  
23 "Constitution", and all laws "made in Pursuance thereof," as "the supreme Law of the Land." They must not give  
24 effect to state laws that conflict with federal laws. Gibbons v. Ogden, 22 U.S. 1, 9 Wheat.1, 210, 6 L. Ed. 23 (1824).

25 Under the Supremacy Clause, Congress has the power to pre-empt state law expressly. See Brown v. Hotel  
26 Employees, 468 U.S. 491, 500-501 (1984). State law is pre-empted "to the extent of any conflict with a federal  
27 statute." Crosby v. National Foreign Trade Council, 530 U.S. 363, 372 (2000) Citing Hines v. Davidowitz,

1 GROUND ONE CONTINUED:

2 312 U.S. 52, 66-67 (1941). Such a conflict occurs when..., or when the state law "stands as an obstacle to the  
3 accomplishment and execution of the full purposes and objectives of Congress." Hines, 312 U.S., It 67.

4 There is not – and from the very nature of the problem there cannot be – any rigid formula or rule which  
5 can be used as a universal pattern to determine the meaning and purpose of every act of Congress. The United States  
6 Supreme Court in considering the validity of state laws in the light of treaties or federal laws touching the same  
7 subject, has made use of the following expressions: conflicting; contrary to; occupying the field; repugnance;  
8 difference; irreconcilability; inconsistency, violation; curtailment; and interference E.G. Hauenstein v. Lynham, 100  
9 U.S. 483, 489; Geofroy v. Riggs, 133 U.S. 258, 267, But none of these expressions provides an infallible  
10 constitutional test or an exclusive constitutional yardstick. Hines, 312 U.S., at 67.

11 S.B. No. 182, 1951, SECTION 1 conflicts with, is contrary to; is repugnant to; in violation of; and  
12 interferes with right, privileges to, etc., of the Constitution of the United States of America, i.e. the 14<sup>th</sup> Amendment.

13 This court must stand ready to protect Petitioner's federal and state constitutional rights, pursuant to its  
14 Oath of office under the Const. of Nev. art. 15, § 2.

15 Petitioner's petition being supported by a convincing Schlup gateway showing vaies[s] sufficient doubt  
16 about Petitioner's guilt to undermine confidence in the result of the trial without the assurance that was untainted by  
17 constitutional error; hence, a review of the merits of the constitutional claim is justified. House, 547 U.S. at 537  
18 (quoting Schlup, 513 U.S. at 317).

19 The Supreme Court of Nevada "has long recognized a petitioners right to a post-conviction evidentiary  
20 hearing when the petitioner asserts claims supported by specific factual allegations not belied by the record that,  
21 if true, would entitle him to relief." Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

22 That, in as much that Petitioner pled guilty, Petitioners plea was "not knowing, voluntary, or intelligently  
23 pled", Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986), for no reasonable person, jurist or reason, etc.,  
24 would ever "Knowingly, voluntarily, or intelligently please guilty to laws that 'do not exist!'", or to please guilty to  
25 laws that are made criminal by an unconstitutional legislative act. Bible, 68 Nev. at 44, Norton, 118 U.S. at 442,  
26 Kelly 263, P. at 905, unconstitutional legislative acts, to which Petitioner owed, or owes no obedience to.  
27 Levingston, 112 Nev. at 482, 916 P.2d at 166, see also Persing, 30 Nev. 342, 34 Pac 1054.

## CONCLUSION

Petitioner's petition/writ, asserts claims supported by "very specific factual allegations of 'who, what, when, where, why, and how'", as concerns "S.B. NO. 182", etc., facts and evidence that "are not belied by the record, being 'true', entitle Petitioner to relief; to include the lack of subject matter jurisdiction.

Petitioner respectfully requests that this court will:


1. Require the Respondent to answer each and every Ground, and sub-grounds here in the petition/writ;
2. Afford Petitioner every procedural protection under the Constitution of the State of Nevada, to include the Constitution's Due Process protection Article 1, §8, yet not limited thereto, for the habeas proceedings before this court;
3. Afford Petitioner Due Process protections as is guaranteed, by the United States Constitution Fifth (5<sup>th</sup>) and Fourteenth (14<sup>th</sup>) Amendments;
4. Determine whether the "trial court", acted in a manner inconsistent with Due Process, as concerns subject matter jurisdiction (the lack thereof), and or as to any other proceedings had before the court? ;
5. Provide resolution of the foregoing petition/writ to prevent "manifest injustice," and or a fundamental miscarriage of justice," denial of Due Process;
6. Resolve the "state" created impediment, that is external to the defense, that is something external to Petitioner, which "cannot be 'fairly' attributed to Petitioner," and attorney ignorance or inadvertence is not cause. Ie look to the procedural deficiencies, Due Process protections, etc., that the "facial unconstitutionality", that S.B. No. 182 has violated;
7. Determine whether "reconstructing only of the circumstances of the challenged conduct..." can only be done adequately at an evidentiary hearing, that these particular issues provides support for the necessity of Petitioner's request for an evidentiary hearing in this matter.

1 **CONCLUSION CONTINUED:**

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3  
4 Clearly on evidentiary hearing is necessary in this matter because a number of questions  
5 "need to be answered". Without an evidentiary hearing, it is impossible to determine the  
6 totality of the detriment of the constitutional violations, as to the issues herein;

- 7 8. GRANT the petition/writ setting the matter for an evidentiary hearing, to develop a full, fair,  
8 and factual record, for the specific purpose, reason, that the Supreme Court of Nevada "is not"  
9 a fact finding tribunal," and there are factual matters herein that must be resolved;  
10 9. That, this court provide such further relief, that this court determines is fair, just, and proper,  
11 under the Constitution and laws, etc., of the United States of America, applicable to the  
12 circumstances, and the issues, nature of the petition/writ, as well as the Constitution of the  
13 State of Nevada.

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17 Respectfully submitted this 22 day of June, 2018.

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other than carrying out the legitimate functions of the Nevada Children's Foundation, Inc., the same shall be taxed.

*Eleventh—Notwithstanding any other provisions of this act or any section or subsection thereof; all claims for tax exemptions on real property shall be filed on or before the second Monday of July of the year for which the exemption is claimed.*

SEC. 2. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

SEC. 3. This act shall be in effect immediately upon its passage and approval.

Senate Bill No. 182—Committee on Finance

### CHAPTER 304

AN ACT establishing a permanent commission for the revision, compilation, annotation, and publishing of the laws of the State of Nevada and certain laws of the United States; prescribing certain duties of a temporary nature; prescribing certain duties of a permanent nature; making an appropriation therefor, and other matters properly connected therewith.

[Approved March 22, 1951]

*The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:*

SECTION 1. There is hereby created a commission of the State of Nevada, to be known as the "commission for revision and compilation of Nevada laws," hereinafter referred to as the commission. Such commission shall be composed of three members, and said members shall be the three justices of the supreme court. The members of such commission shall have the powers and duties prescribed by this act, and shall each receive such salary for their services as shall be prescribed by this act, and subsequent enactments.

SEC. 2. As soon as practicable after the effective date hereof the commission shall commence the preparation of a complete revision and compilation of the constitution and the laws of the State of Nevada of general application, together with brief annotations and marginal notes to sections thereof. Such compilation when completed shall be known as "Revised Laws of Nevada," and the year of first publication shall be filled in the blank space of such title, for brevity such title may be cited as "Rev. Laws."

SEC. 3. In preparing such compilation the commission is hereby authorized to adopt such system of numbering as it deems practical, to cause said compilation to be published in such number of volumes, but such volumes shall not exceed 750 pages, as shall be deemed convenient, and to cause such volumes to be bound in loose-leaf binders of good, and so far as possible, permanent quality. The pages of such compilation shall conform in size and printing style to the pages of the Statutes of Nevada, except that if necessary for marginal notes, the same may be of greater width, and roman style type only, shall

EXHIBIT "1" pg 1

be used. In general, it is recommended, but not required, that such compilation should follow the plan of organization used in the compilation heretofore made and known as the "Revised Laws of Nevada, 1912," as authorized by chapter CCXXXVI, Statutes of 1909.

Sec. 4. Upon completion of each portion of said "Revised Laws," the commission is authorized and directed to have the same printed at the state printing office, and upon completion of the final printing the separate volumes shall be bound as heretofore required and forwarded to the secretary of state for safekeeping and disposition as set forth hereinafter. Sufficient copies of each page shall be printed so that there shall be bound 2,500 copies of each volume of said "Revised Laws." A master copy of said "Revised Laws of Nevada," shall be kept in the office of the commission, and such master copy shall not be removed from said office except in the custody of a member of the commission.

Sec. 5. In complying with the provisions of this act, and within the limitation of available appropriations, the commission is authorized to employ such clerical assistance as it deems necessary, to be compensated at the same rate as other state employees of comparable position, and such assistants in drafting and research as may be necessary, and shall be familiar with methods of compilation and drafting of laws. The terms of the employment and compensation of such assistants shall be fixed by the commission.

Sec. 6. The commission shall reimburse the state printer from the appropriation hereby made for the cost of printing and binding required by this act.

Sec. 7. From and after the completion of "Revised Laws of Nevada," and the delivery of the same to the secretary of state, the said secretary of state shall forward one set of the same to the office of each elected or appointed state officer, and take the official receipt of said officer therefor, thirty sets shall be reserved at all times for the exclusive use of the legislature, one set shall be furnished to each county of the state for the use of the district judge and district attorney of that county, one set shall be furnished to each library in the state maintained by public funds, and such number of sets as may be necessary, not to exceed 50 sets, shall be made available to the state librarian for reciprocal trading with state libraries of sister states and federal territories. The remaining sets shall be sold by the secretary of state at a price of \$10 per volume, and all proceeds of such sales shall be deposited in the general fund.

Sec. 8. The compilation herein authorized to be made, shall be accompanied by as complete an index as it shall be practical to prepare, which index shall be printed and bound in the same manner and style as the "Revised Laws."

Sec. 9. The secretary of state shall make available to the commission all records of his office which are or may be of use to the commission, and any books or statutes in the custody of the said secretary shall likewise be made available to said commission.

Sec. 10. Upon request of the commission, the superintendent of

EXHIBIT "1" pg. 2



buildings and grounds shall assign and make available to the commission suitable and convenient rooms or space for the use of the commission and its employees.

SEC. 11. The commission is authorized to purchase or otherwise secure, necessary supplies and equipment.

SEC. 12. Upon the completion of "Revised Laws of Nevada, \_\_\_\_\_," the commission is authorized and directed to prepare and have printed such replacement and supplementary pages for such laws, as may from time to time be necessary. In any event, said commission shall prepare the replacement and supplementary pages made necessary by the sessions of the legislature, as soon as possible after each such session. The intent of this section is that such "Revised Laws" shall be kept current insofar as may be possible. Distribution of the same is to be made as for the original volumes, and prices shall be set by the commission as near as possible to the cost of preparing and printing, provided, that where distribution of the original volumes was without charge, no charge shall be made for replacement.

SEC. 13. Upon completion, "Revised Laws of Nevada, \_\_\_\_\_," may be cited as prima-facie evidence of the law in all of the courts of this state. Such evidence may be rebutted by proof that the same differ from the official Statutes of Nevada.

SEC. 14. The commission shall, from time to time, make recommendations for clarification of specific statutes, for elimination of obsolete statutes, and calling the attention of the legislature to conflicting statutes, and such other matter as it deems necessary.

SEC. 15. The members of the commission shall each receive a salary of one hundred twenty-five dollars (\$125) per month, paid as are the salaries of other state officers, and out of the appropriation hereby made, for the period commencing on the effective date hereof, and expiring June 30, 1953.

SEC. 16. There is hereby appropriated from the general fund, for the purposes of this act, the sum of seventy-five thousand dollars (\$75,000). Claims against this appropriation shall be allowed and paid in the same manner as are other claims against the state.

SEC. 17. This act shall be effective from and after May 1, 1951.

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material for state  
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California power  
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to Bill No. 188—  
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conflict herewith,  
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proceedings in civil  
relation thereto,  
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all persons who  
seals; providing  
all acts in conflict  
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and local councils  
ouncil of defense;

defining their powers and duties and other matters related thereto;  
making an appropriation therefor, and repealing acts in conflict herewith," approved March 22, 1948. Senate Bill No. 208—Committee on Finance. Approved March 22, 1951 463

301. An Act to amend an act entitled "An act concerning the estates of deceased persons," approved March 26, 1941. Senate Substitute for Senate Bill No. 14—Committee on Judiciary. Approved March 22, 1951 464

302. An Act to amend an act entitled "An act to regulate traffic on the highways of this state, to provide punishment for violations thereof, to make exceptions in certain cases, and other matters properly connected therewith," approved March 21, 1925, as amended. Assembly Bill No. 78—Mr. Folsom. Approved March 22, 1951 468

303. An Act to amend an act entitled "An act to provide revenue for the support of the government of the State of Nevada, providing penalties for the violation thereof, and to repeal certain acts relating thereto," approved March 28, 1931, as amended. Senate Bill No. 96—Senator Lovelock. Approved March 22, 1951 467

304. An Act establishing a permanent commission for the revision, compilation, annotation, and publishing of the laws of the State of Nevada and certain laws of the United States; prescribing certain duties of a permanent nature; temporary nature; prescribing certain duties of a permanent nature; making an appropriation therefor, and other matters properly connected therewith. Senate Bill No. 182—Committee on Finance. Approved March 22, 1951 470

305. An Act to amend an act entitled "An act relating to aeronautics; providing for acquisition, construction, maintenance, operation, and regulation by municipalities and counties of airports and air navigation facilities; within or without the state, and declaring such to be a public purpose; authorizing eminent domain proceedings; providing tax exemptions for municipal airports and income thereof; authorizing leasing of airports; supplying of services in airport operation, and liens to secure payment thereof; granting extra territorial jurisdiction; authorizing penalties for violation of municipal ordinances and regulations; providing for appropriation, levying of taxes, issuance of bonds, and acceptance of federal and state aid; validating prior acquisitions, actions and bond issues; authorizing joint action by municipalities and other public agencies; providing for mutual aid between municipalities; and to make uniform the law with reference to public municipal airports," approved March 21, 1947. Assembly Bill No. 102—Messrs. Byers and Francovich. Approved March 22, 1951 475

306. An Act to amend an act entitled "An act relating to unemployment compensation, creating unemployment compensation and administration funds and providing for the administration thereof; making an appropriation therefor; defining unemployment and providing compensation therefor; requiring contributions by employers to the unemployment compensation fund; creating the office of director, a board of review, and providing for other officers and employees and defining their powers and duties; providing for the levy of assessment; and other matters relating thereto," approved March 21, 1937, as amended. Assembly Bill No. 258—Mr. Folsom. Approved March 22, 1951 474

307. An Act to amend an act entitled "An act to create a water district in the Las Vegas valley, Clark County, Nevada; to provide for the procurement, storage, distribution and sale of water and rights in the use thereof from Lake Mead for industrial, irrigation, municipal, and domestic uses; to provide for the conservation of the ground-water resources of the Las Vegas valley, and to create authority to purchase, acquire and construct the necessary works to carry out the provisions of this act; to provide for the issuance of district bonds; to provide for the levy of taxes for the payment of operation and maintenance expenses and to supplement other revenues available for the payment of principal of and interest on such bonds of said district; granting said district the franchise to carry on its operations in municipal corporations within its boundaries; exempting the property and bonds of said district from taxation; validating the creation and organization of said district; and for other purposes related thereto," approved March 27, 1947, as amended. Assembly Bill No. 225—Mr. Coulthard. Approved March 22, 1951 477

308. An Act to amend an act entitled "An act creating an industrial insurance commission; providing for the creating and disbursement of funds for the compensation and care of workmen injured in the course of employment; relating to the compensation of injured workmen and the compensation of their dependents where such injuries result in death; making premium payments by certain employers compulsory; authorizing the commission created by the act to make such rules and regulations 479

EXHIBIT "1" pg. 4

BARBARA K. CEGAVSKE  
*Secretary of State*

GAIL J. ANDERSON  
*Deputy Secretary for Southern Nevada*

CADENCE MATIJEVICH  
*Deputy Secretary for Operations*

STATE OF NEVADA



OFFICE OF THE  
SECRETARY OF STATE

SCOTT W. ANDERSON  
*Chief Deputy Secretary of State*

KIMBERLEY PERONDI  
*Deputy Secretary for Commercial Recordings*

WAYNE THORLEY  
*Deputy Secretary for Elections*

September 28, 2017

3723 Southern Light Dr.  
Las Vegas, NV 89115

*Re: Certified Copy - Senate Bill 182, Chapter 304 - Approved March 22, 1951*

Dear Mr. Cabrera:

Pursuant to your public records request referenced above, please find enclosed a copy of SB 182, approved March 22, 1951. I was able to locate the bill in our Statutes of Nevada, 1951 volume (copy enclosed). If you require an official certified copy of the actual bill, please contact:

Nevada State Library and Archives  
100 North Stewart Street, Suite 200  
Carson City, NV 89701

Telephone: (775) 684-0135  
Fax: (775) 684-0118

Please be aware there may be a fee for certified copy requests. I hope you find this information helpful. Thank you for contacting the Secretary of State Elections Division.

Sincerely,

Barbara K. Cegavske  
Secretary of State

By:

*Janet Stokes*  
Janet Stokes, Elections Division

/jfs  
Enclosure

EXHIBIT "1" pg. 5

NEVADA STATE CAPITOL  
101 N. Carson Street, Suite 3  
Carson City, Nevada 89701-3714

MEYERS ANNEX  
COMMERCIAL RECORDINGS  
202 N. Carson Street  
Carson City, Nevada 89701-4201

LAS VEGAS OFFICE  
555 E. Washington Avenue, Suite 5200  
Las Vegas, Nevada 89101-3090

## CONSTITUTION OF THE STATE OF NEVADA Art. 3, § 1

Statute permitting disqualification of judge in civil action without filing of affidavit of bias or grounds for disqualification held unconstitutional. Former statute which established peremptory challenge procedure permitting any party in civil action to disqualify judge without filing affidavit of bias or otherwise alleging any grounds for disqualifi-

cation (see sec. 2 of ch. 398, Stats. 1977, codified as former NRS 1.240) constituted unwarranted interference with courts in exercise of judicial function and violated doctrine of separation of powers and therefore was unconstitutional. *Johnson v. Goldman*, 94 Nev. 6, 575 P.2d 929 (1978)

Section 1. Three separate departments; separation of powers. The powers of the Government of the State of Nevada shall be divided into three separate departments, —the Legislative, —the Executive and the Judicial; and no persons charged with the exercise of powers properly belonging to one of these departments shall exercise any functions, appertaining to either of the others, except in the cases herein expressly directed or permitted.

### —ANNOTATIONS—

Constitutional Debates, Nevada Constitutional Debates and Proceedings, pp. 138, 246, 787, 836.

#### Nevada Cases.

Exercise of judicial function by board of county commissioners is constitutional.

Exercise of judicial function by board of county commissioners is not violation of Nev. Art. 3, § 1, which provides for separation of legislative, executive and judicial powers because that section is limited by Nev. Art. 4, § 26, which provides that legislature shall prescribe duties of boards of county commissioners. *State ex rel. Mason v. Board of County Comm'rs*, 7 Nev. 392 (1872).

Construction to be placed on act can be determined only by courts, not legislature. Construction to be placed on act can be determined only by courts, and attempted exercise of this power by legislature, in providing that nothing in act authorizing raffle should be construed as authorizing lottery contrary to provisions of constitution, was assumption of functions of judiciary in violation of Nev. Art. 3, § 1, and was disregarded by court. *Ex parte Blanchard*, 9 Nev. 101 (1874).

Separation of powers provision of Nevada constitution. Under Nev. Art. 3, § 1, state government is divided into executive, legislative and judicial departments, and no person charged with exercise of powers properly belonging to one of these departments may exercise any functions appertaining to either of the others, except in cases expressly directed or permitted by constitution. *Ex parte Blanchard*, 9 Nev. 101 (1874).

Legislative appointment of officers. The offices and agencies of a municipal corporation through which its affairs are administered, are created by the legislature, and persons to fill such offices are chosen or appointed in the mode prescribed by the law of incorporation. Nev. Art. 3, § 1, which separates powers and duties of respective branches of state government, does not prevent legislative appointment because that power is not generally conferred upon executive, and Nev. Art. 15, § 10, exclusively authorizes legislature to provide for election or appointment. *State ex rel. Rosenstock v. Swill*, 11 Nev. 128 (1876).

Legislature cannot adjudicate claims where only private interests are involved. Where only private interests are involved, legislature cannot adjudicate upon disputed claims, and statute directing city treasurer to set apart certain amount of money as special fund and to pay certain enumerated indebtednesses against city, insofar as it undertook to fix amount due listed persons, was attempt by legislature to exercise judicial powers and repugnant to Nev. Art. 3, § 1, pertaining to separation of powers. *State ex rel. Arick v. Hampton*, 13 Nev. 439 (1878).

Statute providing for reduction of jail time is void insofar as it attempts to commute any portion of sentence imposed by courts before time act took effect. Ch. 78, Stats. 1881 (cf. NRS 209.433), relating to government of state prison, insofar as it attempts to commute any portion of sentence imposed by courts prior to time act took effect,

# Art. 6, § 11 CONSTITUTION OF THE STATE OF NEVADA

provisions. State ex rel. Coffin v. Atherton, 19 Nev. 332, 10 Pac. 901 (1886)

Statute's provision allowing judges necessary expenses actually paid in travelling did not violate section. Where statute redistricted state into one judicial district, and provided for election in such district of three judges having equal and concurrent jurisdiction, fact that statute allowed judges, in addition to their salary, necessary expenses actually paid by them in traveling by public conveyance in going to and from place of holding court, did not violate Nev. Art. 6, § 10, which prohibits judicial officers from receiving to their own use any fees or perquisites of office. State ex rel. Coffin v. Atherton, 19 Nev. 332, 10 Pac. 901 (1886)

Compensation allowed trustee under statute not prohibited fee or perquisite. Under sec. 7, ch. 28, Stats. 1869, as amended by sec. 3, ch. 82, Stats. 1871 (cf. NRS 325.070), which authorizes trustee of township on public land to charge fee for his time and services while employed in such trust, fact that person became trustee by virtue of his office as district judge did not prevent his making charge for his services as trustee, because compensation allowed trustee under statute is not fee or perquisite of office of district judge and therefore does not come within prohibi-

tion of Nev. Art. 6, § 10, which forbids judicial officer to receive to his own use any fees or perquisites of office. State ex rel. Jennett v. Stevens, 34 Nev. 128, 116 Pac. 601 (1911)

Statute prohibiting justices of the peace from solemnizing marriages in certain townships did not violate provision requiring uniform system of county and township government. NRS 122.080, which prohibits justices of the peace from solemnizing marriages in certain townships in populous counties did not violate Nev. Art. 4, § 25, which requires uniform system of county and township government, because classification of townships had reasonable basis and did not constitute unconstitutional denial of perquisites of office, because Nev. Art. 6, § 10, which prohibits other judicial officers from accepting fees, did not give justices of the peace any right to marriage fees or limit power of legislature under former provisions of Nev. Art. 6, § 8, to fix their powers, duties and responsibilities. Reid v. Woolfer, 88 Nev. 378, 498 P.2d 361 (1972), cited, State ex rel. Brennan v. Bowman, 89 Nev. 330, at 334, 512 P.2d 1321 (1973), Anthony v. State, 94 Nev. 337, at 341, 580 P.2d 939 (1978), County of Clark v. City of Las Vegas, 97 Nev. 260, at 264, 628 P.2d 1130 (1981)

Sec. 11. Justices and judges ineligible for other offices. The justices of the supreme court and the district judges shall be ineligible to any office, other than a judicial office, during the term for which they shall have been elected or appointed; and all elections or appointments of any such judges by the people, legislature, or otherwise, during said period, to any office other than judicial, shall be void.

(Amended in 1950. Proposed and passed by the 1947 legislature; agreed to and passed by the 1949 legislature; and approved and ratified by the people at the 1950 general election. See: Statutes of Nevada 1947, p. 878; Statutes of Nevada 1949, p. 684.)

## —ANNOTATIONS—

### Constitutional Debates.

Nevada Constitutional Debates and Proceedings, pp. 537, 676, 728, 802, 843.

### Nevada Cases.

District judge not prevented from becoming trustee of township on public land. Under Nev. Art. 6, § 11, which provides that justices of supreme court and judges of district court shall be ineligible to any office, other than judicial office, during term for which they

shall have been elected or appointed, district judge was not prevented from becoming trustee of township on public land, because even though he became trustee by virtue of his office of district judge, and certain of his duties as trustee were judicial in character, his trusteeship was at all times separate and distinct from his office of district judge. State ex rel. Jennett v. Stevens, 34 Nev. 128, 116 Pac. 601 (1911)



## FOREWORD

By the provisions of chapter 304, Statutes of Nevada 1951, amended by chapter 280, Statutes of Nevada 1953, and chapter 248, Statutes of Nevada 1955, the legislature of the State of Nevada created the statute revision commission comprised of the three justices of the supreme court, authorized such commission to appoint a reviser of statutes to be known as the director of the statute revision commission, and charged the commission to commence the preparation of a complete revision and compilation of the laws of the State of Nevada to be known as Nevada Revised Statutes. Reference is made to chapter 220 of Nevada Revised Statutes for the further duties and authority of the statute revision commission relating to the preparation of Nevada Revised Statutes, the numbering of sections, binding, printing, classification, revision and sale thereof.

The commission employed as director Russell W. McDonald, a member of the State Bar of Nevada, who, with his staff, undertook and performed this monumental task with such methods, care, precision, completeness, accuracy and safeguards against error as to evoke the highest praise of the commission and the commendation of the bench and bar of the state.

As the work progressed, Mr. McDonald submitted drafts of chapter after chapter as recompiled and revised, and the members of the commission individually and in conference meticulously checked all revisions. In the vast majority of cases these revisions were promptly approved. Many required further conferences with the director. Some were modified and redrafted. As the several chapters were returned with approval to the director, they were in turn delivered to the superintendent of state printing for printing, to the end that upon the convening of the 1957 legislature Nevada Revised Statutes was ready to present for approval. By the provisions of chapter 2, Statutes of Nevada 1957, Nevada Revised Statutes, consisting of NRS 1.010 to 710.590, inclusive, was "adopted and enacted as law of the State of Nevada."

### STATUTE REVISION COMMISSION

MILTON B. BADT  
EDGAR EATHER  
CHARLES M. MERRILL

EXHIBIT "4" pg. 1

# LEGISLATIVE COUNSEL'S PREFACE

## History and Objectives of the Revision

*Nevada Revised Statutes* is the result of the enactment, by the 45th session of the legislature of the State of Nevada, of chapter 304, Statutes of Nevada 1951 (subsequently amended by chapter 280, Statutes of Nevada 1953, and chapter 248, Statutes of Nevada 1955), which created the statute revision commission and authorized the commission to undertake, for the first time in the state's history, a comprehensive revision of the laws of the State of Nevada of general application. Although revision was not commenced until 1951, the need for statutory revision had been recognized as early as 1865 when an editorial published in the *Douglas County Banner* stated:

One subject which ought to engage the early, and serious consideration of the Legislature, about to convene, and one which should be acted upon without delay, is the revision and codification of the laws of Nevada. Amendment has been added to amendment, in such manner as to leave, in many instances, the meaning of the Legislature, that last resort of the jurist, in determining the application of the law, more than doubtful \* \* \*. The most serviceable members of the Legislature will be those gentlemen who will do something toward reducing to order our amendment-ridden, imperfectly framed and jumbled up statutes at large.

From 1861 to 1951 the legislature made no provisions for statutory revision, although during that period 8,423 acts were passed by the legislature and approved by the governor. During the period from 1873 to 1949 eight compilations of Nevada statutes were published. "Compiling" must be distinguished from "revising." Ordinarily, the "compiling" of statutes involves the following steps: Removing from the last compilation the sections that have been specifically repealed since its publication; substituting the amended text for the original text in the case of amended sections; inserting newly enacted sections; rearranging, to a limited extent, the order of sections; and bringing the index up to date.

"Revising" the statutes, on the other hand, involves these additional and distinguishing operations: (1) The collection into chapters of all the sections and parts of sections that relate to the same subject and the orderly arrangement into sections of the material assembled in each chapter. (2) The elimination of inoperative or obsolete, duplicated, impliedly repealed and unconstitutional (as declared by the Supreme Court of the State of Nevada) sections and parts of sections. (3) The elimination of unnecessary words and the improvement of the grammatical structure and physical form of sections.

The revision, instead of the recompilation, of the statutes was undertaken, therefore, first, to eliminate sections or parts of sections which, though not specifically repealed, were nevertheless ineffective and, second, to clarify, simplify, classify and generally make more accessible, understandable and usable the remaining effective sections or parts of sections.

With respect to the accomplishment of the second purpose of revision specified above, the following revisions, in addition to those mentioned elsewhere in this preface, were made:

**CERTIFICATE OF SERVICE BY MAILING**

I, Gary Costa Aynes, hereby certify, pursuant to NRCP 5(b), that on this 22  
day of June, 2018, I mailed a true and correct copy of the foregoing, "Petition for  
Writ of Habeas Corpus (Post conviction "Actual Innocence""  
by placing document in a sealed pre-postage paid envelope and deposited said envelope in the  
United State Mail addressed to the following:

NYE County Court Clerk  
1520 E. Basin AVE  
Pahrump, NV 89060

NYE County District Attorney  
P.O. Box 39  
Pahrump, NV 89041

CC:FILE

DATED: this 22 day of June, 2018.

Gary Costa Aynes  
Gary Costa Aynes #1128359  
/In Propria Personam  
Post Office Box 208, S.D.C.C.  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS:



**AFFIRMATION**  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Petition for  
Writ of Habeas Corpus (Post Conviction "Actual Innocence")  
(Title of Document)

filed in District Court Case number 7876, 7877A, 7878

☒ Does not contain the social security number of any person.

**-OR-**

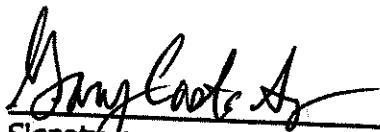
☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

**-or-**

B. For the administration of a public program or for an application  
for a federal or state grant.

  
Signature

6/22/18  
Date

Gary Costa Ayres  
Print Name

\_\_\_\_\_  
Title

JUL 02 2018

Nye County Clerk  
Deputy

Case No. CR 7876; 7877; 7878  
Dept. 2

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA, IN AND FOR THE COUNTY OF NYE

STATE OF NEVADA,

Plaintiff/Respondent,

vs.

GARY COSTA AYRES

Defendant/Petitioner.

COURT ORDER

Petitioner, GARY COSTA AYRES, filed a Petition for Writ of Habeas Corpus  
(Post-Conviction) on June 26, 2018, in the above matters.

**I. Facts**

- On June 3, 2014, Petitioner was bound up to the Fifth Judicial District Court in all three matters.
- On June 9, 2014, a Guilty Plea Agreement was filed in all the above matters.
- On June 9, 2014, an Arraignment Hearing was held in the above matters with the Petitioner canvased by the Court regarding the Guilty Pleas.
- On October 13, 2014, a Sentencing Hearing was held in the above matters
- On October 15, 2014, the judgment of convictions in the above matters were filed.
- On February 11, 2018, Petitioner filed Motions for Modification of Sentence in the above matters. The motions were denied by the Court on February 11, 2015,

1  
2 and the decisions affirmed by the Court of Appeals of the State of Nevada on May  
3 19, 2015.

4  
5 **II. Discussion**

6 Petitioner appears to be attempting to argue actual innocence and lack of subject  
7 matter jurisdiction of the Court. These arguments appear to rely on the argument that the  
8 Nevada Revised Statutes and Senate Bill No. 182 are unconstitutional on their face and  
9 should be treated as if they never existed. Petitioner's arguments are without merit.  
10 Additionally, Petitioner does not provide any facts regarding his own matter. Therefore,  
11 good cause appearing,

12 **IT IS HEREBY ORDERED** that Defendant's Petition for Writ of Habeas  
13 Corpus (Post-Conviction) on June 26, 2018, is DENIED.

14  
15 DATED this 28<sup>th</sup> day of June, 2018.


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27  
28  
District Court Judge

1  
2 **CERTIFICATION OF SERVICE**

3 The undersigned hereby certifies that on the 28<sup>th</sup> day of June, 2018, he mailed  
4 copies of the foregoing Court Order to the following:


5 GARY MARION COSTA AYRES #1128354  
6 Southern Desert Correctional Center  
7 P.O. Box 208  
8 Indian Springs, NV 89070

9 NYE COUNTY DISTRICT ATTORNEY  
10 1520 E. BASIN AVE.  
11 PAHRUMP, NV 89060  
12 (HAND DELIVERED)

13   
14 Jared K. Lam, Esq.  
15 Law Clerk to Judge Robert W. Lane

16 **AFFIRMATION**

17 The undersigned hereby affirms that this Court Order does not contain the social  
18 security number of any person.

19   
20 Jared K. Lam, Esq.  
21 Law Clerk to Judge Robert W. Lane  
22  
23  
24  
25  
26  
27  
28

1 APPL

2 Gary Costa Ayres #1128354

3 NAME

4 P.O. Box 208

5 ADDRESS

6 Indiansprings, NV 89670

7 CITY, STATE, ZIP CODE

8 TELEPHONE

9 IN PROPER PERSON

10 IN THE FIFTH JUDICIAL DISTRICT COURT OF  
11 THE STATE OF NEVADA IN AND FOR THE  
12 COUNTY OF NYE

13 Gary Costa Ayres

14 Plaintiff,

15 vs.

16 STATE OF NEVADA

17 Defendant

Case No.: Cr 7976, 7877A, 7978

Dept. No.: 2

18 APPLICATION TO PROCEED INFORMA PAUPERIS  
19 (Filing Fees/Service Only)

20 Pursuant to NRS 12.015, and based on the following Affidavit, I request  
21 permission from this Court to proceed without paying court costs or other costs and fees  
22 as provided in NRS 12.015, because I lack sufficient financial ability.  
23  
24  
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28

# AFFIDAVIT

STATE OF NEVADA )  
COUNTY OF NYE ) ss.

I, Glary Costa Ayner, after being duly sworn, depose and state as follows:

I wish to file with this Court the pleading submitted with this Application. I cannot pay the filing fees and costs of this action because I lack sufficient income, assets, or other resources. Including myself, there are \_\_\_\_\_ adults and \_\_\_\_\_ children age(s) \_\_\_\_\_ in my household.

My total monthly income is:

From all sources including employment, self-employment, social security, child support, etc

\$ \_\_\_\_\_

Any other household income from another member of the household is

\$ \_\_\_\_\_

My employer is \_\_\_\_\_ located at \_\_\_\_\_

\_\_\_\_\_, my job title is \_\_\_\_\_  
The following represents a list of all of my assets and their value:

Automobile

Value

Loan Balance

YEAR, MAKE, AND MODEL

\$ \_\_\_\_\_

\$ \_\_\_\_\_

Mobile Home, House or Other Real Estate

SIZE, TYPE, AND YEAR

\$ \_\_\_\_\_

\$ \_\_\_\_\_

Bank Accounts

Value

Loan Balance

NAME OF BANK AND TYPE OF ACCOUNT

\$ \_\_\_\_\_

\$ \_\_\_\_\_

NAME OF BANK AND TYPE OF ACCOUNT

\$ \_\_\_\_\_

\$ \_\_\_\_\_

Other

\$ \_\_\_\_\_

\$ \_\_\_\_\_

DESCRIPTION

1 \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_  
2 \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_

3 The following represents my total monthly expenses:  
4

5	Rent or Mortgage		\$ _____
6	Phone, Gas, Electricity, and Other Utilities		\$ _____
7	Food		\$ _____
8	Child Care		\$ _____
9	Insurance		\$ _____
10	Medical		\$ _____
11	Transportation		\$ _____
12	Other: Auto Insurance		\$ _____
13	None		\$ _____
14	TOTAL MONTHLY EXPENSES		\$ _____

15 I request the Court hold a hearing on this Application if the Court is inclined to deny  
16 same, so that I may testify as to my indigent status. I declare under penalty of perjury  
17 that the foregoing is true and correct.  
18

19   
20 \_\_\_\_\_  
21 Signature  
22  
23  
24  
25  
26  
27  
28

JUL 18 2018

NYE COUNTY DEPUTY CLERK  
DEPUTY

*Marianne Yoffee*

**District Court for the State of Nevada  
In and for Nye County**

*Gary Costa Ayres*  
SOCC # 1128354  
P.O. Box 208  
Indian Springs, NV 89070-0208  
Petitioner Pro Se

*Gary Costa Ayres*  
Petitioner,

Vs.

**BRIAN SANDOVAL,  
Governor of the State of Nevada,  
And the State of Nevada  
Real Party in Interest,  
Respondents**

Case No. CV. 7876, 7877A, 7878

Dept. No. 2

Date of Hearing: NY

Time of Hearing:                     

**PETITION FOR WRIT OF MANDAMUS**

COMES NOW, *Gary Costa Ayres* (Petitioner), by and through his proper person, and for cause of action  
alleges that:

**1. (see footnote)**

This Writ is brought pursuant to the provisions of NRS 34.160 to 34.170, the Constitution of the State of Nevada (Const. of Nev.), Article (Art.) 6, § v6(1); Art. 5, § 7 and any applicable provision of the Nevada Compiled Laws (NCL), for petition for writ of mandamus. The Constitution of the United States (Const. of the U.S.); Fourteenth (14<sup>th</sup>), Amendment, the right to petition the Government for a redress of grievances.

**2.**

Petitioner alleges that he is a citizen of the State of Nevada, and the United States of America, and brings and prosecutes this proceeding on his own behalf, and for and behalf of public right, that the object of mandamus is to procure the enforcement of the public duty. Petitioner further alleges that he has a legal or special interest in the results, as Petitioner is interested as a citizen having the laws, articles for the Const. of Nev. faithfully executed, and the right enforced.

(1) The utilization of the NRS, is by no means acknowledgement by Petitioner that the NRS are constitutional, lawful laws of the State of Nevada.



3.

Respondent(s) are employee(s) of the State of Nevada, currently assigned to the Executive Department of the State of Nevada (Exec. Dept. of Nev.), office of the governor. The governor is responsible for the execution of laws. He shall see that the laws are faithfully executed. Art. 5, § 7, of the Const. of Nev.

Respondent, its alleged has failed to and or has refused to act as required by duty of office.

4.

That, an Act of the Legislature of the State of Nevada (Legis. of Nevada), was created, passed, etc., as a result of fraud, mistake of law, conspiracy, and collusion, to defraud the people of the State of Nevada.

It's alleged that the Act is contrary to the Const. of Nev., is "facially unconstitutional, that no set of circumstances exists under which the Act would be valid, that the law, Act, is unconstitutional in all of its applications, that it always operates unconstitutionally," as was framed by a convention of delegates chosen by the people. On the 1<sup>st</sup> Wednesday of September 1864, the constitution was approved by the vote of the people of the Territory of Nevada, and on October 31, 1864, President Lincoln proclaimed that the State of Nevada was admitted into the Union on an equal footing with the original states.

The literal text of the original, signed copy of the constitution filed in the office of the secretary of state has been retained unless it has been repealed or superseded by amendment. Where the original text has been amended or where a new provision has been added to the original constitution, the source of the amendment or addition is indicated in the source not immediately following the text of the text of the amended or new section.

That, without resolution of this mandamus, Writ, enforcement of same, will leave disturbed the separate department relationship that that is to exist between the tripartite Department of government of the State of Nevada, as well as the relationship that is to exist with the people of the State of Nevada; and their government.

The legislative Act disturbing the separate department relationship of the tripartite government of the State of Nevada is Senate Bill No. 182-Committee on Finance CHAPTER 304 Statutes of Nevada 1951, Approved March 22, 1951, (S.B. No. 182) - Committee on finance CHAPTER 304 Statutes of Nevada 1951, Approved March 22, 1951 (S.B. No. 182) (See attached Exhibit "1").

The issuance of the Writ against Respondent, requiring him to perform his duty of office for the State of Nevada, would be in support of the enforcement of Art. 3, § 1, of the Const. of Nev., which provides that the powers of the state government

1 shall be divided into legislative, executive, and judicial departments, and that no person charged with the exercise of the powers  
2 properly belonging to one of these departments shall exercise any functions appertaining to either of the others.... (See Exhibit  
3 "2").

4 The issuance of the Writ against Respondent, requiring him to perform his duty of office for the State of Nevada, would  
5 be in support of the enforcement of Art. 6, § 11, of the Const. of Nev., which mandates: The justices of the supreme court...shall  
6 be ineligible to any office, other than a judicial office, during the term for which they shall have been elected or appointed; and all  
7 elections or appointment of an such judges, by the people, legislature, or otherwise, during said period, to any office other than  
8 judicial, shall be void. [Amended in 1950]. Proposed and passed by the 1947 legislature; agreed to and passed by the 1949  
9 legislature; and approved and ratified by the people at the 1950 general election. See: Statutes of Nevada 1947, p. 878; Statutes  
10 of Nevada 1949, p684. (See Exhibit "3").

11 Further issuance of the Writ against Respondent, requiring him to perform his duty of office for the State of Nevada would  
12 be in support of the enforcement of Art. 5, § 7, and Art. 15, § 7, of the Const. of Nev. (See Exhibit's "4" and "5" respectively.

13 Special sessions of the Legis. of Nev. can only be called by the governor, and being mandated to call a special session  
14 to repeat a "facially unconstitutional legislative Act", which will be for the best interests of the State, Petitioner, and the people of  
15 the State of Nevada.

16 Neither this court nor the appellate courts nor any officer is greater than the organic act under which the state and the  
17 courts and officers are created. This court, nor any court ought not to usurp the rights of the people by amending into the  
18 constitution nor the powers of the legislature by judicially legislating into t statute what it cannot constitutionally provide, authority  
19 to exercise.

20 There is ample reason that is apparent why this court under its constitutional assigned duty Art. 6, § 6 (1), and Art. 15,  
21 § 2 of the Const. of Nev., in this special and preliminary proceeding, adjudicate and uphold the constitutional provisions of each  
22 Art. Of the Const. of Nev: as set forth herein, upholding the rights of Petitioner and each and every individual citizen of the State  
23 of Nevada. Specifically, the right to have the constitutional provisions of the Const. of Nev., enforced against S.B. No. 182, a  
24 "facially unconstitutional" legislative Act that is not a law, or constitutional legislative Act. See Bible v. Malone, 68 Nev. 32, 44, 231  
25 P.2d 599, 603 (1951), citing Norton v. Shelby, 118 U.S. 425, 442 (1886), and must be repealed.

26 It may be conceded that the courts could not, under any statute passed by the legislature, compel the governor to perform  
27 acts which would be in conflict with the powers conferred upon him by the constitution, and that he is absolute in all the prerogatives

1 Conferred upon him by that instrument. Neither the courts nor the legislature can deprive him of any authority conferred upon him  
2 by the constitution.

3 S.B. NO.182 is clear in its direction, it does relate to or infringe on constitutional mandates, whereby it's a legislative Act  
4 that should not have passed in the Legis. of Nev.; and especially should not have been approved by the governor, and certainly  
5 not acted upon by the justices, the judiciary of Nevada.

6 The constitution defines the power of the governor, and provides clearly for the enactment of "constitutional laws" and  
7 the jurisdiction of courts.

8 Should it be admitted that certain powers are vested in the governor by the constitution, which neither the legislature nor  
9 the courts can control. S.B. No. 182 being "facially unconstitutional" by well-established constitutional mandates, provisions, and  
10 unless it be by Art. 5, § 7, which reads that "he shall see that the laws are faithfully executed," and the one giving him the right to  
11 recommend to the legislature that this or any other act be repealed, he has a duty to act to so move to repeal an unconstitutional  
12 legislative Act.

13 When an Act, "not in conflict with the constitution," passes both houses of the legislature, and is approved by the governor  
14 or passed over his veto, it is binding, and no person is above a law, Act so enacted (approved). As he cannot prevent its passage  
15 over his veto, he is powerless to set aside a statute after it has become law (absent repeal).

16 Section 6, (1), of Art. 6, of the Const. of Nev. provides that this court shall have power to issue writs of mandamus.

17 Laws, opinions, of the Supreme Court of the State of Nevada (Sup. Ct. of Nev.), directs that the writ may be issued to  
18 any person "to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station."

19 Nothing places him upon a pedestal above the laws enacted in accordance with the mandatory provisions of the  
20 constitution by the people's representatives in the legislature assembled. He, similarly with other public officers, is the chosen  
21 servant of the people. This court, as well as the executive, are under an oath provided by the constitution itself to support its  
22 provision. The one that "he shall see that the laws are faithfully executed" make it even more incumbent upon him that upon  
23 ordinary citizens to yield obedience to the Const. of Nev. Art's.

24 The fact that with the best of motives, and on the highest of moral grounds, he may disagree with the will of the legislature  
25 as expressed in the Const. of Nev., etc., cannot justify his failure or refusal to perform an act, well defined by its terms, the will of  
26 the people.

27 This court, as well as the governor, are bound to observe the mandates, provisions of the Art.'s of the Const. of Nev.,  
28

1 including the provisions for the issuance of writs of mandamus when any person refuses to perform an act "which the law especially  
2 enjoins as a duty resulting from his office or station."

3 He may recommend the passage of laws and approve or veto "bills" after they have been passed by the senate and  
4 assembly; he may recommend the repeal of acts, statutes which have become the law.

5 The constitution on which our government stands, and without which it would fall, nowhere exempts the governor from  
6 being required, the same as other officers, to perform ministerial acts such as required by the Const. Art.'s, which in no way conflict  
7 with or pertain to his constitutional prerogatives. Should the chief executive may, upon the ground that in "his judgement" it is not  
8 for the best interest of the state, set aside a Const. Article Mandate, provision, he may also for the same reason, and contrary to  
9 the constitutional requirement that he enforce the laws, ignore other constitutional requirement that he enforce the laws, ignore  
10 other constitutional Art.'s; and other officers and citizens, not especially enjoined by the constitution to enforce the laws, would  
11 have quite as much right as he to ignore the constitution, etc., which they did not deem wise or expedient.

12 S.B. No. 182 complained of is one mischievous in its tendencies, and the answer is the responsibility rests upon the  
13 Legislature, and the governor to fix the matter. The governor doing so via enforcement of the Const. of Nev., Art 5, §7, enforcing  
14 mandates of Art. 3, § 1; Art. 6, §11; and Art. 15, § 2, against S.B. No. 182, and calling upon the Legis. of Nev. via special session  
15 to repeal S.B. No. 182, and all Acts of the Legis. of Nev. amending S.B. No. 182, or obtaining authority etc., from Acts amending  
16 S.B. No.182, specifically, Senate Bill No. 188 – Committee on Judiciary CHAPTER 280, Statutes of Nevada 1957, Approved  
17 January 25, 1957 (S.B. No. 2). (See Exhibits "6", "7", and "8" respectively). Evils have come to our system of government due to  
18 the far-reaching of the judiciary, abandoning the sphere assigned to it by the fundamental law; by entering the domain of the  
19 legislature, and upon grounds merely of justice or reason and wisdom, annual constitutional articles that have received the  
20 sanction of the people. It is the solemn duty of the courts, in cases before them to regard the constitutional rights of the citizen  
21 against merely arbitrary power. Because it is equally true—indeed, the public interests imperatively demand—that legislative  
22 enactments be recognized and enforced by the courts, as embodying the will of the people, unless (emphasis added), they are  
23 "plainly" and palpably, and beyond all question, in violation of the fundamental law of the constitution. (Emphasis added).  
24 See Ex Parte Boyce, 27 Nev. 299, 65 L.R.A. 337, 103 Am. St. Rep. 747, 73 P.528.

25 The const. of Nev. Art. 3, § 1, must be construed in light of its purpose, which is to ensure the separation of  
26 departments of government in the State of Nevada. S.B. No.182 contravenes the plain and unambiguous language of Art.3,§ 1,  
27 No.182 is "facially unconstitutional". Art. 5, § 7, of the Const. of Nev. mandates the governor of Nevada

1 Brian Sandoval (Gov. Sandoval), to enforce the mandate of Art.3, § 1, of the Const. of Nev.

2 Likewise, the Const. of Nev. Art. 6, § 11, must be construed in light of its purpose which is to ensure that members of  
3 the judiciary are not in "any other office", other than a judicial office S.B. No. 182 contravenes the plain and unambiguous  
4 language of Art. 6, § 11, of the Const. of Nev., S.B. No. 182 is 'facially unconstitutional.' Art. 5, § 7, of the Const. of Nev.  
5 mandates that Governor Sandoval to enforce 'the mandate of Art. 6, § 11, of the const. of Nev. against S.B. No. 182. See also  
6 Art. 15, § 2, of the Const. of Nev.

7 The Writ must issue to compel the chief executive to perform a ministerial act in accordance with the best authorities,  
8 and has been the law of this state for more than forty years, i.e. Art.3, § 1, Art. 6, §11; and Art. 15, § 2. Compare: State ex rel.  
9 Wall v. Blasdel, 4 Nev. 241 (It was said in the opinion that "if the law as passed is 'valid' it must be enforced.") (emphasis added  
10 to original).

11 Then conversely, is also true, an unconstitutional Act, law, cannot, must not be enforced, and must be repealed.  
12 Bible, 68 Nev. at 44; Norton, 118 U.S. at 442. See also Lieutenant-Governor Laughton v. Governor Adams, 19 Nev. 370, 371,  
13 12 P.488, Such is S.B. No. 182 which must be repealed.

14 Mandamus will therefore lie to compel the governor to perform this duty at the suit of any citizen instituted to enforce  
15 compliance with the law. State of Nevada v. Cracey, 11 Nev. 223 (1876); see also Galloway v. Truesdell, 83 Nev. 13, 422 P.2d  
16 237 (1967).

17 The terms of the Const. of Nev. i.e. Art. 5, §7; Art. 3, § 1; Art. 6, § 11; and Art. 15, § 2, are mandatory and admit of no  
18 discretion. There are further recognitions for the right to have the writ of mandate issue against the chief executive, when the  
19 conditions warrant. Laughton, 19 Nev. at 371, 12 P. at \_\_\_, see also In Re Waterman, 29 Nev. 288, 89 P. 291, 11 L.R.A. (N.S.  
20 424; Middleton v. Low, 3 Cal. 596.

21 In case of Morbury v. Madison, 5 U.S. 137, 1 Cranch 137, 2 LEd 60 Chief Justice Marshall uses the following Language: "The  
22 very essence of civil liberty consist in the right of every individual to claim the protection of the laws, whenever he receives an  
23 injury. One of the first duties of government is to afford that protection. And further on in the same case, page 166 (5U.S. 137, 1  
24 Cranch 137, 2 L.Ed. 60), ... when the rights of the individual are dependent on the performance of those acts, he is, so far, the  
25 officer of the law, is amenable to the laws for his conduct and cannot at his discretion sport away the vested rights of others. In  
26 the case of Tenn. R. Co. v. Moore, 36 Ala. 371, the following language is used: All this is but the result of the just and  
27 wholesome principle that no public functionary, whatever his official rank, is above the law, or will be permitted to violate

1 its express command with impunity. Denying the Writ, would result in continued fraud, mistake of law, usurpation of the powers  
2 of the tripartite government of the State of Nevada.

3 Petitioner sent to Gov. Sandoval a missive detailing the unconstitutionality of the NRS, and as concerns S.B. No. 182.  
4 (See Exhibit "9"). That, to date of the filing of this Writ, Gov. Sandoval has not responded.

5 Petitioner has sought via other means to resolve the facial unconstitutionality of S.B. No. 182, it transcending  
6 constitutional limits etc., again to no avail.

7 5.

8 Petitioner has no plain, speedy and adequate remedy in the ordinary course of law.

9 ...

PRAYER FOR RELIEF

Wherefore, AND FOR THE REASONS SET FORTH HEREIN, Petitioner prays this HONORABLE Court to:

1. Grant the Instant Writ, and Order the Respondent to immediately comply with the provisions of the Constitution of Nevada, Article 5, § 7, enforcing Article 3, § 1, and Article 6, § 11, against S.B. No.182, maintaining Article 15, § 2, of the Constitution of Nevada, and render assistance to Petitioner consist with Montgomery V. Louisiana, 136 S. Ct. 718, 129, 193 L.Ed. 2d 599, 615-16 (2016); citing Ex parte Siebold, 100 U.S. 371, 376-77 (1880); Levingston v. Washoe County, Nevada, By and Through the Sheriff of Washoe County, 112 Nev. 479, 482, 916 P2d, 163, 166 (1996), which is approvable, being consistent with Due Process of law;
2. Direct Respondent to make return and show how they have complied with the Writ;
3. Should Respondent fail to comply with the Writ, Grant Petitioner a hearing that, Petitioner is able to factually set forth all colorable claims, etc., for mandatory enforcement, to include lack of SUBJECT MATTER JURISDICTION;
4. For such other and further relief as to this matter, as this court may deem proper in the premises, Interest of fair justice.

Dated this 10 day of July, 2018

Signed:

Gary Costa  
PETITIONER PRO SE

VERIFICATION WITHOUT NOTARY

I, The Petitioner above-named and under-signed, under penalty of perjury, state, I am a prisoner of the Nevada Department of Corrections, currently confined at Southern Desert Correctional Center (SDCC), that I am the person named in the foregoing Writ, that I have read same and knows the contents thereof; that statements made herein are true and correct, except for those matters state upon information and belief; that as to such matters I believe them to be true

Executed at the Southern Desert Correctional Center facility on this 10 day of July, 2018.

Signed:

Gary Costa Jr  
PETITIONER PRO SE



POINTS AND AUTHORITIES

FACTS

Petitioner, incarcerated at SDCC of the Nevada Department of Corrections (NDOC), located in Indian Springs, Nevada  
SEE: Affidavit of Petitioner, attached hereto.

Petitioner has done, or been assisted, extensive research as concerns S.B. No.182, the "facial unconstitutionality" of  
S.B. No.182, that no set of circumstances exists under which the Act would be valid, i.e. that the law is unconstitutional in all of  
its applications, that it always operates unconstitutionally. Washington State V. Washington State Republican, Party 552 U.S.  
442, 449 (2008).

Setting forth that S.B. No.182 transcends constitutional limits, 112 Nev. at 482, 916 P.2d at 166, thus Petitioner owes  
no obedience to S.B. No.182, nor any Acts alleging to have "amended S.B. No.182, or derived authority therefrom, as a law that  
conflicts with the constitution as to be entirely void, there is nothing to amend. See: In the Matter of the Application of  
F.R. Medeiros For Writ of Habeas Corpus, 57 Nev. 301, 304, 64 P.2d 346 (1937); see also Goldman v. Bryan, 106 Nev. 30, 37,  
787 P.2d 372, (1990) (constitution is law absolutely controlling the legislature, executive, and judicial departments and its  
provisions ("take effect on laws already passed as well as to those to be enacted in the future"); State v. Duffy, 6 Nev. 138 (1870)  
(provisions of state constitution constitute supreme law of the state and must be enforced by the courts in letter and spirit), Robin  
v. District Court, 73 Nev. 169, 175, 313 P.2d 436, 440 (1957) (... "well recognized rule that an express constitutional provision  
requiring a certain thing to be done in a certain way is exclusive to like extent as if it had included a negative provision to the  
effect that not be done in any other way.")

That, S.B. No.182, SECTION 1, first mandates that three members of the Supreme Court, are to be members of the  
commission for revision and compilation of Nevada laws.

The Const. of Nev. being supreme law of the state, and Art.6, § 11, mandates that justices are ineligible to any other  
office, other than a judicial office.

The commission is/was an office being prohibited via Art.6, § 11, of the Const. of Nev. See: State ex rel. Mathews v.  
Murray, 70 Nev. 116, 120-21, 258 P.2d 982, 983-84 (1953), setting forth what constitutes an office. See also Exhibit "3".

Petitioner has sought enforcement of Art.6, § 11, of the Const. of Nev., a provision of the supreme law of this state in  
letter and spirit. Duffy, supra. Art.5 § 7, of the Const. of Nev. calls upon the governor to enforce all laws.

1       Petitioner has also sought the enforcement of Art.3, § 1, mandates as follows; "and no persons charged with the  
2       "exercise of powers properly belonging to one of these departments shall exercise any 'functions', 'appertaining to either of the  
3       others." ... (emphasis strongly added to original) See Exhibit "2".

4       That, S.B. No.182, SECTION 1, mandates "The members of such commission 'shall have the powers and duties  
5       prescribed by this act' "".... See Exhibit "1".

6       The powers and duties (functions), prescribed by this act S.B. No.182, SECTION 1, are for "revision and compilation of  
7       Nevada laws." See Exhibit "1".

8       This mandate of S.B. No.182 SECTION 1, is in violation of the plain and unambiguous language of Art.3, § 1, as  
9       articulated in Galloway v. Truesdell, 83 Nev. 13, 422P.2d, 237 (1967); see also Office of the Attorney General of the State of  
10      Nevada 2004 Nev. AG LEXIS 4 Opinion No. 2004-03 March 1, 2004 Opinion by: "BRIAN SANDOVAL, Attorney General  
11      "Wherein, then Attorney General Brian Sandoval opined in part as follows: "In affirming that the separation of power is 'probably  
12      the most important single principal of government declaring and guaranteeing the liberties of the people,' the Nevada Supreme  
13      Court in Galloway v. Truesdell, 83 Nev. 13, 42 2P.2 237, (1967) declared: ... The extent to which a country can successfully  
14      resolve the conflict between the three branches of government is to a very great extent the measure of that country's capacity of  
15      self-government. Id. at 18, quoting Honorable Arthur T. Vanderbilt, THE DOCTRINE OF SEPARATION OF POWERS (1953).

16      The Truesdell Court, in recognition of the magnitude of this issue, opined even further: The separation of powers the  
17      independence of one branch from the others; the requirement that one department cannot exercise the powers of the other two  
18      is fundamental in our system of government. 83 Nev. at 19 (emphasis added).

19      Indeed, in a more contemporary decision, the Nevada Supreme Court did not hesitate to reaffirm its unyielding  
20      adherence to the separation of powers doctrine. In Whitehead v. Comm'n of Judicial Discipline, 110 Nev. 874, 879, 878 P.2d  
21      913 (1994), the court relied on THE FEDERALIST to emphasize that 'the division of powers is probably the most important single  
22      principle of government declaring and guaranteeing the liberties of the people.'

23               This principle is also of Federal Constitutional dimension and has occupied  
24               Position of unquestioned importance since the early days of the Republic. As  
25               James Madison noted in the Federalist No.47, ""were the power of judging joined  
26               ...to the executive power, the judge might behave with all the violence of  
27               the oppressor"" (quoting Montesquieu).

1 Id. At 879, citing Galloway v. Truesdell, 83 Nev. 13 (1967)

2 ...there can be no liberty \*\*\*if the power of judging be not separate from  
3 from the legislative and executive powers\*\*\*. Were the power of judging  
4 joined with the legislative, the life and liberty of the subject would be exposed  
5 to arbitrary control, for the judge would be the legislator.

6 Galloway v. Truesdell, 83 Nev.13, 19 (1967), citing city of Enterprise v. State,  
7 69 P.2d 953 (Oregon, 1937).

8 In the Truesdell and Whitehead cases, the Nevada Supreme Court was presented with the questions of whether the  
9 judicial branch could perform legislative functions and an officer of the executive branch could perform judicial functions. In both  
10 the Court soundly rejected such a notion, finding that such conduct would violate the principle of separation of powers contained  
11 in Article 3, SECTION 1 of the Nevada Constitution."

12 The question presented to Governor Sandoval concerning S.B. No.182 SECTION1 concerns the same dilemma,  
13 except that Art.6, § 11, of the Const. of Nev. is included in the equation, making S.B. No.182, soundly an unconstitutional;  
14 "facially unconstitutional legislative Act" :-(constitution is law absolutely controlling the legislature, executive, and judicial  
15 departments and its provisions "take effect on laws already passed" as well as to those to be enacted in the future  
16 Wren v. Dixon, 40 Nev. 170, 187, 161 P.722, 726 (1916), citing Oakland Paving Co. v. Hilton, 11 P.3 (Cal. 1886).

## ARGUMENTS

### 1. STANDARDS FOR ISSUANCE OF THE WRIT

Mandamus is a civil remedy, with the qualities and attributes of a civil action. State ex rel: Bullion Exch. Bank v. Mack, 26 Nev. 430, 69 Pac.862 (1902). The Rules of Practice of the District Courts are applicable in Mandamus proceedings, Gulbranson v. City of Sparks, 89 Nev. 93, 95, 506 P.2d 1264 (1973); citing Flanigan v. Burritt, 41 Nev. 504, 173, Pac.352 (1918), as are the Nevada Rules of Civil Procedure (NRCP). Parties to Mandamus actions enjoy the same rights as parties to other civil actions. Flanigan, supra. Mandamus is a constitutionally adequate form of judicial review. Baby Tom & Co. v. City of Las Vegas, 199 F.3d 111 (9<sup>th</sup> Cir. 200).

Mandamus lies to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust, or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled and from which he is unlawfully precluded by such inferior tribunal, corporation, board or person. Board of County Comm'rs v. Las Vegas Discount Golf & Tennis, 110 Nev. 567, 570, 875, P.2d 1045 (1994); Building & Constr.Trades Council v. State ex rel. Pub Works Bd., 108 Nev. 605, 609, 836 P.2d, 633 (1992); State ex rel. McGuire v. Waterman, 5 Nev. 323 (1869). It must appear that Respondent has it within his power to perform the duty required of him. Id. The act must be one performance of which the law requires as a duty resulting from the office and there has to be an actual, not anticipated, omission on the part of the officer to perform it. Brewery Acts Center v. State Bd. Of Examiners, 108 Nev. 1050, 1054, 843 P.2d 369 (1992); State Bar v. List, 97 Nev. 367, 368, 632 P.2d 341 (1981); State ex rel. Ah Chew v. Rising, 15 Nev. 164,166 (1880). The Writ may also issue to compel a state officer to perform a purely ministerial duty imposed on him by state law. Goldman, 106 Nev. at 36, 787 P.2d 372 (1990); List, supra; State ex rel. White v Dickerson, 33 Nev. 540, 113 Pac.105 (1910). The Writ is available where manifest abuse, or arbitrary or capricious exercise of discretion is show, Woerner v. Justice Ct., 116 Nev. 518, 523, 1P3d377 (2000); Barnes v. Eighth Judicial Dist. Ct., 103 Nev. 679, 682, 748, P.2d 483 (1987); Round Hill Gen. Improvement Dist. V. Newman, 97 Nev. 601, 637 P.2d 534 (1981), and where the activity complained of is capable of repetition yet evades review. Millery v. State, 113 Nev. 722, 724, 941 P 2d 456 (1997); State v. Washoe County Pub. Defender, 105 Nev. 299, 775, P.2d 217 (1989). The Writ may issue even though Petitioner has an alternate avenue of relief, where the Petition raises pressing Constitutional and Public policy issues. Diaz v. Eighth Judicial Dist. Ct., 116 Nev. 88, 93, 993 P.2d 50 (2000); Business Computer Rentals v. State Treasurer, 114 Nev. 63, 953,P.2d 13 (1998).

1 The Writ will not issue unless Petitioner demonstrates a clear legal right to relief sought. State ex rel. Blake v. County  
2 Comm'rs, 48 Nev. 299, 304, 231 Pac. 384 (1924); Hardin v. Guthrie, 26 Nev. 246, 252, 66 Pac. 744 (1901); State ex rel. Schaw v.  
3 Noyes, 25 Nev. 31, 56 Pac. 946 (1899). Moreover issuance of the Writ is the discretionary. Scrimmer v. Eighth Judicial Dist. Ct.  
4 116 Nev. 507, 512, 998, P.2d 1190 (2000); Kindred v. Second Judicial Dist. Ct., 116 Nev. 405, 410, 996, P.2d 903 (2000).

5 The Writ shall issue when there is no plain, speedy and adequate remedy in the ordinary course of law. Nevada Pub.  
6 Land Access Coalition v. Humboldt County Board of Comm'rs, 111 Nev. 749, 751, 895, P.2d, 640 (1995); City of Reno v. Nevada  
7 First Thrift, 100 Nev. 483, 488, 686, P.2d 231 (1984); Dzack v. Marshall, 80 Nev. 345, 348, 393, P.2d 610 (1964). That does not  
8 necessarily mean the existence of another remedy precludes mandamus relief. Dzack, supra; State ex rel. Armstrong v. State  
9 Bd. Of Examiners, 78 Nev. 495, 376 P.2d 492 (1962).

10 **2. ARTICLE 5, §7, OF THE CONSTITUTION OF THE STATE OF NEVADA PLACES AN AFFIRM DUTY UPON THE**  
11 **RESPONDENT TO ENFORCE THE ARTICLES OF THE CONSTITUTION OF THE STATE OF NEVADA, THE**  
12 **SUPREME LAW OF THIS STATE.**

13 Art. 5, § 7, of the Const. of Nev., places an affirmative duty upon Gov. Sandoval, to enforce all laws! The Const. of Nev. is  
14 the supreme law of the State of Nevada. Duffy, supra. That, Art. 3, § 1; Art. 6 §, 11; and Art. 15, § 2, are laws of the Const.  
15 of Nev. to be enforced by the Governor of this state.

16 Each of these Articles of the Constitution of Nevada iterated herein supra, are couched in terms ("shall"), so as to make  
17 their application "mandatory" at all times upon a given condition (such as when as "Act is 'facially unconstitutional',  
18 repugnant constitutional mandate Bible, supra, Norton, supra, see and compare Art. 3, § 1; and Art. 6, § 11, Exhibit's "2"  
19 and "3", against S.B. No. 182, SECTION 1).

20 That, when a law, Act, transcends constitutional limits, Petitioner owes "no" obedience to same. Levingston, supra.  
21 S.B. No. 182 transcends constitutional limits, that Petitioner owes no obedience to S.B. No. 182, nor "Acts" alleging to have  
22 amended S.B. No. 182. Medeiros, 57 Nev. at 304, nor Acts, law having been created there fro, etc. Ex Parte Boyce, supra,  
23 and Wallace, supra, whereby S.B. No. 182 must be repealed, as well as those Acts alleging to have amend S.B. No. 182  
24 etc.

25 Petitioner has requested, and sought for the enforcement of Art. 3, § 1, and Art. 6, § 11, of the Const. of Nev., on  
26 several separate occasions, and through various lawful means, citing these articles and providing documents setting forth  
27 the "facially unconstitutionality" of S.B. No. 182.

1 Whereby, Respondent has failed to uphold Petitioner's United States Constitutional fundamental right to the 14<sup>th</sup> Amendment,  
2 the right to due process of law, and 1<sup>st</sup> Amendment, the right to petition the government for redress of grievance, as well as his  
3 constitutional rights to the Constitution of Nevada, upon Petitioner having request, sought assistance, etc., despite having a  
4 clear duty to do so.

5  
6 **CONCLUSION**

7 Art. 5, § 7, places an affirmative duty upon Respondent to enforce all laws, that Art. 15, §, also places an affirmative  
8 duty upon Respondent to uphold the constitution of the United States, as well as the Constitution of Nevada, against foreign, and  
9 domestic attacks.

10 The creators of S.B. No.182, i.e. the Legis. of Nev., the approver of S.B. No.182, i.e. Governor Charles H. Russell  
11 (Gov. Russell), and the Justices of the Supreme Court, in 1951, attacked the Const. of Nev. via S.B. No.182. This attack, via  
12 S.B. No.182, and subsequent amendments thereof etc. being "facially unconstitutional," and or unconstitutional, have remained  
13 uncorrected, un-repealed; and are an affront to the mandates of the Const. of Nev., the sovereignty of Petitioner, and that of the  
14 people of the State of Nevada.

15 The governor of the State of Nevada, being mandate to enforce all laws via Art. 5, §7, of the Const. of Nev., and  
16 Art. 15, §2, of the Const. of Nev., has not done so.

17  
18 Respectfully submitted: \_\_\_\_\_

19 Dated this 10 day of July, 2018

20  
21 *Gary Costa Ayres*  
22 PETITIONER PROSE  
23  
24  
25  
26  
27  
28

IN THE SUPREME COURT OF THE STATE OF NEVADA

**GARY MARION COSTA-AYRES,**  
Appellant,

vs.

**THE STATE OF NEVADA**  
Respondent.

\_\_\_\_\_ /

**GARY MARION COSTA-AYRES,**  
Appellant,

vs.

**THE STATE OF NEVADA**  
Respondent.

\_\_\_\_\_ /

**GARY MARION COSTA-AYRES,**  
Appellant,

vs.

**THE STATE OF NEVADA**  
Respondent.

\_\_\_\_\_ /

Electronically Filed  
Oct 30 2018 03:15 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**Case No. 76530**

**Case No. 76531**

**Case No. 76532**

**RECORD ON APPEAL**

**CR 7877**

**Volume 1**

**Pages # 1 - 197**

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Nye County District Attorney's Office  
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**Appellant: In Proper Person**

**Respondent: The State of Nevada**

10/30/18  
9:51:50

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I N D E X  
FOR CASE# CR 7877

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APPLICATION TO PROCEED INFORMA PAUPERIS (FILED JULY 18, 2018)	117 TO 119 (VOL 1)
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I N D E X  
FOR CASE# CR 7877

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10/30/18  
9:51:50

I N D E X  
FOR CASE# CR 7877

DESCRIPTION  
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PENCILED PAGE NO.  
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(FILED OCTOBER 22, 2014)

RECEIVED

1005 2 1007

1 Case No. 14CR01599

2 Department A

3 LEA Case No(s). 13NY-2616

4 ARR: \_\_\_\_\_

6 IN THE JUSTICE COURT OF PAHRUMP TOWNSHIP

7 COUNTY OF NYE, STATE OF NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 v.

CRIMINAL COMPLAINT

11 GARY MARION COSTA-AYRES,

12 Defendant. /

13 The undersigned, Brian T. Kunzi, District Attorney, County of Nye, State of  
14 Nevada, by and through his deputy, Kirk Vitto, complains and charges the above  
15 named defendant, Gary Marion Costa-Ayres, with having committed the following  
16 offenses within said County of Nye, State of Nevada:

17 OFFER, ATTEMPT, OR COMMISSION OF UNAUTHORIZED ACT(S)  
18 RELATING TO CONTROLLED SUBSTANCE, FIRST OFFENSE, in  
19 violation of NRS 453.321, A CATEGORY 'B' FELONY, committed in  
20 the following manner, to wit: That ON OR ABOUT SEPTEMBER 19,  
21 2013, in Pahrump Township, Nye County, Nevada, said Defendant did  
22 willfully, unlawfully, and knowingly sell a HYDROCODONE, a  
23 Controlled Substance, or did offer or attempt to do any such act;

21 ///

22 ///

23 ///

24 ///

1 All of which is contrary to the form, force and effect of the statutes in such  
2 cases made and provided, and against the peace and dignity of the State of  
3 Nevada. Said complainant makes this declaration under penalty of perjury.

4 DATED this 8 day of April, 2014.

5 BRIAN T. KUNZI  
6 NYE COUNTY DISTRICT ATTORNEY

7  
8 By [Signature]  
9 KIRK VITTO  
10 Chief Deputy District Attorney  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

Case No: 14CR01599, 14CR01607,  
14CR01652, 13CR01879, 14CR00816,  
Dept: A 14CR00735 + 14TR01142

PAHRUMP JUSTICE

Q. Shultz

IN THE JUSTICE COURT OF PAHRUMP TOWNSHIP  
COUNTY OF NYE, STATE OF NEVADA

2014 APR 28 AM 9:11

RECEIVED & FILED

THE STATE OF NEVADA

Plaintiff,

vs.

Gary Marion Costa-Ayres, Jr.  
Defendant.

**AFFIDAVIT AND APPLICATION FOR  
APPOINTMENT OF COUNSEL**

\* GARY M COSTA AYRES JR

1. That he/she is indigent, charged with a crime in the Justice Court of Pahrump Township, to wit:

\* See Attached \*

2. That he/she is without means of employing an attorney.  
3. That he/she has no money with which to employ counsel, that he/she has no property, real or personal, which could be sold or encumbered to provide funds for counsel; that he/she is unable to borrow funds with which to employ counsel.

WHEREFORE, affiant requests the above-entitled Court to appoint counsel to represent him/her at the expense of Nye County, State of Nevada.

In Custody ☐

Address 1280 W HORN RD  
City/State/Zip PAHRUMP NV 89048  
Phone # 775 751 0687

Defendant Signature

Gary M Costa Jr

**ORDER APPOINTING COUNSEL**

The petitioner above-named, having filed an application with the Court, requesting the appointment of an attorney to represent him/her and having filed an affidavit that he/she is without means of employing an attorney and having indicated the facts concerning his/her financial status and good cause appearing therefore,

IT IS HEREBY ORDERED that Nathan Gent, Esq. be appointed to represent the Defendant subject to the terms and conditions as set forth in "Procedure for Appointment of Attorney for Indigent Defendant", which rules are hereby incorporated by reference as if set forth in full, and such other rules and regulations which the Court, from time to time may promulgate pursuant to NRS 171.188 to determine the indigent status of the petitioner.

IT IS FURTHER ORDERED that the Defendant appear in Court on July 30, 2014 at 1:30pm for Pre-Trial Hearing and Oct. 29, 2014 at 9:00am for Preliminary Hearing.

DATED this 21st day of April, 2014

[Signature]  
Justice of the Peace

120806

Judge: KENT, RON

Case No. 14 CR 01599  
Ticket No. 13NY-2616  
CTN:

STATE OF NEVADA VS

By:

-VS-

COSTA-AYERS, GARY MARION DFNDT  
1280 W HORN  
PAHRUMP, NV 89048

By: GENT ESQ, NATHAN  
1321 SOUTH HIGHWAY 160  
STE 4  
PAHRUMP, NV 89048

Dob: 08/08/1966 Sex: M  
Lic: Sid:

Plate#:   
Make:   
Year:   
Type:   
Venue:   
Location: NY  
Accident: No

NYE COUNTY DISTRICT CPLNT Bond: Set:  
ATTORNEYS OFFICE Type: Posted:

Charges:

Ct.1 453.321 OFFER/ATTEMPT/COMMISSION  
UNAUTHORIZED ACT RE CONTROLLED  
SUBSTANCE  
Offense Dt: 09/19/2013 Cvr:  
Arrest Dt:  
Comments:

Sentencing:

No.	Filed	Action	Operator	Fine/Cost	Due
Totals By:					0.00
*** End of Report ***					

Judge: KENT, RON

Case No. 14 CR 01607  
Ticket No. 13NY-2622  
CTN:

STATE OF NEVADA VS

By:

-vs-

COSTA-AYERS, GARY MARION DFNDT  
1280 W HORN  
PAHRUMP, NV 89048

By: GENT ESQ, NATHAN  
1321 SOUTH HIGHWAY 160  
STE 4  
PAHRUMP, NV 89048

Dob: 08/08/1966 Sex: M  
Lic: Sid:

Plate#:   
Make:   
Year: Accident: No  
Type:   
Venue:   
Location: NY

NYE COUNTY DISTRICT CPLNT Bond: Set:  
ATTORNEYS OFFICE Type: Posted:

Charges:

Ct.1 453.3385(1) TRAFFICKING CONT SUBST SCH 1, 4 GMS  
TO 14 GMS  
Offense Dt: 09/20/2013 Cvr:  
Arrest Dt:  
Comments:

Ct.2 453.321 OFFER/ATTEMPT/COMMISSION  
UNAUTHORIZED ACT RE CONTROLLED  
SUBSTANCE  
Offense Dt: 09/20/2013 Cvr:  
Arrest Dt:  
Comments:

Sentencing:

No.	Filed	Action	Operator	Fine/Cost	Due
Totals By:					0.00
*** End of Report ***					

Judge: KENT, RON

Case No. 14 CR 01652  
Ticket No. 13NY-2483  
CTN:

STATE OF NEVADA VS

By:

COSTA-AYERS, GARY MARION DFNDT  
1280 W HORN  
PAHRUMP, NV 89048

-vs-

By: GENT ESQ, NATHAN  
1321 SOUTH HIGHWAY 160  
STE 4  
PAHRUMP, NV 89048

Dob: 08/08/1966 Sex: M  
Lic: Sid:

Plate#:   
Make:   
Year: Accident: No  
Type:   
Venue:   
Location: NY

NYE COUNTY DISTRICT CPLNT Bond: Set:   
ATTORNEYS OFFICE Type: Posted:

Charges:

Ct.1 453.337(2) (a) POSSESS CONT SUBST SCH 1 2 W/INTENT  
TO SELL  
Offense Dt: 09/05/2013 Cvr:   
Arrest Dt:   
Comments:

Ct.2 453.321 OFFER/ATTEMPT/COMMISSION  
UNAUTHORIZED ACT RE CONTROLLED  
SUBSTANCE  
Offense Dt: 09/05/2013 Cvr:   
Arrest Dt:   
Comments:

Sentencing:

No.	Filed	Action	Operator	Fine/Cost	Due
Totals By:					0.00
*** End of Report ***					



Judge: KENT, RON

Case No. 13 CR 01879  
Ticket No. 13NY-1314  
CTN:

STATE OF NEVADA VS

By:

COSTA-AYERS, GARY MARION DFNDT  
1280 W HORN  
PAHRUMP, NV 89048

-vs-

By: GENT ESQ, NATHAN  
1321 SOUTH HIGHWAY 160  
STE 4  
PAHRUMP, NV 89048

Dob: 08/08/1966 Sex: M  
Lic: 2003871035 Sid:

Plate#:   
Make:   
Year: Accident: No  
Type:   
Venue:   
Location: NY

NYE COUNTY DISTRICT CPLNT Bond: Set:  
ATTORNEYS OFFICE Type: Posted:

Charges:

Ct.1 453.336 POSSESS SCHD I, II, III OR IV CTL  
SBTNC, 1ST OR 2ND OFFENSE  
Offense Dt: 05/10/2013 Cvr:  
Arrest Dt: 05/10/2013  
Comments:

Ct.2 453.411 UNLAWFUL USE OF A CONTROLLED  
SUBSTANCE  
Offense Dt: 05/10/2013 Cvr:  
Arrest Dt:  
Comments:

Sentencing:

No.	Filed	Action	Operator	Fine/Cost	Due
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Totals By: 0.00  
\*\*\* End of Report \*\*\*

Judge: KENT, RON

Case No. 14 CR 00816  
Ticket No. 13NY-2544  
CTN:

STATE OF NEVADA VS

By:

-vs-

COSTA-AYERS, GARY MARION DFNDT  
1280 W HORN  
PAHRUMP, NV 89048

By: GENT ESQ, NATHAN  
1321 SOUTH HIGHWAY 160  
STE 4  
PAHRUMP, NV 89048

Dob: 08/08/1966 Sex: M  
Lic: Sid:

Plate#:   
Make:   
Year: Accident: No  
Type:   
Venue:   
Location: NY

NYE COUNTY DISTRICT CPLNT Bond: Set:  
ATTORNEYS OFFICE Type: Posted:

Charges:

Ct.1 453.321 OFFER/ATTEMPT/COMMISSION  
UNAUTHORIZED ACT RE CONTROLLED  
SUBSTANCE  
Offense Dt: 09/12/2013 Cvr:  
Arrest Dt:  
Comments:

Sentencing:

No.	Filed	Action	Operator	Fine/Cost	Due
Totals By:					0.00
*** End of Report ***					

Judge: KENT, RON

Case No. 14 CR 00735 A  
Ticket No. 14NY-0369  
CTN:

STATE OF NEVADA VS

By:

-vs-

COSTA-AYERS, GARY MARION DFNDT  
1280 W HORN  
PAHRUMP, NV 89048

By: GENT ESQ, NATHAN  
1321 SOUTH HIGHWAY 160  
STE 4  
PAHRUMP, NV 89048

Dob: 08/08/1966 Sex: M  
Lic: Sid:

Plate#:   
Make:   
Year: Accident: No  
Type:   
Venue:   
Location: NY

NYE COUNTY DISTRICT CPLNT Bond: Set:  
ATTORNEYS OFFICE Type: Posted:

Charges:

Ct.1 453.336 POSSESS SCHD I, II, III OR IV CTL  
SBTNC, 1ST OR 2ND OFFENSE  
Offense Dt: 02/05/2014 Cvr:  
Arrest Dt: 02/07/2014  
Comments:

Ct.2 453.411 UNLAWFUL USE OF A CONTROLLED  
SUBSTANCE  
Offense Dt: 02/05/2014 Cvr:  
Arrest Dt:  
Comments:

Ct.3 200.508(1) ABUSE/NEGLECT OR ENDANGER CHILD  
Offense Dt: 02/05/2014 Cvr:  
Arrest Dt:  
Comments: COUNT IV

Ct.4 453.3325 UNLAWFUL TO ALLOW CHILD TO BE  
PRESENT INVOLVING CERTAIN CONT  
SUBSTANCES  
Offense Dt: 02/05/2014 Cvr:  
Arrest Dt:  
Comments: COUNT V

Sentencing:

No.	Filed	Action	Operator	Fine/Cost	Due
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Totals By: 0.00  
\*\*\* End of Report \*\*\*

Judge: KENT, RON

Case No. 14 TR 01142  
Ticket No. 341520  
CTN:

STATE OF NEVADA VS

By:

-vs-

COSTA-AYERS, GARY MARION DFNDT  
1280 W HORN  
PAHRUMP, NV 89048

By: GENT ESQ, NATHAN  
1321 SOUTH HIGHWAY 160  
STE 4  
PAHRUMP, NV 89048

Dob: 08/08/1966 Sex: M  
Lic: 2003871035 Sid:

Plate#: TEMP  
Make: FORD  
Year: 1993 Accident: No  
Type: TRUCK  
Venue:  
Location: NY

NYE COUNTY DISTRICT CPLNT Bond: Set:  
ATTORNEYS OFFICE Type: Posted:  
SAME AS DEFENDANT VHCLOWNR

Charges:

Ct.1 484B.413 IMPROPER TURN/STOP WITHOUT SIGNAL  
Offense Dt: 02/21/2014 Cvr:  
Arrest Dt:  
Comments:

Ct.2 482.545 EXPIRED LICENSE PLATES  
Offense Dt: 02/21/2014 Cvr:  
Arrest Dt:  
Comments:

Ct.3 NRS 485.187 UNLAW ACTS PROOF OF INSURANCE  
Offense Dt: 02/21/2014 Cvr:  
Arrest Dt:  
Comments:

Sentencing:

No.	Filed	Action	Operator	Fine/Cost	Due
Totals By:					0.00
*** End of Report ***					

Case No: 14CR01099

FILED  
Pahrump Justice Court

Dept.: A

MAY 08 2014

By: [Signature]

IN THE JUSTICE COURT OF PAHRUMP TOWNSHIP

COUNTY OF NYE, STATE OF NEVADA

\* \* \* \* \*

THE STATE OF NEVADA

Plaintiff,

vs.

CONDITIONAL / UNCONDITIONAL WAIVER OF  
PRELIMINARY HEARING

Gary Marion Costa-Ayres  
Defendant.

The undersigned Gary Marion Costa-Ayres, Defendant

herein, does by these presents hereby waive preliminary examination in the above-entitled matter.

This Waiver does not constitute an admission or plea of guilty to the charge(s) set forth in the  
Criminal complaint on file herein.

DATED this 8 day of May, 20 14.

[Signature]  
Defendant

Nathan J. Gent  
Attorney

110811

PJC Case No. 14 CR 01599  
PJC Dept No. A  
DC Case No. CR7877A

PAHRUMP JUSTICE COURT

BY *[Signature]*

ISN JCM-3 AMID: 05

IN THE JUSTICE COURT OF PAHRUMP TOWNSHIP

COUNTY OF NYE, STATE OF NEVADA

\*\*\*\*\*

THE STATE OF NEVADA,

Plaintiff,

vs.

BINDOVER ORDER

GARY MARION COSTA-AYERS,

Defendant(s)

RECEIVED & FILED

NYE COUNTY DEPUTY CLERK  
DEPUTY *[Signature]*

JUN 03 2014

FILED  
FIFTH JUDICIAL DISTRICT COURT

IT APPEARS to the court that public offenses, namely, **OFFER, ATTEMPT, OR COMMISSION OF UNAUTHORIZED ACT(S) RELATING TO CONTROLLED SUBSTANCE, FIRST OFFENSE**, in violation of NRS 453.321, A CATEGORY 'B' FELONY, has been committed and it further appearing to the court the Defendant above-named, **GARY MARION COSTA-AYERS**, has unconditionally waived Preliminary Hearing in this matter.

IT IS THEREFORE ORDERED that Defendant **GARY MARION COSTA-AYERS**, be, and is hereby, bound over to the Fifth Judicial District of the STATE OF NEVADA, in and for the County of Nye, and there held to answer to said charge.

IT IS FURTHER ORDERED that Defendant **GARY MARION COSTA-AYERS** appear in the District Courtroom of the Nye County Government Complex, 1520 E. Basin Road, Pahrump, Nevada, for arraignment in the Fifth Judicial District Court, Dept 2, on June 9, 2014 at the hour of 9:00 a.m.

IT IS FURTHER ORDERED that the Defendant be admitted to bail in the sum of : FIVE THOUSAND DOLLARS (\$5,000.00) BOND or FOUR HUNDRED FIFTY DOLLARS (\$450.00) CASH.

DONE IN OPEN COURT this 8th day of May 2014

*[Signature]*  
Ron Kent  
Justice of the Peace

FILED  
FIFTH JUDICIAL DISTRICT COURT

JUN 04 2014

NYE COUNTY DEPUTY CLERK  
DEPUTY 

Case No. CR7877A

*The undersigned affirms that  
this document does not contain  
the social security number of  
any person.*

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF NYE

THE STATE OF NEVADA,

Plaintiff,

vs.

INFORMATION

GARY MARION COSTA-AYRES,

Defendant. /

BRIAN T. KUNZI, District Attorney within and for the County of Nye, State of Nevada, informs the Court that GARY MARION COSTA-AYRES, before the filing of this Information, did then and there, in Nye County, Nevada, commit the following offense, to wit:

OFFER, ATTEMPT, OR COMMISSION OF UNAUTHORIZED ACT(S)  
RELATING TO CONTROLLED SUBSTANCE, FIRST OFFENSE, in violation of NRS 453.321, A CATEGORY 'B' FELONY, committed in the following manner, to wit: That ON OR ABOUT SEPTEMBER 19, 2013, in Pahrump Township, Nye County, Nevada, said Defendant did willfully, unlawfully, and knowingly sell a HYDROCODONE, a Controlled Substance, or did offer or attempt to do any such act;

All of which is contrary to the form, force, and effect of the statute in such cases made and provided, and against the peace and dignity for the State of Nevada.

///

Witnesses and their addresses known to the District Attorney of Nye County,  
State of Nevada, at the time of the filing of this Information:

TODD ARMS  
1520 EAST BASIN AVE.  
PAHRUMP, NEVADA

DETECTIVE LOGAN GIBBS  
 NYE COUNTY SHERIFF'S OFFICE  
 PAHRUMP, NEVADA

DETECTIVE TREVOR MEADE  
NYE COUNTY SHERIFF'S OFFICE  
PAHRUMP, NEVADA

JOHN DOE FORENSICS EXPERT  
LVMPD FORENSICS LAB  
LAS VEGAS, NEVADA

DETECTIVE HARRY WILLIAMS  
NYE COUNTY SHERIFF'S OFFICE  
PAHRUMP, NEVADA

RICKY BENJAMIN RICHARDSON JR.  
400 E. HICKORY ST.  
PAHRUMP, NEVADA

**DATED** this 9th day of May, 2014.

**BRIAN T. KUNZI**  
**NYE COUNTY DISTRICT ATTORNEY**

By   
MICHAEL VIETA-KABELL  
Deputy District Attorney



**CERTIFICATE OF SERVICE BY MAIL**

I, Kayla MaKinsey Ball, Executive Legal Secretary, Office of the Nye County District Attorney, P.O. Box 39, Pahrump, Nevada 89041, do hereby certify that I have served the following:

**INFORMATION in  
5<sup>TH</sup> JDC Case No(s). CR7877A  
STATE v. GARY MARION COSTA-AYRES**

upon said Defendant(s) herein by hand delivering a true and correct copy thereof on 5/12/14 to the following:

NATHAN L. GENT  
AT THE NYE COUNTY DISTRICT ATTORNEYS OFFICE  
IN PAHRUMP, NEVADA

  
\_\_\_\_\_  
Kayla MaKinsey Ball

Case No. CR7876, CR7877A, CR7878

FILED  
FIFTH JUDICIAL DISTRICT

JUN 09 2014

Nye County Clerk

Deputy

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF NYE

THE STATE OF NEVADA,

Plaintiff,

vs.

GUILTY PLEA AGREEMENT

GARY MARION COSTA-AYRES,

Defendant. /

COMES NOW THE STATE OF NEVADA ("Plaintiff"), by and through BRIAN T. KUNZI, Nye County District Attorney, by MICHAEL VIETA-KABELL, Deputy District Attorney, and GARY MARION COSTA-AYRES, and file this Guilty Plea Agreement in the above-entitled case.

I, GARY MARION COSTA-AYRES, hereby agree to plead guilty: in case CR7876 to ATTEMPTED TRAFFICKING, in violation of NRS 193.330 being an attempt to violate NRS 453.3385, a category 'C' felony, as more fully alleged in the charging document attached hereto as Exhibit 1; in case CR7877A to OFFER, ATTEMPT, OR COMMISSION OF UNAUTHORIZED ACT(S) RELATING TO CONTROLLED SUBSTANCE, FIRST OFFENSE, in violation of NRS 453.321, a category 'B' felony, as more fully alleged in the charging document attached hereto as Exhibit 2; and in case CR7878, to UNLAWFULLY ALLOWING CHILD TO BE PRESENT DURING COMMISSION OF CERTAIN SITUATIONS WHICH INVOLVE CONTROLLED SUBSTANCE, in violation of NRS 453.3325, a category 'C' felony, as

1 more fully alleged in the charging document attached hereto as Exhibit 3. My decision  
2 to plead guilty is based upon the plea agreement in this case, which is as follows:

3 1. I, GARY MARION COSTA-AYRES, will enter a plea of GUILTY: in case  
4 CR7876 to ATTEMPTED TRAFFICKING, in violation of NRS 193.330 being an  
5 attempt to violate NRS 453.3385, a category 'C' felony; in case CR7877A to OFFER,  
6 ATTEMPT, OR COMMISSION OF UNAUTHORIZED ACT(S) RELATING TO  
7 CONTROLLED SUBSTANCE, FIRST OFFENSE, in violation of NRS 453.321, a  
8 category 'B' felony; and in case CR7878, to UNLAWFULLY ALLOWING CHILD TO BE  
9 PRESENT DURING COMMISSION OF CERTAIN SITUATIONS WHICH INVOLVE  
10 CONTROLLED SUBSTANCE, in violation of NRS 453.3325, a category 'C' felony.

11 2. I, GARY MARION COSTA-AYRES, expressly agree to pay restitution to  
12 the Nye County Sheriff's Office in the amount of FOUR HUNDRED AND EIGHTY  
13 FIVE DOLLARS (\$485.00), and any other restitution as determined by the Department  
14 of Parole and Probation.

15 3. I, GARY MARION COSTA-AYRES, understand that both sides have  
16 retained the right to argue for any legal sentence.

17 3. In exchange for the defendant's guilty plea and other conditions set forth  
18 herein, the State will forego prosecution of any additional charges arising from this  
19 case and will dismiss Pahrump Justice Court cases 14CR01875, 14CR01652,  
20 14CR00816, 13CR01879, and deny charges in LEA cases 14NY-0362 and 13NY-  
21 2587.

22 4. I, GARY MARION COSTA-AYRES, further understand and agree that if  
23 I: fail to interview with the Department of Parole and Probation; fail to appear at any  
24 subsequent hearings in this case; or an independent magistrate, by affidavit review,

1 confirms probable cause against me for new criminal charges, the State will be free to  
2 argue for any legal sentence and term of confinement possible under the  
3 circumstances of the charges set forth in the charging document, to include any  
4 increased punishment as an habitual criminal.

5 CONSEQUENCES OF THE PLEA

6 I understand that by pleading guilty I admit the facts that support all the  
7 elements of the offenses to which I now plead as set forth in Exhibits 1, 2, and 3.

8 I understand that as a consequence of my plea of guilty: in case CR7876 I may  
9 be imprisoned for a period of not less than one (1) year and not more than five (5)  
10 years and/or fined up to Ten Thousand Dollars (\$10,000.00); in case CR7877A I may  
11 be imprisoned for a period of not less than one (1) year and not more than six (6)  
12 years and/or fined up to Twenty Thousand Dollars (\$20,000.00); and in case CR7878 I  
13 may be imprisoned for a period of not less than one (1) year and not more than five (5)  
14 years and/or fined up to Ten Thousand Dollars (\$10,000.00). I also understand that  
15 the law requires me to pay an administrative assessment fee.

16 I understand that, if appropriate, I will be ordered to make restitution to the  
17 victim of the offenses to which I am pleading guilty and to the victim of any related  
18 offense(s) being dismissed or not prosecuted pursuant to this agreement. I will also  
19 be ordered to reimburse the State of Nevada for expenses related to my extradition, if  
20 any.

21 I understand that I am eligible for probation for the offense to which I am  
22 pleading guilty, and I understand that, except as otherwise provided by statute, the  
23 decision to grant or deny probation is in the sole discretion of the sentencing judge.

24 ///

1 I understand that if more than one sentence of imprisonment is imposed and I  
2 am eligible to serve the sentences concurrently, the sentencing judge has the  
3 discretion to order the sentences served concurrently or consecutively.

4 I understand that information regarding charges not filed, dismissed charges or  
5 charges to be dismissed pursuant to this agreement may be considered by the judge  
6 at sentencing.

7 I have not been promised or guaranteed any particular sentence by anyone. I  
8 know that my sentence will be determined by the Court within the limits prescribed by  
9 statute. I understand that if my attorney or the State of Nevada or both recommend  
10 any specific punishment to the court, the court is not obligated to accept the  
11 recommendation.

12 I understand that if I am not a United States citizen, any criminal conviction will  
13 likely result in serious negative immigration consequences including but not limited to:  
14 my removal from the United States through deportation; an inability to reenter the  
15 United States; the inability to gain United States citizenship or legal residency; an  
16 inability to renew and/or retain any leant residency status; and/or an indeterminate  
17 term of confinement, with the United States Federal Government based on my  
18 conviction and immigration status. I also understand, regardless of what I have been  
19 told by any attorney, no one can promise me that this conviction will not result in  
20 negative immigration consequences and/or impact my ability to become a United  
21 States citizen and/or a legal resident.

22 I understand that the Division of Parole and Probation of the Department of  
23 Public Safety may prepare a written report for the sentencing judge before sentencing.  
24 This report will include matters relevant to the issue of sentencing, including my

1 criminal history. I understand that this report may contain hearsay information  
2 regarding my background and criminal history. My attorney and I will each have the  
3 opportunity to comment on the information contained in the report, if any, at the time of  
4 sentencing.

5 WAIVER OF RIGHTS

6 By entering my plea of guilty, I understand that I have waived the following  
7 rights and privileges:

8 1. The constitutional privilege against self-incrimination, including the right  
9 to refuse to testify at trial, in which event the State would not be allowed to comment to  
10 the jury about my refusal to testify.

11 2. The constitutional right to a speedy and public trial by an impartial jury,  
12 free of excessive pretrial publicity prejudicial to the defense, at which trial I would be  
13 entitled to the assistance of an attorney, either appointed or retained. At trial, the  
14 State would bear the burden of proving beyond a reasonable doubt each element of  
15 each offense charged.

16 3. The constitutional right to confront and cross-examine any witnesses  
17 who would testify against me.

18 4. The constitutional right to subpoena witnesses to testify on my behalf.

19 5. The constitutional right to testify in my own defense.

20 6. The right to appeal the conviction, with the assistance of an attorney,  
21 either appointed or retained, unless the appeal is based upon reasonable  
22 constitutional, jurisdictional or other grounds that challenge the legality of the  
23 proceedings and except as otherwise provided by subsection 3 of NRS 174.035.

24 ///

VOLUNTARINESS OF PLEA

I have discussed the elements of all the original charges against me with my attorney and I understand the nature of these charges.

I understand that the State would have to prove each element of each charge against me at trial.

I have discussed with my attorney any possible defenses and circumstances that might be in my favor.

All of the foregoing elements, consequences, rights and waiver of rights have been thoroughly explained to me by my attorney.

I believe that pleading guilty and accepting this plea bargain is in my best interests and that a trial would be contrary to my best interests.

I am signing this agreement voluntarily after consultation with my attorney and am not acting under duress or coercion or by virtue of any promises of leniency, except for those set forth in this agreement.

I am not now under the influence of intoxicating liquor, a controlled substance or other drug(s) that would in any manner impair my ability to comprehend or understand this agreement or the proceedings surrounding my entry of this plea.

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1 My attorney has answered to my satisfaction all of my questions regarding this  
2 Guilty Plea Agreement and its consequences, and I am satisfied with the services  
3 provided by my attorney.

4 Dated this 9 day of June, 2014.

5   
6 GARY MARION COSTA-AYRES  
7 Defendant

8 Agreed to on this 12 day of May, 2014.

9   
10 MICHAEL VIETA-KABELL  
11 Deputy District Attorney



CERTIFICATE OF COUNSEL

I, the undersigned, as the attorney for the defendant named herein and as an officer of the court hereby certify that:

1. I have fully explained to the defendant the allegations contained in the charge(s) to which the guilty plea(s) is/are being entered.

2. I have advised the defendant of the penalties for each charge and the restitution that the defendant may be ordered to pay.

3. I have inquired of Defendant facts concerning Defendant's immigration status and explained to Defendant that if Defendant is not a United States citizen any criminal conviction will most likely result in serious negative immigration consequences including but not limited to: removal from the United States through deportation; an inability to reenter the United States; the inability to gain United States citizenship or legal residency; an inability to renew and/or retain any leant residency status; and/or an indeterminate term of confinement, with the United States Federal Government based on my conviction and immigration status. Moreover, I have explained that regardless of what Defendant may have been told by any attorney, no one can promise Defendant that this conviction will not result in negative immigration consequences and/or impact Defendant's ability to become a United States citizen and/or legal resident.

3. All pleas of guilty offered by the defendant pursuant to this agreement are consistent with all the facts known to me and are made with my advice to the defendant and are in the best interest of the defendant.

4. To the best of my knowledge and belief, the defendant:

///

1 (a) Is competent and understands the charge(s) and the consequences of  
2 pleading guilty as provided in this agreement;

3 (b) Executed this agreement and will enter all guilty pleas pursuant hereto  
4 voluntarily; and

5 (c) Was not under the influence of intoxicating liquor, a controlled substance  
6 or other drug at the time of the execution of this agreement.

7 DATED this 9 day of June, 2014.

8   
9 \_\_\_\_\_  
10 NATHAN GENT, ESQ.

# EXHIBIT 1

Case No. CR7876

*The undersigned affirms that  
this document does not contain  
the social security number of  
any person.*

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF NYE

THE STATE OF NEVADA,

Plaintiff,

vs.

INFORMATION

GARY MARION COSTA-AYRES,

Defendant. /

BRIAN T. KUNZI, District Attorney within and for the County of Nye, State of Nevada, informs the Court that GARY MARION COSTA-AYRES, before the filing of this Information, did then and there, in Nye County, Nevada, commit the following offenses, to wit:

**ATTEMPTED TRAFFICKING IN A SCHEDULE I CONTROLLED  
SUBSTANCE**, in violation of NRS 193.330 being an attempt to violate NRS 453.3385, A CATEGORY 'C' FELONY, committed in the following manner, to wit: That ON OR ABOUT SEPTEMBER 20, 2013, at or near 1280 West Horn Street in Pahrump Township, Nye County, Nevada, said defendant did attempt to knowingly or intentionally possess more than 4 but less than 14 grams of METHAMPHETAMINE or any mixture which contained any such controlled substance;

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NYE COUNTY DISTRICT ATTORNEY  
P.O. BOX 39  
PAHRUMP, NEVADA 89041  
(775) 751-7080

All of which is contrary to the form, force, and effect of the statutes in such cases made and provided, and against the peace and dignity for the State of Nevada.

Witnesses and their addresses known to the District Attorney of Nye County, State of Nevada, at the time of the filing of this Information:

TODD ARMS  
1520 EAST BASIN AVE.  
PAHRUMP, NEVADA

JOHN DOE FORENSICS EXPERT  
LVMPD FORENSICS LAB  
LAS VEGAS, NEVADA

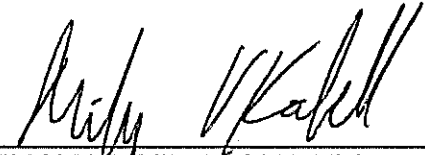
DETECTIVE TREVOR MEADE  
NYE COUNTY SHERIFF'S OFFICE  
PAHRUMP, NEVADA

RICKY BENJAMIN RICHARDSON JR.  
400 E. HICKORY ST.  
PAHRUMP, NEVADA

DETECTIVE LOGAN GIBBS  
NYE COUNTY SHERIFF'S OFFICE  
PAHRUMP, NEVADA

DATED this 9th day of May, 2014.

BRIAN T. KUNZI  
NYE COUNTY DISTRICT ATTORNEY

By   
MICHAEL VIETA-KABELL  
Deputy District Attorney

NYE COUNTY DISTRICT ATTORNEY  
P.O. BOX 39  
PAHRUMP, NEVADA 89041  
(775) 751-7080

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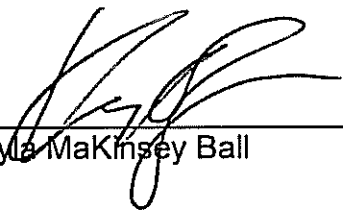
CERTIFICATE OF SERVICE BY MAIL

I, Kayla MaKinsey Ball, Executive Legal Secretary, Office of the Nye County District Attorney, P.O. Box 39, Pahrump, Nevada 89041, do hereby certify that I have served the following:

**INFORMATION in  
5<sup>TH</sup> JDC Case No(s). CR7876  
STATE v. GARY MARION COSTA-AYRES**

upon said Defendant(s) herein by hand delivering a true and correct copy thereof on 5/12/14 to the following:

NATHAN L. GENT  
AT THE NYE COUNTY DISTRICT ATTORNEYS OFFICE  
IN PAHRUMP, NEVADA

  
\_\_\_\_\_  
Kayla MaKinsey Ball

## EXHIBIT 2

GA 29

Case No. CR7877A

*The undersigned affirms that  
this document does not contain  
the social security number of  
any person.*

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF NYE

THE STATE OF NEVADA,

Plaintiff,

vs.

INFORMATION

GARY MARION COSTA-AYRES,

Defendant. /

BRIAN T. KUNZI, District Attorney within and for the County of Nye, State of Nevada, informs the Court that GARY MARION COSTA-AYRES, before the filing of this Information, did then and there, in Nye County, Nevada, commit the following offense, to wit:

OFFER, ATTEMPT, OR COMMISSION OF UNAUTHORIZED ACT(S)  
RELATING TO CONTROLLED SUBSTANCE, FIRST OFFENSE, in violation of NRS 453.321, A CATEGORY 'B' FELONY, committed in the following manner, to wit: That ON OR ABOUT SEPTEMBER 19, 2013, in Pahrump Township, Nye County, Nevada, said Defendant did willfully, unlawfully, and knowingly sell a HYDROCODONE, a Controlled Substance, or did offer or attempt to do any such act;

All of which is contrary to the form, force, and effect of the statute in such cases made and provided, and against the peace and dignity for the State of Nevada.

///



NYE COUNTY DISTRICT ATTORNEY  
P.O. BOX 39  
PAHRUMP, NEVADA 89041  
(775) 751-7080

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Witnesses and their addresses known to the District Attorney of Nye County,

State of Nevada, at the time of the filing of this Information:

TODD ARMS 1520 EAST BASIN AVE. PAHRUMP, NEVADA	DETECTIVE LOGAN GIBBS NYE COUNTY SHERIFF'S OFFICE PAHRUMP, NEVADA
DETECTIVE TREVOR MEADE NYE COUNTY SHERIFF'S OFFICE PAHRUMP, NEVADA	JOHN DOE FORENSICS EXPERT LVMPD FORENSICS LAB LAS VEGAS, NEVADA
DETECTIVE HARRY WILLIAMS NYE COUNTY SHERIFF'S OFFICE PAHRUMP, NEVADA	RICKY BENJAMIN RICHARDSON JR. 400 E. HICKORY ST. PAHRUMP, NEVADA

DATED this 9th day of May, 2014.

BRIAN T. KUNZI  
NYE COUNTY DISTRICT ATTORNEY

By   
MICHAEL VIETA-KABELL  
Deputy District Attorney

NYE COUNTY DISTRICT ATTORNEY  
P.O. BOX 39  
PAHRUMP, NEVADA 89041  
(775) 751-7080

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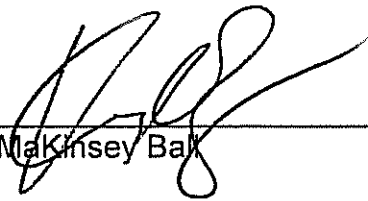
CERTIFICATE OF SERVICE BY MAIL

I, Kayla MaKinsey Ball, Executive Legal Secretary, Office of the Nye County District Attorney, P.O. Box 39, Pahrump, Nevada 89041, do hereby certify that I have served the following:

**INFORMATION in  
5<sup>TH</sup> JDC Case No(s). CR7877A  
STATE v. GARY MARION COSTA-AYRES**

upon said Defendant(s) herein by hand delivering a true and correct copy thereof on 5/12/14 to the following:

NATHAN L. GENT  
AT THE NYE COUNTY DISTRICT ATTORNEYS OFFICE  
IN PAHRUMP, NEVADA

  
\_\_\_\_\_  
Kayla MaKinsey Ball

## EXHIBIT 3

NYE COUNTY DISTRICT ATTORNEY  
P.O. BOX 39  
PAHRUMP, NEVADA 89041  
(775) 751-7080

Case No. CR7878

*The undersigned affirms that  
this document does not contain  
the social security number of  
any person.*

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF NYE

THE STATE OF NEVADA,

Plaintiff,

vs.

INFORMATION

GARY MARION COSTA-AYRES,

Defendant. /

BRIAN T. KUNZI, District Attorney within and for the County of Nye, State of Nevada, informs the Court that GARY MARION COSTA-AYRES, before the filing of this Information, did then and there, in Nye County, Nevada, commit the following offense, to wit:

UNLAWFULLY ALLOWING CHILD TO BE PRESENT DURING  
COMMISSION OF CERTAIN SITUATIONS WHICH INVOLVE  
CONTROLLED SUBSTANCES, in violation of NRS 453.3325, A  
CATEGORY 'C' FELONY, committed in the following manner, to wit:  
That ON OR ABOUT FEBRUARY 5-6, 2014, at 1280 West Horn in Nye  
County Nevada, said Defendant, GARY MARION COSTA-AYRES, did  
willfully, unlawfully and intentionally allow a child or children to be  
present upon a premises wherein a controlled substance, other than  
marijuana, was being used in violation of NRS 453.011 to NRS 453.552,  
said defendant having knowingly engaged in such activity;

///

///

1 All of which is contrary to the form, force, and effect of the statute in such cases  
2 made and provided, and against the peace and dignity for the State of Nevada.

3 Witnesses and their addresses known to the District Attorney of Nye County,  
4 State of Nevada, at the time of the filing of this Information:

5 DEPUTY JAMES MCRAE  
6 NYE COUNTY SHERIFF'S OFFICE  
7 PAHRUMP, NEVADA

KUUIPO COSTA-AYERS  
1280 W HORN RD  
PAHRUMP, NEVADA

7 SERGEANT DAN THOMASSIAN  
8 NYE COUNTY SHERIFF'S OFFICE  
9 PAHRUMP, NEVADA

KALA COSTA-AYERS  
1280 W HORN RD  
PAHRUMP, NEVADA

9 DETECTIVE JAMES SCOTT  
10 NYE COUNTY SHERIFF'S OFFICE  
11 PAHRUMP, NEVADA

STYLAN COSTA-AYERS  
1280 W HORN RD  
PAHRUMP, NEVADA

11 DETECTIVE MICHAEL EISENLOFFEL  
12 NYE COUNTY SHERIFF'S OFFICE  
13 PAHRUMP, NEVADA

WINIFRED KELLY  
3671 WEST VENUS  
PAHRUMP, NEVADA

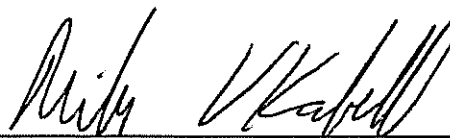
13 DETECTIVE LOGAN GIBBS  
14 NYE COUNTY SHERIFF'S OFFICE  
15 PAHRUMP, NEVADA

DEPUTY ALEX J. COX  
NYE COUNTY SHERIFF'S OFFICE  
PAHRUMP, NEVADA

15 DEPUTY CRYSTAL BARAJAS  
16 NYE COUNTY SHERIFF'S OFFICE  
17 PAHRUMP, NEVADA

17 DATED this 9th day of May, 2014.

18 BRIAN T. KUNZI  
19 NYE COUNTY DISTRICT ATTORNEY

20 By   
21 MICHAEL VIETA-KABELL  
22 Deputy District Attorney  
23  
24

NYE COUNTY DISTRICT ATTORNEY  
P.O. BOX 39  
PAHRUMP, NEVADA 89041  
(775) 751-7080

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**CERTIFICATE OF SERVICE BY MAIL**

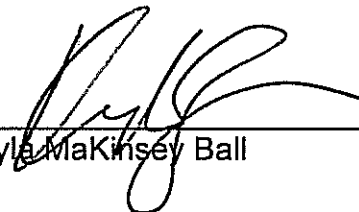
I, Kayla MaKinsey Ball, Executive Legal Secretary, Office of the Nye County District Attorney, P.O. Box 39, Pahrump, Nevada 89041, do hereby certify that I have served the following:

**INFORMATION in  
5<sup>TH</sup> JDC Case No(s). CR7878  
STATE v. GARY MARION COSTA-AYRES**

upon said Defendant(s) herein by hand delivering a true and correct copy thereof on

5/12/14 to the following:

NATHAN L. GENT  
AT THE NYE COUNTY DISTRICT ATTORNEYS OFFICE  
IN PAHRUMP, NEVADA

  
\_\_\_\_\_  
Kayla MaKinsey Ball

1 Case No. CR 7877A

2 Dept. No. 2P

FILED  
FIFTH JUDICIAL DISTRICT COURT

JUN 13 2014

NYE COUNTY DEPUTY CLERK  
DEPUTY *[Signature]*

3  
4 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
5  
6 IN AND FOR THE COUNTY OF NYE  
7

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -v-

11 ORDER RE-SETTING HEARING

12 GARY MARION COSTA-AYERS,

13 Defendant.  
14 \_\_\_\_\_/

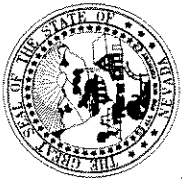
15 Good cause appearing therefore,

16 IT IS ORDERED that the above-captioned matter that was scheduled for  
17 sentencing hearing on Monday, October 6, 2014 at 9:00 a.m. that the same be and  
18 hereby is re-set for Monday, October 13, 2014 at 2:00 p.m. in Pahrump, Nevada.

19 DATED this 13<sup>th</sup> day of June, 2014.

20 *[Signature]*  
21 \_\_\_\_\_  
22 DISTRICT JUDGE  
23  
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FIFTH JUDICIAL DISTRICT COURT  
ESMERALDA, MINERAL AND NYE COUNTIES



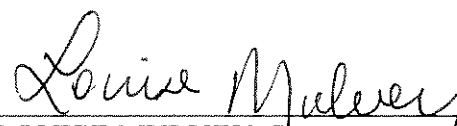


CERTIFICATION OF SERVICE

The undersigned hereby certifies that on the 13<sup>th</sup> day of June, 2014, she mailed  
copies of the foregoing ORDER SETTING HEARING to the following:

NYE COUNTY DISTRICT ATTORNEY'S OFFICE  
1520 E. BASIN AVE. SUITE 107  
PAHRUMP, NV 89041  
(HAND DELIVERED)

NATHAN L. GENT, ESQ.  
1321 S. HWY 160, SUITE 3H  
PAHRUMP, NV 89048  
(HAND DELIVERED)

  
LOUISE MULVEY, Secretary to  
DISTRICT JUDGE



Nos. CR-7876, ~~CR-7877~~, and CR-7878

Dept. No. 2

FILED  
FIFTH JUDICIAL DISTRICT COURT

JUN 16 2014

NYE COUNTY DEPUTY CLERK  
DEPUTY 

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

THE HONORABLE ROBERT W. LANE, DISTRICT JUDGE

-oOo-

**ORIGINAL**

THE STATE OF NEVADA,

Plaintiff,

vs.

GARY MARION COSTA-AYRES,

Defendant.

TRANSCRIPT OF PROCEEDINGS  
ARRAIGNMENT HEARING

JUNE 9, 2014

10:25 A.M.

PAHRUMP, NEVADA

APPEARANCES:

For the State:

KIRK D. VITTO, ESQ.  
CHIEF DEPUTY DISTRICT ATTORNEY  
Nye County Courthouse  
Pahrump, Nevada 89060

For the Defendant:

NATHAN L. GENT, ESQ.  
DEPUTY PUBLIC DEFENDER  
1321 South Highway 160, Ste. 3H  
Pahrump, Nevada 89048

State Parole and  
Probation Officer:

JOHN WINTERS

The Defendant:

GARY MARION COSTA-AYRES

Reported by: CECILIA D. THOMAS, RPR, CCR No. 712

1 PAHRUMP, NYE COUNTY, NEVADA, MONDAY, JUNE 9, 2014

2 10:25 A.M.

3 -oOo-

4 P R O C E E D I N G S

5  
6 THE COURT: Let's do Costa-Ayers, 7878,  
7 7877, and 7876, Gary.

8 And I have a Guilty Plea Memo in front of  
9 me. Would anybody like to brief the record?

10 MR. GENT: Your Honor, I would defer to the  
11 State.

12 THE COURT: I can do it if you want.

13 MR. VITTO: That would be great, Judge.

14 THE COURT: I just read through the Guilty  
15 Plea Memo.

16 MR. VITTO: That's all I do.

17 THE COURT: Good morning, Gary. How are  
18 you feeling today?

19 THE DEFENDANT: I'm feeling good,  
20 Your Honor.

21 THE COURT: Let's see what we got here. We  
22 got three cases and in 76 -- let me write these  
23 down -- in 76, you're pleading guilty to Attempted  
24 Trafficking, which is a C, for which you can get one  
25 to -- let's take a look -- one to five years. And in

1 77, you're pleading guilty to Offer, Attempt, which is  
2 a B, for which you can get one to six. And then in  
3 Case 78, you're pleading to Unlawfully Allowing Kids  
4 To Be Present, which is a C, for which you can get one  
5 to five. The first one is 10K, the second one is 20K,  
6 the third one is 10K.

7 Both sides are free to argue. And they're  
8 going to dismiss a bunch of Pahrump Justice Court  
9 cases which are listed on page 2.

10 All right. Anybody want to supplement that  
11 summary?

12 MR. VITTO: No, Your Honor.

13 THE COURT: Jason -- I mean Nate?

14 MR. GENT: No, Your Honor.

15 THE COURT: All right. Let's walk you  
16 through it -- you ready, Gary -- make sure we both  
17 understand what's going on.

18 You're name is Gary Marion Costa-Ayres.  
19 How old are you, Gary?

20 THE DEFENDANT: Forty-seven.

21 THE COURT: How far did you get through  
22 school?

23 THE DEFENDANT: I didn't finish college,  
24 but I have some college credits.

25 THE COURT: Very good. You read and write

1 English fine then?

2 THE DEFENDANT: Yes.

3 THE COURT: Have you ever been treated for  
4 a mental disorder?

5 THE DEFENDANT: No.

6 THE COURT: Are you under the influence  
7 right now of any prescriptions, drugs, alcohol, or  
8 anything else that's affecting your mind?

9 THE DEFENDANT: No..

10 THE COURT: Did you read through the Guilty  
11 Plea Agreement with your attorney?

12 THE DEFENDANT: Yes, I did.

13 THE COURT: He answered your questions page  
14 by page?

15 THE DEFENDANT: Yes.

16 THE COURT: It indicates you're pleading  
17 guilty to two category C felonies, Attempted  
18 Trafficking and Unlawfully Allowing a Child to Be  
19 Present During the Commission of a Controlled  
20 Substance issue. Each of them are one to five years.

21 And then also you're pleading guilty to an  
22 Offer, Attempt or Commission of Unauthorized Act  
23 Related to Controlled Substance, category B felony,  
24 for which you can get one to six years. The fines are  
25 10, 10, and 20. Those are all the parameters.

1           The important thing is remember is I'm free  
2 to do whatever I think is the right thing at  
3 sentencing. If everybody recommends that they be  
4 concurrent and that you get probation and so forth,  
5 I'm still free if I want to, to say, No, I'm going to  
6 max him out. And it looks like the max would be  
7 around eight to 16 years, or something like that, and  
8 a \$40,000 fine if I wanted to; do you understand?

9           THE DEFENDANT: Yes.

10          THE COURT: Did anybody make any threats or  
11 promises besides the negotiation to get you to plead  
12 today?

13          THE DEFENDANT: (The defendant shakes  
14 head.)

15          THE COURT: All right. To the charges of  
16 Attempted Trafficking, a category C felony; Offer,  
17 Attempt Or Commission of Controlled Substance Act, a  
18 category B felony; and Unlawfully Allowing a Kid to be  
19 Present During an Act of Controlled Substances, a  
20 category C felony, what are your pleas?

21          THE DEFENDANT: Guilty.

22          THE COURT: By pleading guilty, you're  
23 waiving your right to a trial. Mr. Gent would  
24 represent you at the trial, and he would help you  
25 prepare your defense. He would subpoena witnesses to

1 come in and testify in your behalf and cross-examine  
2 all of the State's witnesses, because they have a  
3 legal burden to meet, of proving each and every  
4 element of the underlying charges beyond a reasonable  
5 doubt.

6 It would be a speedy and public trial in  
7 front of a jury of your peers, and you can testify at  
8 the trial if you want to. If you don't want to  
9 testify, you have a right to remain silent and your  
10 silence couldn't be used against you by the State  
11 during the course of the proceedings.

12 Do you understand all of the trial rights  
13 you're waiving?

14 THE DEFENDANT: Yes.

15 THE COURT: By pleading guilty, you're also  
16 waiving your appellate rights. After today, you can  
17 only appeal for four reasons: That I sentenced you  
18 illegally, that the State didn't follow through with  
19 their end of the plea agreement, that your plea wasn't  
20 entered voluntarily, or that the law itself is illegal  
21 or unconstitutional.

22 Other than those four reasons, you can't  
23 appeal after today; do you understand?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Understanding your appellate

1 rights and trial rights, do you still want to plead  
2 guilty?

3 THE DEFENDANT: Yes.

4 THE COURT: Are you pleading guilty because  
5 in fact on or about September 20th, 2013, here in  
6 Pahrump, Nye County, you had four to 14 grams of  
7 methamphetamine?

8 THE DEFENDANT: Yes.

9 THE COURT: Are you pleading guilty because  
10 in fact on or about September 19th, 2013, here in  
11 Pahrump, Nye County, you possessed and/or sold -- let  
12 me rephrase that -- because you sold hydrocodone?

13 THE DEFENDANT: Yes.

14 THE COURT: Are you pleading guilty because  
15 in fact on or about February 5th through the 6th,  
16 2014, here in Pahrump, Nye County, you had a child, it  
17 looks like Gary Marion -- what is that Jr.?

18 THE DEFENDANT: That's me.

19 THE COURT: Okay. Hang on. Let me read it  
20 some more then. You allowed a child to be present  
21 upon a premises where a controlled substance other  
22 than marijuana was being used. Okay. It doesn't say  
23 which child it was, but were there children present?

24 THE DEFENDANT: Being present as in? I had  
25 trouble with Allen (phonetic).

1 THE COURT: Well, let's take a look at the  
2 Information together then. You got it in front of  
3 you?

4 All right. It says that on or about  
5 February 5th through 6th, 2014, at 1280 West Horn  
6 Street, in Pahrump, Nye County, that you were  
7 knowingly engaged in some controlled substance use,  
8 and that a child or children were present upon the  
9 premises at the time you did it. So apparently you  
10 were using drugs while some kids were at the house.

11 THE DEFENDANT: (Defendant shakes head no.)

12 MR. GENT: Court's indulgence, Your Honor.

13 THE COURT: All right. Go ahead.

14 (Counsel and client confer.)

15 THE COURT: All right. Nate, you want to  
16 brief that for me, that third element.

17 MR. GENT: Yes, Your Honor. Thank you for  
18 the brief opportunity to speak with my client. I have  
19 had an opportunity to meet with my client in jail. We  
20 have read through all of the police investigations for  
21 all of these cases together. He understands that the  
22 allegations that he's pleading guilty to today that  
23 there were children present that lived on the property  
24 where the drugs were found.

25 THE COURT: Is that correct?



1 THE DEFENDANT: Yes.

2 THE COURT: Is that good enough, Kirk?

3 MR. VITTO: Yeah.

4 THE COURT: Yeah. He thinks so. We'll  
5 accept your guilty pleas then. We'll set it for  
6 sentencing on October 6th at 0900.

7 Anything else?

8 MR. GENT: Your Honor, before we close  
9 these cases, my client wanted to ask if this Court  
10 would be willing to entertain an oral motion for an  
11 O.R. release.

12 MR. VITTO: Yes, Your Honor. Obviously, I  
13 mean we're going to be asking for some pretty lengthy  
14 hefty prison sentences.

15 THE COURT: All right. If that's the case,  
16 then I can't make an informed decision right now. I  
17 don't know anything about you or your history or  
18 anything. So Nate will have to prepare it in writing,  
19 give the State a chance to respond in writing.

20 MR. GENT: Your Honor, I explained to my  
21 client beforehand that there's not a good chance we  
22 could get an O.R. release because of the seriousness  
23 of the charges and the amount of cases there were.

24 THE COURT: All right. You're prerogative.

25 All right. Good luck to you, sir.

1 MR. GENT: Your Honor, my client just  
2 wanted to inquire into the amounts of bail that is on  
3 this case and ask if this Court would consider  
4 lowering that amount of bail.

5 THE COURT: What's your bail set at right  
6 now? You don't know either? See, you should know  
7 more than anybody in the world what your bail is set  
8 at. I don't know what it's set at either.

9 If you want, you can file a motion for O.R.  
10 and/or a reduction of bail, and we'll figure out what  
11 the amounts of bail are. And then Kirk can respond,  
12 and I'll decide.

13 MR. GENT: Your Honor, with him facing  
14 three felonies that he just pled to, would it be  
15 possible to give him bail in the amount of \$5,000 each  
16 one.

17 THE COURT: I don't know, because I don't  
18 know what it was set at. I don't know what his  
19 underlying offenses are, what his criminal history is.  
20 I don't know the facts of this allegation. I don't  
21 know if he has family here in town. I just don't know  
22 anything.

23 MR. GENT: We're just asking that the bail  
24 be set at an amount that he --

25 THE COURT: Yeah, but I don't know if I can

1 set it at that amount, because I don't know anything  
2 about these charges. I'm not going to do it. You'll  
3 have to do it in writing.

4 MR. GENT: Thank you, Your Honor.

5 THE COURT: Thank you.

6 -oOo-

7

8 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF THE  
9 PROCEEDINGS.

10

11

12

*Cecilia D. Thomas*

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Cecilia D. Thomas  
RPR, CCR No. 712

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Case No. 7877A  
Dept. No. 2P

FILED  
FIFTH JUDICIAL DISTRICT COURT

OCT 15 2014

NYE COUNTY DEPUTY CLERK  
DEPUTY *James Dumas*

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF NYE

THE STATE OF NEVADA,

Plaintiff,

-v-

JUDGMENT OF CONVICTION

GARY MARION COSTA-AYRES,

Defendant.

On the 9<sup>th</sup> day of June 2014, the above named defendant appeared before the Court, while in-custody, with his counsel NATHAN L. GENT, ESQ., and entered a plea of guilty to the crime of OFFER, ATTEMPT, OR COMMISSION OF UNAUTHORIZED ACT(S) RELATING TO CONTROLLED SUBSTANCE, FIRST OFFENSE, in violation of NRS 453.321, a category 'B' felony. The state was represented by KIRK VITTO, ESQ., Chief Deputy District Attorney.

On the 13<sup>th</sup> day of October 2014, the Defendant appeared personally, with his counsel, NATHAN L. GENT, ESQ., for entry of judgment. The State was represented by MICHAEL VIETA-KABELL, ESQ., Deputy District Attorney. No sufficient legal cause was shown by the Defendant as to why judgment should not be pronounced against him. The Court adjudged the Defendant guilty of the crime of OFFER, ATTEMPT, OR COMMISSION OF UNAUTHORIZED ACT(S) RELATING TO CONTROLLED SUBSTANCE, FIRST OFFENSE, in violation of NRS 453.321, a category 'B' felony



1 The Court then sentenced the defendant to imprisonment in the Nevada Department  
2 of Corrections for a maximum term of sixty (60) months and a minimum parole eligibility  
3 of twenty-four (24) months. Said sentence to run consecutive to CR 7876.

4 That the Defendant shall pay to the Clerk of this Court the sum of \$3.00 as a  
5 DNA Administrative Assessment fee.

6 That the Defendant shall pay to the Clerk of this Court the sum of \$25.00 as an  
7 Administrative Assessment fee.

8 That the Defendant shall pay to the Clerk of this Court a sum of \$60.00 as a  
9 Forensic fee.

10 That the Defendant shall pay to the Clerk of this Court a sum of \$500.00 in  
11 attorney fees.

12 That the Defendant shall pay to Nye County the sum of \$400.00 for preparation of  
13 pre-sentence investigation report.

14 That all fines/fees are due by 12/12/14.

15 That the Defendant shall be given credit for zero (0) days credit for pre-sentence  
16 time served.

17  
18 **IT IS FURTHER ORDERED** that any bond in this matter be exonerated,  
19 unless previously ordered by this court for forfeiture or any other purpose.

20 Pursuant to NRS 239B.030, the undersigned hereby affirms this document does not  
21 contain the social security number of any person.

22 DATED this 15<sup>th</sup> day of October 2014.

23  
24   
25 DISTRICT JUDGE

**CERTIFICATION OF SERVICE**

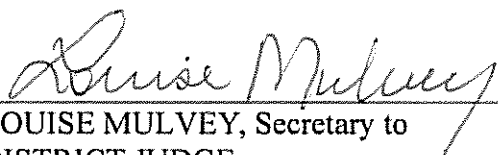
The undersigned hereby certifies that on the 15<sup>th</sup> day of October 2014, she mailed (or hand/fleet delivered) copies of the foregoing **JUDGMENT OF CONVICTION** to the following:

NYE COUNTY DISTRICT ATTORNEY  
1520 E. BASIN AVE., SUITE 107  
PAHRUMP, NV 89060  
(HAND DELIVERED)

NATHAN L. GENT, ESQ.  
1321 S. HWY 160, SUITE 3H  
PAHRUMP, NV 89048  
(HAND DELIVERED)

NYE COUNTY SHERIFF  
TONOPAH, NV 89049  
(FLEET DELIVERED)

NEVADA DIVISION OF PAROLE AND PROBATION  
PAHRUMP, NV 89048  
(HAND DELIVERED)

  
LOUISE MULVEY, Secretary to  
DISTRICT JUDGE



Nos. CR-7876, CR-7877, and CR-7878

Dept. No. 2

FILED  
FIFTH JUDICIAL DISTRICT COURT

OCT 22 2014

NYE COUNTY DEPUTY CLERK  
DEPUTY

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

THE HONORABLE ROBERT W. LANE, DISTRICT JUDGE

-oOo-

**ORIGINAL**

THE STATE OF NEVADA,

Plaintiff,

vs.

GARY MARION COSTA-AYERS,

Defendant.

TRANSCRIPT OF PROCEEDINGS  
SENTENCING HEARING

OCTOBER 13, 2014

3:40 P.M.

PAHRUMP, NEVADA

APPEARANCES:

For the State:

MICHAEL VIETA-KABELL, ESQ.  
DEPUTY DISTRICT ATTORNEY  
Nye County Courthouse  
Pahrump, Nevada 89060

For the Defendant:

NATHAN L. GENT, ESQ.  
DEPUTY PUBLIC DEFENDER  
1321 South Highway 160, Ste. 3H  
Pahrump, Nevada 89048

State Parole and  
Probation Officer:

JOHN WINTERS

The Defendant:

GARY MARION COSTA-AYERS

Reported by: CECILIA D. THOMAS, RPR, CCR No. 712

1 PAHRUMP, NYE COUNTY, NEVADA, MONDAY, OCTOBER 13, 2014

2 3:40 P.M.

3 -oOo-

4 P R O C E E D I N G S

5  
6 THE COURT: Gary Marion Costa-Ayers, 7876,  
7 7877, and 7878. What page is he on?

8 COURT STAFF: Page 6.

9 THE COURT: All set for sentencing.

10 In 7877, they recommend 24 to 60 concurrent  
11 to 7876. In 7876, they recommend 24 to 60. And in  
12 Case 7878, they recommend 19 to 48 months consecutive.

13 We're going to hear from Mr. Gent, then  
14 from you, then from the State.

15 Nathan?

16 MR. GENT: First, Your Honor, I had to make  
17 some things on the record that my client has brought  
18 to my attention about the PSI. He took issue with it  
19 and disagreed with some of the things in the PSI that  
20 I will place on the record here.

21 In reviewing the PSI, if you go to page 3  
22 of the PSI where it says, "Criminal record."

23 THE COURT: Yes.

24 MR. GENT: He has advised me that he should  
25 only have -- he should only have two prior felony



1 convictions where it says six. Where he's stating  
2 that is if you go to page 4 at the top, it says  
3 probation was revoked twice. He said that it's only  
4 been revoked one time.

5 Starting off with the first offense, in  
6 that first box there on page 4, where it says of one,  
7 Sexual Assault, Third Degree, two counts, felony. He  
8 said that yes, that's correct. There are two felonies  
9 there. No. 2, it says, "Sexual Assault, Fourth  
10 Degree, two counts" --

11 THE COURT: Wait. Let me interrupt you on  
12 that first one. It says Count I, there's two counts,  
13 and Count II, there's two counts, a total of four.  
14 He's saying all four are correct, or only one of each?

15 MR. GENT: He's saying No. 2, where it says  
16 "Sexual Assault, Fourth Degree, two counts, felonies,"  
17 he said that Fourth Degree is only misdemeanors. So  
18 in that first box, there should only be two felonies;  
19 two should say misdemeanors.

20 THE COURT: Okay. Now we're caught up.  
21 You can go on to the next box.

22 MR. GENT: Thank you, Your Honor. And then  
23 you go down to the second box at the very end of where  
24 it says that probation, "probation revoked."  
25 Defendant says that he was never on probation for that

1 second box for the incident on December 31st, 1992.

2 THE COURT: All right.

3 MR. GENT: Go down to the fourth box where  
4 it says, "Promoting Dangerous Drug, felony, and Drug  
5 Paraphernalia, felony." I don't know what it is in  
6 the State of Hawaii, but we know that drug  
7 paraphernalia here in the State of Nevada is  
8 definitely a misdemeanor. And those were the things  
9 that my client took issue with.

10 THE COURT: Thank you, sir. Any other  
11 corrections you want to make to the PSI?

12 All right. You wanted to go ahead and  
13 argue the sentencing now?

14 MR. GENT: Your Honor, in regards to the  
15 sentencing -- well, first off, just another  
16 preliminary matter. My client has written me several  
17 notes saying that he was unsatisfied with my  
18 representation of him and that he wished for another  
19 attorney. I've informed my client that he has a right  
20 to competent counsel, not counsel that he likes or  
21 counsel of his choosing.

22 As such, I have a problem with being a  
23 zealous advocate for my client.

24 THE COURT: All right. When he gets a  
25 chance to speak up, he might want to address that.

1 What's your position on sentencing?

2 MR. GENT: In regards to sentencing,  
3 Your Honor -- so his criminal history looks pretty  
4 bad, but when you take that into account,  
5 realistically he's looking like he has two felony  
6 convictions on his record, not six. That makes it  
7 look a whole lot better.

8 He's got substantial ties to this  
9 community. He's got several children, the youngest of  
10 which is still living at home at 12 years old. He  
11 wants to be a productive member of society. He wants  
12 the opportunity at probation, Your Honor.

13 He wrote a big, lengthy note/letter to the  
14 Court where he explains that he regrets what he's  
15 done. He wants to do better. He apologizes. He  
16 takes full responsibility for what he's done. He  
17 wants a chance to be able to be placed on probation to  
18 be able to correct the error of his ways.

19 THE COURT: Thank you, sir. Anything you  
20 would like to say?

21 THE DEFENDANT: Yes, Your Honor. I believe  
22 in having an honest heart. And I value the feelings  
23 of people around me are important. Despite the  
24 possibilities of being betrayed or taken advantage of  
25 by some, I strongly feel that if my choices to help

1 certain individuals was based on ethical or moral or  
2 law abiding situations, I would not be here in this  
3 courtroom today. I've come to accept that. All I can  
4 do is apologize for them and move on.

5 THE COURT: Anything else?

6 THE DEFENDANT: Whatever the outcome of  
7 this court proceeding, maybe I'm ready. But today is  
8 the first day of the rest of my life.

9 THE COURT: Very good.

10 THE DEFENDANT: Thank you.

11 THE COURT: Thank you, sir.

12 Michael?

13 MR. VIETA-KABELL: Thank you, Your Honor.

14 I'm not usually a pound-the-table kind of individual  
15 on controlled substance cases, but sometimes I see a  
16 set of facts that are so reprehensible that I do pound  
17 the table, and this is going to be one of those cases.

18 Even if you take into account the  
19 defendant's corrections on the presentence  
20 investigation report, his criminal history is  
21 deplorable. He's represented that he has children,  
22 which should be a mitigating factor. But in Case  
23 CR-7878, deputies executed a search warrant on the  
24 residence of the defendant. They found, basically a  
25 meth house where a baby bassinet was located inside

1 one of the bedrooms, containing rat and mice feces.  
2 Dog feces were observed inside the bedroom. Another  
3 bedroom was found with rat and mice feces. At some  
4 point it's just deplorable, and I have no problem  
5 arguing that you should throw the book at somebody  
6 based on their problem with controlled substance.  
7 Because he hasn't just made it his problem; he's made  
8 it his children's problem. And they shouldn't have to  
9 live in that kind of environment. They should have  
10 never had to endure that kind of experience.

11 So on Case CR-7876, I'm going to ask you to  
12 sentence the defendant to 24 to 60 months. In Case  
13 CR-7878, I'm going to ask you to sentence the  
14 defendant to 24 to 60 months consecutive. In Case  
15 CR-7877-A, I'm going to ask you to sentence the  
16 defendant to 28 to 72 months consecutive to the  
17 previous two cases because these cases just on their  
18 face don't look too bad, but when you delve through  
19 the details, they disgust me.

20 THE COURT: Anything you would like to add,  
21 Mr. Winters?

22 SERGEANT WINTERS: No, Your Honor.

23 THE COURT: Let's do 76 first. 25, 3, 60,  
24 and 150 fees. Standard attorneys fees and PD fees and  
25 PSI fees, 24 to 60 months, credit for time served.

1 Case No. 77, same fees, same fines and everything; 24  
2 to 60 months. On Case 78, same standard fines and  
3 fees, 19 to 48 months, all consecutive. Credit for  
4 time served.

5 Good luck to you, sir.

6 MR. VIETA-KABELL: Thank you, Your Honor.

7 THE COURT: Thank you.

8 -oOo-

9  
10 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF THE  
11 PROCEEDINGS.  
12  
13

14 *Cecilia D. Thomas*

15 Cecilia D. Thomas  
16 RPR, CCR No. 712  
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Gary Marion Costa-Alyne ID NO. 1128354  
HIGH DESERT STATE PRISON  
22010 COLD CREEK RD  
P.O. BOX 650  
INDIAN SPRINGS, NV. 89070

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA FOR THE COUNTY OF NYE.

State of Nevada

Plaintiff,

VS.

Gary Marion Costa - Ayres.

Defendant

Case No.: CR 7877A, CR 7878, CR 7876

Dept. No.: 2 P

## NOTICE OF MOTION

**MOTIONS FOR MODIFICATION OF SENTENCE**

Comes now, Defendant Gary marion coste-Agnes, pro per, and respectfully moves this Honorable Court for a Modification of Sentence.

This motion is made and based pursuant to the supporting Points and Authorities attached hereto, NRS 176.555, as well as all papers, pleadings, and documents on file herein.

## POINTS AND AUTHORITIES

## I. STANDARD OF REVIEW

The Nevada Supreme Court has long recognized that Court's have the power and jurisdiction to Modify a sentence, see, *Staley v. State*, 787 P2d 396, 106 Nev. 75 (1990):

... "that if a sentencing court pronounces sentence within statutory limits, the court will have jurisdiction to MODIFY, suspend or other wise correct that sentence if it is based upon materially untrue assumptions or mistakes which work to the extreme detriment of the defendant".

1 Defendant believes that this court has, based upon Staley, the jurisdiction to MODIFY his  
2 sentence, due to that sentence being pronounced based upon a Pre-Sentence Investigation Report which  
3 did have several material facts in error, which will be discussed below in the statement of facts.

4 Respondent may argue that laches apply due to the fact that thee [3] years have passed since  
5 sentence was pronounced. However, the Nevada Supreme Court held that such time requirement does not  
6 apply to a request for Modification of Sentence, see, Passanisi v. State, 831 P2d 1371, 108 Nev. 318  
7 (1995):

8  
9 ... "we note that the trial court has inherent authority to correct a sentence at any time if such  
10 sentence based on mistake of material fact that worked to the extreme detriment of the defendant.  
11 (Citations Omitted). If the trial court has inherent authority to correct a sentence, a Fortiori, if has  
12 the power to entertain a motion requesting it to exercise that inherent authority.... Thus, the time  
13 limits and other restrictions with respect to a post-conviction relief do not apply to a Motion to  
14 Modify a Sentence based on a claim that the sentence was illegal or was based on an untrue  
15 assumption of the fact that amounted to denial of due process (Emphasis added) Id. 831 P2d at  
16 1372n. 1. See also, Edwards v. State, 918 P2d 321, 324, 112 Nev. 704 (1996).

17 Defendant, as stated above, is alleging that his sentence by this Court was based upon  
18 assumptions founded upon his Pre-Sentence Investigation Report (PSI) that had several factors in error,  
19 and as such, his constitutional right to due process was violated. See, State v. District Court, 677 P2d  
20 1044, 100 Nev. 90 (1984):

21 The district court's inherent authority to correct a judgment or sentence founded on mistake is in  
22 accord with the constitutional considerations underlying the sentencing process. The United  
23 States Supreme Court has expressly held that where a defendant is sentenced on the basis of  
24 materially untrue assumptions concerning his criminal record, "(the) result whether caused by  
25 carelessness or design, is inconsistent with due process of law". Townsend v. Burke, 736, 741,  
26 68 S. Ct. 12552, 1255, 92 L. Ed. 1690 (1948). Further, the cases clearly established that  
27 constitutionally Violate "materially untrue assumptions" concerning a criminal record may arise  
28 either as a result of a sentencing judge's correct perception of misapprehension. (Emphasis in  
29 original). Id. 677 P2d at 1048 n. 3.

30 Defendant would asks that this Court not perceive this request to be pointing the finger at the  
31 Court and saying 'you were wrong' as that is not the case. Defendant is merely requesting that the Court  
32 reconsider the sentence that was pronounced based upon mistakes of fact in the PSI report and at  
33 sentencing.



II. STATEMENT OF FACTS

On 10/13/14 after reading over my P.S.T report, I have come to find numerous errors which had no basis for being presented in my presentance investigation report, along with many inaccuracies that I feel played a big part in my sentencing process.

\* I held a CDL A Nevada Drivers license from 2011 # ~~20013571035~~ 2003871035

10-9-87 (2cts) Sexual Assault fourth degree (M)  
12-31-92 Count 4-Criminal trespass I was never on probation for this offense.  
07-06-01- Sentenced to five years probation and had a Honorable Discharge  
cc# CR-7878 Offense Synopsis is incorrect stated my juvenile son was in the living room He is 28 years old. Offense Synopsis is completely inaccurate, and assumptions not facts were written, which work to the extreme detriment of the defendant

TOTAL (4) Felonies not 6 as stated in PST probation twice, one revoked and one Honorable discharge. Drivers license# 2003871035  
The mice and dog feces had nothing to do with my offense along with the assumptions of the bug owe sheets and drugs found on tenants living on property. CR 7878

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CONCLUSION

WHEREFORE, all of the above stated reasons, Defendant respectfully requests this Honorable Court to Modify his/her Sentence in accordance with this Court's fair and just consideration of the facts of the case.

Dated this 12 day of January, 2015.

By: Gary Costa Agres

Gary Costa Agres

# 1128354

High Desert State Prison  
22010 Cold Creek Rd.  
P.O. Box 650  
Indian Springs, NV. 89070

1 I, Gary Costa Ayres, certify that the foregoing "Motion For  
2 Modification of Sentence", was served upon the Respondent pursuant to NRCP 5 (b), by placing same in  
3 the United States Postal Service, postage being fully pre-paid, and addressed as follows:  
4  
5

6 Clerk of Courts

7 CANDRA MERLINO  
8 1520 EAST BASIN  
9 SUITE 108  
10 PAHRUMP, NV  
11 89060  
12

District Attorney's Office

ANGELA BELLO  
PO BOX 39  
PAHRUMP, NV  
89049  
13

14 Dated this 12 day of January, 2015  
15  
16

17 By: Gary Costa Ayres

18 Gary Costa Ayres #1128354  
19 High Desert State Prison  
20 22010 Cold Creek Rd.  
21 P.O. Box 650  
22 Indian Springs, NV. 89070

23 Defendant, In Proper Person  
24  
25  
26  
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AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding motion

for modification of SENTENCE  
(Title of Document)

filed in District Court Case number CR7878-CR7874-CR7877A

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

-or-

B. For the administration of a public program or for an application  
for a federal or state grant.

Gary Costa Ayres  
Signature

1/12/15  
Date

Gary Costa Ayres  
Print Name

Defendant  
Title



Case No. CR 7876, 7877A, 7878  
Dept. 2P

FILED

2015 FEB 11 PM 2:55

*Anna Davis*  
NYE COUNTY CLERK

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA, IN AND FOR THE COUNTY OF NYE

THE STATE OF NEVADA,

Plaintiff,

vs.

GARY MARION COSTA-AYRES,

Defendant.

**ORDER DENYING MOTION FOR  
MODIFICATION OF SENTENCE**

On February 3, 2015, Defendant filed a Motion for Modification of Sentence. Defendant argues there were numerous inaccuracies in his Presentence Investigation Report (PSI). Specifically, Defendant states the PSI reflected he had six felonies when he actually had four; he received probation twice. Defendant is alleging that his sentence was based upon such inaccurate assumptions, and therefore his constitutional right to due process was violated.

Constitutionally violative "materially untrue assumptions" concerning a criminal record, used as a basis for sentencing defendant, may arise either as a result of (the) sentencing judge's correct perception of inaccurate or false information, or the judge's incorrect perception or misapprehension of otherwise accurate or true information. State v. District Court, 677 P.2d 1044, 1048 n.3 (1984).

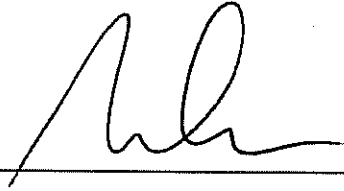


1  
2 In this case, Defendant's argument is belied by the record. Defendant's counsel  
3 Mr. Nathan Gent, at the request of Defendant, informed the Court of potential issues in the  
4 PSI. (Transcript of Proceedings, Sentencing Hearing, 2:16) Mr. Gent informed the Court  
5 that Defendant believes he should have only two prior felony convictions instead of six;  
6 that probation was revoked once instead of twice; and that he should have two  
7 misdemeanors. (Transcript of Proceedings, Sentencing Hearing, 3:1-19). Therefore, the  
8 Court was aware of Defendant's concerns about any alleged inaccuracies in the PSI prior  
9 to sentencing, and Defendant's constitutional right to due process was not violated as a  
10 result.  
11

12 Good cause appearing:

13 **IT IS HEREBY ORDERED** that Defendant's Motion for Modification of  
14 Sentence is DENIED.  
15

16  
17  
18 DATED this 11<sup>th</sup> day of February, 2015.  
19  
20  
21

22   
23 The Honorable Robert W. Lane  
24 District Court Judge  
25  
26  
27  
28



**CERTIFICATION OF SERVICE**

The undersigned hereby certifies that on the 11<sup>th</sup> day of February, 2015, he mailed copies of the foregoing Court Order to the following:

GARY MARION COSTA-AYRES, #1128354  
H.D.S.P.  
PO Box 650  
Indian Springs, NV 89070

NYE COUNTY DISTRICT ATTORNEY  
1520 E. Basin Ave.  
PAHRUMP, NEVADA 89060  
(HAND DELIVERED)

Christopher R. Alderman, Esq.  
Law Clerk to Judge Robert W. Lane

**AFFIRMATION**

The undersigned hereby affirms that this Court Order does not contain the social security number of any person.

Christopher R. Alderman, Esq.  
Law Clerk to Judge Robert W. Lane

FILED

2015 MAR 11 AM 11:33

NYE COUNTY CLERK  
BY DEPUTY

Gary Marion Costa Ayres  
In Proper Person  
P.O. Box 650 H.D.S.P. #1128354  
Indian Springs, Nevada 89018 89070

5TH DISTRICT COURT

NYE COUNTY NEVADA

Gary Marion Costa Ayres

Defendant,

-v-

STATE OF NEVADA

Respondant,

Case No. CR 7876, 7877A 7878

Dept. No. 2P

Docket

NOTICE OF APPEAL

Notice is hereby given that the Defendant, Gary Marion Costa Ayres, by and through himself in proper person, does now appeal to the Supreme Court of the State of Nevada, the decision of the District Court State of Nevada in and for the County of Nye Defendants order Denying motion for modification of Sentence

Dated this date, 3/5/15.

Respectfully Submitted,

Gary Marion Costa Ayres

In Proper Person



**CERTIFICATE OF SERVICE BY MAILING**

I, Gary marion Costa Ayres, hereby certify, pursuant to NRCP 5(b), that on this 5  
day of MARCH, 2015, I mailed a true and correct copy of the foregoing, "NOTICE of  
Appeal"

by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,  
addressed as follows:

NYE County District  
ATTORNEY  
1520 E Basin Ave  
Pahrump, NV  
89060

NEVADA SUPREME COURT  
Office of the Clerk  
Supreme Court building  
201 South Carson Street Suite-201  
Carson City, Nevada 89701-4702

Nye County Court Clerk  
1520 E Basin, Ave  
Pahrump, NV  
89060

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATED: this 5 day of March, 2015.

Gary marion Costa Ayres  
# 1128354  
/In Propria Persona  
Post Office box 650 [HDSP]  
Indian Springs, Nevada 89918 89070

66

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding \_\_\_\_\_

Notice of Appeal  
(Title of Document)

filed in District Court Case number CR 7876, 7877A, 7878

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

-or-

B. For the administration of a public program or for an application  
for a federal or state grant.

Gary Marion Costa Ayres  
Signature

3/5/15  
Date

Gary Marion Costa Ayres  
Print Name

\_\_\_\_\_  
Title

Case No. CR 7877A

Dept. No. 2

FILED  
2015 MAR 11 P 1:32  
NYE COUNTY CLERK

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF NYE

GARY MARION COSTA-AYERS,

Petitioner,

vs.

THE STATE OF NEVADA

Respondent.

CASE APPEAL STATEMENT

1. Name of Petitioner/Appellant filing the Case Appeal Statement: **Gary Marion Costa-Ayers**
2. Identify the Judge issuing the Judgment appealed from: **The Honorable Judge Robert W. Lane, 5<sup>th</sup> Judicial District Court, Department 2**
3. Identify each Petitioner/Appellant and the name and address of counsel: **Gary Marion Costa-Ayers is the only Petitioner/Appellant, filing a Notice of Appeal in proper person, whose address is:**  
  
**Gary Marion Costa-Ayers #1128354  
High Desert State Prison  
P.O. Box 650  
Indian Springs, NV 89070**
4. Identify each Respondent and the name and address of counsel: **The State of Nevada is the only Respondent and is represented by the Nye County District Attorney's Office, whose address is:**  
  
**Nye County District Attorney's Office  
1520 East Basin Avenue, Suite 107  
Pahrump, NV 89060**

- 1 5. Indicate whether any attorney identified above in response to question 3 or 4 is  
2 not licensed to practice law in the State of Nevada and, if so, whether the  
3 District Court granted that attorney permission to appear under SCR 42 (attach  
4 a copy of any district court order granting such permission): **All attorneys are  
5 licensed to practice law in the State of Nevada.**
- 6 6. Indicate whether Petitioner/Appellant was represented by appointed or retained  
7 counsel in the District Court: **Petitioner/Appellant was represented by Nathan  
8 L. Gent, who had been appointed as counsel.**
- 9 7. Indicate whether Petitioner/Appellant is represented by appointed or retained  
10 counsel on appeal: **Appellant filed a Notice of Appeal in proper person.**
- 11 8. Indicate whether Petitioner/Appellant was granted leave to proceed in forma  
12 pauperis, and the date of entry of the District Court order granting such leave:  
13 **Petitioner/Appellant has not filed a Motion to Proceed In Forma Pauperis  
14 and no such order has been granted.**
- 15 9. Indicate the date proceedings commenced in the District Court: **Proceedings  
16 commenced upon the filing of a Bindover Order in District Court on June  
17 3<sup>rd</sup>, 2014.**
- 18 10. Provide a brief description of the nature of the action and result in the District  
19 Court, including the type of Judgment appealed from and relief granted by the  
20 District Court: **This is an appeal of an Order Denying Motion for Modification  
21 of Sentence filed February 11<sup>th</sup>, 2015 in which the Court DENIED  
22 Defendant's Motion for Modification of Sentence filed February 3<sup>rd</sup>, 2015.**
- 23 11. Indicate whether this case has previously been the subject of an appeal or  
24 original writ proceeding in the Supreme Court and, if so, the caption and  
25 Supreme Court docket number of the prior proceeding: **This case has not  
previously been the subject of an appeal.**
12. Indicate whether this appeal involves child custody or visitation: **N/A**

1 13. If this is a civil case, indicate whether this appeal involves the possibility of  
2 Settlement: **N/A**  
3  
4  
5  
6

7 Dated this 11<sup>th</sup> day of March, 2015.  
8

9 SANDRA L. MERLINO  
10 NYE COUNTY CLERK

11 By: 

12 Sarah Westfall, Deputy Clerk  
13 Nye County Clerk's Office  
14 1520 East Basin Avenue  
15 Pahrump, NV 89060  
16 (775) 751-7040  
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IN THE SUPREME COURT OF THE STATE OF NEVADA  
OFFICE OF THE CLERK

GARY MARION COSTA-AYRES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

Supreme Court No. 67554  
District Court Case No. CR7877A

RECEIPT FOR DOCUMENTS

TO: Gary Marion Costa-Ayres  
Nye County District Attorney \ Angela A. Bello, District Attorney  
Sandra L. Merlino, Nye County Clerk ✓

NYE COUNTY CLERK  
BY DEPUTY

2015 MAR 16 / A 10:40

FILED

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

03/12/2015 Appeal Filing Fee waived. Criminal.

03/12/2015 Filed Notice of Appeal/Proper Person. Appeal docketed in the Supreme Court this day.

DATE: March 12, 2015

Tracie Lindeman, Clerk of Court  
lh

CR 7877A

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY MARION COSTA-AYRES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

2015 MAR 23 A 10:39

No. 67554

**FILED**

MAR 18 2015

NYE COUNTY CLERK  
BY DEPUTY

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

**ORDER DIRECTING TRANSMISSION OF RECORD**

This court has concluded that its review of the complete record is warranted. See NRAP 10(a)(1). Accordingly, the clerk of the district court shall have 60 days from the date of this order to transmit to the clerk of this court a certified copy of the complete trial court record of this appeal. See NRAP 11(a)(2). The record shall include copies of documentary exhibits submitted in the district court proceedings, but shall not include any physical, non-documentary exhibits or the original documentary exhibits. The record shall also include any presentence investigation reports submitted in a sealed envelope identifying the contents and marked confidential. See NRS 176.156(5).

It is so ORDERED.

*[Signature]*, C.J.

cc: Gary Marion Costa-Ayres  
Attorney General/Carson City  
Nye County District Attorney  
Nye County Clerk ✓

CR 7878, CR 7877, CR 7876

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARY MARION COSTA-AYRES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

GARY MARION COSTA-AYRES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

GARY MARION COSTA-AYRES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

FILED  
2015 APR 13 A 11:46  
No. 67555  
BY DEPUTY CLERK

No. 67555

FILED

APR 10 2015

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER TRANSFERRING TO COURT OF APPEALS*

The clerk of this court is directed to assign this appeal to the Court of Appeals of Nevada for disposition. See Nev. Const. art. 6, § 4. The Nevada Rules of Appellate Procedure as amended on December 18, 2014, shall apply to all further proceedings in this appeal. See In the Matter of the Amendment of the Nevada Rules of Appellate Procedure, ADKT No. 0501 (Order Amending Rules, December 18, 2014) (providing that amended rules apply to appeals docketed in the Court of Appeals of Nevada on or after their effective date).

It is so ORDERED.

*[Signature]*, C.J.



cc: Hon. Robert W. Lane, District Judge  
Gary Marion Costa-Ayres  
Attorney General/Carson City  
Nye County District Attorney  
Nye County Clerk

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

GARY MARION COSTA-AYRES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

GARY MARION COSTA-AYRES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

GARY MARION COSTA-AYRES,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 67553  
CR 7876  
**FILED**  
MAY 19 2015

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

No. 67554  
CR 7877

No. 67555 CR 7878

NYE COUNTY CLERK  
BY DEPUTY

*[Signature]*

2015 MAY 22 A 11:33

**FILED**


ORDER OF AFFIRMANCE


These are consolidated appeals from orders of the district court denying three identical motions to modify sentence.<sup>1</sup> Fifth Judicial District Court, Nye County; Robert W. Lane, Judge.

<sup>1</sup>These appeals have been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude the records are sufficient for our review and briefing is unwarranted. *See Luckett v. Warden*, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

In his motions filed on February 8, 2015, appellant Gary Costa-Ayres claimed there were errors in his presentence investigation report. Specifically, he claimed he only has four felonies, not six, his probation had only been revoked once, the offense synopsis was incorrect, and he had a commercial driver's license. Because counsel noted the errors regarding the felonies and probation at the sentencing hearing, Costa-Ayres failed to demonstrate the district court relied on mistaken assumptions regarding his criminal record that worked to his extreme detriment. *See Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). The other potential errors in the presentence investigation report did not implicate Costa-Ayres' criminal record and, therefore, these claims were outside the scope of a motion to modify sentence. *See id.* Therefore, we conclude the district court did not err in denying the motions, and we

ORDER the judgments of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Robert W. Lane, District Judge  
Gary Marion Costa-Ayres  
Attorney General/Carson City  
Nye County District Attorney  
Nye County Clerk