## IN THE SUPREME COURT OF THE STATE OF NEVADA

Silverwing Development, a Nevada corporation; J CARTER Witt III, an individual,

Appellants, vS.

Nevada State Contractors Board
Respondents.

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Supreme Court No.: 79134

## APPELLANTS' APPENDIX VOLUME 5

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## CHRONOLOGICAL INDEX FOR APPELLANT'S APPENDIX

NO. DOCUMENT1. Petition for Judicial ReviewExhibit 1: Nevada State Contractor'sDATE VOL. PAGE NO.Board Decision dated December 21,2017
2. Notice of Petition for Judicial Review ..... 1/17/18 1 ..... 18-20
3. Notice of Transmittal of Record of ..... 2/23/18 121-23
Proceedings
Exhibit 1: Nevada State Contractor's1
Board's Notice of Hearing, Complaint,and Requirement to Answer [withexhibits] dated July 14, 2017
Exhibit 2: Answer to Notice of2482-500
Hearing, Complaint, and Requirement to Answer [with exhibits] dated ..... 501-643August 24, 2017
Exhibit 3: Nevada State Contractor's3
Board Memorandum of Points and
Authorities in Response toRespondent's Constitutional Challengeto NRS 624.220(2) dated September22, 2017
Exhibit 4: Nevada State Contractor's ..... 3 ..... 652-654
Board Errata to memorandum ofPoints and Authorities in Response toRespondent's Constitutional Challengeto NRS 624.220(2)
Exhibit 5: Reply to NSCB ..... 3644-651
Memorandum dated September 26,
2017
Exhibit 6: "Board's Exhibit 2"-- ..... 3
Edgewater at Virginia Lake
Apartments Permit Numbers, IssueDate, and Final CofO Date;
Edgewater at Virginia Lake Condos
Permit Numbers, Issue Date, and Final
CofO Date;
Fountainhouse at Victorian Square
Permit Numbers, Issue Date, and Final

CofO Date; and
The Bungalows at Sky Vista Permit Numbers, Issue Date, and Final CofO Date

(cont 3) | Exhibit 7: "Respondent's Exhibit 2"" |  |
| :--- | :--- |
|  | Official Plat of Edgewater at Virginia |
|  | Lake a Condominium Subdivision - |
|  | Condominium Tract Map 5095, |
|  | 5095A, 5095C; |
|  | Official Plat of Bungalows at Sky |
|  | Vista - Phase 1, A Condominium |
|  | Subdivision - Condominium Tract |
|  | Map 5054 and 5054A; and, |
|  | Fountainhouse at Victorian Square, a |
|  | Condominium Subdivision, Vicinity | Condominium Subdivision, Vicinity Map -- Condominium Tract Maps 5139 and 5139A

Exhibit 8: Nevada State Contractor's 3
689-715
Board September 28, 2017 Power
Point Presentation on the Applicability of License Limits on Construction Projects within Subdivisions

Exhibit 9: Order dated September 29,
2017

Exhibit 10: Nevada State Contractors
Board's Closing Brief dated October
26, 2017
Exhibit 11: Errata to Nevada State Contractors Board's Closing Brief dated October 26, 2017
Exhibit 12: Respondent's Closing 4
739-756
Brief dated November 9, 2017
Exhibit 13: Nevada State Contractors
4
757-765
Board's Reply to Respondent's
Closing Brief dated November 16, 2017
$\begin{array}{llll}\text { (cont 3) } & \begin{array}{l}\text { Exhibit 14: Nevada State Contractors }\end{array} & 4 & 766-777 \\ & \begin{array}{l}\text { Board Decision dated December 21, } \\ 2017\end{array} & & \end{array}$

| NO. | DOCUMENT | DATE | VOL. | PAGE NO. |
| :---: | :---: | :---: | :---: | :---: |
| 4. | Transcript of September 28, 2017 Administrative Hearing | 4/2/18 | 4 | 778-781 |
|  | Exhibit 15: Transcript |  | 4 | 782-956 |
| 5. | Petitioners' Opening Brief | 4/3/18 | 4 | 957-985 |
| 6. | Amicus Curiae Brief of The Construction Trade Associations | 5/7/18 | 5 | 986-1000 |
| 7. | LMMC's Amicus Brief Supporting Respondent | 5/7/18 | 5 | 1001-1015 |
| 8. | Respondent's Answering Brief | 5/10/18 | 5 | 1016-1050 |
|  | Exhibit A: Minutes of the Organization Meeting of the State Contractors Board dated May 19, 1941 |  | 5 | 1051-1058 |
|  | Exhibit B: Minutes of a Regular Meeting of the Nevada State Contractors Board Held in the Office of Board Member Rowan, Ely, Nevada, on April 21, 1941, at 10:45 a.m. |  | 5 | 1059-1061 |
|  | Exhibit C: Minutes of a Regular and Organization Meeting of the Nevada State Contractors Board, Held in the Office of the Board, Hotel Golden, Room B-4, July 21, 1945, at 10:45 a.m. |  | 5 | 1062-1066 |
|  | Exhibit D: Minutes of a Regular State Contractors Board Meeting, Held in the Office of the Board, Room B-4, Hotel Golden, Reno, Nevada |  | 5 | 1067-1069 |
|  | Exhibit E: Senate Bill 53-Senator Reid, February 7, 1951 |  | 5 | 1070-1072 |
|  | Exhibit F: First Quarterly Meeting, Nevada State Contractors Board, Reno, Nevada, January 27, 1961 |  | 5 | 1073-1080 |
| (cont 8) | Exhibit G: Statues of Nevada 1963, Senate Bill No. 67-Senator Dodge, Chapter 345 |  | 5 | 1081-1085 |
|  | Exhibit H: Senate Bill No. 457Senator Dodge, Chapter 535 |  | 5 | 1086-1091 |

Exhibit I: Senate Bill No. 5-Senator Young, January 20, 1969;
Senate Judiciary Committee Public Hearing, SB \#5, January 20, 1969

| 9. | Reply to Amicus Curiae Briefs | $5 / 24 / 18$ | 5 | $1107-1113$ |
| :--- | :--- | :--- | :--- | :--- |
| 10. | Reply to Respondent's Answering Brief <br> Transcript of Proceedings, Hearing on <br> Petition for Judicial Review, Tuesday, <br> September 4, 2018 | $6 / 15 / 18$ | 5 | $1114-1123$ |
| 11. |  | 5 | $1124-1232$ |  |
| 12. | Order Regarding Petition for Judicial Review | $11 / 8 / 18$ | 6 | $1233-1242$ |
| 13. | Notice of Entry of Order Regarding Petition <br> for Judicial Review | $11 / 15 / 18$ | 6 | $1243-1254$ |
| 14. | Nevada State Contractors Board Clarification <br> on Remand on Decision Entered December | $1 / 24 / 19$ | 6 | $1255-1258$ |
|  | 17,2017 |  |  |  |

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE

SILVERWING DEVELOPMENT,
a Nevada corporation; and
J. CARTER WITT, III, an individual,

Petitioners,
v.

Case No: CV18-00128
Dept. No.: 10
AMICUS CURIAE BRIEF OF THE CONSTRUCTION TRADE ASSOCIATIONS

NEVADA STATE CONTRACTORS BOARD,

> Respondent.

## TABLE OF CONTENTS

$\qquad$

TABLE OF AUTHORITIES iii
I. IDENTITY OF AMICUS CURIAE ..... 1
II. SUMMARY OF THE ARGUMENT. ..... 1
III. SUMMARY AND PURPOSE OF THE STATUTE AT ISSUE ..... 1
IV. ARGUMENT ..... 2
A. Level of Scrutiny ..... 3
B. Standards of Addressing Vagueness Challenges ..... 3
C. Applying the Relevant Standards and Tests to NRS 624.220 ..... 5

## A.App. 987 <br> $$
\text { V. CONCLUSION................................................................................................................ } 9
$$ <br> AFFIRMATION <br> ..... 10

## TABLE OF AUTHORITIES

## Cases

Arata v. Faubion,
$\qquad$
Carrigan v. Comm'n on Ethics of State, 129 Nev. 894, 313 P.3d 880 (2013)4

City of Reno v. Reno Police Protective Ass'n, 118 Nev. 889, 59 P.3d 1212 (2002)8

Cornella v. Justice Ct., 132 Nev. Adv. Op. 58, 377 P.3d 97 (2016) 5, 6, 9

Flamingo Paradise Gaming, LLC v. Chanos, 125 Nev. 502, 217 P.3d 546 (2009) passim

Pimentel v. State,
$\qquad$
Pyramid Lake Paiute Tribe of Indians v. Washoe Cnty., 112 Nev. 743, 918 P.2d 697 (1996)8

See Cornella,
337 P.3d.7

Shapiro v. West,
133 Nev. Adv. Op. 6, 389 P.3d 262 (2017) 4, 5

Statutes
Nev. Const. art. 1, § 8(5).................................................................................................................... 2
NRS 233B. 130 .............................................................................................................................. 8
NRS 233B.135(3)(f)....................................................................................................................... 8
NRS 239B. 030 ............................................................................................................................. 10
NRS 624.005 ................................................................................................................................. 2
NRS 624.200(2) ............................................................................................................................. 6


## I. IDENTITY OF AMICUS CURIAE

The Construction Trade Associations ${ }^{1}$ collective missions are to enhance and maintain the quality of the construction industry in the State of Nevada. The Construction Trade Associations represent numerous construction trade industry groups throughout the State of Nevada, whose members include contractors that are regulated by Chapter 624 of the Nevada Revised Statutes and the license limit provisions found in NRS 624.220(2). On behalf of its members, the Construction Trade Associations and their members have a significant interest in the Court's determination of the constitutionality of the statute at issue in this judicial review.

## II. SUMMARY OF THE ARGUMENT

NRS 624.220(2) requires the Nevada State Contractors Board ("Board") to set a maximum contract amount a licensed contractor may undertake on one or more construction contracts on a single construction site or subdivision site for a single client. Petitioners Silverwing Development and J. Carter Witt, III (collectively "Silverwing") argue the statute is facially unconstitutionally vague. When analyzed under the applicable law, it is clear that the statute is facially constitutional. Therefore, Petitioner's facial challenge of the statute should be rejected. ${ }^{2}$

## III. SUMMARY AND PURPOSE OF THE STATUTE AT ISSUE

NRS 624.220(2) provides:
The Board shall limit the field and scope of the operations of a licensed contractor by establishing a monetary limit on a contractor's license, and the limit must be the maximum contract a licensed contractor may undertake on one or more construction contracts on a single construction site or subdivision site for a single
${ }^{1}$ The Construction Trade Associations is comprised of the following Nevada-based construction associations: Nevada Chapter Associated General Contractors ("AGC"), Nevada Association of Mechanical Contractors ("NAM"), Southern Nevada Chapter of National Electronic Contractors' Association ("NECA"), Southern Nevada Home Builders Association ("SNHBA"), Nevada Contractor's Association ("NCA"), Mechanical Contractor's Association of Las Vegas ("MCA"), Nevada Subcontractor's Association ("NSA"), Sheet Metal and Air Conditioning Contractors' National Association of Southern Nevada ("SMACNA"), and Associated Builders and Contractors, Inc. ("ABC").
${ }^{2}$ Pursuant to the Court's Order of April 18, 2018, this brief is limited to the issue of facial unconstitutionality. The Trade Associations do not address other bases for Petitioner Silverwing's challenge and do not take a position on the Contractors Board's interpretation of the statute.
client. The Board may take any other action designed to limit the field and scope of the operations of a contractor as may be necessary to protect the health, safety and general welfare of the public. The limit must be determined after consideration of the factors set forth in NRS 624.260 to 624.265 , inclusive.

The Nevada Legislature has specifically provided valid justification and the purposes for this statute and monetary license limits for licensed contractors in the State of Nevada. First, the statute is intended to promote public confidence and trust in the competence and integrity of licensees. NRS 624.005. Second, the statute is intended to protect the health, safety, and welfare of the public. NRS 624.005; NRS $624.220(2)$. There are also many practical purposes for this statute and the monetary license limits addressed therein. Namely, the statute protects homeowners, allows smaller companies to obtain a contractor's license (and later request higher limits), and protects the construction industry, including, but not limited to, the companies in the industry who supply materials and equipment.

In reviewing the statute in context of its identified purposes, it is clear that the Nevada Legislature created the license limits to guard the public from the adverse consequences of a contractor's financial insolvency, as well as a contractor's lack of experience. Therefore, pursuant to NRS 624.220(2), for the protection of the public, the Board is tasked with ensuring that contractors are not engaged in projects on a single construction site or subdivision site beyond the contractors' financial capability or experience.

## IV. ARGUMENT

Silverwing argues that NRS 624.220(2) violates its substantive due process rights found in the Nevada and the United States Constitutions because it is unconstitutionally vague. ${ }^{3}$ The first step in analyzing a due process challenge is to identify the appropriate level of constitutional scrutiny the Court should apply in evaluating the challenged statute. Arata $v$. Faubion, 123 Nev. 153, 159, 161 P.3d 244, 248 (2007). The next step is to identify the specific

[^0]tests that the Nevada Supreme Court uses to address claims of due process violations based on vagueness challenges. The third step is then to apply those rules to the statute at issue.

## A. Level of Scrutiny

Unless a statute discriminates against a suspect class or interferes with a fundamental right, a statute will survive a due process challenge so long as the statute withstands "minimum scrutiny." Id. Under minimum scrutiny, a statute is constitutional so long as it is "rationally related to a legitimate government purpose." Id. This is known as the "rational relationship" test.

In reviewing a statute under the relational relationship test, the Court is not limited to considering only the justifications for the statute specifically asserted by the Legislature, but may hypothesize the legislative purpose behind the statute. Id. at 160 . Under this low level of scrutiny, "if any set of facts may reasonably be conceived to justify the legislation, a statute will not be set aside." Id. (citation, brackets, and internal quotations omitted) (emphasis added).

## B. Standards of Addressing Vagueness Challenges

As noted, the over-arching standard for reviewing a statute for a due process violation is the "rational relationship" test. However, the courts have adopted specific rules and tests for reviewing a due process constitutionality challenge for vagueness. In Flamingo, the Supreme Court of Nevada clarified the proper framework to be used in analyzing a facial vagueness challenge. See Flamingo Paradise Gaming, LLC v. Chanos, 125 Nev. 502, 509-13, 217 P.3d 546, 551-54 (2009). The Court decided the Flamingo case in 2009. In that case, the Court, in a detailed opinion authored by Justice Hardesty, noted that there was a divergence of authority regarding the appropriate test that courts should apply in evaluating a facial vagueness challenge. Id. As a result, the Court spent significant time in its decision walking through the different tests and analyses used by the Nevada and United States Supreme Courts. Id. Ultimately, after that review, the Court identified the standard that would apply under Nevada law. Id.

The Court noted that there was a general consensus that a two-part test applied. Id. at 510. Under this two-part test, a statute is unconstitutionally vague if it: "(1) fails to provide notice sufficient to enable persons of ordinary intelligence to understand what conduct is
prohibited and (2) lacks specific standards, thereby encouraging, authorizing, or even failing to prevent arbitrary and discriminatory enforcement." Id. at 510.

Next, the Court held that there are two approaches to a facial vagueness challenge, depending on the type of statute at issue. Id. at 510-12. If the facial vagueness challenge is to a civil statute, "the plaintiff must show that the statute is impermissibly vague in all of its applications." Id. at 512 (emphasis added). However, if the statute involves criminal penalties or constitutionally protected rights, the statute is unconstitutional if vagueness "permeates the text." Id. Other situations (none of which are applicable here) in which a statute is reviewed under the heightened standard of whether "vagueness permeates the text" are when fundamental liberty interests protected under substantive due process are at issue such as the right to marry, the right to custody of one's children, and the right to keep the family together. See Arata, 123 Nev. at 159. Civil statutes are held to a less-strict vagueness standard than criminal laws, "because the consequences of imprecision are qualitatively less severe." Carrigan v. Comm'n on Ethics of State, 129 Nev. 894, 899, 313 P.3d 880, 884 (2013) (citation and internal quotations omitted).

In conducting a review of the constitutionality of a statute, all statutes "are presumed to be valid." Shapiro v. West, 133 Nev. Adv. Op. 6, 389 P.3d 262, 267 (2017) (citation and internal quotations omitted). Moreover, "every reasonable construction must be resorted to, in order to save a statute from unconstitutionality." Id. (emphasis added). Further, the burden is on the challenger to make a clear showing of the statute's unconstitutionality. Id.

Therefore, a civil statute that is not subject to the heightened standard of review is only facially unconstitutionally vague if the challenger makes a clear showing "that the statute is impermissibly vague in all of its applications." Shapiro, 389 P.3d at 267 (quoting Flamingo, 125 Nev . at 512) (emphasis added). Thus, "if the statute provides sufficient guidance as to at least some conduct that is prohibited and standards for enforcement of that conduct, it will survive a facial challenge because it is not void in all its applications." Flamingo, 125 Nev . at 514.

Further, a statute is not unconstitutionally vague because there are some "marginal cases where it is difficult to ascertain whether the facts violate the statute." Cornella v. Justice Ct., 132 Nev. Adv. Op. 58, 377 P.3d 97, 101 (2016) (citations and internal quotations omitted). "Mathematical precision is not [required] in drafting statutory language." Id. Additionally, "[e]nough clarity to defeat a vagueness challenge may be supplied by judicial gloss on an otherwise uncertain statute, by giving the statute's words their well-settled and ordinarily understood meaning, and by looking to the common law definitions of the related term or offense." Shapiro, 389 P.3d at 267 (citation and internal quotations omitted). Therefore, in sum, because the challenged statute in this case is a civil statute and is not subject to a heightened standard of review, the following rules apply:

- The statute is presumed to be valid. Shapiro, 389 P.3d at 267.
- The statute is valid if it is rationally related to a legitimate public purpose. Arata, 123 Nev . at 159.
- The statute is only unconstitutionally vague if it is vague in all its applications. Flamingo, 125 Nev . at 512.
- If any set of facts may reasonably be conceived to justify the legislation, the statute cannot be set aside. Arata, 123 Nev . at 159.
- Every reasonable construction must be applied in favor of constitutionality. Shapiro, 389 P.3d at 267.
- The statute is not unconstitutionally vague just because there might be "marginal cases" where it is difficult to ascertain whether certain facts violate the statute. Cornella, 377 P.3d at 101.
- Petitioner Silverwing has the burden of proof to show that the statute is clearly unconstitutional. Shapiro, 389 P.3d at 267.


## C. Applying the Relevant Standards and Tests to NRS 624.220

Here, NRS $624.220(2)$ is a civil statute without any criminal penalties or constitutionally protected rights. Therefore, the less-strict standard for civil statutes applies. As such, Silverwing must make a clear showing that the statute is impermissibly vague in all of its applications. Flamingo, 125 Nev . at 512. In order to make such a showing, Silverwing must demonstrate that there is no set of facts under which the statute would provide a person of ordinary intelligence fair notice of what is prohibited. Id. at 518-20. Simply stated, Silverwing cannot make that
showing. That is because there are very clear applications of the statute in which no one could reasonably question whether a particular act would violate the statute.

Two examples of routine situations in which NRS 624.200(2) applies demonstrate that the statute is not vague in all of its applications: (1) construction of an individual single-family residence that is not part of a larger subdivision development; and (2) construction of a single commercial building on a single parcel of property. In these circumstances, the statute is not vague any way. For instance, if the cost to build the building at issue is $\$ 500,000$, then the general contractor on the project must have a license limit of at least $\$ 500,000$. By the same token, if the value of the plumbing work on the project is $\$ 100,000$, the plumber on the project must have at license limit of at least $\$ 100,000$. Thus, a general contractor with a $\$ 250,000$ license limit who builds that building is clearly and unquestionably in violation of the license limit statute. By the same token, a plumber with a $\$ 50,000$ license limit who performs all the plumbing work on that building is also clearly and unquestionably in violation of the statute. These are the standard types of situations in which the license limit law applies every day in the State of Nevada. They are straightforward situations without any vagueness or ambiguity. As such, it cannot be plausibly argued that NRS $624.200(2)$ is impermissibly vague in "all applications."

Therefore, because NRS $624.200(2)$ is a civil statute not subject to the heightened standard of review, under clearly established law, the statute is constitutional. Cf. Flamingo, 125 Nev. at 518-20 (holding that a civil statute which prohibited smoking tobacco in certain restricted areas was not facially unconstitutionally vague because smoking was clearly prohibited in those restricted areas such as bars and restaurants where food is served and, therefore, "the statute is not vague in all of its applications . . . because there are very clear applications of the statute in which no one could reasonably question whether a particular act would violate the statute"). This is the case even if Petitioner Silverwing can come up with a "marginal case" wherein the statute is somewhat less clear. Cornella, 377 P.3d at 101.

Additionally, under the second prong of the two-part test, the statute is not so standardless that it authorizes or encourages seriously discriminatory enforcement. Under most
circumstances, there is no room for interpretation by the Board of whether a contractor violated the statute. For instance, in the examples noted above, when a contractor or subcontractor performs work beyond the scope of its license limit on a single-family residence or single building on a single parcel of property, it is clear that the statute has been violated. It is true that there may be some cases, on the margins, where the Board must interpret the statute. However, that does not make the statute unconstitutional, because there are at least minimal guidelines that govern the Board's enforcement of the statute. See Cornella, 337 P.3d at 101; NRS 624.300; NRS 624.3015; NAC 624.7251.

In the limited circumstances in which it is not abundantly clear whether a contractor has violated the statute (such as the examples above), a Board Investigator must evaluate various criteria, together with the Legislature's intent in creating the license limits, to determine whether the project in question is on a single construction site or subdivision site. The criteria evaluated by the Board are the geography, time, contract(s), design, permitting, and complexity of the project. The investigator must do so in light of the language and purpose of the statute.

In these limited circumstances, the Board Investigator evaluates all the information and criteria and decides whether it appears the project is on a single construction site or subdivision site for a single client. However, that is not the end of the process. The contractor has the right and ability to challenge the investigator's interpretation. Once the investigator has made his or her findings, the Board reviews the findings and determines whether a contractor has engaged in conduct that warrants discipline. A hearing is then scheduled where the contractor can present its evidence and make arguments. See NRS 624.345; NRS 624.351. If the Board determines that a contractor has engaged in an action warranting discipline (i.e., performed work beyond the scope of its license limit), the Board may issue one or more specific, limited penalties. See NRS 624.300; NRS 624.3015. Moreover, the Board has established standards it uses in determining the amount of any potential administrative fine, which include the gravity of the violation(s), the number of violation(s), whether the contractor exhibited bad faith by ignoring warnings, whether the violation(s) caused harm to other persons, whether the violation(s) were perpetuated against a senior citizen or person with a disability, and the history or previous violations of the statute
by the contractor. See NRS 624.300(4); NAC 624.7251. If the contractor objects to the Board's findings, it has a right to appeal. See NRS 233B.130. This is the very definition of due process.

Further, the statute and related regulations provide established guidelines that govern the Boards enforcement of the statute. These guidelines provide adequate direction and restraint on the Board to avoid arbitrary or discriminatory enforcement. The statute is not unconstitutional simply because it provides the Board with the ability to exercise some discretion. See City of Reno v. Reno Police Protective Ass'n, 118 Nev. 889, 900, 59 P.3d 1212, 1219 (2002) ("[T]his court will not readily disturb an administrative interpretation of statutory language. This court has held that '[a]n agency charged with the duty of administering an act is impliedly clothed with power to construe it as a necessary precedent to administrative action [and] great deference should be given to the agency's interpretation when it is within the language of the statute.'") (citation omitted). In fact, the Board (like any administrative agency) is tasked with using its knowledge and unique experience handling similar matters together with established guidelines to make a determination regarding the case before it. Id.; see also Pyramid Lake Paiute Tribe of Indians v. Washoe Cnty., 112 Nev. 743, 748, 918 P.2d 697, 700 (1996) (stating that "great deference should be given to the [administrative] agency's interpretation when it is within the language of the statute. While the agency's interpretation is not controlling, it is persuasive.") (citations and quotations omitted); NRS 233B.135(3)(f) (establishing that an administrative agency's final decision will be set aside if it is "[a]rbitrary or capricious or characterized by abuse of discretion," which recognizes that agencies are tasked with exercising their discretion). The statute properly authorizes and limits such discretion of the Board.

Moreover, there is no evidence before the Court that the Board improperly exercised its discretion or engaged in any discriminatory action towards Silverwing in this case. There is no evidence that the Board disregarded its established criteria for determining whether Silverwing violated the statute, or disregarded its established standards for determining the amount of the fine assessed on Silverwing. There is no evidence that a different contractor in a similar situation to Silverwing has been treated differently (either by this investigator or another Board investigator). See Pimentel v. State, 396 P.3d 759, 765 (2017) (finding that the challenger failed
to establish the second prong of the two-part test because he failed to put forth any evidence, and there was none in the record, to indicate discriminatory action towards the challenger compared to other similarly-situated individuals).

Finally, Silverwing argues that the Board's "Tesla Letter" proves that the statute is unconstitutionally vague. However, that argument is misplaced. It is true that the Board's December 14, 2015 Advisory Opinion regarding the Tesla Gigafactory ("Tesla Letter") recognized that the statute can be somewhat ambiguous in certain limited circumstances. Tesla sought the Board's opinion on how the Board interprets the applicable statutory license limit provisions with respect to a large construction project with multiple phases that would be built out over a decade or more, but which was on a single parcel. The construction of the Tesla Gigafactory is clearly a unique project and is one of the "marginal cases" where it may be difficult to ascertain whether the facts violate the statute, which requires further analysis by the Board. See Cornella, 377 P.3d at 101.

In the Tesla Letter, the Board opined that the phrase "single construction site" is ambiguous under those limited circumstances because the phrase is subject to more than one reasonable meaning. But, under the applicable standard, to be found to be unconstitutional, the statute must be vague in all its applications. See Flamingo, 125 Nev. at 518-20. The fact that there is a phrase that is potentially ambiguous in certain specific limited situations in a marginal case does not render the statute unconstitutionally vague. Cornella, 377 P.3d at 101. ${ }^{4}$

## V. CONCLUSION

NRS 624.220(2) requires the Board to set a maximum contract amount a licensed contractor may undertake on one or more contracts on a single construction site or subdivision site for a single client. Although there may be marginal cases in which it could be difficult to determine whether a contractor violated the statute, it is indisputable that the statute is not vague in all its applications. Namely, no one could reasonably question whether a contractor performing work on a building on a single parcel (as described in the examples above) beyond

[^1]its monetary license limit would violate the statute. The statute is obviously enforceable against a contractor in those circumstances. Moreover, the fact that there may be some room for interpretation of the statute in some limited circumstances does not render the statute facially unconstitutional.

NRS $624.220(2)$ is rationally related to the legitimate purpose of protecting the public. As a civil statute subject to the minimum scrutiny, it is valid, constitutional, and enforceable. Therefore, Amicus Curiae hereby respectfully request that this Court reject Silverwing's facial constitutional challenge to the statute.

## AFFIRMATION

The undersigned does hereby affirm that pursuant to NRS 239B.030, the preceding document does not contain the social security number of any person.

DATED: May 7, 2018.

McDONALD CARANO LLP

By__/s/ Paul J. Georgeson
Paul J. Georgeson, Esq.
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## CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDONALD CARANO LLP and that on May 7, 2018, I served the within AMICUS CURIAE BRIEF OF THE CONSTRUCTION

TRADE ASSOCIATIONS on the parties in said case by placing a true copy thereof enclosed in sealed envelopes with postage prepaid thereon in the United States Post Office mail at 100 West Liberty Street, $10^{\text {th }}$ Floor, Reno, Nevada 89501 addressed as follows:

Margi Grein, Executive Officer<br>Nevada State Contractors Board<br>5390 Kietzke Lane, Suite 102<br>Reno, Nevada 89511<br>Michael S. Kimmel<br>Theodore E. Chrissinger<br>50 W. Liberty St., Suite 840<br>Reno, Nevada 89501<br>Mark A. Hutchinson<br>Daniel H. Stewart<br>500 Damonte Ranch Parkway, Suite 980<br>Reno, Nevada 89521<br>Adam P. Laxalt, Attorney General<br>Office of the Attorney General<br>100 N. Carson St.<br>Carson City, Nevada 89701<br>Noah Allison, Esq.<br>The Allison Law Firm Chtd.<br>3191 E. Warm Springs Rd.<br>Las Vegas, NV 89120

I am familiar with the firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. The envelopes addressed to the above parties were sealed and placed for collection by the firm's messengers and will be deposited today with the United States Postal Service in the ordinary course of business.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on May 7, 2018 at Reno, Nevada.


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# SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE 

SILVERWING DEVELOPMENT, a Nevada corporation; and J. CARTER WITT, III, an individual, Petitioners, v.

NEVADA STATE CONTRACTORS BOARD, Respondent.
$\qquad$ 1

Dept. No.: 10

## LMCC'S AMICUS BRIEF SUPPORTING RESPONDENT



## TABLE OF AUTHORITIES

## Federal Cases

Brown v. Gardner, 115 S.Ct. 552, 555, 513 U.S. 115, 118 (1994)................................................ 2
Lupert v. Cal. St. Bar, 761 F.2d 1328 (9th Cir. 1985) ................................................................... 8
Personnel Adm'r of Massachusetts v. Feeney, 99 S.Ct. 2282, 2293, 442 U.S. 256, 273 (1979)... 7
U.S. v. Salerno, 481 U.S. 739, 745, 107 S.Ct. 2095 (1987)........................................................... 1

State Cases
City of Sparks v. Sparks Mun. Court, 129 Nev. 348, 359, 302 P.3d 1118, 1126 (2013)1

Deja Vu Showgirls of Las Vegas, LLC v. New Dep't of Taxation, 334 P.3d, 398 (Nev. 2014) ..... 1
Flamingo Paradise Gaming, LLC v. Chanos, 217 P.3d 546, 553 (Nev. 2009) ............................. 1
List v. Whisler, 99 Nev. 133, 137660 P.2d 104, 106 (Nev. 1983) ................................................ 1
Martinez v. Goddard, 521 F.Supp.2d 1002, 1004 (D. Ariz. 2007) ................................................ 9
Public Employees' Benefits Program v. Las Vegas Metropolitan Police Dept., 124 Nev. 138, 147, 179 P.3d 542, 548, (2008)3

Rural Telephone Company v. Public Utilities Commission, 398 P.3d 909, 911 (Nev., 2017) ...... 2
Schwartz v. Lopez, 382 P.3d 886, 895 (Nev. 2016) ....................................................................... 1
Silvar v. Dist. Ct., 122 Nev. 289, 293129 P.3d 682, 683 (2006) .............................................. 1, 3
Sutter Basin Corp. v. Brown, 253 P.2d 649, 655 (Cal., 1953) ....................................................... 7
Urbatec v. Yuma Cnty., 614 F.2d 1216, 1218 (9th Cir. 1980) ...................................................... 9
State Statutes
NRS 108.22188......................................................................................................................... 4, 5
NRS 108.236 .................................................................................................................................. 9
NRS 278.320(1) ............................................................................................................................ 3
NRS 338.1385(5) ........................................................................................................................... 9
NRS 608.150 .................................................................................................................................. 9
NRS 624.029 .................................................................................................................................. 4
NRS 624.220(2) ........................................................................................................................ 4, 5

NRS 624.273(7) 9

Record Part III, Ex. 10, Closing Brief, pg. 3 ls. 7-9....................................................................... 2
Regulation of Contractors: Hearing on A.B. 634 Before the Nevada State Assembly Committee on Commerce and Labor 70th Legis. Session, Hrg. March 29 (Nev. 1999)

## Other Authorities

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## ARGUMENT

Facial challenges to the constitutionality of a statute must establish invalidity in all circumstances. U.S. v. Salerno, 481 U.S. 739, 745, 107 S.Ct. 2095 (1987). Statutes are presumed valid, so a court "will only interfere when the Constitution is clearly violated." Schwartz v. Lopez, 382 P.3d 886, 895 (Nev. 2016); quoting List v. Whisler, 99 Nev. 133, 137660 P.2d 104, 106 (Nev. 1983). The challenger must prove no circumstance exist where the statute is valid. Schwartz at 895; citing Deja Vu Showgirls of Las Vegas, LLC v. New Dep't of Taxation, 334 P.3d, 398 (Nev. 2014). Ambiguity must exist in the language's plain meaning. Schwartz at 895. Ambiguity exists only if the language is subject to more than one reasonable interpretation. City of Sparks v. Sparks Mun. Court, 129 Nev. 348, 359, 302 P.3d 1118,1126 (2013). If ambiguous, a court considers legislative history, public policy, and the reason for the statute. $I d$.

A statute must be impermissibly vague in all applications to be facially invalid. Flamingo Paradise Gaming, LLC v. Chanos, 217 P.3d 546, 553 (Nev. 2009). Vagueness is evaluated by a two factor test: The statute "(1) fails to provide notice sufficient to enable persons of ordinary intelligence to understand what conduct is prohibited and (2) lacks specific standards, thereby encouraging, authorizing, or even failing to prevent arbitrary and discriminatory enforcement." Id.; quoting Silvar v. Dist. Ct., 122 Nev. 289, 293129 P.3d 682, 683 (2006). A statute giving guidance for even one foreseeable situation survives a facial challenge because it is not void in all applications. Id at 554; See also Hoffman Estates v. Flipside, Hoffman Estates, 455 U.S. 489, 497, 102 S.Ct. 1186 (1982).

## 1. "Subdivision site" is not ambiguous in the context of NRS 624 et seq.

The litigants confuse definitional possibilities with statutory ambiguity. For example, the NSCB surmised that "subdivision site ... could mean the place where a subdivision exists, or, ... it could mean a discrete place within a subdivision." (Record Part III, Ex. 10, Closing Brief, pg. 3 ls. 7-9.) ${ }^{1}$ However, "[a]mbiguity is a creature not of definitional possibilities but of statutory context." Brown v. Gardner, 115 S.Ct. 552, 555, 513 U.S. 115, 118 (1994). The context in which "on a single construction site or subdivision site" exists is not ambiguous. The proffered definition of "subdivision site" to include a "single construction site" (or using the NSCB's terminology "discrete place within a subdivision") requires that the words "single construction site" be consumed by the words "subdivision site." Stated another way, the idea that "subdivision site" may mean something smaller than an entire subdivision cannot stand because the statute already accounts for a discrete place within the subdivision through the words "single construction site." Once a plot of ground within a planned (or actively developed) subdivision is legally identified as a separate parcel of property, it by necessity becomes a "single construction site" capable of receiving its own work of improvement.

## 2. The litigants impermissibly isolated statutory words for interpretation.

Silverwing extracts words from the statute and then impermissibly seeks to interpret the isolated words. "[W]ords within a statute must not be read in isolation...." Rural Telephone Company v. Public Utilities Commission, 398 P.3d 909, 911 (Nev. 2017) quoting Banegas v. State Indus. Ins. Sys., 117 Nev. 222, 225, 19 P.3d 245, 247 (2001). "FINALLY, WE CONSIDEr (sic) multiple legislative

[^2]provisions as a whole, CONSTRUING A STAtute (sic) so that no part is rendered meaningless." Public Employees' Benefits Program v. Las Vegas Metropolitan Police Dept., 124 Nev. 138, 147, 179 P.3d 542, 548, (2008). Silverwing's argued ambiguity arises not from NRS 624.220(2) but from the analytical framework used for statutory interpretation. As a comparative example, the Silvar court articulated the first prong of the vagueness analysis rule as "fails to provide notice sufficient to enable persons of ordinary intelligence to understand what conduct is prohibited." Silvar 122 Nev. 289, 293. Extracting the words "ordinary intelligence" from the rule and then interpreting only those words begs the question of "what is ordinary intelligence," the answer to which will vary from person to person. The Court would be wise not to get caught in Silverwing's definitional possibilities because "single site" and "subdivision site" are clear when considered in context.

## 3. "Subdivision site" is not vague even in isolation.

The argument that "subdivision site" may mean the subdivision as a whole or a single site within the subdivision violates the statutory language itself. "Subdivision site" is used in the singular. If subdivision site meant a specific location within the subdivision as a whole, the language must be plural as "subdivision sites" because multiple sites exist within a subdivision.

## 4. The Court should look to NRS 624 and not NRS 278 for meaning.

The litigants focused on the wrong statute when seeking a definition for subdivision site. The litigants' argument concerning NRS 278.320(1) appears misplaced. NRS 624 et seq. is designed to regulate contractors for the health and safety of the public (see NRS 624.005) while NRS 278 et seq. is intended to meet the demands of urbanization, protect the environment, and meet economic necessities. See NRS 278.02521. At no time does NRS 624 et seq. ever reference

NRS 278 et seq. Using NRS 278 to dictate meanings in NRS 624 appears improper because the word "subdivision" is broader than the idea of 5 or more lots as taken from NRS 278.320(1). Therefore, using the 5 lot definition impermissibly restricts the language of NRS 624.220(2) and creates an exception (fewer than 5 lots) to the statute's prohibition of breaking a work of improvement into smaller contracts to avoid monetary licensing limits.

NRS 624.029 offers better insight than the 5 lot definition found in NRS 278.320(1). It is axiomatic that every construction contract and its associated value is for a "work of improvement" regardless of the type of construction site. It is the contractor's financial capabilities associated with the work of improvement under the contract that was of obvious concern to the Legislature. NRS 624.029 defines "work of improvement" by incorporating the definition of NRS 108.22188. This shows that the meaning of "work of improvement" is incorporated into the contractor licensing, supervision and discipline regulatory scheme of NRS 624 et seq. NRS 108.22188 reads as follows:
"Work of improvement" means the entire structure or scheme of improvement as a whole, including, without limitation, all work, materials and equipment to be used in or for the construction, alteration or repair of the property or any improvement thereon, whether under multiple prime contracts or a single prime contract except as follows:

1. If a scheme of improvement consists of the construction of two or more separate buildings and each building is constructed upon a separate legal parcel of land and pursuant to a separate prime contract for only that building, then each building shall be deemed a separate work of improvement; and
2. If the improvement of the site is provided for in a prime contract that is separate from all prime contracts for the construction of one or more buildings on the property, and if the improvement of the site was contemplated by the contracts to be a separate work of improvement to be completed before the commencement of
construction of the buildings, the improvement of the site shall be deemed a separate work of improvement from the construction of the buildings and the commencement of construction of the improvement of the site does not constitute the commencement of construction of the buildings. As used in this subsection, "improvement of the site" means the development or enhancement of the property, preparatory to the commencement of construction of a building, and includes:
(a) The demolition or removal of improvements, trees or other vegetation;
(b) The drilling of test holes;
(c) Grading, grubbing, filling or excavating;
(d) Constructing or installing sewers or other public utilities; or
(e) Constructing a vault, cellar or room under sidewalks or making improvements to the sidewalks in front of or adjoining the property.

NRS 108.22188.

Therefore, the general rule for a contract's value, for which contract licensing limits apply, is the aggregate of all work, materials and equipment incorporated into the entire structure or scheme of improvement whether done in a single contract or multiple contracts.

An exception to the general rule exists where clearing, testing, or infrastructure improvements are done to a piece property intended to be subdivided into smaller separate parcels upon which individual buildings will be constructed under separate contracts. In such a scenario, contract values cannot be aggregated for licensing limits because the work of improvement and its subsequent value are deemed to have accrued to each individual parcel of property and not the "subdivision site" as a whole. To be clear, NRS 624.220(2) contemplates that general work such as clearing and infrastructure will be done to the entire "subdivision site" as a whole in preparation for sub-parcels that will each become their own "single construction site" at some point in the future.

The question for the Court is therefore whether Silverwing has proven that the exception applies. Otherwise, the general rule governs, under which all contracts on a single "work of improvement" must be aggregated in assessing whether a contractor has stayed within the bounds of its licensing limits. The first step in showing that any exception to the general rule applies (and the burden to do so is on Silverwing) is to prove that "the scheme of improvement consists of the construction of two or more separate buildings" each of which is "constructed upon a separate legal parcel of land." In the absence of such proof, the "work of improvement" must be analyzed as a single project, no matter how many contracts Silverwing may have entered into.

As a matter of law, the NCSB's aggregation approach appears valid, even though this amicus brief has offered a different statutory explanation for the approach. ${ }^{2}$ The salient point of the foregoing argument is that that NRS 624.220(2), when interpreted within the context of the NRS 624 statuary scheme, has a conceivable interpretation that allows both a contractor and the NSCB to proceed without speculation.

The incorporation of NRS 108.22188, and its specific contract language, resolves any possible ambiguity issue because the statute directs how a contract's work of improvement is applied to various worksites, specific parcels of property within the subdivision or upon the subdivision as a whole. There is no ambiguity within the context of NRS 624.220(2) when analyzed from the work of improvement standpoint that specifically addresses the issue raised by Silverwing.

[^3]
## 5. NRS 624.220(2) applies equally to all contractors.

Silverwing confuses opportunity with result. "[T]he settled rule that the Fourteenth Amendment guarantees equal laws, not equal results" is applicable to Silverwing's equal protection argument. Personnel Adm'r of Massachusetts v. Feeney, 99 S.Ct. 2282, 2293, 442 U.S. 256, 273 (1979). All contractors are subject to NRS 624.220.
'The equality of the Constitution is the equality of right and not of enjoyment. A law that confers equal rights on all citizens of the state, or subjects them to equal burdens, is an equal law. (Citations.) So long as the statute does not permit one to exercise the privilege while refusing it to another of like qualifications, under like conditions and circumstances, it is unobjectionable upon this ground.' Watson $v$. Division of Motor Vehicles, 212 Cal. 279, 284, 298 P. 481, 483.

Sutter Basin Corp. v. Brown, 253 P.2d 649, 655 (Cal., 1953). All contractors bear the same burden under NRS 624.220(2). Each contractor can choose when, where and with whom it chooses to contract so long as its licensing limits are honored.

Silverwing ignores subsection 3 of NRS 624.220. "A licensed contractor may request that the Board increase the monetary limit on his or her license, either on a permanent basis or for a single construction project...." NRS 624.220(3). ${ }^{3}$ The outcome of how contract values aggregate may be different (as identified by Silverwing's example on page 16 of its Opening Brief), but, as noted above, the Constitution does not guarantee equal outcomes. Moreover, Silverwing's example fails because the identified outcomes are premised upon choice in how the contractor does business, with whom the contractor does business and whether or

[^4]not to seek a licensing limit increase. Indeed, with the opportunity of a license limit increase, plumber B in Silverwing's example has the same opportunity of avoiding regulatory discipline as plumber A . Because equal protection only requires a single conceivable basis on which a statute might survive rational basis scrutiny (see Lupert v. Cal. St. Bar, 761 F.2d 1328 (9th Cir. 1985)), Silverwing's equal protection challenge fails.

Moreover, legislative history provides a specific example of how a monetary licensing limit helps identify construction fraud. Thomas Hall, an attorney, testified that his client had been swindled by a contractor who entered into two contracts for the construction of a barn because the total construction value exceeded the contractor's $\$ 250,000.00$ license limit. Eventually Mr. Hall brought a complaint against the contractor before the NSCB where substantial construction fraud was discovered. But for the monitory licensing limitation, the contractor's fraud would have gone undiscovered, placing the public at continued risk of harm. See Regulation of Contractors: Hearing on A.B. 634 Before the Nevada State Assembly Committee on Commerce and Labor 70th Legis. Session, Hrg. March 29 (Nev. 1999) (Statement of Thomas Hall). Thus, monetary licensing limits are more than just confirmation of economic viability, they act as a regulatory tool for identifying and removing bad actors from the construction industry. With a conceivable public interest, licensing limits are rational and must be upheld as constitutional.

Monetary licensing limits may produce peculiar results from time to time. But all laws do the same to one degree or another. For example, a speed limit law seems irrational if viewed in the context of rushing a pregnant woman to the hospital for delivery. But such a view is specious when considering the societal utility of lowered speed limits for public protection. The fact that a law may have an odd
result as to one particular party does not mean that constitutional equal protection is violated.

## 6. Licensing limits comport with public health and safety.

Contrary to Silverwing's assertion, license limitations are rationally related to public welfare. See E.g., Hall Statement, supra. Other courts have found licensing limits to be constitutional. In Martinez v. Goddard, 521 F.Supp.2d 1002, 1004 (D. Ariz. 2007), a factually similar case, the plaintiff argued that that a licensing limit was unconstitutional. The court applied a rational basis review and upheld the statute because the purpose of a license and licensing limit is to "protect the public from unscrupulous, unqualified, and financially irresponsible contractors." Id. at 1008-9. See also Urbatec v. Yuma Cnty., 614 F.2d 1216, 1218 (9th Cir. 1980) ("[A]ll of these requirements, taken together, are designed to protect members of the general public without regard to the impact upon individual contractors.")

A monetary licensing limit is only part of Nevada's public policy scheme affecting contractors that is designed to protect the public. NRS 608.150 makes a general contractor liable for the unpaid wages and benefits of a subcontractor's employees. NRS 108.236 ranks laborers first, materialmen second, subcontractors third, and all other lien claimants fourth when distributing lien foreclosure proceeds. NRS 624.273(7) grants a priority to labor claims upon a contractor's licensing bond. NRS 338.1385(5) requires public bodies to award contracts to the "lowest responsive and responsible bidder." It is clear that Nevada places burdens on contractors because these burdens benefit and protect the public. Bad actors who harm the public are either prevented from entering the industry or identified and removed by Nevada's regulatory scheme.

## CONCLUSION

For the foregoing reasons, NRS 624.220(2) must be found constitutional.
Dated this May 6, 2018.
Pursuant to Local Rule 10(4) and NRS 239(B).030(4), I hereby affirm that this document does not contain a social security number of any person.

Christensen James \& Martin<br>By:_/s/Evan L. James, Esq.<br>Evan L. James, Esq.<br>Nevada Bar No. 7760<br>7440 W. Sahara Avenue<br>Las Vegas, NV 89117<br>Tel.: (702) 255-1718<br>Fax: (702) 255-0871<br>Attorneys for Amicus Curiae LMCC

## CERTIFICATE OF SERVICE

I hereby certify that on May 7, 2018, I electronically filed the foregoing with Amicus Brief with Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the following:

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PAUL GEORGESON, ESQ. and PHILIP MANNELY, ESQ for ASSOCIATED BUILDERS \& CONTRACTORS, INC., NEVADA CHAPTER ASSOCIATED GENDERAL CONTRACTORS, SOUTHERN NEVADA HOME BUILDERS ASSOCIATION, SOUTHERN NV CHAPTER OF NATIONAL ELECTRONIC CONTRACTORS ASSOC, SHEET METAL \& AIR CONDITIONING CONTRACTORS NATL ASSOC SO. NV, NEVADA CONTRACTORS ASSOCIATION, MECHANICAL CONTRACTORS ASSOCIATION OF LAS VEGAS, NEVADA SUBCONTRACTORS ASSOCIATION, NEVADA ASSOCIATION OF MECHANICAL CONTRACTORS

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Dated this May 7, 2018.
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By:_/s/Evan L. James Evan L. James, Esq.

## TABLE OF CONTENTS

V. ARGUMENT AND ANALYSIS
.8
Conclusions of Law in an Agency's Final Decision.
10
B. Standards for the Review of a Statute on Constitutional Grounds

1. Nevada Law Favors the Severability of Invalid Provisions of a Statute Over the Statute's Wholesale Eradication. ..... 10
2. Facial Vagueness Standards. ..... 11
3. Equal Protection Standards. ..... 12
A. The History of License Limits at the Nevada State Contractors Board. ..... 12
4. 1941-1951. The Creation of the Nevada State Contractors Board, Financial Responsibility, and the First Contract Limits Imposed on Licenses. ..... 13
5. 1951. The Nevada Legislature First Recognizes Contract License Limits. ..... 13
1. 1961-1967. The Legislature Enacts Laws Authorizing and Defining License Limits. . ..... 14
2. 1969. The Legislature Defines the Acts Constituting Cause for Discipline by the Board.16
1. 1970-Present. NRS 624.220(2) and NRS 624.3015(3) Remain Mostly Unchanged and Consistently Upheld. ..... 17
B. ALJ Pro Properly Invoked and Applied NRS 278.320(1) to Define "Subdivision Site" in NRS624.020(2).20
C. NRS 624.220(2) Is Not Unconstitutionally Vague. ..... 22
2. NRS 624.220(2) is Abundantly Clear to Persons of Ordinary Intelligence. ..... 22
3. NRS 624.220(2) Provides Specific Standards. ..... 23
D. NRS 624.220(2) Does Not Violate the Equal Protection Clause. ..... 24
4. License Limits Serve a Legitimate Government Interest. ..... 25
5. NRS 624.220(2) Has a Rational Basis Related to the Legitimate Government Interest of
Ensuring the Financial Responsibility of Contractors. ..... 25
VI. CONCLUSION AND RELIEF SOUGHT ..... 27
AFFIRMATION ..... 27
CERTIFICATE OF COMPLIANCE ..... 28
CERTIFICATE OF SERVICE. ..... 29

## TABLE OF AUTHORITIES

## Nevada Caselaw

Apeceche v. White Pine Co., 96 Nev. 723, 615 P. 2 d 975 (1980) ..... 8
Beavers v. Department of Motor Vehicles \& Pub. Safety, 109 Nev. 435, 851 P.2d 432 (1993) ..... 8
Cannon v. Taylor, 87 Nev. 285, 486 P.2d 493 (1971) ..... 20
Chanos v. Nev. Tax Comm'n, 124 Nev. 232, 181 P.3d 675 (2008) ..... 20, 21
Clark Co. School Dist. v. Local Gov't, 90 Nev. 442, 530 P.2d 114 (1974). ..... 9
Cnty. Of Clark v. City of Las Vegas, 92 Nev. 323, 550 P.2d 779 (1976). ..... 11
Dep't Human Resources v. UHS of The Colony, 103 Nev. 208, 735 P.2d 319 (1987) ..... 9
Dutchess Business Services v. Nevada Board of Pharmacy, 124 Nev. 701, 191 P.3d 1159 (2008) ..... 9
Elizando v. Hood Mach., Inc., 129 Nev. Adv. Rep. 84, 312 P.3d 479 (2013) ..... 10
Employment Sec. Dep't v. Verrati, 104 Nev. 302, 756 P.2d 1196 (1988) ..... 9
Flamingo Paradise Gaming, LLC v. Chanos, 125 Nev. 502, 217 P.3d 546 (2009) ..... $11,12,22,24$
Gilman v. Nevada State Bd. of Veterinary Medical Examiners, 120 Nev. 263, 89 P.3d 1000 (2004). .....  8
Gur-Kovic v. State Contractors Board, 95 Nev. 489, 596 P.2d 850 (1979) ..... $16,18,23,25$
Homewood Inv. Co. v. Moses, 96 Nev. 326, 608 P.2d 503 (1.980) ..... 18, 19
Homewood Inv. Co. v. Witt, 97 Nev. 378, 632 P.2d 1140 (1981) ..... 19
Langman v. Nevada Administrators, Inc., 114 Nev. 203, 955 P.2d 188 (1998) ..... 8
Nevada Comm'n on Ethics v. JMA/Lucchesi, 110 Nev. 1, 866 P.2d 297 (1994) ..... 9
Public Emples. Benefits Program v. Las Vegas Metro. Police Dep't, 124 Nev. 138, 179 P.3d 542 (2008)12
Robert E. v. Justice Court of Reno Township, 99 Nev. 443, 664 P.2d 957 (1983) ..... 20
Rogers v. Heller, 117 Nev. 169, 18 P.3d 1034 (2001) ..... 10
Rose v. First Fed. Sav. \& Loan Assn., 105 Nev. 454, 777 P.2d 1318 (1989) ..... 12
Sierra Pacific Power Co. v. Department of Taxation, 96 Nev. 295, 607 P.2d 1147 (1980) ..... 19
Sierra Pac. Power Co. v. State Dep't of Taxation, 130 Nev. Adv. Rep. 93, 338 P.3d 1244 (2014)10,11
Silvar v. Dist. Ct., 122 Nev. 289, 129 P. 3 d 682 (2006). ..... 11Southern Nev. Homebuilders v. Clark County, 121 Nev. 446, 117 P.3d 171 (2005)22
State v. State Engineer, 104 Nev. 709, 766 P.2d 263 (1988) ..... 9
State ex rel Tax Comm'n v. Saveway, 99 Nev. 626, 668 P.2d 291 (1983) ..... 9
State Farm v. All Electric, Inc., 99 Nev. 222, 660 P.2d 995 (1993) ..... 12
Westergard v. Barnes, 105 Nev. 830, 784 P.2d 944 (1989) ..... 9
Nevada Revised Statutes
NRS 0.020(1) ..... 10
NRS 233B. 135 ..... 6, 7
NRS 278.320(1) ..... $1,7,20,21$
NRS 360.247 ..... 21
NRS 622.400(1) ..... 3
NRS 624.024 ..... 19,20
NRS 624.220(2) ..... passim
NRS 624.260 ..... $15,18,25,26$
NRS 624.3013(5) ..... 2, 3
NRS 624.3015(3) ..... $.2,3,17,18,19,24$
NRS 624.740 ..... 14
Nevada Rules of Appellate Procedure
NRAP 28(e) ..... 28
Nevada Administrative Code
NAC 624.640(6) ..... 2
NAC 624.7251 ..... 3
Federal Caselaw
Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984) ..... 9, 10, 22
Miller v. French, 520 U.S. 327 (2000) ..... 12
Williams v. Taylor, 529 U.S. 420 (2000) ..... 20


## I. STATEMENT OF THE ISSUES

1. On a judicial review of a final decision of the Nevada State Contractors Board ("NSCB" or "Board"), may this reviewing court consider arguments against the "single construction site" phrase of NRS 624.220(2) when Administrative Law Judge Philip Pro ("ALJ Pro") expressly declined to apply that phrase in his analysis and decision? This question is answered in the negative in Section IV.A.1.
2. On judicial review of a final decision of the Board, should this reviewing court defer to ALJ Pro's interpretation of "subdivision site" in NRS 624.220(2) when the legislature has not expressly addressed the issue so long as ALJ Pro's interpretation is reasonable? This question is answered in the affirmative in Section V.B. pursuant to the standards expressed in Section IV.A.2.
3. Is the Legislature's statutory definition of a contractor license limit under NRS 624.220(2) as the "the maximum contract a licensed contractor may undertake on one or more construction contracts on a [. . .] subdivision site for a single client" impermissibly vague in all of its applications such as to render the entire subsection void? This question is answered in the negative in Section V.C. pursuant to the standards expressed in Section IV.B.2.
4. Does the Legislature's imposition of contractor license limits defined under NRS $624.220(2)$ as "the maximum contract a licensed contractor may undertake on one or more construction contracts on a [ . . .] subdivision site for a single client" have a rational basis related to a legitimate government interest? This question is answered in the affirmative in Section V.D. pursuant to the standards expressed in Section IV.B.3.

## II. STATEMENT OF THE CASE AND COURSE OF PROCEEDINGS

This is a judicial review of a final Board decision against Silverwing Development ("Silverwing") pursuant to the Administrative Procedure Act. The facts are not seriously disputed. Record, Transcript, 18:10-18. This review examines whether the Board's interpretation and application of NRS 624.220(2) defining a contractor's license limit as "the maximum contract a licensed contractor may undertake on one or more construction contracts on a . . . subdivision site for a single client" violates the Constitution. This review also examines whether ALJ Pro correctly relied upon and interpreted the definition of "subdivision" in NRS 278.320 (1) in constructing a reasonable definition of "subdivision site" in NRS 624.220(2).

## Record, Exhibit 1, pp. 1-13.

2. Silverwing filed and served an answer to the Board's complaint on August 24, 2017. Silverwing denied the charges on various grounds including constitutional grounds. Record, Exhibit 2, pp. 1-18.
3. ALJ Pro held a preliminary telephonic hearing on September 18, 2017 and ordered the parties to submit pre-hearing briefs relating to the constitutional challenges raised by Silverwing in its answer. The Board submitted its pre-hearing brief on September 22, 2017. Record, Exhibit 3. Silverwing served its reply brief on September 26, 2017. Record, Exhibit 5.
4. The hearing on the Board's complaint was held before ALJ Pro on September 28, 2017 at the Board's Reno office. Record, Transcript, p. 1. The exhibits attached to the Board's complaint and the exhibits attached to Silverwing's answer were admitted into evidence. Record, Transcript, 22:3-12. Silverwing also submitted recorded plat maps and a letter from the Legislative Counsel Bureau to Assemblyman Jim Wheeler, which was made part of the record but not part of the evidence. Record, Transcript, 20:21-21:21:6, 22:13-25:5. The Board introduced a PowerPoint slide presentation (which contained the subdivision plats), which were admitted into evidence. Record, Transcript, 21:1-7, Board Compliance Investigator Jeff Gore and Silverwing president and qualified individual J. Carter Witt III
gave sworn testimony and were subjected to direct and cross-examination from both sides, as well as questions from ALJ Pro. Record, Transcript, 70:14-166:2. At the conclusion of the hearing, ALJ Pro asked the parties to submit closing briefs. Record, Exhibit 9, Transcript, 167:3-12.
5. The Board submitted its closing brief on October 26, 2017. Record, Exhibit 10. Silverwing submitted its closing brief on November 9, 2017. Record, Exhibit 12. The Board submitted its reply to Silverwing's closing brief on November 16, 2017. Record, Exhibit 13.
6. On December 21, 2017, ALJ Pro issued a ten-page written decision. Record, Exhibit 14. Based on the written findings of fact adduced at the evidentiary hearing and the conclusions of law reached thereupon, ALJ Pro determined Silverwing violated NRS 624.3015(3) thirty (30) times for knowingly bidding to contract or entering into a contract with a contractor for work in excess of its limit and imposed a fine of $\$ 1,000.00$ for each violation, which is the minimum allowed by NAC 624.7251. Record, Exhibit 14, p. 9. ALJ also found Silverwing violated NRS 624.3015(3) three (3) times for knowingly bidding to contract or entering into a contract with a contractor for work beyond the scope of his license and imposed a $\$ 1,000.00$ fine for each violation. Record, Exhibit 14, pp. 6, 9. ALJ Pro also dismissed the charges under NRS 624.3013(5). Record, Exhibit 14, p. 9. ALJ Pro also ordered Silverwing to pay the sum of $\$ 28,739.00$ for the Board's attorney's fees and costs pursuant to NRS 622.400(1). Record, Exhibit 14, p. 10.

## III. STATEMENT OF FACTS

The following facts relevant ${ }^{1}$ to this judicial review were established at the evidentiary hearing before ALJ Pro on September 28, 2017. The facts are largely undisputed.

1. Silverwing is a licensed contractor in the State of Nevada, holding license number 44017, a Class B (General Building) license with an unlimited monetary limit. J. Carter Witt III ("Witt") is Silverwing's president and qualified individual. Record, Exhibit 1, pp. 16-17.
${ }^{1}$ The Board deems a fact "relevant" to this judicial review if it was used by ALJ Pro to reach his final decision. There was a great deal of evidence-and discussion- at the evidentiary hearing about whether the four Silverwing developments were "single construction sites" under NRS 624.220(2). The Board considers this evidence and discussion as irrelevant because ALJ Pro did not consider this discussion and based his final decision on his conclusion that the four Silverwing developments occurred within the boundaries of established subdivision sites.
2. Silverwing was the general contractor developing four residential projects known as the Fountainhouse at Victorian Square ("Fountainhouse"), the Bungalows at Sky Vista ("Sky Vista"), the Edgewater at Virginia Lake Condos ("Edgewater Condos"), and the Edgewater at Virginia Lake Apartments ("Edgewater Apartments"). Record, Exhibit 1, pp. 48-161 (Fountainhouse), pp. 162-267 (Sky Vista), pp. 268-317 (Edgewater Condos), pp. 318-457 (Edgewater Apartments).
3. The construction of the Fountainhouse development occurred within the geographic boundaries of the "Official Plat of Fountainhouse at Victorian Square a Condominium Subdivision" after the plat was recorded on November 16, 2015. Record, Exhibit 7, pp. 6-7, Transcript, 152:10-20. Witt signed the plat and certified as owner that he consented to the preparation and recordation of the plat and that the same was "executed in compliance with and subject to the provisions of N.R.S. Chapters 116, 117, 278, 278A and Title 17 of the City of Sparks." Record, Exhibit 7, p. 6. The "Subdivision Summary" for the Fountainhouse Project stated that the plat divided the land, or at a minimum, proposed to divide the land into 220 "Total Units." Record, Exhibit 8, p. 13.
4. The construction of the Sky Vista development occurred within the geographic boundaries of the "Official Plat of Bungalows at Sky Vista $\sim$ Phase 1 a Condominium Subdivision" after the plat was recorded on November 26, 2013. Record, Exhibit 7, pp. 4-5, Transcript, 152:21-24. Witt signed the plat and certified as the owner that the plat was "executed in compliance with and subject to the provisions of N.R.S. Chapter 116 and 278." Record, Exhibit 7, p. 4. The "Subdivision Summary" for the Sky Vista Project stated that the plat divided the land or, at a minimum, proposed to divide the land into 188 "Total Lots." Record, Exhibit 7, p. 5.
5. The construction of the Edgewater Condos and Edgewater Apartments occurred within the geographic boundaries of the "Official Plat of Edgewater at Virginia Lake a Condominium Subdivision" after the plat was recorded on September 5, 2014. Record, Exhibit 7, pp. 1-3, Transcript, 152:25-153:6. Witt signed the plat and certified as the owner that the plat was "executed in compliance with and subject to the provisions of N.R.S. Chapter 116 and 278." Record, Exhibit 7, p. 1. The plat divided the land or, at a minimum, proposed to divide the land into 336 "Lots (Condo Units)." Record, Exhibit 7, p. 2.
6. Silverwing hired various subcontractors with a wide range of monetary limits to work on the four developments. Record, Exhibit 1, pp. 48-161 (Fountainhouse), pp. 162-267 (Sky Vista), pp. 268-317 (Edgewater Condos), pp. 318-457 (Edgewater Apartments).
7. In response to an anonymous complaint alleging Zephyr Plumbing had bid and contracted for amounts in excess of its license limit, Board Compliance Investigator Jeff Gore opened an investigation into the four developments where Silverwing was the general contractor. Record, Exhibit 1, pp. 18-27, Transcript, 71:10-73:7.
8. Thirty subcontracts over the four Silverwing developments were in excess of the subcontractors' license monetary limits either standing alone or through aggregation of multiple subcontracts with Silverwing on the same subdivision site. Record, Exhibit 1, pp. 48-402.
9. Some subcontracts with Silverwing were for amounts in excess of the subcontractors' license limit on the face of the base subcontract. For example, Silverwing hired Preferred Window Products to work on the Fountainhouse development under a single subcontract for $\$ 299,700.00$. Preferred Window Products had a monetary license limit of $\$ 225,000.00$. Record, Exhibit 1, pp. 48-57, Transcript, 85:13-92:14.
10. Other Silverwing subcontracts did not exceed license limits standing alone, but when multiple subcontracts were compiled for each development as a whole and aggregated, the subcontracts exceeded the subcontractors' monetary license limits. For example, Silverwing hired A.B.C. Builders to work on the Fountainhouse development between January and August of 2016 under five separate subcontracts. Record, Exhibit 1, pp. 58-94, Transcript, 103:8-14. A.B.C. Builders' license had a monetary limit of $\$ 150,000.00$. Record, Exhibit 1, p. 58, Transcript, 96:6-7. Four of the separate subcontracts were for $\$ 147,840.00$ each and a fifth was for $\$ 79,357.00$. Record, Exhibit 1, pp. 58-94, Transcript, 103:8-14. Aggregating the subcontracts to a sum of $\$ 670,717.00$, A.B.C. Builders had exceeded its monetary license limit by \$520,717.00. Record, Transcript, 103:5-7.
11. Silverwing also hired R.D.R. Production Builders to perform framing work on the Fountainhouse, Edgewater Condos, and Edgewater Apartments developments. Record, Exhibit 1, pp. 139-150, 296-304, 372-382, Transcript, 104:18-107:7. The framing work required a C-3 specialty
license, but R.D.R. Production Builders only had a B-2 general building license. Record, Transcript, 104:18-107:7.

## IV. STANDARDS OF REVIEW

There are two standards of review germane to this judicial review of ALJ Pro's final decision. The first standard explains a district court's legislatively limited powers to review the final decision of an administrative agency. The second standard addresses how a reviewing court must analyze a claim of facial unconstitutionality of a statute under the due process and equal protection clauses of the Constitution. Each standard is discussed in this Section.

## A. Standards for the Review of an Administrative Agency's Final Decision.

## 1. NRS 233 B. 135 Strictly Governs and Limits this Court's Reviewing Authority.

NRS 233B. 135 strictly governs how a district court must review the final decision of an administrative agency:

- The review must be conducted by the court without a jury. NRS 233B.135(1)(a).
- Except in rare cases concerning alleged irregularities in the procedure not shown on the record, the review must be confined to the administrative record. NRS 233B.135(1)(b).
- The reviewing court must deem the final decision of the agency reasonable and lawful until reversed or set aside in whole or in part by the court. NRS 233B.135(2).
- The burden of proof is on the party attacking the decision to show that it is invalid for one or more reasons set forth in subsection 3 of NRS 233B.135. NRS 233B.135(2).
- The reviewing court may not substitute its judgment for that of the agency as to the weight of evidence on a question of fact. NRS 233B.135(3).
- Finally, the reviewing court may remand or affirm the decision or set it aside in whole or in part only if substantial rights of the petitioner have been prejudiced because the final decision is:
(1) In violation of constitutional or statutory provisions;
(2) In excess of the statutory authority of the agency;
(3) Made upon unlawful procedure;
(4) Affected by other error of law;
(5) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
(6) Arbitrary or capricious or characterized by abuse of discretion.

NRS 233B. $135(3)$ (a)-(f).
In this judicial review, Silverwing has challenged ALJ Pro's final decision on four grounds, but it has failed to connect its challenges to the limited grounds upon which this Court may review a final decision. The Board offers the necessary connections to trigger this Court's authority.

First, Silverwing asserts NRS 624.220(2) is unconstitutionally vague both facially and as ALJ Pro applied the statute to Silverwing. Petitioner's Brief, p. 8. This challenge appears to fall under NRS 233B.135(3)(a) (in violation of constitutional provisions).

Second, Silverwing asserts ALJ Pro committed legal error when he utilized NRS 278.320(1) to define the word "subdivision" when interpreting NRS 624.220(2). Petitioner's Brief, p. 12. This challenge appears to fall under NRS 233B.135(3)(d) (affected by other error of law).

Third, Silverwing asserts NRS $624.220(2)$ is unconstitutional because it violates Silverwing's right to equal protection under the law. Petitioner's Brief, p. 14. This challenge appears to fall under NRS 233B.135(3)(a) (in violation of constitutional provisions).

Fourth, Silverwing asserts the Board's interpretation of the phrase "single construction site" in NRS 624.220(2) in its unrelated Tesla Opinion is improper rule-making, possibly in violation of the Separation of Powers doctrine of the Constitution. Petitioner's Brief, p. 17. While this challenge appears to fall under NRS 233B.135(3)(a) (in violation of constitutional provisions), Silverwing has failed to establish the necessary predicate that the Board's Tesla Opinion prejudiced its substantial rights in this matter and thus has no basis for its argument in this forum.

As stated above, this Court has authority under NRS 233B.135(3)(a) to remand, affirm or set aside the decision if the decision is in violation of constitutional provisions, but "only if substantial rights of the petitioner have been prejudiced" as a result. NRS 233B.135(a). If there is a constitutional problem with a portion of a statute expressly not relied upon by ALJ Pro in his final decision, then this Court must not address it in this judicial review because that portion of the statute did not prejudice Silverwing's substantial rights. NRS 233B. 135.

ALJ Pro only relied upon the "subdivision site" phrase of NRS 624.220(2) and expressly excluded consideration of Silverwing's challenges to the "single construction site" phrase:

Finding that the Silverwing Projects were single "subdivision sites" subject to the provisions of NRS 624.220(2), the undersigned concludes it is unnecessary to consider Silverwing's constitutional challenge to the term "single construction site." The Board already has addressed the issue of a recognized ambiguity in that phrase in its "Tesla Advisory Opinion" issued December 14, 2015. Although the Board's approach to harmonizing the meaning of the phrase "single construction site" with the Legislature's intent for creating license limits is instructive, the issues presented in the Tesla matter are not the issues presented here.
Record, Exhibit 14, p. 8. Silverwing spends at least three pages of its Brief addressing the meaning of "single construction site" and the Board's Tesla Opinion. These arguments are beyond the Board's final decision and have no place in this judicial review and this Court therefore should disregard them. Beavers v. Department of Motor Vehicles \& Pub. Safety, 109 Nev. 435, 438, 851 P.2d 432, 434 (1993). Thus, unless this Court directs otherwise, the Board will not address the "single construction site" phrase of NRS 624.220(2) and its Tesla Opinion interpreting that phrase in this judicial review. ${ }^{2}$

## 2. Nevada Cases Explaining the Court's Role in Reviewing Findings of Fact and Conclusions of Law in an Agency's Final Decision.

The standard of review for administrative decisions is well settled. "Neither this court [the Supreme Court] nor the district court may substitute its judgment or evaluation of the record developed at the agency level for that of the Board." Gilman v. Nevada State Bd. of Veterinary Medical Examiners, 120 Nev. 263, 267, 89 P.3d 1000, 1003 (2004); Langman v. Nevada Administrators, Inc., 114 Nev. 203, 210, 955 P.2d 188, 192 (1998). The court must affirm the decision of the administrative agency if that decision is supported by substantial evidence in the record. Gilman, 120 Nev . at 268,89 P.3d at 1003 ; SIIS v. Swinney, 103 Nev. 17, 20, 731 P.2d 359, 361 (1987); Apeceche v. White Pine Co., 96 Nev. 723, 725,615 P.2d 975, 977 (1980). When the factual findings of the administrative agency are supported by the evidence, they are conclusive, and the district court is limited to a determination of whether the agency

[^5]acted arbitrarily or capriciously. Employment Sec. Dep't v. Verrati, 104 Nev. 302, 304, 756 P.2d 1196, 1197 (1988).

A court reviewing a final decision of an administrative agency must adhere to the Chevron Doctrine when confronted with a potentially ambiguous statute. In 1984, in Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984), the Supreme Court handed down a landmark decision in administrative law jurisprudence. The Chevron Court held that when a court reviews an administrative agency's construction of a statute it is charged to administer, it is confronted with two questions. Chevron at 842 . First and always, is the question whether the legislature has directly spoken to the precise question at issue. Id. If yes, that is the end of the inquiry for the court and the agency, and the court must give effect to the unambiguously expressed intent of the legislature. Id. at 842-43. Second, if the court determines the legislature has not directly addressed the precise question at issue, the court may not impose its own construction of the statute, as would be necessary in the absence of an administrative interpretation. Id. at 843. Rather, the court must inquire if the agency's position is based on a permissible construction of the statute. Id. In other words, a court may not substitute its own construction of an ambiguous statutory provision for a reasonable interpretation made by the agency. Id. at 844 .

The Chevron Doctrine is canon in Nevada. A reviewing court must "defer to an agency's interpretation of its governing statutes or regulations if the interpretation is within the language of the statute." Dutchess Business Services v. Nevada Board of Pharmacy, 124 Nev. 701, 709, 191 P.3d 1159, 1165 (2008). The interpretation by an administrative agency of the laws it is directed to enforce shall be accorded great deference by a reviewing court. Nevada Comm'n on Ethics v. JMA/Lucchesi, 110 Nev .1 , 866 P. 2 d 297 (1994); State v. State Engineer, 104 Nev. 709, 766 P. 2 d 263 (1988); Dep't Human Resources v. UHS of The Colony, 103 Nev. 208, 735 P.2d 319 (1987); Sierra Pacific Power v. Dep't of Taxation, 96 Nev. 295, 607 P.2d 1147 (1980); State ex rel Tax Comm'n v. Saveway, 99 Nev. 626, 668 P.2d 291 (1983); Clark Co. School Dist. v. Local Gov't, 90 Nev. 442, 530 P.2d 114 (1974). An administrative agency's interpretation of its laws should not be lightly disturbed by a reviewing court. Westergard v. Barnes, 105 Nev. 830, 834, 784 P. 2 d 944 (1989).

Silverwing ignored the Chevron Doctrine when it asserted "this Court must decide pure legal questions without deference to an agency determination." Petitioner's Brief, p. 7. The Elizondo v. Hood Mach., Inc. case cited by Silverwing in support of its assertion of carte blanche interpretative powers of a reviewing court involved an agency's failure to follow "plain and unambiguous law." Elizando v. Hood Mach., Inc., 129 Nev. Ady. Rep. 84 p. 8, 312 P.3d 479, 482 (2013). There, the Court followed the Chevron Doctrine by concluding the legislature had spoken to the precise question and thus ended the inquiry. Id. Had Elizando involved an agency's interpretation of a portion of a statute the legislature had not directly addressed, the Court surely would have afforded deference to the agency's interpretation and would have restrained itself from applying its own interpretation. Chevron at 843.

Where conflicting inferences may be drawn from the evidence presented at an administrative hearing, the administrative body's choice between two fairly opposing views may not be replaced by a reviewing court. Colorado State Bd. of Nursing v. Lang, 842 P.2d 1383, 1387 (Colo. App. 1992). That a court may find an opposite conclusion to be reasonable and might have ruled differently will not justify a reversal of the administrative body's determination. Abrahamson v. Illinois Dep't of Pro. Reg., 606 N.E.2d 1111, 1117 (Ill. 1992).

## B. Standards for the Review of a Statute on Constitutional Grounds.

1. Nevada Law Favors the Severability of Invalid Provisions of a Statute Over the Statute's Wholesale Eradication.

Silverwing asserts the exact opposite of Nevada law when it suggests this reviewing Court must expunge all of NRS 624.220(2) if it finds any part of it violates the Constitution. Petitioner's Brief, pp. 6-7. This Court has a duty to preserve the statute if feasible. NRS $0.020(1)$ provides:

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

NRS $0.020(1)$. The severability doctrine obligates the judiciary to "uphold the constitutionality" of" legislative enactments where it is possible to strike only the unconstitutional provisions." Sierra Pac.

Power Co. v. State Dep't of Taxation, 130 Nev. Adv. Rep. 93, p. 6, 338 P.3d 1244, 1247 (2014) quoting Rogers v. Heller, 117 Nev. 169, 177, 18 P.3d 1034, 1039 (2001). Before offending language can be
severed from a statute, a court first must determine whether the remainder of the statute, standing alone, can be given legal effect, and whether preserving the remaining portion of the statute accords with legislative intent. Id. citing Cnty. Of Clark v. City of Las Vegas, 92 Nev. 323, 336-37, 550 P.2d 779, 78889 (1976).

The severability doctrine is critical to this judicial review if the Court determines there is a constitutional problem with the "subdivision site" language of NRS $624.220(2)$ defining license limits. In such a circumstance, before the Court may obliterate license limits in their entirety and cast the construction industry into chaos, it must determine if the remainder of NRS 624.220(2) standing alone can be given legal effect in accordance with legislative intent. Silverwing's alarmist statement that the proverbial baby must be thrown out with the bath water contradicts Nevada law.

## 2. Facial Vagueness Standards.

Nevada has two approaches to facial vagueness challenges. Flamingo Paradise Gaming, LLC v. Chanos, 125 Nev. $502,512,217$ P.3d 546,553 (2009). The first approach arises under a facial challenge to a civil statute. Id. There, the challenger must show the statute is impermissibly vague in all of its applications. Id. (citations omitted). The second approach arises when the statute involves criminal penalties or constitutionally protected rights. Id. There, the statute will fail if the "vagueness permeates the text." Id. (citations omitted). Both standards utilize a two-factor test to determine whether the statute: (1) fails to provide sufficient notice to enable persons of ordinary intelligence to understand what conduct is prohibited, and (2) lacks specific standards, thereby encouraging, authorizing, or even failing to prevent arbitrary and discriminatory enforcement. Id. at 512-13, 217 P.3d at 553-54 citing Silvar v. Dist. Ct., 122 Nev. 289, 293, 129 P.3d 682, 685 (2006).

Administrative statutes, even statutes imposing fines as a form of discipline, are considered civil statutes for purposes of facial vagueness challenges. Flamingo Paradise at 518, 217 P.3d at 557 n.12; Handyman Connection of Sacramento, Inc. v. Sands, 123 Cal. App. $4^{\text {th }} 867,896-97$ (Cal. App. 2004) (holding an occupational licensee is not similarly situated to a criminal defendant who faces a potential loss of life or liberty).

In this case, ALJ Pro only fined Silverwing; he did not revoke, suspend, or restrict its license. Handyman Connection at 880 (holding where the only sanction imposed is a fine - not revocation,
suspension, or restriction of the petitioner's license - no fundamental vested right is implicated). Because Silverwing has not suffered the violation of a fundamental vested right, to prevail on its facial constitutional challenge of NRS 624.220(2), Silverwing must demonstrate that the statute is impermissibly vague in all of its applications.

## 3. Equal Protection Standards.

The Equal Protection Clause of the Constitution allows different classifications of treatment under a law, but the classifications must be reasonable under different levels of scrutiny. Flamingo Paradise at 520,217 P.3d at 558-59. If the proscribed activity does not involve a fundamental right or a suspect class, the statute will be upheld if there is a rational basis related to a legitimate government interest for treating the members of the class differently. Id. at 520,217 P.3d at 559 . When conducting a rational basis review, a reviewing court is not limited to the Legislature's reasons for enacting a statute. Id. If any rational basis exists, then a statute does not violate equal protection. Id. Under a rational basis test, classifications must "apply uniformly to all who are similarly situated, and the distinctions which separate those who are included within a classification from those who are not must be reasonable, not arbitrary." Id. at 521, 217 P.3d at 559 quoting State Farm v. All Electric, Inc., 99 Nev. 222, 225, 660 P.2d 995, 997 (1993). The classifications must also "bear a rational relationship to the legislative purpose sought to be effected." Id. quoting State Farm at 225, 660 P.2d at 997.

## V. ARGUMENT AND ANALYSIS

## A. The History of License Limits at the Nevada State Contractors Board.

The Board has conducted exhaustive research in the preparation of this Brief to inform the Court of the historical background and reasons for contractor license limits in Nevada. Historical context is paramount for understanding the purpose and evolution of the $50+$ year-old statute that is under attack in this judicial review, In statutory interpretation, the legislative will is the all-important and controlling factor. Miller v. French, 520 U.S. 327, 340-41 (2000). The court's duty is to interpret statutes consistent with the intent of the legislature. Rose v. First Fed. Sav. \& Loan Assn., 105 Nev. 454, 457, 777 P. 2 d 1318,1319 (1989). When a statute is ambiguous, courts often turn to the statute's historical background and spirit, reason, and public policy to determine the legislature's intent. Public Emplés. Benefits Program v. Las Vegas Metro. Police Dep't, 124 Nev. 138, 147, 179 P.3d 542, 547 (2008).

1. 1941-1951. The Creation of the Nevada State Contractors Board, Financial

## Responsibility, and the First Contract Limits Imposed on Licenses.

Contractor license limitations based on financial responsibility trace back almost to the creation of the Contractors Board in 1941. At the Board's first meeting on May 19, 1941 at the Golden Hotel in Reno, the founding members adopted a set of rules and regulations for licensure. Minutes of the Organization Meeting of the State Contractors Board, p. 4 (May 19, 1941) (attached as Exhibit A). Existing contractors had to provide three references of individuals who would certify to their character and financial responsibility. Exhibit A, p. 5. New applicants had to provide a statement of their financial condition and three references. Exhibit A, p. 6.

For the first four years of the Board's existence, establishing financial responsibility was an all-or-nothing proposition. An applicant either met a financial responsibility threshold and received a license without any contract limits or the Board denied the license. State Contractors Board Meeting Minutes, p. 2 (April 21, 1945) (attached as Exhibit B). For example, Leroy Grow received an unlimited painting license after he presented letters of credit from local suppliers and after officers of the Ely National Bank supported him and stated they would "back him on good contracts to the limit of $\$ 300$ or $\$ 400$. ." Exhibit B, p. 2.

The first licenses with contract amount limitations were granted to Harold McGinnis and Lee Construction Company on July 21, 1945. State Contractors Board Meeting Minutes, pp. 2-3 (July 21, 1945) (attached as Exhibit C). The Board broke from its "all-or-nothing" approach to financial responsibility and granted Mr. McGinnis a license for jobs not to exceed " $\$ 1,000$ for any one job." Exhibit C, p. 3. It also granted Lee Construction "a license with a $\$ 15,000$ limitation on any one contract." Exhibit C, p. 4.
2. 1951. The Nevada Legislature First Recognizes Contract License Limits.

The Board's practice of setting license limits based on financial responsibility continued through the 1940 s and 1950s under its regulatory rules, but without a statute expressly governing the practice. The Legislature, however, was aware of the Board's activity, and agreed with it. In 1951, the Legislature added the following language to the joint venture statute (in italics):

It is unlawful for any two or more licensees, whose licenses have been limited by the board to contracts not exceeding certain monetary sums and each of whom has been issued a
license to engage separately in the business or to act separately in the capacity of a contractor within this state, to jointly submit a bid or otherwise act in the capacity of a contractor within this state without first having secured an additional license for acting in the capacity of such a joint venture or combination in accordance with the provisions of this act as provided for an individual, copartnership or corporation.

Senate Bill 53 sec. 4, 1951 Legislative Session (1951) (enacted) (attached as Exhibit E). This law exists today as NRS 624.740. The new law addressing joint venture agreements expressly recognized that the Board was imposing limits on licenses based on "contracts not exceeding certain monetary sums." Exhibit E, p. 1.

## 3. 1961-1967. The Legislature Enacts Laws Authorizing and Defining License Limits.

Beginning in the 1960s, groups of contractors started asking the Board for stricter enforcement of the license limits it imposed. The Minutes of a Board Meeting on January 27, 1961 reflect:

Rodney Boudwin of Walker Boudwin Construction Company, Al Solari, and L.J. Savage appeared before the board and the contractors indicated they were speaking as individual contractors but reflected the feeling of a substantial group of contractors in the Reno area. Among other things, the contractors asked for more strict enforcement of limits placed on licenses; asked the board to consider placing limits on all licensees up to a million or two million dollars; and asked the board to request financial statements and a list of completed projects from all licensees at time of renewal. Chairman Linnecke described the purpose of the law and the operation of the board in great detail. The contractors stated they would be willing to pay a higher license fee to permit the board to have additional funds in order to better enforce the law and to keep the contractors and the public better informed on the activities of the board. Attorney Cooke advised the contractors that his interpretation of the law indicated that the board could enforce limits and the policy of the board would be to enforce financial limits placed on a licensee. Chairman Linnecke indicated that the suggestions made by the contractors would be taken under advisement and given further study. After the contractors were excused from the meeting, the Secretary was instructed to obtain information from other states to determine the methods used to establish limits on licenses.
State Contractors Board Meeting Minutes, pp. 3-4 (January 27, 1961) (attached as Exhibit F). The requests from the construction industry itself for stricter enforcement of license limits prompted the legislative action that followed over the next decade.

In 1963 , the Legislature codified the Board's longstanding practice of imposing monetary limits on licenses when it enacted Senate Bill No. 67, adding the following language to NRS 624.220:

The board may limit the field and scope of the operations of a licensed contractor by establishing a monetary limit on a contractor's license, and such limit shall be the maximum contract a licensed contractor shall undertake under a specific contract. The board may take such other action designed to limit the field and scope of the operations
of a contractor as may be necessary to protect the health, safety and general welfare of the public.
Senate Bill 67 sec. 6, 1963 Legislative Session (1963) (enacted) (attached as Exhibit G). By using the word "may" in the first phrase, the Legislature delegated the decision of whether limits should be imposed on the Board. Exhibit G, p. 2. By using the word "shall" twice in the second phrase, the Legislature defined a monetary limit established by the Board as "the maximum contract a licensed contractor shall undertake under a specific contract." Exhibit G, p. 2. The use of the words "other such action" in the second sentence indicated that the purpose of imposing license limits was "to protect the health, safety and general welfare of the public." Exhibit G, p. 2.

Four years later, in the 1967 Legislative Session, Senate Bill 457 added the additional "single construction site or subdivision site for a single client" language to NRS 624.220(2). This added language is the focus of this judicial review.

> The board may limit the field and scope of the operations of a licensed contractor by establishing a monetary limit on a contractor's license, and such limit shall be the maximum contract a licensed contractor shall undertake under a specific contract [.] on a single construction site or subdivision site for a single client. The board may take such other action designed to limit the field and scope of the operations of a contractor as may be necessary to protect the health, safety and general welfare of the public. The limit, if any, shall be determined after consideration of the factors set forth in subsection 1 of NRS 624.260 .

Senate Bill 457 sec. 2, 1967 Legislative Session (1967) (enacted) (attached as Exhibit H, p. 2).
The Legislature, by ordering the Board when setting the limit to consider "the factors set forth in subsection 1 of NRS 624.260," invoked the public policy reasons for the Board's licensing activities:

The board shall require an applicant to show such a degree of experience, financial responsibility and such general knowledge of the building, safety, health and lien laws of the State of Nevada and the rudimentary principles of the contracting business as the board shall deem necessary for the safety and protection of the public.
Exhibit H, p. 2. The Legislature's directive that the Board consider the contractor's experience, financial responsibility and knowledge when determining an appropriate license limit expressly tied the purpose of the license limits to the "safety and protection of the public." Exhibit H, p. 2. The trend throughout the 1960s reflects greater Legislative control over the Contractors Board and increased clarity in tying Board actions to its principal purpose of protecting the public.

The reason for the added "single construction site or subdivision site for a single client" language to the definition of a contractor's license limit is unclear in the 1967 Legislative record, but its profound effect became evident later. The additional language closed a gigantic loophole in the 1963 statute that allowed contractors with limited licenses to split their work on a single construction site or subdivision site into multiple contracts, each one under the contractor's license limit. Before 1967, a subcontractor desiring to work on a ten-story hotel could enter into ten separate construction contracts with the general contractor for each floor of the building. A contractor wishing to build 40 houses in a single subdivision could contract with the developer by house instead of for the entire subdivision work. Prior to the 1967 amendment, the entire purpose of limiting licenses based on financial responsibility in the public interest was prone to subversion and evasion.

The subversion described above was illustrated in the 1979 case of Gur-Kovic v. State Contractors Board. There, the Nevada Supreme Court affirmed the Board's decision to reprimand a pool contractor with a $\$ 75,000.00$ license limit for splitting its bid for the construction of a pool at a park in Reno to the same general contractor into two: one bid for $\$ 74,000.00$ for the labor and another bid for $\$ 48,080.00$ for the equipment. Gur-Kovic v. State Contractors Board, 95 Nev. 489, 490, 596 P.2d 850, 850-51 (1979). The Board charged the pool contractor with a violating NRS 624.3015 for contracting in excess of its license limit. Id. at 490, 596 P.2d at 851 . The Court reviewed the record and held the Board's decision was "proper." Id. at 491, 596 P.2d at 851 . In so finding, the Court necessarily determined the Board did not act "arbitrarily, capriciously, or contrary to the law" when it reprimanded the pool contractor for contracting outside its limit. Id.

If the pool contractor had split its contracts prior to the 1967 change to NRS 624.220, there would have been no violation of the law. The pool contractor violated the law because it entered into two contracts for the same client on the same construction site which, in the aggregate, exceeded its license limit. NRS 220(2); Gur-Kovic at 490, 596 P.2d at 850-51. The loophole that the 1967 amendment closed in NRS 624.220(2) subjected the pool contractor's evasive contracting activity to discipline.
4. 1969. The Legislature Defines the Acts Constituting Cause for Discipline by the Board.

In the 1969 Legislative Session, the legislature enacted Senate Bill 5. Senate Bill 5, 1969 Legislative Session (1969) (enacted) (attached as Exhibit I). Senate Bill 5, among other things, defined
in detail the types of acts that constituted cause for the discipline of contractors by the Board, including, in Section 11, " $k$ J]nowingly entering into a contract with a contractor while such contractor is not licensed, or entering into a contract with a contractor for work in excess of his limit or beyond the scope of his license." Exhibit I, p. 5. Section 11 of Senate Bill 5 is NRS 624.3015(3) today and is the same statute Silverwing was charged with and disciplined for violating in this case. Exhibit I, pp. 4-5.

During the public hearing before the Senate Judiciary Committee on Senate Bill 5, there was a lively and detailed discussion on the purpose of license limits. Exhibit I, pp. 12-14. The discussion started after a contractor testified in opposition to license limits. Exhibit I, pp. 12-13. In response, Senator Dodge stated on the record:

The Contractor's licensing law was created in Nevada to provide public protection. There must also be protection for the contractors, large or small. The contractors turned to the legislature for rules to use as a guide. They did this because they were interested in public protection as well as for their own protection. I will defend any reaction to the statement that the Board runs a closed shop. It is a basic law and the Board is the administrator of the law.

Exhibit I, p. 13. Robert Stoker, the Executive Director of the Board, also stated:
The dollar limit is placed on their financial status as well as their ability. It is placed there to protect the public as well as the contractor. They all have to meet responsible financial requirements and may not be qualified to handle a large contracting job. They would go bankrupt if we let them accept a contract they couldn't handle and the public would be left holding the bag. The financial limit can be increased as the contractor proves himself.

Exhibit I, p. 13. Thomas Cook, attorney for the Board, also stated:
I certainly defend the law. It is one of the finest of its kind in the United States. Nevada was the first State to adopt a licensing law regulating acts of the contractors to protect the public. It is to protect the public and to protect the Board of Contractors as well as the contractor. The dollar limit of licensing is unique. Other States regard it as model legislation. The Board has contracted to act on evidence as set forth in the law. Rather than risk a challenge they come to the legislature to prepare the laws for them. By limiting the Contractor it keeps many of them from getting into financial problems.

Exhibit I, p. 14.
5. 1970-Present. NRS 624.220(2) and NRS 624.3015(3) Remain Mostly Unchanged and

Consistently Upheld.
The license limit statute, NRS 624.220(2) and the corresponding disciplinary statute ALJ Pro disciplined Silverwing for violating, NRS 624.3015(3), have remained relatively unchanged since 1969.

The minor changes do not merit discussion in this brief. The modern version of NRS 624.220(2) reads below. The minor changes to NRS 624.220(2) since 1967 are noted in strikeouts and italics:

The $b B$ oard may shall limit the field and scope of the operations of a licensed contractor by establishing a monetary limit on a contractor's license, and such the limit shall must be the maximum contract a licensed contractor shall may undertake under a on one or more specifie construction contracts on a single construction site or subdivision site for a single client. The $b B$ oard may take such any other action designed to limit the field and scope of the operations of a contractor as may be necessary to protect the health, safety and general welfare of the public. The limit, if any, shall must be determined after consideration of the factors set forth in subsection 1 of NRS 624.260 to 624.265 , inclusive.

Compare SB 457 (1967) and NRS 624.220(2) (modern). The minor changes to NRS 624.3015(3) since 1969 are noted in strikeouts and italics:

The following acts, among others, constitute cause for disciplinary action under NRS 624.300:
3. Knowingly bidding to contract or entering into a contract with a contractor white sueh eontractor is not licensed, or entering into a contract with eontractor for work in excess of his limit or beyond the scope of his license.

Compare SB 5 (1969) and NRS $624.3015(3)$ (modern).
Since 1969, the Nevada Supreme Court has looked at three cases involving contractor license limits. On all three occasions, the Court recognized the necessity of the Board's power to place monetary limits on contractor licenses. The first case was Gur-Kovic discussed supra.

The second case was Homewood Inv. Co. v. Moses. There, the Nevada Supreme Court affirmed a judgment against an individual who agreed to personally indemnify a construction company in order for the company to receive an unlimited license from the Board. Homewood Inv. Co. v. Moses, 96 Nev . 326, 330, 608 P.2d 503, 506 (1980). Homewood is an excellent example of the Board's recognition of the public policy behind license limits and of the Board's power to interpret its statutory powers.

In Homewood, a contractor applied for an unlimited contractors license because it wished to build a condominium project. Id. at $328,608 \mathrm{P} .2 \mathrm{~d}$ at 505 . The Board was only willing to issue a license with a $\$ 100,000.00$ limit. As an accommodation, however, the Board offered to grant the unlimited license if two individuals agreed to personally indemnify the contractor. Id. An indemnification agreement was submitted and the Board approved the unlimited license. Id. at $328-29,608$ P. 2 d at 505.

During construction, the contractor ordered a substantial amount of building materials on credit.
Id. Even though the contractor's account became delinquent, the supplier continued to extend credit in reliance on the indemnification agreement. Id. The delinquency continued, the supplier sued the contractor and individual indemnitors, and the supplier obtained a judgment against them. Id.

On appeal, one of the indemnitors asserted the Board acted in excess of its statutory authority when it required the indemnification agreement as a condition for the unlimited license. Id. The aggrieved indemnitor complained there was nothing in NRS 624.220 authorizing the Board to require indemnification agreements. Id.

The Court rejected the indemnitor's argument because the Board's action tended to "promote the statutory policy of protecting the public welfare and is consistent with a reasonable interpretation of its statutory powers." Id. at $330,608 \mathrm{P} .2 \mathrm{~d}$ at 506 . The Court noted no statutory proscription against accepting indemnification agreements when considering license limits. Id. The Court also noted that the Board had accepted indemnification agreements and other forms of security for years without objection from the legislature. Id. The Court thus held the legislature's acquiescence was "an indication that the Board's interpretation of its authority is consistent with legislative intent." Id., citing Sierra Pacific Power Co. v. Department of Taxation, 96 Nev. 295, 297, 607 P.2d 1147, 1148-49 (1980). The Court's holding in Homewood recognized the well-established principle that great deference should be afforded to an administrative body's regulatory activity when it is within the language of the statute.

The third case was Homewood Inv. Co. v. Witt, which involved the same contractor, same indemnitors, same indemnification agreement, but different creditors. Homewood Inv. Co. v. Witt, 97 Nev. $378,380,632$ P.2d 1140, 1142 (1981). The indemnitor again challenged the Board's authority to require the indemnification agreement and the Court again held the "Board has the power to require indemnification agreements as a condition precedent to the issuance of an unlimited contractor's license." Id. at $381,632 \mathrm{P} .2 \mathrm{~d}$ at 1142 .

In 2003, the Legislature defined the term "knowingly" used in NRS 624.3015(3) and elsewhere in Chapter 624 in 2003 . NRS 624.024 provides:
"Knowingly" imports a knowledge that the facts exist which constitute the act or omission and does not require knowledge of the prohibition against the act or omission. Knowledge of any particular fact may be inferred from the knowledge of such other facts as should put an ordinarily prudent person upon inquiry.

NRS 624.024. The enactment of this definition is yet another example of the Legislature exercising its authority to instruct the Board's administration of NRS Chapter 624. The "knowingly" definition put contractors on notice that they need only have knowledge of their actions and not the prohibition against them to be found in violation of certain provisions of NRS Chapter 624.

## B. ALJ Pro Properly Invoked and Applied NRS 278.320(1) to Define "Subdivision Site" in NRS 624.020(2).

The Legislature did not define "subdivision site" when it defined a contractor license limit as "the maximum contract a licensed contractor may undertake on one or more construction contracts on a... subdivision site for a single client" in NRS 624.220(2). There also is no definition of "subdivision" in the regulations (Nevada Administrative Code) for contractors. The lack of a handy definition required ALJ Pro to look elsewhere.

Judges often are confronted with statutes containing words and phrases undefined by the Legislature at the time of enactment. It is ultimately a court's province and duty to construe laws enacted by the legislature. Brown v. Flowe, 349 N.C. 520, 523, 507 S.E.2d 894, 896 (1998). When interpreting a statute, legislative intent is the controlling factor. Robert E. v. Justice Court of Reno Township, 99 Nev. $443,445,664$ P.2d 957, 959 (1983). If the statute is clear on its face with every word and phrase carefully defined, a court cannot go beyond the statute in determining legislative intent. Id. If a statute is ambiguous, a judge must construe it "in line with what reason and public policy would indicate the legislature indicated." Id. citing Cannon v. Taylor, 87 Nev. 285, 299, 486 P.2d 493, 495 (1971).

Judges have several tools to define words in statutes consistent with the legislature's intent. Sometimes, courts turn to dictionaries ${ }^{3}$ for definitions of words used in statutes. Williams v: Taylor, 529 U.S. 420, 431 (2000) (turning to several dictionaries for a definition of "fail" in a statute); Chanos v. Nev.

## ${ }^{3}$ Black's Law Dictionary defines "subdivision" as:

Division into smaller parts of the same thing or subject-matter. The division of a lot, tract or parcel of land into two or more lots, tracts, parcels or other divisions of land for sale or development.

Tax Comm'n, 124 Nev. 232, 241, 181 P.3d 675, 681 (2008) (searching for a definition of "hearing" in NRS 360.247).

Other times, judges look at definitions of the same word or phrase in different statutes on the same subject matter. When legislation has been judicially construed and subsequent statutes on a similar subject use identical or substantially similar language, the usual presumption is that the legislature intended the same construction. Ketchum v. Moses, 24 Cal. $4^{\text {th }} 1122,1135$ (2001). The Nevada Legislature has defined "subdivision" in Chapter 278 of the Nevada Revised Statutes entitled "Planning and Zoning" as follows:
"Subdivision" means any land, vacant or improved, which is divided or proposed to be divided into five or more lots, parcels, sites, units or plots, for the purpose of any transfer or development, or any proposed transfer or development, unless exempted by one of the following provisions: [exemptions omitted].

NRS 278.320(1).
The subject matter of Chapter 278 is the development of property. The Chapter covers planning commissions, divisions of land, and zoning. The phrase "single construction site or subdivision site" in NRS $624.220(2)$ addresses the exact same subject matter: specific descriptions of areas of property development. ALJ Pro was spot-on when he applied the definition of "subdivision" in NRS 278.320(1) to the word "subdivision" in NRS 624.220(2).

Judge Pro also properly defined the word "site" after the word "subdivision" in NRS 624.220(2) as the physical location where a specified subdivision exists. Record, Exhibit 14, p. 7. "Site" is defined in Black's Law Dictionary as:

A plot of ground suitable or set apart for some specific use. A seat or ground plot. The term does not by itself necessarily mean a place or tract of land fixed by definite boundaries.

Black's Law Dictionary 1387 ( $6^{\text {th }}$ ed. 1990). Judge Pro's determination of "subdivision site" as the place where the subdivision exists is reasonable because the construction of "subdivision site" as a lot within a subdivision would render the phrase "subdivision site" in NRS 624.220(2) superfluous and nugatory. We would be back to the loophole in the 1963 definition of license limit where a contractor with a limited license could build an entire subdivision by contracting with the developer on a per-house basis. Statutes
must be read as a whole, so as not to render superfluous words or phrases or make provisions nugatory. Southern Nev. Homebuilders v. Clark County, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005).

It is possible this Court could reach a different definition of "subdivision" or "subdivision site" if it had carte blanche to interpret NRS 624.220(2). That, however, is not the Court's role on judicial review of an agency's final decision. As explained above, the Chevron Doctrine and several Nevada cases define this Court's duty on judicial review. If this Court determines the legislature did not directly address the term "subdivision site" in NRS 624.220(2), it may not impose its own construction of the statute in place of ALJ Pro's reasonable interpretation. Chevron at 843-44. This Court's duty ends with its determination that ALJ Pro's position was based on a reasonable construction of the statute. Id. at 843.

As shown above, ALJ Pro's construction of the phrase "subdivision site" in NRS 624.220(2) was reasonable, appropriate and within well-established standards of statutory construction. Moreover, ALJ Pro's construction of the phrase comported with the legislature's stated intent that license limits serve to protect the health, safety and general welfare of the public. NRS $624.220(2)$. For these reasons, this Court should accept and adopt ALJ Pro's interpretation of "subdivision site" in NRS 624.220(2).
C. NRS 624.220(2) Is Not Unconstitutionally Vague.

To prevail on its facial vagueness challenge, Silverwing has the heavy burden of showing NRS 624.220(2) is impermissibly vague in all of its applications. Flamingo Paradise at 512,217 P.3d at 553. Silverwing first must show that NRS 624.220(2) fails to provide sufficient notice to enable persons of ordinary intelligence to understand what conduct is prohibited. Id. at 512-13, 217 P.3d at 553-54. Silverwing next must show NRS 624.220(2) lacks specific standards, thereby encouraging, authorizing, or even failing to prevent, arbitrary and discriminatory enforcement. Id. As will be shown in this Section, Silverwing has failed to show that NRS $624.220(2)$ is impermissibly vague in all of its applications. The statute therefore must stand.

## 1. NRS 624.220(2) is Abundantly Clear to Persons of Ordinary Intelligence.

The first clause of NRS 624.220(2) requires the Board to limit the field and scope of the operations of a licensed contractor by establishing a monetary limit for a contractor's license. NRS 624.220(2). There is nothing unclear about the Legislature's mandate. The Board must limit the field and scope of a licensed contractor's operations by establishing a monetary limit.

The second clause of NRS $624.220(2)$ defines the limit as "the maximum contract a licensed contractor may undertake on one or more construction contracts on a single construction site or subdivision site for a single client." NRS 624.220(2). This clause also is reasonably clear. As applied to Silverwing's situation, the limit is the maximum contract one of Silverwing's subcontractors may undertake on one or more subcontracts on a subdivision site for Silverwing.

NRS 624.220 (2) provides sufficient notice to Silverwing and its subcontractors that if they enter into multiple contracts with Silverwing for work on a subdivision site, the subcontractors' license limits must be greater than the sum of the subcontracts. NRS 624.220 (2). A subcontractor with a $\$ 150,000$ license limit like A.B.C. Builders cannot enter into four subcontracts with Silverwing for $\$ 147,500.00$ each on the same subdivision site. It is no different than the pool contractor in the Gur-Kovic case (supra) who entered into a contract for labor and another contract for equipment with the same customer to try to evade its license limit.

The ambiguity posed by the absence of a legislative definition of "subdivision site" in NRS Chapter 624 does not render NRS 624.220(2) impermissibly vague in all of its applications. If every ambiguity in a statute rose to the level of impermissible vagueness, it would lead to nonsensical results. Courts would strike down statutes every day rendering a Court's duty to construct and interpret laws pointless. ALJ Pro reached a reasonable definition of "subdivision site" consistent with the Legislature's intent.

NRS 624.220 (2) provides sufficient notice to contractors of the conduct required to stay within their license limits -- it cautions contractors about entering into multiple contracts on the same subdivision site with the same customer. Silverwing therefore has failed to satisfy the first prong of the vagueness test.

## 2. NRS 624.220(2) Provides Specific Standards.

NRS 624.220 (2) provides a precise definition for contractor license limits. It primarily states that a contractor license limit is the maximum contract a contractor can undertake. NRS 624.220(2). Then, to avoid evasion of the legislative purpose for the limitation, NRS 624.220(2) further states that the limit is the maximum contract a contractor can undertake on a subdivision site for a single client. NRS $624.220(2)$. There is no room for arbitrary or discriminatory enforcement.

Three hypothetical scenarios illustrate consistent enforcement of the law:

## Scenario \#1

- Subcontractor S has a monetary license limit of $\$ 100,000$.
- Subcontractor S contracts with General Contractor G for $\$ 90,000.00$ on Subdivision A.
- Subcontractor S contracts with General Contractor $G$ for $\$ 90,000.00$ on Subdivision B.

Subcontractor S has stayed within its license limit because it has entered into multiple contracts with the same client on different subdivision sites. NRS 624.220(2). The Board therefore has no basis for imposing discipline.

## Scenario \#2

- Subcontractor $S$ has a monetary license limit of $\$ 100,000$.
- Subcontractor $S$ contracts with General Contractor $G$ for $\$ 90,000.00$ on Subdivision A.
- Subcontractor S contracts with General Contractor H for $\$ 90,000.00$ on Subdivision A.

Subcontractor $S$ has stayed within its license limit because has entered into multiple contracts with different clients on the same subdivision site. NRS 624.220(2). The Board therefore has no basis for imposing discipline.

## Scenario \#3

- Subcontractor $S$ has a monetary license limit of $\$ 100,000$.
- Subcontractor S contracts with General Contractor G for $\$ 90,000.00$ on Subdivision A.
- Subcontractor $S$ contracts with General Contractor $G$ for $\$ 90,000.00$ on Subdivision A.

Subcontractor $S$ has exceeded its $\$ 100,000$ license limit because has entered into multiple contracts with the same client on the same subdivision site. Under NRS 624.220(2). The Board therefore has grounds for imposing discipline against Subcontractor S and General Contractor G. NRS 624.3015(3).

The standards set by NRS 624.220 (2) are clear. The Board's enforcement is correspondingly consistent. As such, Silverwing has failed to satisfy the second prong of the vagueness test.

## D. NRS 624.220(2) Does Not Violate the Equal Protection Clause.

This Court must uphold NRS 624.220(2) if it determines it has a rational basis related to a legitimate government interest. Flamingo Paradise at 520,217 P.3d at 559. The lengthy historical recitation of license limits in Nevada in Section V.A. supra is particularly instructive for this
determination. This analysis demonstrates the legitimate government interest license limits serve. NRS $624.220(2)$ has a rational basis related to the legitimate government interest.

## 1. License Limits Serve a Legitimate Government Interest.

At its inception, the Board was charged by the Legislature to ensure licensed contractors were financially responsible. Exhibit A, pp. 5-6. The promulgation of financially responsible contractors absolutely serves the legitimate government interest of protecting the public. NRS 624.260(1). License limits came into existence - first as a Board practice under its regulatory powers and later through Legislative enactment -- as a way to allow contractors who lacked financial capacity to perform certain work to still receive a limited license based on the size of the project they could undertake. Exhibits C-I. The Board's historical records, the Legislature's records, and Nevada Supreme Court cases are full of references to license limits serving government's interest in protecting the public. Exhibits C-I; GurKovic; Homewood Inv. NRS 624.220(2) itself counts the imposition of license limits as one of the many actions the Board may take "to limit the field and scope of the operations of a contractor as may be necessary to protect the health, safety and general welfare of the public." NRS 624.220(2).

The "one or more construction contracts on a single construction site or subdivision site for a single client" language added to NRS 624.220(2) in 1967 not only furthered the government's legitimate interest in imposing license limits, it in fact preserved the practice by closing a loophole. If a contractor can avoid license limits merely by breaking his work on a development into multiple contracts within its license limit, the entire purpose of license limits and ensuring financial responsibility is thwarted. The pool contractor in the Gur-Kovic case could undertake any size job merely by dividing its contracts and avoid discipline.

## 2. NRS 624.220(2) Has a Rational Basis Related to the Legitimate Government Interest of <br> Ensuring the Financial Responsibility of Contractors.

Silverwing questions how defining a contractor's limit as the maximum contract a contractor can undertake on one or more contracts on a subdivision site for a single client relates to the legitimate government interest of ensuring the financial responsibility of contractors. Petitioner's Brief, pp. 16-17. Silverwing correctly points out that a contractor with a $\$ 50,000$ limit can undertake four $\$ 50,000$ contracts for four different customers on the same subdivision without exceeding its limit. Petitioner's Brief, p.
16. It also is true that a contractor with a $\$ 50,000$ limit can undertake four $\$ 50,000$ contracts with the same customer on four different subdivisions without exceeding its limit. How, Silverwing asks, does such an outcome rationally relate to the government's interest?

The rational basis goes back to the historical reasons for license limits and the loophole the 1967 legislation closed. License limits were not introduced as a barrier to contractors, but rather as a rational accommodation for contractors who could not establish financial responsibility to undertake any size project. License limits was a recognition - first by the Board and later by the Legislature - that contractors come in all shapes and sizes, from the enormous casino builders to the modest home renovation companies. Addressing the size of the projects a contractor could undertake was a rational way of recognizing the economic divide between large contractors and small contractors while still protecting the government's interest in ensuring their financial responsibility.

It is difficult to think of any better way than license limits to resolve the question. Denying a license to an applicant who cannot establish the financial wherewithal to undertake a massive project is impractical and unfair. At the same time, granting an unlimited license to all applicants regardless of their financial condition ignores the government's mandate that the Board ensure contractors in Nevada are financially responsible. NRS 624.260(1).

The rational basis also can be found in the concept of division of risk. All contractors are by nature risk-takers. Every bid, every job, involves a large outlay of resources with no certainty of the outcome. It is far safer for a contractor to undertake four $\$ 50,000$ jobs for four different customers or on four different developments than it is for a contractor to undertake one $\$ 200,000$ project for the same customer on the same development. If the contractor "busts" (miscalculates) a $\$ 50,000$ bid, he can recover. If he busts a $\$ 200,000$ bid, it could bury him. If an owner's funding dries up on a project with a $\$ 50,000$ contract, the contractor has three other projects that can carry him through the bad project. If an owner's funding dries up on a $\$ 200,000$ contract with no other work on other projects to save him, the contractor is finished. The license limits also protect the contractor.

The imposition of license limits based on contract size may not be the only solution, but it certainly is a rational solution and it has served Nevada well for over fifty years. A rational basis is all this Court


## CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this RESPONDENT'S ANSWERING BRIEF, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. Ifurther certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by appropriate references to the record on appeal. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.


Noah G. Allison (Bar \#6202)

## CERTIFICATE OF SERVICE

I hereby certify that on the $10^{t h}$ day of May, 2018, I electronically filed the foregoing
Respondent's Answer Brief with the Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the following:

WESLEY SMITH, ESQ. for SOUTHERN NV PAINTERS, DECORATORS, \& GLAZIERS LMCC
NOAH ALLISON, ESQ. for NEVADA STATE CONTRACTORS BOARD
THEODORE CHRISSINGER, ESQ. for J. CARTER WITT III et al

PHILIP MANNELLY, ESQ. for NEVADA CONTRACTORS ASSOCIATION, SOUTHERN NEVADA HOME BUILDERS ASSOCIATION, NEVADA CHAPTER ASSOCIATED GENERAL CONTRACTORS, SOUTHERN NV CHAPTER OF NATIONAL ELECTRONIC CONTRACTORS ASSOC, NEVADA SUBCONTRACTORS ASSOCIATION, NEVADA ASSOCIATION OF MECHANICAL CONTRACTORS, SHEET METAL \& AIR CONDITIONING CONTRACTORS NATL ASSOC SO. NV, ASSOCIATED BUILDERS \& CONTRACTORS, INC., MECHANICAL CONTRACTORS ASSOCIATION OF LAS VEGAS

MICHAEL KIMMEL, ESQ. for J. CARTER WITT III et al
EVAN JAMES, ESQ. for SOUTHERN NV PAINTERS, DECORATORS, \& GLAZIERS LMCC

PAUL GEORGESON, ESQ. for NEVADA CONTRACTORS ASSOCIATION, SOUTHERN NEVADA HOME BUILDERS ASSOCIATION, NEVADA CHAPTER ASSOCIATED GENERAL CONTRACTORS, SOUTHERN NV CHAPTER OF NATIONAL ELECTRONIC CONTRACTORS ASSOC, NEVADA SUBCONTRACTORS ASSOCIATION, NEVADA ASSOCIATION OF MECHANICAL CONTRACTORS, SHEET METAL \& AIR CONDITIONING CONTRACTORS NATL ASSOC SO. NV, ASSOCIATED BUILDERS \& CONTRACTORS, INC., MECHANICAL CONTRACTORS ASSOCIATION OF LAS VEGAS

WESLEY SMITH, ESQ. for SOUTHERN NV PAINTERS, DECORATORS, \& GLAZIERS LMCC THEODORE CHRISSINGER, ESQ. for SILVERWING DEVELOPMENT et al

A.App. 1051

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Six members of the State Contractors Board recently appointed by the पonorable 8. P. Carville, Governor of the State of Nevada, met in the office of the Asuociated Genaral Contractors, Room B3. Hotel Goldex at 11:CO A.N. . May 19. 1941, for the purpose of organizing the Board and placing the State Contractora Board Aet into operation. The meeting was called in response to a letter dated May 12, 1941, from C. V. Isbell, one of the members of the State Contractors Eoard, and was airected to each of the members in their reapective places of realdence. This letter read as follows:

May 14, 1941
F.S. Rowan
J.A. Anderbon
G.F. Lindack
J.S. Dillard
‥J. Maupin
S.P. Jamen

Gentlemen:
The first meeting of the State Cortracters' Boand has definitely been set for May 19: 1941, 11:00 A.K., in the Associated General Contractors office in the colder Hotel, Beno: Nevada.

It is urged that all members be
present to aid in the formulation of the Bym Lave, Enlee and Regulations, etc.

I personally want to streas the treportance of this meeting, and beg that all the members be present.

Sincerely,
C. Y. 5SEELH (Hember)

6V/jw State Contractors Board

Pursuant to the above letter the following mewers appeared and were preaent at the organization meeting

- J. A. jnderron, Winnemace
- J. C. Dillard, Reno
- C. Y. Iabell, Hono
- Harry linnecke, Beno
- E. J. Naupin, Ir., Fallon
-7. C. Rowan, Ely
A motion was made by member C. F. Isbell and seconded by member daderson that member E. J. Maupin, Jr., be made temporary chairman and that J. C. Dillard be made temporary Secretary. The motion was carried by the unanimona vote of all the members present.

The temporary secretary then called the roll of the members present and called for their crodentials. It wes found that the following quallfied membera wera present:
J. A. Anderbon
J. C. Dillard
C. V. Isbell

Harry Hnnecke
T. J. Manpin, Jr.,
F. C. Rowan

The temporary secretary then read a letter from Mr. S. P. Jamsa of Las Yegas, the only member of the Board not attending, which letter stated as follows:

May 7. 1941
Hr. C. 7. Isbell
1300 Bast 4th Strest
Reno, Nevada
Dear Siy:
I regret that owetag to lack of efficiont help, and beveing contracts that nust be completed It is impossible for me to leave my business at any time in the impediate future.

I am very much interested in whet you are trying to accomplish, and will be plaased to recelve a report of the meeting.

> Yery truly yours,
> /s/ S.P.Jamps
> O. K. Plumbing Company
> S. P. James, Owner

Mr. Iabell then presented to the temporary secretary if file pertaining to the S tate Contractors Board.

Temporary Chairman Mapin stated thista quorum being present the organizution of the Board was the next order of business and nominati ons were opened for the office of a permanent Chairman. A motion wat made by member Isbell and secondad by member Dillard that member E. J. Maupti, Jr., of Eallon, Jisvada, be elected Ohalrman of the Board, and the motion was carried by the unanimous vote of all members present. Kr. Maupin, $x 9$ germanent Gbairita, announced that the Board wes duly organized and that a guoxtam being preaent the 3 tate Contractors Board could proceed with all regular buainess authorized to be performed by $1 t$ under Chapter 186, Statutes of Nevada, 2941.

A wotion was made by member Dillard and seconded by member dnderson thet Harry Linnecke of Reno be electad Treasuxer of the Bogrd and the motion was carried by the unanimous rote of all meabere present.

A motion was made by member ilinnecke and seconiad by member Anderson that Chas. I. Hill be appointed pormanent Secretary of the Board at a salary of $\$ 150.00$ per month. The motion wes carried by the unanimous vote of all mexbers present. The Chairman instructed the secretary to dill the roil and to require the presentation of their credentiale of office. The Secretary proceeded to call the roll and announced that the following members were present and had presented their credentials:

```
J. A. arderson
Harry Linnecke
J. A. Arderson
E. J. Naupin, Jr.
C. V. Isbell
J. C. Rowan
```

The secretary announced thet in. S. P. James of Las Vegas was absent.
A motion was made by member Isbell and seconded by member Rowan that Mr. Wh. Cashill, attorney at Law, be retained as Atorney for the Board at a retaluing fee of $\$ 100,00$ per month for the eirst three months and the motion was carried by the unantmous vote of all membera prosent.

The meetirg recessed at $12: 20$ P. \% for lianch and the Chair announced that the meeting was to be resumed at $1: 30$ P.M.

The meeting was called to order by the Chairman at 1:50 P.M. kith all
 Cashill, Attorney, Were also pregent. The Chairman announced that a quorm being present the Boara could proceed to consicier further business
concerning the organization of the Board.
A motion was mide by nember Isbell and seconded by Member Kiowan that the secretary be empowered to secure Room 34 in the Hotel Golden for an of fice of the State Boara, at a sum not to ezceed $\$ 50.00$ per manth. The motion wan carried by the unantmous vote of all wembers present.

A motion was made by member Dillard and eeconded by menber Anderson thsit all monies of the Board shall be deposited in the Security Jational Bank in Heso and withdrawn by the order of Traasurer Innnecke as provided by the statute. The Chairman instructed the secretary to include in the minutes of the Board a copy of the authorization to the Security National. Bank by which the monies of the Board were to be dopoaited and the manner in which they were to be withdrawn.







A motion wac made by suember Iabell and seconded by member Nowan that the annual fee for a contractorsi 1icense for the balance of 1941 shall be Ton ( $\$ 10.00$ ) Dollars. The motion was carried by the unanianous vote of all member presert.

By unandmous consent of the Board the secretary wes instancted to procure an official seal for the use of the Board as outilned in the law cresting the Board.

A motion was made by member Dillard and aeconded by member Anderson authorizing the Chairman and secretary of the Board to purchase ruch necessary supplies and office equipmezt $k s$ may be required at a sum not to exceed One Thouaand $(\$ 1,000,00)$ Dollara. The motion was carried by the unanimous vote of all members present.

A motion was made by member Rowan and seconded by member Isbell that the secretery be empovered to employ an assistant secretary at a salary not to exceed One Bundred Twenty-7゙ive ( $\$ 125.00$ ) Dollara per
 present.

Fursuant to $a$ motion by member Isbell and seconded by member Dillard, the entire Soard, including the absant member, was namad all a Cominttee of the Whole for tho purpose of administoring oathe and taicing testimony and prooss concerning all matters vithin tho jurisdiction of the Board and that each teabar be constituted a sub-committea of the commitioe of the whole for the purpose of administerine oathe and taking testimony and proofs concerning all watters within the jurisdiction of the Board. The motion ves carried by the unanimous voto of all menters present.

A motion was made by member Iabell and seconded by Member Dillard that the secretary be authorized to place advertisements in such nowspapers of the state as would reasonably notify all contractors that they muat secure a 11 cense under Chapter 186. Statutes of Nevads, 1941. The motion was carried by the unanimous pote of all membera present.

The Cheirman announced that cortain reasonable rales and regulations should be adopted relative to the manner and method of applying for Liconees under the State Contractore Liscense Act. Member Iabell moved and it was aeconded by member Anderson that the following regulations be adopted:

## RULPS AND HEOUSATIOXS

## APPLICATIONS

1. Any contractor who wishes to qualify under Section 2, Articie 8, Chapter 187. Statutes of Vevada, 1941, that is, those contractors who were engaged in the contracting bustness in Devads on March 31 , 1941, shall, upon the presentetion of his application together with the aubmission of an anmal license feo, be granted a temporary certificate which shall enable him to contime in the contracting business in Hevade for a period of thirty (30) days from the date of his application. At the termination of that time the socretary 1 s authorized to tasue to suck applicant a permanent license for the balance of the celendar year, PROVIDED KOXPVER, that if a protest is lodged with the Board within the thirty (30) day period, the temporary certificate may be continued in offect until buch time as the Board may authot te the lasuance of a pernanent license, or until the Board susponds, modifies of revokes the temporary license granted to the applicent.
2. Any contractor who at the time of his application is engaged in construction in Jevade and cannot qualify under regulation 1 shall, upon the presentation of his application togethor with the subuiseion of the anmal ilcense fee, be granted a temporary certificate which shall enable him to continue in the contracting business for a pariod of thirty (30) days frox the date of his application, At the terionation of that time the secretary is authorized to is oue to such applicant a permanent license for the balance of the celendar year, PROVIOTD ROWEVLA, that if a protest is lodged with the Board within the thirty ( 30 ) day period, the temporary cartificate may be continued in offect until guch time as the Board may authorize the is suance of a permanent 1icenst, or until the Board suspends, modifies or revokes the temporary 11 cerse granted to the applicant. This regulation bhali be in full forte and effoct until July 19, 1941.
3. Any contractor who ohall apply for a 11 conae from the Board as naw applicant and cannot qualify under regulationa 1 and 2 sball, within ten (10) daye after the presentation of hie application together with the submiseion of the annual license foe, be granted a parmanent contractors 11 cense, EROVIDED HOWEVEA, that if a protest is

20azed with the Board againgt the isgusnce of a license to the applicant or if upon good ceuse the secrotary of the Board certifios that the mattor is one that should be preseated to the Board, the secretary is avthorized to contime the application under adolsement until such time as the Bcard shall, at a rogular or special meating, suthorize or rofuse the issuance of the permanent 11cense, PROFIDMD FOWRYIR, that the 18 suance of a permacont 11 ceace ghail not be postponed bayond thirty (30) daya of the dste of the appilcation, unless within that poriod the Board has taken adverse action upon the application.
4. An applicant who applies for a license under Section 2, Article 8, Chapter 187, Statutes of Nevade 1941, (Grandfather Clause), shall be required to provide the Board with the following information:
A. The name under which the applicant whes to conduct his brainess.
B. The applicant's mall addrees and the address of his prine cipal place of business.
C. A complete list, together with the titlo and address of each individual owner of all partinere or officers, including chief construction cuperiatencent.
D. Whether the applicant was operating as a contractor in the State of Nevada on Narch 31, 1941.
E. The type or class of contracting businese in which applicant is engaged.
F. A list of the lant three ( 3 ) contracta in Hevada immedlately prior to March 31, 1941, upon which the appilicant was engaged, stating the clase of worir performed and tha contract involvad.
G. Three (3) references of individuele or institutions who will certify to applicant' oharacter and pinancial reapozitillity.
5. All applicant's who cannot qualify for a license under Section 2, Article 8 , Chapter 187, Statutes of Nevada 1941, shall be required to provide the Board with the following information:
A. The name under whith the appilcant desires to conduct his contracting business.
B. The applicont's mall address and the address of the applicant's principal place of business.
O. The manner in which the applicant is conducting his contracting bueinoss, that is, whether or not applicant is an individuel, co-partnership or corporation.
D. The type or class of contracting business in which applicant intends to engage.
E. Whether ox not applicant his previousiy been licensed as a contractor in thic or any other state, giving tho name under which the license was issuad, the time of 1 bsuance, and the ftate of issuance.
P. Whethar or not the ilcense is to be 1ssuod undar a fictitious name and whether or not such name has been properly registered according to law.
G. The naves and addresses of applicant's pariners or busineas ascociates in the five (5) years immediately proceaing application.
E. Whether or not applicant hes had a contractor's license refused, suspended or revoked by this or any other state and whether or not applicant hes been assoclated with any person, compartnership or corporetion whose contractora ifcense was refused, suapended or revoked by this or any other atate.
I. Whether or not a bonding company or gurety evar was roquired to make good upon a bond in which applicant or any member of apolicant's organization was interested.
J. Whether or not there are any unpaid past due bille for materiela, services or labor or any liens, suits or judgments now pending or recorded againat applicant or any one associated with applicant's organization.
K. Whether or not applicant has been adjudicatad a bankrupt or made any assignment, et ther voluntery or othorwise, for the benefit or in fraud of oraditorn.
L. Whether or not applicant has been convicted of a felony or a misdemesnor.
M. Whether or not applicant is a partictpant under the Workerens Compensetion ict tad, if not, whather or not applicant will quallfy under the Workmena Compensation act before hiring enployeed in Nevada.

甘. Appitcant's apprenticeehip record in the construction trade.
C. Applicant's experience in the construction or contractine bubiness.
P. The contract prices of the three (3) 2argeat jobs thet applicant has performed as (1) a specialty or genoral contractor; (2) a superintondent; (3) a foreman.
Q. The names and aderosaes of the last three (3) persons or firme for whom applicant actea as a contractor or bulider or who purchased residences from applicant or conatruction built for speculation.
g. The names and addretset of any firma who have employed applicant during the two years preceding application.
S. An outline of the exporience the applicant has had in administrative or executive capacity that might tond to qualify applicent to engage in contracting buciness.
P. Whether or not applicant has received payments from the State Unemployment Compensation Fund and the date of such payment.
U. A stetement of the appilcant's financial condition as of the date of the application.
V. If applicant contemplates any construction in the imwediate future or is submitting any bide, a statement of the approximate total price of auch work and the manner in which applicant proposes to finance it.
W. Three references of indiviauals or institutions who will certify to applicant's character and financial responsability.
6. All applications submitted to the Boario must be eubscrited and sworn to before a Notary Public and rust be signed in the follownig manner:
(a) An individual muat sign his atplicatinn peraonally.
(b) A co-fartnerahip application must be signed and acknowisdged by each member.
(c) A corporate application must be aigned by an officer of the corporation.
7. The annuel application fae must accompany overy application form.
8. Tees tendered in the form of personal check will be accepted, but licensea will not be is sued until check is cheared.
9. Checka shall be mado payable to the "Secretary, State Contractors Board ${ }^{\text {a }}$

A motion was made by menber Isbell and secondod by member Dillard thet the merbers of the state Contractors Board be allowed the sum of seven cents per mile as travel expense and a per di am allowance of Five ( $\$ 5.00$ ) Dollars per day for subsistence. The motson wan carifed by the unanimous vote of all the members present.

Upon motion by member Innneake and seconded by member Rowan the maeting was adjourned at 6:c0 P, M. until called by the Chairman. The motion was carried by the unsifmous vote of all members present.


## EXHIBIT "B"

MINUTES OF A REGULAR MEETING OF THE NEVADA STATE CONTRACTORS BOARD HELD IN THE CFFICE OF BOARD ZHBRBER ROTAN, ELY, NEVADA, ON APRIL 21, 1945, AT 10:05 A. $\mathrm{M}_{0}$

The meeting was called to order at 10:05 A.M., by Mr. F. C. Rowan in the absence of Chairman E. J. Maupin, Jr. Roll was called and the following Board Mambers were found present:

J. A. Anderson, Member C. V. Isbell, Member F. C. Rowan, Member

and present by proxs were:

> J. C. Dillard, Member H. F. Linnecke, Member \& Ireasurer
also present was Chas. L. Hill, Secretary.
Absent:

$$
\text { S. F. James, Member } \quad \text { E. J. Maupin, Jr., Chairman }
$$

and Mr. John S. Halley, Attomey for the Board.
The mesting was called in response to a lettor dated April 7, 1945, which was directed to all members of the Board at their respective places of residence. The letter read as followa:

$$
\text { "April 7, } 1945
$$

'Pursuant to Sec. 2 of the By-Lers, as amended, and in line with a motion mede, duly seconded and carried by the unanimous vote of the menbers present at the January 20,1945 meeting, the next meeting of the Board will be held in the office of Mr. F. C. Rowan, Roard Member, 752 Aultman Street, Ely, Neveda, on Ayril 21, 1945 at 10:00 A.M.
'This is a regular quarterly meoting of the Board for the purpose of transacting any busineas that may be brought before the members. AlBo, the Sacretary has certified the application of Mr. LeRoy A. Grov of Ely, Neveda, for a painting contractor's license. A copy of the Certification is herewith attached. The Chsirman has instructed the Secretary to present this Certification to the members of the Board at the regular meeting to be held in Ely on April 21, 1945.

Yours sincerely,
/s/Chas, $L_{\text {. }}$ H111
Chas. L. Hill, Secty.
NEVADA STATE COKTRAGTORS BOARD"
Acting Chairman Roman stated that there was a quorum of the Board present, ofther in person or by Proxy and that the reeting was opened for any business that might be brought before the members, and inatructed Secretary hill to read the minutes of the last regular meeting of the Board held on January 20, 1945, in the office of the Boerd, Reno, Nevada.
The minutes were read and upon motion of Mr. Isbell; seconded by Kr. Anderson, the minutes were approved as read.

Secretary Hill then presented an accounting of the Board'g finemces and upon motion of Mr. Anderson; seconded by kr. Isbell, Checks Noa. 560 to 604 inclusive, drawn to meet the expenses of the Boerd for the period Jamuary 21 to April 16, 1945, were epproved by the unanimous vote of all members.

Secretary fill then read copy of a letter addressed to the Governor of the State of Nevada, froil the Las Vegas Euilders' Exchange, requesting him to appoint lur. Harrison Stooks of Las Vegas, as a member from that area to replace kr. S. P. Jamse, whose term of office expires in Kay. The members who are well acquainted with Mr. Stocks, requested the Secretary to lend his efforts to having Mr. Btooks appointed as a Member of the Board.

The Secretary was then instructed by the members to request Attomay Halley to prepare rules and regulations for olassifications of contractors as provided in the Amendrent passed by the last (42nd) Session of the Nevada State Legislatire.

The application of Mr. LeRoy A. Grow, which had been certified to the Board by the Secretary, was then reviewed and after discussion, Mr, Grov appeared before the Board at $10: 45 \mathrm{~A}$, H., in behalf of his application, and after a review of his file and other supporting doouments, Mr. Grow was unable to substantiate any of the atatements that he had made and at 11:00 A. . ., left for the purpose of securing letters of credit from eeveral business firms. These let.ters of credit wers to be presented to the Board Members at 2:00 P.M.
After Mr. Grow left to secure his letters of credit, the application of Mr. C. C. Meneley and Mr. Joseph Massineo, Jr., were presented to the Board Members and after a complete review and discussion, it was moved by $u r$. Isbell and seconded by Mr . Anderson that licenses be issued to the applicants. The motion mas unanimcusly carried.
The application of the weil Construction Company was then presented. This applicam tion had been presented to the Board on January 20 and it was held in abeyance for further investigation. With the application, Secretary hill presented a letter from Ir. Weil's attorney, relative to his status as a former officer of the Cal-Vada Conotruction Company, and also an uptodete finsncial statement. After a complete cevier, it was moved by Mr. Isbell and Seconded by Mr. Anderson that Mr. Weil be granted a license to operate as the Koil Construction Company. The motion mas approved by unanimous vote.

After the above 1loenses had been issued, it mas noted that it was 12:15 a.m., and the members recessed until 2:00 p.m., when they were to meet with Mr. Grow.
At $2: 00 \mathrm{p}, \mathrm{m}_{0}$, the Board Members reconvened and Mr. Rowan stats that. the same members, together with the Froxies, were present as they had been at the moruing meoting.

Before meeting with Mr. Grow, Mr. Isbell made the following verbal report. He stated that he had contacted, during the recess hour, Mr. O. G. Bates and Mr. N.H. Chapin, both Officers of the Ely National Bank. He further stated that it was their opinion that a Mr. Marsh was the bad member or associate of the working taam of Grom \& Nlareh. They also stated to Mr. Isbell that Mr. Grom was a good meohanio and uasd good materiais, and that the benk would back him on good contracts to the limit of $\$ 300$. or $\$ 400$. The bankers further stated to Mr . Isbell that Mr. Harvey Semell, of the Sevell Stores, recomended Mr. Grom very highly as a most excellent workman and that he had painted all of the Semell stores to the complete satisfaction of the omnera and that he hoped that Mr. Grow would be granted a Painting Contractor's License.

After KIr. IsbeIz's report, Mr. Grow appeared before the Board and presented to them three letters of credit; each letter atating the oredit in the amount of $\$ 200,00$ would be extended to Ur, Grow. Letters were recedved from the following firmss

> Zadow Conmercial Co., Ely, Nev. Heber-Sundberg Hardware Co., Ely, Nev. Ely Lumber \& Coal Co., Ely, Nev.

After receiving the letters of credit, and upan complation of the discussion with Mr , Grow, he was excused and Mr. Isbell moved that Mr. Grow be granted a Painting Contractor's license. The motion was seconded by Mr. Anderson and was carried by unanimous vote.
There being no further business to come before the Members, the meating was recessed at $2: 30$ P. M., until called by the Chairman, and if no special meeting ras called by the Chairman, wntil the next regular meeting milich is to be heldgin Reno, Nev., on July 21, 1945.


## EXHIBIT "C"

## hinutes of a regular and organization lienting or the <br> NEVADA STATE COATRICTORS BOARD <br> HRLD IN THE OFFICE OF THE BOARD, HOTEL GOLDEN, ROONS B-4 <br> Jaily 21, 1945, at 10:15 A. 世.

In the absence of Chairnan E. J. Kaupin Jr., the reguiar quarterly moeting of the Novada State Contrastors Board was called to order by deting Chairman, Harry F. Lfnnecke at 10il5 1.M., July 21, 1945. Roll was oalled, and the following members were found to be present.

J. A. Andergon, Herber<br>C. V. Isbell, Member<br>J. C. DSILard, Yomber<br>F. C. Rowan, Member<br>H. F. Linnecke, Treaburer<br>Harrison S. Stooke, Member

ibsent - E. J. Maupin, Chairman of the Board.
iLiso present ware: Chas. L. Hill, Beoretary
John S. Halley, Attorney for the Board Lyell Kofoed, Assistant Secretary

The meeting was called in response to letters dated July 5th and 16th, 1945, direoted to all Nembers of the Board at their reapective places of business. The letters read as follows:

July 5, 1945
Purgaant to Sec. 2 of the By-Lawa, as amended, the neat meating of the State Contractors Board will be held in the office of the Board, Room B4, Hotel Golden, Reno, Nevada, on Joly 21, 1945, at 10 A.N.

This is a regular quarterly meeting of the Board for the purpose of transacting any business that may be brought bafore tho mambers. Miso, while the Secretary has not oertified the following applications, it is felt by some of the local Board Members and the Secretary that these applications ahould be considered by the full Board at a regular meeting:

John Xnensil, General Butlaing and Engineoring Contractor Harold Yackay Hofinnis' Ropeiring, Remodeling, Small Resi-: dence Contractor
Les \& Soherupp, Generel Building Contractor
C. H. Blabon, General Building Coatractor

Hr. Blabon's application is the one that was presented at the last Board meeting, and with his consent was held in abayance until the July 21 meeting in order that Mr. Blabon might collect additional information in support of his application.

Sinoerely youra,
REVADA STATE CONTRACTORS BOARD
0.HH/1k /a/ Chas. L. HIII, Socretary

Juily 16, 1945
Just a note to remind you that the naxt regular meeting of the Board is to be held in the office of the Board, Eotel Golden, next Saturday, Jully 21, 1945, at 10 A.M.

This meeting is important. May I urge gou to mark your calendar now, and plan to attend.

Since it is getting exteremy hard to secure hotel roons, ray I cuggest to those of you wo require accomiodations that you contact, immediately, the hotel of y"ur choice or this office, and we will try to have a room reserved for you.

Sincerely youra,
NEVADA STATE CCNTRACTORS BOARD
/s/ Chas. L. Hill, Secretary

Acting Chairman Ifnnecke stated that there was a quomwa of the Board preaent; and that the meeting was open for any basiness that might come bafore it, and instructed secretary Hill to read the minutes of the apecial meeting held on May 31, 1945, in the offlces of the Board, Room B-4, Hotel Golden, Reno, lievada. The minutes were umanimously approved as read.

Since wr. Blabon wae waiting, the regular procedure was cuapended, and his application was raviomed and the letters that be had been instructad to have sent to the Board (lotters from material housea, arohitecta, and the person whom be had stated was willing to finance him) were read.

Mr. Dillard moved that the letter from Avis C, and Elmer T. Eall be atriken from the record, as it was from a relative of the applicant. There was no aecond to seid motion.
$\Delta t$ this point (10:30 A. $\mathbf{M}_{\text {. }}$ ) Ohairman Maupin ontered the meeting. He requested that ioting Chairam Linnecke oontinue in the chair umtil the investigation of Er. Slabon was completad.

Loting Ohairusn Linneaike then asked the pleasure of the Board on this application, and 4 . Rowan moved that the appilicant Blabon come in for further questioning and discuesion of his application. Ur. Isbell seconded the motion. The motion was carried on the following rotel

Aye - Anderson, Ieboll, Lampin, Rowan, Stocks
Hay = Dillard
Loting Chuirman Linnecke not voting
The Loting Ghairman inetrueted the Secretary to invite Mr. Blabon in. Mr. Blabon stated that ail he decired was a license that would permit hin to build reaidences of from $\$ 10,000$ to $\$ 15,000$. That he had a californila License, f1263231, and he had juat renemed it for the fiscal year, 19451946. Under quastioning by Mr. Maupin, Mr. Blabon admitted that thera nere umpaid notes amounting to about $\$ 1,000$ owing in Santa Crus, California that ho had not includod in his arorn finarcial statoment. There boing no further questions, Mr. Blabon was excused. Kr. Anderson moved that the application of ur, Blabon for a Goneral Building Contractor's Licanse be denied without projudice, since his statements as to his liabilities, by his oun admisaion were false, and that the secretary and Ireasurer be instructed to return the $\$ 15$ teo. Seconted by Mr. Dilliart, and passed by the manimous vote of the Board. IIr. Isbell made a motlon aThat on ell applicaticas that were denied by the Eoard the application foe of $\$ 15 \mathrm{be}$ automatioally returned, so that a motion to this offect would not have to be made every tise an application was denied." Seconded by Hr. Anderson, and carried by the unanimous vote of the Board.

Acting Chairwan Linnecke surrendered the ohair to Chairman Maupin.
The appifcation of Dcnald L. Clard for a building contractor's liconce was presented to the Board. urter discussion Mr. Isbell moved that the appliaation be approved, and the license be granted. Seconded by Mr. Rowan, and passed by the umanimous vote of the Board.

Mr. Hill rendered an accounting of the Board's finances, and read checks 605 through and including 652 covering the expenses of the Board aince the last regular meeting, april 21, 2945. ur. Anderson moved the report be acceptad by the Board, soconded by Mr. Rowan, passed by the manimous vote of the Board.

Mr. E112 reported on his investigations of J. H. Baird, who had obtained a city of Reno building permit under a name not regiatered with the Board; Nevada Plumbing and Heating (operating without a State Contractor's. 11conse); and Fm. Fererstoin, (taking contracts umder a name other than that listed with the Board).

Seoretary Hill read a letter from the Reno City School Board rittion in reepones to one from thise office, asidng them to insert the folioning phrases in their bid formas FNo bld will be acceptod from a contractor who is not Ifcensed in accordance oith the lav under the provisions of Chapter 186, Stetutes of Nevada ae amended." ands MStata of Hevada Contractors License No.
$\qquad$ 2. The Reno City Schoal Board's lotter atated that a resolution
had been passed by the Board on July 10, 1945 quoting the above phrases and stating that they would be ingerted in their bid forms.

Searetary Hill told the Board of the cooperation given by Ur. Glen Myers, Secretary of the Bevada Board of Trade, in investigating establiahed contractory wha were making application for a contractors license. He stated that he belleved that this would be a vary good source of information on firms eilready established in some other state and making application for a lievada license.

Secretary B 411 recomended that Seotion 1 and 2 of the Rules and reguletions of the State Contractors Board be deleted as they are no longer mppicable, and that Seation 3, line 4 be changed to read "that he be granted a pormanent liconse within tom (10) daye arter completion of the investigation by the Boardx. Mr. Iabell moved that the Seoretary and Attomey of the Board be anthorised to change the wording of Section 3 to meet the recomnendation of Secretary Hill, and that Sections 1, 2, and 4 be eliminated as contractore can no longor qualify for a licence under the Grandfather clause. In Section 5, atrike out the words "who cannot qualify ... .... under Section 2, Article 8, Chapter 186, statutos of Hevada 1941". This shall read aa follons mall appiicante for a license shall be required to provide the Board with the following informations" Seconded by yr. Anderson and passed by the manimous vote of the Board.

Mr. Isboll made a motion that the Board adjourn for lunoh. Kotion تithm drawn.

The application of John Kuenzil for a General Butlding and Engineering License was presented to the Board. After alscuselion, bir. Iinnecke moved that this license be granted. Seconded by Atr. Stocks, and passed by the following votet

| Un. Dillaxd - Nay | Mr. Anderson - Me | kr. Linnecke - Aye |
| :---: | :---: | :---: |
| Mr. Iabell - Nay | Hr. Roman - Aye | Kr. Stocks - \$ye |
|  | rman Maupin not voting |  |

Mr. Stocks moved that the next regular meeting of the Board be heid in Las Veges, on Ootober 20, 1945. Seconded by $4 r$. Rowan, and passed by the unanimous vote of the mombers.

Chairman Laupin stated that it was his opinion that the Board must hold an election of officers, since this was the firat meeting after the Hon. E. P. Carrille, Governor of the State of Nevada, had appointed the following men to serve on the Nevada State Contractors Board: Msers. I. A. Anderson, J. C. Dillard, C. V. Isbell, H. F. Linnecke, E. J. Maupin, Jr. F. C. Bonar, and Earrison S. Stocks. (The appointments were made in Hay 1945) Ur. Isbeil moved that the present officers be contimed in office until the first regular maeting of the Board In 1946, and that the minutes of this meeting be headed that it is an organisation meeting of the new Board. Ur, Anderson seconded the wotion and it was carried by the unanimous rote of the members.

## The meeting was receased for lunoh at $12: 35$ P. . . .

The meeting reconvened at 2 P. M. and Magrs. Anderson, Iabell, Linnecica, Maupin, Rowan, and Stocks wore found to be present by roll call. Absent J. C. Dillard.

The application of Harold Mackay Meginnis for a Remodeling and Repalining Contractors License was presented to the Board for concideration. The follow-: ing statement made to the Board by Judge Bartlett before the meeting was formally oponed at the morning seesion was read into the winutes.

- Mr. Mocinnis has worked for we roplastexing and ropaining tho
coilinge and walls of three of my bedrooms. The work wes satiefact-
orily done, and I invite any or all of the Board to come and inspect
the work. I cormend him as a good workman, and recommend that the
Board grent him his request for a Remodeling and Repairing Contract-
or's License."
Aftor further discugsion Mr. Limeoke moved that the application of Harold Mackay Hocinals be granted for jobs not to exceed a $\$ 500$ maxdmum on any one job. Seoonded by Hr. Isbell. Wr. Linnecke moved that with the approval of his second hr. Isbeli, his motion be asended to read $\$ \$ 1,000$ on any one job"; passed by the manimous vote of the members.

The applicetion of the Nestern Builders, Ino., for a General Buifaing Contractors License was presented for consideration. After diacussion it wes moved by 4 . Irbell and seconded by Mr. Anderson that this applioation be granted. Pased by the unanimons vote of the members.

The Nevade Heating \& Plumbing Co.'d application for a Heating and Plambing Contractorn License was presented to the Board. After discuasion it mas mored by Mr. Rowan that thise application be granted. Seconded by Mr. Stocks, and paseed by the unanimous vote of the Board.

The application of Roy Hilton for a General Construction Contractors License mas presented to the Board for consideration. After discussion it was moved by Mr. Limnecke that thi appilcation be granted. Seconded by : \#r. Rowan, and pasead by the unanimous vote of the Board.

The application of Robert Allred, dba Allred Roofing Company, for a Roofing and Siding Contractora License was next presented to the Board for consideration. After diacugsion it was moved by Lr . Stooke, and seconded by yir. Rowan that thi application be granted. Passed by the unanimous vote of the Board.

The application of John B. Craig for a Roofing, Siding, and Insulation Contractors License was presented for the consideration of the Board. Aftex disousaion it was moved by Mr. Anderson that this applioation be granted. Seconded by 4 fr. Rovan, and passed by the unanimous vote of the Board.

Tho application of the Lee Constinuction Company Por a General Builaing Contractors License was presented to the Board for consideration. Aeter discuraion it vas moved by Mr. Isbell that the Lee Gonstmuction Company be granted a liconse with a 815,000 limitation on any one contriacto Seconded by Mr, Limeoke, and pasied by the mansmioue vote of the Board.

It the conclucion of the meeting lir. Stocks asked for more time for the inveatigation of Southern Nevada applications, and indicated that Southern Nevada contractors rould like to have more to agy about licensee granted in that sention of the State. Ho invited all the members to come to the October meeting of the Board in Las Vegas.

Cbairman Maupin agked if there was any further busineas to core before the Board. There being none Kir. Linnecke moved that the meeting be adjourned, seconded by Mr. Isboll, and passed by unamimove voto of the Board. Time 3:25P.M.


ATTEST:


## EXHIBIT "D"

MINUTES OF A FEGULAR STATE CONTRACTORS BOARD MEETING Held in the office of the Board
goom B-4; Hotel colden, Reno, Nevada
The nembers of the State Contractors Board convened in the office of the Board, Room B-4, Hotel Golden, Reno, Nevada for the Firat Regular Quarterly Meeting of the Board at $10: 05$ A.M.; Saturday, January 19, 1946.

Ghairman Hapin requested the Secretary to call the roll, and the folloring members mere found to be present.

| E. J. Maupin Jr., Chairman | C. V. I Bbell, Member |
| :--- | :--- |
| R. F. Linnecke, Treasurer | B. C. Rowan, Hember |
| J. A. Anderscn, Member | Harrison S. Stocke, Member |

J. A. Anderson, Member Harrison S. Stooke, Member absent - Paul Hanuel, Member

Sleo present were: Chas. L. Hill, Secretary of the Board
Lyell Kofoed, Aseistant Secretary of the Board
Wm. J. Cashill, Attornoy for the Board
The meeting was called in reaponse to a letter dated Jamary 4, 1946 direoted to all members of the Board at their reapective places of businese. The letter read as followe:
"January 4, 1946
Purpuant to section 2 of the By-Lams, as anonded, the next meeting of the State Contractora Board will be held in the office of the Board, Room B-4; Kotel Golden, Reno, Nevada, on Jenuary 19, 1946, at $10: 00$ A.M.

This is a regular quartarly meeting of the Board for the purpose of transacting any business that may be brought before the members.

The Seoretary has certified the following applications to the Board for thair consideration and action.
F. H. Gustino; (Coast Construation Co.) Seattie, Fishington

Grading, side Semers, Semers, and Watermains
Jease Fatkins, 434 East Ninth Street, Reno, Nevada General Building
Joseph P. Davis, 602 Galifornia Avenue, Bouldor City, Nevada Plumbing \& Heating

Very truly yours,
NEVADA STATE COHTRACTORS BOARD
CLH:IF
/8/ Chas. L. Hill, Sacretary"
Chairman Maupin stated that there was a quorum of the Board present, and that the mesting was open for any businass that might be brought before the members present, and instructed the secretary to read the minutes of the regular mesting held on October 20, 1945 in the Directore Room of the Las Vegas Builders' Exchange, Leas Vegas, Nevada.

Chairman Maupin atatad that there being no correctios or additions to the minutas; they would stand approved as read.

The Secretary submitted a financial report for the year of 1945, and a report on all the moneys recelved by the Board since 1te inceptions copies of which are attached hereto. The Searetary requested approval of checks 693 to 736 inclusive, which covered the expenses of the Board since the last meeting on October 20, 1945. Upon motion of Hr . Anderson, seconded by !ir. Stocks they were approved by unanimous vote.

Since Hr, Watkins, whose applicetion for a General Building Contractor's License had been certified to the Board, was waiting, the regular procedure was suspended
 Secretary to invite Lir. Matkine in to the weoting. Under questioning oy wir, Gaahill, HIr. Ratikins stated that his Pinancial statement given the Board was a twue and accurate picture of his finanoes, and that he pould confins himself to building conatruction involving costs betireen $\$ 15 ; 000$ and $\$ 20,000$. Mr. Watkins wes excused.

## Eeconded ty tr. Anderson

After discubsion Hr . Isbell movad/that. Hr. Watzins be granted a General Building Contractor's license with a maximum contract limit of $\$ 20,000$ per contract. Garried oy unanimons vote. (Gcrrected from ories al minntes)

The request of Haroid A. Lee, General Building Contractor, Liobnse \#829, that the $\$ 15,000$ limitation on each contract be ramoved, wha presented to the Board. Mr. Lee had submitted a new financial statement to substantiate his request. After a discussion of his request by the Board members, Hr. Lee was invited into the meeting and sworn in. Onder questioning by Ur. Cashill, Hr. Lee atated that his new financial statement was a true and accurate picture of his financial status, and that he had need of a broadened Hicense since there was a much larger contract being offered him than he was ifcensed to take. Ur. Lee was excused from the meetm ing, and upon motion of sir. Linneoke and the second of Ur . Rowan that the restrictions on the liconge of Harold A. Lee Construotion Company be removed, the Board voted unenimonsly to remove the restriations.

The file of F. N. Gustino, Coast Conatruction Company, Seattle, Fashington, was then prasented to the Board for discussion. Since the last meating of the goard Ur. Gustino had written stating that he was retiring from business and requested that his application for a State Contractor's license be witharam. Er. Isbell moved that the application be denied on the request of Mr. Gustino, and that his application fee of $\$ 15$ be returned to him. Seconded by Hr. Anderson, and carried by unanimous vote.

The application of Joseph P. Davis, Boulder City, Nevada for a Plumbing and Heating Contractor's license, which had been certified to the Board, res presented to the Board; and after a complete revien of the file discussion followed, and 3r. Stocke moved that the application of J. P. Davis be granted, seoonded by wr. Ibbell and carried by unanimous vote.

Hark tu. Butler's request to have his present Grading Contractor'g lioense H647 broadened to that of a Generel Contractor, in order to permit him to do work 1 nvolve Ing other crafte incidental to his business as a grading contractor, was read to the Board. The Secretary was inatructed to write Mr. Butler and oail his attention to Article IIl-i, paragraph 2 of the Nevada State Contractors' Licenea Lav; and to inform his that if he atill felt he wanted a broadened license to submit a nem finamcial statement and the request for the broadened license to the Board.

The request of Lhoyd Bvane to raise the limitation of $\$ 10,000$ on his General Building Contractor's license \#854 was presented to the Board for consideration. ar. Erans had aubmitted a financial stctement and a letter giving details of his operations to substantiate his request. After discussion, Mr. Linneeke maved that the $\$ 10,000$ iimitation be raised to $\$ 20,000$ maxdmm limit per contract. Seconded by Mr. Rowan, and paised by manimous vote.

The request of Donald Giard that his Remodeling, Repairing, Small Residence Contractar's Lioense \$830, with a limitation of $\$ 8,000$ maximun per contract be broadened to $\$ 15,000$ was next presented to the Board. Hr. Giard presented a now financial statement and a list of the work he had done eince the granting of his license by the Board to substantiate his request. After discussion ur, Einnecke moved that the 1 imitation on Br. Giard!s lioense be raised to 815,000 maxdmam per contract. It was seconded by yr. Stocks and carried by unanimous vote.

The requost of J. I. Jenkins, Cemont and Fencing Contractor, this his license \#877 be brodiened to allow him to erect Quonset Steel Prafabricated Buildinga mas prosented. It was moved by Hr. Limnecke that his request be granted, seconded by Kr. Isbell, and carried by umanimous vote.

The request of the Hevada Conetructors, Inc., to broadon their General Enginoering and Yining Contractor's Ilcense \#897 to allow them to do small butlaing and remodeling was presented for consideration. Mr. Iabell moved that the request be dented on the ground that sufficient information is not before the Board to grant the request. The motion was eeconded by Mr. Iimeoke, and carried by manimous vote.

The application of the Hapea Hotel Construction Company for a General Building Contractor's license was presented to the Board for consideration. Upon the motion of Mr. Isbell, seconded by Hr. Anderson the application was granted, and passed by unanimous vote.

## S．B． 53

## SENATE BILL NO．53－SENATOR REID

February 7， 1951

Referred to
Summary－Amends state contractor＇s license law．
－要要
EXPLANATION－Matter in italics is new；matter in brackets［ ］is materlal to be omitted．

AN ACT to amend an act entitled＂An act to create a state contractors board； defining the powers and duties of said board；deffing contractors and pro－ Fiding for the licensing of contractors；fixing the fees for such licenses； providing the method of suspension and cancellation of such licenses； prescribing a penalty for the riolation of this act and other matters prop－ erly relating thereto．＂Approved March 31，1941，as amended．

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

Section 1．Section 3 of article I of the above－entitled act，being section 1473．03， 1929 N．C．L． 1941 Supp．，is hereby amended to read as follows：
Section 3．The terms of the members of the first board shall be for a period of four years each．Vacancies arising for any reason shall be filled by the governor by appointment for the unexpired ferm．Each member shall hold office after the expiration of his term antil his successor has been duly appointed and qualified．［All mem－ bers of the board shall hold their offices at the pleasure of the governor蕧and the governor shall have power to remove any member of the board


Sec．2．Section 4 of article II of the above－entitled act，being sec－． tion 1472．12， 1929 N．C．L． 1941 Supp．，is hereby amended to read as follows：

Section 4．It is unlawful for any two or more licensees，whose licenses have been limited by the board to contracts not exceeding cer－ tain monetary sums and each of whom has been issued a license to engage separately in the business or to act separately in the capacity of a contractor within this state，to jointly submit a bid or otherwise act in the capacity of a contractor within this state without first having secured an additional license for acting in the capacity of such a joint venture or combination in accordance with the provisions of this act as provided for an individual，copartnership or corporation．
SEc．3．Section 1 of article III of the above－entitled act，being sec－

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ion 1473．13， 1929 N．C．L．1941．Supp．，is hereby amended to drod， as follows：
Section 1．This act does not apply to work done exclusively an authorized representative of the United States government ， State of Nevada，or any incorporated town，city，county，irrigex district，reclamation district，or other municipal or political corpode tion or subdivision of this state．
Sec．4．Section 3 of article III，of the above－entitled act，befin section 1474．15， 1929 N．C．L． 1941 Supp．，is hereby amended to deed as follows：

Section 3．This act does not apply to work done exclusively public utilities operating under the regulations of the publie sedex commission on construction，maintenance，and development work 1 phe $_{\text {d }}$ ． dental to their own business．

Sec．5．Section 4 of article III，of the above－entitled act 繀 amended，being section 1474．16， 1929 N．C．L． 1949 Supp．，is hext amended to read as follows：
Section 4．This act does not apply to owners of property，buildidit or improving residential structures thereon for the occupancy of sisid owner and not intended for sale．
SEC．6．Section 7 of article III，of the above－entitled act，being tion $1474.19,1929$ N．C．L． 1941 Supp．，is hereby amended to read裂 follows：

Section 7．This act does not apply to any construction，alterate improvement or repair financed in whole or in part by the fedid government and carried on within the limits and boundaries of ${ }^{2 d f}$ site or reservation，the title of which rests in the federal governmed
Sec．7．Section 3 of article IV of the above－entitled act，being tion 1474．24， 1929 N．C．L． 1941 Supp．，is hereby amended to read follows：

Section 3．The board shall require an applicant to show suth degree of experience，financial responsibility and such general kmow edge of the building safety and health laws of the State of Nezat and the rudimentary principles of the contracting business as ${ }^{2}$ 旅 board shall deem necessary for the safety and protection of the pnbila

Sec．8．Section 1 of Article VI of the above－entitled act，being 8 殕 tion 1474．30， 1929 N．C．L． 1941 Supp．，is hereby amended to 至放 as follows：

Section 1．The board，in its discretion，is authorized to fix apglw tion and［the］annual license［fee］fees to be paid by［recipient applicants and licensees under the terms of this act；［，save and exce that the fee to be charged for the year 1941 shall not exceed $\$ 10$ ．
 year．］provided，however，that the application fee shall not exicog $\$ 15$ and the annual license fee shall not exceed $\$ 15$ per year．

## EXHIBIT ' ${ }^{6}$ "

FIRST QUARTERLY MEETING NEVADA STATE CONTRACTORS BOARD

Reno, Nevada
January 27, 1961
The First Quarterly Meeting of the State Contractors Board was held in the Board office at 180 West First Street, Reno, Nevada. The meeting was called to order by Chairman H. F. Linnecke at $90^{\prime}$ clock a.m., Friday, January 27, 1961. Roll was called and the following members were present:
H. F. Linnecke
E. J. Maupin, Jr.

ABSENT: C. V. Isbell Also present were:

Paul Manuel
H. S. Stocks
J. A. Anderson

Frank E. Scott

Rowland Oakes, Secretary Thomas A. Cooke, Board Attorney Mary Canak

Chairman Linnecke declared the meeting open for the transaction of such business as might properiy be brought before the board.

On a motion by Mr. Maupin, seconded by Mr. Manuel and unanimously voted, the minutes of the October 14, 1960 meeting were approved.

Mr. Oakes then read the Secretary's Report. It was moved by Mr. Maupin, seconded by Mr. Anderson that all pending applications for renewal be approved if there were no complaints on file, if the requested financial statements had been received, and if the applications met all other requirements of the board. The motion carried unanimously.

On motion by Mr. Manuel, seconded by Mr. Maupin and voted unanimously, the following salaries for board employees were approved for 1961:

| Stanley J. Cavolick | $\$ 610$ |
| :--- | ---: |
| Mary Canak | 550 |
| Anita Ashurst | 280 |
| Gladys Land | 220 |

On a motion by Mr. Maupin, seconded by Mr. Manuel, it was voted to transfer the funds invested in Series "K" bonds, on the maturity dates, as follows: $\$ 4,000$ to First National Bank, Account \#6904; $\$ 6,000$ to First National Bank of Ely, \#15408; and the balance to the Nevada State Bank in Las Vegas, Nevada.

On a motion by Mr. Maupin, seconded by Mr. Anderson, and unanimously voted, the Secretary was instructed to consult with the auditor and prepare a recommendation for the April board meeting on more efficient methods of handling office procedures.

Attorney Cooke discussed lien laws and other atatutes affecting con-
tractors. On a motion by Mr. Manuel, seconded by Mr. Maupin, Mr. Cooke was authorized to prepare an amendment to the existing law governing contractors' performance and payment bonds on pubilic works construction projects. The motion carried unanimously.

The following certifications were reviewed during the morning session of the meeting:

Edgar E. Squire \& Son, Reno, Nevada, application for renewal of "Masonry" license \#5598, and application to increase the $\$ 4,000$ contract 1 imit thereon. Attorney Cooke reviewed the file with the board members after which Mr. Squire, accompanied by his son, entered the meeting and were sworn in by Chairman Linnecke.

Mr. Cooke questioned Mr. Squire regarding evidence that he had contracted for projects in excess of his $\$ 4,000 \mathrm{limit}$. Mr. Squire admitted taking projects in excess of $\$ 4,000$ and further stated that he took the Travelodge project after being advised not to do so by the Chairman of the board. Additional testimony indicated that the applicant had substantial accounts payable over 60 days past due.

On a motion by Mr. Maupin, seconded by Mr. Manuel, the application to increase the contract 1 imit of $\$ 4,000$ was denied; the 1961 application for renewal was approved and the ilcense suspended for ninety (90) days. unless otherwise ordered by the board. The applicant was permitted to complete projects on which he had made bids prior to January 27, 1961. The motion carried unanimously.

Blackwell Construction Company, Montello, Nevada, applicant for a "General Building" license. Attorney Cooke reviewed the file and financial statement with the board members after which Mr. Blackwell entered the meeting and was sworn in by Chairman Linnecke.

Testimony from the applicant indicated sufficient experience for a general building license but he stated that all of his financial resources were tied up in a restaurant, bar and motel at Montello, Nevada. The applicant stated that as soon as he had secured working capital, he would like to again reapply for a license should the board deny the present application.

On a motion by Mr. Maupin, seconded by Mr. Scott, the application of Blackwell Construction Company for a general building license was denied, without prejudice, and the Secretary was instructed to advise the applicant that he could reapply at such time as he had secured sufficient working capital. The motion carried unanimously.

Martin Kolmos, Reno, Nevada, applicant for a "General Building" Iicense. Attorney cooke reviewed the file with the board members after which Mr . Kolmos entered the meeting, accompanied by Attorney John Crislaw, and was
sworn in by Chairman Linnecke.
Mr. Cooke questioned the applicant about reports that he was fired for stealing in one of the gambling clubs at Lake Tahoe. Mr. Kolmos presented evidence to show that all of the people employed, in the specific operation involved, were fired but that he was later rehired after being exonerated of any participation in the incident. The applicant submitted evilence "Exhibit A through I", plus affidavits attesting to his ability and told the board that he would accept a limit of $\$ 25,000$ on a general building license, if the board decided to grant a license.

On a motion by Mr. Manuel, seconded by Mr. Stocks and unanimousiy voted, the application of Martin Kolmos was approved with a $\$ 25,000$ limit, pending receipt of an up-to-date financial statement reflecting the information presented orally by the applicant.

Lido Construction Company, Las Vegas, Nevada, applicant for a "Concrete" license. After a review of the file by Attorney cooke, Mr. Lido Paglia entered the meeting and was sworn in by Chairman finnecke. Mr. Caoke verified the financial statement by questioning the applicant and Mr . paglia recited the projects on which he had supervised concrete work over a period of several years.

On a motion by Mr. Stocks, seconded by Mr. Manuel and unanimously voted, the application of Lido Construction was approved.

Juan Garijo, Winnemucca, Nevada, applicant for a "General Building" iicense. After a review of the file by Attorney cooke with the board members, Mr. Garijo entered the meeting and was sworn in by Chairman Linnecke. Mr. Cooke questioned Mr. Garijo about experience in the construction industry and advised him that under Nevada Statutes, it was necessary for the board to "require that an applicant show such a degree of experience, financial responsibility, and such general knowledge of the building safety and health laws of the state of Nevada, and of the rudimentary principles of the contracting business as the board shall deem necessary for the safety and protection of the public".

In the testimony of Mr . Garijo he stated that his son would be able to assist him in the business asson as he was discharged from the Army of the United States. Questioning by Mr. Cooke and the board members indicated that Mr. Garijo had extreme difficulty in speaking and understanding engitsh.

On a motion by Mr. Maupin, seconded by Mr. Anderson, and unanimousiy voted, the application of Juan Garijo for a general builaing license was denied, without prejudice, and the Secretary was instructed to advise the applicant to reapply for a license at such time as his son could join him in making application for a license.

Rodney Boudwin of Walker Boudwin Construction Company, A1 Solari; and
L. J. Savage appeared before the board and the contractors indicated they were speaking as individual contractors but reflected the feeling of a substantial group of contractors in the Reno area. Among other things, the contractors asked for more strict enforcement of limits placed on licensees; asked the board to consider placing limits on all licensees up to a million or two million dollars; and asked the board to request finamcial statements and a list of completed projects from all licensees at time of renewal. Chairman Linnecke described the purpose of the law and the operation of the board in great detail. The contractors stated they would be willing to pay a higher license fee to permit the board to have additional funds in order to better enforce the law and to keep the contractors and the public better informed on the activities of the board. Attorney Cooke advised the contractors that his interpretation of the law indicated that the board could enforce limits and the policy of the board would be to enforce financial limits placed on a licensee. Chairman Linnecke indicated that the suggestions made by the contractors would be taken under advisement and given further study. After the contractors were excused from the meeting, the Secretary was instructed to obtain information from other states to determine the methods used to establish limits on licenses.

The Board recessed for lunch at 12:30 o'clock p.m. The meeting resumed at 1:30 o'clock p.m. Present were:

Chairman Linnecke
E. J. Maupin, Jr.

Paul Manuel
J. A. Anderson
H. S. Stocks

Frank E. Scott

Absent: C. V. Isbell Also present were:

Rowland Oakes
Thomas A. Cooke Mary Canak

On a motion duly made, seconded and unanimously adopted the following applicants for renewal of 1961 licenses were issued temporary licenses, pending further investigation by the Board.
V. V. Heater

Bino Grifantini
Carey C. Ballard
Jack W. Allison
Andrew P. Berg
Al Newberry Electric \& Neon
Nevada Nursery, Inc.
Mogensen Concrete Company
S. D. Orr, East Ely, Nevada, applicant for a "General Building, Fencing \& Masonry" license. Attorney Cooke reviewed applicant's file with the board members after which Mr: Ory entered the meeting and was sworn in by Chairman Linnecke. Mr. Cooke questioned him regarding his financial
statement and the applicant indicated that in recent months he had been
able to pay up most of his bilis. Mr. Cooke then questioned him about his experience and the evidence submitted by Mr. Orr indicated that the projects constructed by him were completed by ilicensed contractors under his supervision. Mr. Orr further stated that the contracting he had done in violation of the law was not an intentional violation, but because of his fallure to realize it was necessary to have a license to construct certain types of projects. Mr. Orr outlined his experience in fencing, after which he was excused from the meeting by Chairman Linnecke.

On a motion by Mr. Manuel, seconded by Mr. Anderson, and unanimousiy voted, the fencing license was granted and the application for "General Building \& Masonry" classifications was denied, without prejudice. The Secretary was instructed to advise Mr. Orr that the board did not feel he had sufficient experience to qualify for the latter two classifications.

Stateline Welding Service, Zephyr Cove, Nevada, applicant for an "Excavating, Trenching, Pipeline \& Welding" Iicense. After a review of the file by Attorney Cooke with the board members, Mr. Irving P. Bobo entered the meeting and was sworn in by Chairman Linnecke.

Mr. Cooke explained to Mr. Bobo that it was necessary for the board to determine his financial responsibility and desired to inquire into the present status of debts incurred in a bankruptcy in California. Testimony from Mr. Bobo indicated that the bankruptcy was caused by speculating in lumber and not as a result of his contracting business, and that he had paid off the debts in question. Mr. Bobo was then excused from the meeting by Chairman Linnecke.

On a motion by Mr. Maupin, seconded by Mr. Manuel, and unanimously voted, the application of Stateline Welding Service was approved with a $\$ 10,000$ limit, pending receipt of a current financial statement.

Martin M. Muhar, Reno, Nevada, applicant for a "General Building" 1icense. After a review of the file by Attorney Cooke, Mr. Muhar entered the meeting and was sworn in by Chairman Linnecke.

Mr. Cooke reviewed the applicant's financial condition and Mr. Muhar indicated that he had used some of his cash to purchase a truck. He further indicated that he had built houses on speculation in Reno without a license and would accept a limit of $\$ 15,000$ if the board granted his license. Mr. Muhar's statement on the construction of speculative houses was in direct contradiction to the sworn statement in the application that he had not built any houses for speculation in Nevada. He was then excused from the meeting by Chairman Linnecke. On a motion by Mr. Manuel; seconded by Mr. Maupin, and unanimously voted, the application of Martin M. Muhar for a general building license was denied, without prejudice.

Edmond J. Turner, Tahoe Valley, California, applicant for an "Electrical" license. Attorney Cooke reviewed the file with the board members and our
investigation which indicated very limited financial responsibility．The applicant did not appear．

On a motion by Mr．Maupin，seconded by Mr．Scott，the application of Edmond J．Turner for an electrical contractor＇s license was denied，without prejudice．The motion carried unanimously．

On a motion by Mr．Maupin，seconded by Mr．Manuel，and unanimously voted，the Secretary＇s State of Income \＆Expense，Operating Cash Statement， and Checks issued（ 5488 to 5660 ）were approved．

On a motion by Mr．Scott，seconded by Mr．Stocks，and unanimousiy voted， the Secretary was instructed to advise Laramore construction Company that heir application for renewal would not be approved by the board until sufficient capital was invested in the business and a new financial state－ ment submitted to the board．

On a motion by Mr．Stocks，seconded by Mr．Maupin，and unanimously voted， the 1961 application for renewal of H．W．Polk，license \＃1893，was denied， without prejudice，because of applicant＇s failure to furnish the board with a financial statement and other information requested on several occasions during 1960．The Secretary was instructed to adviae Mr．Polk that he would be given until the April board meeting to complete work in progress and that he be required to furnish the board immediately with a list of all pro－ jects started prior to February 7， 1961.

On a motion by Mr．Maupin，seconded by Mr．Anderson，and unanimously voted，the Secretary was instructed to hold a hearing on the application of Wm S．Uebel for a＂General Building＂license，and the 1961 application for renewal of license \＃2080．

On a motion by Mr．Maupin，seconded by Mr．Scott，the board voted to deny，without prejudice，the application of Barnes Electric，Inc．，for an ＂Electrical＂license in view of his failure to furnish the board with the financial information he was instructed to furnish at the July， 1960 board meeting．

On a motion by Mr．Maupin，seconded by Mr．Anderson，and unanimously voted，the renewal period was extended until January 31， 1961.

The meeting was recessed to $10: 00$ o＇clock a．m．，Saturday，January 28， 961.

## 大 小 小 大＊＊＊

The meeting was called to order by Chairman Linnecke at 10：00 0＇clock A．m．，Saturday，January 2a，1961．Present were：H．F．Linnecke，E．J． Maupin，Jr．，Paul Manuel，H．S．Stocks，J．A．Anderson，Frank E．Scott． Also present：Rowland Oakes Absent：C．V．Isbel：

It was moved by Mr. Maupin, seconded by Mr. Scott that present employees of the board be retained and the salary of the secretary for 1961 be $\$ 800$ per month. The motion carried unanimously.

On a motion by Mr. Scott, seconded by Mr. Anderson, and unanimously adopted, the secretary was instructed to cast one (1) ballot for the election of H. F. Linnecke as Chairman; H. S. Stocks as Vice-Chairman and Paul Manuel, Treasurer.

On a motion by Mr. Maupin, seconded by Mr. Stocks, it was unanimously voted to hold the next full meeting of the board in Las Vegas, Nevada, on April 28-29. 1961.

The Chairman appointed each member of the board as a committee of one to review applications between board meetings and have the approval of such applications ratified by the full board at regular quarterly board meetings.

On a motion by Mr. Stocks, seconded by Mr. Anderson, the purchase of furniture by the building committee was approved.

The meeting adjourned on a motion by Mr. Maupin, seconded by Mr. Manuel.


known or suspected violations hereof. In allowing such expenses the chairman shall not be limited or bound by the provisions of NRS 281.160 or any act amendatory thereof or supplemental thereto.
4. After the expenditure of money from the revolving fund, the chairman of the board shall present a clairn to the state board of examiners for the amount of the expenditare to be replaced in the revolving fund. The claim shall be andited, allowed and paid as are other claims against the state, but such claim shall not detail the investigation made as to the agent or employee making the same or the person or persons investigated. If the state board of examiners is not satisfied with the claim, the members thereof may orally examine the chairman concerning the same.
5. Expenditures from the revolving fund shall not exceed $\$ 1,5,000$ in any 1 [calendar] fiscal year. Authorization for expenditures from the revolving fund shall in no event be deemed to be an exception to the limitation on total expenditures imposed by subsection 1 , but such expenditures from the revolving fund shall be deemed administrative expenses of this chapter and shall be included in the total of expenditures to which such limitation is applicable.

SEC.2. For the period from January 1, 1963, to June 30, 1963 , the chairman of the state gaming control board is authorized to expend from the state gaming control board revolving fund for such purposes as are authorized by law a sum of money not to exceed $\$ 7,500$.

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

## Semate Bill No. 67-Senator Dodge

CHAPMER 345
AN ACT to amend chapter 624 of NRS, relating to contractors, by acding a new section requiring the payment of registration fees for all motor velhicles owned by the board; to amend NRS sections $384.010,482.665,482.505$, $624.220,624.270,624.290$ and 624.300 , relating to identification, registration and license fees of state-owned rehicles, classification of contractors, contractors' bonds, joint ventures by contractors, and suspension and revocation of contractors licenses, by exempting antomobiles owned by the state contractors' board from the requirement of carrying the Label and license plates of state-owned rehicles; by exempting certain state-owned vehicles from the payment of license fees; by permitting the board to take certain measures liniting the scope of operations of licensed contractors; by increasing the amome of bonds or cash deposits required of licensed contrictors; by limiting the right of licensed contractors to engage in joint ventures; and providing other matters properly relating thereto.
[Approved April 18, 1963]
The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:
Secrion 1. Chapter 624 of NRS is hereby amended by adding thereto a new section which shall read as follows:

All motor vehicles owned by the board shall be subject to the paymont of motor velucle registration fees.
serve to identify such automobiles ass state-owned vehicles. Notwithstanding the provisions of subsection 1, sucli license plates shall be issued annually.
3. Applications for such licenses shall be made through the head of the department, board, bureau, commission, school district or irrigation district, or through the chairman of the board of county commissioners of the county or town or through the mayor of the city, owning or controlling such vehicles, and no plate or plates shall be issued until a certificate shall have been filed with the department showing that the name of the department, board, burean, commission, county, city, town, school district or irrigation district, as the case may be, and the words "For Official Use Only" have been permanently and legibly affixed to each side of the vehicle, except such automobiles as are maintained for and used by or under the anthority and direction of the state board of parole commissioners, the state contractors' board and auditors and investigators of the state gaming control board, and one automobile used by the Nevada state prison, two automobiles used by the Nevada girls training center, and four automobiles used by the Nevada youth training center.

Sec. 4. NRS 482.505 is hereby amended to read as follows:
482.505 [All] Except as otherwise provided by law, all motor vehicles owned by the State of Nevada, or by any board, bureau, department or commission thereof, or any county, city, town, school district or irrigation district in the state shall be exempt from the payment of the license fee thereon.

Sec. 5. (There is no section of this number.)
SEO. 6. NRS 624.220 is hereby amended to read as follows:
624.220 1. The board may adopt rules and regulations necessary to effect the classification of contractors in a mamer consistent with established usage and procedure as found in the construction business, and may limit the field and scope of the operations of a licensed contractor to those in which he is classified and qualified to engare. LA licensee may make application for classification and be classified in more than one classification if the licensee meets the qualifications prescribed by the board for such additional classification or classifications. The rules and regulations may provide for an additional application or license fee to be charged for qualifying or classifying a licensee in additional classifications. 1 The board may limit the field and scope of the operations of a licensed contractor by establishing a monetary limit on a contractor's license, and such limit shall be the maximnm contract a licensed contractor shall undertale under a specific contract. The board may take such other action designed to limit the field and scope of the operations of a contractor as may be necessary to protect the health, safety and general welfare of the public.
2. Nothing contained in this section shall prohibit a specialty contractor from taking and executing a contract involving the use of two or more crafts or trades, if the performance of the work in the crafts
or trades, other than in which he is licensed, is incidental and supplemental to the performance of work in the craft for which the specialty contractor is licensed.

SEC. 7. NRS 624.270 is hereby amended to read as follows:
624.270 I. No new license, as distinguished from the renewal of an existing license, shall be issued hereafter by the board unless the applicant for a new license shall:
(a) File, or have on file, with the board a bond issued by a qualified surety insurer in a sum to be fixed by the board based upon the magnitude of the operations of the applicant, but which sum shall not be less than $\$ 500$ nor more than $[\$ 1,000] \$ 5,000$, rumning to the State of Nevada and conditioned upon his compliance with all the provisions of this chapter; or
(b) In lieu of the requirements of paragraph (a), post with the board a cash deposit in an amount based upon the magnitude of the operations of the applicant but of a sum not less than $\$ 500$ nor more than [ $\$ 1,000.] \$ 5,000$.
2. The failure of an applicant to file the required bond or post the required deposit shall constitute grounds for denying him a lieense.
3. Every person imjured by the unlawful acts or omissions of a contractor who has filed a bond or posted a cash deposit as required under the provisions of this section may bring an action in a proper court on the bond or a claim against the cash deposit for the amount of the damage he suffered as a result thereof to the extent covered by the bond or cash deposit.
4. The claim of any employee of the contractor for wages shall be a preferred claim against any such bond or cash deposit. If any bond or cash deposit which may be required is insufficient to pay all claims for wages in full, the sum recovered shall be distributed among all claimants for wages in proportion to the amount of their respective claims. The partial payment of such claims shall not be considered as full payment and the claimants may bring action for the completion of payment of any umpaid balance.
5. After the liceusee required to furnish the bond has acted in the capacity of a licensed contractor within the State of Nevada for a period of 2 years, the licensee shall be relieved of the requirement of filing a bond or posting a cash deposit. The bond or cash deposit shall remain in force and with the board during the first 2 years' operation of the licensee as a licensed contractor, and during such additional time as, in the opinion of the board, there may be unsatisfied claims outstanding against the period of operation.

Sec. 8. NRS 624.290 is hereby amended to read as follows:
624.290 1. It is malawful for any two or more licensees, whose licenses have been limited by the board to contracts not exceeding certain monetary sums and each of whom has been issued a license to engage separately in the business or to act separately in the capacity of a contractor within this state, jointly to submit a bid or otherwise act in the capacity of a contractor within this state without first having secured an additional license for acting in the capacity of such a joint
venture or combination in accordance with the provisions of this chapter as provided for an individual, copartnership or corporation.
2. A licensee whose license is limited to contracts not exceeding certain nonetary sums cannot be a party to a joint venture unless such licensee has secured an additional license for such joint venture.

Sto. 9. NRS 624.300 is hereby amended to read as follows:
624.300 The board shall have power [to】 either to suspend or revoke licenses already issued and to refuse renewals of licenses when the applicant or licensee:

1. Has been guilty of acts of conduct harmful to either the safety or protection of the public; or
2. Has been guilty of dishonesty, fraud and deceit whereby injury has been sustained by another; or
3. Cannot establish financial responsibility the time of renewal; or
4. Has failed to comply with and complete a contract; or
5. Has been guilty of improper diversion of funds, misuse or misappropriation of funds, willful delay in completion of construction and the like.

## Assembly Bill No. 46--Clark County Delegation

## CHAPTER 346

AN ACT to amend NRS section 207.030, relating to vagrants, by adding new elements to the definition of a ragrant in relation to persons without visible or known means of living; and by providing other matters properly relating thereto.
[Approved April 18, 1963]

## The People of the State of $N$ evada, represented in Senate and Assembly, do enact as follows:

SECTION 1. NRS 207.030 is hereby amended to read as follows:
207.030 1. Every idle or dissolute person:
(a) Without visible or known means of living, who has the physical ability to work, who engages in vice of associates with persons linown to engage in vice or associates with known cheaters of ganing establishments, and who does not use due diligence to seek employment, nor labor when employment is offered to him; or
(b) Who roams about the country from place to place without any lawful business; or
(c) Who wanders about the streets at late and unusual hours of the night, or prowls around dark alleys, byways, and other dark or unfrequented places at any hour of the night, without any legitimate business in so doing; or
(d) Who lodges in any barn, shed, shop, outhouse or place other than that kept for lodging purposes, without the permission of the owner or person entitled to the possession thereof, is a vagrant.
consideration is measured by a percentage of the revenue derived from such machine or by a fixed fee or otherwise, without having first procured a state gaming license for the same.
4. It is unlawful for any person to furnish services or property, real or personal, on a contract, lease or license basis, pursuant to which such person receives payments based on earnings or profits or otherwise from any gambling game, including any slot machine, without having first procured a state gaming license; but the provisions of this subsection do not include any such person:
(a) Whose payments are a fixed sum determined in advance on a bona fide basis; and
(b) Receiving such payments on January 1, 1967.
5. Any person who shall knowingly permit any gambling game, slot machine or device to be conducted, operated, dealt or carried on in any house or building or other premises owned by him, in whole or in part, except by a person who is licensed hereunder, or his employee, shall be guilty of a gross misdemeanor.
[5.] 6. Any licensee who puts additional games or slot machines into play or displays such games or slot machines in a public area without authority of the commission to do so is subject to the penalties provided in NRS 463.310.

SEC. 20. This act shall become effective at 12:01 a.m. on July 1, 1967.

Senate Bill No. 457-Senator Dodge
CHAPTER 535
AN ACT relating to the licensing of contractors, setting forth the classifications of licenses and additional requirements for qualifying for a license; making certain records confidential; providing penalties; and providing other matters properly relating thereto.
[Approved April 26, 1967]
The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

Section 1. NRS 624.110 is hereby amended to read as follows:
624.110 I . The board may maintain offices in as many localities in the state as it finds necessary to carry out the provisions of this chapter, but it shall maintain one office in which there shall be at all times open to public inspection a complete record of applications, licenses issued, licenses renewed and all revocations, cancellations and suspensions of licenses.
2. Credit reports, references, investigative memoranda and financial information or data pertaining to a licensee's net worth shall be confidential and not open to public inspection.

SEC. 2. NRS 624.220 is hereby amended to read as follows:
624.220 1. The board may adopt rules and regulations necessary to effect the classification and subclassification of contractors in a manner
consistent with established usage and procedure as found in the construction business, and may limit the field and scope of the operations of a licensed contractor to those in which he is classified and qualified to engage II as defined by section 7 of this act and the rules and regulations of the board.
2. The board may limit the field and scope of the operations of a licensed contractor by establishing a monetary limit on a contractor's license, and such limit shall be the maximum contract a licensed contractor shall undertake under a specific contract [.] on a single construction site or subdivision site for a single client. The board may take such other action designed to limit the field and scope of the operations of a contractor as may be necessary to protect the health, safety and general welfare of the public. The limit, if any, shall be determined after consideration of the factors set forth in subsection 1 of NRS 624.260.
3. Nothing contained in this section shall prohibit a specialty contractor from taking and executing a contract involving the use of two or more crafts or trades, if the performance of the work in the crafts or trades, other than in which he is licensed, is incidental and supplemental to the performance of work in the craft for which the specialty contractor is licensed.

Sec. 3. NRS 624.260 is hereby amended to read as follows:
624.260 1. The board shall require an applicant to show such a degree of experience, financial responsibility and such general knowledge of the building, safety [and], health and lien laws of the State of Nevada and the rudimentary principles of the contracting business as the board shall deem necessary for the safety and protection of the public.
2. An applicant may qualify in regard to his experience and knowledge in the following ways:
(a) If an individual, he may qualify by personal appearance or by the appearance of his responsible managing employee.
(b) If a copartnership, a corporation or any other combination or organization, it may qualify by the appearance of the responsible managing officer or member of the personnel of such applicant firm.
3. The individual qualifying on behalf of an individual or firm under paragraphs (a) and (b) of subsection 2 shall allege and prove that he is a bona fide member or employee of such individual or firm and at all times, when his principal or employer is actively engaged as a contractor, shall exercise and be in a position to exercise authority in connection with his principal or employer's contracting business in the following manner:
(a) To make technical and administrative decisions.
(b) To hire, superintend, promote, transfer, lay off, discipline or discharge other employees and to direct them, either by himself or through others, or effectively recommend such action on behalf of his principal or employer.

Sec. 4. NRS 624.280 is hereby amended to read as follows:
624.280 The board in its discretion is authorized to fix application, examination and annual license fees to be paid by applicants and licensees under the terms of this chapter, but the application and examination fee shall not exceed $\$ 50] \$ 100$ and the annual license fee shall not exceed [\$50] \$100 per year.

Sec. 5. NRS 624.300 is hereby amended to read as follows:
624.300 The board shall have power [either] to suspend or revoke licenses already issued, [and] to refuse renewals of licenses [when the applicant or licensee: $\overline{1}$, to impose limits on the field, scope and monetary limit of the license as provided in NRS 624.220 or to reprimand or to take other less severe disciplinary action if the licensee:

1. Has been guilty of acts of conduct harmful to either the safety or protection of the public; or
2. Has been guilty of dishonesty, fraud and deceit whereby injury has been sustained by another; or
3. Cannot establish financial responsibility at the time of renewal; or
4. Has failed to comply with and complete a contract;
5. Has been guilty of improper diversion of funds, misuse or misappropriation of funds, willful delay in completion of construction and the like; or
6. Permits any person, firm or corporation not licensed under this chapter to use the license of such licensee to perform work in the state which would require a license under this chapter.
Sec. 6. Chapter 624 of NRS is hereby amended by adding thereto the provisions set forth as sections 7 to 11, inclusive, of this act.

SEc. 7. 1. For the purpose of classification, the contracting business includes any or all of the following branches:
(a) General engineering contracting.
(b) General building contracting.
(c) Specialty contracting.
2. A general engineering contractor is a contractor whose principal contracting business is in connection with fixed works, including irrigation, drainage, water supply, water power, flood control, harbors, railroads, highways, tunnels, airports and airways, sewers and sewage disposal systems, bridges, inland waterways, pipelines for transmission of petroleum and other liquid or gaseous substances, refineries, chemical plants and industrial plants requiring a specialized engineering knowledge and skill, power plants, piers and foundations and structures or work incidental thereto.
3. A general building contractor is a contractor whose principal contracting business is in connection with any structures built, being built, or to be built, for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind, requiring in its construction the use of more than two unrelated building trades or crafts, or to do or superintend the whole or any part thereof.
4. A specialty contractor is a contractor whose operations as such are the performance of construction work requiring special skill and whose principal contracting business involves the use of specialized building trades or crafts.
Sec. 8. 1. A licensee may make application for classification and be classified in one or more classifications if the licensee meets the qualifications prescribed by the board for such additional classification or classifications.
2. An additional application and license fee may be charged for qualifying or classifying a licensee in additional classifications.

Sec. 9. 1. For purposes of this chapter, financial responsibility means
a past and present business record of solvency. If the applicant or contractor is a corporation, its financial responsibility must be established independently of and without reliance on the assets of its officers, directors or stockholders, but the financial responsibility of its officers and directors may be inquired into and considered as a criterion in determining the corporation's financial responsibility.
2. The financial responsibility of an applicant for a contractor's license or of a licensed contractor shall be determined by using the following standards and criteria in connection with each applicant or contractor and each associate or partner thereof:
(a) Net worth.
(b) Amount of liquid assets.
(c) Prior payment and credit records.
(d) Previous business experience.
(e) Prior and pending lawsuits.
(f) Prior and pending liens.
(g) Adverse judgments.
(h) Conviction of a felony or crime involving moral turpitude.
(i) Prior suspension or revocation of a contractor's license in Nevada or elsewhere.
(j) Prior assignment for benefit of creditors or bankruptcy proceeding.
(k) Form of business organization (corporate or otherwise).
(l) Information obtained from confidential financial references and credit reports.
( $m$ ) Reputation for honesty and integrity of the applicant or contractor or any officer, director, associate or parther thereof.

Sec. 10. 1. If the individual qualifying by examination on behalf of another individual or a firm pursuant to subsection 2 of NRS 624.260 ceases for any reason to be connected with the licensee to whom the license is issued, the licensee shall notify the board in writing within 30 days from such cessation of association or employment. If a notice is given, the license shall remain in force for a reasonable length of time to be set by the board, but not exceeding 60 days from the date of such cessation of association or employment.
2. The licensee shall replace the person originally qualified with another individual similarly qualified and approved by the board within the time limited by subsection 1, unless extended by the board for good cause.
3. If the licensee fails to notify the board within the 30-day period his license shall be automatically suspended. The license shall be reinstated upon the replacement of the person originally qualified by another individual similarly qualified and approved by the board.

Sec. 11. An applicant for a contractor's license and each officer, director, partner and associate thereof shall possess good character. Lack of character may be established by showing that the applicant or any officer, director, partner or associate thereof has:

1. Committed any act which, if committed by any licensed contractor, would be grounds for the suspension or revocation of a contractor's license;
2. A bad reputation for honesty and integrity;
3. Entered a plea of guilty to, been found guilty of or been convicted
of a felony or crime involving moral turpitude arising out of, in connection with or related to the activities of such person in such a manner as to demonstrate his unfitness to act as a contractor, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal; or
4. Had a license revoked for reasons that would preclude the granting of a license for which the application has been made.

Sec. 12. This act shall become effective at 12:01 a.m. on July 1, 1967.

Assembly Bill No. 392-Committee on Taxation
CHAPTER 536
AN ACT relating to gaming; to provide for the licensing and regulation of manufacturers, sellers and distributors of gambling devices and equipment; providing a penalty; and providing other matters properly relating thereto.
[Approved April 26, 1967]
The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:
Section 1. Chapter 463 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 4 , inclusive, of this act.

Sec. 2. 1. It is unlawful for any person, either as owner, lessee or employee, whether for hire or not, to operate, carry on, conduct or maintain in the State of Nevada any form of manufacture, selling or distribution of any device or machine used in gambling, except pinball machines, in which the odds are operated, produced or determined electronically or electrically, without having first procured a license for such manufacture, selling or distribution as provided in sections 2 and 3 of this act.
2. Any person whom the commission determines to be a suitable person to receive a license under the provisions of sections 2 and 3 of this act, having due consideration for the proper protection of the public health, safety, morals, good order and general welfare of the inhabitants of the State of Nevada, may be issued a manufacturer's or distributor's license. The burden of proving his qualification to receive or hold any license under sections 2 and 3 of this act shall be at all times on the applicant or licensee.

SEc. 3. 1. The commission shall charge and collect from each applicant a fee of:
(a) For the issuance or renewal of a manufacturer's license, $\$ 500$.
(b) For the issuance or renewal of a seller's or distributor's license, $\$ 200$.
2. All licenses shall be issued for the calendar year and shall expire on December 31. Regardless of the date of application or issuance of the license, the fee to be charged and collected under this section shall be the full annual fee.
3. All license fees collected pursuant to this section shall be paid over immediately to the state treasurer to be deposited to the credit of the general fund.

## EXHIBIT "I"



Without first having a valid license, the bid of such person, firm, copartnership, corporation, association or other orgavization shall be void.
2. The provisions of subsection I do not apply to ary bill on work to be performed on a project financed in whole or in part by the Federal Government.

SEC. 3. NRS 624,263 is hereby amended to read as follows:
624.263 1. For purposes of this chanter, Snancial responsibility
means a past and present business record of solvency. If the applicant or
contractor is a corporation, its financial responsibility must be established independently of and without reifance on the assers of its officers, directors or stockholders, but the financial responsibility of its officers and directors may be inquired into and considered as a criterion in determining the corporation's financial responsibility.
2. The financial responsibility of an applicant for a contractors
license or of a licensed conteactor shall be determined by using the following standards and criteria in connection with each applicant or contractor and each associate or partner thereof:
(a) Net worth.
(b) Amount of liquid assets.
(c) Prior payment and credit records.
(d) Previous business experience.
(e) Prior and pending lawsuits.
(f) Prior and pending hens.
(g) Adverse judgments.
(h) Conviction of a felony or crima involving moral turpitude.
(i) Prior suspension or revocation of a contractor's license in Nevada or elsewhere.
(j) Prior assignment for benefit of creditors or bankrapty proceeding.
(k) Form of business organization (corporate or otherwise).
(1) Information obtained from confidential fionncial references and credit reports.
(in) Reputation for honesty and or partner thereof.
(n) An adjudication of bankruptcy or any other proceeding under the federal barkrupicy laws, includirg:
(1) A composition, arrongentent or reorsanization proceeding;
(2) The appointment of a receiver of the propery of the applicants: contractor or any officer, director, associate or purniaj thereof under if, , laws of this state or the United States; or
(3) The making of an assignment for the benefir of craditors.

SEC. 4. NRS 624.300 is hereby ancinded to read as follows:
$624.300 \quad 1$. The board shall have power to suspend or revoke licenses already issued, to refuse renewals of licenses, to impose limits on the field, scope and monetary limit of the License as provided in NIRS 624.220 , or to reprimand or to take other less severe discjpinary action if the Iicensee E :

1. Has been gailty of acts of conduct harmfui to either the safety or protection of the public; or
2. Has been guilty of dishonesty, fraud and deceít whereby injury has been sustaiued by another; ot
3. Cannot establish fin
4. Has faiked to comp?
5. Elas been guilty of appropriation of funds, si the like; or
6. Permits any person chapter to use the license which woudd requits a Iic act or acts ser forth in sect situte cause for discipithars
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Sec. 5. Chapter 624 ol the provisions set forth as s

SEC. 6. The following: ciplinary action under NRS

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2. Failiwe in a nstiterial any constimen projet or for such project or operatio
3. Willitul failure or re licensee as a contractor to 1 with reasonable ditigence. ts
SEC. 7. The following a ciplinary oction maler NRS,
4. Willjul and prejudict specifications in any materis or his duly anthorized repre. particular construction pro, with such man. and specifica
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SEC. 8. The jollowing a ciplinary action timder NiRS 6
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license, the bid of such person, firm, copartation of other ongavization shall be void. ubsectini I do not apply a any bid on work ?ct financed in whole or in part by the Federal
is her toy amended to read as follows: oses of this chaper, financial responsibility business record of suivency. If the applicant or 4, its finnrcial responsibility must be established out relince on tie sesets of its officers, diractors oumelal responsibility of its officers ared cirectors d ecosidered as a criterion in determining the ponsibility.
ponsibility of an sipplicanl for a contanctor's ntractor shall be determined by using the follow1 in rennection with each applicant or contractor trie reoif:
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elony or crime involving moral turpitude. or revocation of a contractor's license in Sevada
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ained from confidential financial references and
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17, an angement or reorganization proceeding; nent of a receiver of the property of the applicant or cer, director, associate or parmer thereof under the te United Stetes; or
of an assigmment for the benefit of creditors.
7,300 is hereby amended to read as follows: efuse shall have power to suspend or revoke licenses etary limit of the license as provided in NRS 624.220 , to take other less severe disciplinary action if- the
-ity-_ucts of conduct harmful to either the salety or blic; or dilty of dishonesty, frand and deccil whereby injury; by another; o:
3. Cannot establish financial responsibility at the time of renewal; or
4. Has failed to comply with and complete a contract;
5. Has been guilty of improper diversion of funds. misuse or misappropriation of funds, willul delay in completion of construction and the like; or
6. Permits any person, firm or corporation not licensed under this chapter to use the license of such licensee to perform work in the state which would require a license under this chapter. 7 has committed on act or acts set forth in sections 6 to 34 , inclusive, of this act which constimu cabse for diuciplinay action.
2. If the board sifspends or revokes the license of a contractor for failere to endolish fanancial responsibility, which is a cause for disciplimate action :finder subsection 3 of section 9 of this act, the board may enstate or reissue such license upon the contition that each contract imdcruken by the licensee be sepaiately covered by a bond or bonds conditioned upon the performance of and the payment of lahor and materials required by the contract.

SEC. 5. Chapter 624 of NRS is hereby amended by adding thereto the provisions set forth as sections 6 to 15 . inclusive, of this act.

SEC. 6. The following acts, among otilers, consfitute couse for disciplinary action under NRS 624.300:

1. Abandonment without legal excuse of any consiruction project or opsation engaged in or midertaken by the licensee as a contractor.
2. Failure in a material respect on the part of a licensee to complete any construction project or openation for the price stard in the contract for such project or operation or any modification thereof.
3. Willtul failure or refusai without legal cxcuse on the part of a licensee as a contractor to prosecute a construction project or operation with reasonable diligence, thereby causing material infury to another.

SEc.7. The following acts, among others, constitute cause for disciplinary action monder NRS 624.300:

1. Willful and prejudicial departure from or disregard of plans or specifications in any material respect without the consent of the owner or his duly authorized representaive and the person entitled to have the particular construction project or operation completed in accordance. with such plans and specifications.
2. Willful or deliberate disregard and violation of:
(a) The building law's of the state or of any political subdivision thereof.
(b) The safety laws or labor laws or compensation insurance laws of the stafe.
(c) Any provision of the Nevada health and safety laws or Nevada laws and rules and regulations promulgaied thereunder relating to the digging, boring or driling of warer wells.

SEC. 8. The following acts, anong outhers, constitue cause for dissiplinary action uniter NRS 624.300.

1. Diversion of funds or property zeceived for completion of a specific constuuction project-or operation or-for-a specified purpose-in-the compleion of any construction project or operation to any other consmuction project or operation, obligation or purpose.

failure by any licensee or agent or officer when due for any marcertals or services rens operations as a contractor, when he has the has feceived sudicicint funds therefor as paystruction work, projut or operation or which re revidered or purchased, thereof with intent to indebicdress or int: intient to injure: delay or q sucflindebredness is due.
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in force the bond or cash deposit required by 1 period required by the board. anterial respect to come oodrd.
ving acks among ofthers, constitute cause for disIRS 624.300: apacity of a contractor under any license issued he ficensee as set forth upon the license. of the ficersee as set forth in the application for , changed purstant to, this, chapter and the rules board.
to evade the provisions of this chapter. provisions onspiring with an unlicensed person to perform an use to be used by an tullicensed person.
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llow acts, among others, constitute cause for dis-
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in excess of the limit placed on the license by the board. The limit placed on a contractor's license by the board shall be the total anount of construction wook he may undertake on a single consiruction site or subdivision site for one cient. 4
2. Knowingly ensering into a contract with a contractor while such contractor is not licensed, or entcing into a contract with a contractor for work in excess of his limit or beyond the scope of his license.

SEC. 12. The following acts, annong others, constitute cause for disciplinary action under NRS 624.300:

1. The doing of any willful, fratdulent or deceifful act as a contractor whes eby stbstanial injury has been ststained by another.
2. An adiudiction of bunkupley or the confinnation of any other proceeding under the federal bankruptcy lavs, including:
(a) A composition, arrangement or reorganization proceeding;
(b) The appoinment of a recciver of the property of a licensee under the laws of this state or the United States; or
(c) The making of an assigmment for the benefit of creditors.
3. A conviction of a felony or a cime involving moral turpitude.

SEC. 13. The following acts, among others, constitute cause for disciplinary action under NRS 624.300 :

1. Workmanship wifich is not commensurate with standard's of the trade in gerseral or which is below building or construction codes adopted by the city or county in which the work is pertormed. If no applicable building or construction code has been adopted locally, then workmanship shall meet the standards deterrained by the latest edition of the Uniform Building Codic, Uniform Plumbizg Code or National Electrical Code.
2. Advertising constuction projects. without including in such adverrisements the name of the licensed contractor responsible for the construction of such projects.

Sec. 14. 1. Any person who:
(a) Has been denied a license or who has had his license revoked or suspended or who has been denied a ronewal of a license; or
(b) Has been a mernber, officer, director or associate of any parfnership, corporation, firm or association whose application for a license has been denied, or whose license has been revoked or suspended or which has been denied a renewal of a license, and whille acting as such member, officer, director or associate had knowledge of or participated in any of the prohibited acts for which the license or the renewal thereof was denied, susperided or revoked,
shall be prohibited from serving as an officer, director, associate or parther of a licensec.
2. The performance by any partnership, corporation, frm or associafion of aris act or ornission constituting a cause for discipinany action likewise constitutes a cause for disciplinary action against any licensee who is a member, officer, divector or associate of such parmership, corporation, firm-or-association, and-who-participated in-such prohibited act-or omission.


SERATE JUDIGTARE COMATTEE PUBLJC HEARJNG
SB 35 - Senator Young
Establishes edditional grounds for disciplinary action against licensed contractors; staggers board menbers' texms; adda exenption; provides for license renewals. Executive estimate of cost: None.

January 30, 1969.
The public hearing was called to order by Chairman Moncoe at $2: 25 \mathrm{p} . \mathrm{m}$. on Jamuary 30, 1969.

Committee members present: Semator Nonroe, Chaixman Senator Srobe Senator Dodge
(All pxesent)
Senator Young
Senator Chxistensen
Senator Bunker Senator Hug

Chairman Monroe called upon Senator Young who introduced Fin. Ton Cooke, Attozney foz the State Contractors' Board.

Mr. Cooke: The first anendment, Section I, 624.060, is. to provide for the term of the members of the board to be For four years commencing on July 1 of each four year term, the membexs of the boerd holding office on July 1, 1969, shall select by lot three members whose texms shall expire on June 30, 1971 and four members whose terms expire in 1973, this staggexing the teras so there will not be a complete change of members at once.
Semator Dodge: Why not stagger the terms before that time?
Mr. Cooke: This is the way it came from the legislative council, a long term and a short term,
Chaiman Konnoe: This makes it more interesting as it gives an element of chance.

Senator Young: Section 3, subsection 2 was amended adding standersfor financial responsibility of the contractor "An adjudication of barkzuptcy or any other proceeding under the federal bankruptcy laws including [1] a composition, arrangement or reorgenization proceeding; [2] the eppointment of a receiver of the property of the applicant or contractor on any officer, director, associate or partner theccof under the laws of [3] making of an assignment for benefit of crectitors ${ }^{1}$, There is a very good reason for this anendment. The last pait ci the first section reectec durjng tie last session

Mr. Cooke: On Section 2, page 2. This was amenderl so there would be no effect on any work involved with federal financing of State Eifway projects or on the University of Nevada contracts eligible for federal funds. This provision would eliminate the problem. The contractor would have to get a license after he was awarded the bid.

Senator Donge: Where do you provide for the applicant to get a state license if he were awarded the job? Could they stop him from working until the license vas issued? They shauld not put the state in a pasition that they would mot qualify for federal funds.

Senator Young: This was not stated the way they wanted it. The provisions of subsection 1 did not apply to any bid on work to be pereormed on a project financed in whole or in part by the Federal Government.

Mr. Coote: It was the intent but this certainly should be clarified.

Senator Dodge: fin excellent suggestion. This should be amended.

Mr. Cooke: On Inne 2, page 2. The word void should be changed to voidable as it would make it more flexible.

Senator Christensen: Can the contractor get a license after he has been awarded the bid?
Mx. Cooke: Yes, but they would have to qualify in accordance with the low. A license could be issued after the bid was awarded. $d$ of subsection 2 of 624.263 should be stricken as it is more specific in the amendment.
624.300, there are now provisions for refusing renewals of licenses that are set forth in the law. Under subsection 1 there js protection to the public expecially in work where there fis no bid required as it gives the client a chance to file technical puestions beyond the jurisdiction of the courts and justifies the Boend's position. The reason for the change set forth in the amendment to 6,4 , 304 is becawoe these are set forth in Article 5 of the rules of the Staie Contractors' Boerd and they should be in the law.

Senator Momoe: Why are there so many sections?
Mr. Cnoke: This was set up by Russ McDonald, legislative comen.

Section 14, page 5; Jine 41 , the shall should be
be changed to "may."
Section 15, page 6, "Each license issued undex the provisions of this expires on Jamary 31 of the year next following the date on which issued. A license may be renewed by filing a renewal application accompanied by - the annual renewal fee as fjxed by the board. The board prescribes regulations concerning license renewal." Before when the license expired the Boerd was limited and hed no power or control of relicensing. A situation came up and was before the District Court in Reno and the judge ruled in favor, however all judges do not always agree so the legislature should provide this by lav.

Chaiman Yonxo: Are there any questions?
Senator Dodge: If a license has been revolked can it be rejnsteted it timancial responsibiljty is proven?

Mr. Cooke: A license will be reinstated if the contractor provides a bond, that is perfornance bond, for each contract jod. Upon renewal of a ljeense it is up to the decision of the board if the proof of finameial responsibility is vaived. A proven responsible financially sound contractor may not be required to submit a financtat statement for renewal.

Semator Dodge: I feel sections 6 thru 14 should be consoliadated.

Chaiman ronroe: Is there any one else that would like to be heara?

Mr. Fitch: I am Roy Fitch, Secretary of the Electrical Workers Union from Reno, Nevada. Who would enforce the electrical code if there were no city or county ordinance to apply?

Mr. Cooke: In that situation a worknanship complaint would be fifed in the same method used at the present time, that is by a buildirig inspector. Any electrical danage caused by poor wozleme. .." ip would be a violation of the building code and safety standarcis.

Mr. Fitich: I am in favor of the amenarments.
Mr. Oakes: Kix. Rowland Oakes, Secretacy-Manager of the Assoctation of General Contractors. I would like more time to study the bill, however I am in favor as long as the regulationis are fothowed as set forth on page section 2. On page $G$ the new section, the language should be in accordance with the Adrainistrative piocedure Act so there whit be no conflict of interest. The staggened terme are good and we are in favor of this. I would like to

subnit to the committee the recomendation that four members of the Board must be general contractors. I feel this should be written into the amendment.

As the bottom of page 1 and top of page 2 stating a bid is void if the contractor is not licensed should be changed to voidable. It might make it difficult for the Board to to explain void.

Subsection 2 should be taken out. $\dot{M}$.... .. and Koudsen Contractors were not allowad to subnit a bid as they were not licensed at that time, however it was a mistake. The language in the federal government bill states the only ones that are exempt are on federal hiway projects and that should be in this law.

Page 3, Ijnes 6 thru 17. Personaliy I am not in favor of that language. It should be determined by the board and not the bondine company as they may not qualify for a bond. It is very diffjcult to get a license bond as well as a performmee and payment bond. The board wauld have to drermine if they could not qualify for a bond.

I would like time to submit the amendments.to get approval.

SENATOR Dodge: Section 2 on page 2 could come out. It might be an idee to consider the contractor to be prelicensed when bidding and he would then have to subuit a license if bid was awarded. Federal Hivay projects can be bid without a license but the bidder must show a license within ten days. If any work performed in the state involved in Federal aid should be limited to federal bids on highway - projects. The university projects are not the same as federal or himay projects.

Mr. Stoker: I agree the wording should be changed from void Eo voidable. Sub-section 2 page 3, I feel the whole section should come out as I feel the Boerd should decide who gets the licenses. If he is qualified he should be awarded the job andithen he could get his license. The law is drawn to protert the small peisom.

Chaixman fonroe: I think we should be in complete accordance with Ehe federal act.

Senator Young: We do not went to be in violation.

What sabout requirements? Can you bid without a license on a Federal project? Do 'they have to get a license if the bid is accepted?

Mr. Cooke: Yes, they should be licensed in Nevada but the law shouid be carified as to intent.

Sehator Young: We will change the "void" to "voidable"; The previous law stopped on line 21 page 1. If we stopped there now there would be no confusion.

Senator Hug: The way things are now the contractor was better off under the old act.

Mr. Cooke: Tf the contractor has $100 \%$ government money and it is $100 \%$ government inspected he cannot bid without a state license when federal monay is involved.

Senator Young: Line 21 page 1 is no trouble. The last part could be taken out and section 2 could come out also.

Senator Dodge: The reason it was changed was that it was unlawful to submit a bid without prior licensing and jt restricted who might submit a bid for a contract.

Chairman Monroe: At the present tirne are the permitted a license after a successful bid?

Mr. Cooke: A bid on any federal project, a successful bidder can not get the contract until they get a license. Tiey must be licensed.

Mr. Oakes: Legislation was submitted for tilis but it was not put in by Euss McDonald, and we would like to have it.

Mr. Fitchi In some contract ceses the bidder must have a license before bidding and in others this is not a requirement. It seems to me this is tiscriminatory, and in violation of Federal refuiments. I would like more infomatiōn on this.

Mr. Frazzini: My, 有ane in Carson Frazaini, 1630 Van Ness Street, Reno, levade, $\because$ Leve been a contractor for thirty sears and in the Reno area for twenty five years. Mre lan is very umique and the only other state that concures with this is Noxth Dakota. With the financial responsibility section the Eoard could put you out of business if you owe e few over due bills, lit is the only licensing Boarcl in the United States to puti a dollar Gmit on financial wepomibelaxy ability. I have checked with thixty even state cepitols and there are no others. ST 5
should tighten the financial responsibility section. This allows three percent of the Nevada Contrectors to dominate the others in the State. At the time of renewal they could cancel youz license and can demand a fimancial statoment, list of past clienes and practically your whole past histozy. They tell a small contractor the limit he can bid on and they have a limit on his license. The only other state to put a limit on finences is North Dalcota. In Califorma thay do not have a finencial responsibility section.

Regarding the tems, some time bach they had staggered terms but they wanted a change so that they all expired together and now they want to change it back again.

They have terrific power thru the Contrector's Act. They have powers mot even the President of the United States has. They limit small contractors so they can only do small contractors and can force a combachor to go broke. He can't neke enough to make a decent living.

Chairman Monaroe: Mr. Frazaini, are you implying the wealthy contiactor does not have to comply the seme as the small contractor?

Mr. Frazzini: Most of the lengex contractozs are not asket for a thencter statement. They only ask a fem. There is no protection for those few. There are sone big ones that dominate all other contractors in the Stete. They are afraid to conceat the laws and the licensting as they conld ba put out of business.

I hope the commitee vill defoat this bill as it is a bed law.
Senator Dodge: (to Mr. Frazzini) From your arguments you siate Ehat this is a closed shop.

The Contractor's licensing Iary was oreated in Nevada fo provide public protection. There must also be protection for the contractore, large or mall. The contractors turned to the legislature for xules to run as a guide. They did this because they were interested in public protection as well as foz cheix own protection. I will detend any reection to the statment that the Board runs a closed shop. It is a basic law and the Boerd is the admindstentox of the lew,
(To Mr. Stoker) Low many contrectors axe licensed in tre State of Nevada?

$$
\mathrm{Mr} . \text { Stoker: } 4,491
$$

SB H5 - Janua工y 30, 1969 -7

Senatoz Dodge: I can't believe they are dominated by $3 \%$.
Mr. Stoker: The dollar limit is pleced on reheir financial status as weIl as their ability. It is placed there to protect the public as well as the contractor. They all have to meet responsible financial requirements and mey, ot be qualified to handle a large contracting job. They would go bankrupt if we let them accept a contract they couldn't handle and the public would be left holding the bag. The financial limit can be increased as the contractor proves himself.

Chairman Noncoe: A charge was made that the large contractor dominates the industry. $85 \%$ of the contractors in the state are not the large contractors.
Mx. Frazzini: I am indicating the law is a bad one. I feel a.1 members appointed by Governor Laxalt to the Contractor's Board have betrayed their appointment.

Mr. Cooke: 'I certainly defend the lay. It is one of the finest of its kind in the United States. Nevada was the first State to adopt a licensing law regulating acts of the contractors to protect the public. It is to protect the public and to protect the Board of Contractor's as well as the contractor. The dollar Iimit of licensing is unjaue. Other States regerd it as modet Iegislation. The Boarcl has contracted to act on evidence as set forth in the law. Rather tham risk a challenge they come to the legislatire to prepare the laws for them. By limiting the Contractor it keeps many of them from getting into financial problems.

Senator Dodge: (Directed to M. Cooke) Do you ever have any complaints that you are to lenient?

Mr. Cooke: We heve more complaints that we are too lenient than the other way.

Mr. Frazzini: Why not give everyone the same dollar limit and charge them accordingly?

Mr. Solarj: I am Al Solari, a member of the State Contractor's Board from Reno, Neveda: First, may I say that the statement that $3 \%$ of the Contracinis worninate the Board is not true. As far as discriminating ageinst any one contractor, this is not true. In the event of a complaint against a contractor the Eoard has to investigate so they can call for a financial statement at that time. There is no discrimination at all.

Mr. Fitch; If a Contractor that was not Iicensed wanted to bid on a job, who is to say the Contractor is financitily responsible if je mas a bid on a state job?
SENATE JUDICIARY COGTTTEE HEARING
SB \#5 Jamuary 30,1969

Mr. Cooke: A Surety Bond would have to be furnjshed by the Contractor.

Mr. Cuno: I an Ernest Cuno from Reno, Nevada. On page 2, section 2, I feel that if there were any changes in the wordjng it would open the foor for FHA and VA insurance loans. Also the Federal National Morgage Assoctation. I agree with Mr. Oakes on the bonding. I would like to mow how you would define legal excuse in Section 6.

Mr. Cooke: I would say this would be an act of God, a strike, or anything beyond theis control.

Mr. Cuno: Who would be responsible for inspection of jobs done by various comtractors to be sure their work met the codes and that the work was accomplished in a workmalike mamer?

Mr. Cooke: There are building inspectors, both city and county to inspect finished work amd if it was found to be unsatisfactory we would cextainly hear about it.

Chafman Monxoe: Are there any others that would like to be heard?

If not, I am sure that renator Young and Mr. Cooke can get together and work out amendments to tale care of the changes.

The meeting wes adjourned at $3: 45 \mathrm{p}$. Th. ?

Respectfully submitted,

JEANNE M. SMITH, Secretary

Approved: $\qquad$ $-$

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# IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE 

Silverwing Development, a Nevada corporation; J Carter Witt III, an individual,

Petitioners,
vs.

Nevada State Contractors Board
Respondents.

CASE NO.: CV18-00128
DEPT. NO.: 10

## REPLY TO AMICUS CURIAE BRIEFS

Petitioners Silverwing Development and J Carter Witt III (collectively, "Silverwing")
respectfully submit the following reply to the "CTA" Amicus Curiae Brief and "LMCC" Amicus
Curiae Brief.

## ARGUMENT

## I. Introduction

The fundamental conclusion posited to the Court by the CTA Brief is that NRS $624.220(2)$ 's limitation on "the maximum contract a licensed contractor may undertake on one or more construction contracts on a single construction site or subdivision site for a single client" is rationally related to a legitimate public purpose. The legitimate public purpose, as articulated by CTA's brief, is "to guard the public from the adverse consequences of a contractor's financial insolvency, as well as a contractor's lack of experience." CTA Brief; p. 2:12-15. As discussed below, CTA's position might make sense if concurrent work was aggregated for all licensees regardless of where the work was performed or for whom, if the word "site" as used in NRS 624.220(2) was analogous to a specific permit, or if it was clear that consecutively performed and completed work could not be aggregated. In the absence of such qualifications though, there is no rational relationship between the actual language of NRS $624.220(2)$ and the claimed public purpose of the statute.

Paradoxically, the LMCC Brief actually appears to support Silverwing's position. Silverwing and LMCC are in agreement that the definition of the word "subdivision" in NRS $278.320(1)$ is not an appropriate surrogate for the phrase "subdivision site" in NRS 624.220(2). Oddly though, LMCC appears to argue that the Legislature actually intended "single construction site or subdivision site" to mean "work of improvement", a phrase defined by NRS 624.029 and NRS 108.22188. LMCC Brief; p. 3-6. As discussed below, while LMCC's use of NRS 108.22188 makes some practical sense, it is not supported by any generally accepted method of statutory construction.

The crux of this entire case remains true. Nobody who has opined on the issue...not Silverwing, not the Nevada State Contractors Board, not CTA's counsel, not LMCC's counsel, and not the Legislative Counsel Bureau...has been able to articulate a well-settled and ordinarily understood meaning of NRS 624.220(2)'s "single construction site" and "subdivision site". Principles of due process and equal protection require much more than an "I know it when I see it" ${ }^{1}$ approach to the applicability of contractor licensing limits.

## II. NRS 624.220(2) IS NOT RATIONALLY RELATED TO SOLVENCY.

The CTA Brief confuses the constitutionality of the concept of license limits, which if properly drafted could potentially be rationally related to financial responsibility and solvency, with the actual language of NRS 624.220(2).

The Legislature has articulated a series of financial metrics to be considered by the NSCB when determining financial responsibility. NRS 624.263(2)(a)-(f). These metrics include net worth, liquid assets, current liabilities, working capital, and ratio of current assets to current liabilities. The last metric, ratio of current assets to current liabilities, is known in accounting terms as the "current ratio". The current ratio, sometimes also called the "working capital ratio", is a liquidity ratio because it measures a company's ability to pay short-term and long-term obligations. The current ratio is also one of several ratios often used to determine solvency. Black's Law Dictionary defines solvency as "the ability to pay debts as they come due." Black's Law Dictionary 1400 (7th ed. 1999). Thus, a rational relationship between NRS $624.220(2)$ and solvency requires a nexus between the

1 Jacobellis v. State of Ohio, 378 U.S. 184, 197, 84 S. Ct. 1676, 1683, 12 L. Ed. 2d 793 (1964)(Stewart, J., concurring).
definition of a license limit and the ratio of current assets to current liabilities. No such nexus exists.

If NRS $624.220(2)$ was truly rationally related to solvency, it would require the aggregation of all contracts requiring work to be concurrently performed by a licensee at any given time since those contracts represent current liabilities (NRS 624.263(2)(d)). But, NRS 624.220 (2) requires no such analysis. More broadly, if NRS 624.220(2) was rationally related to the "financial responsibility" (as defined by the factors stated by the Legislature in NRS $624.263(2)$ ) of a contractor, it would never aggregate in perpetuity properly completed, accepted, and paid for work. Prior satisfied liabilities bear absolutely no relationship to the ratio of current assets to current liabilities (solvency), and they certainly do not reflect negatively on the financial responsibility of a licensee.

## III. NRS 624.220(2) IS unconstitutionally vague because there is no wellSETTLED AND UNDERSTOOD MEANINGS of "Single construction Site" and "SUBDIVISION SITE".

CTA's counsel, acting as counsel for Tesla, requested an advisory opinion from the NSCB because counsel could not discern from the applicable statute whether Tesla's project would be considered a "single construction site". The NSCB, through counsel, responded with an opinion letter in which it unequivocally stated that the phrase "single construction site" was "ambiguous because the phrase is subject to more than one reasonable meaning." Exhibit 2: SWD000150. If the phrase "single construction site" had well-settled and understood meanings, certainly counsel for a billion-dollar company (Tesla) and counsel for the Nevada State Contractors Board would be apprised of those meanings.

Because there is no well-settled and understood meaning of the phrase "subdivision site", the NSCB (at least in this case) used a singular word ("subdivision") from a different statute (NRS $278.320(1)$ ) as a surrogate for the phrase "subdivision site". Rules of statutory construction, and of simple grammar, do not support the interchangeability of "subdivision site" and "subdivision". Importantly, LMCC's Brief agrees. Interestingly though, LMCC argues that the Legislature really intended "single construction site" and "subdivision site" to be synonymous with "work of improvement" as defined by NRS 624.029. LMCC Brief; p. 3-6. In essence, it appears that LMCC considers the words "site" and "project" to be interchangeable. If LMCC is correct, then NRS 624.029(1) would prevent the aggregation of contracts for construction of separate buildings on separate legal parcels of land, provided that separate prime contracts are issued. That analysis, while practical to some degree, is completely contrary to any other interpretation of NRS $624.220(2)$ proffered to date and directly contrary to the interpretation proffered by the NSCB.

This is not a situation where unconstitutional vagueness only exists through some fanciful creation of marginal fact patterns. ${ }^{2}$ The parties to this Petition, the Amici Curiae, and even the Legislative Counsel Bureau (Exhibit 5, SWD000147), have not, and cannot, articulate well-settled and understood meanings of the key phrases in NRS 624.220(2). Where accomplished counsel for sophisticated parties and government agencies cannot reasonably agree as to what specific phrases in NRS 624.220 (2) mean, it is difficult to

[^6]comprehend how the statute gives a person of ordinary intelligence a reasonable opportunity to know what is prohibited.

## CONCLUSION

No amount of creative lawyering can change the fact that NRS 624.220(2) is so vague that nobody, not the NSCB, not its investigator, and not the public at large, can articulate with any certainty when the statute will apply. That is a violation of due process. Moreover, there is no rational basis for the statute's disparate treatment of licensees with the same monetary limit through the aggregation of work performed for the same client on a single construction site or subdivision site. Similarly, the aggregation of work previously performed for the same client on a "single construction site or subdivision site" is not rationally related to solvency of a licensee, or to the Legislature's stated goal to protect the health, safety and general welfare of the public.

Based on the foregoing, Silverwing respectfully requests the Court reverse the decision of the Administrative Law Judge.

## Affirmation

The undersigned affirm that this document does not contain any social security numbers.

Dated May 24, 2018.

/s/ Michael S. Kimmel Michael S. Kimmel Hoy | Chrissinger | Kimmel | Vallas<br>Mark A. Hutchison<br>Daniel H. Stewart<br>Hutchison \& Steffen, PLLC<br>Attorneys for Petitioners

## Certificate of Service

I hereby certify that on May 24, 2018, I electronically filed the foregoing with the Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the following:

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# IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE 

Silverwing Development, a Nevada corporation; J Carter Witt III, an individual,

Petitioners,
vS.

Nevada State Contractors Board
Respondents.

CASE NO.: CV18-00128
DEPT. NO.: 10

## REPLY TO RESPONDENT'S ANSWERING BRIEF

Petitioners Silverwing Development and J Carter Witt III (collectively, "Silverwing") respectfully submit the following reply to Respondent Nevada State Contractors Board's ("NSCB") Answering Brief.

## ARGUMENT

## I. Introduction

The NSCB concedes, as it must, that there is no definition of the phrases "single construction site" or "subdivision site" to be found anywhere in NRS Chapter 624 or the associated NAC 624. NSCB Brief; p. 20:7-10. The evidence in the record before this Court confirms that the NSCB's own investigator could not find applicable definitions anywhere, and that there are absolutely no internal written guidelines, manuals, or guide books that the investigator could use to determine whether something is a single construction site or subdivision site. Transcript; p. 123:20-25, p. 124:1-25, p. 125:1-25, 126:1-3. There is no evidence in the record that any court, the Legislature, the Legislative Counsel Bureau, or even the NSCB, has ever published an opinion or legislative history of any kind that supports the application of NRS 624.220(2) in the manner in which it was applied to Silverwing in this case.

It is unfathomable to conclude that a statute can be of sufficient specificity as to give a person of ordinary intelligence a reasonably opportunity to know what is prohibited while concurrently also being so vague that several governmental agencies, multiple attorneys representing a variety of parties, and highly sophisticated developers cannot agree on its meaning. Yet, that is exactly what the NSCB would have this Court conclude.

## II. The Chevron Doctrine does not save NRS 624.220(2).

The ALJ's Decision is silent on several important constitutional points. First, it did not address "single construction site" at all, nor did it address the NSCB's repeated concession that the phrase is subject to multiple, reasonable interpretations. Second, it did not address the constitutionality (equal protection) of treating similarly situated licensees
differently solely based on whether they perform work for the same client in the same "subdivision site" or "single construction site". With respect to these issues, there is nothing in the ALJ's Decision to which the Chevron Doctrine could apply.

With respect to the singular issue that was addressed by the ALJ's Decision (the application of NRS $278.320(1)$ ), the so-called "Chevron Doctrine" relied upon by the NSCB is far from absolute. The Court must determine if the agency's position is based on a permissible construction of the statute. If, for example, the agency's position is unconstitutionally vague, the Chevron Doctrine is of no effect. Valenzuela Gallardo v. Lynch, 818 F.3d 808, 819 (9th Cir. 2016). This Court is not bound to accept and apply an unconstitutional interpretation of a statute simply because the agency, to justify its own actions, has chosen to do so. See, generally, F.C.C. v. Fox Television Stations, Inc., 567 U.S. 239, 132 S. Ct. 2307, 183 L. Ed. 2d 234 (2012). Nor is this Court bound to accept and apply an interpretation that "is nothing more than a convenient litigating position" or a "post hoc rationalization advanced by an agency seeking to defend past agency action against attack." Christopher v. SmithKline Beecham Corp., 567 U.S. 142, 155, 132 S. Ct. 2156, 2166, 183 L. Ed. 2d 153 (2012)(internal citations and quotations omitted).

As discussed at length in Silverwing's Opening Brief, the ALJ's us of the singular word "subdivision" as defined in NRS 278.320(1) as a substitute for "subdivision site" in NRS 624.220(2) is not reasonable. The terms in the statutes are not the same. A statutory "subdivision" is composed of land divided into "five or more lots, parcels, sites, units or plots", a "subdivision site" must be something less than an actual "subdivision"; a "subdivision site" must be a smaller piece of the entire subdivision. Therefore, multiple subdivision sites, in the aggregate, make up the subdivision. The NSCB cannot legitimately claim that subdivision lot, subdivision parcel, subdivision unit, and subdivision plot are
synonymous with the subdivision as a whole because each is a smaller piece of the subdivision, five or more of which are required to constitute a subdivision. There is no principle of grammar, legal precedent, or generally accepted method of statutory interpretation upon which it is reasonable to treat the word "site" differently than the rest of the series of divisions of land contained in NRS 278.320(1).

As a practical matter, the NSCB own hypotheticals in the Answering Brief illustrate Silverwing's point. In each of those hypotheticals, Silverwing references "Subdivision A" and/or "Subdivision B" . . not "Subdivision Site A" or "Subdivision Site B". The NSCB does so because normal language usage would not include the word "site" after "subdivision" as a method to reference the entire subdivision. The point becomes more evident when the subdivision is given an actual name, such as the Arrowcreek Subdivision, the Damonte Ranch Subdivision, or the Somersett Subdivision. It is nonsensical to conclude that a reference to the "Arrowcreek Subdivision site" would be a reference to the entire subdivision spanning many square miles and to allow the NSCB to aggregate all contracts over more than a decade of work. ${ }^{1}$ The word subdivision, on its own, already encompasses the entirety of the subdivision. The only reasonable interpretation is that the word site provides a reference to a specific site within the Arrowcreek Subdivision.

Additionally, the statutory interpretation proffered by the NSCB and utilized by the ALJ only adds to the constitutional problems with the statute. Without any rational basis for doing so, the NSCB's interpretation would treat licensees who perform work in planned groups of homes with less than five sites differently than licensees who perform work in

1 There has been some reference made to a licensee's ability to obtain a one-time limit increase. It is nonsensical to conclude that a licensee could attempt obtain a "single project" limit increase pursuant to NAC 624.670 if the entire subdivision is considered to be the "single project".
statutory subdivisions with five or more sites. After all, the former would not be a "subdivision site" as contemplated by the NSCB while the latter would meet the NSCB's strained definition. Moreover, according to the NSCB, its interpretation of NRS 624.220(2) is necessary to prevent licensees from splitting up contracts to avoid licensing limits. Yet, the NSCB's interpretation supports such contract splitting by providing an incentive for developers to record multiple maps in which any one map contains no more than four lots.

## III. The Severability Doctrine does not save NRS 624.220(2).

Silverwing challenged both the facial and as-applied constitutionality of NRS $624.220(2)$ in its entirety. The challenge was not limited to either the phrase "subdivision site" or the phrase "single construction site". At the hearing, the NSCB suggested that the hearing be reconvened so the NSCB could present evidence on the issue of the application of the facts to the phrase "single construction site". Transcript; p. 63-65. Although the ALJ did not continue the hearing, he did provide the NSCB with a short recess to gather its evidence and prepare its presentation on the topic. Both parties introduced evidence and testimony related to the facts as applied to the vague term, "single construction site". On the one had, the NSCB contends that all of that evidence and testimony is irrelevant (NSCB Answering Brief; p. 3, FN 1) while at the same time arguing that any constitutional defect in the phrase "subdivision site" should be cured with the Severability Doctrine, thereby leaving only the term "single construction site" in the statute. The NSCB's argument lacks merit.

The Severability Doctrine contemplates the removal of provisions from an otherwise valid statute, not the removal of specific words within a sentence. Moreover, the Nevada Supreme Court has recognized that severability clauses are "entitled to little weight" and
should not be paid "undue homage". Clark Cty. v. City of Las Vegas, 92 Nev. 323, 336, 550 P.2d 779, 788 (1976). Severability requires a determination that legal effect can be given to a statute standing alone and that the legislature intended the provision to stand alone if other provisions failed. Neither test is satisfied in this case. The removal of the vague phrase "subdivision site" from NRS 624.220(2) does not cure the vagueness of the phrase "single construction site" (a phrase the NSCB admitted is subject to multiple reasonable intepretations), and vice versa. Similarly, the removal of either phrase does not cure the undeniable violation of equal protection with respect to whatever words are left over. So long as the statute aggregates work in perpetuity for some, but not all, licensees of the same class and monetary amount based on whether they perform work for the same or different clients, there is a clear violation of equal protection without a rational basis for doing so.

## IV. NRS 624.220(2) IS NOT RATIONALLY RELATED TO SOLVENCY.

The NSCB's Answering Brief, like the CTA Brief, confuses the constitutionality of the concept of license limits, which if properly drafted might be rationally related to financial responsibility and solvency, with the actual language of NRS 624.220(2). NRS 624.220(2) is not, however, rationally related to financial responsibility and solvency. In support of its erroneous argument, the NSCB relies on purported Legislative history from old, inapplicable statutes as well as cases that do not address the issues before this Court.
"Prior legislative history is a hazardous basis for inferring the intent of a subsequent Legislature." Great Basin Water Network v. State Eng'r, 126 Nev. 187, 197, 234 P.3d 912, 918 (2010)(FN 8)(internal citations omitted). As conceded by the NSCB, and also recognized by the Legislative Counsel Bureau, there is no legislative history explaining
either the intent of the addition of the phrase "single construction site or subdivision site for a single client" to NRS 624.220(2) or how that phrase is to be applied. The NSCB has provided no reference anywhere in any legislative history of the Legislature's intent to use NRS 278.320(1) as a surrogate for the term "subdivision site" in NRS 624.220(2). In fact, the version of NRS 278.320(1) that existed when NRS 624.220(2) was amended in 1967 is much different than the version of NRS 278.320(1) that exists today. In 1967, NRS 278.320(1) defined a "Subdivision" as:

> [A]ny land or portion thereof, shown on the last preceding tax roll as a unit or as contiguous units, which is divided for the purpose of sale or lease, whether immediate or future, by and subdivider into 5 or more parcels within any 1 calendar year.

Under that definition, homes and buildings separated by common area or even a public right-of-way would never be contiguous, and therefore could never constitute a statutory "subdivision". Moreover, there would be a temporal limitation of 1 calendar year on the finding of that any divided property constituted a statutory subdivision.

The NSCB posits that subversion of licensing requirements provides the basis for the 1967 amendments, and that the case of Gur-Kovic v. State Contractors Board 95 Nev . 489, 596 P.2d 850 (1979)) stands for the proposition that bids cannot be split. The NSCB misreads the Gur-Kovic case. In that case, the pool contractor admitted to submitting a bid in excess of its license and that error provided the basis for the violation of statute. The licensee was not reprimanded for later submitting two bids, one for labor to be performed by the licensee and one for equipment to be supplied by a separate material/equipment supply company (a company not subject to the provisions of NRS Chapter 624.) The point of the case was that the licensee could not cure its original, admitted violation by changing the nature of the contracts after bid submission. However, had the licensee originally
submitted a bid for the labor only, and had the separate material supply company originally submitted a separate bid for the provisions of materials/equipment, there would have been no violation. The Gur-Kovic case is not premised on in improper attempt to "split a contract"; to the contrary, it is based on the fact that an original bid was not properly split between the licensee entity who would perform the labor and the non-licensee entity who would supply materials/equipment.

There is no evidence before this Court even remotely establishing how prior, completed work negatively impacts financial responsibility. There is no evidence before this Court even remotely establishing that it is more risky for a contractor to perform a series of projects for one client than it is for a contractor to perform multiple, simultaneous projects for multiple owners. There is no evidence before this Court that the public was in any way put at risk by the facts of this case. The only party that could possibly be at risk under the facts of this case is Silverwing. The only evidence before this Court is that Silverwing was both the unlimited licensee and the owner/developer of the projects at issue in this case. Those two uncontroverted facts obviate any possible argument that the NSCB could make regarding the rational relationship of the legislative purpose (to protect the public as stated in NRS 624.005) to NRS 624.220(2) as applied to this case.

## CONCLUSION

NRS 624.220(2) is so vague that nobody, not the NSCB, not its investigator, and not the public at large, can articulate with any certainty when the statute will apply. That is a violation of due process. Moreover, there is no rational basis for the statute's disparate treatment of licensees with the same monetary limit through the aggregation of work performed for the same client on a single construction site or subdivision site. Similarly, the aggregation of contract work previously performed and completed for the same client
on a "single construction site or subdivision site" is not rationally related to solvency of a licensee, or to the Legislature's stated goal to protect the health, safety and general welfare of the public.

Based on the foregoing, Silverwing respectfully requests the Court reverse the decision of the Administrative Law Judge.

## Affirmation

The undersigned affirm that this document does not contain any social security numbers.

Dated June 14, 2018.
/s/ Michael S. Kimmel
Michael S. Kimmel
Hoy | Chrissinger | Kimmel | Vallas
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## Certificate of Service

I hereby certify that on June 14, 2018, I electronically filed the foregoing with the Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the following:

NOAH ALLISON, ESQ. for NEVADA STATE CONTRACTORS BOARD
PAUL GEORGESON, ESQ. for ASSOCIATED BUILDERS \& CONTRACTORS, INC., NEVADA CHAPTER ASSOCIATED GENERAL CONTRACTORS, SOUTHERN NEVADA HOME BUILDERS ASSOCIATION, SOUTHERN NV CHAPTER OF NATIONAL ELECTRONIC CONTRACTORS ASSOC, SHEET METAL \& AIR CONDITIONING CONTRACTORS NATL ASSOC SO. NV, NEVADA CONTRACTORS ASSOCIATION, MECHANICAL CONTRACTORS ASSOCIATION OF LAS VEGAS, NEVADA SUBCONTRACTORS ASSOCIATION, NEVADA ASSOCIATION OF MECHANICAL CONTRACTORS

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EVAN JAMES, ESQ. for SOUTHERN NV PAINTERS, DECORATORS, \& GLAZIERS LMCC
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An employee of Hoy | Chrissinger | Kimmel | Vallas PC

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    6 SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
    et al.,
        Plaintiffs,
    vs.
        NEVADA STATE CONTRACTORS BOARD,
            Defendant.
15
        HEARING ON PETITION FOR JUDICIAL REVIEW
                                    TUESDAY, SEPTEMBER 4, 2018
23Job No.: 494369
24 Reported By: PEGGY B. HOOGS, CCR 160, RDR, CRR
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| 1 | -000- Page 3 |
| :---: | :---: |
| 2 | RENO, NEVADA; TUESDAY, SEPTEMBER 4, 2018; 1:34 P.M. |
| 3 | -000- |
| 4 |  |
| 5 | THE COURT: This is CV18-00128, Silverwing vs. |
| 6 | the Nevada State Contractors Board. |
| 7 | We are here on a Petition for Judicial Review. |
| 8 | On behalf of the petitioners -- I'll just say |
| 9 | the petitioners, plural, because it is Mr. Witt and |
| 10 | Silverwing Development -- are Mr. Kimmel and Mr. Stewart. |
| 11 | Gentlemen, good afternoon. |
| 12 | MR. KIMMEL: Thank you, Your Honor. Good |
| 13 | afternoon. |
| 14 | THE COURT: On behalf of the contractors board |
| 15 | is Mr. Allison. |
| 16 | Mr. Allison, good afternoon. |
| 17 | MR. ALLISON: Good afternoon. |
| 18 | THE COURT: Mr. Georgeson and Mr. Mannelly are |
| 19 | here on behalf of an amicus brief that the Court allowed, |
| 20 | and I will just describe it as the construction trade |
| 21 | associations. |
| 22 | Mr. Georgeson, nice to see you. |
| 23 | MR. GEORGESON: Thank you. |
| 24 | THE COURT: And then Mr. James is here on |

1 behalf of the second amicus curiae brief, which was filed on behalf of the Painters, Decorators and Glaziers, LMCC. MR. JAMES: Correct.

THE COURT: And on behalf of the Contractors Board we have Executive Officer Margi -- is it Grine? MS. GREIN: Margi Grein.

THE COURT: Grein. Thank you. I apologize. And Margaret Cavin is here as well.

THE COURT: Good afternoon to you.
Let's see. As I said, we are here for oral argument on a Petition for Judicial Review, reviewing a decision by the administrative law judge Philip Pro. The Court has received and reviewed the January 17, 2018, file-stamped Petition for Judicial Review. Attached thereto, I believe, was the decision from Judge Pro, which I have read.

The Court has also received and reviewed the following documents: The Court has received and reviewed the April 3, 2018, file-stamped Petitioner's Opening Brief; the Court has also received and reviewed the May 10, 2018, file-stamped Respondent's Answering Brief; further, the Court has received and reviewed the June 15, 2018, file-stamped Reply to Respondent's Answering Brief. When I say I've received and reviewed the

1 documents, I've reviewed not only the documents themselves, but any exhibits that are attached thereto, and as I say at the beginning of most hearings, if it looks like $I$ don't have all of the exhibits here on the bench, it's because I don't print out your exhibits. That's not environmentally friendly, so $I$ just print out the paperwork itself because $I$ prefer to read things in that fashion, and then $I$ have all of the exhibits digitally on the bench and in my office that $I$ review as I review the document. So if any time you wish to refer to an exhibit, please feel free to do so.

The Court has also received and reviewed the May 7, 2018, file-stamped Amicus Curiae Brief of the Construction Trade Associations filed by Mr. Georgeson; the Court has received and reviewed the May 7, 2018, file-stamped LMCC's Amicus Curiae Brief Supporting Respondent; and the Court has received and reviewed the May 24 , 2018, file-stamped Reply to Amicus Curiae Briefs. Those matters were all submitted to me for consideration as well.

I need to pull up the record. The record has been transmitted as well, so if at some point anyone wishes to refer to the record on appeal, please just give me a moment to pull up that portion of the proceedings,

1 and I will be able to quickly do so. I said quickly. I'll do my best to do it quickly. And it's on my computer as well.

It is my intent to hear from the petitioner twice. It's the petitioner's burden of proof, and so I will hear from the petitioners twice, both in an opening and in a reply argument. I will hear from the respondents and the amicus filers only once.

And I think somebody called and asked whether or not the amicus briefs would be allowed to be heard or whether the people filing the amicus briefs would be allowed to be heard, and Ms. Mansfield spoke to me about it, and I said yes. Because the issues are somewhat different, I'll allow the amicus to be heard when $I$ hear from the State of Nevada because they're all basically in support of Judge Pro's analysis, and I don't think it's fair to have the amicus have a separate argument.

So you guys can argue first, I'll hear from everybody on the left side of the room, and then I'll let the petitioner argue and conclude the arguments this afternoon.

With that, on behalf of the petitioner.
MR. KIMMEL: Thank you, Your Honor.
Again, Your Honor, Michael Kimmel on behalf of

1 the petitioner, who is with me. I have Dan Stewart, co-counsel, and then also Jay Witt, who is the individually named petitioner. I'm not sure if I stated that on the record.

Your Honor, this case has been pretty heavily briefed, obviously, at two different levels. My intent is not just to restate my brief or rehash my brief. I know that the Court has some questions, and that was part of the basis for having this hearing.

In essence, there's four parts to our petition. Three of them are what $I$ will say is purely legal or constitutional arguments, and then one of them is a factual argument related to the sufficiency of the evidence for the factual determination that was made by Judge Pro.

The legal arguments can in essence be broken up into three different sections.

One is due process, and it's based on the language of the statute itself and our position that the statute is unconstitutionally vague.

The second is based on equal protection and that addresses the law's disparate treatment, in our opinion, of similarly situated licensees. I want to be very clear with the Court in the manner in which I state

1 that. It would be inappropriate for me to stand up here and say that all licensees have to be treated the same. That's not our position at all. We understand that there are differences between specific licensees both in terms of what type of work they can do and the amount of work that they can actually perform.

So the specific argument that we are advancing, Your Honor, is that for similarly situated licensees, and that means licensees of the same dollar amount, there is disparate treatment depending on for whom they perform work and where they perform work. So that's the equal protection part of it.

The third constitutional part of this, Your Honor, is based on our contention that -- in essence, the nondelegation doctrine, Your Honor, and our contention that the Nevada State Contractors Board, in issuing what's been referred to as the Tesla letter, has taken on the role of the legislature and has created factors, enumerated factors, that the board intends to apply to determine if the statute applies. Our position is that that is an inappropriate assumption of that duty of the legislature and that that duty has not been delegated to the board.

Now, to be fair, Your Honor, that deals with

1 Page 9
one aspect of the statute. The statute has two phrases that we are really focused on in our briefing. The parts of the phrasing are "single construction site" or "subdivision site." So the "single construction site" of it is the aspect of it to which the Tesla letters applies. The Tesla letter does not apply to the subdivision site.

The contractors board, in its opinion letter, made the determination that it believed the "subdivision site" was unambiguous, but it agreed that --

THE COURT: If I could just jump in, I recall reading Mr. Allison's brief, and his contention is that Judge Pro didn't even address the construction site analysis; he only addressed the subdivision site analysis.

Do I remember that correctly, Mr. Allison?
MR. ALLISON: Yes, Your Honor.
THE COURT: It's not even the basis of Judge Pro's decision, and therefore I shouldn't even be considering it at all.

MR. KIMMEL: I understand that that's Mr. Allison's --

THE COURT: I'm not saying you're going to say, "Yes, I agree."

MR. KIMMEL: No. I understand, Your Honor.
And that was, in fact, what Judge Pro did. Judge Pro believed a few things in my opinion. He believed that he could not address facial constitutionality, was one of the things that he believed. I think he believed that he could address constitutionality as applied to this particular contested case. I can discuss whether I think he did that or not, but I believe he believed it was within his power to do so.

When His Honor determined that this was a subdivision site and made that factual determination, it then took out of his opinion any analysis of construction site, single construction site.

Now, Your Honor, though, what I'd like to point out is the record is clear, though, that the parties did argue both. The evidence was put before the Court as to both. In fact, Mr. Allison, during the hearing, requested a continuance so he could put on evidence of whether these were single construction sites or whether they were multiple different construction sites.

Judge Pro did not permit a continuance. He wanted us to move forward since everybody was there, rightfully so. So we took about a 15 -minute recess, and

1 then Mr Allison came back and put on his case as Page 11 the Contractors Board would believe that the single construction site would be applicable to these four projects, including to some degree, I think, the five factors stated in the Tesla letter.

So that aspect of it, Your Honor, while it wasn't part of his decision, it was absolutely part of the hearing, and one of our positions is that it was in error to find that this was a subdivision or that these were subdivision sites, and therefore the analysis should have been under single construction site. And based on the facts that were adduced at the hearing, these were not single construction sites.

THE COURT: Okay. Go ahead.
MR. KIMMEL: Your Honor, one of the things I find curious about this case is we've got a group of sophisticated professionals all the way around. We've got a group of sophisticated and accomplished lawyers all the way around, we've got the Legislative Counsel Bureau weighing in, we've got counsel for the Contractors Board weighing in, and none of us can seem to come to an agreement on what these terms mean.

Now, I understand some of that is bound up with people being advocates, and that's our job as lawyers,

1 Page 12
1 but it's interesting, when even one of the amicus briefs says that it's improper to try and use "subdivision site" as used in 624 and reach over to 278 and grab the definition of "subdivision" and use them interchangeably.

There's a problem here, Your Honor. There's a problem here with the clarity in the statute. I believe Mr. Allison admitted as much on the record in the hearing. Mr. Allison says there's a problem here. It needs to be dealt with by the legislature in his opinion, but he concedes that there is a problem.

When we put this problem in the context of my client, who is trying to do developments on the front end and enter into contracts, there must be some certainty in the law so my client can knowingly follow the law. If what we're dealing with is ambiguous, undefined terms that aren't even common in the industry, that nobody seems to agree about what they mean, it's difficult to comprehend how my client and other people can comply with the law on the front end.

So what we contend happened here, Your Honor, is 624 doesn't have "subdivision site" defined anywhere, so the Contractors Board looked elsewhere to try and find a definition. The definition that they borrowed was "subdivision." Even if we were to agree for the sake of

1 "Page 13
1 argument that "subdivision" and "subdivision site" are supposed to be synonymous, we still have a problem in the law, then, because we've still created a situation where there can be an intentional evasion of the law in essence.

A developer conceptually could make all of their subdivision maps have less than five lots. If they're less than five lots, then the statutory definition of "subdivision" would never apply. I don't think that that's the intent of the legislature.

There's a completely different approach, and that is that under 278 a subdivision is all of Reno. It is. Under the definition in 278, a subdivision is any development or planned development that is a division of land into five or more parts. Now, there's different parts spelled out in the statute itself, but five or more parts.

Under that definition, all of Double Diamond is a subdivision. Certainly all of Somersett is a subdivision. All of Summerlin in Las Vegas with 10,000 homes is a subdivision. Any time there is a map somewhere that shows an intentional division of land, regardless of the number of parts, provided those number of parts would be more than five, then it would meet the

1 definition of a subdivision.

Your Honor, if we put that in the context of the practical way in which construction occurs, particularly in Northern Nevada, what we're basically saying is, if you have a license that is somehow limited in its dollar amount, you will reach a point where you can no longer in perpetuity do work in that area for that owner.

That can't be the law, Your Honor, and the reason I say that that can't be the law is because that does not meet the stated goals of the legislature in 624, to protect the public -- health, safety and wellness of the public. The manner in which the board does that is through a very significant financial analysis on the front end to see what the assets are, what the liabilities are, what kind of judgments have been entered against particular claimants, whether they have IRS liens, all sorts of different financial metrics to get one's license limit, and those deal with liquidity, Your Honor, they deal with a contractor's ability to do the job that they have.

In essence, we liken it to a line of credit. You get a line of credit from the Contractors Board to do work up to X amount. When you've done that work, it

1
shouldn't continue to hurt you. When that work is years past and everything is fine, it shouldn't continue to hurt you.

And what's interesting, Your Honor, is the equal protection side of it becomes more evident when you think about the fact that those same fears of solvency are not applied equally to everyone based on all outstanding work.

I'm awful with juggling, Your Honor. I envisioned coming in here with a set of balls and doing this great presentation where $I$ sit and $I$ throw one ball up in the air and $I$ show the court how easy it is to catch it, and then $I$ wait a few minutes and $I$ throw another ball up in the air and I show the court how easy it is to catch it. That's a contractor who is doing work within their license limit, completing it, and then doing more work at a later date.

Now, I'd like to juxtapose that with the visual of me sitting here with six or seven balls, trying to throw them up in the air. We know what would happen, Your Honor. I'm maybe a clown, but I'm not that good of a clown. Those balls would hit the ground. The reason they would hit the ground is because it's more than $I$ can bite off. That is the statute that would make sense, but that's not the statute that is before the Court.

The statute that is before the Court makes a distinction between people of the same license limit without providing any rational relationship to how it is doing it, and $I$ think this is another very important point, Your Honor.

The petitioner is not before this Court saying that license limits, the concept, are invalid or unconstitutional. What we are saying is, unfortunately, the manner in which they have been drafted in the state of Nevada is unconstitutional because it bears no rational relationship to the solvency. If it did, it would be aggregation for everyone based on all work open regardless of who they're performing for or where.

Getting back to the ambiguity part of it, Your Honor, unfortunately 624 is riddled with lots of different terms that appear to be talking about the same thing, but they're clearly different terms.

One of the amicus briefs mentions the definition of "work of improvement," so the definition of "work of improvement" in 108 that is then borrowed into 624 provides that a work of improvement is the entire scheme of improvement as a whole. That's an interesting concept. That's pretty broad.

But then it provides an exception, and it says if it's multiple buildings that are built on separate parcels pursuant to separate contracts, then they are separate works of improvement. Well, that directly contradicts the license definition that says it doesn't matter if it's under one or more contracts and provides no kind of geographic limitation based on APNs or anything else or even the number of buildings. So we can't use that.

There's been some talk about, well, this statute is not that burdensome because licensees can just go out and get a one-time limit increase, but if we look carefully at that statute, Your Honor, no, they can't, because the statute provides a one-time limit increase for a project, for a project. It doesn't provide a one-time limit increase for an entire subdivision. It doesn't provide a one-time limit increase for an owner. It doesn't provide -- I think I could fairly say that a single construction site is probably intended to be the same thing as a project or that at least those line up somehow, but with respect to the rest of it, it is difficult to understand how a drywaller or a plumber with a 10 - or $\$ 15,000$ license or a $\$ 20,000$ license can go to the Contractors Board and say, Double Diamond is being

1 Page 18
1 built, I've seen the master plan, there could be 22,000
2 homes out there. I don't know how many I'm going to get. I'm doing one home at a time, but I'd like you to give me a one-time project limit increase. It's incomprehensible --

THE COURT: To a million and a half dollars. MR. KIMMEL: To a million and a half dollars without any understanding that they are contractually obligated to perform that much work or they may ever get that work.

And the big problem again, Your Honor, is that there's a financial component that ties to that license limit increase. The board isn't just going to give somebody, you know, a license limit increase that's 15 times in excess of what their underlying normal license is and have it open-ended for 20 years on Double Diamond or on Somersett, and that's without us even looking at the size of the projects down in Las Vegas.

So the issue here, Your Honor -- I mean, the heart of it, from the vagueness side of it, Your Honor, is "single construction site" and "subdivision site." We contend that there's a very, very important word in those phrases and it's the word "site." It's what makes a subdivision site different than a subdivision. We know

1 that to be the case because if we look at Chapter 624 Page 19 definition of "subdivision," we see that one of the parts that can comprise a subdivision are five or more divisions of land in two sites.

So the very statute that the board has relied upon to explain why there is a violation actually presupposes that a site within a subdivision, a subdivision site, is different than a subdivision in its entirety.

Curiously, 278 isn't mentioned anywhere. It's not mentioned on the Contractors Board's website as being, you know, a statute that contractors need to worry about. It's certainly not borrowed into 624. There's no legislative history that shows that that was the intent, to have crossover between those two statutes.

What compounds all of this, Your Honor, is within 624 there's a very difficult definition of the word "knowingly." I think it's quite clear from Judge Pro's opinion that he did not believe that the petitioners intentionally tried to evade the law or that the petitioners believed they were evading the law.

That's an important point, that a sophisticated developer who has brought to completion a billion dollars in projects did not believe they were violating the law.

1 That speaks to whether the terms that we are talking about are commonly used terms that everybody understands what they mean.

THE COURT: I have to admit, not recalling it in the record, but do we know what the Contractors Board would say or has said to people who pick up the phone, I call and say, "I run Sattler's Plumbing, and I'm looking here at Chapter 624. What's a site?" Do they reference them to anything in particular? Do they give them some idea about a subdivision site or a construction site?

MR. KIMMEL: Your Honor, I can't personally say that I've called and asked the question. What I can do is point to parts of the record that I believe answer the question.

First, we've got Mr. Georgeson, who is now here representing the AGC group, sending a letter on behalf of Tesla to the board saying, I don't understand what this means. It seems ambiguous to me. And you've got the board's lawyer responding and saying, yeah, one-half of this is ambiguous so we're going to come up with some stuff. So that provides some indication as to what was told.

Perhaps more importantly, though, Your Honor -and I believe I've given the Court pinpoint cites of this
in this testimony in the opening brief.
THE COURT: I think you did.
MR. KIMMEL: And that is the testimony of the investigator for the board.

THE COURT: Mr. Gore.
MR. KIMMEL: Mr. Gore.
And, Your Honor, I spent quite some time asking Mr. Gore, what do you rely on? Even just internally, what do you rely on to make this determination? What do you have in writing, even just internally, that ensures that you look at things the same way as an investigator down in Southern Nevada or that you look at things the same way as the investigator down the hall?

The unequivocal response, Your Honor, was there is nothing, that there's nothing in writing, there's no guidance. That's internally, Your Honor, much less what gets put out to the public.

Now, Mr. Georgeson, to his credit, he requested an advance opinion for his client in a particular case. The law shouldn't require that. The law should not be so ambiguous that it requires every single developer or contractor in every single situation to request an opinion letter before they can move forward. Admittedly, Tesla is a bit unique. It's an

1 extremely large project with multiple phases, but on the subdivision side of this, too, if you were going to put my client, the petitioner, into the subdivision site, it's equally problematic.

When people develop, they do a master plan. Is that the subdivision? And then they do tentative maps and final map for particular phases. Are those the subdivisions? Sometimes they do down to a block, you know, or even six houses in a phase. Is that the subdivision?

I can't answer that, Your Honor. I don't think the board can answer that by pointing to any specific document or internal guideline that they have. They certainly can't answer that by pointing to anything in Chapter 624.

So where does that leave us? Where does that leave us with certainty under the law? We contend that it leaves us with a bit of a mess, and there isn't certainty because reasonable minds can look at this and come to different conclusions as to what these phrases mean. But the one thing that we --

THE COURT: But that's not the standard, Mr. Kimmel. If I were to just apply that as the standard, we'd have a room full of reasonable attorneys
all telling me exactly what their opinion was, and then we'd have a constitutional challenge present.

It's not just that reasonable minds differ. I believe the standard off the top of my head is, if a person of reasonable or ordinary intelligence would understand the meaning of the statute. So it's not that because you and I are reasonable people, we can each come up with our own idea of what that means. I mean, again, I think that would create an almost impossible standard. MR. KIMMEL: I agree, Your Honor.

THE COURT: Lawyer standard.
MR. KIMMEL: And I appreciate your point, and I wasn't trying to proffer that what the lawyers believe is the standard. What I was trying to do is show that there are sophisticated people in the industry who can't seem to come to any general agreement as to what it means, and that in and of itself provides some evidence that it is not a phrase -- it's not a phrase that people of ordinary intelligence can look at and understand what it means. A person of ordinary intelligence, though, does look at the word "site" and understand that the word "site" is stated in the singular. A person of ordinary intelligence can look at the word "site" and believe and understand, quite reasonably so, that it is an intention

1 to direct one to a very specific thing.

The problem is when we append that to "subdivision" and use "subdivision site" as interchangeable with "subdivision," it becomes much less clear how that is to apply, and that is where we do not believe that a person of reasonable intelligence or ordinary intelligence can understand what that means. We think, as evidenced by the fact that the board had to look somewhere else to find the definition, the definition that they found is not exactly the same as the word that they're -- the phrase that they're trying to use it for. We have to presume the legislature used the word "site" for a reason.

In normal grammar, "subdivision" does mean the whole. In normal grammar, there would be no reason to add the word "site" if the intent was to be talking about the entire subdivision because the subdivision already is the whole. In normal grammar, "subdivision site" means a subset of the greater thing, which is a subdivision, which, again, Your Honor, is why 278 recognizes that it takes a certain number of sites to make up a subdivision. Your Honor, I would venture to say that everybody in this room probably agrees that there should be some type of temporal application to the applicability

1 of this, that somebody doing work 25 years from now,
2100 years from now should not be penalized for work they 3 did 100 years ago, 25 years ago.

4

THE COURT: And I think, Mr. Kimmel, that was the -- I'm trying to go back and flip through your brief, but that was kind of the chart that you drew -- if I remember correctly, it was yours --

MR. KIMMEL: Yes, Your Honor, I provided -THE COURT: There is some question about how long does it last? Is there an expiration date on it so to speak?

Because as $I$ was just thinking about it -- not from the perspective of the trade professionals that we're here all talking about, but just common sense -you might have a giant subdivision. Let's just say Red Hawk. That takes forever to be accomplished. It started out around a golf course, and I'm just thinking how it's mushroomed out. I remember when I was a kid, there was nothing there. That's where you went duck hunting and stuff. But now it's everywhere. So it's kind of just flowered out, and at some point those are separate, different subdivisions, possibly or arguably, and is there a time when Sattler Plumbing and Heating is allowed to go out five years later into the new section and start

1 again, bid again, or am $I$ forever forbidden, Page 26 met my limit? What if $I$ get a new one and my limit goes up? Can $I$ now bid again on my greater limit? Those might be the temporal issues that you're talking about. MR. KIMMEL: Based on Mr. Allison's own testimony -- not testimony -- argument at the hearing below, he agreed there's no temporal limit, and that's why he said it's unfortunate and this needs to be addressed.

We contend there is a temporal limit. The temporal limit is provided by the use of the word "site." That is the very word that focuses on the back end, the board, and on the very specific place where work is being done. It's the very word on the front end that allows developers and contractors who are hiring licensees and acting as licensees to understand when there will be aggregation versus when there won't.

So to answer your question pointedly, Your Honor, if the respondents are correct, there is no temporal limitation, period, end of story. If it meets the definition of "subdivision," which as we know could quite literally be a master plan for 30,000 homes that are built over the course of decades --

THE COURT: One thinks of -- what is it? --

Page 27
1 Coyote Springs, whatever, the city that was going to grow 2 out of the desert some time ago. That would basically be what you're talking about, one giant piece of land that was subdivided by, as I recall, a single developer that was going to take a long time to develop. I think it was called Coyote Springs, wasn't it? That's basically what you're talking about.

MR. KIMMEL: It's absolutely what I'm talking about, Your Honor.

THE COURT: Which wasn't going to happen overnight and has not happened at all, I guess.

MR. KIMMEL: No, Your Honor. And even if we look at what's happened in the last 10,15 years, within Reno -- even if we take Somersett, for example. Somersett built really fast, it was one big subdivision, but then there was time where building slowed down. Same with Double Diamond. They slowed down because of the economy. It doesn't mean they stopped being a subdivision.

And then years later, when the economy starts to improve, construction starts again within the same subdivision. It's all subject to the same CC\&Rs, the same homeowners association. By any imagination, that is a subdivision with a subdivision map.

Now, there may be smaller subdivision maps within the bigger subdivision, but it's still a subdivision, and that construction occurs over time, and there's absolutely nothing, nothing in the definition in 624 that provides a temporal limitation on that.

THE COURT: But why isn't -- I pulled up 624.220, and the last time it was amended was in 2011. The argument that has been made is, well, this is a legislative issue, it's something that has to be taken up with the legislature.

I find it curious to believe that the first time this issue ever crossed anybody's radar is this case. Even in the last seven years since the statute was most recently amended, why isn't this just a legislative issue for the other branch of government to address next year or if they see fit?

MR. KIMMEL: Your Honor, I can answer that through only my own experience.

THE COURT: Let me interrupt by saying I recall during the discussion that we had on whether or not amicus briefs can be filed, that this is an issue of first impression, which I found somewhat surprising.

MR. KIMMEL: Your Honor, I can only speak to what I know and what my experiences have been, and I can

1 tell you, in a little over 14 years of doing construction ${ }^{29}$ law, this is the first time I've ever had this issue.

I can also tell you -- and this is just anecdotal -- I can tell you that every construction lawyer who I've spoken with regarding this is surprised to actually read the language and understand. I can tell you that, with some uniformity, my experience has been that people have believed, incorrectly so, that the statute was based on a permit, because that's how you get to do construction and that's how you get a certificate of occupancy, that's how you get inspections from the building department, and I think there was some presumption that that's the way it was.

I cannot speak to whether the board has had $X$ number of these cases, these contested cases on this same issue. I just don't know, Your Honor.

THE COURT: Just with the overwhelming amount of construction that was going on in Clark County that you've described and also just the amount of construction that's gone on here in Washoe County and all throughout the state at different levels, again, I'm just kind of shocked that this is some sort of new thing. MR. KIMMEL: I'm shocked as well, Your Honor. I can tell you -- and this is in the record --

1 I can tell you how this case originated. This case originated through an anonymous complaint made by one person or entity -- I don't know, it's anonymous -- to the Contractors Board against a plumber.

THE COURT: Presumably somebody who didn't get the contract dropped a dime, as they say.

MR. KIMMEL: Presumably, Your Honor. And it's a little bit scary to think what potentially could happen to construction in Northern Nevada if that continues and if this is what the law is, because there isn't an abundance of unlimited licensed stucco people who are out there signing up to do entire subdivisions. There isn't an abundance of unlimited licensed plumbers and drywallers who are, you know, signing up to be on the hook to do entire subdivisions.

We hear time and time again in almost every news cycle, Your Honor, the importance of affordable housing in this state and especially in this town. This goes directly against that. This makes the pool of available people so small, it will have a profound effect on construction.

And we don't contend that the board created the statute. They didn't cause this animal, but this animal doesn't work. It's impossible to follow. Even on the

1 Page 31
construction side of this -- and again, Your Honor, remember, we do have a factual argument that factually it was improper for Judge Pro to find that we were a subdivision. Factually, we did not meet the definition of a statutory "subdivision," in which case "construction site" would apply.

And it's interesting. Some of the very things that Mr. Allison came up with in the Tesla letter are assigned to address the very temporal limitations that we all think should be imposed.

THE COURT: Mr. Allison or Mr. Georgeson?
MR. KIMMEL: Mr. Allison wrote the opinion letter.

THE COURT: Now I understand what you're saying.

MR. KIMMEL: Yes, Your Honor.
So I think everybody recognizes that there's a problem. I think not everybody agrees on what the law says. I think we're in a very difficult situation where there's an absence of clarity knowing what's going to happen going forward.

But putting that aside for a second and putting aside the facial constitutionality issues and getting back to the as-applied constitutionality issues with

1 Page 32
1 respect to my specific client who was the owner of the property, who was an unlimited and is an unlimited licensed contractor and who hired these subs to do work on multiple separate permitted buildings that all received multiple separate inspections, multiple separate certificates of occupancy, all of which was in the record and all of which was put before Judge Pro, to impose upon that petitioner a fine of this substance based on a law that, one part of it, the board has agreed is ambiguous --

They've agreed in writing that "single construction site" is ambiguous. They've tried to avoid that in this case by putting us into the "subdivision site" argument, which is an afterthought, Your Honor. It's an afterthought. It wasn't the original allegation against my client.

Mr. Allison conceded on the record that this changed a little bit through the course of time. So this wasn't a situation where the investigator first got these files, looked at these and said, oh, these are subdivisions, we're going to get you under this 278. It's an afterthought.

That is really, Your Honor, the gravamen of kind of ad hoc rule-making by an administrative body that

1 is improper. That is the thing that due process and vagueness and those constitutional concerns are designed to prevent.

And to be fair to the board, they need certainty, too. They need certainty so they know when they're going to be applying something and when they're not. They need certainty so their own investigator isn't saying, I'm just going based on my gut. I don't care how many streets there may be.

I mean, in the record, Your Honor, there's -Mr. Gore and I kind of go through this long exercise of, you know, if we start with a project in Reno and a project in Las Vegas, would you agree that those two are separate? Yes.

And I keep make making that smaller to where it's North Valleys and where the Contractors Board is on Kietzke Lane? Well, that's probably still separate.

Okay. What about one here and one across Kietzke Lane? Are those separate now?

Mr. Gore's responses are interesting. It depends. Are they using the same material? Are they driving equipment from here across Kietzke?

Now, I understand why Mr. Gore was trying to come up with the answers he was coming up with, but

1 that's not certainty in the law, because his answers are not the same or may not be the same as the investigator down the hall, much less the investigator down in Las Vegas. That's not the kind of certainty of the law that we should require of our laws, especially for something like this.

Now, the particular statutes at issue in this case that gave rise to the fines that the petitioners received, they are not in and of themselves criminal statutes. There are criminal statutes within the Contractors Board licensing statutory scheme. These particular ones are not, but they do have pretty substantial ramifications if you violate them, which include a loss of an ability to make a living, a loss of your license. If you are ultimately fined and do not pay that fine, there are potential ramifications to that as well.

And, again, Your Honor, we're dealing in the context of 624 that provides that "knowingly" simply means you were aware of the facts. So for my client, being aware of the fact that he entered into a contract with somebody is knowingly, under the law, a violation of the law if it is determined after the fact that his contract or contracts were for a single construction site
or subdivision site.

It's a tough sell. It's a tough sell without some level of specificity so people can comply on the front end and so the board can fairly investigate on the back end.

Your Honor, I think I've covered my four topics. I tend to be pretty wordy and speak a lot, so if His Honor has specific questions you'd like me to answer during this part of --

THE COURT: No, Mr. Kimmel. I tend to be less wordy but more willing to interrupt, and so if $I$ have questions, $I$ ask them in the moment because then at the end I look back at my notes and I have terrible handwriting sometimes, and I go, what do I mean by that? So if I have a question of any of the respondents or the amicus filers, $I$ just ask it. It's the benefit of the job. I just dive in and say, "Hold on a second. I'm going to interrupt you."

So I don't have any additional questions for you.

MR. KIMMEL: Thank you, Your Honor.
THE COURT: Mr. Allison, on behalf of the respondent. And then we'll probably take a break and we'll come back and hear from the amicus filers, and then

I'll hear from Mr. Kimmel again.
Go ahead.
MR. ALLISON: Thank you, Your Honor. Good afternoon.

THE COURT: Good afternoon to you as well. MR. ALLISON: I grew up in the 1970s, actually after the law that we're talking about was actually written, but everything important that I learned back then came from Schoolhouse Rock. I don't know if you watched that show on $T V$. I still sing the preamble to the constitution, 3 's A Magic Number, I Got My Adverbs At Lolly's --

THE COURT: Conjunction Junction. We could all go through it. Wasted childhoods in front of the television.

MR. ALLISON: That's right.
And I still think of our government as the three-ring circus one where they would have -- probably today more than ever -- where they would have the executive, the legislative and the judiciary, and each of them has their special role. And I think that separation of powers, that entire concept has very special importance in this proceeding because what you heard from Mr. Kimmel, in my personal opinion, is a pretty good

1 statement you would make in front of the Sage 37
1 statement you would make in front of the Senate Judiciary
2 Committee, the Assembly Committee, when you're trying to 3 get a law changed. It's not impossible to comply with

4 it. It's just kind of unpleasant is what he's saying. I
5 don't like to comply with it. I don't like this law.
What do we do when we don't like laws? You don't come here if you don't like a law. You go to your congressman, you go to your assembly person. You say this isn't working out. This law was made in the 60 s. Subdivisions probably had a completely different flavor in the 1960s. They weren't building 10,000-home subdivisions in the 60s. That's where you go to correct these things.

This isn't the place for that. This Court, as the third ring of the three-ring circus, your job is you have a stop sign that you can hold up, and you can say this law violates the ultimate law, which is the constitution, and you can say that it's vague.

And when I think of vague, I'm with Your Honor. I don't think vague means two lawyers can get up and say the law says two different things. Vague means -- in my mind, a vague law is a law that is just completely impossible to understand and comply with. An example of a vague law in my mind would be contractors have to be

1 nice to their customers or you're going to face discipline. What's nice? I mean, that is a vague law. That's the kind of thing that courts have a constitutional problem with.

THE COURT: The thing that always pops in my head, Mr. Allison, is all of the laws that were overturned, I think, in the 80 s, possibly in the 90 s regarding vagrancy. What is vagrancy? It's such a broad term. Is it sitting on the sidewalk for ten minutes or is it living in a park? So the Supreme Court struggled with that concept for quite some time.

MR. ALLISON: Right. And I do think there's some ambiguity -- you can find ambiguity in laws all over the place, and it's this Court's role -- again, we're back to the three-ring circus -- when you have something that's not crystal clear, that's what statutory construction is for. You now have the obligation to go back and try and figure out what the legislature meant when it said "single construction site" or when it said "subdivision site." What did the legislature mean? And that is an historical exercise in this case. It starts with understanding the history.

I spent a great deal of time in my brief. I thought it was very useful for me just to see how did we

1 come -- how did license limits come into existence. Well, it started out in 1941 when the board was formed. It was an all-or-nothing proposition. You either got a contractor's license with -- an unlimited license or you didn't get one at all, but you had to establish financial responsibility. So it was an all-or-nothing proposition. If we still had this today, we may very well have smaller contractors not getting licensed, which is something that would be a problem because there's a world of difference between somebody that comes in and does a house remodel and somebody who builds a hotel-casino. There's just a world of difference, and the Contractors Board saw that and it evolved over time.

In 1945 -- this is before there are any statutes on the matter -- the Contractors Board started giving out license limits. It was a way to say you can't exceed a contract for a thousand dollars. That went on for years and years.

In 1961 -- this is during the age -- if you're kind of interested in just the history of overall administrative law -- this is the era of the 60 s when administrative agencies are starting to get more power, and they're starting to be more responsible for public policy and protecting the public.

Well, in 1961 a group of contractors showed up in front of the board and said, you're giving out these license limits, but you're not being very strict on enforcing it. We want you to enforce these for the benefit of the public, and we're actually willing to pay more fees to do that.

So in 1963 a law gets passed, and the law that gets passed in 1963 says exactly what the board had been doing up until then. The law says, 1963:
"The board may limit the field and scope of the operations of a licensed contractor by establishing a monetary limit on a contractor's license" -- well, that's pretty clear -- "and such limits shall be the maximum contract a licensed contractor shall undertake under a specific contract. The board may take such other action to assign the limit to the field and scope of the operations of a contractor as may be necessary to protect the health, safety and general welfare of the public."

Again, just to backtrack for a quick moment, the Contractors Board is in the second ring of the -- is in the first ring of the circus. We're part of the executive branch. The Contractors Board was created by the legislature to administer Chapter 624, and it's supposed to do that in accordance with 624.005 , which

1 states that 624 is intended to promote public confidence and trust in the competence and integrity of licensees and to protect the health, safety and welfare of the public.

So that's what the board is here for, but we go back to 1963 in our understanding of why we have contractor license limits and why we're here, is that we have that, but there was a giant hole in that, and that wasn't discussed in Mr . Kimmel's argument, but I think that giant loophole is at the base, is at the root of why we have this added language in 1967 of "single construction site" or "subdivision site."

We went to the archives. We searched for anything and everything from the 1967 legislative session to understand why they added "single construction site" or "subdivision site" for a single client because, as Your Honor knows, in statutory construction the ultimate obligation of a court is to try and define the will of the legislature.

So we're trying to figure out why they did that. There's nothing in the legislative record, but if you think about common sense, in the GurKovic case, which I cited repeatedly in my briefing, illustrates the problem.

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THE COURT: I think it's G-u-r-capital K- Page MR. ALLISON: -- o-v-i-c vs. State Contractors Board. It's a 1979 case.

THE COURT: I always make sure to let my court reporter know exactly what you're saying because I'm familiar with the case, but when you flow over it quickly, it doesn't sound quite the same.

MR. ALLISON: Correct.
So GurKovic vs. State Contractors Board,
95 Nev. 489, 596 P. 2d 850 is a 1979 case.
In that case a pool contractor submitted two bids to a general contractor for a pool, and the pool contractor had a $\$ 75,000$ limit on his license. So the pool contractor, being kind of clever, says, well, I'll do the labor, I'll enter into one contract for labor for $\$ 74,000$, and I'll enter into a second contract for materials for $\$ 48,000$, and that way I've stayed under my license limit and I'm not going to get in trouble with the Contractors Board.

If we were in 1963 to 1967, that pool contractor would have gotten away with it, no problem, because in 1963, the way they wrote the law was based on contract. You can't enter into a contract for an amount in excess of something.

So that could be easily circumvented. You can contract for anything. You could have a contractor come in here to build out this courtroom and enter into a contract for the wall panels, a contract for the carpet, a contract for the lighting, a contract for all these different things, each one of them being below their license limit, but they're really building out this courtroom. That's what they're doing.

So 1967 comes around, and I think what happened -- now, I don't have a legislative record to prove it, I have the GurKovic case to show what it would be like if we didn't change it -- they said we need to create a way to prevent exactly that from happening. We can't have contractors contracting their way around their license limits, and that's what "single construction site" or "subdivision site" did.

A subdivision site in 1967, I'll agree with Mr. Kimmel, is very different from a subdivision site in 2019. I would venture to say that a subdivision in 1967 was 40 houses, one phase, and you're done. What they didn't want to see because that work is happening all kind of at the same time --

And the other thing I want to point out, now that I'm on it, that Mr . Kimmel didn't talk about is the

1 other piece of 624.220(2), and that is for a single client. It's not just you can't ever work on the same subdivision ever again for perpetuity. It's for a single client. So you would have to be back with the same customer over and over again.

Now, if you're building --
THE COURT: Is a developer a client?
MR. ALLISON: A developer would be -- so the general contractor would be the one -- you'd have to have an unlimited license to build out a subdivision, period. THE COURT: Right.

MR. ALLISON: But if you're a subcontractor and you're building out on a subdivision -- say you have one where you have Phase I is being built by Pardee, Phase II is being built by some other homebuilder. Those are two different clients. You can build -- your license limit is not going to aggregate between those two clients. It's only if you're doing it for Pardee.

So if you come back in five years and do some work in that subdivision, the only way you're going to have a problem is if you're back doing it again for Pardee.

But, again, what the legislature was doing when they added that language, it was trying to stop that

1
1 loophole, and it's -- I think there's probably different ways to skin that cat. I think Mr. Kimmel has come up with some ideas that he wants to maybe talk to some legislatures about.

THE COURT: I think you just made cat lovers shudder, but go ahead.

MR. ALLISON: There's more than one way to deal with that.

So basically the point being that we could come back -- this needs to go to the legislature. It shouldn't be here where we want to deal with those things, because again --

THE COURT: Mr. Allison, excuse me for interrupting you, but I'm going to ask you kind of the same question that $I$ asked Mr. Kimmel, which is, is this really a problem of first impression here? You might know more about it representing the Contractors Board. Even though Mr. Kimmel does a large amount of this type of work, this might be the first case that he's had, but since this law was passed or at least most recently analyzed by the 2011 legislature, nobody's brought this issue up? This has just not been a problem for anybody until Mr. Gore got mad at Mr. Witt or at least took issue with something Mr. Witt did and Judge Pro got involved

1 and here we are today?

I find that the former concept that I had to be at least -- I have more comfort in the fact $I$ can't be the first person to address this issue or that you haven't had to address it before.

MR. ALLISON: I think you're the first district court judge to have addressed it. I do think the board has consistently followed the interpretation that we've done ever since 1967.

THE COURT: There hasn't been any petitions for judicial review after administrative proceedings?

MR. ALLISON: Right. It would get to an administrative proceeding or there would be a citation. These cases don't start out -- you don't get in front of Judge Pro on this unless -- this starts out -- the way complaints work with the Contractors Board, first off, if somebody files a complaint, we have to investigate it. There's a statute that says we investigate every single complaint.

Second, we talk about Mr . Gore. The role of an investigator is not to decide what to charge somebody with. Mr. Gore doesn't make those decisions. Mr. Gore is a fact finder. He goes out and he looks at the sites, he develops facts, he presents them, and then the board

1 staff collaborates to decide if there's a charge. Page ${ }^{\prime} t^{\prime}$ s not Mr . Gore is doing something different than another investigator. They collect facts. That's what the role is there.

THE COURT: But just as a basic premise, is Mr. Gore's analysis of those facts in any way determinative of what happens? For example, as a former prosecutor -- I'm just trying to think of a benign circumstance -- the police send prosecutors cases. It's the prosecutor's job to charge the case based on the facts that were collected, but the cops who are doing the investigation, let's say, on a possession of a controlled substance case, you're not getting a bunch of varying opinions of whether or not having a gram of methamphetamine in your pocket is a crime. So the police officer is the fact finder. I stopped this defendant on this day, searched him, presumably constitutionally, and found a gram of meth in his pocket. From Officer A, B, $C, D$ and $E$, that's all going to be basically the same. And then it comes to the prosecutor, the prosecutor does the executive function of deciding whether or not to charge the case and, if so, how.

But it almost sounds like from Mr. Kimmel's analysis, to use my facts, Officer A finds a gram of meth

1 and says, okay, I'm going to send that to the D.A.'s office as possession of a controlled substance; Officer B looks at it and says, I'm not sure we should have meth as a schedule I controlled substance, so I'm going to let you go; Officer D just doesn't even do a search.

I mean, that's the fundamental difference in the analysis I see, and that's why I'm still interested in the fact of, does Mr. Gore have a specific set of rules or guidelines that he's supposed to go through in order to bring it to your attention?

Because you don't -- you as the Contractors Board don't want to be investigating all of these things if there's a set of rules and Mr. Gore goes out and looks and goes, no, this is a single subdivision site or it is not a single subdivision site. Presumably that would end some of the investigation process, and then the board doesn't even have to get involved. You get involved when there's an issue?

MR. ALLISON: Right. When the investigator thinks he sees something that's chargeable, he then will, as you say, recommend charges to be brought, and those --

THE COURT: He goes out there and says that the plumbing -- somehow there's something wrong with the permitting on the plumbing at this site, and Mr. Gore

1 drives out there and it's a field of dirt. That ends the inquiry. If there's a house there, then he might inquire further. If construction is ongoing, he might inquire further.

So doesn't it matter if his analysis is different than somebody in Pioche or somebody down in Laughlin?

MR. ALLISON: I think it matters, but I also think, though, that construction sites, construction issues, can be as endlessly varied as anything else. Construction projects come in all shapes and sizes. In this case it was Zephyr -- the company was called zephyr Plumbing. That was the originating complaint.

Mr. Gore found out, when he looked at the Edgewater project, that Zephyr had a license limit of $\$ 350,000$, but Zephyr had subcontracted to do $\$ 1.9$ million worth of work on that project. His antenna went up. He saw that. This is a single development. His antenna went up.

The board investigated further. They looked at other subcontractors on this because this was definitely something that was definitely worth looking at. Some subcontractors for this particular project had subcontracts with Silverwing. On the face of the

1 Page 50
1 subcontract it was for an amount in excess of their license limit. Others, we had cases where you would have a subcontractor with a $\$ 150,000$ license limit, and you'd see four subcontracts for $\$ 147,750$ and then one subcontract for $\$ 92,000$ to kind of round it out. Those are the sorts of things that get an investigator's attention, and that's what happened here.

Now, is every single investigator going to say $\$ 350,000$, $\$ 1.9$ million? I don't know what they're going to do. I mean, just like a police officer is not going to know what to do. But I can tell you that construction is an incredibly varied industry, and what I noticed Judge Pro did during that when he was questioning Mr . Gore, the thing that Judge Pro kept getting into was he kept asking Mr. Gore, "Tell me about your experience in construction," and Mr. Gore said, "Well, I have 20-some-odd years in commercial construction experience." So he's looking more at his knowledge of the industry. That's what Judge Pro was looking at less than saying, well, did you pull out your investigator methamphetamine -- you know, like you would with meth -and say, does it meet these exact standards?

I don't think you could write a book thick enough to capture all the variables in construction. At

1 some point you're --

THE COURT: Wouldn't you at least have to write a book that captures some of them? I mean, I'm not making a finding or a ruling. It's just a question. You're right. To use the law enforcement analogy that I came up with, there's no way you can teach police officers everything that will happen during the course of your career, and here's how you respond to every single thing that may come up, but there's a reason they go to the police officers service training academy or the POST Academy.

They teach them some of the -- these are some of the main things you've got to deal with, here's how you deal with them. Here's the Fourth Amendment, here's the Fifth Amendment. We don't cover every nuance of Fourth or Fifth Amendment analysis, but these are some of the big things you're going to see on a regular basis. Here's what a Terry stop is. This is what you do at a Terry stop. You can't just say we can't cover all of the possible issues that arise and therefore we don't cover any of them.

MR. ALLISON: Correct. Ultimately you do fall back to the statute, and he's looking at that and he's giving that consideration.

You heard Mr. Kimmel correctly say that, $\begin{aligned} & \text { Page }{ }^{52}\end{aligned}$ questioning, Mr . Gore said, well, when it comes down to whether it's on one side of the street or the other side of the street, you'd say, well, what do the permits say? What does the material look like? Is there consistent construction going from one side to the other?

And to be completely honest with Your Honor, I'm going to stand up here and say for the record that I don't think Tesla has anything to do with any of this because Judge Pro didn't touch it, and I think under 230B. 135 you have to stay within the four corners of the ruling, not every argument that was made. I mean, I don't think you should look at that.

But the purpose of the Tesla thing, and while it was directed only to Tesla to answer their question, but the analysis was to point to -- to try to give some kind of understanding of the different variables that can affect whether something is a single construction site or multiple construction sites.

It could vary based on the time. It could vary based on permits. It could vary based on -- is it the same architect? Is it the same -- are there shared systems across the different phases? All those things are things that you should be thinking about when you're

1 Page 53
1 wondering, jeez, am I going to be in trouble under the statute? Am I starting to tread into that ground?

Because the statute itself, Your Honor, is not vague. It says, if you engage the same -- if you're with the same customer on the same construction site and you go over your limit, you're going to be in trouble. That's pretty clear. There's nothing unclear about that.

But you can't deny the basic complexity of construction, and you can't -- and the other thing I think I jotted down in my notes here is under NAC 624.120, somebody has the ability to call up the board and you can get advisory opinions on these things. You can say, "I'm kind of on the edge right here. What should I do?" You can do that. That didn't happen here.

We've kind of been having an interesting conversation. I would like to -- if you want to keep talking about this issue, we can.

THE COURT: No. Go ahead.
MR. ALLISON: Or I could start talking about some of the other points that Mr. Kimmel raised. The subdivision site argument, basically saying Judge Pro didn't get that right, one thing that didn't get referenced in Mr. Kimmel's argument is the Chevron doctrine. I think the Chevron doctrine is something of

1 arrical importance 54
1 critical importance, it's well recognized in Nevada law, and that says that when a body, an administrative body -and the administrative body, by virtue of its statutory powers, vested its authority in Judge Pro to make that call -- when a statutory body is called on to interpret a statute, a reviewing court has an obligation to defer to that so long as it's got reasonable support to it. Now, subdivision site, the ambiguity, the question would be, is a subdivision site a site within a subdivision or is a subdivision site the whole thing? Like I call up my friend, and I say, "Meet me over at the subdivision site." I'm probably talking about the whole place.

When I did my briefing in front of Judge Pro, which is part of the record, I actually went and looked around other states and tried to find statutes that say the word "subdivision site" -- every one of them -- I'm looking at my closing brief, which is in the record -every one of the statutes $I$ could find, when it used the phrase "subdivision site," was talking about the whole thing.

And the other thing, the ultimate point there is that if I talk about a subdivision site and I'm talking about a site within a subdivision, aren't $I$ just back to a single construction site and I've completely 55 why are we even using the word "subdivision"? I've rendered it negatory by saying, no, it's actually a lot or a site in the subdivision. That's a single construction site.

So the way you look at it, the way the board has looked at it, the way Judge Pro looked at it is it means the whole thing, the subdivision site. And respectfully, Your Honor, unless you can find that's a completely unreasonable approach, you should defer to that under the Chevron doctrine.

So that's our position on "subdivision site." I've touched on the vagueness and the due process issue.

Finally, we get to the equal protection clause argument, and equal protection in my mind basically says the law serves absolutely no purpose. It doesn't do anything to advance any governmental interest and it's unconstitutional on that ground. That's my idea of equal protection. It doesn't mean that it's not an unpleasant law or a law that maybe a lot of us in this room would have different. The question is, does it have a rational relationship to a legitimate government purpose?

Well, I spent a huge amount of time in the brief talking about why we have license limits. I've

1 cited legislative dialogues where they talk about license limit. I've cited Nevada Supreme Court cases where they talk about license limit with approval.

There's no question that the government has a stated legitimate interest in ensuring the financial responsibility of the contractors and has enacted legislation to that effect by saying, we're going to instruct the Contractors Board in the public interest to impose license limits. So that's the first prong. That's the legitimate government interest.

So the question becomes, does the way the legislature in 1967 created that -- closed that loophole that I was discussing, does that serve a rational purpose? And all I can tell you is that I tried -- I sat down and I tried to think of other ways they could have closed that loophole. It certainly serves the purpose of doing that. It actually -- that extra language, the "single construction site"/"subdivision site" actually preserves the concept of license limits. Without it, it would be subject to subversion and evasion very easily by just multiple contracts.

The other reason I gave in the brief, and I think it's critical -- and I represent contractors in my practice, I've been doing it for a long time, and I can

1 tell you that a contractor, when they take on a project 57
1 tell you that a contractor, when they take on a project, 2 it's a very risky proposition. You literally have to lay 3 out a ton of resources, a ton of risk, and if you mess up one job a lot of times, especially if you're a general contractor, you can be out of business or pretty darn close. And that's why license limits are important, and that's why they're important in the context of we want to make sure you're not doing the same thing for the same person on the same project, because if you -- it's one thing to have four $\$ 50,000$ contracts with four different people than it is to have one $\$ 200,000$ contract for the same person on the same project.

It's a question of division of risk, and I think if you look at that and you look at the -- I think I talked about busting a bid. If you bust one $\$ 50,000$ bid with one person, but you have three others, you're going to survive because you have your other projects to carry you through. If you bust one $\$ 200,000$ bid because you have four with the same person on the same project, lots of things could go wrong. Funding could dry up; your upper tier could go out of business; you could make a mistake in your bid and just screw up your bid. Any one of those things could lead to all kinds of problems for that contractor and for the public at large because

1 Page 58 all kinds of things that happen.

That's why we say single construction site for a single client or a single subdivision site for a single client.

THE COURT: What do you make of Mr. Kimmel's argument that if we took that to its not-too-difficult-to-extrapolate conclusion, we'd run out of contractors pretty quickly? We only have, here in Washoe County, so many drywallers, so many plumbers, so many electricians, so many people that do soils and grading, so many people who lay foundation. I mean, it's just easy to go through the list, and if we're desirous of a robust, yet safe construction industry, that would quickly dry up. There's just not enough people to fill the roles.

MR. ALLISON: First off, I'll respond to that. THE COURT: I'm paraphrasing Mr. Kimmel's argument.

MR. ALLISON: And I appreciate it.
My first response to that would be, again, that's a wonderful thing to get up and say in front of the assembly or the senate and why the law needs to be maybe changed.

As far as it has to do here, first off, you can come to the Contractors Board and you could say to them, you could say, "You know, I'm being asked to come back and do more work on this subdivision. I was out there two years ago. I'm completely done, but I'm really up to my contract limit. Can you help me out?"

I mean, now I'm giving you -- this isn't evidence, but $I$ will tell you that the board is going to say, "Okay. Give us a one-time raise in limit application, and we'll try to be helpful with you, and we understand that you no longer have any liability under those old contracts, and we can see what we can do."

In the meantime maybe you could talk to your legislator and see what you can do about some of these issues, because we're the executive branch, we enforce the laws, we don't make the laws. But the board can and does do some of those things. They give the one-time raises on that.

Again, we did not create this law, but I don't think it's any of the things that get to the point where this ring of the three-ring circus -- it's not the place to deal with it. You have to go really far -- it has to be really far off the scale to get to constitutionality, and I just don't think that -- I don't think it's vague.

1 I don't think it's irrational. I don't think it doesn't 60
2 serve -- I think it does serve a purpose.

23 Monday, Your Honor. Board. trade associations. handling this today.

Is it something that $I$ would do necessarily? No. Is it something Your Honor would do if you were the lawmaker? No. But it is what it is, and this is the wrong place to be dealing with it.

Any other questions, Your Honor?
THE COURT: No. Thank you, Mr. Allison.
We will be in recess for about 15 minutes.
When we come back I'll talk to Mr. Georgeson.
(A recess was taken.)
THE COURT: We're back on the record in Silverwing Development vs. Nevada State Contractors

Mr. Georgeson, on behalf of the construction

MR. GEORGESON: Your Honor, Mr. Mannelly is

THE COURT: Mr. Mannelly, good morning. Or good afternoon. I keep saying good morning. You'd think I'd know what time of day it is.

MR. GEORGESON: Because it's Tuesday instead of THE COURT: It's all just a big mess.

Mr. Mannelly, go ahead.
MR. MANNELLY: Good afternoon, Your Honor. As Paul indicated, I'm Philip Mannelly, and along with Paul Georgeson of McDonald Carano we represent the amici construction trade associations. The associations appreciate Your Honor providing them the opportunity to participate in this matter, and we hope that their brief as well as today's argument will be helpful to the Court.

The construction trade associations are comprised of nine Nevada-based construction associations with a collective mission to enhance and maintain the quality of the construction industry in the state of Nevada.

The associations submit that limits on a contractor's license promote that mission as well as the stated purpose of the statute at issue here, which are twofold: One, to promote public confidence and trust in the competence and integrity of the licensee; and, two, the health, safely and welfare of the public.

Your Honor, the issue is whether NRS 624.220(2) is unconstitutionally vague on its face, more specifically, whether petitioners have satisfied their burden to prove by a clear showing of invalidity that the

1 statute is impermissibly vague in all of its applications $\begin{gathered}\text { Page }\end{gathered}$ or so standardless as to encourage or authorize arbitrary and discriminatory enforcement. The short answer is no. Petitioners have failed to carry their burden in that regard, and that's because petitioners simply cannot do so.

Now, petitioners argue that no one here can come up with an agreement on what these terms mean, that the statute is ambiguous, essentially that the statute is not perfect and it could be amended to be better. However, that's not the standard. The standard is whether the statute is impermissibly vague in all of its applications.

NRS 624.220(2) is not unconstitutionally vague because, first, a statute is not vague in all of its application as there are very clear applications in which no one can question whether a particular act would violate the statute or not, and there are articulated standards of enforcement such that the statute does not authorize or encourage arbitrary and discriminatory enforcement. Therefore, neither of the two prongs necessary for a showing of unconstitutionality or vagueness can be satisfied here.

Those two prongs --

THE COURT: Let me just interrupt you for a second. What about the argument that Mr. Georgeson himself has suggested that somehow the statute is vague? And the difference, as $I$ recall it, is the description is it's vague -- well, I can't remember if the Tesla letter said the statute is vague and the parties are arguing that it's ambiguous, or the Tesla letter said it's ambiguous and the parties are arguing it's vague, but regardless, the language isn't identical, but even by requesting the opinion from the Contractors Board, there has been an allegation that there is some confusion in the statute itself.

Does it matter; do you think? Does that matter?

THE WITNESS: Respectfully, Your Honor, it doesn't matter if the particular word or phrase is ambiguous. If a particular word or phrase is ambiguous, the Court looks to the legislative history, other potential avenues in order to put gloss on that particular word in terms of what it may mean in that situation. That is not the standard here. The standard is whether or not it is impermissibly vague in all of its applications.

As our brief pointed out, there are easily two

1 Page 64
1 very concrete examples of where no one can argue to the contrary whether or not this statute applies, one being single construction of an individual single-family residence. No one can argue that if the contractor or a subcontractor contracts above its license limit on that house, that it knows it is in violation of the statute. Therefore, honestly, the first prong of the analysis should end, and petitioners have the burden to show otherwise.

And to provide a little more clarity on the differences between vagueness and ambiguity, ambiguity is when there are two or more reasonable meanings to the same word; vagueness means there is no reasonable meaning to the word.

So here, even if we have a situation where there could potentially be two or more readings of "subdivision site" or "single construction site," honestly, for the Court's analysis of whether or not the statute is unconstitutionally vague on its face, those arguments don't apply.

And, again, getting back to these two prongs that have been established by the Nevada Supreme Court in the Flamingo Paradise Gaming case and clarified by subsequent cases, the first prong regards the notice to

1 Page 65 the public, whether the statute fails to provide notice sufficient to enable a person of ordinary intelligence to understand what conduct is prohibited; and the second prong, which regards the enforcement of the statute, whether the statute is so standardless that it authorizes, encourages or fails to prevent arbitrary and discriminatory enforcement.

So turning to that first prong first, the Nevada Supreme Court jurisprudence provides clear framework under which this Court should analyze the issue, and the Supreme Court established, when it's a civil statute at issue, meaning there's no criminal penalties or infringement on fundamental rights at issue, a more lenient standard applies.

Here, as petitioners admit, there are no potential criminal penalties and there's no infringement on fundamental rights. Therefore, the more lenient standard applies. Pursuant to that more lenient standard, the Court starts with a presumption that the statute is valid.

The Court then must resort to every reasonable construction, including any potential set of facts, not just the actual facts that may have happened in this case or the actual facts that may have happened at any other

1 time in history, any potential facts to determine if page 66 statute is vague in all of its applications.

Then the petitioners have the burden to prove otherwise. They have to overcome that burden and the presumption in favor of constitutionality with a showing by a clear showing of invalidity that there are no set of potential facts where the statute could be invalid.

As I mentioned here, the applicable facts and the actual facts of what happen every day throughout the state of Nevada demonstrate that there are definitely situations in which the statute is not vague. Therefore, even if -- and to follow up on your prior question -even if the phrase "single construction site" is ambiguous and even if that somehow automatically makes the phrase "subdivision site" ambiguous, that does not make the statute unconstitutionally vague.

Moving on to the second prong, whether the statute is so standardless that it authorizes, encourages or fails to prevent arbitrary and discriminatory enforcement, petitioners similarly failed to carry their burden in this regard. That is because the statutory scheme provides specific guidelines on what discipline may be imposed and what that discipline should be with specific factors.

NRS 624.301 through . 305 prescribe what the prohibited conduct is. NRS 624.300 provides what the potential discipline is for violation of the license limits. NRS 624.300(4) provides factors that must be considered in deciding the severity of the penalty. Those factors are the gravity of the violation, the good faith of the contractor, and any history of violations. Similarly, the Nevada Administrative Code 624.7251 provides the amount of the fine that may be imposed. Now, there may be potential situations where it's not absolutely clear whether a violation has occurred. However, in those situations the investigator that is tasked with looking into whether or not there's a potential violation considers these factors, considers their experience just as a law enforcement officer may consider their experience when coming on a potential crime scene, and they factor in all of that experience and these factors in determining whether or not the violation has been -- the statute has been violated. Once that determination is made, if the statute has potentially been violated, then the statute and the regulations set out what those fines specifically must be. And along the way, as I said, in certain circumstances the investigator may use their discretion.

1 However, the standard is not whether there is any discretion. The standard is whether the statute is so standardless that it authorizes, encourages or even fails to prevent arbitrary and discriminatory enforcement. Now, here, pursuant to this statutory scheme, even if the investigator makes a showing that the contractor violated the statute, the contractor then has the ability to bring that in front of the board and to present more evidence why that investigator was wrong. The board then uses its experience and these other factors and determines whether or not they agree with what the investigator has found and if a citation is going to stand. Even after that, a petitioner can appeal the board's decision. That, Your Honor, is the definition of due process.

The statutory scheme here provides specific guidelines for enforcing its prohibitions. There's no evidence that the board acted arbitrarily or discriminatory here. There's no evidence that the board treated petitioners any differently than any other contractors. Simply, petitioners failed to carry their burden on the second prong as well.

Your Honor, based on these reasons in the associations' brief, the construction trade associations

1 submit that NRS 624.220(2) is not facially
2 unconstitutionally vague.

THE COURT: Thank you, Mr. Mannelly.
And is it MAN-EH-LEE, not MAN-LEE?
MR. MANNELLY: MAN-EH-LEE is correct, Your Honor.

THE COURT: MAN-EH-LEE. I apologize for mispronouncing it earlier, sir.

Thank you, Mr. Mannelly.
Mr. James, what are your thoughts on similar
issues?
MR. JAMES: My thoughts are I have a headache.
THE COURT: Well, you can sit down.
MR. JAMES: That's okay. I can put everybody behind me and act like they're not looking at me.

I'm going to start out, Your Honor, just by check-marking some of the notes I made about some of the comments that were made in argument.

One of the statements that was made is that everybody would agree there's a problem. I don't think there's a problem. I think the statute is really clear, and I don't think there's an issue. So I don't agree with anybody who would promulgate that idea. On its face it's pretty clear, which I'll get to in just a second.

So I think -- well, as I was sitting there, something hit me. I don't know if you've ever seen the show "From the Hip." It was back in the 90 s , I believe. It's about two lawyers who go out of their way to fight over some obscure word in some statute, and what it does, it gets them a lot of publicity, and so they just fight over that and fight over that and fight over that. Not that these guys are doing that. That's not what I'm saying, but that's what $I$ think has happened here is we're fighting over words that on their face are just really understandable by the normal person. We don't need to delve into all of these issues. And I recommend going and watching that show "From the Hip."

THE COURT: I guess I could just look at the sworn testimony of President Clinton to Kenneth Starr when he had a discussion about the word "is." It depends on what your meaning of the word "is" is.

MR. JAMES: There you go.
THE COURT: Maybe a little bit more along the line of President Clinton than a show from the 90s. MR. JAMES: I may look up "From the Hip" and try to watch it this weekend if I get a chance. But, you know, we're arguing over something that really is pretty basic and very simple and

1 straightforward.

Another thing I want to address is this issue of Coyote Springs. I actually don't live too far from Coyote Springs. I live out to Logandale. Wonderful place to live. I go to Coyote Springs golfing. There's an actual golf course there.

During that back-and-forth you had with counsel, one of the things you were discussing is how these projects work. Now, I don't know your background. You've alluded that it was in the prosecutor's office. Let me share with you some of my background.

I've represented contractors in multiple situations for years, not so much lately. I do represent a number of labor organizations which have contractors as part of those, but I do still have contractor clients. I litigate in three states: Nevada, Utah, and the state of Washington. Nevada and Utah, I've had substantial litigation with regards to liens, things of that nature, and I can tell you that without exception -- there might be one -- but without exception of what I'm thinking of today, I cannot think of a developer who comes in with the idea they're going to build every house in a development.

So what a developer does is they go out and

1 they get this large parcel of property. It might actually consist of two or three parcels, and they think that's going to be a good place for a development.

THE COURT: Just so you know, you just made the petitioner cringe because $I$ think that's exactly what he did in this case.

MR. JAMES: Yeah.
THE COURT: But I mean -- and I apologize. I just looked over as you were saying that and Mr. Witt started scratching his head, because as I understand the facts of this case, that's in essence what Mr. Witt was doing. He was the developer of all of these things. I might be completely mistaken about that, but you're saying that doesn't happen. I think it happened in this case. Am I wrong about that?

MR. JAMES: What I'm saying is, in my experience I've never found a developer who wants to develop 500 acres of property and build a house on each one of those. They may build some of the houses, but what they do is they come in and they do the groundwork, and then they put in the plats, which the cities require these planned developments now in order to get the utilities and everything in. But oftentimes they'll actually go to

1 subdevelopers or contractors and say, "Okay. I have this pod or this phase of this project. It's for sale." And these contractors will bid on that, and then they'll build that phase out. That phase really becomes the little community that we live in. All right? It might be called Mary's Terrace or something like that. It might consist of 50 houses.

And so that's the type of subdivision that most people understand. When you talk about subdivision, it's I live in Mary's Terrace subdivision or I live in Lake Heights subdivision. That's the common parlance of the word "subdivision."

And so to understand what "subdivision" means in common, you know, language, it's not that hard, especially when it comes to homebuilding, because we live in subdivisions or, like me, you live out in the middle of nowhere. And so it's just not that big of an issue.

So when you say you were shocked a little bit, my thought process is, you're shocked because this hasn't come up because it's not that big a deal because almost everybody understands what a subdivision is.

So that takes us to the idea of, what is a subdivision? Well, the other thing that really hit me as I listened to the arguments was everybody is thinking

1 Page 74
1 huge. Well, the statute that's at issue applies to small as well. If $I$ have a piece of property and I divide it in two, I've subdivided, and if I build a house on each side of that, that would be a subdivision property.

So we don't even need to go into the idea of homebuilding or subdivision to get the idea of what a subdivision is because subdivision applies regardless of the size of property. And so when we're thinking huge, it's easy to get lost in the trees of, well, what could this be, what could this be. And the way I addressed that in my brief was I said, that's the definition of possibilities, and that's where we've been going is with the definition of possibilities, and that's really not the issue. It's the standard that's been covered so I'm not going to cover that.

And so anybody can take this and say, well, in this situation it's going to mean $X$, and in this situation it's going to mean $Y$. The fact of the matter is "subdivision" means you break a piece off and it's subdivided. End of story.

So now that I've covered that thought, the other thing I'd like to -- I'd also like to tie that into this idea that somehow "subdivision" has changed over the years. I don't think it has. I don't think from the 60s

1 to today "subdivision" is any different. Subdivide mage 75 to subdivide. If I have a parcel of property and I'm capable under the municipal rules to break that off and build houses on it, I can do that.

There's other ways I can subdivide, too. I can actually go vertical, and each of those vertical apartments, for example, gets its own APN number, something we've seen down more in Clark County. I don't know what it's like up here, but you see that with condominiums and such, that each one has its own APN number. So this idea that "subdivision" is somehow vague and ambiguous, my simple mind says no, it's not. Subdivide means subdivide.

So that takes us to the idea of, well, what is a subdivision site? And as $I$ pointed out in my brief, subdivision site is the whole subdivision. All right. Now, the question, I guess, for the Court in this particular case is, well, how are we going to define that? And that's the argument of the petitioner, that we can't define it.

My point is, when it comes to the statute, the "subdivision site" means that property that is being broken up to build the houses on in the context of this case. That is the subdivision site. And that would be

1 Page 76
1 defined probably by the contract between the parties. All right? We're going to develop this property over here, we're going to break it up into 50 houses, and that will be the subdivision site.

Once we break up each of those individual parcels, those individual lots and give them their own APN numbers, that's where the other provision of the standard comes in and says "single construction site," and that's the beauty of statutory construction is you have to read those together. If we want to break out "single construction site" and somehow try to confuse that with "subdivision site," we could do that all day long and we could be here all night long trying to parse that out, but you have to give deference to both terms, "subdivision site" as well as "single construction" -THE COURT: Excuse me for interrupting you, Mr. James, but I don't even think that Mr. Allison would agree with that analysis. I'm not sure, but it sounds different than what he was arguing.

I understand that you're each arguing from a different and unique perspective, but -- so you're saying that a subdivision site -- I own a piece of land and I divide it into 50 subdivisions. That's the subdivision site. And then I construct a home on each one of those

1

50 subdivisions. Now that's individual construction sites. So it covers both? Did I track with you correctly?

MR. JAMES: No. You used some words that I wouldn't use --

THE COURT: Okay. Help me, then.
MR. JAMES: -- that you build an individual home on a subdivision. No. You build an individual home on a parcel of property.

THE COURT: That has been subdivided?
MR. JAMES: That has been subdivided from a larger parcel. That's my argument. That's what a "single construction site" means, and that's how it would be applied in the statute.

THE COURT: Is there any support in the legislative history for that, or do you just think that the statute is clear on its face and, therefore, you don't have to resort to the legislative history?

MR. JAMES: That is my facial analysis of the language. You can't confuse the two. You have to give deference to both. That's the Court requirement and that's the requirement for the Court to follow.

And so if you accept the analysis of Silverwing, I believe, what you do is you accept the idea

1 of, well, we're just going to focus on the word "site." 78
2 We're going to forget the six words that preceded it. And you can do that and we can create ambiguity, but if you read "subdivision site" in connection with
"individual site of construction" -- I don't know if I said that right -- they both have to give meaning, and the only way the Court gives that meaning is that the subdivision site means the whole subdivision for those -- and I'm using 50 lots -- and then each individual construction site means the individual parcel of property.

I went into an analysis on 624 and how this applies, and I brought in the concept of NRS 108, which deals with the lien laws, and that is pretty clear in how it explains how you value these contracts, and it does it under the term of "work of improvement."

There was some criticism of my arguments in the reply brief that $I$ didn't lay out any sort of statutory construction idea of how that works. The Latin term for that is "in pari materia," which means "of like manner." And so what you're dealing with is you're dealing with NRS 624, and that whole section, NRS 624, deals with regulation on contractors. So if you take a look at 624, the regulation of contractors, you can see that it

1 Page 79
1 incorporates this idea of the work of improvement and how you value the contracts, whether it's one contract, two contracts, three contracts, and how that applies to each individual location.

Also, at the end of 624, work of improvement is applied in the specific context of contracts between a general contractor and a subcontractor, and a developer or an owner and a general contractor. And so that has to do with payments on contracts and when one can stop work. If you're interested in what those statutory provisions are, it's NRS 624.600 through NRS 624.626, and that work-of-improvement concept is used extensively.

Another note that I would like to make to the Court is this argument that, look -- and I think the Court's addressed it, but I want to make my record -that we have a bunch of people in here who have come to different conclusions of what this might mean, and the idea, well, we're arguing on behalf of our clients makes sense, but the reality is we're all going to the same place, we just take different roads. And because I take a different road than the Contractors Board or the construction trades doesn't mean that we don't get to the same location.

And I think that's a good way to analyze that

1 Page 80 getting to this one location of constitutionality, but that doesn't mean that just because we have differing ideas of how we get there, that the statute is unconstitutional.

Rather than just keep going, I'd like to -- you raised the idea of police officers. I'm not arguing on behalf of either way, but the idea of reasonable suspicion comes into play, and if you can define what reasonable suspicion is -- I imagine you ask that question every time you get a criminal case coming through -- well, that same type of idea comes into, I think, the idea of the investigators, whether it be a Contractors Board investigator, a Department of Labor wage and hour investigator. They go out and they look at it, and they have ideas, well, there might be a problem here, and I'm going to look at this.

And I think that's what Mr. Allison was talking about, that even in the Contractors Board context, a contractor investigator does have some sort of reasonable suspicion, and what is that? I think it's intentionally vague because you don't know until you actually go out there and try to see it. So I wanted to mention that to you as well. Okay. I covered that one.

The idea that the work shouldn't continue or the issue shouldn't continue into the future, into perpetuity, that you can no longer come in and work on a particular development, my analysis takes care of that. If you take a look at work of improvement and how it's defined, there is no question that under that concept and that analysis, the general rule is that if you have a piece of property and you're going to build one or two more buildings on that piece of property, that every contract you enter into is -- it's cumulative, meaning you aggregate those together.

The exception to that is the fact that if you now come in as a contractor -- and you're expected to be sophisticated to do that -- if you come in as a contractor -- hopefully you're sophisticated enough to build a large development -- the idea is you're contemplating to separate this out into subparcels on which to build your property. Maybe it's a condominium, maybe it's a house.

The exception applies there, and what it says, it says we're not going to aggregate these issues or your contracts if you do this. And what has to apply? What has to apply here -- what has to apply is you have to separate it into legal parcels and separate prime

1 contracts for each parcel.

Let's put that in the context of a drywall contractor. All right? So if you're going to build 50 homes, rather than have the drywall contractor come in and say, "I'll charge you $\$ 4,500$ per home," and then we're going to have a total contract value of whatever 50 times 4 -- I don't know, that's why I'm a lawyer, not a mathematician -- that's the total contract value. That would be a violation of the statute.

But if you come in and say it's our intent we're going to put a house on this parcel, and you'll do that house for $\$ 4,500$ and we enter into a prime contract on that house, the statute contemplates that and says we're not going to aggregate the contracts.

So I think that the analysis that I laid out in my brief works. There's actually a third exception, but the third exception kind of ties back into the other two, the other two points $I$ just made, and that's when you have -- the third exception is when you have a development being developed and you come in and you put the groundwork in, you put the utilities in, the power, the roads, the underground electrical. That exception kind of pulls back to the other two, but it can be distinct, and I won't get into that because I think the

1 first one covers it.

Just give me a minute.
THE COURT: Take your time.
MR. JAMES: Interestingly, the petitioner actually agrees with my argument in the sense that they say that it makes practical sense that you can actually evaluate these contracts on this parcel under this NRS 108 work of improvement concept, and that actually is found on page 2 of the reply brief where they say that it does make some sense, but then they go on to say that I didn't support it. And, in fact, I think I did support it, and I provided some additional support to the Court today.

But there is some agreement that there is analysis that this would be a constitutional statute on its face, because under the analysis I provided to the Court, it works. Whether or not that's applicable to allow Silverwing to avoid liability, I don't know. I'm not going there. That's not my issue. My issue is to present to the Court the constitutionality of the statute.

Any questions, Your Honor?
THE COURT: No questions, Mr. James.
I just went back and looked at that portion of

1 the reply brief because $I$ remember what it said in $a$ general sense.

On page 2 of the reply brief it says:
"As discussed below, while LMCC's use of NRS 108. 22188 makes some practical sense, it is not supported by any generally accepted method of statutory construction." So it's not that it's unsupported. It's just --

MR. JAMES: And I gave that to you. In pari materia, of like matter.

And I think that is in large part with regard to -- well, I don't even think you get to this need to go to this issue. I think on its face -- and I covered that -- the idea of "single construction site" and "subdivision site" is just clear. I don't get the confusion, but then I may not be of normal intelligence. I don't know. But if we're going to go beyond that and we're going to say, well, there may be some ambiguity, how would we address it, this idea of work of improvement actually provides that analysis for the Court, and the concept of in pari materia or upon the same or similar subject is applicable.

Now, I will agree with Silverwing that I do think that there's an improper use of -- I think -- was

1 it 327 on the subdivision site? I don't think that's 85 proper. I don't want to make legal arguments that I don't think are valid. I could see how one would be tempted to use that, but the problem with that analysis, Your Honor, is, if it's five or more lots, then you created this exception for one, two, three and four lots, because, again, we're all thinking big.

So what that means is NRS 624.220(2) has just been invalidated, and I don't think the Court can do that. I think that the analysis has to apply to I'm taking a subdivision of two lots or whether it's three lots, four lots as well, and so I think that my analysis is probably the most accurate.

And I'll provide one more case to you. It's Gila River Indian Community vs. the U.S. It's actually a Ninth Circuit case. I'm not going to make any arguments on it, but $I$ didn't have a chance to file a reply brief and the citation is 729 F .3 d 1139. The specific quote I'm thinking is from the court. It says:
"Our goal is to understand the statute as a symmetrical and coherent regulatory scheme and to fit, if possible, all parts into a harmonious whole."

And that's what my argument is, is you have to fit all parts of 624 into a harmonious whole, and when

1 you do that, you apply the idea of a work of improvement, which specifically applies to contract value, which is the specific issue for the Contractors Board and the statute as a whole.

Thank you for allowing me to argue. It's been a pleasure.

THE COURT: Thank you, Mr. James. It's been a pleasure as well.

Okay, Mr. Kimmel. Final thoughts on everything you have heard since you sat down.

MR. KIMMEL: Thank you, Your Honor.
THE COURT: In any order you choose.
MR. KIMMEL: Your Honor, it's always interesting to respond to multiple different people's arguments at the same time and to try your best to not come across as being disjointed, so --

THE COURT: Especially when they're sometimes inconsistent arguments.

MR. KIMMEL: Correct, Your Honor. So forgive me if I'm jumping around a little bit.

At the outset, Your Honor, truly, I would be remiss if $I$ didn't say on the record -- if I didn't commend Mr. Allison. He and I have had what I consider to be as collegial and professional a relationship as

1 they come during this Page 87 important for the Court to know that, that we've really tried to work through this problem and talk to each other, sometimes in a very academic sense, but talk to each other and with each other about all of that, so I think that's important to put on the record.

THE COURT: Thank you.
MR. ALLISON: Thank you. I appreciate that. THE COURT: It's nice to acknowledge collegiality. Often what $I$ hear is "this guy's a jerk" and "that woman is not doing what she's supposed to do," so it's always nice to hear a compliment.

MR. KIMMEL: I don't think we take enough time in our lives to tell people when they have done well, so I think that's important.

So I'm going to start with addressing some of Noah's arguments. I'm sorry. Mr. Allison. My apologies. I didn't mean to refer to him by his first name.

One of Mr. Allison's big points was separation of powers, the three-ring circus, as he called it, and each ring has its different purpose, and Mr. Allison recognized that the Contractors Board is part of the executive branch. It's not part of the judiciary, it's

1 Page 88 not part of the legislative branch, and because of that and because of this case, one of the things that Mr. Allison asks is this Court not try to sit in the role as the legislature.

What's ironic about that, Your Honor, is that's exactly what the Contractors Board has done here. It's exactly what it's done. It did it first with the Tesla letter, and then it did it next by borrowing NRS 278 to fill a void in NRS 624.

THE COURT: Did the State do that or did -- did the board do that or did Judge Pro do that? The latter, I mean.

MR. KIMMEL: Well, Your Honor, it originated with the board. I think that's evidenced by the Tesla opinion wherein Mr. Allison says he does not believe that the "subdivision site" part of the statute is ambiguous. He believes that the "single construction site" is ambiguous, and therefore the Tesla factors are derived for the single construction site.

In that letter Mr. Allison, on behalf of the board, opines that the "subdivision site" side of it is not ambiguous. That becomes carried forward through the actual allegation and ultimately what is argued at the hearing and presented to Mr . Pro.

THE COURT: Judge Pro.
MR. KIMMEL: Judge Pro. My apologies, Your Honor.

And then at the point that Judge Pro rules, sitting as an administrative law judge, then, in fact, it is the board adopting, through its administrative law judge, statutes that are outside of 624.

So in several different aspects the Contractors Board has done the very thing that it says this Court cannot. It has --

THE COURT: Let me just ask you a question about that, Mr. Kimmel, and I'm not asking this to be flippant. I'm really curious what your thoughts are. Judge Pro, when he's sitting as the administrative law judge, is not the Contractors Board's employee or judge, he's a neutral party, a neutral fact finder, $I$ guess $I$ would say, so he doesn't -- he's not acting on behalf of the board, is he? That's kind of how I just took your analysis. I might have misunderstood what you were trying to say.

MR. KIMMEL: Well, Your Honor, first, in a normal case, Judge Pro is not just hired and on staff as the administrative law judge who presides over all Contractors Board matters and hearings. In a normal

1 Page 90
1 case, the Contractors Board presides over its matters. Mr. Allison essentially is the prosecutor working on behalf of the board, and those matters are brought to the board, and then the board makes the determination on those matters. So in a normal administrative context, absolutely, the board is making a decision based on matters that are brought before the board.

In this particular context, I think because we asserted constitutional concerns, Judge Pro was brought in. So he's not an employee of the board and is not working for the board per se. He has been engaged by the board to act as the administrative law judge in this particular case.

THE COURT: Well, with an understanding, I would assume, that he's a neutral party. He's not coming in to rubber-stamp the board's analysis or Mr. Allison's arguments just because he represents the construction Contractors Board?

MR. KIMMEL: I think that is correct, Your Honor, and $I$ think he viewed it as a very limited role, and I think he opined as much to us.

We actually had a conference call before the hearing because there was discussion about how much he could hear and what the effect and weight of his decision

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    1 could bage 91
    1 could be, whether it could have preclusive effect, for example, on other matters, that type of thing. So I think --
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THE COURT: I think that's borne out even in his decision that he rendered where he just didn't want to opine on the constitutionality of the statute. He felt it was beyond the scope of his analysis.

MR. KIMMEL: I agree, Your Honor.
THE COURT: And given the fact that he's a retired United States District Court judge, his opinion on that thing probably would have had a lot of weight.

MR. KIMMEL: I agree, Your Honor.
THE COURT: He just left it for me.
MR. KIMMEL: Yes, he did, Your Honor. And for all of us to talk about, and it is an interesting conversation to be had.

And Mr. Allison opines that, you know, this is not the place for us to bring our argument.

THE COURT: Just so you know, I don't agree with that. Obviously it has to be the place, you know, because if it weren't, if this were not the correct forum to make those constitutional arguments, then the first place that they would be made is at the Court of Appeals or the Nevada Supreme Court.

My role in the process is to make those determinations, I believe. Now, I don't just come in and look at it and say, well, it looks like Judge Pro did a good job, I'll rubber-stamp him, and you guys go fight about this with Judge Tao and -- I was going to say Judge Tao, Judge Silver and Judge Gibbons. I know by the time it gets there, it will not be Judge Silver, it will be Justice Silver, so somebody else will be there. But my job is to resolve those issues to the best of my ability, not just kind of move it up the food chain.

MR. KIMMEL: And I agree, Your Honor.
Obviously that's why we're here. We believe that to assert -- the only proper place to assert our constitutional concerns, especially in the face of a fine that has been imposed, is within the petition for judicial review and the district court review process and on from there.

THE COURT: If you didn't, you would have waived them, and then they would just say, well, you didn't raise them in your Petition for Judicial Review, so they're just waived them.

MR. KIMMEL: If we didn't, we would have waived them.

So I think that addresses the separation of

1 powers issue, Your Honor.

The GurKovic case is very interesting, and I would invite the Court to very carefully read that case because I believe that that case says something very different than what Mr . Allison believes it says.

In that case the contractor made an error by entering into one contract for the performance of labor and the provision of materials, and that total of the two exceeded the contractor's license limit. So it was in violation the second it entered into the contract.

Now, they tried to fix it. It was too late. The method by which they tried to fix it is they actually have a separate materials supply company and a separate labor company. They tried to split them into two. It was too late. They had already entered into the unlawful contract under one contractor's license number, one entity. That is a very different animal than labor and material being pulled out and separated, and that happens all the time. Let me give the Court an example.

If an owner purchases, self-purchases lumber for the job, that price of lumber doesn't automatically get associated with the contract of the person who is actually framing and using the lumber. So there's very, very different things going on here, and I believe, if I

1 Page 94
1 understood Mr. Allison correctly, his argument was that because in GurKovic there was an attempt to split that was found unlawful, that the statute was then changed. That's not the holding of GurKovic. GurKovic, they were found to violate the statute because they didn't split it between the two companies that could have separately, each of them, done what was proposed to have been done. Very, very different analysis.

There's something I found interesting that Mr. Allison kept referencing with respect to Mr. Gore and Mr. Gore's investigation, and it was factually that some of these contracts on their face are over X dollars. THE COURT: I was just going to ask you that. MR. KIMMEL: Well, Your Honor, if we actually look at the definition of the license limit, it doesn't matter whether they're on their face in excess of it. It doesn't matter if it's split into multiple contracts. What the statute says is whether under multiple or a single contract for one client, one subdivision site. Those are the two prongs that matter, not whether on its face it is over a dollar amount.

And as an example of this, Mr . Gore and I went through it, and I said, Mr. Gore, what if you're my plumber, and I enter into a contract with you for
$1 \$ 300,000$, and your limit is only for 150,000 ? on Page 95
2 face that appears to be a violation, but what if we look
3 deeper into the contract and what we see is that $\$ 150,000$
4 of that work is going to performed in Las Vegas and

23 matter whether the parties try to split it up into 15
24 contracts or they do it under one.

So Mr. Gore and I go through this analysis, and he agrees it actually -- it takes more than just looking at the dollar amount of the contract.

One of the things we talked about, and I think this answers some of what the Court was asking about earlier -- and I would direct His Honor to page 121 of the transcript in the record on appeal -- I asked Mr. Gore, I said:
"When a complaint comes to you and you review it, what decision-making authority do you have, if any, as to whether the complaint is going to be ignored or as to whether you're going to start investigating it?"

Mr. Gore responds, and again, this is page 121 of the transcript, lines 6 through 9:
"ANSWER: Every complaint that is assigned to me, $I$ begin an investigation until the point $I$ decide to provide to my superior whether an allegation is valid or invalid.
"QUESTION: So there comes a point in time after an investigation is filed and you have actually" -- I'm sorry -- "after a Complaint has been filed that you conduct an investigation, and then you, yourself, make a determination as to whether there is validity; is that correct so far?
"ANSWER: That's correct.
"And then you take your determination to your supervisor, and you advise them whether you think there is validity or invalidity to the complaint; is that correct?
"That is correct."
And that's that give-and-take that Mr. Gore and I go through where ultimately I ask him, "Okay. What do you use to make that determination?" and at one point Judge Pro steps in, I think expecting that ultimately there is going to be some answer that there's something somewhere that Mr . Gore relies upon, finding out that there isn't, and then asking Mr. Gore if he at least relies upon his own experience, to which he clearly says yes.

These are important points, Your Honor, because the investigators are the gatekeepers. The investigators are actually issuing citations, if you will, and they are making -- they are the stopgap or the continuation, if you will. They're the gatekeeper as to whether things go upstream higher than that individual investigator, and if they're not operating under the same guidelines and, more importantly, if the guidelines that they're using, the public doesn't even know what they are, it is very

1 Page 98 difficult to say that that's fair and right and what is intended by principles of due process and what is intended by principles of equal protection.

That's part of the issue here is that
principles of constitutional vagueness require that it not be left up solely to the discretion of the investigator as to whether something is going forward or not. As Your Honor pointed out, they're supposed to be the collector of the fact. Was there drugs? Not is this a subdivision site or not a subdivision site. Not is this a construction site based on factors that we've created that are not within the statute or is it not? THE COURT: But shouldn't they be able to at least have some common sense regarding those things? It kind of gets back to the point $I$ was raising before. You can't possibly define every single thing. MR. KIMMEL: Of course. THE COURT: I mean, there's got to be some discretion. So in the example I used before, somebody says that Sattler's Plumbing is plumbing at this house without a license or without a contract or they're over their bid, and somebody goes out there and there's nothing there. Common sense, you know, frankly, you don't care if it's a subdivision or a construction site.

1 You go out thage 99
1 You go out there and there's just nothing there at that 2 parcel. You turn around and leave, don't you? I mean, you just have to do anything beyond that. You probably go back and tell your supervisor, I looked, it's just dirt and sagebrush.

That's why I'm saying you can't account for every possible outcome. You're just concerned that you're getting too far down the road of discretion without direction?

MR. KIMMEL: Yes, Your Honor, because -- and I agree, Your Honor, you cannot account for every possible outcome, which is why we have things like building departments issuing building permits related to specific works of improvement. That's why we have certificates of occupancy that are specific to a particular building that say that that building has been permitted, it's been inspected, it's been completed, and it's ready for use.

There are mechanisms out there from which one could make determinations as to how to figure out if something is a single construction site or how to determine if something is a particular site in a subdivision, but those mechanisms haven't been specified anywhere. And just because I think there are certain mechanisms or the current board and the current set of

Page 100

1

23 home.
investigators think that they may have some mechanisms, there has to be some consistency such that when the next board comes along or when the next group of investigators come along or when the next developer ten years from now comes along, there's some level of consistency within the law. There's some direction as to how it is supposed to be applied.

Your Honor, one of the things that $I$ think was interesting about one of the arguments provided -forgive me, $I$ forgot if we decided we were going to say "amici" for plural.

THE COURT: I'll just say individual amicus. MR. KIMMEL: One of the arguments --

THE COURT: I think you used the term "amici"?
MR. MANNELLY: Google says "amici."
THE COURT: Well, if Google says it, then that's the rule. Google or Wikipedia, it's got to be one or the other.

MR. KIMMEL: Your Honor, one of the amici arguments was that, hey, there's a clear situation where this statute applies and everybody agrees it applies, and that's a single home and you're doing work on a single

Well, what's interesting is that is the most

Page 101 defined site. That's what we're talking about, a site. What nobody has presented is the argument that makes sense under the interpretation that Silverwing has been held to, which is that a subdivision is forever and its expansion -- there's no limitation on its expansiveness or its time.

The Chevron doctrine, Your Honor, we understand it's important, but it's not absolute. I've cited the cases in the brief, Your Honor, that clearly the Chevron doctrine is not an escape from meaningful constitutional analysis. It's not an escape from an analysis as to whether a rule is just being, in essence, adopted for a current situation as opposed to some longstanding adoption.

We've seen nothing from the board, from the legislature, from anyone saying there was actual intent by the legislature to use the NRS 278 definition of "subdivision." We haven't seen anything from the board, even just any kind of internal memorandum from, you know, six, seven, eight, ten years ago saying what they were going to do was adopt 278 as the definition of "subdivision."

Contractor's licensees have to take tests to get licensed. We haven't seen any materials, anything

Page 102 promulgated by the board that says, these are what you have to worry about and here's how we apply this statute. There is nothing that would reasonably lead somebody to, on their own, out there in the real world on their own, just assume that they need to go look at 278 when trying to figure out if they were exceeding their license limit. Even if they were smart enough to be cognizant of the law and read through 624 because they're a licensee, there's nothing anywhere that would have led that licensee to go look at 278.

THE COURT: Just because it deals with construction?

MR. KIMMEL: 278 deals with development, which is a little bit different. It's a different section of NRS. But, yeah, it doesn't deal with construction, it doesn't deal with figuring out what your license can do and not do. All of that is embodied in 624 in NAC and NRS, so the regs and the statute. Reasonably, of course, if people look at 108 because there's lien statutes, so it's reasonable to look there and see if something can be found. No reference.

So something has been brought in without any real notification of it being adopted, and $I$ say it that way because $I$ think that's important in the context of

1 Page 103
1 the Chevron analysis. It is important in the context of this Court looking at what was done by Judge Pro and making a determination as to whether it was appropriate to rely upon 278.

I think that His Honor made this point for me at the end of the last argument, but $I$ just want to make clear that nothing in the reply brief we filed conceded to the constitutionality of the statute if the statute used "work of improvement" as defined by 108 or 624 as a surrogate for "single construction site" or "subdivision site."

The point of the reply was, it's interesting, it's an interesting concept, because in the definition of "work of improvement," there's at least some temporal limitations recognized. Now, the problem is, in the language of 624 , some of those same temporal limitations are expressly rejected. So in 624 it expressly says whether under one or more contracts. It doesn't matter how many contracts you enter into. What matters is whether it's for the same client and then the single construction site or subdivision site. So that's completely opposite to what the "work of improvement" definition is.

More importantly, it sure seems that, like, if

Page 104
1 the legislature intended "work of improvement," they just would have used that phrase. They're both in 624 . It is hard to imagine the legislature intentionally meaning them to be the same thing and not just using the same phraseology. It happens, but it doesn't make a lot of sense in the context of all of this.

Your Honor, again, $I$ think that $I$ would end with it's an interesting kind of series of events to be held -- to have knowingly violated something which the law says that you actually don't have to have the intent to have violated and to be held to --

THE COURT: That's not -- go ahead. I'm sorry, Mr. Kimmel. I was going to interrupt you, and I don't want to.

MR. KIMMEL: Your Honor, it's okay. I'm happy to answer --

THE COURT: Well, the statutory definition of "knowingly" that's provided -- I don't have a citation to it, but generally speaking, the definition of "knowingly" in other form or other parts of the law, you don't have to intend to violate the law. You just have to intend to commit the acts which are a violation of the law, so it just takes out mistake basically or complete inadvertence. It's I intended to do this, and you don't 1 get to come in and say, well, I didn't know I wasn't Page 105 allowed to do that. That's the "ignorance of the law is not a defense" analysis. It was, I intended to do the fact. Whether you did it with the intent to violate the law isn't particularly germane to the analysis.

MR. KIMMEL: I appreciate that, Your Honor, but the actual count itself is knowingly violating the law, and then you go to find what the definition of "knowingly" is, and you see that all you had to know that you were doing was entering into a contract.

And there's no way -- we are dealing with a situation where there's no way on the front end somebody can or has pointed to where my client should have looked to understand that NRS 278 was going to be applicable to his projects. There is nowhere that my client could have looked to, when entering into the contracts and proceeding forward with his projects, that he could have looked at to understand what the board's definition of that "single construction site" was or that there would be any kind of temporal limitation on that.

Those all came after. Tesla came after, the Tesla letter came after. You know, the actual hearing came after. The application of 278 came after. So all of these things are happening after but are being used to

1 fine Page 106
1 fine my client, you know, $\$ 33,000$ plus -- to be fair, $\$ 30,000$ because 3,000 is for a separate issue, so $\$ 30,000$ plus administrative costs and fines for something that nobody has articulated how my client could have even known through investigation into the law how it was going to be applied on the front end.

Your Honor, I thank you for your time. If you have any follow-up questions, I'd be happy to fill in the blanks anywhere I can.

THE COURT: I do not have any additional questions. Thank you Mr. Kimmel. I appreciate your advocacy on behalf of the petitioner.

I would like to echo something that Mr. Kimmel said. I have found the level of professionalism for all of the parties in this case to be exemplary. The briefs are well written, they're thoughtful. I won't describe them as consistent, but consistent in that everyone's analysis is slightly different. As Mr. James acknowledged, maybe we're all trying to take different roads to get to the same point on the map, but I've been very impressed with the level of professionalism and collegiality that has been demonstrated.

It's a big issue for everybody, but it just demonstrates to me that just because we're talking about

1 big issues that have broad impacts not only to the petitioner in this case but, arguably, to a large industry in the state, we can do it civilly, we can do it cordially, we can do it with respect to opposing points of view. So I guess that's just my way of thanking everybody for what they've done today and the briefing that I've received.

I am going to take the issue under advisement because this is not the type of case that $I$ just rule from the bench and then point at somebody and say go write the order. It's something that obviously requires some meaningful analysis on my part.

I would note that one of the things I can do is just remand it back to Judge Pro and make him do something else, but I'm not going to do that either. He kicked it up to me. I'm not going to kick the can back down to him.

So I will take the issue under advisement. I would like a transcript from the hearing today so I can begin to work on the order.

And I think I entered the order staying the judgment, didn't I?

MR. KIMMEL: Yes, Your Honor.
THE COURT: So that's taken care of as well, so

1 there's not a huge time crunch, but I'll try to get this 2 to the parties as quickly as possible.

3

4 construction defect case coming up in the very near
5 future here in Department 10 , so I'm not quite sure yet
6 if that's going to go. If not, it will open up some time 7 where I can focus more of my time and attention on your 8 guys' case. If not, I'll be dealing with that

9 construction defect case for quite some time, but I'll 10 get this done as quickly as I can.

11 Thank you, everyone. Court is in recess.
12 (Proceedings concluded.)

I would note that I've got a six-week

|  | Page 109 |
| :---: | :---: |
| 1 | STATE OF NEVADA.) |
|  | ) ss. |
| 2 | COUNTY OF WASHOE ) |
| 3 |  |
| 4 | I, PEGGY B. HOOGS, Certified Court Reporter in |
| 5 | and for the State of Nevada, do hereby certify: |
| 6 | That the foregoing proceedings were taken by me |
| 7 | at the time and place therein set forth; that the |
| 8 | proceedings were recorded stenographically by me and |
| 9 | thereafter transcribed via computer under my supervision; |
| 10 | that the foregoing is a full, true and correct |
| 11 | transcription of the proceedings to the best of my |
| 12 | knowledge, skill and ability. |
| 13 | I further certify that I am not a relative nor |
| 14 | an employee of any attorney or any of the parties, nor am |
| 15 | I financially or otherwise interested in this action. |
| 16 | I declare under penalty of perjury under the |
| 17 | laws of the State of Nevada that the foregoing statements |
| 18 | are true and correct. |
| 19 | Dated this 17th day of September, 2018. |
| 20 |  |
| 21 | /s/ Peggy B. Hoogs |
| 22 | Peggy B. Hoogs, CCR \#160, RDR |
| 23 |  |
| 24 |  |


[^0]:    ${ }^{3}$ The Constitution of the State of Nevada establishes that "[n]o person shall be deprived of life, liberty, or property, without due process of law." Nev. Const. art. 1, § 8(5). Similarly, the Constitution of the United States provides that "[n]o state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend XIV, § 1.

[^1]:    ${ }^{4}$ It is relevant to note that, in the Tesla Letter, the Board deemed the phrase "subdivision site," which is the primary basis for Silverwing's challenger here, as clear and unambiguous.

[^2]:    ${ }^{1}$ The NSCB later backs off this statement.

[^3]:    ${ }^{2}$ No position on Silverwing's statutory compliance is taken.

[^4]:    ${ }^{3}$ Subsection 3 also defeats all ambiguity argument. The increase applies to the entire "project" and not just a site, so as a matter of law and as a matter of regulatory fact, Silverwing's ambiguity argument fails because monetary license limit increases are available to all contractors.

[^5]:    ${ }^{2}$ The Board has no position on whether Silverwing or any other party interested in asserting a facial challenge to NRS 624.220(2) on the basis of the "single construction site" phrase may do so in a separate action outside the Administrative Procedure Act.

[^6]:    2 This Court may take judicial notice of the fact that the majority of new residential construction within the Court's territorial jurisdiction occurs in NRS 278.320 "subdivision[s]".

