IN THE SUPREME COURT OF THE STATE OF NEVADA

STATE OF NEVADA ex rel. NICOLE J. CANNIZZARO, in her official capacity as Senate Majority Leader of the Senate of the State of Nevada; CLAIRE J. CLIFT, in her official capacity as Secretary of the Senate of the State of Nevada; LEGISLATIVE COUNSEL BUREAU, LEGAL DIVISION, in its official capacity as the legal agency of the Legislative Department of the State of Nevada; BRENDA J. ERDOES, Esq., in her official capacity as Legislative Counsel and Chief of the Legislative Counsel Bureau, Legal Division, and in her professional capacity as an attorney and licensed member of the State Bar of Nevada; and KEVIN C. POWERS, Esq., in his official capacity as Chief Litigation Counsel of the Legislative Counsel Bureau, Legal Division, and in his professional capacity as an attorney and licensed member of the State Bar of Nevada,

Petitioners,

vs.

THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, in and for CARSON CITY; and THE HONORABLE JAMES TODD RUSSELL, District Judge,

Respondents, and

JAMES A. SETTELMEYER, JOSEPH P. HARDY, HEIDI SEEVERS GANSERT,

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Case No.

Original Action for Writ to
First Judicial District Court,
Carson City, Nevada,
Case No. 19 OC 00127 1B

PETITION FOR WRIT OF MANDAMUS

SCOTT T. HAMMOND, PETE GOICOECHEA, BEN KIECKHEFER, IRA D. HANSEN, and KEITH F. PICKARD, in their official capacities as members of the Senate of the State of Nevada and individually,

Real Parties in Interest.

PETITION FOR WRIT OF MANDAMUS

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ROUTING STATEMENT

For the purposes of NRAP 21(a)(3)(A), this petition for writ of mandamus ("writ petition") falls in one of the categories of cases presumptively retained by the Supreme Court under NRAP 17(a) and should not be assigned to the Court of Appeals under NRAP 17(b) because this writ petition involves: (1) a dispute over questions of law among members and officers of the legislative branch of state government; (2) the district court's interpretation and application of the Nevada Rules of Professional Conduct adopted by the Supreme Court to the government lawyers of the Legal Division of the Legislative Counsel Bureau ("LCB Legal"); and (3) the statutory authority of LCB Legal to provide legal representation to its legislative branch clients in their official capacity as their statutorily authorized counsel under NRS 218F.720.[1]

Accordingly, under NRAP 17(a)(10)-(11), this writ petition raises questions of first impression and of statewide public importance concerning the district court's order granting the Plaintiff Senators' motion to disqualify LCB Legal from representing the Legislative Defendants in their official capacity in this litigation as their statutorily authorized counsel under NRS 218F.720. (*PA3:0601-05.*)[2] The

[1] NRS 218F.720 is reproduced in the addendum to this writ petition.

[2] Citations to "*PA*" are to volume and page numbers of the Petitioners' appendix.

district court's interpretation and application of the Nevada Rules of Professional Conduct also raises questions of first impression and of statewide public importance concerning the constitutional separation of powers under Article 3, Section 1 of the Nevada Constitution. Therefore, the principal issues raised by this writ petition should be considered by the Supreme Court as matters of first impression and of statewide public importance under NRAP 17(a)(10)-(11).

STATEMENT OF THE ISSUES

1. Based on the constitutional separation of powers and the rules of statutory construction as applied to the Nevada Rules of Professional Conduct ("RPC"), is the "except" clause in RPC 1.11(d)—which states that the conflict-of-interest rules apply to government lawyers "[e]xcept as law may otherwise expressly permit"—intended to create an exception from the conflict-of-interest rules in order for government lawyers to provide legal representation to their government clients when required by law?

2. Because LCB Legal has been directed by law under the statutory provisions in NRS 218F.720 to provide legal representation in this litigation to the Legislative Defendants in their official capacity, does that law create an exception to the conflict-of-interest rules in RPC 1.7—based on the "except" clause in RPC 1.11(d)—so that LCB Legal must be allowed to fulfill its statutory duties under NRS 218F.720 to provide legal representation in this litigation to the Legislative Defendants in their official capacity in order to ensure the proper functioning of state government and guarantee the separation of powers?

3. Under well-established case law, did the Plaintiff Senators have standing to bring a motion to disqualify LCB Legal as counsel for the Legislative Defendants in their official capacity given that LCB Legal does not have a separate attorney-client relationship with the Plaintiff Senators which can form the basis for

disqualification because LCB Legal represents individual members of the Legislature in their official capacity as constituents of the organization and not as separate individuals?

4. Even assuming for the sake of argument that LCB Legal has a conflict of interest, is disqualification an appropriate remedy in this litigation given that the balance of competing interests and prejudices weighs against disqualification and in favor of LCB Legal representing the Legislative Defendants in their official capacity in this litigation as their statutorily authorized counsel under NRS 218F.720?

5. Even assuming for the sake of argument that LCB Legal has a conflict of interest, should the Plaintiff Senators be barred—under the equitable doctrines of estoppel and waiver—from challenging the conflict of interest based on their calculated and tactical litigation decision to name the Legislative Defendants in their official capacity with full knowledge that the Legislative Defendants are not necessary parties to this litigation and with full knowledge that LCB Legal is expressly authorized to represent the Legislative Defendants in their official capacity as their statutorily authorized counsel under NRS 218F.720?

PETITION AND RELIEF SOUGHT

Petitioners State of Nevada ex rel. Senate Majority Leader Nicole Cannizzaro and Secretary of the Senate Claire Clift ("Legislative Defendants"), by and through their counsel the Legal Division of the Legislative Counsel Bureau ("LCB Legal") under NRS 218F.720; and LCB Legal, in its official capacity as the legal agency of the Legislative Department of the State of Nevada; Brenda J. Erdoes, Esq., in her official capacity as Legislative Counsel and Chief of LCB Legal and in her professional capacity as an attorney and licensed member of the State Bar of Nevada; and Kevin C. Powers, Esq., in his official capacity as Chief Litigation Counsel of LCB Legal and in his professional capacity as an attorney and licensed member of the State Bar of Nevada, hereby file this petition for writ of mandamus ("writ petition") under Article 6, Section 4 of the Nevada Constitution, NRS 34.160 and NRAP 21.[3]

This writ petition concerns the order entered by the district court in the underlying action on December 19, 2019, granting the Plaintiff Senators' motion to disqualify LCB Legal from representing the Legislative Defendants in their official capacity in this litigation as their statutorily authorized counsel under

[3] Along with this writ petition, the Petitioners also filed with this Court an emergency motion under NRAP 8(a)(2) and NRAP 27(e) for a stay of all district court proceedings pending resolution of this writ petition.

NRS 218F.720. (*PA3:0597*.) On the same date that the district court entered its order disqualifying LCB Legal as counsel for the Legislative Defendants in their official capacity, the district court entered a separate order granting the Legislature's motion to intervene as a defendant-intervenor. (*PA3:0607*.) In that order, the district court also denied the Plaintiff Senators' motion to disqualify LCB Legal from representing the Legislature in this litigation as its statutorily authorized counsel under NRS 218F.720. (*PA3:0607*.)

Thus, under the district court's orders, LCB Legal may represent the Legislature in this litigation as its statutorily authorized counsel under NRS 218F.720 for the purpose of defending the Legislature's official interests. However, LCB Legal is prohibited from representing the individual Legislative Defendants in this litigation even though the Legislative Defendants are being sued in their official capacity as constituents of the Legislature as an organization and even though LCB Legal has the same statutory authorization under NRS 218F.720 to represent the Legislative Defendants in this litigation for the purpose of defending the Legislature's official interests.

The Petitioners ask this Court to set aside the disqualification order based on the district court's erroneous interpretation and application of the conflict-of interest rules in RPC 1.7 and RPC 1.11. The district court committed a manifest abuse of discretion when it concluded that LCB Legal has a disqualifying conflict

of interest under RPC 1.7 and disqualified LCB Legal from representing the Legislative Defendants in their official capacity in this litigation as their statutorily authorized counsel under NRS 218F.720.

Based on the constitutional separation of powers and the rules of construction, the "except" clause in RPC 1.11(d)—which states that the conflict-of-interest rules apply to government lawyers "[e]xcept as law may otherwise expressly permit"—is intended to create an exception from the conflict-of-interest rules in order for government lawyers to provide legal representation to their government clients when required by law. Because LCB Legal has been directed by law under the statutory provisions in NRS 218F.720 to provide legal representation in this litigation to the Legislative Defendants in their official capacity, the conflict-of-interest rules in RPC 1.7 are not applicable under the "except" clause in RPC 1.11(d), and LCB Legal must be allowed to fulfill its statutory duties under NRS 218F.720 to provide legal representation to its legislative branch clients in order to ensure the proper functioning of state government and guarantee the separation of powers.

Furthermore, under well-established case law, the Plaintiff Senators did not have standing to bring a motion to disqualify LCB Legal as counsel for the Legislative Defendants in their official capacity given that LCB Legal does not have a separate attorney-client relationship with the Plaintiff Senators which can

form the basis for disqualification because LCB Legal represents individual members of the Legislature in their official capacity as constituents of the organization and not as separate individuals.

Even assuming for the sake of argument that LCB Legal has a conflict of interest, disqualification would not be an appropriate remedy in this litigation because the balance of competing interests and prejudices weighs against disqualification and in favor of LCB Legal representing the Legislative Defendants in their official capacity in this litigation as their statutorily authorized counsel under NRS 218F.720. For decades, LCB Legal has been directed by law to provide representation to members of the legislative branch sued in their official capacity when deemed necessary or advisable to protect the official interests of the Legislature under NRS 218F.720. During that time, LCB Legal has been able to provide essential and effective representation to its legislative branch clients sued in their official capacity in such litigation. This case is no different, and under the balancing of competing interests and prejudices, LCB Legal should not be disqualified from representing the Legislative Defendants in their official capacity in this litigation as their statutorily authorized counsel under NRS 218F.720.

Finally, even assuming for the sake of argument that LCB Legal has a conflict of interest, the Plaintiff Senators should be barred—under the equitable doctrines of estoppel and waiver—from challenging the conflict of interest based on their

calculated and tactical litigation decisions in this case. The Plaintiff Senators intentionally introduced the conflict of interest into this litigation when they made a calculated and tactical litigation decision to name the Legislative Defendants in their official capacity with full knowledge that the Legislative Defendants are not necessary parties to this litigation and with full knowledge that LCB Legal is expressly authorized to represent the Legislative Defendants in their official capacity as their statutorily authorized counsel under NRS 218F.720. Under such circumstances and in the interests of equity, justice and fairness, the Plaintiff Senators should be required to accept the consequences of their own calculated and tactical litigation decisions, and they should not be permitted to use their disqualification motion to prejudice the rights of the Legislative Defendants to their statutorily authorized counsel under NRS 218F.720.

Therefore, the Petitioners ask this Court to issue a writ of mandamus to Respondents, the First Judicial District Court and the Honorable James Todd Russell, District Judge, directing them to: (1) vacate the order granting the motion to disqualify LCB Legal from representing the Legislative Defendants in their official capacity in this litigation as their statutorily authorized counsel under NRS 218F.720; and (2) enter an order denying the motion to disqualify filed by the Plaintiff Senators.

PARTIES

In the underlying action for declaratory and injunctive relief, the Plaintiffs are challenging the constitutionality of Senate Bill No. 542 (SB 542) and Senate Bill No. 551 (SB 551) of the 2019 legislative session. SB 542, 2019 Nev. Stat., ch. 400, at 2501; SB 551, 2019 Nev. Stat., ch. 537, at 3271. The Plaintiffs alleged that SB 542 and SB 551 were each subject to the two-thirds majority requirement in Article 4, Section 18(2) of the Nevada Constitution and that each bill is unconstitutional because the Senate passed each bill by a majority of all the members elected to the Senate, instead of a two-thirds majority of all the members elected to the Senate. (*PA1:0035-37.*)

The Plaintiffs consist of: (1) eight members of the Senate ("Plaintiff Senators") who voted against SB 542 and SB 551; and (2) several private businesses, associations and other entities that pay—or whose members pay—certain fees and taxes associated with SB 542 and SB 551 ("Plaintiff Businesses"). (*PA1:0023-27.*) Because the Plaintiff Senators are the parties who filed the motion to disqualify LCB Legal and because the Plaintiff Businesses did not join in that motion (*PA2:0394-95*), the Plaintiff Senators are the Real Parties in Interest to this writ petition, and the Plaintiff Businesses are not parties to this writ petition.

The Plaintiffs named several state officers and agencies of the executive branch and legislative branch as defendants in their official capacity. (*PA1:0027-*

28.) The executive branch defendants are: (1) the Honorable Kate Marshall, in her official capacity as Lieutenant Governor of the State of Nevada and President of the Senate; (2) the Honorable Steve Sisolak, in his official capacity as Governor of the State of Nevada; (3) the Nevada Department of Taxation; and (4) the Nevada Department of Motor Vehicles ("Executive Defendants"). (*PA1:0027-28.*) The Executive Defendants have been represented in their official capacity in this litigation by the Office of the Attorney General. Because the Executive Defendants did not file any responsive documents or make any oral arguments in the district court with regard to the motion to disqualify LCB Legal (*PA3:0558-59*), the Executive Defendants are not parties to this writ petition.

The Legislative Defendants are the Honorable Nicole Cannizzaro, in her official capacity as Senate Majority Leader, and Claire Clift, in her official capacity as the Secretary of the Senate. (*PA1:0027.*) From the onset of this litigation, the Legislative Defendants have been represented in their official capacity by LCB Legal as their statutorily authorized counsel under NRS 218F.720.

STATEMENT OF THE CASE AND FACTS

Under Article 4, Section 18(1) of the Nevada Constitution, a majority of all the members elected to each House is necessary to pass every bill, unless the bill is

subject to the two-thirds majority requirement in Article 4, Section 18(2), which provides:

> [A]n affirmative vote of not fewer than two-thirds of the members elected to each House is necessary to pass a bill or joint resolution which creates, generates, or increases any public revenue in any form, including but not limited to taxes, fees, assessments and rates, or changes in the computation bases for taxes, fees, assessments and rates.

Nev. Const. art. 4, § 18(2).

During the 2019 legislative session, members of the Majority and Minority Leadership in both Houses made requests under NRS 218F.710(2) for LCB Legal to give a legal opinion regarding the applicability of the two-thirds majority requirement to potential legislation.[4] On May 8, 2019, LCB Legal provided the requested legal opinion to the Majority and Minority Leadership in both Houses. (*PA1:0154.*) In the legal opinion, LCB Legal concluded that the two-thirds majority requirement does not apply to a bill which extends until a later date—or revises or eliminates—a future decrease in or future expiration of existing state taxes when that future decrease or expiration is not legally operative and binding

[4] NRS 218F.710(2) provides: "Upon the request of any member or committee of the Legislature or the Legislative Commission, the Legislative Counsel shall give an opinion in writing upon any question of law, including existing law and suggested, proposed and pending legislation which has become a matter of public record."

yet, because such a bill does not change—but maintains—the existing computation bases currently in effect for the existing state taxes. (*PA1:0164-72.*)

On May 10, 2019, the Senate introduced SB 542. Senate Daily Journal, 80th Sess., at 2 (Nev. May 10, 2019). The bill involved an existing technology fee collected by the Department of Motor Vehicles under NRS 481.064. The existing technology fee had a future expiration of June 30, 2020, but the future expiration was not legally operative and binding yet. The bill proposed extending for two years—from June 30, 2020, until June 30, 2022—the future expiration of the existing technology fee. Consequently, the bill proposed maintaining the existing legally operative rate of the technology fee currently in effect.

On May 27, 2019, the Senate voted 13-8 in favor of passage of SB 542, and the bill was declared passed by a constitutional majority of all the members elected to the Senate under Article 4, Section 18(1). Senate Daily Journal, 80th Sess., at 9 (Nev. May 27, 2019). On May 31, 2019, the Assembly voted 28-13 in favor of passage of SB 542 (with one seat vacant), and the bill was declared passed by a constitutional majority of all the members elected to the Assembly under Article 4, Section 18(1). Assembly Daily Journal, 80th Sess., at 6-7 (Nev. May 31, 2019). On June 5, 2019, the Governor approved SB 542, and it became law under Article 4, Section 35 of the Nevada Constitution. SB 542, 2019 Nev. Stat., ch. 400, at 2501.

On May 27, 2019, the Senate introduced SB 551. Senate Daily Journal, 80th Sess., at 68-69 (Nev. May 27, 2019). The bill involved certain existing taxes collected by the Department of Taxation under NRS Chapters 363A and 363B. The bill proposed eliminating a rate adjustment procedure used by the Department of Taxation to determine whether the existing rates of the taxes should be reduced in future fiscal years under certain circumstances. If, under the rate adjustment procedure, the Department of Taxation determined that the existing rates of the taxes should be reduced in future fiscal years, any future reduced rates would not go into effect and become legally operative and binding until July 1 of the following odd-numbered year. At the time of the 2019 legislative session, no future reduced rates for the taxes had gone into effect and become legally operative and binding based on the rate adjustment procedure. Consequently, by eliminating the rate adjustment procedure, the bill proposed maintaining the existing legally operative rates of the taxes currently in effect.

On June 3, 2019, the Senate voted 13-8 in favor of passage of SB 551, and the bill was declared passed, as amended by the Senate, by a constitutional majority of all the members elected to the Senate under Article 4, Section 18(1). Senate Daily Journal, 80th Sess., at 98-99 (Nev. June 3, 2019). Also on June 3, 2019, the Assembly voted 28-13 in favor of passage of SB 551 (with one seat vacant), and the bill was declared passed, as amended by the Senate, by a constitutional

majority of all the members elected to the Assembly under Article 4, Section 18(1). Assembly Daily Journal, 80th Sess., at 428-29 (Nev. June 3, 2019). On June 12, 2019, the Governor approved SB 551, and it became law under Article 4, Section 35. SB 551, 2019 Nev. Stat., ch. 537, at 3271.

In the underlying action, the Plaintiffs alleged that SB 542 and SB 551 were each subject to the two-thirds majority requirement in Article 4, Section 18(2) and that each bill is unconstitutional because the Senate passed each bill by a majority of all the members elected to the Senate, instead of a two-thirds majority of all the members elected to the Senate. (*PA1:0035-37.*) The Plaintiffs filed their original complaint on July 19, 2019. (*PA1:0001.*) Before serving their original complaint, the Plaintiffs filed their first amended complaint on July 30, 2019. (*PA1:0022.*)

Also on July 30, 2019, counsel for the Plaintiffs called the LCB to discuss service of each summons and complaint on the Legislative Defendants. (*PA3:0599, 0610.*) The call was directed to LCB Legal which indicated it would accept service on behalf of the Legislative Defendants. Id. On July 31, 2019, counsel for the Plaintiffs delivered to LCB Legal the summons and the original complaint and the first amended summons and first amended complaint and an acceptance and acknowledgement of service on behalf of each Legislative Defendant in their official capacity. (*PA1:0052, 0066.*) On that same date, Brenda J. Erdoes, Legislative Counsel and Chief of LCB Legal, signed the acceptance and

acknowledgement of service on behalf of each Legislative Defendant in their official capacity and mailed each to counsel for the Plaintiffs. (*PA1:0039-42.*) On August 5, 2019, counsel for the Plaintiffs filed each acceptance and acknowledgement of service with the clerk of court. Id.

On September 16, 2019, LCB Legal filed an answer to the first amended complaint on behalf of the Legislative Defendants under NRCP 12. (*PA1:0094.*) On that same date, the Executive Defendants filed a motion to dismiss the first amended complaint under NRCP 12. (*PA1:0108.*) On September 30, 2019, the Plaintiffs filed an opposition to the Executive Defendants' motion to dismiss or, in the alternative, a motion for summary judgment. (*PA2:0232.*)

On October 7, 2019, counsel for the Plaintiffs met in person with LCB Legal. (*PA3:0599-600, 0610-11.*) During the meeting, LCB Legal requested an extension of time until October 28, 2019, for the Legislative Defendants to file their opposition to the Plaintiffs' motion for summary judgment and to file their own counter-motion for summary judgment. Id. Also during the meeting, counsel for the Plaintiffs informed LCB Legal that the Plaintiff Senators and counsel believed that LCB Legal had a conflict of interest and could not represent the Legislative Defendants against the Plaintiff Senators. Id. LCB Legal indicated that a court order would be necessary to remove LCB Legal as counsel for the Legislative Defendants in this litigation. Id.

On October 8, 2019, counsel for the Plaintiffs telephoned LCB Legal and indicated that the Plaintiffs would agree to the Legislative Defendants' requested extension of time. (*PA3:0600, 0611*.) Counsel for the Plaintiffs also told LCB Legal that the Plaintiff Senators were still discussing a motion to disqualify LCB Legal as counsel for the Legislative Defendants. Id.

On October 10, 2019, the district court approved a stipulation and order which established specific dates for the completion of briefing relating to the parties' dispositive motions and which set a hearing before the district court for oral argument on the parties' dispositive motions. (*PA2:0389.*) On October 24, 2019, during the period in which the parties were briefing their dispositive motions, the Plaintiff Senators filed a motion to disqualify LCB Legal from representing the Legislative Defendants based on an alleged conflict of interest under RPC 1.7. (*PA2:0394.*) On October 29, 2019, the district court approved a stipulation and order which stayed all briefing for the parties' dispositive motions pending entry of a written order by the district court resolving the motion to disqualify and which vacated the hearing before the district court for oral argument on the parties' dispositive motions. (*PA2:0409.*) On November 4, 2019, the Legislative Defendants filed their opposition to the motion to disqualify (*PA2:0415*), and on November 12, 2019, the Plaintiff Senators filed their reply in support of the motion to disqualify. (*PA3:0482.*)

On November 6, 2019, the Legislature, also represented by LCB Legal, filed a motion to intervene as a defendant-intervenor under NRCP 24 and NRS 218F.720 to protect the official interests of the Legislature and defend the constitutionality of SB 542 and SB 551. (*PA3:0446.*) On November 18, 2019, the Plaintiffs collectively filed a qualified opposition to the Legislature's motion to intervene, and the Plaintiff Senators additionally filed a motion to disqualify LCB Legal as counsel for the Legislature as a defendant-intervenor. (*PA3:0537.*)

On November 19, 2019, the district court heard oral argument on: (1) the Plaintiff Senators' motion to disqualify LCB Legal as counsel for the Legislative Defendants; (2) the Legislature's motion to intervene as a defendant-intervenor; and (3) the Plaintiff Senators' motion to disqualify LCB Legal as counsel for the Legislature as a defendant-intervenor. (*PA3:0547-96.*)

On December 19, 2019, the district court entered an order which granted the Plaintiff Senators' motion to disqualify LCB Legal from representing the Legislative Defendants in their official capacity as their statutorily authorized counsel under NRS 218F.720. (*PA3:0597-606.*) The district court's order also required the Legislative Defendants to obtain separate outside counsel to represent them in their official capacity in this litigation. Id. The district court's order also denied a stay of the district court proceedings requested by LCB Legal to address the consequences of the order requiring the Legislative Defendants to obtain

separate outside counsel to represent them in their official capacity in this litigation. Id. Finally, the district court's order set a procedural schedule for briefing dispositive motions on the merits of the constitutional issue. Id. The procedural schedule required the Legislative Defendants—after obtaining separate outside counsel—to file an opposition to the Plaintiffs' motion for summary judgment and file their own counter-motion for summary judgment not later than January 21, 2020.

Also on December 19, 2019, the district court entered a separate order which granted the Legislature's motion to intervene as a defendant-intervenor. (*PA3:0607-18.*) In that order, the district court also denied the motion to disqualify LCB Legal from representing the Legislature as its statutorily authorized counsel under NRS 218F.720. Id.

On December 30, 2019, at the next scheduled meeting of the Legislative Commission following entry of the district court's disqualification order, the Legislative Commission directed LCB Legal under NRS 218F.720 to take all actions necessary to obtain appellate review of the disqualification order in order to protect the official interests of the Legislature. On January 2, 2020, LCB Legal filed—on behalf of the Petitioners—this writ petition and the emergency motion for a stay of all district court proceedings pending resolution of this writ petition.

ARGUMENT

I. Standards of review for writ petitions.

Because writ relief is an extraordinary remedy that invokes this Court's original jurisdiction, the decision whether to entertain a writ petition lies within this Court's sole discretion. Nev. Yellow Cab Corp. v. Dist. Ct., 123 Nev. 44, 49 (2007). This Court will exercise that discretion "only when there is no plain, speedy and adequate remedy in the ordinary course of law or there are either urgent circumstances or important legal issues that need clarification in order to promote judicial economy and administration." Valley Health Sys. v. Estate of Doe, 134 Nev. 634, 643 (2018) (quoting State v. Dist. Ct. (Logan D.), 129 Nev. 492, 497 (2013)). In this case, this Court should exercise its discretion to entertain the Petitioners' writ petition because the Petitioners do not have a plain, speedy and adequate remedy in the ordinary course of the law to challenge the district court's disqualification order and because this case presents urgent circumstances and important legal issues that need clarification in order to promote judicial economy and administration.

This Court has determined that a writ petition for "mandamus is the appropriate vehicle for challenging orders that disqualify counsel." Nev. Yellow Cab, 123 Nev. at 49. Because disqualification orders deprive clients of their right to counsel of their choice, the clients have standing to bring such writ petitions.

See Brown v. Dist. Ct., 116 Nev. 1200, 1202 (2000). Additionally, because disqualification orders also inflict significant reputational harm on the disqualified attorneys, this harm provides an additional and independent basis for those attorneys to have standing to bring such writ petitions. See Valley Health, 134 Nev. at 643-45. As explained by this Court, "the importance of an attorney's reputation alone provides a basis for justiciability [of such a writ petition] where the district court made a finding that the attorney violated the rules of professional conduct." Id. at 644; see also Harris v. Griffith, 413 P.3d 51, 56 (Wash. Ct. App. 2018); State ex rel. Swanson v. 3M Co., 845 N.W.2d 808, 815 (Minn. 2014). Consequently, because a writ petition is the appropriate vehicle for challenging disqualification orders, an appeal after a final judgment does not provide an adequate legal remedy to rectify the irreparable harm caused by erroneous disqualification orders that permanently separate parties from their attorneys whom they have chosen to represent them in the litigation.[5]

[5] Like this Court, other courts have held that writ relief—or an interlocutory appeal—is available to challenge disqualification orders because an appeal after a final judgment does not provide an adequate legal remedy. See, e.g., Borman v. Borman, 393 N.E.2d 847, 852 (Mass. 1979); Goldston v. Am. Motors Corp., 392 S.E.2d 735, 736-37 (N.C. 1990); Travco Hotels, Inc. v. Piedmont Nat. Gas Co., 420 S.E.2d 426, 429 (N.C. 1992); State ex rel. Ogden Newspapers v. Wilkes, 482 S.E.2d 204, 206 (W.Va. 1996); Hurley v. Hurley, 923 A.2d 908, 910 (Me. 2007); State ex rel. Thompson v. Dueker, 346 S.W.3d 390, 393 (Mo. Ct. App. 2011); Kidd v. Kidd, 219 So. 3d 1021, 1022 (Fla. Dist. Ct. App. 2017).

In this case, the district court found that LCB Legal has a disqualifying conflict of interest under RPC 1.7, and it disqualified LCB Legal from representing the Legislative Defendants in their official capacity in this litigation as their statutorily authorized counsel under NRS 218F.720. This Court should exercise its discretion to entertain the Petitioners' writ petition because: (1) the writ petition is the appropriate vehicle for challenging the district court's disqualification order; (2) an appeal after a final judgment would not provide the Petitioners with an adequate legal remedy to rectify the irreparable harm caused by an erroneous disqualification order; and (3) the writ petition presents urgent circumstances and important legal issues that need clarification in order to promote judicial economy and administration.

II. Standards of review for disqualification orders.

In reviewing disqualification orders in the context of a writ petition, this Court applies "the mandamus standard of manifest abuse of discretion to [its] consideration of disqualification orders." Nev. Yellow Cab, 123 Nev. at 54 n.26. In deciding whether there has been a manifest abuse of discretion, this Court "pays deference to the district court's familiarity with the facts of the case at issue to determine if disqualification is warranted." New Horizon Kids Quest III v. Dist. Ct., 133 Nev. 86, 88 (2017). Therefore, this Court will generally defer to the

district court's factual determinations in attorney disqualification matters. Id. at 88-89.

However, when the district court's disqualification order is based on the interpretation of a statute or court rule, this Court reviews the district court's interpretation of the statute or rule "de novo, even in the context of a writ petition," and this Court will not extend any deference to the district court's legal interpretation. Id. (quoting Marquis & Aurbach v. Dist. Ct., 122 Nev. 1147, 1156 (2006)). As a result, in the context of a writ petition, this Court will find a manifest abuse of discretion when the district court's order is based on "[a] clearly erroneous interpretation of the law or a clearly erroneous application of a law or rule." State v. Dist. Ct. (Armstrong), 127 Nev. 927, 932 (2011) (quoting Steward v. McDonald, 958 S.W.2d 297, 300 (Ark. 1997)).

In this case, based on the district court's erroneous interpretation and application of the conflict-of-interest rules in RPC 1.7 and RPC 1.11, the district court committed a manifest abuse of discretion when it concluded that LCB Legal has a disqualifying conflict of interest under RPC 1.7 and disqualified LCB Legal from representing the Legislative Defendants in their official capacity in this litigation as their statutorily authorized counsel under NRS 218F.720. Therefore, the Petitioners ask this Court to set aside the disqualification order based on a manifest abuse of discretion.

III. Based on the constitutional separation of powers and the rules of construction, the "except" clause in RPC 1.11(d)—which states that the conflict-of-interest rules apply to government lawyers "[e]xcept as law may otherwise expressly permit"—is intended to create an exception from the conflict-of-interest rules in order for government lawyers to provide legal representation to their government clients when required by law.

In its disqualification order, the district court concluded that LCB Legal could not represent the Legislative Defendants because the district court believed that LCB Legal's representation of the Legislative Defendants is governed by the conflict-of-interest rules in RPC 1.7. (*PA3:0601-03.*) With certain exceptions, RPC 1.7 provides that a lawyer cannot represent a client if the representation of that client would be directly adverse to another client. RPC 1.7(a)(1). Based on its belief that RPC 1.7 applied, the district court determined that LCB Legal could not represent the Legislative Defendants because that representation would be directly adverse to the interests of the Plaintiff Senators. (*PA3:0601-03.*)

The district court committed a manifest abuse of discretion because LCB Legal's representation of the Legislative Defendants is governed by RPC 1.11, which applies specifically to government lawyers. Under RPC 1.11(d), although the conflict-of-interest rules in RPC 1.7 generally apply to government lawyers, RPC 1.11(d) also contains an "except" clause stating that the conflict-of interest rules are applicable to government lawyers "[e]xcept as law may otherwise expressly permit."

Based on the constitutional separation of powers and the rules of construction, the "except" clause in RPC 1.11(d) is intended to create an exception from the conflict-of-interest rules in order for government lawyers to provide legal representation to their government clients when required by law. In this case, because LCB Legal has been directed by law under the statutory provisions in NRS 218F.720 to provide legal representation in this litigation to the Legislative Defendants in their official capacity, the conflict-of-interest rules in RPC 1.7 are not applicable under the "except" clause in RPC 1.11(d), and LCB Legal must be allowed to fulfill its statutory duties under NRS 218F.720 to provide legal representation to its legislative branch clients in order to ensure the proper functioning of state government and guarantee the separation of powers.

Thus, this writ petition involves the intersection of the professional conduct rules, which were adopted by this Court under its inherent power to govern the legal representation provided by all lawyers to their clients generally, with the statutory provisions in NRS 218F.720, which were enacted by the Legislature under its inherent power to govern the legal representation provided by the lawyers of LCB Legal to their legislative branch clients specifically. When court rules and statutory provisions intersect under such circumstances, this Court has determined that any "apparent conflicts between [the] court rule and [the] statutory provision should be harmonized and both should be given effect if possible." Bowyer v.

Taack, 107 Nev. 625, 627-28 (1991), *overruled in part on other grounds by* McCrary v. Bianco, 122 Nev. 102 (2006). In this case, because the "except" clause in RPC 1.11(d) is intended to create an exception from the conflict-of-interest rules that allows LCB Legal to represent the Legislative Defendants in their official capacity as their statutorily authorized counsel under NRS 218F.720, any apparent conflicts between the professional conduct rules and the statutory provisions in NRS 218F.720 have been harmonized by the "except" clause in RPC 1.11(d), and both the rules and the statutory provisions can be given effect.

When this Court interprets statutes and court rules, it applies the same rules of construction to both types of provisions. In re Estate of Sarge, 134 Nev. 866, 868 (2018). Under those rules of construction, the primary task of this Court is to ascertain the intent of the drafters of the statutes and court rules and adopt an interpretation that best captures their objective. Nev. Mining Ass'n v. Erdoes, 117 Nev. 531, 538 (2001). In ascertaining the intent of the drafters, this Court gives the words used by the drafters their plain meaning unless doing so would violate the spirit of the provisions. Id.

Because this Court presumes that the drafters intended for each separate clause in the provisions to be given some meaning, purpose and effect, this Court reads each separate sentence, phrase and word to render it meaningful within the context of the purpose of the provisions. Redl v. Heller, 120 Nev. 75, 78 (2004).

Consequently, whenever possible, this Court avoids any interpretation that would render a clause nugatory, superfluous or mere surplusage or would result in the clause being inoperative, ineffectual or inconsequential. Albios v. Horizon Communities, 122 Nev. 409, 418 (2006); Int'l Game Tech. v. Dist. Ct., 124 Nev. 193, 200-01 (2008).

Furthermore, whenever possible, this Court interprets each statute and court rule in harmony with other related statutes and court rules to avoid unreasonable or absurd results. We the People Nev. v. Miller, 124 Nev. 874, 881 (2008). Thus, this Court interprets related provisions to be compatible with each other whenever possible, so all such provisions are harmonized and given meaning, purpose and effect within the larger regulatory scheme. State Div. of Ins. v. State Farm Mut. Auto. Ins., 116 Nev. 290, 294-95 (2000).

However, if there are any conflicts between the related provisions, this Court presumes that the provisions which apply specifically to the particular situation take precedence over any provisions which apply only generally. Piroozi v. Dist. Ct., 131 Nev. 1004, 1009 (2015); Laird v. State Pub. Emp. Ret. Bd., 98 Nev. 42, 45 (1982); Sierra Life Ins. v. Rottman, 95 Nev. 654, 656 (1979). Under such circumstances, this Court presumes that the more specifically applicable provisions create an exception to the more generally applicable provisions. Ronnow v. City of Las Vegas, 57 Nev. 332, 365 (1937) ("Where one statute deals with a subject in

general and comprehensive terms, and another deals with another part of the same subject in a more minute and definite way, the special statute, to the extent of any necessary repugnancy, will prevail over the general one.").

Finally, when this Court adopted the Nevada Rules of Professional Conduct, it based the Nevada Rules on the ABA Model Rules of Professional Conduct. State v. Dist. Ct. (Zogheib), 130 Nev. 158, 162-63 (2014). As a result, although the comments to the ABA Model Rules are not part of the Nevada Rules, those comments "may be consulted for guidance in interpreting and applying the Nevada Rules of Professional Conduct." RPC 1.0A; New Horizon, 133 Nev. at 89-90.

Starting with the plain language of the professional conduct rules, by including the "except" clause in RPC 1.11(d), the drafters clearly intended to limit the application of the conflict-of interest rules to government lawyers by specifically stating that the conflict-of interest rules are applicable to government lawyers "[e]xcept as law may otherwise expressly permit." Thus, the drafters expressly recognized that the conflict-of-interest rules are limited by "law" when those rules are being applied to government lawyers. To give meaning, purpose and effect to the "except" clause in RPC 1.11(d) as intended by the drafters, the "except" clause must be interpreted to create an exception to the conflict-of interest rules when government lawyers are required by law to provide legal representation

to their government clients. Otherwise, the "except" clause would serve no purpose and would be rendered meaningless.

In considering the meaning of the "except" clause in RPC 1.11(d), courts in other jurisdictions have recognized that the professional conduct rules "expressly contemplate that the responsibilities of government lawyers are not fully defined by the [r]ules, but are also governed by other applicable law." Mosley v. City of Memphis, No. W2019-00199-COA-R3-CV, 2019 WL 6216288, at *9 (Tenn. Ct. App. Nov. 21, 2019).[6] As explained by the Tennessee Court of Appeals:

> [P]rovisions of the Rules [of Professional Conduct] applicable to government attorneys recognize that other law may inform decisions concerning their obligations. For example, the rule addressing special conflicts of interest for current and former government employees states that the conflict of interest rules are generally applicable to government lawyers, "[e]xcept as law may otherwise expressly permit[.]" Tenn. R. Sup. Ct. R. 8, RPC 1.11(d)(1); cf. Tenn. R. Sup. Ct. R. 8, RPC 1.11 cmt. 5 ("The question of whether two government agencies should be regarded as the same or different clients for conflict of interest purposes is beyond the scope of these Rules."); Tenn. R. Sup. Ct. 8, RPC 1.13 cmt. 8 ("Defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context and is a matter beyond the scope of these Rules."). **Thus, the Rules expressly contemplate that the responsibilities of government lawyers are not fully defined by the Rules, but are also governed by other applicable law**. Id. [Tenn. Sup. Ct. R. 8, Scope

[6] This Court may consider citations to unpublished cases from other jurisdictions "which may be cited for their persuasive, if nonbinding, precedential value." Schuck v. Signature Flight Support, 126 Nev. 434, 441 n.2 (2010) (permitting citation to unpublished federal district court cases); see also Tenn. Ct. App. R. 12 (permitting citation to unpublished opinions).

> [19]] ("These Rules do not abrogate the powers and responsibilities of government lawyers as set forth under federal law or under the Constitution, statutes, or common law of Tennessee. **The resolution of any conflict between these Rules and the responsibilities or authority of government lawyers under any such legal provisions is a question of law beyond the scope of these Rules**.").

Id. (emphasis added and footnote omitted).

Similarly, the comments to the ABA Model Rules of Professional Conduct also recognize that the professional duties and responsibilities of government lawyers are not defined exclusively by the rules, but those duties and responsibilities are also governed by other applicable law that may take precedence over the rules. ABA Model Rules of Prof'l Conduct, Preamble and Scope Paragraph [18]. As stated in the comments:

> [18] Under various legal provisions, including constitutional, statutory and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. . . . Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. **These Rules do not abrogate any such authority.**

Id. (emphasis added).

Because of the statutory duties imposed on government lawyers, courts have consistently held that the conflict-of-interest rules for private lawyers cannot be mechanically applied to government lawyers who are statutorily authorized to

provide legal representation to their government clients. Rather, the conflict-of-interest rules for private lawyers must give way when necessary for government lawyers to fulfill their statutory duties to provide legal representation to their government clients. See, e.g., State ex rel. Comm'r of Transp. v. Med. Bird Black Bear White Eagle, 63 S.W.3d 734, 773 (Tenn. Ct. App. 2001) ("Unlike the conflict-of-interest rules governing the conduct of lawyers representing private clients, the Attorney General is not necessarily prohibited from representing governmental clients whose interests may be adverse to each other."); State v. Klattenhoff, 801 P.2d 548, 551 (Haw. 1990) ("[D]ue to the AG's statutorily mandated role in our legal system, we cannot mechanically apply the Code of Professional Responsibility to the AG's office."), *abrogated on other grounds by* State v. Walton, 324 P.3d 876 (Haw. 2014); Gibson v. Johnson, 582 P.2d 452, 455 (Or. Ct. App. 1978) ("The duties and responsibilities of the Attorney General and his professional assistants, acting as attorneys, are set forth in various statutes. They assume the function of legal counsel only as authorized by statute. They are thus not in the same category as private lawyers in respect to representation of clients."); Envtl. Prot. Agency v. Pollution Control Bd., 372 N.E.2d 50, 52-53 (Ill. 1977) ("[A]lthough an attorney-client relationship exists between a State agency and the Attorney General, it cannot be said that the role of the Attorney General

apropos of a State agency is precisely akin to the traditional role of private counsel apropos of a client.").

As a result, when applying the conflict-of-interest rules to government lawyers, courts must first consider whether those government lawyers have been given statutory powers and duties to provide legal representation to their government clients that take precedence over the conflict-of-interest rules in order to ensure the proper functioning of state government and guarantee the separation of powers. As stated in one treatise on legal ethics, "a government lawyer may possess powers beyond those possessed by a lawyer representing a nongovernmental client. . . . Some government lawyers, such as an elected state attorney general or similar officer, have discretionary powers under law that have no parallel in representation of nongovernmental clients." Restatement (3d) Law Governing Lawyers § 97 & cmt. b (2000).

As a matter of state law under NRS 218F.720, LCB Legal is expressly authorized to provide legal representation in litigation to legislative branch clients in their official capacity "[w]hen deemed necessary or advisable to protect the official interests of the Legislature in any action or proceeding." NRS 218F.720(1); Comm'n on Ethics v. Hansen, 134 Nev. 304, 309 n.4 (2018). Such litigation includes cases where a party alleges that the Legislature has

violated the Nevada Constitution or alleges that any law is invalid, unenforceable or unconstitutional. NRS 218F.720(2).

In this case, the Plaintiff Senators allege that the Legislature has violated the Nevada Constitution, and they are attacking the constitutional validity of SB 542 and SB 551, which are presumed to be valid and constitutional acts passed by the Legislature. As explained by this Court:

> Our analysis of [every statute] begins with the presumption of constitutional validity which clothes statutes enacted by the Legislature. All acts passed by the Legislature are presumed to be valid until the contrary is clearly established. In case of doubt, every possible presumption will be made in favor of the constitutionality of a statute, and courts will interfere only when the Constitution is clearly violated. Further, the presumption of constitutional validity places upon those attacking a statute the burden of making a clear showing that the statute is unconstitutional.

List v. Whisler, 99 Nev. 133, 137-38 (1983) (citations omitted).

Given that the Plaintiff Senators are attacking the constitutional validity of SB 542 and SB 551, this litigation clearly implicates the official interests of the Legislature in the constitutional validity of its legislative acts. Because the Plaintiff Senators named the Legislative Defendants in their official capacity, it was deemed necessary and advisable to protect the official interests of the Legislature in this litigation, and LCB Legal has been directed by law under the statutory provisions in NRS 218F.720 to provide legal representation in this litigation to the Legislative Defendants in their official capacity. Therefore,

because LCB Legal has been directed by law under the statutory provisions in NRS 218F.720 to provide legal representation in this litigation to the Legislative Defendants in their official capacity, the conflict-of-interest rules in RPC 1.7 are not applicable under the "except" clause in RPC 1.11(d), and LCB Legal must be allowed to fulfill its statutory duties under NRS 218F.720 to provide legal representation to its legislative branch clients in order to ensure the proper functioning of state government and guarantee the separation of powers.

Furthermore, if the conflict-of-interest rules in RPC 1.7 are interpreted to prohibit LCB Legal from fulfilling its statutory duties to provide legal representation to its legislative branch clients, such an interpretation would produce unreasonable and absurd results that would make it a practical impossibility for LCB Legal to perform any of its statutory duties to provide legal services to its legislative branch clients, including providing bill-drafting services under NRS 218D.110 and providing legal opinions under NRS 218F.710.

The conflict-of-interest rules in RPC 1.7 are not limited to litigation. Instead, those conflict-of-interest rules apply to all types of legal services provided by a lawyer representing a client. Under NRS 218D.110(1), LCB Legal has a statutory duty to "assist Legislators in the drafting of the legislative measures which they are authorized to request, including, without limitation, drafting them in proper form and furnishing the Legislators with the fullest information upon all matters within

the scope of the Legislative Counsel's duties." Additionally, when a Legislator requests a legal opinion from LCB Legal under NRS 218F.710(2), LCB Legal has a statutory duty to "give an opinion in writing upon any question of law."

Given that the legislative process is inherently structured to involve Legislators with competing interests, when LCB Legal provides a Legislator with bill-drafting services under NRS 218D.110 or legal opinions under NRS 218F.710, it could be argued that LCB Legal is providing legal representation to that Legislator which is directly adverse to the interests of other Legislators who oppose or disagree with that legislation or legal opinion. Based on the district court's erroneous interpretation and application of the conflict-of-interest rules in RPC 1.7 in this case, it could be argued that LCB Legal is prohibited from performing any of its statutory duties to provide legal services to its legislative branch clients because, according to the district court, LCB Legal is not "allowed to represent one set of members and officers of the Legislature adverse to other members of the Legislature." (*PA3:0602-03*.)

Fortunately for the legislative branch, the drafters of the professional conduct rules understood that government lawyers have been given statutory powers and duties to provide legal representation to their government clients that take precedence over the conflict-of-interest rules in order to ensure the proper functioning of state government and guarantee the separation of powers. That is

the reason those drafters specifically included the "except" clause in RPC 1.11(d), and that is the reason why the district court manifestly abused its discretion when it concluded that LCB Legal has a disqualifying conflict of interest under RPC 1.7.

Finally, if the conflict-of-interest rules in RPC 1.7 are interpreted to prohibit LCB Legal from fulfilling its statutory duties to provide legal representation to its legislative branch clients, such an interpretation would raise serious constitutional problems under the separation-of-powers doctrine. Fortunately for the legislative branch, such an interpretation must be avoided whenever possible.

Under the rules of construction, if one possible interpretation of a statute or court rule would raise serious constitutional problems, this Court generally rejects that interpretation, whenever possible, and construes the statute or court rule in an alternative manner that avoids the constitutional problems. Sheriff v. Wu, 101 Nev. 687, 690 (1985); Bell v. Anderson, 109 Nev. 363, 366 (1993). As stated by the U.S. Supreme Court, "if an otherwise acceptable construction of a statute would raise serious constitutional problems, and where an alternative interpretation of the statute is 'fairly possible,' we are obligated to construe the statute to avoid such problems." I.N.S. v. St. Cyr, 533 U.S. 289, 299-300 (2001) (quoting Crowell v. Benson, 285 U.S. 22, 62 (1932)).

As a component of the constitutional separation-of-powers doctrine, each branch of state government has inherent powers to administer its own affairs.

Blackjack Bonding v. Las Vegas Mun. Ct., 116 Nev. 1213, 1218 (2000) (recognizing that the Nevada Constitution establishes that "each branch of government is considered to be co-equal, with inherent powers to administer its own affairs"). If any branch of state government is denied its inherent powers to administer its own affairs, it "would become a subordinate branch of government, which is contrary to the central tenet of separation of powers." Id. Consequently, when one branch of state government exercises its inherent powers to administer its own affairs, the separation-of-powers doctrine prohibits the other branches of government from interfering with or impinging on the exercise of those powers. Id.; Comm'n on Ethics v. Hardy, 125 Nev. 285, 291-92 (2009).

By enacting NRS 218F.720, the Legislature determined—as part of its inherent powers to administer its own affairs—that LCB Legal is the most appropriate office to provide legal representation in litigation to legislative branch clients in their official capacity "[w]hen deemed necessary or advisable to protect the official interests of the Legislature in any action or proceeding." NRS 218F.720(1); Hansen, 134 Nev. at 309 n.4. Therefore, as a matter of constitutional separation of powers, because LCB Legal has been directed by law under the statutory provisions in NRS 218F.720 to provide legal representation in this litigation to the Legislative Defendants in their official capacity, the conflict-of-interest rules in RPC 1.7 are not applicable under the "except" clause in

RPC 1.11(d), and LCB Legal must be allowed to fulfill its statutory duties under NRS 218F.720 to provide legal representation to its legislative branch clients in order to ensure the proper functioning of state government and guarantee the separation of powers.

Accordingly, the district court committed a manifest abuse of discretion when it concluded that LCB Legal has a disqualifying conflict of interest under RPC 1.7 and it disqualified LCB Legal from representing the Legislative Defendants in their official capacity in this litigation as their statutorily authorized counsel under NRS 218F.720.

IV. Under well-established case law, the Plaintiff Senators did not have standing to bring a motion to disqualify LCB Legal as counsel for the Legislative Defendants in their official capacity given that LCB Legal does not have a separate attorney-client relationship with the Plaintiff Senators which can form the basis for disqualification because LCB Legal represents individual members of the Legislature in their official capacity as constituents of the organization and not as separate individuals.

As a general rule, before an attorney may be disqualified for a conflict of interest under RPC 1.7, the party claiming disqualification must establish that the party has an attorney-client relationship with the attorney that can form the basis for disqualification. Liapis v. Second Jud. Dist. Ct., 128 Nev. 414, 420 (2012). If the party claiming disqualification cannot establish such an attorney-client relationship with the attorney, the party does not have standing to bring a motion to disqualify the attorney on the basis of a conflict of interest. Id.

In this case, because LCB Legal represents the Legislature as an organizational client "acting through its duly authorized constituents" under RPC 1.13(a), LCB Legal has an attorney-client relationship with the Legislature as a governmental entity. However, under well-established case law, LCB Legal does not have a separate attorney-client relationship with the individual members of the Legislature that can form the basis for disqualification because LCB Legal represents individual members of the Legislature in their official capacity as constituents of the organization and not as separate individuals. Therefore, because LCB Legal does not have a separate attorney-client relationship with the Plaintiff Senators that can form the basis for disqualification in this litigation, the Plaintiff Senators did not have standing to bring a motion to disqualify LCB Legal as counsel for the Legislative Defendants in their official capacity on the basis of an alleged conflict of interest.

It is well established that when government lawyers represent a governmental entity as an organizational client, the government lawyers have an attorney-client relationship with the governmental entity, acting through its individual officers, but the government lawyers do not have a separate attorney-client relationship with the individual officers that can form the basis for disqualification. As a result, when individual officers sue the governmental entity—or any of its other officers acting in their official capacity—the government lawyers do not have a disqualifying

conflict of interest because the government lawyers do not have a separate attorney-client relationship with the individual officers who are suing the governmental entity. See Ward v. Superior Court, 138 Cal. Rptr. 532, 533-38 (Cal. Ct. App. 1977) (holding that because the county counsel represented the county as an entity, and not individual county officers, no separate attorney-client relationship existed between the county counsel and the county assessor as an individual officer, and the county counsel was not disqualified by a conflict of interest from representing members of the board of county commissioners who were sued in their official capacity by the county assessor); Cole v. Ruidoso Municipal Schs., 43 F.3d 1373, 1382-85 (10th Cir. 1994) (holding that: (1) a public school principal did not have a separate attorney-client relationship with the school district's counsel even though she had consulted with counsel on "sensitive personnel issues" and acted on counsel's advice; (2) the principal's belief that she had a separate attorney-client relationship was not reasonable because she consulted with the school district's counsel only for the purpose of carrying out her duties as a school principal; and (3) the school district's counsel was not disqualified from representing the school district in the principal's lawsuit against the school district); Handverger v. City of Winooski, 38 A.3d 1158, 1160-61 (Vt. 2011) (holding that a city manager did not have a separate attorney-client relationship with the city attorney because "[a]n organization's lawyer, such as a

city attorney or corporate counsel, works only for its constituents, including its employees and officials, in order to serve the organization, not to serve those individuals personally."); Salt Lake Cnty. Comm'n v. Salt Lake Cnty. Att'y, 985 P.2d 899, 905 (Utah 1999) (stating that "[t]he County Attorney has an attorney-client relationship only with the County as an entity, not with the [County] Commission or the individual Commissioners apart from the entity on behalf of which they act.").

Thus, because the government lawyers do not have a separate attorney-client relationship with the individual officers who are suing their own governmental entity—or any of its other officers acting in their official capacity—those government lawyers are able to represent the governmental entity—and any of its officers acting in their official capacity—as defendants in such a lawsuit. If those government lawyers were not able to provide such representation, then every time such a lawsuit was filed, the governmental entity would be deprived of its statutorily authorized counsel, and it would be required to employ outside legal counsel in every such case at considerable expense to the taxpayers.

For example, under the arguments made by the Plaintiff Senators, so long as at least one Legislator is included as a plaintiff in any lawsuit challenging the constitutionality of a statute in which other members of the legislative branch are named as defendants, LCB Legal would not be able to represent those legislative

branch defendants or defend the constitutionality of the statute on behalf of the legislative branch in the litigation. Under such circumstances, the legislative branch would be deprived of its statutorily authorized counsel, and it would be required to employ outside legal counsel in every such case at considerable expense to the taxpayers. Because plaintiffs in a lawsuit have sole and exclusive control over which parties are included as plaintiffs and which parties are named as defendants in their complaint, it is not hard to imagine that some plaintiffs would be encouraged to manipulate their complaints to ensure that LCB Legal would not be able to represent legislative branch defendants named in the pleadings or defend the constitutionality of the challenged statutes on behalf of the legislative branch. Because such a result would raise serious constitutional problems under the separation-of-powers doctrine, the Nevada Rules of Professional Conduct must be interpreted to avoid such a result.

Therefore, in keeping with well-established case law, the Plaintiff Senators did not have standing to bring a motion to disqualify LCB Legal as counsel in this litigation given that LCB Legal does not have a separate attorney-client relationship with the Plaintiff Senators that can form the basis for disqualification because LCB Legal represents individual members of the Legislature in their official capacity as constituents of the organization and not as separate individuals.

Accordingly, the district court committed a manifest abuse of discretion when it concluded that LCB Legal has a disqualifying conflict of interest under RPC 1.7 and it disqualified LCB Legal from representing the Legislative Defendants in their official capacity in this litigation as their statutorily authorized counsel under NRS 218F.720.

V. Even assuming for the sake of argument that LCB Legal has a conflict of interest, disqualification would not be an appropriate remedy in this litigation because the balance of competing interests and prejudices weighs against disqualification and in favor of LCB Legal representing the Legislative Defendants in their official capacity in this litigation as their statutorily authorized counsel under NRS 218F.720.

In considering whether disqualification is an appropriate remedy for a conflict of interest, this Court has stated that "[a]lthough the district court has wide latitude in determining whether to disqualify counsel from participating in a given case, its discretion in such cases is not unlimited. The district court must balance the prejudices that will inure to the parties as a result of its decision." Cronin v. Dist. Ct., 105 Nev. 635, 640 (1989), *disapproved on other grounds by* Nev. Yellow Cab, 123 Nev. at 54 n.26. This Court has further explained that:

> District courts are responsible for controlling the conduct of attorneys practicing before them, and have broad discretion in determining whether disqualification is required in a particular case. See Robbins v. Gillock, 109 Nev. 1015, 1018 (1993); Cronin v. District Court, 105 Nev. 635, 640 (1989). Courts deciding attorney disqualification motions are faced with the delicate and sometimes difficult task of balancing competing interests: the individual right to be represented by counsel of one's choice, each party's right to be free from the risk of even inadvertent disclosure of confidential information, and the public's

> interest in the scrupulous administration of justice. See Hull v. Celanese Corp., 513 F.2d 568, 570 (2d Cir. 1975). While doubts should generally be resolved in favor of disqualification, see Cronin, 105 Nev. at 640; Hull, 513 F.2d at 571, parties should not be allowed to misuse motions for disqualification as instruments of harassment or delay. See Flo-Con Systems, Inc. v. Servsteel, Inc., 759 F. Supp. 456, 458 (N.D. Ind. 1990).
>
> When considering whether to disqualify counsel, the district court must balance the prejudices that will inure to the parties as a result of its decision. Cronin, 105 Nev. at 640. To prevail on a motion to disqualify opposing counsel, the moving party must first establish "at least a reasonable possibility that some specifically identifiable impropriety did in fact occur," and then must also establish that "the likelihood of public suspicion or obloquy outweighs the social interests which will be served by a lawyer's continued participation in a particular case." Id. at 641 (quoting Shelton v. Hess, 599 F. Supp. 905, 909 (S.D. Tex. 1984)).

Brown v. Dist. Ct., 116 Nev. 1200, 1205 (2000).

In this case, the Plaintiff Senators' speculative contentions about the potential harms allegedly caused by LCB Legal's representation of the Legislative Defendants in their official capacity cannot justify disqualification of counsel. Therefore, the balance of competing interests and prejudices weighs against disqualification and in favor of LCB Legal representing the Legislative Defendants in their official capacity in this litigation as their statutorily authorized counsel under NRS 218F.720. See Liapis, 128 Nev. at 420 (stating that "[s]peculative contentions of conflict of interest cannot justify disqualification of counsel.") (quoting DCH Health Servs. Corp. v. Waite, 115 Cal. Rptr. 2d 847, 850 (Cal. Ct. App. 2002))).

In the district court, the Plaintiff Senators did not argue that there is at least a reasonable possibility that LCB Legal has engaged in "some specifically identifiable impropriety." Cronin, 105 Nev. at 640. Instead, the Plaintiff Senators made several speculative contentions about the potential harms allegedly caused by LCB Legal's representation of the Legislative Defendants in their official capacity. In particular, the Plaintiff Senators speculated that:

> [T]he representation of one member by Legislative Counsel in a matter in which she is directly adverse to other members of the same legislative body creates a high likelihood of substantially impairing the ability of LCB and the Legislative Members to work together in the future. Additionally, LCB's representation of one member over the other creates the appearance of bias and violates the concept of neutrality in the administration of government.
>
> LCB's representation impairs the public's confidence in LCB as an impartial administrative organization. LCB's representation of Defendants CANNIZZARO and CLIFT against other elected members gives the appearance to the public that it has chosen a side. . . . While this dispute involving constitutional interpretation is not meant to be a partisan dispute, the argument has resulted in a party-line split. LCB's representation, specifically of Defendant CANNIZZARO, gives the appearance that LCB has selected to represent one party over the other party.

(*PA2:0400.*)

The Plaintiff Senators' speculative contentions must be rejected because they are contrary to the established understanding of both the proper role that a lawyer plays in litigation under RPC 1.2(b) and the longstanding and well-known role that LCB Legal plays in representing members of the legislative branch in court when

deemed necessary or advisable to protect the official interests of the Legislature under NRS 218F.720.

First, under the professional conduct rules, "[a] lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities." RPC 1.2(b). Thus, "representing a client does not constitute approval of the client's views or activities." ABA Model Rules of Prof'l Conduct, Rule 1.2(b) cmt. [5]. As explained by one legal commentator, "[t]he essence of Rule 1.2(b) is that lawyers must be separated from their clients. Lawyers are agents, not principals, and they should not be condemned, criticized, or looked down upon by either colleagues or the general public for the clients they represent." Andre A. Borgeas, Necessary Adherence to Model Rule 1.2(b): Attorneys Do Not Endorse the Acts or Views of Their Clients by Virtue of Representation, 13 Geo. J. Legal Ethics 761, 768 (2000).

Accordingly, based on the established understanding of the proper role that a lawyer plays in litigation under RPC 1.2(b), when LCB Legal provides representation to legislative branch clients in their official capacity in litigation, LCB Legal's representation of those clients does not constitute an endorsement of their political, economic, social or moral views or activities. RPC 1.2(b). Consequently, there is no reasonable basis to conclude that LCB Legal's

representation of legislative branch clients in their official capacity in this litigation—as expressly authorized by existing state law in NRS 218F.720—violates the concept of neutrality in the administration of government, creates the appearance of bias in favor of any political, economic, social or moral views or otherwise gives the appearance to the public that LCB Legal has chosen a side or selected to represent one party over the other party in this litigation.

Rather, LCB Legal's representation in this litigation gives the appearance that LCB Legal is properly carrying out its statutory powers and duties under existing state law in NRS 218F.720 to represent legislative branch clients in their official capacity for the clear purpose of defending the validity of acts passed by the Legislature that are presumed to be constitutional. Thus, LCB Legal's representation in this litigation gives the appearance that LCB Legal is properly performing its statutory functions as a nonpartisan administrative organization and agent of the Legislature and not as an adherent of any political, economic, social or moral views. Therefore, LCB Legal should not be condemned, criticized or looked down upon by either the Plaintiff Senators or the general public for representing legislative branch clients in the manner expressly authorized by existing state law in NRS 218F.720.

Furthermore, given the longstanding and well-known role that LCB Legal plays in representing members of the legislative branch in court when deemed

necessary or advisable to protect the official interests of the Legislature under NRS 218F.720, LCB Legal's representation of legislative branch clients in this litigation cannot reasonably engender any "public suspicion or obloquy [that] outweighs the social interests which will be served by [LCB Legal's] continued participation in [this] particular case." Cronin, 105 Nev. at 641. For decades, LCB Legal has provided representation to members of the legislative branch in court when deemed necessary or advisable to protect the official interests of the Legislature under NRS 218F.720. See, e.g., Neal v. Griepentrog, 108 Nev. 660 (1992); Comm'n on Ethics v. Hardy, 125 Nev. 285 (2009); Comm'n on Ethics v. Hansen, 134 Nev. 304 (2018). During that time, LCB Legal has been able to provide essential and effective representation to its legislative branch clients in their official capacity in litigation when expressly authorized by existing state law in NRS 218F.720, regardless of their political parties or their political, economic, social or moral views. This case is no different.

Therefore, even assuming for the sake of argument that LCB Legal has a conflict of interest, disqualification would not be an appropriate remedy in this litigation because the balance of competing interests and prejudices weighs against disqualification and in favor of LCB Legal representing the Legislative Defendants in their official capacity in this litigation as their statutorily authorized counsel under NRS 218F.720. Accordingly, the district court committed a manifest abuse

of discretion when it disqualified LCB Legal from representing the Legislative Defendants in their official capacity in this litigation as their statutorily authorized counsel under NRS 218F.720.

VI. Even assuming for the sake of argument that LCB Legal has a conflict of interest, the Plaintiff Senators should be barred—under the equitable doctrines of estoppel and waiver—from challenging the conflict of interest based on their calculated and tactical litigation decisions in this case.

Under the equitable doctrines of estoppel and waiver, the Plaintiff Senators should be barred from challenging the conflict of interest in their motion to disqualify because they intentionally introduced the conflict of interest into this litigation when they made a calculated and tactical litigation decision to name the Legislative Defendants in their official capacity with full knowledge that the Legislative Defendants are not necessary parties to this litigation and with full knowledge that LCB Legal is expressly authorized to represent the Legislative Defendants in their official capacity as their statutorily authorized counsel under NRS 218F.720. Under such circumstances and in the interests of equity, justice and fairness, the Plaintiff Senators should be required to accept the consequences of their own calculated and tactical litigation decisions, and they should not be permitted to use their disqualification motion to prejudice the rights of the Legislative Defendants to their statutorily authorized counsel under NRS 218F.720.

In the context of litigation, district courts have inherent power to disqualify an attorney based on an alleged conflict of interest, and "district courts have broad discretion in determining whether disqualification is required in a particular case." Cronin, 105 Nev. at 640. Because the inherent power to disqualify an attorney derives from the judiciary's equitable powers, courts have recognized that "a motion for disqualification is governed by such equitable principles as waiver, estoppel, latches, 'undue hardship' and 'a balancing of the equities.'" UMG Recordings, Inc. v. MySpace, Inc., 526 F. Supp. 2d 1046, 1062 (C.D. Cal. 2007) (quoting Geoffrey C. Hazard, Jr. & W. William Hodes, The Law of Lawyering: A Handbook on the Model Rules of Professional Conduct § 4.7, at 4-22 (Aspen 3d ed. 2007)). Additionally, courts have recognized that "a disqualification motion may involve such considerations as a client's right to chosen counsel, an attorney's interest in representing a client, the financial burden on a client to replace disqualified counsel, and the possibility that tactical abuse underlies the disqualification motion." People ex rel. Dep't of Corps. v. SpeeDee Oil Change Sys., Inc., 980 P.2d 371, 377-78 (Cal. 1999).

Based on principles of equity, justice and fairness, the doctrine of estoppel "operates to prevent the assertion of legal rights that in equity and good conscience should be unavailable because of a party's conduct." United Bhd. of Carpenters & Joiners of Am. v. Dahnke, 102 Nev. 20, 22 (1986); Topaz Mut. Co. v. Marsh, 108

Nev. 845, 853 (1992). Thus, the doctrine of estoppel may bar a party from asserting legal rights during the course of litigation based on the party's conduct during that litigation, including the party's litigation decisions in the case. See In re Harrison Living Tr., 121 Nev. 217, 222-24 (2005). The application of the doctrine of estoppel is committed to the district court's sound discretion. Id.

Under the doctrine of waiver, when a party moves to disqualify opposing counsel for an alleged conflict of interest, the threshold issue is whether the party waived the right to challenge the alleged conflict of interest by engaging in conduct in the litigation that clearly indicates the party's intention to relinquish that right. Nev. Yellow Cab, 123 Nev. at 49-50. This Court has stated that such a waiver "may be inferred when a party engages in conduct so inconsistent with an intent to enforce the right as to induce a reasonable belief that the right has been relinquished." Id. at 49.

In determining whether a party has waived the right to challenge the alleged conflict of interest, courts will consider whether the party's conduct indicates that the party is using the disqualification motion as a calculated and tactical litigation decision in order to gain an advantage in the litigation or to "block, harass, or otherwise hinder the other party's case." Baltimore Cnty. v. Barnhart, 30 A.3d 291, 309 (Md. Ct. Spec. App. 2011) (quoting Klupt v. Krongard, 728 A.2d 727, 740 (Md. Ct. Spec. App. 1999)); State ex rel. Swanson v. 3M Co., 845 N.W.2d

808, 817-18 (Minn. 2014). For example, the Minnesota Supreme Court has stated that "disqualification motions are particularly susceptible to abuse as a litigation tactic. [Courts] do not countenance the strategic use of disqualification motions to delay judicial proceedings to gain an advantage in litigation." Swanson, 845 N.W.2d at 818.

Courts also will consider whether the choices that the party makes in litigating the case indicate that the party has waived the right to challenge the alleged conflict of interest. Brown & Williamson Tobacco Corp. v. Pataki, 152 F. Supp. 2d 276, 289-90 (S.D.N.Y. 2001). For example, in Brown & Williamson, the court denied the State of New York's motion to disqualify plaintiff's counsel for an alleged conflict of interest where the State intentionally chose to expedite proceedings and it delayed bringing its disqualification motion for two months while the parties were engaged in briefing for a preliminary injunction hearing. Id. In denying the State's disqualification motion, the court explained that the State had to accept the consequences of its own litigation decisions:

> While ordinarily a delay of two months in bringing a disqualification motion would not result in prejudice, as noted above, it has here because of the expedited proceedings. Counsel for both sides have compressed the usual time periods and conducted a motion for a temporary restraining order and expedited discovery and are in the midst of preparing for a preliminary injunction hearing in about two months. Brown & Williamson has invested substantial resources in [its counsel] C & B's accumulation of knowledge and its preparation of the case in the two months before the issue of disqualification was raised and during the briefing period.

> This accelerated process, in turn, was the result of the State's request for expedited proceedings after issuance of the TRO. The State was understandably reluctant to consent to extension of the TRO and did so only to permit the minimum time for trial preparation. However, that decision is not without consequences. The State argues in the present motion that C & B's conflict is apparent and disqualification clearly required. Accepting that position as true in this part of the analysis, however, it is equally clear that the State must have made a tactical decision at the outset not to seek what it regards as obviously-required disqualification (or at least raise the issue) and instead chose to pursue expedited proceedings. Having made that choice, it must accept the consequence now and acknowledge the prejudice to Brown & Williamson of permitting C & B to participate in the action virtually until the eve of trial before raising the issue of disqualification.

Id.

In this case, the Plaintiff Senators intentionally made a calculated and tactical litigation decision to name the Legislative Defendants in their official capacity with full knowledge that the Legislative Defendants are not necessary parties to this litigation and with full knowledge that LCB Legal is expressly authorized to represent the Legislative Defendants in their official capacity as their statutorily authorized counsel under NRS 218F.720. Under such circumstances, the Plaintiff Senators cannot complain of a conflict of interest that they intentionally introduced into this case by naming the Legislative Defendants in their official capacity when the Plaintiff Senators were not required to do so in order to litigate their claims.

First, "it is the general and long-established rule that in actions for declaratory and injunctive relief challenging the constitutionality of state statutes, state officers

with statewide administrative functions under the challenged statute are the proper parties defendant." Serrano v. Priest, 557 P.2d 929, 941-42 (Cal. 1976). As a result, state legislators are not necessary parties in such actions because "[t]he interest they do have—that of lawmakers concerned with the validity of statutes enacted by them—is not of the immediacy and directness requisite to party status; it may thus be fully and adequately represented by the appropriate administrative officers of the state." Id. at 942. As stated by the U.S. Supreme Court, "[i]n making an officer of the state a party defendant in a suit to enjoin the enforcement of an act alleged to be unconstitutional, it is plain that such officer must have some connection with the enforcement of the act." Ex parte Young, 209 U.S. 123, 157 (1908).

Thus, because the Legislative Defendants in their official capacity do not occupy positions as state officers with statewide administrative functions under the challenged statutes in SB 542 and SB 551, the Legislative Defendants do not have any connection with the enforcement of the bills. Consequently, the Legislative Defendants are not necessary parties to this litigation as a matter of law, and the Plaintiff Senators were not required to name them as defendants in order to litigate their claims.

Second, as legislative branch defendants sued in their official capacity, the Legislative Defendants are not proper parties because they are entitled to absolute legislative immunity from declaratory and injunctive relief for "any actions, in any form, taken or performed within the sphere of legitimate legislative activity." NRS 41.071; Supreme Ct. of Va. v. Consumers Union, 446 U.S. 719, 731-34 (1980); Chappell v. Robbins, 73 F.3d 918, 920-22 (9th Cir. 1996); Scott v. Taylor, 405 F.3d 1251, 1253-56 (11th Cir. 2005). Legislative immunity is a form of absolute immunity, and it protects all legislative actions regardless of the motive or intent of the official performing the actions. Bogan v. Scott-Harris, 523 U.S. 44, 54-55 (1998). Thus, legislative immunity applies broadly to all legislative actions that are "integral steps in the legislative process," including all actions relating to introducing, sponsoring, voting for or signing legislation. Id. at 54-55.

The Plaintiffs seek declaratory and injunctive relief against the Legislative Defendants for legislative actions taken in their official capacity in the passage and approval of SB 542 and SB 551. (*PA1:0027-28.*) Because the Legislative Defendants are entitled to absolute legislative immunity from declaratory and injunctive relief for those actions, the Legislative Defendants are not proper parties

to this litigation as a matter of law, and the Plaintiff Senators were not required to name them as defendants in order to litigate their claims.[7]

Finally, because every person is presumed to know the law, it must be presumed that the Plaintiff Senators acted with full knowledge that LCB Legal is expressly authorized to represent the Legislative Defendants in their official capacity as their statutorily authorized counsel under NRS 218F.720. See Smith v. State, 38 Nev. 477, 481, 151 P. 512, 513 (1915) (stating that "[e]very one is presumed to know the law, and this presumption is not even rebuttable"). This presumed knowledge of the law is reinforced by the fact that this Court has recognized that LCB Legal is expressly authorized to represent legislative branch defendants in their official capacity under NRS 218F.720. Comm'n on Ethics v. Hansen, 134 Nev. 304, 309 n.4, 419 P.3d 140, 143 n.4 (2018) (explaining that because the claims in the litigation "were submitted against the assemblymen in their official capacity, the LCB is representing the assemblymen in their official capacity, something it is authorized to do, including being able to 'prosecute,

[7] Executive officials "outside the legislative branch are entitled to legislative immunity when they perform legislative functions." Bogan, 523 U.S. at 55. Therefore, Governor Sisolak and Lieutenant Governor Marshall are not proper parties to this litigation as a matter of law because they are entitled to absolute legislative immunity from declaratory and injunctive relief for all actions taken in their official capacity in the passage and approval of SB 542 and SB 551.

defend, or intervene in any action or proceeding before any court.'" (quoting NRS 218F.720)).

Thus, because the Plaintiff Senators intentionally included the Legislative Defendants in this litigation—even though they were not required to do so in order to litigate their claims—their conduct clearly indicates that they named the Legislative Defendants for purely calculated and tactical purposes that are wholly unrelated to the litigation of the merits of their claims. Based on the equitable doctrines of estoppel and waiver and in the interests of equity, justice and fairness, the Plaintiff Senators should be barred from challenging the conflict of interest because they intentionally introduced the conflict of interest into this litigation and they should be required to accept the consequences of their own calculated and tactical litigation decisions. Moreover, the Plaintiff Senators should not be permitted to use their disqualification motion to prejudice the rights of the Legislative Defendants to their statutorily authorized counsel under NRS 218F.720. Accordingly, the district court committed a manifest abuse of discretion when it disqualified LCB Legal from representing the Legislative Defendants in their official capacity in this litigation as their statutorily authorized counsel under NRS 218F.720.

CONCLUSION

Based on the foregoing, the Petitioners ask this Court to issue a writ of mandamus to Respondents, the First Judicial District Court and the Honorable James Todd Russell, District Judge, directing them to: (1) vacate the order granting the motion to disqualify LCB Legal from representing the Legislative Defendants in their official capacity in this litigation as their statutorily authorized counsel under NRS 218F.720; and (2) enter an order denying the motion to disqualify filed by the Plaintiff Senators.

DATED: This **2nd** day of January, 2020.

BRENDA J. ERDOES
Legislative Counsel

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ADDENDUM

NRS 218F.720 Authority to provide legal representation in actions and proceedings; exemption from fees, costs and expenses; standards and procedures for exercising unconditional right and standing to intervene; payment of costs and expenses of representation.

1. When deemed necessary or advisable to protect the official interests of the Legislature in any action or proceeding, the Legislative Commission, or the Chair of the Legislative Commission in cases where action is required before a meeting of the Legislative Commission is scheduled to be held, may direct the Legislative Counsel and the Legal Division to appear in, commence, prosecute, defend or intervene in any action or proceeding before any court, agency or officer of the United States, this State or any other jurisdiction, or any political subdivision thereof. In any such action or proceeding, the Legislature may not be assessed or held liable for:

(a) Any filing or other court or agency fees; or

(b) The attorney's fees or any other fees, costs or expenses of any other parties.

2. If a party to any action or proceeding before any court, agency or officer:

(a) Alleges that the Legislature, by its actions or failure to act, has violated the Constitution, treaties or laws of the United States or the Constitution or laws of this State; or

(b) Challenges, contests or raises as an issue, either in law or in equity, in whole or in part, or facially or as applied, the meaning, intent, purpose, scope, applicability, validity, enforceability or constitutionality of any law, resolution, initiative, referendum or other legislative or constitutional measure, including, without limitation, on grounds that it is ambiguous, unclear, uncertain, imprecise, indefinite or vague, is preempted by federal law or is otherwise inapplicable, invalid, unenforceable or unconstitutional,

➥ the Legislature may elect to intervene in the action or proceeding by filing a motion or request to intervene in the form required by the rules, laws or regulations applicable to the action or proceeding. The motion or request to intervene must be accompanied by an appropriate pleading, brief or dispositive motion setting forth the Legislature's arguments, claims, objections or defenses, in law or fact, or by a motion or request to file such a pleading, brief or dispositive motion at a later time.

3. Notwithstanding any other law to the contrary, upon the filing of a motion or request to intervene pursuant to subsection 2, the Legislature has an unconditional right and standing to intervene in the action or proceeding and to present its arguments, claims, objections or defenses, in law or fact, whether or not the Legislature's interests are adequately represented by existing parties and

whether or not the State or any agency, officer or employee of the State is an existing party. If the Legislature intervenes in the action or proceeding, the Legislature has all the rights of a party.

4. The provisions of this section do not make the Legislature a necessary or indispensable party to any action or proceeding unless the Legislature intervenes in the action or proceeding, and no party to any action or proceeding may name the Legislature as a party or move to join the Legislature as a party based on the provisions of this section.

5. The Legislative Commission may authorize payment of the expenses and costs incurred pursuant to this section from the Legislative Fund.

6. As used in this section:

(a) "Action or proceeding" means any action, suit, matter, cause, hearing, appeal or proceeding.

(b) "Agency" means any agency, office, department, division, bureau, unit, board, commission, authority, institution, committee, subcommittee or other similar body or entity, including, without limitation, any body or entity created by an interstate, cooperative, joint or interlocal agreement or compact.

(c) "Legislature" means:

(1) The Legislature or either House; or

(2) Any current or former agency, member, officer or employee of the Legislature, the Legislative Counsel Bureau or the Legislative Department.

(Added to NRS by 1965, 1461; A 1971, 1546; 1995, 1108; 1999, 2203; 2007, 3305; 2009, 1565; 2011, 3244)—(Substituted in revision for NRS 218.697)

NRAP 21(a)(5) VERIFICATION

Pursuant to NRS 53.045, we declare under penalty of perjury under the law of the State of Nevada that we are the attorneys for the Petitioners named in this petition for writ of mandamus; that we know the contents of the petition; that the facts alleged in the petition are true of our own knowledge, except as to those matters stated on information and belief; and that as to those matters stated on information and belief, we believe the petition to be true.

Pursuant to NRS 53.045, we declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

EXECUTED ON: This **2nd** day of January, 2020.

BRENDA J. ERDOES
Legislative Counsel

By: /s/ Kevin C. Powers
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CERTIFICATE OF COMPLIANCE

1. We hereby certify that this petition for writ of mandamus complies with the formatting requirements of NRAP 21(d), NRAP 32(a)(4) and NRAP 32(c)(2), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because the petition has been prepared in a proportionally spaced typeface using Microsoft Office Word 2010 in 14-point font and Times New Roman type.

2. We hereby certify that this petition for writ of mandamus complies with the type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the petition exempted by NRAP 32(a)(7)(C), the petition is proportionately spaced, has a typeface of 14 points or more, and contains **12,863** words, which is less than the type-volume limit of 14,000 words.

3. We hereby certify that we have read this petition for writ of mandamus, and to the best of our knowledge, information and belief, it is not frivolous or interposed for any improper purpose. We further certify that the petition complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the petition regarding matters in the record to be supported by a reference to the page and volume number, if any, of the appendix where the matter relied on is to be found. We understand that we

may be subject to sanctions in the event that the petition is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED: This **2nd** day of January, 2020.

BRENDA J. ERDOES
Legislative Counsel

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Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Nevada Legislative Counsel Bureau, Legal Division, and that on the **2nd** day of January, 2020, pursuant to NRAP 25 and the parties' stipulation and consent to service by electronic mail, I served a true and correct copy of the Petitioners' Petition for Writ of Mandamus and the Petitioners' Appendix, as follows:

By personal delivery to a clerk or other responsible person at the offices of and by electronic mail directed to:
KAREN A. PETERSON, ESQ.
JUSTIN TOWNSEND, ESQ.
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Attorneys for All Real Parties in Interest and All Other Plaintiffs in the District Court Proceedings

By United States Mail, postage prepaid, directed to:
HONORABLE JAMES T. RUSSELL
FIRST JUDICIAL DISTRICT COURT
885 E. Musser St. Room 3061
Carson City, NV 89701
Respondent District Judge

By personal delivery to a clerk or other responsible person at the offices of and by electronic mail directed to:
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/s/ Kevin C. Powers
An Employee of the Legislative Counsel Bureau