

Electronically Filed  
Jan 03 2020 11:29 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

appropriated to the county pursuant to that section for distribution to the county during the calendar year ~~{2015}~~ 2016, excluding any portion of the amount appropriated to the county pursuant to that section for distribution to the county during the calendar year ~~{2015}~~ 2016 which is attributable to a pro rata share of any penalties and interest collected by the Department of Taxation for the late payment of taxes distributed to the county.

(b) In calculating the amount required to be apportioned to each local government or other local entity pursuant to subsection 2 of that section for the calendar year ~~{2016}~~ 2017, the county treasurer shall reduce the amount required to be determined pursuant to paragraph (a) of that subsection for that calendar year by the amount determined pursuant to that paragraph for the calendar year ~~{2015}~~ 2016.

**Sec. 108.** Section 17 of chapter 476, Statutes of Nevada 2011, as amended by chapter 518, Statutes of Nevada 2013, at page 3427, is hereby amended to read as follows:

Sec. 17. 1. This section and sections 1 and 7 to 16, inclusive, of this act become effective upon passage and approval.

2. Sections 4.5, ~~{and}~~ 6 and 6.5 of this act become effective on July 1, 2011.

3. ~~{Sections}~~ Section 4 ~~{and 6.5}~~ of this act ~~{become}~~ becomes effective on July 1, 2011, and ~~{expire}~~ expires by limitation on June 30, 2015.

4. Section 5 of this act becomes effective on the date that the balance of the separate account required by subsection 8 of NRS 408.235 is reduced to zero.

**Sec. 109.** Section 4 of chapter 373, Statutes of Nevada 2013, at page 1992, is hereby amended to read as follows:

Sec. 4. This act becomes effective on July 1, 2013, and expires by limitation on June 30, ~~{2015}~~ 2017.

**Sec. 110.** Notwithstanding the provisions of sections 2 to 61, inclusive, of this act, the Department shall waive payment of any penalty or interest for a person's failure to timely file a report or pay the commerce tax pursuant to sections 2 to 61, inclusive, of this act for any failure to comply with the provisions of those sections, which occurs before February 15, 2017, regardless of when the Department makes the determination that the person failed to file a report or pay the commerce tax, if the failure:

1. Occurred despite the person's exercise of ordinary care; and
2. Was not intentional or the result of willful neglect.



- 108 -

**Sec. 111.** Any rate of the tax imposed by NRS 363A.130 or 363B.110 determined pursuant to section 62 of this act does not apply to any taxes due for any period ending on or before June 30 of the year in which the rate becomes effective.

**Sec. 112.** The amendatory provisions of sections 67 to 70, inclusive, of this act do not apply to taxes due for any period ending on or before June 30, 2015.

**Sec. 113.** 1. The amendatory provisions of sections 71 and 73 of this act apply to cigarettes to which a stamp is affixed on or after July 1, 2015, regardless of the date on which a wholesale dealer purchased the stamp from the Department of Taxation.

2. As used in this section:

(a) "Stamp" has the meaning ascribed to it in NRS 370.048.

(b) "Wholesale dealer" has the meaning ascribed to it in NRS 370.055.

**Sec. 114.** 1. This section and sections 103 to 112, inclusive, of this act become effective upon passage and approval.

2. Sections 1 to 78, inclusive, and 79 to 102, inclusive, of this act become effective:

(a) Upon passage and approval for the or the purpose of performing any preparatory administrative tasks that are necessary to carry out the provisions of this act; and

(b) On July 1, 2015, for all other purposes.

3. Sections 78.1 and 78.7 of this act become effective on July 1, 2015.

4. Sections 78.3 and 78.8 of this act become effective on July 1, 2016.

5. Sections 78.5 and 78.9 of this act become effective on July 1, 2017.

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# **EXHIBIT “5”**

Senate Committee on Finance  
June 2, 2019  
Page 79

SENATOR KIECKHEFER:

Is the recommendation to keep sections 2, 3 and 4 and delete everything that follows?

SENATOR SETTELMAYER:

I do not have the bill in front of me. I would need to verify that. Mr. Krmpotic might know the correct sections.

MR. KRMPOTIC:

The conceptual amendment for Senate Bill 446 deletes sections 4 and 5, which removes all provisions containing the Medicaid eligibility for incarcerated persons. The amendment would remove the fiscal note from the Department of Health and Human Services, Division of Welfare and Supportive Services.

CHAIR WOODHOUSE:

We will close the hearing on S.B. 446 and will place it on work session.

SENATOR BROOKS MOVED TO AMEND AND DO PASS AS AMENDED  
S.B. 446.

SENATOR CANCELA SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

\* \* \* \* \*

CHAIR WOODHOUSE:

We are considering S.B. 551. Proposed Amendment No. 6101 (Exhibit E) was provided to the Committee members.

**SENATE BILL 551 (1st Reprint)**: Revises provisions relating to state financial administration. (BDR 32-1286)

SENATOR NICOLE J. CANNIZZARO (Senatorial District No. 6):

I will walk the Committee through the salient points of Proposed Amendment No. 6101, Exhibit E, for S.B. 551. The first part of the amendment deletes the portions related to the "more cops tax" or the sunset of the sales and use tax for Clark County which has funded law enforcement officers. That part has been removed from the bill.

The remainder of S.B. 551 still includes the provisions that this Body discussed regarding the buydown of the Modified Business Tax (MBT) and removing the sunset for that tax.

However, after reviewing the changes and in looking at where money would go for schools within this bill, the bill has some changes to the amounts and the designated place for the overall money which would be generated from the buydown of the MBT.

The first portion of the money would still go to school safety. However, the amount for the School Safety Account would go to facility improvements in the amount of approximately \$16.7 million. This is on top of the other money which has already gone to school safety. The \$16.7 million would be designated for facility enhancements which this Committee is familiar with.

The remainder of what would exist for the MBT buydown would fund the students who are currently in school through the Nevada Opportunity Scholarship Program. The total amount over the biennium is \$9.5 million. This provision will not include any additional enrollees for the Opportunity Scholarship Program. The provision will not include growth over any long period of time. Proposed Amendment No. 6101, Exhibit E, just includes those students who are currently on the Nevada Educational Choice Scholarship Program—also known as the Opportunity Scholarship program—to be grandfathered in; as the students matriculate out, the Program would decrease over time.

The additional money left in the MBT balance of approximately \$72 million will go to each of the school districts as designated on pages 32 and 33 of the Proposed Amendment No. 6101, Exhibit E. These funds would be on a per pupil basis through the Account for Programs for Innovation and the Prevention of Remediation for each of the school districts. The amounts in that section are for those districts affected as a result of the provisions of S.B. 551.

This bill, although it is not reflected in Proposed Amendment No. 6101, will be stamped with a two-thirds majority requirement.

SENATOR KIECKHEFER:

I appreciate the spending priorities. For the Opportunity Scholarship program, Proposed Amendment No. 6101 subs out the language included in the one-time \$20 million appropriation from last Session, puts in \$4.75 million in

# **EXHIBIT “6”**

# SB551

## Notice of Reconsideration ▲

Assembly	Senate
<b>No Vote Recorded</b>	<b>Passed:</b> No (2/3 of Elected Members) <b>Date:</b> Monday, June 3, 2019 <b>Votes:</b>
	All: 21 <span style="float: right;">▼</span>
	Yea: 13 <span style="float: right;">▼</span>
	Nay: 8 <span style="float: right;">▼</span>
	Excused: 0 <span style="float: right;">▼</span>
	Not Voting: 0 <span style="float: right;">▼</span>
	Absent: 0 <span style="float: right;">▼</span>

## Final Passage ▲

Assembly	Senate
<b>Passed:</b> Yes (Constitutional Majority) <b>Date:</b> Monday, June 3, 2019 <b>Votes:</b>	<b>Passed:</b> Yes (Constitutional Majority) <b>Date:</b> Monday, June 3, 2019 <b>Votes:</b>
All: 42 <span style="float: right;">▼</span>	All: 21 <span style="float: right;">▼</span>
Yea: 28 <span style="float: right;">▼</span>	Yea: 13 <span style="float: right;">▼</span>
Nay: 13 <span style="float: right;">▼</span>	Nay: 8 <span style="float: right;">▼</span>
Excused: 0 <span style="float: right;">▼</span>	Excused: 0 <span style="float: right;">▼</span>
Not Voting: 0 <span style="float: right;">▼</span>	Not Voting: 0 <span style="float: right;">▼</span>
Absent: 0 <span style="float: right;">▼</span>	Absent: 0 <span style="float: right;">▼</span>
Vacant: 1 <span style="float: right;">▼</span>	

# **EXHIBIT “7”**



## Senate Bill No. 502—Committee on Finance

## CHAPTER.....

AN ACT relating to the Department of Motor Vehicles: temporarily authorizing the Department to collect a technology fee: temporarily increasing the limitation on the percentage of the proceeds of certain fees and charges collected by the Department that are authorized for the Department's costs of administration associated with the collection of those fees and charges: and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

**Section 3** of this bill authorizes the Department of Motor Vehicles to assess a \$1 technology fee on paid transactions, to be used by the Department to pay the expenses associated with implementing, upgrading and maintaining the platform of information technology used by the Department. **Section 7** of this bill authorizes the collection of the technology fee until June 30, 2020.

Under existing law, all the proceeds from the imposition of any license or registration fee and other charges regarding the operation of a motor vehicle on any public highway, road or street in Nevada, except costs of administering the collection thereof, is required to be used exclusively for the construction, maintenance and repair of the State's public highways. (Nev. Const. Art. 9, § 5; NRS 408.235) Existing law limits the amount of such proceeds that are authorized to be used for costs of administration to 22 percent of the proceeds collected. (NRS 408.235) **Section 5** of this bill temporarily increases this limitation for costs of administration to 27 percent during the period in which the Department is collecting the technology fee.

EXPLANATION - Matter in bolded italics is new; matter between brackets (omitted material) is material to be omitted

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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1.** Chapter 481 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

**Sec. 2.** (Deleted by amendment.)

**Sec. 3.** *The Department shall add a nonrefundable technology fee of \$1 to the existing fee for any transaction performed by the Department for which a fee is charged. The technology fee must be used to pay the expenses associated with implementing, upgrading and maintaining the platform of information technology used by the Department.*

**Sec. 4.** NRS 481.079 is hereby amended to read as follows:

481.079 1. Except as otherwise provided by *section 3 of this act or any other specific statute*, all taxes, license fees and money



- 2 -

collected by the Department must be deposited with the State Treasurer to the credit of the Motor Vehicle Fund.

2. If a check or any other method of payment accepted by the Department in payment of such fees is returned to the Department or otherwise dishonored upon presentation for payment:

(a) The drawer or any other person responsible for payment of the fee is subject to a fee in the amount established by the State Controller pursuant to NRS 353C.115 in addition to any other penalties provided by law; and

(b) The Department may require that future payments from the person be made by cashier's check, money order, traveler's check or cash.

3. The Department may adjust the amount of a deposit made with the State Treasurer to the credit of the Motor Vehicle Fund for any cash shortage or overage resulting from the collection of fees.

Sec. 5. NRS 408.235 is hereby amended to read as follows:

408.235 1. There is hereby created the State Highway Fund.

2. Except as otherwise provided by a specific statute, the proceeds from the imposition of any:

(a) License or registration fee and other charges with respect to the operation of any motor vehicle upon any public highway, city, town or county road, street, alley or highway in this State; and

(b) Excise tax on gasoline or other motor vehicle fuel,

↪ must be deposited in the State Highway Fund and must, except for costs of administering the collection thereof, be used exclusively for the administration, construction, reconstruction, improvement and maintenance of highways as provided for in this chapter.

3. The interest and income earned on the money in the State Highway Fund, after deducting any applicable charges, must be credited to the Fund.

4. Costs of administration for the collection of the proceeds for any license or registration fees and other charges with respect to the operation of any motor vehicle must be limited to a sum not to exceed ~~{22}~~ 27 percent of the total proceeds so collected.

5. Costs of administration for the collection of any excise tax on gasoline or other motor vehicle fuel must be limited to a sum not to exceed 1 percent of the total proceeds so collected.

6. All bills and charges against the State Highway Fund for administration, construction, reconstruction, improvement and maintenance of highways under the provisions of this chapter must be certified by the Director and must be presented to and examined by the State Board of Examiners. When allowed by the State Board of Examiners and upon being audited by the State Controller, the



- 3 -

State Controller shall draw his or her warrant therefor upon the State Treasurer.

7. The money deposited in the State Highway Fund pursuant to NRS 244A.637 and 354.59815 must be maintained in a separate account for the county from which the money was received. The interest and income on the money in the account, after deducting any applicable charges, must be credited to the account. Any money remaining in the account at the end of each fiscal year does not revert to the State Highway Fund but must be carried over into the next fiscal year. The money in the account:

(a) Must be used exclusively for the construction, reconstruction, improvement and maintenance of highways in that county as provided for in this chapter;

(b) Must not be used to reduce or supplant the amount or percentage of any money which would otherwise be made available from the State Highway Fund for projects in that county; and

(c) Must not be used for any costs of administration or to purchase any equipment.

8. The money deposited in the State Highway Fund pursuant to NRS 482.313 must be maintained in a separate account. The interest and income on the money in the account, after deducting any applicable charges, must be credited to the account. Any money remaining in the account at the end of each fiscal year does not revert to the State Highway Fund but must be carried over into the next fiscal year. The money in the account:

(a) Must be used exclusively for the construction, reconstruction, improvement and maintenance of highways as provided for in this chapter; and

(b) Must not be used for any costs of administration or to purchase any equipment.

**Secs. 6 and 6.5.** (Deleted by amendment.)

**Sec. 7.** This act becomes effective on July 1, 2015, and expires by limitation on June 30, 2020.

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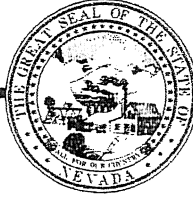
# **EXHIBIT “8”**

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April 16, 2019

Senator Yvanna D. Cancela  
Senate Chambers

Dear Senator Cancela:

You have asked whether the First Reprint of Senate Bill No. 201 requires a two-thirds majority vote for final passage. Section 18(2) of Article 4 of the Nevada Constitution provides that “an 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.” Specifically, you have asked whether the Legislature is required to pass SB 201 by a two-thirds majority vote in each House given that Section 8 of SB 201 requires the Commissioner of Financial Institutions to establish a new fee which must be charged by and collected from all licensees who make deferred deposit loans, title loans and high-interest loans in this State.

Section 8 of SB 201 requires the Commissioner of Financial Institutions to enter into a contract with a vendor or service provider or other entity to develop, implement and maintain a database of all deferred deposit loans, title loans and high-interest loans in this State for the purposes of ensuring compliance with the laws governing the businesses that make these types of loans. Section 8 also requires the licensees who make these types of loans to report and update certain information concerning each deferred deposit loan, title loan and high-interest loan made by the licensee and further requires the Commissioner to establish a fee which must be charged and collected by the vendor or service provider from a licensee who is required to report the information using the database. The fee is required to be used to pay for the administration and operation of the database.

Under the traditional parliamentary rule, a simple majority of a quorum is sufficient for the final passage of a bill in each house of a bicameral legislature unless a constitutional provision establishes a different requirement. See Mason’s Manual of Legislative Procedure § 510 (2010). This traditional parliamentary rule is followed by

each House of Congress which may pass a bill by a simple majority of a quorum. United States v. Ballin, 144 U.S. 1, 6 (1892) (“at the time this bill passed the house there was present a majority, a quorum, and the house was authorized to transact any and all business. It was in a condition to act on the bill if it desired.”); 1 Thomas M. Cooley, Constitutional Limitations 291 (8th ed. 1927).

When the Nevada Constitution was framed in 1864, the Framers rejected the traditional parliamentary rule by providing in Article 4, Section 18 that “*a majority of all the members elected to each House is necessary to pass every bill or joint resolution.*” Nev. Const. art. 4, § 18 (1864) (emphasis added). The purpose of the Framers in adopting this constitutional majority requirement was to ensure that the Senate and Assembly could not pass a bill by a simple majority of a quorum. See Andrew J. Marsh, Official Report of the Debates and Proceedings of the Nevada State Constitutional Convention of 1864, at 143-45 (1866); Andrew J. Marsh & Samuel L. Clemens, Reports of the 1863 Constitutional Convention of the Territory of Nevada 208 (1972).

The constitutional majority requirement for final passage of bills is now codified in Article 4, Section 18(1), and it provides that “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 Section 18(2) of Article 4. Under the constitutional majority requirement in Section 18(1) of Article 4, the Senate and Assembly may pass a bill only if a majority of the entire membership authorized by law to be elected to each House votes in favor of the bill. See Marionneaux v. Hines, 902 So. 2d 373, 377-79 (La. 2005) (holding that in constitutional provisions requiring a majority or super-majority of members elected to each house to pass a legislative measure or constitute a quorum, the terms “members elected” and “elected members” mean the entire membership authorized by law to be elected to each house); State ex rel. Garland v. Guillory, 166 So. 94, 101-02 (La. 1935); In re Majority of Legislature, 8 Haw. 595, 595-98 (1892).

Thus, under the current membership authorized by law to be elected to the Senate and Assembly, if a bill requires a constitutional majority for final passage under Section 18(1) of Article 4, the Senate may pass the bill only with an affirmative vote of at least 11 of its 21 members, and the Assembly may pass the bill only with an affirmative vote of at least 22 of its 42 members. See Nev. Const. art. 4, § 5, art. 15, § 6 & art. 17, § 6 (directing the Legislature to establish by law the number of members of the Senate and Assembly); NRS Chapter 218B (establishing by law 21 members of the Senate and 42 members of the Assembly).

In 1994 and 1996, Nevada’s voters approved constitutional amendments to Section 18 of Article 4 that were proposed by an initiative pursuant to Article 19, Section 2 of the Nevada Constitution. The amendments provide that:

Except as otherwise provided in subsection 3, an 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) (emphasis added). The amendments also include an exception in subsection 3 which provides that “[a] *majority of all of the members elected to each House* may refer any measure which creates, generates, or increases any revenue in any form to the people of the State at the next general election.” Nev. Const. art. 4, § 18(3) (emphasis added).

Under the two-thirds majority requirement, if a bill “creates, generates, or increases any public revenue in any form,” the Senate may pass the bill only with an affirmative vote of at least 14 of its 21 members, and the Assembly may pass the bill only with an affirmative vote of at least 28 of its 42 members. However, if the two-thirds majority requirement does not apply to the bill, the Senate and Assembly may pass the bill by a constitutional majority in each House.

To answer your question, it is necessary to examine whether SB 201 is a bill which “creates, generates, or increases any public revenue in any form” within the meaning of Section 18(2) of Article 4. To date, there are no reported decisions from the Nevada Supreme Court or the Nevada Court of Appeals that have interpreted Section 18(2) of Article 4 and applied it to determine whether a bill “creates, generates, or increases any public revenue in any form” within the meaning of that provision. In the absence of any controlling decision from Nevada’s appellate courts, the rules of constitutional construction are controlling, and the historical evidence, case law from other jurisdictions and other legal sources must be considered for guidance in this area of the law.

The Nevada Supreme Court has long held that the rules of statutory construction govern the interpretation of constitutional provisions, including provisions approved by the voters through an initiative. See Lorton v. Jones, 130 Nev. Adv. Op. 8, 322 P.3d 1051, 1054-58 (2014) (applying the rules of statutory construction to the term-limit provisions approved by the voters through an initiative). Under those rules of construction, the primary task of the court is to ascertain the intent of the drafters and the voters and to adopt an interpretation that best captures their objective. Nev. Mining Ass’n v. Erdoes, 117 Nev. 531, 538 (2001).

To ascertain the intent of the drafters and the voters, the court will first examine the language of the constitutional provision to determine whether it has a plain and ordinary meaning. Miller v. Burk, 124 Nev. 579, 590 (2008). If the constitutional

language is clear on its face and is not susceptible to any ambiguity, uncertainty or doubt, the court will generally give the constitutional language its plain and ordinary meaning unless doing so would violate the spirit of the provision or would lead to an absurd or unreasonable result. Miller, 124 Nev. at 590-91; Nev. Mining Ass'n, 117 Nev. at 542 & n.29.

However, if the constitutional language is capable of “two or more reasonable but inconsistent interpretations,” making it susceptible to ambiguity, uncertainty or doubt, the court will interpret the constitutional provision according to what history, reason and public policy would indicate the drafters and the voters intended. Miller, 124 Nev. at 590 (quoting Gallagher v. City of Las Vegas, 114 Nev. 595, 599 (1998)). Under such circumstances, the court will look “beyond the language to adopt a construction that best reflects the intent behind the provision.” Sparks Nugget, Inc. v. State, Dep’t of Tax’n, 124 Nev. 159, 163 (2008). Thus, if there is any ambiguity, uncertainty or doubt as to the meaning of a constitutional provision, “[t]he intention of those who framed the instrument must govern, and that intention may be gathered from the subject-matter, the effects and consequences, or from the reason and spirit of the law.” State ex rel. Cardwell v. Glenn, 18 Nev. 34, 42 (1883).

Finally, even when there is some ambiguity, uncertainty or doubt as to the meaning of a constitutional provision, that ambiguity, uncertainty or doubt must be resolved in favor of the Legislature and its general power to enact legislation. When the Nevada Constitution imposes limitations upon the Legislature’s power, those limitations “are to be strictly construed, and are not to be given effect as against the general power of the legislature, unless such limitations clearly inhibit the act in question.” In re Platz, 60 Nev. 296, 308 (1940) (quoting Baldwin v. State, 3 S.W. 109, 111 (Tex. Ct. App. 1886)). As a result, the language of the Nevada Constitution “must be strictly construed in favor of the power of the legislature to enact the legislation under it.” Id. Therefore, even when a constitutional provision imposes restrictions and limitations upon the Legislature’s power, those “[r]estrictions and limitations are not extended to include matters not covered.” City of Los Angeles v. Post War Pub. Works Rev. Bd., 156 P.2d 746, 754 (Cal. 1945).

With these fundamental rules of construction in mind, it is important to begin by examining the plain language of the two-thirds majority requirement in Section 18(2) of Article 4. Based on its plain language, the two-thirds majority requirement applies to a bill which “creates, generates, or increases any public revenue in any form.” The two-thirds majority requirement, however, does not provide any definitions to assist the reader in applying the terms “creates, generates, or increases.” Therefore, in the absence of any constitutional definitions, we must give those terms their ordinary and commonly understood meanings.



As explained by the Nevada Supreme Court, “[w]hen a word is used in a statute or constitution, it is supposed it is used in its ordinary sense, unless the contrary is indicated.” Ex parte Ming, 42 Nev. 472, 492 (1919); Seaborn v. Wingfield, 56 Nev. 260, 267 (1935) (stating that a word or term “appearing in the constitution must be taken in its general or usual sense.”). To arrive at the ordinary and commonly understood meaning of the constitutional language, the court will usually rely upon dictionary definitions because those definitions reflect the ordinary meanings that are commonly ascribed to words and terms. See Rogers v. Heller, 117 Nev. 169, 173 & n.8 (2001); Cunningham v. State, 109 Nev. 569, 571 (1993). Therefore, unless it is clear that the drafters of a constitutional provision intended for a term to be given a technical meaning, the court has emphasized that “[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning.” Strickland v. Waymire, 126 Nev. Adv. Op. 25, 235 P.3d 605, 608 (2010) (quoting Dist. of Columbia v. Heller, 554 U.S. 570, 576 (2008)).

Accordingly, in interpreting the two-thirds majority requirement, the normal and ordinary meanings commonly ascribed to the terms “creates, generates, or increases” in Section 18(2) of Article 4 must be determined. The common dictionary meaning of “create” is to “bring into existence.” Webster’s New Collegiate Dictionary 304 (9th ed. 1991) The common dictionary meaning of “generate” is also to “bring into existence” or “produce.” Id. at 510. The common dictionary meaning of “increase” is to “make greater” or “enlarge.” Id. at 611. The ordinary meaning of “public” is “of or relating to a government.” Id. at 952.

Based on the normal and ordinary meanings of the terms “creates, generates, or increases” and “public,” it is clear that the terms all refer to the Legislature taking legislative action that directly brings into existence, produces or enlarges public revenue in the first instance, rather than contracting with a business to perform a quasi-governmental function for which fees are paid by licensees directly to the private entity that created, maintains and operates the required database. Rather than imposing a fee which will increase or otherwise generate revenue for the state or any other public entity, the provisions of the First Reprint of SB 201 have the effect of requiring the Commissioner of Financial Institutions to, by contract, delegate both the functions of creating, maintaining and operating the database for use by licensees and the entitlement to receive the fees meant to cover the cost of the database.

In conclusion, the First Reprint of SB 201 provides for the State to relinquish control over the database that will be created and used by licensees to carry out their statutory duty. By requiring the Commissioner of Financial Institutions to contract with a vendor or other entity to create and manage the database, the bill shifts this function and the right to receive the fees meant to cover the cost of performing the function to a private entity. There is no indication in the text of the First Reprint of SB 201 or other

April 16, 2019

Page 6

evidence in the current legislative history that suggests any portion of the fee or other revenue will be transferred to the State or any other public entity. Therefore, it is the opinion of this office that a two-thirds majority vote is not required to pass the First Reprint of SB 201 out of the Senate.

If you have any further questions regarding this matter, please do not hesitate to contact this office.

Sincerely,



Brenda J. Erdoes  
Legislative Counsel

BJE:dtm

Encl.

Ref No. 190416101321

File No. OP\_Cancelal190416221556

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AUBREY HOWLATT  
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BY [Signature]  
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7 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
8 **IN AND FOR CARSON CITY**

9 THE HONORABLE JAMES SETTELMEYER,  
10 THE HONORABLE JOE HARDY, THE  
11 HONORABLE HEIDI GANSERT, THE  
12 HONORABLE SCOTT HAMMOND, THE  
13 HONORABLE PETE GOICOECHEA, THE  
14 HONORABLE BEN KIECKHEFER, THE  
15 HONORABLE IRA HANSEN, and THE  
16 HONORABLE KEITH PICKARD, in their official  
capacities as members of the Senate of the State of  
Nevada and individually; et al.,

14 Plaintiffs,

15 vs.

16 STATE OF NEVADA ex rel. THE HONORABLE  
17 NICOLE CANNIZZARO, in her official capacity  
as Senate Majority Leader; THE HONORABLE  
18 KATE MARSHALL, in her official capacity as  
President of the Senate; CLAIRE J. CLIFT, in her  
19 official capacity as Secretary of the Senate; THE  
HONORABLE STEVE SISOLAK, in his official  
20 capacity as Governor of the State of Nevada;  
NEVADA DEPARTMENT OF TAXATION;  
21 NEVADA DEPARTMENT OF MOTOR  
VEHICLES; and DOES I-X, inclusive,

22 Defendants.

Case No. 19 OC 00127 1B  
Dept. No. I

**ORIGINAL**

23 **STIPULATION REGARDING BRIEFING SCHEDULE FOR DISPOSITIVE MOTIONS,**  
24 **HEARING DATE FOR ORAL ARGUMENT AND RELATED PROCEDURAL MATTERS**  
**AND ORDER**

1 BACKGROUND

2 In this action, Plaintiffs are challenging the constitutionality of Senate Bill No. 542 (SB 542) and  
3 Senate Bill No. 551 (SB 551) of the 80th (2019) Session of the Nevada Legislature. Plaintiffs filed their  
4 Complaint on July 19, 2019, and Plaintiffs filed their First Amended Complaint on July 30, 2019.  
5 Plaintiffs are represented by KAREN A. PETERSON, ESQ., and JUSTIN TOWNSEND, ESQ., of the  
6 law firm of Allison MacKenzie, Ltd.

7 Defendants are: (1) the State of Nevada ex rel. the Honorable Kate Marshall, in her official  
8 capacity as President of the Senate; the Honorable Steve Sisolak, in his official capacity as Governor of  
9 the State of Nevada; the Nevada Department of Taxation; and the Nevada Department of Motor  
10 Vehicles (collectively the "Executive Defendants"), who are represented by AARON D. FORD,  
11 Attorney General of the State of Nevada, and CRAIG A. NEWBY, Deputy Solicitor General, of the  
12 Office of the Attorney General; and (2) the State of Nevada ex rel. the Honorable Nicole Cannizzaro, in  
13 her official capacity as Senate Majority Leader; and Claire J. Clift, in her official capacity as Secretary  
14 of the Senate (collectively the "Legislative Defendants"), who are represented by BRENDA J.  
15 ERDOES, Legislative Counsel, and KEVIN C. POWERS, Chief Litigation Counsel, of the Legislative  
16 Counsel Bureau, Legal Division.

17 On September 16, 2019, Executive Defendants filed a Motion to Dismiss Plaintiffs' First  
18 Amended Complaint, and Legislative Defendants filed an Answer to Plaintiffs' First Amended  
19 Complaint. On September 30, 2019, Plaintiffs filed their Opposition to Executive Defendants' Motion  
20 to Dismiss or, in the Alternative, Plaintiffs' Motion for Summary Judgment. Executive Defendants will  
21 be filing their Reply in Support of their Motion to Dismiss and their Opposition to Plaintiffs' Motion for  
22 Summary Judgment. Legislative Defendants will be filing their Opposition to Plaintiffs' Motion for  
23 Summary Judgment and their Counter-Motion for Summary Judgment. The parties enter into this  
24 Stipulation in order to establish a briefing schedule for their dispositive motions and a hearing date for

1 oral argument and to address other related procedural matters.

2 **STIPULATION OF PARTIES**

3 Having conferred in good faith, counsel for the parties hereby agree and stipulate, contingent upon  
4 approval by the Court, as follows:

5 1. Not later than October 28, 2019, Executive Defendants shall file and serve their Reply in  
6 Support of their Motion to Dismiss and their Opposition to Plaintiffs' Motion for Summary Judgment,  
7 and Legislative Defendants shall file and serve their Opposition to Plaintiffs' Motion for Summary  
8 Judgment and their Counter-Motion for Summary Judgment.

9 2. Not later than November 20, 2019, Plaintiffs shall file and serve their Reply in Support of  
10 their Motion for Summary Judgment and their Opposition to Legislative Defendants' Counter-Motion  
11 for Summary Judgment.

12 3. Not later than November 27, 2019, Legislative Defendants shall file and serve their Reply in  
13 Support of their Counter-Motion for Summary Judgment.

14 4. A hearing before the Court for oral argument on the parties' dispositive motions is set for  
15 December 16, 2019, at 1:30 p.m.

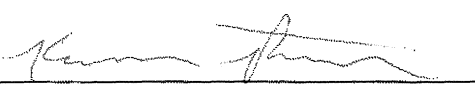
16 5. Because the parties' dispositive motions should resolve this action based on issues of law, the  
17 parties stipulate and ask the Court, for good cause shown, to continue the time for the early case  
18 conference pursuant to NRCP 16.1(b)(2)(B) to a date not more than 180 days after service of the first  
19 answer by the Legislative Defendants on September 16, 2019. Upon approval of this Stipulation by the  
20 Court, the early case conference must be held not later than March 13, 2020, unless the Court enters a  
21 final judgment or order in this action before that date.

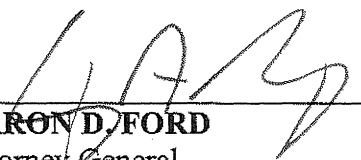
22 6. Pursuant to NRCP 5(b)(2)(E), the parties consent to service by electronic mail. The parties  
23 may use portable document format (pdf) or Microsoft Word as the format for attachments to service by  
24 electronic mail.

1 The following are the original signatures of counsel for the parties to this Stipulation Regarding  
2 Briefing Schedule for Dispositive Motions, Hearing Date for Oral Argument and Related Procedural  
3 Matters and Order:

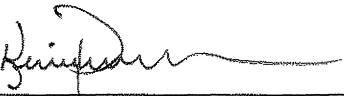
4 DATED: This 7<sup>th</sup> day of October, 2019.

DATED: This 9<sup>th</sup> day of October, 2019.

5 By:   
6 **KAREN A. PETERSON, ESQ.**  
7 **JUSTIN TOWNSEND, ESQ.**  
8 ALLISON MACKENZIE, LTD.  
9 402 N. Division St.  
10 Carson City, NV 89703  
11 Tel: (775) 687-0202; Fax: (775) 882-7918  
12 [kpeterson@allisonmackenzie.com](mailto:kpeterson@allisonmackenzie.com)  
13 [jtownsend@allisonmackenzie.com](mailto:jtownsend@allisonmackenzie.com)  
14 *Attorneys for Plaintiffs*

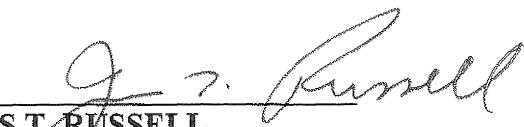
By:   
5 **AARON D. FORD**  
6 Attorney General  
7 **CRAIG A. NEWBY**  
8 Deputy Solicitor General  
9 OFFICE OF THE ATTORNEY GENERAL  
10 100 N. Carson St.  
11 Carson City, NV 89701  
12 Tel: (775) 684-1100; Fax: (775) 684-1108  
13 [CNewby@ag.nv.gov](mailto:CNewby@ag.nv.gov)  
14 *Attorneys for Defendants State of Nevada ex rel.*  
15 *Governor Steve Sisolak, Lieutenant Governor*  
16 *Kate Marshall, Nevada Department of Taxation*  
17 *and Nevada Department of Motor Vehicles*

18 DATED: This 9<sup>TH</sup> day of October, 2019.

19 By:   
20 **BRENDA J. ERDOES**  
21 Legislative Counsel  
22 **KEVIN C. POWERS**  
23 Chief Litigation Counsel  
24 LEGISLATIVE COUNSEL BUREAU, LEGAL DIVISION  
401 S. Carson St.  
Carson City, NV 89701  
Tel: (775) 684-6830; Fax: (775) 684-6761  
[kpowers@lcb.state.nv.us](mailto:kpowers@lcb.state.nv.us)  
*Attorneys for Defendants State of Nevada ex rel.*  
*Senate Majority Leader Nicole Cannizzaro and*  
*Secretary of the Senate Claire Clift*

22 **IT IS SO ORDERED.**

23 DATED: October 10, 2019

  
24 **JAMES T. RUSSELL**  
DISTRICT JUDGE


CERTIFICATE OF MAILING

The parties having consented to service by electronic mail, pursuant to NRCP 5(b)(2)(E), I certify that I am an employee of the First Judicial District Court and that on this <sup>10<sup>th</sup></sup> day of October, 2019, I transmitted via electronic mail a true and correct copy of the foregoing Order to counsel of record, addressed as follows:

Karen A. Peterson, Esq.  
kpeterson@allisonmackenzie.com  
Justin Townsend, Esq.  
jtwnsend@allisonmackenzie.com

Craig A. Newby  
Deputy Solicitor General  
cnewby@ag.nv.gov

Kevin C. Powers  
Chief Litigation Counsel  
kpowers@lcb.state.nv.us



---

Angela Jeffries  
Judicial Assistant, Dept. 1

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1 KAREN A. PETERSON, ESQ.  
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2 JUSTIN TOWNSEND, ESQ.  
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6 Attorneys for Plaintiffs

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9 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
10 IN AND FOR CARSON CITY

12 THE HONORABLE JAMES SETTELMAYER,  
THE HONORABLE JOE HARDY,  
13 THE HONORABLE HEIDI GANSERT,  
THE HONORABLE SCOTT HAMMOND,  
14 THE HONORABLE PETE GOICOECHEA,  
THE HONORABLE BEN KIECKHEFER,  
15 THE HONORABLE IRA HANSEN, and  
THE HONORABLE KEITH PICKARD,  
16 in their official capacities as members of the  
Senate of the State of Nevada and individually;  
17 GREAT BASIN ENGINEERING  
CONTRACTORS, LLC, a Nevada limited  
18 liability company; GOODFELLOW  
CORPORATION, a Utah corporation qualified  
19 to do business in the State of Nevada;  
KIMMIE CANDY COMPANY, a Nevada  
20 corporation; KEYSTONE CORP., a Nevada  
nonprofit corporation; NATIONAL FEDERATION  
21 OF INDEPENDENT BUSINESS, a California  
nonprofit corporation qualified to do business  
22 in the State of Nevada; NEVADA FRANCHISED  
AUTO DEALERS ASSOCIATION, a Nevada  
23 nonprofit corporation; NEVADA TRUCKING  
ASSOCIATION, INC., a Nevada nonprofit  
24 corporation; and RETAIL ASSOCIATION  
OF NEVADA, a Nevada nonprofit corporation,

Case No: 19 OC 00127 1B  
Dept. No: I

25 Plaintiffs,

26 vs.

27 ///  
28 ///



1 STATE OF NEVADA *ex rel.* THE  
2 HONORABLE NICOLE CANNIZZARO,  
3 in her official capacity as Senate Majority  
4 Leader; THE HONORABLE KATE  
5 MARSHALL, in her official capacity as  
6 President of the Senate; CLAIRE J. CLIFT,  
7 in her official capacity as Secretary of  
8 the Senate; THE HONORABLE STEVE  
9 SISOLAK, in his official capacity as  
10 Governor of the State of Nevada; NEVADA  
11 DEPARTMENT OF TAXATION;  
12 NEVADA DEPARTMENT OF MOTOR  
13 VEHICLES; and DOES I-X, inclusive,

14 Defendants.

---

15 PLAINTIFF SENATORS MOTION TO DISQUALIFY

16 Plaintiffs, THE HONORABLE JAMES SETTELMAYER, THE HONORABLE JOE  
17 HARDY, THE HONORABLE HEIDI GANSERT, THE HONORABLE SCOTT HAMMOND, THE  
18 HONORABLE PETE GOICOECHEA, THE HONORABLE BEN KIECKHEFER, THE  
19 HONORABLE IRA HANSEN and THE HONORABLE KEITH PICKARD in their official capacities  
20 as members of the Senate of the State of Nevada (“Plaintiff Senators”) by and through their attorneys,  
21 ALLISON MacKENZIE, LTD., file this Motion to Disqualify the LEGISLATIVE COUNSEL  
22 BUREAU, LEGAL DIVISION as counsel for THE HONORABLE NICOLE CANNIZZARO, in her  
23 official capacity as Senate Majority Leader and CLAIRE J. CLIFT, in her official capacity as Secretary  
24 of the Senate. This Motion is made and based upon the following Memorandum of Points and  
25 Authorities and all other papers and pleadings on file in this matter.

26 MEMORANDUM OF POINTS AND AUTHORITIES

27 I.

28 INTRODUCTION

The Nevada LEGISLATIVE COUNSEL BUREAU, LEGAL DIVISION hereinafter  
sometimes referred to as “LCB”, acts as a legal adviser to the Legislature. Historically and pursuant  
to statute, LCB has represented the Nevada Legislature as well as individual legislators in various  
matters that have arisen with regard to a legislator acting in his or her official capacity or the  
Legislature as a whole. *See generally*, NRS 218F.720.

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E-Mail Address: law@allisonmackenzie.com

1 In this action, the Plaintiff Senators seek to invalidate Senate Bill (“SB”) 542 and SB 551 of  
2 the 80<sup>th</sup> (2019) Legislative Session because the bills did not pass with the constitutional two-thirds  
3 majority required pursuant to Nev. Const. art. 4, §18(2). During the 80<sup>th</sup> (2019) Legislative Session,  
4 LCB provided an opinion to Legislative Leadership as to “whether the two-thirds majority requirement  
5 applied to a bill which extends until a later date – or revises or eliminates – a future decrease in or  
6 future expiration of existing state taxes when that future decrease or expiration is not legally operative  
7 and binding yet.” LCB concluded that such a bill did not need the required constitutional two-thirds  
8 majority.

9 The Legislature and LCB are not named as defendants in this action. On September 16, 2019,  
10 LCB submitted an Answer in this action on behalf of Defendants, THE HONORABLE NICOLE  
11 CANNIZZARO, in her official capacity as Senate Majority Leader, and CLAIRE J. CLIFT, in her  
12 official capacity as Secretary of the Senate. The Answer was submitted by Brenda J. Erdoes,  
13 Legislative Counsel and Kevin C. Powers, Chief Litigation Counsel for LCB. On October 7 and 8,  
14 2019, the undersigned discussed the issue of a conflict of interest with Mr. Powers. Based upon those  
15 conversations, the undersigned understood LCB would not disqualify itself from representing  
16 Defendants CANNIZZARO and CLIFT in this matter absent a Court order.

17 It is a violation of an attorney’s ethical duty to represent a client if a conflict of interest exists.  
18 See, Nevada Rules of Professional Conduct (“RPC”) 1.7. LCB is statutorily required to represent the  
19 Legislature as a whole and members of the Legislature and cannot represent one member of the  
20 legislative body against another in an adversarial action without an inherent conflict of interest. LCB’s  
21 representation of Defendants CANNIZZARO and CLIFT is directly adverse to the Plaintiff Senators  
22 in this action, with whom LCB has an ongoing attorney-client relationship. The Plaintiff Senators  
23 have not given their consent to waive this conflict of interest. Thus, LCB should be disqualified as  
24 counsel for Defendants CANNIZZARO and CLIFT<sup>1</sup> in this action because a concurrent conflict of  
25 interest exists in violation of the Nevada Rules of Professional Conduct.

26 ///

27  
28 \_\_\_\_\_  
<sup>1</sup> The Legislative Commission or Chair of the Legislative Commission can engage other outside counsel to represent Defendants CANNIZZARO and CLIFT who were named as Defendants in their official capacities.

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II.

LEGAL STANDARD

NRS 218F.710 provides for the general powers and duties of the LCB Legal Division. NRS 218F.710 provides that “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.” Moreover, “the nature and content of any work produced by the officers and employees of the Legal Division [...] and any matter entrusted to those officers and employees to produce such work are confidential and privileged and are not subject to discovery or subpoena.” NRS 218F.150. NRS 218F.720 provides in relevant part that “[w]hen 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 . . . . may direct the Legislative Counsel and the Legal Division to appear in, commence, prosecute, defend or intervene in any action before any court, . . .” NRS 218F.720(6)(c) defines the Legislature to mean: 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.”<sup>2</sup>

RPC 1.13(a) states a lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents. RPC 1.13(g) provides in relevant part: “A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7.” The duty applies to government organizations. See, ABA Model Rules of Professional Conduct Rule 1.13 cmt. 9 (2018) (“The duty defined in this Rule applies to governmental organizations.”) RPC 1.11(d)(1) provides: “Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee: (1) Is subject to Rules 1.7 and 1.9;”.

RPC 1.7 provides in relevant part: “a lawyer shall not represent a client if the representation involves a concurrent conflict of interest.” RPC 1.7 defines a concurrent conflict of interest as “(1)

---

<sup>2</sup> It is presumed the Legislative Commission or the Chair of the Legislative Commission directed the Legislative Counsel and the Legal Division to appear in this action as required by NRS 218F.720(1).

1 The representation of one client will be directly adverse to another client; or (2) There is a significant  
2 risk that the representation of one or more clients will be materially limited by the lawyer's  
3 responsibilities to another client, a former client or a third person or by a personal interest of the  
4 lawyer." The Nevada Supreme Court has stated that RPC 1.7 "imposes a duty of loyalty on lawyers"  
5 that prohibits representation of more than one client if the representation involves a concurrent conflict  
6 of interest. *See, Stalk v. Mushkin*, 125 Nev. 21, 28, 199 P.3d 838, 843 (2009).

7 There is an exception for a lawyer with a concurrent conflict of interest to represent one client  
8 directly adverse to another client. RPC 1.7(b) provides notwithstanding the existence of a concurrent  
9 conflict of interest, a lawyer may represent a client if:

- 10 1) The lawyer reasonably believes that the lawyer will be able to
- 11 provide competent and diligent representation to each affected
- 12 client; 2) The representation is not prohibited by law; 3) The
- 13 representation does not involve the assertion of a claim by one
- 14 client against another client represented by the lawyer in the same
- 15 litigation or other proceeding before a tribunal; and 4) Each
- 16 affected client gives informed consent, confirmed in writing.

17 (Emphasis added).

18 "It is within the inherent power of the court to govern the conduct of the members appearing  
19 before it." *Ryan's Express v. Amador Stage Lines*, 128 Nev. 289, 294, 279 P.3d 166, 169 (2012). The  
20 district court has broad discretion in determining whether to disqualify a lawyer in a particular case  
21 and that determination will not be overruled by the Supreme Court absent a manifest abuse of  
22 discretion. *Nevada Yellow Cab Corp. v. Eighth Judicial Dist. Court*, 123 Nev. 44, 52-54, 152 P.3d  
23 737, 742-743 (2007). The Nevada Court of Appeals has found that "a conflict of interest arises when  
24 counsel's loyalty to, or efforts on behalf of, a client are threatened by his responsibilities to another  
25 client or a third person or by his own interests." *Jefferson v. State*, 133 Nev. 874, 876, 410 P.3d 1000,  
26 1003 (2017). The rule against concurrent conflicts is based on the attorney's duty of loyalty, the  
27 breach of which Nevada does not take lightly. *State Farm Mut. Auto. Ins. Co. v. Hansen*, 131 Nev.  
28 743, 749, 357 P.3d 338, 342 n.6 (Nev. 2015) (en banc) ("The representation of clients with conflicting  
interests and without informed consent is a particularly egregious ethical violation that may be a proper  
basis for complete denial of fees." (quotation omitted)).

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1 Generally, a conflict of interest exists when a lawyer for an entity chooses to represent  
2 individual members against other members of the entity. *See, Woods v. The Superior Court of Tulare*  
3 *County*, 197 Cal. Rptr. 185, 189, 149 Cal. App. 3d 931, 936 (Cal. Ct. App. 1983); *LZ Properties v.*  
4 *Tampa Obstetrics, P.A.*, 753 So. 2d 721, 722 (Fla. App. 2000). The rule arises from the duty of loyalty  
5 owed by an attorney to the client. The purpose of the rule is to preserve the client's trust of the attorney,  
6 which is undermined when the attorney becomes adverse to the client. *See, Woods*, 197 Cal. Rptr. at  
7 188, 149 Cal. App. 3d at 935. A lay client is likely to doubt the loyalty of a lawyer who undertakes to  
8 oppose him even in an unrelated matter. *Id.* (cite omitted). Loyalty is an essential element in a  
9 lawyer's relationship to a client.

10 III.  
11 ARGUMENT

12 Here, LCB represents the Legislature and its individual members in their official capacities as  
13 provided in NRS 218F.710 and NRS 218F.720. There is an ongoing attorney-client relationship  
14 between LCB, Plaintiff Senators and Defendants CANNIZZARO and CLIFT. LCB may only  
15 represent Defendants CANNIZZARO and CLIFT as provided in RPC 1.13(g) subject to the provisions  
16 of RPC 1.7. The interests of the Plaintiff Senators are adverse to Defendants CANNIZZARO and  
17 CLIFT. LCB's representation of Defendants CANNIZZARO and CLIFT violates the duty of loyalty  
18 owed by LCB to Plaintiff Senators. LCB is taking a position in this litigation which is directly adverse  
19 to the Plaintiff Senators who are also otherwise represented by LCB in an ongoing attorney-client  
20 relationship. LCB has responsibilities that are embodied in statute to both Plaintiff Senators as well  
21 as Defendants CANNIZZARO and CLIFT. LCB's responsibilities to the Legislature and its members  
22 and employees require LCB to provide loyalty to both groups of Senators and the Senate Clerk,  
23 creating a conflict of interest because the interests of the Plaintiff Senators and the Defendant Senate  
24 Member and the Senate Clerk are directly adverse to one another. LCB has not obtained a written  
25 consent of the conflict in writing from the Plaintiff Senators in compliance with RPC 1.7(b).

26 The representation by LCB of Defendants CANNIZZARO and CLIFT could also substantially  
27 impair the working relationship between LCB and the Plaintiff Senators. LCB maintains a trusted,  
28 privileged and confidential position among Legislators and Staff. LCB and Legislative Members work

1 very closely throughout the session and in the interim. If, pursuant to NRS 218F.150(3), the work  
2 produced whether for an individual legislator or the Legislature as a whole is "privileged and  
3 confidential," the connection is easily made that LCB develops a privileged and confidential attorney  
4 relationship with each legislator in their capacity as a legislator.

5 Therefore, because of this privileged and confidential relationship between members of the  
6 Legislature and LCB, the representation of one member by Legislative Counsel in a matter in which  
7 she is directly adverse to other members of the same legislative body creates a high likelihood of  
8 substantially impairing the ability of LCB and the Legislative Members to work together in the future.  
9 Additionally, LCB's representation of one member over the other creates the appearance of bias and  
10 violates the concept of neutrality in the administration of government.

11 LCB's representation impairs the public's confidence in LCB as an impartial administrative  
12 organization. LCB's representation of Defendants CANNIZZARO and CLIFT against other elected  
13 members gives the appearance to the public that it has chosen a side. The National Conference of  
14 State Legislatures ("NCSL") Section 4 states, "A legislative staff member provides objective advice,  
15 information, and alternatives to legislators, independent of the staff member's personal beliefs or  
16 interests or the interests of third parties. A trustworthy staff member avoids activities that conflict  
17 with this objectivity or gives the appearance of conflict." While this dispute involving constitutional  
18 interpretation is not meant to be a partisan dispute, the argument has resulted in a party-line split.  
19 LCB's representation, specifically of Defendant CANNIZZARO, gives the appearance that LCB has  
20 selected to represent one party over the other party.

21 In order for the exception provided in RPC 1.7(b) to apply, each affected person is required to  
22 give informed consent in writing. The Plaintiff Senators, evidenced by the very nature of this Motion,  
23 do not consent to the conflict of interest that exists with regard to LCB representing Defendants  
24 CANNIZZARO and CLIFT in this action adverse to them.

25 In summary, LCB's representation of Defendants CANNIZZARO and CLIFT violates the duty  
26 of loyalty owed to Plaintiff Senators and LCB has not complied with the exception requirements of  
27 RPC 1.7(b) to overcome the concurrent conflict of interest. Thus, LCB should be disqualified as  
28 counsel for Defendants CANNIZZARO and CLIFT in this case. The remedy of disqualification is

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1 appropriate in concurrent representation scenarios. *See, Bryan Corp. v. Abrano*, 52 N.E. 3d 95, 105  
2 (Mass. 2016); *United States ex rel. Luke v. Healthsouth Corporation*, 2017 WL 5346385 (D. Nev.  
3 2017).

4 IV.

5 CONCLUSION

6 Based on the foregoing, Plaintiff Senators respectfully request that the Motion to Disqualify  
7 be granted. Pursuant to First Judicial District Court Rule 15(7), a proposed Order Granting Plaintiff  
8 Senators Motion to Disqualify is attached hereto as Exhibit "1".

9 V.

10 AFFIRMATION

11 The undersigned does hereby affirm that the preceding document DOES NOT contain the  
12 social security number of any person.

13 DATED this 24<sup>th</sup> day of October 2019.

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15 402 North Division Street  
16 Carson City, NV 89703  
17 Telephone: (775) 687-0202

18 By: 

19 KAREN A. PETERSON, ESQ.  
20 Nevada State Bar No. 366  
21 JUSTIN M. TOWNSEND, ESQ.  
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24 Email: [jtownsend@allisonmackenzie.com](mailto:jtownsend@allisonmackenzie.com)

25 Attorneys for Plaintiffs THE HONORABLE JAMES  
26 SETTELMAYER, THE HONORABLE JOE HARDY,  
27 THE HONORABLE HEIDI GANSERT, THE  
28 HONORABLE SCOTT HAMMOND, THE  
HONORABLE PETE GOICOECHEA, THE  
HONORABLE BEN KIECKHEFER, THE  
HONORABLE IRA HANSEN and THE HONORABLE  
KEITH PICKARD in their official capacities as  
members of the Senate of the State of Nevada

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CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON, MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be served on all parties to this action by:

- \_\_\_\_\_ Placing a true copy thereof in a sealed postage prepaid envelope in the United States Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]
- \_\_\_\_\_ Hand-delivery - via Reno/Carson Messenger Service [NRCP 5(b)(2)(A)]
- X   Electronic Transmission
- \_\_\_\_\_ Federal Express, UPS, or other overnight delivery
- \_\_\_\_\_ E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures [NRCP 5(b)(2)(D)]

fully addressed as follows:

Brenda J. Erdoes, Esq.  
Kevin C. Powers, Esq.  
Legislative Counsel Bureau, Legal Division  
[bjerdoes@lcb.state.nv.us](mailto:bjerdoes@lcb.state.nv.us)  
[kpowers@lcb.state.nv.us](mailto:kpowers@lcb.state.nv.us)

Aaron D. Ford, Esq.  
Craig A. Newby, Esq.  
Office of the Attorney General  
[CNewby@ag.nv.gov](mailto:CNewby@ag.nv.gov)

DATED this 24<sup>th</sup> day of October, 2019.

  
\_\_\_\_\_  
NANCY FONTENOT



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INDEX OF EXHIBITS

1  
2  
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14  
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<u>Exhibit No.</u>	<u>Description</u>	<u>Number of Pages</u>
"1"	[Proposed] Order Granting Plaintiff Senators Motion to Disqualify	04

4814-5058-5769, v. 1

# **EXHIBIT “1”**

ALLISON MACKENZIE, L.L.D.  
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4 Carson City, NV 89703  
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7 Attorneys for Plaintiffs

9 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
10 IN AND FOR CARSON CITY

12 THE HONORABLE JAMES SETTELMAYER,  
13 THE HONORABLE JOE HARDY,  
14 THE HONORABLE HEIDI GANSERT,  
15 THE HONORABLE SCOTT HAMMOND,  
16 THE HONORABLE PETE GOICOECHEA,  
17 THE HONORABLE BEN KIECKHEFER,  
18 THE HONORABLE IRA HANSEN, and  
19 THE HONORABLE KEITH PICKARD,  
20 in their official capacities as members of the  
Senate of the State of Nevada and individually;  
21 GREAT BASIN ENGINEERING  
22 CONTRACTORS, LLC, a Nevada limited  
23 liability company; GOODFELLOW  
24 CORPORATION, a Utah corporation qualified  
25 to do business in the State of Nevada;  
26 KIMMIE CANDY COMPANY, a Nevada  
27 corporation; KEYSTONE CORP., a Nevada  
28 nonprofit corporation; NATIONAL FEDERATION  
OF INDEPENDENT BUSINESS, a California  
nonprofit corporation qualified to do business  
in the State of Nevada; NEVADA FRANCHISED  
AUTO DEALERS ASSOCIATION, a Nevada  
nonprofit corporation; NEVADA TRUCKING  
ASSOCIATION, INC., a Nevada nonprofit  
corporation; and RETAIL ASSOCIATION  
OF NEVADA, a Nevada nonprofit corporation,

Case No: 19 OC 00127 1B  
Dept. No: I

Plaintiffs,

vs.

///  
///

ALLISON MACKENZIE, L.L.D.  
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1 STATE OF NEVADA *ex rel.* THE  
2 HONORABLE NICOLE CANNIZZARO,  
3 in her official capacity as Senate Majority  
4 Leader; THE HONORABLE KATE  
5 MARSHALL, in her official capacity as  
6 President of the Senate; CLAIRE J. CLIFT,  
7 in her official capacity as Secretary of  
8 the Senate; THE HONORABLE STEVE  
9 SISOLAK, in his official capacity as  
10 Governor of the State of Nevada; NEVADA  
11 DEPARTMENT OF TAXATION;  
12 NEVADA DEPARTMENT OF MOTOR  
13 VEHICLES; and DOES I-X, inclusive,

8 Defendants.

10 ORDER GRANTING PLAINTIFF SENATORS MOTION TO DISQUALIFY

11 This matter is before the Court on Plaintiff Senators Motion to Disqualify, filed on October  
12 24, 2019. The Court, having read the papers and pleadings on file herein, and good cause appearing  
13 therefore, finds and orders as follows:

14 **IT IS HEREBY ORDERED THAT** Plaintiff Senators Motion to Disqualify is GRANTED  
15 in its entirety as it appears that LEGISLATIVE COUNSEL BUREAU, LEGAL DIVISION has a  
16 concurrent conflict of interest pursuant to Nevada Rules of Professional Conduct 1.7 in representing  
17 Defendants, THE HONORABLE NICOLE CANNIZZARO, in her official capacity as Senate  
18 Majority Leader and CLAIRE J. CLIFT, in her official capacity as Secretary of the Senate.

19 **IT IS SO ORDERED.**

20 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.


23 \_\_\_\_\_  
DISTRICT COURT JUDGE

24 ///  
25 ///  
26 ///  
27 ///  
28 ///

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Submitted by:  
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JUSTIN TOWNSEND, ESQ.  
Nevada State Bar No. 12293  
Attorneys for Plaintiffs

4834-0113-3481, v. 1



1 BRENDA J. ERDOES, Legislative Counsel  
Nevada Bar No. 3644  
2 KEVIN C. POWERS, Chief Litigation Counsel  
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3 LEGISLATIVE COUNSEL BUREAU, LEGAL DIVISION  
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5 E-mail: [kpowers@lcb.state.nv.us](mailto:kpowers@lcb.state.nv.us)  
*Attorneys for Defendants State of Nevada ex rel. Senate Majority Leader  
6 Nicole Cannizzaro and Secretary of the Senate Claire Clift*

REC'D & FILED

2019 OCT 29 PM 3:02

A JERREY '00



7 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
8 **IN AND FOR CARSON CITY**

9 THE HONORABLE JAMES SETTELMEYER,  
10 THE HONORABLE JOE HARDY, THE  
11 HONORABLE HEIDI GANSERT, THE  
12 HONORABLE SCOTT HAMMOND, THE  
13 HONORABLE PETE GOICOECHEA, THE  
14 HONORABLE BEN KIECKHEFER, THE  
15 HONORABLE IRA HANSEN, and THE  
16 HONORABLE KEITH PICKARD, in their official  
17 capacities as members of the Senate of the State of  
18 Nevada and individually; et al.,

19 Plaintiffs,

20 vs.

21 STATE OF NEVADA ex rel. THE HONORABLE  
22 NICOLE CANNIZZARO, in her official capacity  
23 as Senate Majority Leader; THE HONORABLE  
24 KATE MARSHALL, in her official capacity as  
President of the Senate; CLAIRE J. CLIFT, in her  
official capacity as Secretary of the Senate; THE  
HONORABLE STEVE SISOLAK, in his official  
capacity as Governor of the State of Nevada;  
NEVADA DEPARTMENT OF TAXATION;  
NEVADA DEPARTMENT OF MOTOR  
VEHICLES; and DOES I-X, inclusive,

Defendants.

Case No. 19 OC 00127 1B  
Dept. No. I

**ORIGINAL**

25 **STIPULATION AND ORDER REGARDING STAY OF PROCEEDINGS PENDING**  
26 **RESOLUTION OF PLAINTIFF SENATORS' MOTION TO DISQUALIFY COUNSEL FOR**  
27 **DEFENDANTS SENATE MAJORITY LEADER NICOLE CANNIZZARO**  
28 **AND SECRETARY OF THE SENATE CLAIRE CLIFT**

1 BACKGROUND

2 In this action, Plaintiffs are challenging the constitutionality of Senate Bill No. 542 (SB 542) and  
3 Senate Bill No. 551 (SB 551) of the 80th (2019) Session of the Nevada Legislature. Plaintiffs filed their  
4 Complaint on July 19, 2019, and Plaintiffs filed their First Amended Complaint on July 30, 2019.  
5 Plaintiffs are represented by KAREN A. PETERSON, ESQ., and JUSTIN TOWNSEND, ESQ., of the  
6 law firm of Allison MacKenzie, Ltd.

7 Defendants are: (1) the State of Nevada ex rel. the Honorable Kate Marshall, in her official  
8 capacity as President of the Senate; the Honorable Steve Sisolak, in his official capacity as Governor of  
9 the State of Nevada; the Nevada Department of Taxation; and the Nevada Department of Motor  
10 Vehicles (collectively “Executive Defendants”), who are represented by AARON D. FORD, Attorney  
11 General of the State of Nevada, and CRAIG A. NEWBY, Deputy Solicitor General, of the Office of the  
12 Attorney General; and (2) the State of Nevada ex rel. the Honorable Nicole Cannizzaro, in her official  
13 capacity as Senate Majority Leader; and Claire J. Clift, in her official capacity as Secretary of the Senate  
14 (collectively “Defendants Senator Cannizzaro and Secretary Clift” or “Legislative Defendants”), who  
15 are represented by BRENDA J. ERDOES, Legislative Counsel, and KEVIN C. POWERS, Chief  
16 Litigation Counsel, of the Legislative Counsel Bureau, Legal Division (“LCB Legal Division”).

17 On September 16, 2019, Executive Defendants filed a Motion to Dismiss Plaintiffs’ First  
18 Amended Complaint, and Legislative Defendants filed an Answer to Plaintiffs’ First Amended  
19 Complaint. On September 30, 2019, Plaintiffs filed their Opposition to Executive Defendants’ Motion  
20 to Dismiss or, in the Alternative, Plaintiffs’ Motion for Summary Judgment. On October 10, 2019, the  
21 Court approved a Stipulation and Order Regarding Briefing Schedule for Dispositive Motions, Hearing  
22 Date for Oral Argument and Related Procedural Matters (“October 10th Stipulation and Order”). In the  
23 October 10th Stipulation and Order, specific dates were set for the completion of briefing relating to the  
24 parties’ dispositive motions, and a hearing before the Court for oral argument on the parties’ dispositive



1 motions was set for December 16, 2019, at 1:30 p.m.

2 On October 24, 2019, Plaintiff Senators James Settelmeyer, Joe Hardy, Heidi Gansert, Scott  
3 Hammond, Pete Goicoechea, Ben Kieckhefer, Ira Hansen and Keith Pickard (collectively “Plaintiff  
4 Senators”) filed a Motion to Disqualify LCB Legal Division as counsel for Defendants Senator  
5 Cannizzaro and Secretary Clift. In response, Defendants Senator Cannizzaro and Secretary Clift will be  
6 filing an Opposition to the Motion to Disqualify.

7 The Court’s resolution of the Motion to Disqualify could affect whether LCB Legal Division may  
8 continue to provide legal representation to Defendants Senator Cannizzaro and Secretary Clift against  
9 the claims of Plaintiff Senators in this action, including providing such legal representation regarding the  
10 parties’ dispositive motions. The parties enter into this Stipulation in order to stay proceedings  
11 regarding the parties’ dispositive motions pending the Court’s resolution of the Motion to Disqualify.

12 **STIPULATION OF PARTIES**

13 Having conferred in good faith, counsel for the parties hereby agree and stipulate, contingent upon  
14 approval by the Court, as follows:

15 1. The parties agree and stipulate to vacate the briefing schedule for the parties’ dispositive  
16 motions set forth in paragraphs 1, 2 and 3 of the October 10th Stipulation and Order.


17 2. The parties agree and stipulate to stay all briefing for the parties’ dispositive motions pending  
18 entry of a written order by the Court resolving the Motion to Disqualify, which briefing includes,  
19 without limitation, the following documents: (1) Executive Defendants’ Reply in Support of their  
20 Motion to Dismiss and their Opposition to Plaintiffs’ Motion for Summary Judgment; (2) Legislative  
21 Defendants’ Opposition to Plaintiffs’ Motion for Summary Judgment and their Counter-Motion for  
22 Summary Judgment; (3) Plaintiffs’ Reply in Support of their Motion for Summary Judgment and their  
23 Opposition to Legislative Defendants’ Counter-Motion for Summary Judgment; and (4) Legislative  
24 Defendants’ Reply in Support of their Counter-Motion for Summary Judgment.

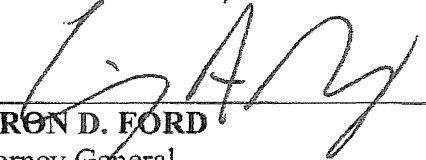


1 The following are the original signatures of counsel for the parties to this Stipulation Regarding  
2 Stay of Proceedings Pending Resolution of Plaintiff Senators' Motion to Disqualify Counsel for  
3 Defendants Senate Majority Leader Nicole Cannizzaro and Secretary of the Senate Claire Clift:

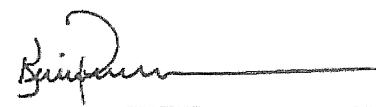
4 DATED: This 28<sup>th</sup> day of October, 2019.

DATED: This 28<sup>th</sup> day of October, 2019.

5 By:   
6 **KAREN A. PETERSON, ESQ.**  
7 **JUSTIN TOWNSEND, ESQ.**  
8 **ALLISON MACKENZIE, LTD.**  
9 402 N. Division St.  
10 Carson City, NV 89703  
11 Tel: (775) 687-0202; Fax: (775) 882-7918  
12 [kpeterson@allisonmackenzie.com](mailto:kpeterson@allisonmackenzie.com)  
13 [jtownsend@allisonmackenzie.com](mailto:jtownsend@allisonmackenzie.com)  
14 *Attorneys for Plaintiffs*

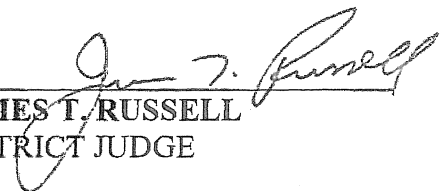
By:   
5 **AARON D. FORD**  
6 Attorney General  
7 **CRAIG A. NEWBY**  
8 Deputy Solicitor General  
9 OFFICE OF THE ATTORNEY GENERAL  
10 100 N. Carson St.  
11 Carson City, NV 89701  
12 Tel: (775) 684-1100; Fax: (775) 684-1108  
13 [CNewby@ag.nv.gov](mailto:CNewby@ag.nv.gov)  
14 *Attorneys for Defendants State of Nevada ex rel.*  
15 *Governor Steve Sisolak, Lieutenant Governor*  
16 *Kate Marshall, Nevada Department of Taxation*  
17 *and Nevada Department of Motor Vehicles*

18 DATED: This 28<sup>th</sup> day of October, 2019.

19 By:   
20 **BRENDA J. ERDOES**  
21 Legislative Counsel  
22 **KEVIN C. POWERS**  
23 Chief Litigation Counsel  
24 LEGISLATIVE COUNSEL BUREAU, LEGAL DIVISION  
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[kpowers@lcb.state.nv.us](mailto:kpowers@lcb.state.nv.us)  
*Attorneys for Defendants State of Nevada ex rel.*  
*Senate Majority Leader Nicole Cannizzaro and*  
*Secretary of the Senate Claire Clift*

22 IT IS SO ORDERED.

23 DATED: October 29, 2019

  
**JAMES T. RUSSELL**  
DISTRICT JUDGE

1 CERTIFICATE OF MAILING

2 The parties having consented to service by electronic mail, pursuant to NRC 5(b)(2)(E),  
3 I certify that I am an employee of the First Judicial District Court and that on this 29<sup>th</sup> day of  
4 October, 2019, I transmitted via electronic mail a true and correct copy of the foregoing Order to  
5 counsel of record, addressed as follows:

6 Karen A. Peterson, Esq.  
7 kpeterson@allisonmackenzie.com  
8 Justin Townsend, Esq.  
9 jtowndsend@allisonmackenzie.com

10 Craig A. Newby  
11 Deputy Solicitor General  
12 cnewby@ag.nv.gov

13 Kevin C. Powers  
14 Chief Litigation Counsel  
15 kpowers@lcb.state.nv.us

16 

17 \_\_\_\_\_  
18 Angela Jeffries  
19 Judicial Assistant, Dept. 1  
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1 BRENDA J. ERDOES, Legislative Counsel  
Nevada Bar No. 3644  
2 KEVIN C. POWERS, Chief Litigation Counsel  
Nevada Bar No. 6781  
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5 E-mail: [kpowers@lcb.state.nv.us](mailto:kpowers@lcb.state.nv.us)  
*Attorneys for Defendants State of Nevada ex rel. Senate Majority Leader*  
6 *Nicole Cannizzaro and Secretary of the Senate Claire Clift*

REC'D & FILED  
2019 NOV -4 PM 3:25  
J. WARKLE  
BY \_\_\_\_\_ DEPUTY

7 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
8 **IN AND FOR CARSON CITY**

9 THE HONORABLE JAMES SETTELMEYER,  
10 THE HONORABLE JOE HARDY, THE  
11 HONORABLE HEIDI GANSERT, THE  
12 HONORABLE SCOTT HAMMOND, THE  
13 HONORABLE PETE GOICOECHEA, THE  
14 HONORABLE BEN KIECKHEFER, THE  
15 HONORABLE IRA HANSEN, and THE  
16 HONORABLE KEITH PICKARD, in their official  
capacities as members of the Senate of the State of  
Nevada and individually; et al.,

14 Plaintiffs,

15 vs.

16 STATE OF NEVADA ex rel. THE HONORABLE  
17 NICOLE CANNIZZARO, in her official capacity  
18 as Senate Majority Leader; THE HONORABLE  
19 KATE MARSHALL, in her official capacity as  
20 President of the Senate; CLAIRE J. CLIFT, in her  
official capacity as Secretary of the Senate; THE  
21 HONORABLE STEVE SISOLAK, in his official  
capacity as Governor of the State of Nevada;  
NEVADA DEPARTMENT OF TAXATION;  
NEVADA DEPARTMENT OF MOTOR  
VEHICLES; and DOES I-X, inclusive,

22 Defendants.

Case No. 19 OC 00127 1B  
Dept. No. I

23 **OPPOSITION TO PLAINTIFF SENATORS' MOTION TO DISQUALIFY LCB LEGAL AS**  
24 **COUNSEL FOR DEFENDANTS STATE OF NEVADA EX REL. SENATE MAJORITY**  
**LEADER NICOLE CANNIZZARO AND SECRETARY OF THE SENATE CLAIRE CLIFT**

1 OPPOSITION

2 Defendants State of Nevada ex rel. Senate Majority Leader Nicole Cannizzaro and Secretary of  
3 the Senate Claire Clift (collectively “Legislative Defendants”), by and through their counsel the Legal  
4 Division of the Legislative Counsel Bureau (“LCB Legal”) under NRS 218F.720, hereby submit their  
5 Opposition to Plaintiff Senators’ Motion to Disqualify LCB Legal as Counsel for the Legislative  
6 Defendants. This Opposition is made under FJDCR 15 and is based upon the attached Memorandum of  
7 Points and Authorities, all pleadings, documents and exhibits on file in this case and any oral arguments  
8 the Court may allow.

9 MEMORANDUM OF POINTS AND AUTHORITIES

10 **I. Introduction and Summary of the Argument.**

11 In this action for declaratory and injunctive relief, Plaintiffs are challenging the constitutionality of  
12 Senate Bill No. 542 (SB 542) and Senate Bill No. 551 (SB 551) of the 80th (2019) Session of the  
13 Nevada Legislature. Plaintiffs allege that SB 542 and SB 551 violated the two-thirds requirement in  
14 Article 4, Section 18(2) of the Nevada Constitution, which provides in relevant part that:

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

18 Nev. Const. art. 4, § 18(2).

19 Plaintiffs allege that SB 542 and SB 551 were each subject to the two-thirds requirement in  
20 Article 4, Section 18(2) and that, as a result, each bill is unconstitutional because the Senate passed each  
21 bill by a majority of all the members elected to the Senate, instead of a two-thirds majority of all the  
22 members elected to the Senate. Plaintiffs ask for a declaration that each bill is unconstitutional in  
23 violation of Article 4, Section 18(2), and Plaintiffs also ask for an injunction against enforcement of  
24 each bill.

1 Plaintiffs filed their original Complaint on July 19, 2019, and Plaintiffs filed their First Amended  
2 Complaint on July 30, 2019. In their First Amended Complaint, Plaintiffs named the Nevada  
3 Department of Taxation as a Defendant. The Nevada Department of Taxation is empowered by state  
4 law with statewide administrative functions under the challenged statutes in SB 551. Plaintiffs also  
5 named the Nevada Department of Motor Vehicles as a Defendant. The Nevada Department of Motor  
6 Vehicles is empowered by state law with statewide administrative functions under the challenged  
7 statutes in SB 551.

8 Plaintiffs also named the following state officers of the executive branch as Defendants: (1) the  
9 Honorable Kate Marshall, in her official capacity as Lieutenant Governor of the State of Nevada and  
10 President of the Senate; and (2) the Honorable Steve Sisolak, in his official capacity as Governor of the  
11 State of Nevada. However, because neither Defendant Governor Sisolak nor Defendant Lieutenant  
12 Governor Marshall is empowered by state law with any statewide administrative functions under the  
13 challenged statutes in SB 542 and SB 551, they are not necessary parties to this litigation, and Plaintiffs  
14 were not required to name them as Defendants in order to litigate their claims.<sup>1</sup>

15 Finally, Plaintiffs named the following state officers of the legislative branch as Defendants:  
16 (1) the Honorable Nicole Cannizzaro, in her official capacity as Senate Majority Leader (“Senator  
17 Cannizzaro”); and (2) Claire J. Clift, in her official capacity as Secretary of the Senate (“Secretary  
18 Clift”). However, because neither Defendant Senator Cannizzaro nor Defendant Secretary Clift is  
19 empowered by state law with any statewide administrative functions under the challenged statutes in SB  
20 542 and SB 551, they are not necessary parties to this litigation, and Plaintiffs were not required to name  
21 them as Defendants in order to litigate their claims.

22 On September 16, 2019, Executive Defendants filed a Motion to Dismiss Plaintiffs’ First  
23 Amended Complaint, and Legislative Defendants filed an Answer to Plaintiffs’ First Amended

---

24 <sup>1</sup> The state agencies and officers of the executive branch named as Defendants in this case will be referred to collectively as “Executive Defendants.”

1 Complaint. On September 30, 2019, Plaintiffs filed their Opposition to Executive Defendants' Motion  
2 to Dismiss or, in the Alternative, Plaintiffs' Motion for Summary Judgment. On October 10, 2019, the  
3 Court approved a Stipulation and Order Regarding Briefing Schedule for Dispositive Motions, Hearing  
4 Date for Oral Argument and Related Procedural Matters ("October 10th Stipulation and Order"). In the  
5 October 10th Stipulation and Order, specific dates were set for the completion of briefing relating to the  
6 parties' dispositive motions, and a hearing before the Court for oral argument on the parties' dispositive  
7 motions was set for December 16, 2019, at 1:30 p.m.

8 On October 24, 2019, Plaintiff Senators James Settelmeyer, Joe Hardy, Heidi Gansert, Scott  
9 Hammond, Pete Goicoechea, Ben Kieckhefer, Ira Hansen and Keith Pickard (collectively "Plaintiff  
10 Senators") filed a Motion to Disqualify LCB Legal Division as counsel for Defendants Senator  
11 Cannizzaro and Secretary Clift. On October 29, 2019, the Court approved a Stipulation and Order  
12 Regarding Stay of Proceedings Pending Resolution of Plaintiff Senators' Motion to Disqualify Counsel  
13 for Defendants Senator Cannizzaro and Secretary Clift. ("October 29th Stipulation and Order"). In the  
14 October 29th Stipulation and Order: (1) all briefing for the parties' dispositive motions was stayed  
15 pending entry of a written order by the Court resolving the Motion to Disqualify; (2) the December 16,  
16 2019, hearing before the Court for oral argument on the parties' dispositive motions was vacated;  
17 (3) specific dates were set for the completion of briefing relating to the Motion to Disqualify; and (4) a  
18 hearing before the Court for oral argument on the Motion to Disqualify was set for November 19, 2019,  
19 at 3:30 p.m.

20 In the Motion to Disqualify, Plaintiff Senators contend that: (1) as the legal office for the  
21 legislative branch, LCB Legal has an ongoing attorney-client relationship with Plaintiff Senators and  
22 with Defendants Senator Cannizzaro and Secretary Clift; and (2) LCB Legal's representation of  
23 Defendants Senator Cannizzaro and Secretary Clift against the constitutional claims of Plaintiff Senators  
24 in this litigation creates an alleged conflict of interest under Rule 1.7 of the Nevada Rules of



1 Professional Conduct (RPC) because LCB Legal’s representation of Defendants Senator Cannizzaro and  
2 Secretary Clift is directly adverse to Plaintiff Senators. Based on this alleged conflict of interest under  
3 RPC 1.7, Plaintiff Senators claim that LCB Legal should be disqualified because they have not given  
4 their informed consent in writing to allow LCB Legal to represent Defendants Senator Cannizzaro and  
5 Secretary Clift notwithstanding the alleged conflict of interest.

6 Under the equitable doctrines of estoppel and waiver, Plaintiff Senators should be barred from  
7 challenging the alleged conflict of interest because they intentionally introduced the alleged conflict of  
8 interest into this litigation when they made a calculated and tactical litigation decision to name Senator  
9 Cannizzaro and Secretary Clift as Defendants in their official capacity with full knowledge that Senator  
10 Cannizzaro and Secretary Clift are not necessary parties to this litigation and with full knowledge that  
11 LCB Legal is expressly authorized—as a matter of state law—to represent Senator Cannizzaro and  
12 Secretary Clift as Defendants in their official capacity under NRS 218F.720. Under such circumstances  
13 and in the interests of equity, justice and fairness, Plaintiff Senators should not be permitted to use their  
14 disqualification motion to prejudice the rights of Senator Cannizzaro and Secretary Clift to their  
15 statutorily authorized counsel under NRS 218F.720.<sup>2</sup>

16 In addition, as a matter of constitutional separation of powers, because LCB Legal has been given  
17 express statutory authorization under NRS 218F.720 to provide legal representation in this litigation to  
18 Senator Cannizzaro and Secretary Clift in their official capacity, the conflict-of-interest rules in RPC 1.7  
19 do not apply, and LCB Legal must be allowed to fulfill its statutory duties to provide legal  
20 representation to its legislative branch clients in order to ensure the proper functioning of state  
21 government and guarantee the separation of powers.

22 Furthermore, under well-established case law, Plaintiff Senators do not have standing to bring a  
23 motion to disqualify LCB Legal as counsel in this litigation given that LCB Legal does not have a  
24

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<sup>2</sup> NRS 218F.720 is reproduced in the Addendum following the Memorandum of Points and Authorities.

1 separate attorney-client relationship with Plaintiff Senators that can form the basis for disqualification  
2 because LCB Legal represents individual members of the Legislature in their official capacity as  
3 constituents of the organization and not as separate individuals.

4 Finally, even assuming for the sake of argument that LCB Legal has a conflict of interest,  
5 disqualification would not be an appropriate remedy in this litigation because the balance of competing  
6 interests and prejudices weighs against disqualification and in favor of LCB Legal's continued  
7 participation in this litigation. Accordingly, the Court must deny Plaintiff Senators' Motion to  
8 Disqualify LCB Legal as Counsel for Senator Cannizzaro and Secretary Clift.

## 9 II. Argument.

### 10 A. Under the equitable doctrines of estoppel and waiver, Plaintiff Senators should be 11 barred from challenging the alleged conflict of interest based on their calculated and tactical litigation decisions in this case.

12 Under the equitable doctrines of estoppel and waiver, Plaintiff Senators should be barred from  
13 challenging the alleged conflict of interest because they intentionally introduced the alleged conflict of  
14 interest into this litigation when they made a calculated and tactical litigation decision to name Senator  
15 Cannizzaro and Secretary Clift as Defendants in their official capacity with full knowledge that Senator  
16 Cannizzaro and Secretary Clift are not necessary parties to this litigation and with full knowledge that  
17 LCB Legal is expressly authorized—as a matter of state law—to represent Senator Cannizzaro and  
18 Secretary Clift as Defendants in their official capacity under NRS 218F.720. Under such circumstances  
19 and in the interests of equity, justice and fairness, Plaintiff Senators should not be permitted to use their  
20 disqualification motion to prejudice the rights of Senator Cannizzaro and Secretary Clift to their  
21 statutorily authorized counsel.

22 In the context of litigation, district courts have inherent power to disqualify an attorney based on  
23 an alleged conflict of interest, and “district courts have broad discretion in determining whether  
24 disqualification is required in a particular case.” Cronin v. Eighth Jud. Dist. Ct., 105 Nev. 635, 640, 781

1 P.2d 1150, 1153 (1989), *disapproved on other grounds by Nev. Yellow Cab Corp. v. Eighth Jud. Dist.*  
2 *Ct.*, 123 Nev. 44, 54 n.26, 152 P.3d 737, 743 n.26 (2007). Because the inherent power to disqualify an  
3 attorney derives from the judiciary's equitable powers, courts have recognized that "a motion for  
4 disqualification is governed by such equitable principles as waiver, estoppel, laches, 'undue hardship'  
5 and 'a balancing of the equities.'" *UMG Recordings, Inc. v. MySpace, Inc.*, 526 F. Supp. 2d 1046, 1062  
6 (C.D. Cal. 2007) (quoting Geoffrey C. Hazard, Jr. & W. William Hodes, *The Law of Lawyering: A*  
7 *Handbook on the Model Rules of Professional Conduct* § 4.7, at 4-22 (Aspen 3d ed. 2007)).  
8 Additionally, courts have recognized that "a disqualification motion may involve such considerations as  
9 a client's right to chosen counsel, an attorney's interest in representing a client, the financial burden on a  
10 client to replace disqualified counsel, and the possibility that tactical abuse underlies the disqualification  
11 motion." *People ex rel. Dep't of Corps. v. Speedee Oil Change Sys., Inc.*, 980 P.2d 371, 377-78 (Cal.  
12 1999).

13 Based on principles of equity, justice and fairness, the doctrine of estoppel "operates to prevent the  
14 assertion of legal rights that in equity and good conscience should be unavailable because of a party's  
15 conduct." *United Bhd. of Carpenters & Joiners of Am. v. Dahnke*, 102 Nev. 20, 22, 714 P.2d 177, 178-  
16 79 (1986); *Topaz Mut. Co. v. Marsh*, 108 Nev. 845, 853, 839 P.2d 606, 611 (1992). Thus, the doctrine  
17 of estoppel may bar a party from asserting legal rights during the course of litigation based on the  
18 party's conduct during that litigation, including the party's litigation decisions in the case. *See In re*  
19 *Harrison Living Tr.*, 121 Nev. 217, 222-24, 112 P.3d 1058, 1061-62 (2005). The application of the  
20 doctrine of estoppel is committed to the district court's sound discretion. *Id.*

21 Under the doctrine of waiver, when a party moves to disqualify opposing counsel for an alleged  
22 conflict of interest, the threshold issue is whether the party waived the right to challenge the alleged  
23 conflict of interest by engaging in conduct in the litigation that clearly indicates the party's intention to  
24 relinquish that right. *Nev. Yellow Cab Corp. v. Eighth Jud. Dist. Ct.*, 123 Nev. 44, 49-50, 152 P.3d 737,

1 740-41 (2007). The Nevada Supreme Court has stated that such a waiver “may be inferred when a party  
2 engages in conduct so inconsistent with an intent to enforce the right as to induce a reasonable belief that  
3 the right has been relinquished.” 123 Nev. at 49, 152 P.3d at 740.

4 In determining whether a party has waived the right to challenge the alleged conflict of interest,  
5 courts will consider whether the party’s conduct indicates that the party is using the disqualification  
6 motion as a calculated and tactical litigation decision in order to gain an advantage in the litigation or to  
7 “block, harass, or otherwise hinder the other party’s case.” Baltimore Cnty. v. Barnhart, 30 A.3d 291,  
8 309 (Md. Ct. Spec. App. 2011) (quoting Klupt v. Krongard, 728 A.2d 727, 740 (Md. Ct. Spec. App.  
9 1999)); State ex rel. Swanson v. 3M Co., 845 N.W.2d 808, 817-18 (Minn. 2014). For example, the  
10 Minnesota Supreme Court has stated that “disqualification motions are particularly susceptible to abuse  
11 as a litigation tactic. [Courts] do not countenance the strategic use of disqualification motions to delay  
12 judicial proceedings to gain an advantage in litigation.” Swanson, 845 N.W.2d at 818.

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

21 While ordinarily a delay of two months in bringing a disqualification motion would not  
22 result in prejudice, as noted above, it has here because of the expedited proceedings.  
23 Counsel for both sides have compressed the usual time periods and conducted a motion for a  
24 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.

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

12 Id.

13 In this case, Plaintiff Senators intentionally made a calculated and tactical litigation decision to  
14 name Senator Cannizzaro and Secretary Clift as Defendants in their official capacity with full  
15 knowledge that Senator Cannizzaro and Secretary Clift are not necessary parties to this litigation and  
16 with full knowledge that LCB Legal is expressly authorized—as a matter of state law—to represent  
17 Senator Cannizzaro and Secretary Clift as Defendants in their official capacity under NRS 218F.720.  
18 Under such circumstances, Plaintiff Senators cannot complain of an alleged conflict of interest that they  
19 intentionally introduced into this case by naming Senator Cannizzaro and Secretary Clift as Defendants  
20 when Plaintiff Senators were not required to do so in order to litigate their claims.

21 First, “it is the general and long-established rule that in actions for declaratory and injunctive relief  
22 challenging the constitutionality of state statutes, state officers with statewide administrative functions  
23 under the challenged statute are the proper parties defendant.” Serrano v. Priest, 557 P.2d 929, 941-42  
24 (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. Thus, because Senator Cannizzaro and  
Secretary Clift do not occupy positions as state officers with statewide administrative functions under

1 the challenged statutes in SB 542 and SB 551, they are not necessary parties to this litigation, and  
2 Plaintiff Senators were not required to name them as Defendants in order to litigate their claims.<sup>3</sup>

3 Second, because every person is presumed to know the law, it must be presumed that Plaintiff  
4 Senators acted with full knowledge that LCB Legal is expressly authorized—as a matter of state law—to  
5 represent Senator Cannizzaro and Secretary Clift as Defendants in their official capacity under NRS  
6 218F.720. See Smith v. State, 38 Nev. 477, 481, 151 P. 512, 513 (1915) (stating that “[e]very one is  
7 presumed to know the law, and this presumption is not even rebuttable”). This presumed knowledge of  
8 the law is reinforced by the fact that the Nevada Supreme Court has recognized that LCB Legal is  
9 expressly authorized—as a matter of state law—to represent legislative branch defendants in their  
10 official capacity under NRS 218F.720. Comm’n on Ethics v. Hansen, 134 Nev. 304, 309 n.4, 419 P.3d  
11 140, 143 n.4 (2018) (explaining that because the claims in the litigation “were submitted against the  
12 assemblymen in their official capacity, the LCB is representing the assemblymen in their official  
13 capacity, something it is authorized to do, including being able to ‘prosecute, defend, or intervene in any  
14 action or proceeding before any court.’” (quoting NRS 218F.720)).

15 Thus, because Plaintiff Senators intentionally included Senator Cannizzaro and Secretary Clift in  
16 this litigation—even though they were not required to do so in order to litigate their claims—their  
17 conduct clearly indicates that they named Senator Cannizzaro and Secretary Clift as Defendants for  
18 purely calculated and tactical purposes that are wholly unrelated to the litigation of the merits of their  
19 claims. Based on the equitable doctrines of estoppel and waiver, Plaintiff Senators should be barred  
20 from challenging the alleged conflict of interest because they intentionally introduced the alleged  
21 conflict of interest into this litigation and they should be required to accept the consequences of their

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22  
23 <sup>3</sup> As legislative branch defendants sued in their official capacity, Senator Cannizzaro and Secretary Clift  
24 are also entitled to 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).

1 own calculated and tactical litigation decisions. Moreover, Plaintiff Senators should not be permitted to  
2 use their disqualification motion to prejudice the rights of Senator Cannizzaro and Secretary Clift to  
3 their statutorily authorized counsel. Therefore, in the interests of equity, justice and fairness, the Court  
4 should deny Plaintiff Senators' Motion to Disqualify LCB Legal as Counsel for Senator Cannizzaro and  
5 Secretary Clift.

6 **B. As a matter of constitutional separation of powers, because LCB Legal has been**  
7 **given express statutory authorization under NRS 218F.720 to provide legal representation**  
8 **in this litigation to Senator Cannizzaro and Secretary Clift in their official capacity, the**  
9 **conflict-of-interest rules in RPC 1.7 do not apply, and LCB Legal must be allowed to**  
10 **fulfill its statutory duties to provide legal representation to its legislative branch clients in**  
11 **order to ensure the proper functioning of state government and guarantee the separation**  
12 **of powers.**

13 Plaintiff Senators contend that: (1) as the legal office for the legislative branch, LCB Legal has an  
14 ongoing attorney-client relationship with Plaintiff Senators and with Defendants Senator Cannizzaro and  
15 Secretary Clift; and (2) LCB Legal's representation of Defendants Senator Cannizzaro and Secretary  
16 Clift against the constitutional claims of Plaintiff Senators in this litigation creates an alleged conflict of  
17 interest under RPC 1.7 because LCB Legal's representation of Defendants Senator Cannizzaro and  
18 Secretary Clift is directly adverse to Plaintiff Senators. Based on this alleged conflict of interest under  
19 RPC 1.7, Plaintiff Senators claim that LCB Legal should be disqualified because Plaintiff Senators have  
20 not given their informed consent in writing to allow LCB Legal to represent Defendants Senator  
21 Cannizzaro and Secretary Clift notwithstanding the alleged conflict of interest.

22 As is evident from their arguments, Plaintiff Senators rely on RPC 1.7 to establish the alleged  
23 conflict of interest. However, although LCB Legal's government lawyers are subject to the Nevada  
24 Rules of Professional Conduct, those Rules recognize that the statutory duties of government lawyers to  
provide legal representation to their government clients will take precedence over the conflict-of-interest  
rules in RPC 1.7 in order to ensure the proper functioning of state government and guarantee the  
separation of powers.

1 First, the Nevada Rules of Professional Conduct state that “[e]xcept as law may otherwise  
2 expressly permit, a lawyer currently serving as a public officer or employee . . . [i]s subject to Rules 1.7  
3 and 1.9.” RPC 1.11(d) (emphasis added). Thus, the Nevada Rules of Professional Conduct expressly  
4 recognize that—as applied to government lawyers—the conflict-of-interest rules in RPC 1.7 are limited  
5 by “law,” including by the statutory duties of government lawyers to provide legal representation to their  
6 government clients.

7 Second, the comments to the ABA Model Rules of Professional Conduct state that government  
8 lawyers “may be authorized to represent several government agencies in intragovernmental legal  
9 controversies in circumstances where a private lawyer could not represent multiple private clients.  
10 **These Rules do not abrogate any such authority.**” ABA Model Rules of Professional Conduct,  
11 Preamble and Scope Paragraph [18] (emphasis added). Although the comments to the ABA Model  
12 Rules of Professional Conduct are not part of the Nevada Rules of Professional Conduct, those  
13 comments “may be consulted for guidance in interpreting and applying the Nevada Rules of  
14 Professional Conduct.” RPC 1.0A; New Horizon Kids Quest III, Inc. v. Eighth Jud. Dist. Ct., 133 Nev.  
15 86, 89-90, 392 P.3d 166, 169 (2017).

16 Because of the statutory duties imposed on government lawyers, courts have consistently held that  
17 the conflict-of-interest rules for private lawyers cannot be mechanically applied to government lawyers  
18 who are statutorily authorized to provide legal representation to their government clients. Rather, the  
19 conflict-of-interest rules for private lawyers must give way when necessary for government lawyers to  
20 fulfill their statutory duties to provide legal representation to their government clients. See, e.g., State  
21 ex rel. Comm’r of Transp. v. Med. Bird Black Bear White Eagle, 63 S.W.3d 734, 773 (Tenn. Ct. App.  
22 2001) (“Unlike the conflict-of-interest rules governing the conduct of lawyers representing private  
23 clients, the Attorney General is not necessarily prohibited from representing governmental clients whose  
24 interests may be adverse to each other.”); State v. Klattenhoff, 801 P.2d 548, 551 (Haw. 1990) (“[D]ue



1 to the AG’s statutorily mandated role in our legal system, we cannot mechanically apply the Code of  
2 Professional Responsibility to the AG’s office.”), *abrogated on other grounds by State v. Walton*, 324  
3 P.3d 876 (Haw. 2014); *Gibson v. Johnson*, 582 P.2d 452, 455 (Or. Ct. App. 1978) (“The duties and  
4 responsibilities of the Attorney General and his professional assistants, acting as attorneys, are set forth  
5 in various statutes. They assume the function of legal counsel only as authorized by statute. They are  
6 thus not in the same category as private lawyers in respect to representation of clients.”); *Envtl. Prot.*  
7 *Agency v. Pollution Control Bd.*, 372 N.E.2d 50, 52-53 (Ill. 1977) (“[A]lthough an attorney-client  
8 relationship exists between a State agency and the Attorney General, it cannot be said that the role of the  
9 Attorney General apropos of a State agency is precisely akin to the traditional role of private counsel  
10 apropos of a client.”).

11 As a result, when applying the conflict-of-interest rules in RPC 1.7 to government lawyers, courts  
12 must first consider whether those government lawyers have been given statutory powers to provide legal  
13 representation to their government clients that takes precedence over the conflict-of-interest rules in  
14 RPC 1.7 in order to ensure the proper functioning of state government and guarantee the separation of  
15 powers. As stated in one treatise on legal ethics, “a government lawyer may possess powers beyond  
16 those possessed by a lawyer representing a nongovernmental client. . . . Some government lawyers, such  
17 as an elected state attorney general or similar officer, have discretionary powers under law that have no  
18 parallel in representation of nongovernmental clients.” *Restatement (3d) Law Governing Lawyers* § 97  
19 & cmt. b (2000).

20 As a matter of state law under NRS 218F.720, LCB Legal is expressly authorized to provide legal  
21 representation in litigation to legislative branch clients in their official capacity “[w]hen deemed  
22 necessary or advisable to protect the official interests of the Legislature in any action or proceeding.”  
23 NRS 218F.720(1); *Comm’n on Ethics v. Hansen*, 134 Nev. 304, 309 n.4, 419 P.3d 140, 143 n.4 (2018).  
24 Such litigation includes cases where a party alleges that the Legislature has violated the Nevada

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

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

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

12 List v. Whisler, 99 Nev. 133, 137-38, 660 P.2d 104, 106 (1983) (citations omitted).

13 Given that Plaintiff Senators are attacking the constitutional validity of SB 542 and SB 551, this  
14 litigation clearly implicates the official interests of the Legislature in the constitutional validity of its  
15 legislative acts. Because Plaintiff Senators named Senator Cannizzaro and Secretary Clift as Defendants  
16 in their official capacity, it was deemed necessary and advisable to protect the official interests of the  
17 Legislature in this litigation, and LCB Legal was given express statutory authorization under NRS  
18 218F.720 to provide legal representation in this litigation to Senator Cannizzaro and Secretary Clift in  
19 their official capacity.

20 Therefore, because LCB Legal has been given express statutory authorization under NRS  
21 218F.720 to provide legal representation in this litigation to Senator Cannizzaro and Secretary Clift in  
22 their official capacity, the conflict-of-interest rules in RPC 1.7 do not apply, and LCB Legal must be  
23 allowed to fulfill its statutory duties to provide legal representation to its legislative branch clients.  
24 Furthermore, if the conflict-of-interest rules in RPC 1.7 are interpreted to prohibit LCB Legal from  
25 fulfilling its statutory duties to provide legal representation to its legislative branch clients, such an  
26 interpretation would raise serious constitutional problems under the separation-of-powers doctrine.  
27 Fortunately, under well-established rules of construction, such an interpretation must be avoided

1 whenever possible.

2 When the Nevada Supreme Court interprets the rules governing proceedings in state courts, it  
3 applies the same rules of construction that are used to interpret statutes. See In re Estate of Sarge, 134  
4 Nev. Adv. Op. 105, 432 P.3d 718, 721 (2018) (“This court applies the rules of statutory interpretation  
5 when interpreting the Nevada Rules of Civil Procedure.”). Under those rules of construction, if one  
6 possible interpretation of a rule or statute would raise serious constitutional problems, courts will  
7 generally reject that interpretation, whenever possible, and construe the rule or statute in an alternative  
8 manner that avoids the constitutional problems. See Sheriff v. Wu, 101 Nev. 687, 690, 708 P.2d 305,  
9 306 (1985); Bell v. Anderson, 109 Nev. 363, 366, 849 P.2d 350, 352 (1993). As stated by the U.S.  
10 Supreme Court, “if an otherwise acceptable construction of a statute would raise serious constitutional  
11 problems, and where an alternative interpretation of the statute is ‘fairly possible,’ we are obligated to  
12 construe the statute to avoid such problems.” I.N.S. v. St. Cyr, 533 U.S. 289, 299-300 (2001) (quoting  
13 Crowell v. Benson, 285 U.S. 22, 62 (1932)).

14 Under the constitutional separation-of-powers doctrine, each branch of state government has  
15 inherent powers to administer its own affairs. See Blackjack Bonding v. Las Vegas Mun. Ct., 116 Nev.  
16 1213, 1218, 14 P.3d 1275, 1279 (2000) (recognizing that the Nevada Constitution establishes that “each  
17 branch of government is considered to be co-equal, with inherent powers to administer its own affairs”).  
18 If any branch of state government is denied its inherent powers to administer its own affairs, it “would  
19 become a subordinate branch of government, which is contrary to the central tenet of separation of  
20 powers.” Id. Consequently, when one branch of state government exercises its inherent powers to  
21 administer its own affairs, the separation-of-powers doctrine prohibits the other branches of government  
22 from interfering with or impinging on the exercise of those powers. Id.; Comm’n on Ethics v. Hardy,  
23 125 Nev. 285, 291-92, 212 P.3d 1098, 1103 (2009).

24 By enacting NRS 218F.720, the Legislature determined—as part of its inherent powers to

1 administer its own affairs—that LCB Legal is the most appropriate office to provide legal representation  
2 in litigation to legislative branch clients in their official capacity “[w]hen deemed necessary or advisable  
3 to protect the official interests of the Legislature in any action or proceeding.” NRS 218F.720(1);  
4 Comm’n on Ethics v. Hansen, 134 Nev. 304, 309 n.4, 419 P.3d 140, 143 n.4 (2018). Therefore, as a  
5 matter of constitutional separation of powers, because LCB Legal has been given express statutory  
6 authorization under NRS 218F.720 to provide legal representation in this litigation to Senator  
7 Cannizzaro and Secretary Clift in their official capacity, the conflict-of-interest rules in RPC 1.7 do not  
8 apply, and LCB Legal must be allowed to fulfill its statutory duties to provide legal representation to its  
9 legislative branch clients in order to ensure the proper functioning of state government and guarantee the  
10 separation of powers. Accordingly, the Court must deny Plaintiff Senators’ Motion to Disqualify LCB  
11 Legal as Counsel for Senator Cannizzaro and Secretary Clift.

12 **C. Under well-established case law, Plaintiff Senators do not have standing to bring a**  
13 **motion to disqualify LCB Legal as counsel in this litigation given that LCB Legal does not**  
14 **have a separate attorney-client relationship with Plaintiff Senators that can form the basis**  
15 **for disqualification because LCB Legal represents individual members of the Legislature**  
16 **in their official capacity as constituents of the organization and not as separate**  
17 **individuals.**

18 As a general rule, before an attorney may be disqualified for a conflict of interest under RPC 1.7,  
19 the party claiming disqualification must establish that the party has an attorney-client relationship with  
20 the attorney that can form the basis for disqualification. Liapis v. Second Jud. Dist. Ct., 128 Nev. 414,  
21 420, 282 P.3d 733, 737 (2012). If the party claiming disqualification cannot establish such an attorney-  
22 client relationship with the attorney, the party does not have standing to bring a motion to disqualify the  
23 attorney on the basis of a conflict of interest. Id.

24 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,

1 LCB Legal does not have a separate attorney-client relationship with the individual members of the  
2 Legislature that can form the basis for disqualification because LCB Legal represents individual  
3 members of the Legislature in their official capacity as constituents of the organization and not as  
4 separate individuals. Therefore, because LCB Legal does not have a separate attorney-client  
5 relationship with Plaintiff Senators that can form the basis for disqualification in this litigation, Plaintiff  
6 Senators do not have standing to bring a motion to disqualify LCB Legal as counsel for Senator  
7 Cannizzaro and Secretary Clift in their official capacity on the basis of a conflict of interest.

8 Under well-established case law, when government lawyers represent a governmental entity as an  
9 organizational client, the government lawyers have an attorney-client relationship with the governmental  
10 entity, acting through its individual officers, but the government lawyers do not have a separate  
11 attorney-client relationship with the individual officers that can form the basis for disqualification. As a  
12 result, when individual officers sue the governmental entity or any of its other officers acting in their  
13 official capacity, the government lawyers for the entity do not have a disqualifying conflict of interest  
14 because the government lawyers do not have a separate attorney-client relationship with the individual  
15 officers who are suing the governmental entity. See Ward v. Superior Court, 138 Cal. Rptr. 532, 533-38  
16 (Cal. Ct. App. 1977) (holding that because the county counsel represented the county as an entity, and  
17 not individual county officers, no separate attorney-client relationship existed between the county  
18 counsel and the county assessor as an individual officer, and the county counsel was not disqualified by  
19 a conflict of interest from representing members of the board of county commissioners who were sued in  
20 their official capacity by the county assessor); Cole v. Ruidoso Municipal Schs., 43 F.3d 1373, 1382-85  
21 (10th Cir. 1994) (holding that: (1) a public school principal did not have a separate attorney-client  
22 relationship with the school district's counsel even though she had consulted with counsel on "sensitive  
23 personnel issues" and acted on counsel's advice; (2) the principal's belief that she had a separate  
24 attorney-client relationship was not reasonable because she consulted with the school district's counsel

1 only for the purpose of carrying out her duties as a school principal; and (3) the school district's counsel  
2 was not disqualified from representing the school district in the principal's lawsuit against the school  
3 district); Handverger v. City of Winooski, 38 A.3d 1158, 1160-61 (Vt. 2011) (holding that a city  
4 manager did not have a separate attorney-client relationship with the city attorney because "[a]n  
5 organization's lawyer, such as a city attorney or corporate counsel, works only for its constituents,  
6 including its employees and officials, in order to serve the organization, not to serve those individuals  
7 personally."); Salt Lake Cnty. Comm'n v. Salt Lake Cnty. Att'y, 985 P.2d 899, 905 (Utah 1999) (stating  
8 that "[t]he County Attorney has an attorney-client relationship only with the County as an entity, not  
9 with the [County] Commission or the individual Commissioners apart from the entity on behalf of which  
10 they act.").

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

18 For example, under the arguments made by Plaintiff Senators, so long as at least one Legislator is  
19 included as a plaintiff in any lawsuit challenging the constitutionality of a statute in which other  
20 members of the legislative branch are named as defendants, LCB Legal would not be able to represent  
21 those legislative branch defendants or defend the constitutionality of the statute on behalf of the  
22 legislative branch in the litigation. Under such circumstances, the legislative branch would be deprived  
23 of its statutorily authorized counsel, and it would be required to employ outside legal counsel in every  
24 such case at considerable expense to the taxpayers. Because plaintiffs in a lawsuit have sole and

1 exclusive control over which parties are included as plaintiffs and which parties are named as defendants  
2 in their complaint, it is not hard to imagine that some plaintiffs would be encouraged to manipulate their  
3 complaints to ensure that LCB Legal would not be able to represent legislative branch defendants named  
4 in the pleadings or defend the constitutionality of the challenged statutes on behalf of the legislative  
5 branch. Because such a result would raise serious constitutional problems under the separation-of-  
6 powers doctrine, the Nevada Rules of Professional Conduct must be interpreted to avoid such a result.

7 Therefore, in keeping with well-established case law, Plaintiff Senators do not have standing to  
8 bring a motion to disqualify LCB Legal as counsel in this litigation given that LCB Legal does not have  
9 a separate attorney-client relationship with Plaintiff Senators that can form the basis for disqualification  
10 because LCB Legal represents individual members of the Legislature in their official capacity as  
11 constituents of the organization and not as separate individuals. Accordingly, the Court must deny  
12 Plaintiff Senators' Motion to Disqualify LCB Legal as Counsel for Senator Cannizzaro and Secretary  
13 Clift.

14 **D. Even assuming for the sake of argument that LCB Legal has a conflict of interest,  
15 disqualification would not be an appropriate remedy in this litigation because the balance  
16 of competing interests and prejudices weighs against disqualification and in favor of LCB  
17 Legal's continued participation in this litigation.**

18 In considering whether disqualification is an appropriate remedy for a conflict of interest, the  
19 Nevada Supreme Court has stated that “[a]lthough the district court has wide latitude in determining  
20 whether to disqualify counsel from participating in a given case, its discretion in such cases is not  
21 unlimited. The district court must balance the prejudices that will inure to the parties as a result of its  
22 decision.” Cronin v. Eighth Jud. Dist. Ct., 105 Nev. 635, 640, 781 P.2d 1150, 1153 (1989), *disapproved*  
23 *on other grounds by Nev. Yellow Cab Corp. v. Eighth Jud. Dist. Ct.*, 123 Nev. 44, 54 n.26, 152 P.3d  
24 737, 743 n.26 (2007). The Nevada Supreme Court has further explained that:

1 District courts are responsible for controlling the conduct of attorneys practicing before  
2 them, and have broad discretion in determining whether disqualification is required in a  
3 particular case. See Robbins v. Gillock, 109 Nev. 1015, 1018, 862 P.2d 1195, 1197 (1993);  
4 Cronin v. District Court, 105 Nev. 635, 640, 781 P.2d 1150, 1153 (1989). Courts deciding  
5 attorney disqualification motions are faced with the delicate and sometimes difficult task of  
6 balancing competing interests: the individual right to be represented by counsel of one's  
7 choice, each party's right to be free from the risk of even inadvertent disclosure of  
8 confidential information, and the public's interest in the scrupulous administration of justice.  
9 See Hull v. Celanese Corp., 513 F.2d 568, 570 (2d Cir. 1975). While doubts should  
10 generally be resolved in favor of disqualification, see Cronin, 105 Nev. at 640, 781 P.2d at  
11 1153; Hull, 513 F.2d at 571, parties should not be allowed to misuse motions for  
12 disqualification as instruments of harassment or delay. See Flo-Con Systems, Inc. v.  
13 Servsteel, Inc., 759 F. Supp. 456, 458 (N.D. Ind. 1990).

8 When considering whether to disqualify counsel, the district court must balance the  
9 prejudices that will inure to the parties as a result of its decision. Cronin, 105 Nev. at 640,  
10 781 P.2d at 1153. To prevail on a motion to disqualify opposing counsel, the moving party  
11 must first establish "at least a reasonable possibility that some specifically identifiable  
12 impropriety did in fact occur," and then must also establish that "the likelihood of public  
13 suspicion or obloquy outweighs the social interests which will be served by a lawyer's  
14 continued participation in a particular case." Id. at 641, 781 P.2d at 1153 (quoting Shelton  
15 v. Hess, 599 F. Supp. 905, 909 (S.D. Tex. 1984)).

13 Brown v. Eighth Jud Dist. Ct., 116 Nev. 1200, 1205, 14 P.3d 1266, 1269-70 (2000).

14 In this case, the balance of competing interests and prejudices weighs against disqualification and  
15 in favor of LCB Legal's continued representation in this litigation because Plaintiff Senators'  
16 speculative contentions about potential harms from LCB Legal's representation do not justify  
17 disqualification of counsel. See Liapis v. Second Jud. Dist. Ct., 128 Nev. 414, 420, 282 P.3d 733, 737  
18 (2012) (stating that "[s]peculative contentions of conflict of interest cannot justify disqualification of  
19 counsel.") (quoting DCH Health Servs. Corp. v. Waite, 115 Cal. Rptr. 2d 847, 850 (Cal. Ct. App.  
20 2002))).

21 In their Motion to Disqualify, Plaintiff Senators have not argued that there is at least a reasonable  
22 possibility that LCB Legal has engaged in "some specifically identifiable impropriety." Cronin, 105  
23 Nev. at 640, 781 P.2d at 1153. Instead, Plaintiff Senators make several speculative contentions about  
24 potential harms from LCB Legal's representation of Senator Cannizzaro and Secretary Clift as



1 Defendants in their official capacity. In particular, Plaintiff Senators speculate that:

2 [T]he representation of one member by Legislative Counsel in a matter in which she is  
3 directly adverse to other members of the same legislative body creates a high likelihood of  
4 substantially impairing the ability of LCB and the Legislative Members to work together in  
5 the future. Additionally, LCB's representation of one member over the other creates the  
6 appearance of bias and violates the concept of neutrality in the administration of  
7 government.

8 LCB's representation impairs the public's confidence in LCB as an impartial  
9 administrative organization. LCB's representation of Defendants CANNIZZARO and  
10 CLIFT against other elected members gives the appearance to the public that it has chosen a  
11 side. . . . While this dispute involving constitutional interpretation is not meant to be a  
12 partisan dispute, the argument has resulted in a party-line split. LCB's representation,  
13 specifically of Defendant CANNIZZARO, gives the appearance that LCB has selected to  
14 represent one party over the other party.

15 (Mtn. to Disqualify at 7.)

16 Plaintiff Senators' speculative contentions must be rejected because they are contrary to the  
17 established understanding of both the proper role that a lawyer plays in litigation under RPC 1.2(b) and  
18 the longstanding and well-known role that LCB Legal plays in representing members of the legislative  
19 branch in court when deemed necessary or advisable to protect the official interests of the Legislature  
20 under NRS 218F.720.

21 First, under the Nevada Rules of Professional Conduct, "[a] lawyer's representation of a client,  
22 including representation by appointment, does not constitute an endorsement of the client's political,  
23 economic, social or moral views or activities." RPC 1.2(b). Thus, "representing a client does not  
24 constitute approval of the client's views or activities." ABA Model Rules of Professional 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,

1 768 (2000).

2 Accordingly, based on the established understanding of the proper role that a lawyer plays in  
3 litigation under RPC 1.2(b), when LCB Legal provides representation to legislative branch clients in  
4 their official capacity in litigation, LCB Legal’s representation of those clients does not constitute an  
5 endorsement of their political, economic, social or moral views or activities. RPC 1.2(b).  
6 Consequently, there is no reasonable basis to conclude that LCB Legal’s representation of legislative  
7 branch clients in their official capacity in this litigation—as expressly authorized by existing state law in  
8 NRS 218F.720—violates the concept of neutrality in the administration of government, creates the  
9 appearance of bias in favor of any political, economic, social or moral views or otherwise gives the  
10 appearance to the public that LCB Legal has chosen a side or selected to represent one party over the  
11 other party in this litigation.

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

21 Furthermore, given the longstanding and well-known role that LCB Legal plays in representing  
22 members of the legislative branch in court when deemed necessary or advisable to protect the official  
23 interests of the Legislature under NRS 218F.720, LCB Legal’s representation of legislative branch  
24 clients in this litigation cannot reasonably engender any “public suspicion or obloquy [that] outweighs

1 the social interests which will be served by [LCB Legal's] continued participation in [this] particular  
2 case." Cronin, 105 Nev. at 641, 781 P.2d at 1153. For decades, LCB Legal has provided representation  
3 to members of the legislative branch in court when deemed necessary or advisable to protect the official  
4 interests of the Legislature under NRS 218F.720.<sup>4</sup> During that time, LCB Legal has been able to  
5 provide essential and effective representation to its legislative branch clients in their official capacity in  
6 litigation when expressly authorized by existing state law in NRS 218F.720, regardless of their political  
7 parties or their political, economic, social or moral views. This case is no different.

8       Therefore, even assuming for the sake of argument that LCB Legal has a conflict of interest,  
9 disqualification would not be an appropriate remedy in this litigation because the balance of competing  
10 interests and prejudices weighs against disqualification and in favor of LCB Legal's continued  
11 participation in this litigation. Accordingly, the Court must deny Plaintiff Senators' Motion to  
12 Disqualify LCB Legal as Counsel for Senator Cannizzaro and Secretary Clift.

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24 <sup>4</sup> See, e.g., Neal v. Griepentrog, 108 Nev. 660, 837 P.2d 432 (1992); Comm'n on Ethics v. Hardy, 125 Nev. 285, 212 P.3d 1098 (2009); Comm'n on Ethics v. Hansen, 134 Nev. 304, 419 P.3d 140 (2018).

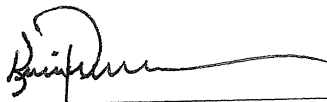
1 CONCLUSION

2 Based upon the foregoing, the Legislative Defendants respectfully request that the Court enter an  
3 order which denies Plaintiff Senators' Motion to Disqualify LCB Legal as Counsel for Senator  
4 Cannizzaro and Secretary Clift. Pursuant to FJDCR 15(7), a proposed order is attached as Exhibit 1.

5 DATED: This 4th day of November, 2019.

6 Respectfully submitted,

7 **BRENDA J. ERDOES**  
8 Legislative Counsel

9 By:   
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18 *Attorneys for Defendants State of Nevada ex rel.*  
19 *Senate Majority Leader Nicole Cannizzaro and*  
20 *Secretary of the Senate Claire Clift*  
21  
22  
23  
24

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,

1 including, without limitation, any body or entity created by an interstate, cooperative, joint or  
interlocal agreement or compact.

2 (c) "Legislature" means:

(1) The Legislature or either House; or

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

I hereby certify that I am an employee of the Nevada Legislative Counsel Bureau, Legal Division, and that on the 4th day of November, 2019, pursuant to NRCP 5(b) and the parties' stipulation and consent to service by electronic mail, I served a true and correct copy of the Legislative Defendants' Opposition to Plaintiff Senators' Motion to Disqualify LCB Legal as Counsel for Defendants State of Nevada ex rel. Senate Majority Leader Nicole Cannizzaro and Secretary of the Senate Claire Clift, by electronic mail, directed to the following:

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JUSTIN TOWNSEND, ESQ.  
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Governor Steve Sisolak, Lieutenant Governor Kate  
Marshall, Nevada Department of Taxation and  
Nevada Department of Motor Vehicles*

  
\_\_\_\_\_  
An Employee of the Legislative Counsel Bureau

# Exhibit 1

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# Exhibit 1



1 BRENDA J. ERDOES, Legislative Counsel  
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6 *Nicole Cannizzaro and Secretary of the Senate Claire Clift*

7 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
8 **IN AND FOR CARSON CITY**

9 THE HONORABLE JAMES SETTELMAYER,  
10 THE HONORABLE JOE HARDY, THE  
11 HONORABLE HEIDI GANSERT, THE  
12 HONORABLE SCOTT HAMMOND, THE  
13 HONORABLE PETE GOICOECHEA, THE  
14 HONORABLE BEN KIECKHEFER, THE  
15 HONORABLE IRA HANSEN, and THE  
16 HONORABLE KEITH PICKARD, in their official  
capacities as members of the Senate of the State of  
17 Nevada and individually; et al.,

18 Plaintiffs,

19 vs.

20 STATE OF NEVADA ex rel. THE HONORABLE  
21 NICOLE CANNIZZARO, in her official capacity  
as Senate Majority Leader; THE HONORABLE  
22 KATE MARSHALL, in her official capacity as  
President of the Senate; CLAIRE J. CLIFT, in her  
official capacity as Secretary of the Senate; THE  
23 HONORABLE STEVE SISOLAK, in his official  
capacity as Governor of the State of Nevada;  
24 NEVADA DEPARTMENT OF TAXATION;  
NEVADA DEPARTMENT OF MOTOR  
VEHICLES; and DOES I-X, inclusive,

Defendants.

**Case No. 19 OC 00127 1B**  
**Dept. No. I**

**ORDER DENYING PLAINTIFF SENATORS' MOTION TO DISQUALIFY LCB LEGAL  
AS COUNSEL FOR DEFENDANTS STATE OF NEVADA EX REL. SENATE MAJORITY  
LEADER NICOLE CANNIZZARO AND SECRETARY OF THE SENATE CLAIRE CLIFT**

1 ORDER

2 This matter is before the Court on Plaintiff Senators’ Motion to Disqualify the Legislative Counsel  
3 Bureau, Legal Division (“LCB Legal”), as Counsel for Defendants State of Nevada ex rel. Senate  
4 Majority Leader Nicole Cannizzaro (“Senator Cannizzaro”) and Secretary of the Senate Claire Clift  
5 (“Secretary Clift”), which was filed on October 24, 2019. The Court, having read the papers and  
6 pleadings on file herein, finds and orders as follows:

7 1. Based on their litigation decisions in this case, Plaintiff Senators are barred from challenging  
8 the alleged conflict of interest under the equitable doctrines of estoppel and waiver.

9 2. As a matter of constitutional separation of powers, because LCB Legal has been given express  
10 statutory authorization under NRS 218F.720 to provide legal representation in this litigation to Senator  
11 Cannizzaro and Secretary Clift in their official capacity, the conflict-of-interest rules in RPC 1.7 do not  
12 apply, and LCB Legal must be allowed to fulfill its statutory duties to provide legal representation to its  
13 legislative branch clients in order to ensure the proper functioning of state government and guarantee the  
14 separation of powers.

15 3. Plaintiff Senators do not have standing to bring a motion to disqualify LCB Legal as counsel  
16 in this litigation given that LCB Legal does not have a separate attorney-client relationship with Plaintiff  
17 Senators that can form the basis for disqualification because LCB Legal represents individual members  
18 of the Legislature in their official capacity as constituents of the organization and not as separate  
19 individuals.

20 4. Even assuming that LCB Legal has a conflict of interest, disqualification would not be an  
21 appropriate remedy in this litigation because the balance of competing interests and prejudices weighs  
22 against disqualification and in favor of LCB Legal’s continued participation in this litigation.

23 //

24 //



**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. SETTELMAYER, JOSEPH P. HARDY, HEIDI SEEVERS GANSERT,

**Case No.**

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

**PETITIONERS'  
APPENDIX  
VOLUME 3**

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.

---

**PETITIONERS' APPENDIX  
VOLUME 3**

---

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*Attorneys for Petitioners*

## ALPHABETICAL INDEX

### **Acceptance and Acknowledgement of Service**

[by Brenda J. Erdoes, Legislative Counsel and Chief of LCB Legal, on behalf of Defendant State of Nevada ex rel. Claire J. Clift, in her official capacity as Secretary of the Senate]

(Aug. 5, 2019).....Vol. 1, p. 0039

### **Acceptance and Acknowledgement of Service**

[by Brenda J. Erdoes, Legislative Counsel and Chief of LCB Legal, on behalf of Defendant State of Nevada ex rel. Nicole Cannizzaro, in her official capacity as Senate Majority Leader]

(Aug. 5, 2019).....Vol. 1, p. 0041

### **Acknowledgement of Receipt of Documents**

[by Michelle Fournier, Administrative Assistant, Office of the Attorney General, on behalf of Defendants State of Nevada ex rel. Nicole Cannizzaro, in her official capacity as Senate Majority Leader, Kate Marshall, in her official capacity as Lieutenant Governor of the State of Nevada and President of the Senate, and Claire J. Clift, in her official capacity as Secretary of the Senate]

(Aug. 5, 2019).....Vol. 1, p. 0043

### **Affidavit of Karen Peterson**

(Nov. 12, 2019).....Vol. 3, p. 0528

### **Affidavit of Senator James Settelmeyer**

(Nov. 12, 2019).....Vol. 3, p. 0532

### **Amended Notice of Entry of Order Granting Nevada Legislature’s Motion to Intervene as Defendant-Intervenor and Denying Plaintiff Senators’ Motion to Disqualify LCB Legal as Counsel for Nevada Legislature**

(Dec. 19, 2019) .....Vol. 3, p. 0635

### **Answer to Plaintiffs’ First Amended Complaint by Defendants State of Nevada ex rel. Senate Majority Leader Nicole Cannizzaro and Secretary of the Senate Claire Clift**

(Sept. 16, 2019).....Vol. 1, p. 0094

### **Complaint**

(July 19, 2019).....Vol. 1, p. 0001

**Declaration of Service**

[on Michelle Fournier, Administrative Assistant, Office of the Attorney General, on behalf of Defendant State of Nevada ex rel. Nicole Cannizzaro, in her official capacity as Senate Majority Leader] (Aug. 5, 2019)..... Vol. 1, p. 0045

**Declaration of Service**

[on Brenda J. Erdoes, Legislative Counsel and Chief of LCB Legal, on behalf of Defendant State of Nevada ex rel. Nicole Cannizzaro, in her official capacity as Senate Majority Leader] (Aug. 5, 2019)..... Vol. 1, p. 0052

**Declaration of Service**

[on Defendant Kate Marshall, in her official capacity as Lieutenant Governor of the State of Nevada and President of the Senate] (Aug. 5, 2019)..... Vol. 1, p. 0059

**Declaration of Service**

[on Brenda J. Erdoes, Legislative Counsel and Chief of LCB Legal, on behalf of Defendant State of Nevada ex rel. Claire J. Clift, in her official capacity as Secretary of the Senate] (Aug. 5, 2019)..... Vol. 1, p. 0066

**Declaration of Service**

[on Michelle Fournier, Administrative Assistant, Office of the Attorney General, on behalf of Defendant State of Nevada ex rel. Steve Sisolak, in his official capacity as Governor of the State of Nevada] (Aug. 5, 2019)..... Vol. 1, p. 0073

**Declaration of Service**

[on Melanie Young, Executive Director, on behalf of Defendant State of Nevada ex rel. Nevada Department of Taxation] (Aug. 5, 2019)..... Vol. 1, p. 0080

**Declaration of Service**

[on Heather Walent, Administrator, on behalf of Defendant State of Nevada ex rel. Nevada Department of Motor Vehicles] (Aug. 5, 2019)..... Vol. 1, p. 0087

**First Amended Complaint**  
 (July 30, 2019) ..... Vol. 1, p. 0022

**Hearing Date Memo**  
 (Oct. 28, 2019) ..... Vol. 2, p. 0408

**JAVS Transcript of Proceedings Oral Argument**  
 (Nov. 19, 2019) ..... Vol. 3, p. 0547

**Motion to Dismiss**  
 [by Executive Defendants]  
 (Sept. 16, 2019) ..... Vol. 1, p. 0108

**Nevada Legislature’s Answer to Plaintiffs’ First Amended Complaint**  
 (Dec. 26, 2019) ..... Vol. 3, p. 0653

**Nevada Legislature’s Motion to Intervene as Defendant**  
 (Nov. 6, 2019) ..... Vol. 3, p. 0446

**Notice of Assignment by Clerk**  
 (July 24, 2019) ..... Vol. 1, p. 0020

**Notice of Entry of Order Granting Plaintiff Senators’ Motion to Disqualify  
 LCB Legal as Counsel for Legislative Defendants Senator Cannizzaro and  
 Secretary of the Senate Clift; Order Denying Stay; Order Setting Procedural  
 Schedule**  
 (Dec. 19, 2019) ..... Vol. 3, p. 0619

**Opposition to Plaintiff Senators’ Motion to Disqualify LCB Legal as Counsel  
 for Defendants State of Nevada ex rel. Senate Majority Leader Nicole  
 Cannizzaro and Secretary of the Senate Claire Clift**  
 (Nov. 4, 2019) ..... Vol. 2, p. 0415

**Order Denying Temporary Restraining Order Without Prejudice**  
 (July 22, 2019) ..... Vol. 1, p. 0015

**Order Granting Nevada Legislature’s Motion to Intervene as Defendant-  
 Intervenor and Denying Plaintiff Senators’ Motion to Disqualify LCB Legal  
 as Counsel for Nevada Legislature**  
 (Dec. 19, 2019) ..... Vol. 3, p. 0607



**Order Granting Plaintiff Senators’ Motion to Disqualify LCB Legal as Counsel for Legislative Defendants Senator Cannizzaro and Secretary of the Senate Clift; Order Denying Stay; Order Setting Procedural Schedule**

(Dec. 19, 2019) ..... Vol. 3, p. 0597

**Peremptory Challenge of Judge**

(July 22, 2019) ..... Vol. 1, p. 0018

**Plaintiff Senators’ Motion to Disqualify**

[LCB Legal as Counsel for Defendants State of Nevada ex rel. Senate Majority Leader Nicole Cannizzaro and Secretary of the Senate Claire Clift]

(Oct. 24, 2019) ..... Vol. 2, p. 0394

**Plaintiffs’ Opposition to Defendants’ Motion to Dismiss or, in the Alternative, Plaintiffs’ Motion for Summary Judgment**

(Sept. 30, 2019) ..... Vol. 2, p. 0232

**Plaintiffs’ Qualified Opposition to Motion to Intervene and Plaintiff Senators’ Motion to Disqualify**

[LCB Legal as Counsel for Nevada Legislature]

(Nov. 18, 2019) ..... Vol. 3, p. 0537

**Reply in Support of Motion to Disqualify**

[LCB Legal as Counsel for Defendants State of Nevada ex rel. Senate Majority Leader Nicole Cannizzaro and Secretary of the Senate Claire Clift]

(Nov. 12, 2019) ..... Vol. 3, p. 0482

**Stipulation and Order Regarding Stay of Proceedings Pending Resolution of Plaintiff Senators’ Motion to Disqualify Counsel for Defendants Senate Majority Leader Nicole Cannizzaro and Secretary of the Senate Claire Clift**

(Oct. 29, 2019) ..... Vol. 2, p. 0409

**Stipulation Regarding Briefing Schedule for Dispositive Motions, Hearing Date for Oral Argument and Related Procedural Matters and Order**

(Oct. 10, 2019) ..... Vol. 2, p. 0389

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REC'D & FILED  
2019 NOV -6 PM 4:35  
AUDREY ROBERTS  
V. Alegria  
BY \_\_\_\_\_ DEPUTY

7 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
8 **IN AND FOR CARSON CITY**

9 THE HONORABLE JAMES SETTELMEYER,  
10 THE HONORABLE JOE HARDY, THE  
11 HONORABLE HEIDI GANSERT, THE  
12 HONORABLE SCOTT HAMMOND, THE  
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14 HONORABLE BEN KIECKHEFER, THE  
15 HONORABLE IRA HANSEN, and THE  
16 HONORABLE KEITH PICKARD, in their official  
17 capacities as members of the Senate of the State of  
18 Nevada and individually; et al.,

14 Plaintiffs,

15 vs.

16 STATE OF NEVADA ex rel. THE HONORABLE  
17 NICOLE CANNIZZARO, in her official capacity  
18 as Senate Majority Leader; THE HONORABLE  
19 KATE MARSHALL, in her official capacity as  
20 President of the Senate; CLAIRE J. CLIFT, in her  
21 official capacity as Secretary of the Senate; THE  
22 HONORABLE STEVE SISOLAK, in his official  
23 capacity as Governor of the State of Nevada;  
24 NEVADA DEPARTMENT OF TAXATION;  
NEVADA DEPARTMENT OF MOTOR  
VEHICLES; and DOES I-X, inclusive,

Defendants.

Case No. 19 OC 00127 1B  
Dept. No. I

**NEVADA LEGISLATURE'S  
MOTION TO INTERVENE AS DEFENDANT**

1 MOTION TO INTERVENE AS DEFENDANT

2 The Legislature of the State of Nevada (“Legislature”), by and through its counsel the Legal  
3 Division of the Legislative Counsel Bureau (“LCB Legal”) under NRS 218F.720, hereby moves the  
4 Court for an order granting the Legislature’s Motion to Intervene as Defendant pursuant to NRCP 24  
5 and NRS 218F.720. This Motion is made under FJDCR 15 and is based upon the attached  
6 Memorandum of Points and Authorities, all pleadings, documents and exhibits on file in this case and  
7 any oral arguments the Court may allow. Pursuant to NRCP 24(c), this Motion is accompanied by the  
8 Legislature’s proposed Answer to the First Amended Complaint, which is attached as Exhibit 1.

9 MEMORANDUM OF POINTS AND AUTHORITIES

10 **I. Introduction and Summary of the Argument.**

11 In this action for declaratory and injunctive relief, Plaintiffs are challenging the constitutionality of  
12 Senate Bill No. 542 (SB 542) and Senate Bill No. 551 (SB 551) of the 80th (2019) Session of the  
13 Legislature. Plaintiffs allege that SB 542 and SB 551 violated the two-thirds requirement in Article 4,  
14 Section 18(2) of the Nevada Constitution, which provides in relevant part that:

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

18 Nev. Const. art. 4, § 18(2).

19 Plaintiffs allege that SB 542 and SB 551 were each subject to the two-thirds requirement in  
20 Article 4, Section 18(2) and that, as a result, each bill is unconstitutional because the Senate passed each  
21 bill by a majority of all the members elected to the Senate, instead of a two-thirds majority of all the  
22 members elected to the Senate. Plaintiffs ask for a declaration that each bill is unconstitutional in  
23 violation of Article 4, Section 18(2), and Plaintiffs also ask for an injunction against enforcement of  
24 each bill.

1 Plaintiffs filed their original Complaint on July 19, 2019, and Plaintiffs filed their First Amended  
2 Complaint on July 30, 2019. In their First Amended Complaint, Plaintiffs named the Nevada  
3 Department of Taxation as a Defendant. The Nevada Department of Taxation is empowered by state  
4 law with statewide administrative functions under the challenged statutes in SB 551. Plaintiffs also  
5 named the Nevada Department of Motor Vehicles as a Defendant. The Nevada Department of Motor  
6 Vehicles is empowered by state law with statewide administrative functions under the challenged  
7 statutes in SB 542.

8 Plaintiffs also named the following state officers of the executive branch as Defendants: (1) the  
9 Honorable Kate Marshall, in her official capacity as Lieutenant Governor of the State of Nevada and  
10 President of the Senate; and (2) the Honorable Steve Sisolak, in his official capacity as Governor of the  
11 State of Nevada. However, because neither Defendant Governor Sisolak nor Defendant Lieutenant  
12 Governor Marshall is empowered by state law with any statewide administrative functions under the  
13 challenged statutes in SB 542 and SB 551, they are not necessary parties to this litigation, and Plaintiffs  
14 were not required to name them as Defendants in order to litigate their claims.<sup>1</sup>

15 Finally, Plaintiffs named the following state officers of the legislative branch as Defendants:  
16 (1) the Honorable Nicole Cannizzaro, in her official capacity as Senate Majority Leader (“Senator  
17 Cannizzaro”); and (2) Claire J. Clift, in her official capacity as Secretary of the Senate (“Secretary  
18 Clift”). However, because neither Defendant Senator Cannizzaro nor Defendant Secretary Clift is  
19 empowered by state law with any statewide administrative functions under the challenged statutes in  
20 SB 542 and SB 551, they are not necessary parties to this litigation, and Plaintiffs were not required to  
21 name them as Defendants in order to litigate their claims.

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24 <sup>1</sup> The state agencies and officers of the executive branch named as Defendants in this case will be referred to collectively as “Executive Defendants.”

1 On September 16, 2019, Executive Defendants filed a Motion to Dismiss Plaintiffs' First  
2 Amended Complaint, and Defendants Senator Cannizzaro and Secretary Clift filed an Answer to  
3 Plaintiffs' First Amended Complaint. On September 30, 2019, Plaintiffs filed their Opposition to  
4 Executive Defendants' Motion to Dismiss or, in the Alternative, Plaintiffs' Motion for Summary  
5 Judgment. On October 10, 2019, the Court approved a Stipulation and Order Regarding Briefing  
6 Schedule for Dispositive Motions, Hearing Date for Oral Argument and Related Procedural Matters  
7 ("October 10th Stipulation and Order"). In the October 10th Stipulation and Order, specific dates were  
8 set for the completion of briefing relating to the parties' dispositive motions, and a hearing before the  
9 Court for oral argument on the parties' dispositive motions was set for December 16, 2019, at 1:30 p.m.

10 On October 24, 2019, Plaintiff Senators James Settlemeyer, Joe Hardy, Heidi Gansert, Scott  
11 Hammond, Pete Goicoechea, Ben Kieckhefer, Ira Hansen and Keith Pickard (collectively "Plaintiff  
12 Senators") filed a Motion to Disqualify LCB Legal as counsel for Defendants Senator Cannizzaro and  
13 Secretary Clift. On October 29, 2019, the Court approved a Stipulation and Order Regarding Stay of  
14 Proceedings Pending Resolution of Plaintiff Senators' Motion to Disqualify Counsel for Defendants  
15 Senator Cannizzaro and Secretary Clift. ("October 29th Stipulation and Order"). In the October 29th  
16 Stipulation and Order: (1) all briefing for the parties' dispositive motions was stayed pending entry of a  
17 written order by the Court resolving the Motion to Disqualify; (2) the December 16, 2019, hearing  
18 before the Court for oral argument on the parties' dispositive motions was vacated; (3) specific dates  
19 were set for the completion of briefing relating to the Motion to Disqualify; and (4) a hearing before the  
20 Court for oral argument on the Motion to Disqualify was set for November 19, 2019, at 3:30 p.m.  
21 Additionally, the October 29th Stipulation and Order provides that:

22 7. As soon as practicable after the Court enters a written order resolving the Motion to  
23 Disqualify, the parties shall confer, in good faith, to develop and submit for consideration by  
24 the Court an appropriate stipulation and order regarding briefing and hearing for oral  
argument of the parties' dispositive motions and any other related procedural matters in the  
case.

1 Thus, even though certain parties have filed dispositive motions, those proceedings are now stayed  
2 under the October 29th Stipulation and Order. As a result, the parties did not complete briefing on the  
3 dispositive motions, and any further proceedings relating to the dispositive motions will not resume  
4 until: (1) the Court enters a written order resolving the pending Motion to Disqualify; and (2) the parties  
5 thereafter develop and submit for consideration by the Court an appropriate stipulation and order  
6 relating to the dispositive motions. Therefore, the Legislature is timely filing its Motion to Intervene  
7 while the proceedings relating to the parties' dispositive motions are stayed.

8 Because Plaintiffs are challenging the constitutional authority of the Legislature to enact SB 542  
9 and SB 551, the Legislature qualifies for intervention as of right under NRCP 24(a)(1) and  
10 NRS 218F.720.<sup>2</sup> The statute confers an unconditional right to intervene when a party in any action or  
11 proceeding alleges that the Legislature has violated the Nevada Constitution or alleges that any law is  
12 invalid, unenforceable or unconstitutional. When a party makes such a constitutional challenge, the  
13 statute provides that:

14 the Legislature has an *unconditional right and standing to intervene* in the action or  
15 proceeding and to present its arguments, claims, objections or defenses, in law or fact,  
16 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.

17 NRS 218F.720(3) (emphasis added). Therefore, under NRCP 24(a)(1) and NRS 218F.720, the  
18 Legislature has an unconditional right and standing to intervene in this action.

19 In addition, the Legislature qualifies for intervention as of right under NRCP 24(a)(2) because the  
20 Legislature has substantial interests in the subject matter of this case which may be impaired if the  
21 Legislature is not permitted to intervene and which may not be adequately represented by existing  
22 parties. The Legislature also qualifies for permissive intervention under NRCP 24(b) because Plaintiffs'

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24 <sup>2</sup> NRCP 24 was recently amended by the Nevada Supreme Court, effective March 1, 2019. NRCP 24,  
as amended, and NRS 218F.720 are reproduced in the Addendum following the Memorandum of  
Points and Authorities.

1 claims are based on a state constitutional provision that governs legislative procedure and the  
2 administration of the Legislature's core constitutional function of enacting laws.

3 Finally, the Legislature has acted with appropriate haste and diligence to intervene in order to  
4 protect its official interests, and the Legislature's participation will not delay the proceedings or  
5 complicate the management of the case and will not cause any prejudice to existing parties. If permitted  
6 to intervene, the Legislature would be in a position to protect its official interests by providing a more  
7 comprehensive and thorough presentation of the controlling law and a better understanding of the issues,  
8 and the Court would be ensuring that the views of the Legislature are fairly and adequately represented.  
9 Therefore, because the Legislature has acted with appropriate haste and diligence to intervene in this  
10 case in order to protect its official interests, the Legislature's Motion to Intervene as Defendant should  
11 be granted.

## 12 II. Argument.

### 13 A. Intervention as of right.

14 Under NRCP 24(a), a movant qualifies for intervention as of right under two circumstances. Am.  
15 Home Assurance Co. v. Dist. Ct., 122 Nev. 1229, 1235, 147 P.3d 1120, 1124-25 (2006). First, under  
16 subsection (a)(1), on timely motion, the court must permit a movant to intervene who "is given an  
17 unconditional right to intervene by a state or federal statute." NRCP 24(a)(1). Second, under subsection  
18 (a)(2), on timely motion, the court must permit a movant to intervene who:

19 claims an interest relating to the property or transaction that is the subject of the action, and  
20 is so situated that disposing of the action may as a practical matter impair or impede the  
21 movant's ability to protect its interest, unless existing parties adequately represent that  
22 interest.

22 NRCP 24(a)(2). In this case, the Legislature qualifies for intervention as of right under both subsections  
23 of NRCP 24(a).

1           **(1) The Legislature qualifies for intervention as of right under NRCP 24(a)(1).**

2           To qualify for intervention as of right under NRCP 24(a)(1), the movant must prove that: (1) a  
3 statute confers an unconditional right to intervene; and (2) the motion to intervene is timely. See EEOC  
4 v. GMRI, Inc., 221 F.R.D. 562, 563 (D. Kan. 2004); EEOC v. Taylor Elec. Co., 155 F.R.D. 180, 182  
5 (N.D. Ill. 1994).<sup>3</sup>

6           In determining whether a statute confers an unconditional right to intervene for purposes of  
7 NRCP 24(a)(1), the issue before the court is one of statutory construction, and the court must limit its  
8 inquiry to the terms of the statute and must not consider any of the factors listed in NRCP 24(a)(2). See  
9 Bhd. of R.R. Trainmen v. Balt. & Ohio R.R., 331 U.S. 519, 525-31 (1947); Ruiz v. Estelle, 161 F.3d  
10 814, 828 (5th Cir. 1998). Consequently, the movant is not required to prove that existing parties may be  
11 inadequately representing its interests or that its interests may be impaired if it is not allowed to  
12 intervene. Ruiz, 161 F.3d at 828. Instead, the movant is required to prove only that it qualifies for  
13 intervention under the terms of the statute. Bhd. of R.R. Trainmen, 331 U.S. at 531. Upon meeting the  
14 statutory requirements for intervention, “there is no room for the operation of a court’s discretion” and  
15 “the right to intervene is absolute and unconditional.” Id.; see also United States v. Presidio Invs., Ltd.,  
16 4 F.3d 805, 808 n.1 (9th Cir. 1993).

17           Under NRS 218F.720, the Legislature may elect to intervene in any action or proceeding when a  
18 party alleges that the Legislature, by its actions or failure to act, has violated the Nevada Constitution or  
19 when a party contests or raises as an issue that any law is invalid, unenforceable or unconstitutional. To  
20 intervene in the action or proceeding, the Legislature must file “a motion or request to intervene in the

21 <sup>3</sup> When interpreting the provisions of NRCP 24 regarding intervention, the Nevada Supreme Court  
22 looks to federal cases interpreting the analogous provisions of the Federal Rules of Civil Procedure.  
23 Am. Home Assurance, 122 Nev. at 1238-39, 147 P.3d at 1126-27; Lawler v. Ginochio, 94 Nev. 623,  
24 626, 584 P.2d 667, 668-69 (1978). Thus, in determining whether intervention is appropriate under  
NRCP 24, such federal cases “are strong persuasive authority, because the Nevada Rules of Civil  
Procedure are based in large part upon their federal counterparts.” Exec. Mgmt., Ltd. v. Ticor Title  
Ins. Co., 118 Nev. 46, 53, 38 P.3d 872, 876 (2002) (quoting Las Vegas Novelty, Inc. v. Fernandez,  
106 Nev. 113, 119, 787 P.2d 772, 776 (1990)).



1 form required by the rules, laws or regulations applicable to the action or proceeding.”

2 NRS 218F.720(2). If the Legislature files such a motion or request to intervene:

3 the Legislature has an *unconditional right and standing to intervene* in the action or  
4 proceeding and to present its arguments, claims, objections or defenses, in law or fact,  
5 whether or not the Legislature’s interests are adequately represented by existing parties and  
6 whether or not the State or any agency, officer or employee of the State is an existing party.

6 NRS 218F.720(3) (emphasis added).

7 In this case, Plaintiffs allege that the Legislature violated the Nevada Constitution by enacting  
8 SB 542 and SB 551 without complying with the two-thirds requirement in Article 4, Section 18(2), and  
9 Plaintiffs are asking for an order declaring that SB 542 and SB 551 are invalid, unenforceable and  
10 unconstitutional. Thus, Plaintiffs are clearly alleging that the Legislature violated the Nevada  
11 Constitution when it enacted SB 542 and SB 551, and Plaintiffs are clearly alleging that the legislation is  
12 invalid, unenforceable and unconstitutional. Given these allegations, the Legislature has an  
13 unconditional right to intervene under NRS 218F.720. See People’s Legislature v. Miller, No. 2:12-cv-  
14 00272-MMD-VCF, 2012 WL 3536767, at \*5 (D. Nev. Aug. 15, 2012) (holding that because the plaintiff  
15 in the case was challenging the constitutionality of several statutes enacted by the Legislature,  
16 “NRS 218F.720 therefore grants the Legislature an unconditional right to intervene in this proceeding.”).

17 Accordingly, because NRS 218F.720 confers an unconditional right to intervene, the Legislature’s  
18 Motion to Intervene must be granted so long as the motion is timely. The timeliness of a motion to  
19 intervene is a determination that lies within the discretion of the district court. Lawler, 94 Nev. at 626,  
20 584 P.2d at 668; Cleland v. Dist. Ct., 92 Nev. 454, 456, 552 P.2d 488 (1976). In determining whether a  
21 motion to intervene is timely, the court must consider the age of the lawsuit, the length of the movant’s  
22 delay in seeking intervention after learning of the need to intervene, and the extent of any prejudice to  
23 the rights of existing parties resulting from the delay. Am. Home Assurance, 122 Nev. at 1244, 147  
24 P.3d at 1130; Dangberg Holdings Nev. v. Douglas County, 115 Nev. 129, 141, 978 P.2d 311, 318

1 (1999). If the movant's intervention would cause prejudice to the rights of existing parties, the court  
2 must weigh that prejudice against any prejudice resulting to the movant if the motion to intervene is  
3 denied. Am. Home Assurance, 122 Nev. at 1244, 147 P.3d at 1130.

4 In this case, Plaintiffs filed their First Amended Complaint on July 30, 2019. Thereafter, on  
5 September 16, 2019, Executive Defendants filed a Motion to Dismiss Plaintiffs' First Amended  
6 Complaint, and Defendants Senator Cannizzaro and Secretary Clift filed an Answer to Plaintiffs' First  
7 Amended Complaint. On September 30, 2019, Plaintiffs filed their Opposition to Executive  
8 Defendants' Motion to Dismiss or, in the Alternative, Plaintiffs' Motion for Summary Judgment.

9 Even though certain parties have filed dispositive motions, those proceedings are now stayed  
10 under the October 29th Stipulation and Order. As a result, the parties did not complete briefing on the  
11 dispositive motions, and any further proceedings relating to the dispositive motions will not resume  
12 until: (1) the Court enters a written order resolving the pending Motion to Disqualify; and (2) the parties  
13 thereafter develop and submit for consideration by the Court an appropriate stipulation and order  
14 relating to the dispositive motions. Therefore, the Legislature is timely filing its Motion to Intervene  
15 while the proceedings relating to the parties' dispositive motions are stayed. Because those proceedings  
16 are stayed, the Legislature has acted with appropriate haste and diligence to intervene, and the  
17 Legislature's intervention will not delay the proceedings, complicate management of the case or cause  
18 any prejudice to existing parties. Consequently, the Legislature's Motion to Intervene is timely. See  
19 EEOC v. Taylor Elec. Co., 155 F.R.D. 180, 182 (N.D. Ill. 1994) (finding that a motion to intervene filed  
20 four months after the plaintiff commenced the action was timely where no discovery had been  
21 conducted in the case).

22 In sum, because the Legislature has an unconditional right to intervene under NRS 218F.720 and  
23 because the Legislature's Motion to Intervene is timely, the Legislature meets the standards for  
24 intervention as of right under NRCP 24(a)(1). Therefore, the Legislature's Motion to Intervene should

1 be granted.

2 **(2) The Legislature qualifies for intervention as of right under NRCP 24(a)(2).**

3 As a general rule, courts give NRCP 24(a)(2) a broad and liberal construction in favor of  
4 intervention as of right. State Indus. Ins. Sys. v. Dist. Ct., 111 Nev. 28, 32, 888 P.2d 911, 913 (1995)  
5 (“Intervention of right should be broadly construed because it protects precious judicial resources.”),  
6 *overruled in part on other grounds by* Am. Home Assurance Co. v. Dist. Ct., 122 Nev. 1229, 147 P.3d  
7 1120 (2006); Arakaki v. Cayetano, 324 F.3d 1078, 1083 (9th Cir. 2003) (“Rule 24 traditionally receives  
8 liberal construction in favor of applicants for intervention.”); Scotts Valley Band of Pomo Indians v.  
9 United States, 921 F.2d 924, 926 (9th Cir. 1990) (“Rule 24(a) is construed broadly, in favor of the  
10 applicants for intervention.”).

11 To qualify for intervention as of right under NRCP 24(a)(2), the movant must establish that:  
12 (1) the movant has sufficient interests in the subject matter of the litigation; (2) the movant’s ability to  
13 protect those interests could be impaired if the movant is not permitted to intervene; (3) the movant’s  
14 interests may not be adequately represented by the existing parties; and (4) the motion to intervene is  
15 timely. Am. Home Assurance, 122 Nev. at 1238, 147 P.3d at 1126. The determination of whether the  
16 movant has met the four requirements is within the discretion of the district court. Id.

17 As discussed previously, the Legislature’s Motion to Intervene is timely. Because the Legislature  
18 also meets the remaining requirements for intervention as of right under NRCP 24(a)(2), the  
19 Legislature’s Motion to Intervene should be granted.

20 **(a) The Legislature has significantly protectable interests in the subject matter of this**  
21 **action which will be impaired if Plaintiffs succeed on their claims.**

22 For purposes of intervention as of right under NRCP 24(a)(2), the movant must have significantly  
23 protectable interests in the subject matter of the action, and the movant must be situated such that the  
24 disposition of the action may impair or impede the movant’s ability to protect those interests. PEST

1 Comm. v. Miller, 648 F. Supp. 2d 1202, 1211-12 (D. Nev. 2009). The movant satisfies these  
2 requirements if: (1) the movant asserts any interests that are protected under federal or state law; and  
3 (2) there is a relationship between the movant’s protected interests and the plaintiffs’ claims such that  
4 the movant will suffer a practical impairment of its interests if the plaintiffs succeed on their claims. Id.  
5 at 1212. When the plaintiffs seek declaratory relief that statutes are unconstitutional, the movant is  
6 entitled to intervene to defend the validity of the statutes if the movant’s protected interests would be  
7 impaired, as a practical matter, by a declaration that the statutes are unconstitutional. Cal. ex rel.  
8 Lockyer v. United States, 450 F.3d 436, 441-45 (9th Cir. 2006).

9 In the context of defending the validity of state statutes, courts have recognized that a state  
10 legislature may have an independent “legal interest in defending the constitutionality of [its] laws” that  
11 is separate and distinct from the interests of state officials who are charged with administering those  
12 laws. Ne. Ohio Coal. for Homeless v. Blackwell, 467 F.3d 999, 1007 (6th Cir. 2006). For example, in a  
13 case challenging the constitutionality of Ohio’s election laws where Ohio’s Secretary of State was  
14 named as the defendant, the Sixth Circuit allowed the State of Ohio and its General Assembly to  
15 intervene in the case because “the Secretary’s primary interest is in ensuring the smooth administration  
16 of the election, while the State and General Assembly have an independent interest in defending the  
17 validity of Ohio laws and ensuring that those laws are enforced.” Id. at 1008.

18 In this case, the Legislature has an independent legal interest in defending the constitutionality of  
19 SB 542 and SB 551 that is separate and distinct from the interests of the Executive Defendants who are  
20 charged with administering the legislation, and the Legislature’s interests will be impaired if Plaintiffs  
21 succeed on their claims. Plaintiffs are challenging the process followed by the Legislature in enacting  
22 legislation in conformity with the two-thirds requirement in Article 4, Section 18(2). As a consequence,  
23 this case strikes at the heart of the most vital component of the legislative function—the constitutional  
24 process of enacting laws. Because the Legislature has a right to defend that process, the Legislature has

1 substantial interests in the subject matter of this action which will be impaired if the Legislature is not  
2 permitted to intervene.

3 Moreover, the provisions of the Nevada Constitution governing legislative procedure must be  
4 interpreted with respect for the construction placed on those provisions by the Legislature. State ex rel.  
5 Coffin v. Howell, 26 Nev. 93, 104-05, 64 P. 466, 468-69 (1901); State ex rel. Torreyson v. Grey, 21  
6 Nev. 378, 380-84, 32 P. 190, 190-92 (1893); State ex rel. Cardwell v. Glenn, 18 Nev. 34, 43-46, 1 P.  
7 186, 187-92 (1883). This is particularly true when a constitutional provision involves the passage of  
8 legislation. Id. Thus, when construing such a constitutional provision, “although the action of the  
9 legislature is not final, its decision upon this point is to be treated by the courts with the consideration  
10 which is due to a co-ordinate department of the state government, and in case of a reasonable doubt as to  
11 the meaning of the words, the construction given to them by the legislature ought to prevail.” Dayton  
12 Gold & Silver Mining Co. v. Seawell, 11 Nev. 394, 399-400 (1876).

13 The weight given to the Legislature’s construction of a constitutional provision involving  
14 legislative procedure is of particular force when the meaning of the constitutional provision is subject to  
15 any uncertainty, ambiguity or doubt. Nev. Mining Ass’n v. Erdoes, 117 Nev. 531, 539-40, 26 P.3d 753,  
16 758-59 (2001). Under such circumstances, the Legislature may rely on an opinion of the Legislative  
17 Counsel which interprets the constitutional provision, and “the Legislature is entitled to deference in its  
18 counseled selection of this interpretation.” 117 Nev. at 540, 26 P.3d at 758.

19 In this case, the Legislature relied on an opinion of the Legislative Counsel which interpreted the  
20 two-thirds requirement in Article 4, Section 18(2) and which concluded that the two-thirds requirement  
21 does not apply to a bill—like SB 542 or SB 551—that extends until a later date, or revises or eliminates,  
22 a future decrease in or future expiration of existing state taxes or fees when that future decrease or  
23 expiration is not legally operative and binding yet. Because the Legislature has a right to defend its  
24 construction of the two-thirds requirement in Article 4, Section 18(2), including its reliance on the

1 opinion of the Legislative Counsel interpreting that constitutional provision, the Legislature has  
2 significantly protectable interests in the subject matter of this action which will be impaired if Plaintiffs  
3 succeed on their claims.

4 **(b) The Legislature's interests are not adequately represented by existing parties.**

5 When the movant has sufficient interests to support intervention as of right under NRCP 24(a)(2),  
6 the movant must be permitted to intervene unless the movant's interests are adequately represented by  
7 existing parties. Am. Home Assurance, 122 Nev. at 1241, 147 P.3d at 1128; Lundberg v. Koontz, 82  
8 Nev. 360, 362-63, 418 P.2d 808, 809 (1966). The movant must satisfy only a minimal burden to  
9 demonstrate that existing parties do not adequately represent its interests. Sw. Ctr. for Biological  
10 Diversity v. Berg, 268 F.3d 810, 823 (9th Cir. 2001). The movant need only show that representation by  
11 existing parties may be inadequate, not that it will be inadequate. Id. Courts typically consider three  
12 factors when determining whether existing parties adequately represent the interests of the movant:  
13 (1) whether the interests of existing parties are such that they will undoubtedly make all of the movant's  
14 arguments; (2) whether existing parties are capable and willing to make such arguments; and  
15 (3) whether the movant would offer any necessary elements to the proceeding that existing parties would  
16 neglect. PEST Comm., 648 F. Supp. 2d at 1212.

17 As a general rule, there is a presumption that a state official adequately represents the interests of  
18 **private parties** in defending the constitutionality of state statutes because the state official is acting in a  
19 representative capacity on behalf of the citizens of the state and because the state official and the private  
20 parties share the same ultimate objective, which is to uphold the statutes against constitutional attack.  
21 PEST Comm., 648 F. Supp. 2d at 1212-13; Hairr v. Dist. Ct., 132 Nev. 180, 184-86, 368 P.3d 1198,  
22 1201-02 (2016). This presumption, however, does not apply here because the Legislature is a  
23 governmental entity, not a private party, and the Legislature has an independent legal interest in  
24 defending the constitutionality of SB 542 and SB 551 that is separate and distinct from the interests of

1 the Executive Defendants who are charged with administering the legislation. See Ne. Ohio Coal., 467  
2 F.3d at 1008. In particular, because this case strikes at the heart of the most vital component of the  
3 legislative function—the constitutional process of enacting laws—the Executive Defendants who are  
4 charged with administering SB 542 and SB 551 are not in a position to adequately represent the official  
5 interests of the Legislature and defend the exercise of its core constitutional function of enacting laws.  
6 Under such circumstances, the Legislature’s interests are not adequately represented by existing parties,  
7 and the Legislature is entitled to intervention as of right under NRCP 24(a)(2).<sup>4</sup>

8 **B. Permissive intervention.**

9 As recently amended by the Nevada Supreme Court, effective March 1, 2019, the provisions of  
10 NRCP 24(b) were revised to conform to the federal rule. NRCP 24 Advisory Committee Note—2019  
11 Amendment. The provisions of NRCP 24(b) provide that permissive intervention may be granted under  
12 the following circumstances:

13 **(b) Permissive Intervention.**

14 **(1) In General.** On timely motion, the court may permit anyone to intervene who:

15 (A) is given a conditional right to intervene by a state or federal statute; or

16 (B) has a claim or defense that shares with the main action a common question of  
17 law or fact.

18 **(2) By a Government Officer or Agency.** On timely motion, the court may permit  
19 a state or federal governmental officer or agency to intervene if a party’s claim or defense is  
20 based on:

21 (A) a statute or executive order administered by the officer or agency; or

22 (B) any regulation, order, requirement, or agreement issued or made under the  
23 statute or executive order.  
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<sup>4</sup> Although Senator Cannizzaro and Secretary Clift are named as Defendants, they are not necessary or proper parties to this litigation. First, they are not necessary parties because they are not empowered by state law with any statewide administrative functions under the challenged statutes in SB 542 and SB 551. Second, they are not proper parties because, as legislative branch defendants sued in their official capacity, they are entitled to 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).

1 Permissive intervention lies within the discretion of the district court. Hairr, 132 Nev. at 187, 368  
2 P.3d at 1202; 7C Wright & Miller, Federal Practice & Procedure-Civil § 1913 (3d ed. & Westlaw 2019)  
3 (“If there is no right to intervene under Rule 24(a), it is wholly discretionary with the court whether to  
4 allow intervention under Rule 24(b).”). However, “[a] finding by the court that the presence of the  
5 intervenor will not prejudice the original parties serves to encourage the court to exercise its discretion  
6 to allow intervention.” Federal Practice & Procedure-Civil, *supra*, § 1913.

7 Furthermore, when the intervenor is a governmental agency, permissive intervention ordinarily  
8 should be granted to the agency where the legal issues in the case may have a substantial impact on “the  
9 maintenance of its statutory authority and the performance of its public duties.” SEC v. U.S. Realty &  
10 Impr. Co., 310 U.S. 434, 460 (1940). Thus, where the governmental agency’s interest in the case “is a  
11 public one” and it intends to raise claims or defenses concerning questions of law involved in the case,  
12 permissive intervention should be granted, especially when the agency’s intervention “might be helpful  
13 in [a] difficult and delicate area.” United States v. Local 638, Enter. Ass’n of Pipefitters, 347 F. Supp.  
14 164, 166 (S.D.N.Y. 1972) (quoting SEC v. U.S. Realty & Impr. Co., 310 U.S. 434, 460 (1940)).

15 In this case, even assuming the Legislature does not qualify for intervention as of right under  
16 NRCP 24(a)(1) and NRCP 24(a)(2), the Court should exercise its discretion and grant the Legislature  
17 permissive intervention under NRCP 24(b). This case involves extremely important questions of  
18 constitutional law and legislative power whose resolution will have a substantial impact on legislative  
19 procedure and the administration of the Legislature’s core constitutional function of enacting laws under  
20 the two-thirds requirement in Article 4, Section 18(2). By permitting the Legislature to intervene, the  
21 Court would be facilitating a more comprehensive and thorough presentation of the controlling law and  
22 a better understanding of the issues, and the Court would be ensuring that the views of the Legislature  
23 are fairly and adequately represented and are not prejudiced by this case. Moreover, because the  
24 proceedings relating to the parties’ dispositive motions are stayed, the Legislature has acted with



1 appropriate haste and diligence to intervene, and the Legislature's intervention will not delay the  
2 proceedings, complicate management of the case or cause any prejudice to existing parties. Therefore,  
3 even assuming the Legislature does not qualify for intervention as of right under NRCP 24(a)(1) and  
4 NRCP 24(a)(2), the Court should exercise its discretion and grant the Legislature permissive  
5 intervention under NRCP 24(b).

6 **CONCLUSION**

7 Based upon the foregoing, the Legislature respectfully requests that the Court enter an order which  
8 grants the Legislature's Motion to Intervene as Defendant. Pursuant to FJDCR 15(7), a proposed order  
9 is attached as Exhibit 2.

10 DATED: This 6th day of November, 2019.

11 Respectfully submitted,

12 **BRENDA J. ERDOES**  
13 Legislative Counsel

14 By: 

15 **KEVIN C. POWERS**  
16 Chief Litigation Counsel  
17 Nevada Bar No. 6781  
18 LEGISLATIVE COUNSEL BUREAU, LEGAL DIVISION  
19 401 S. Carson St.  
20 Carson City, NV 89701  
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23 *Attorneys for the Legislature of the State of Nevada*  
24

ADDENDUM

**NRCP 24. Intervention**

(a) **Intervention of Right.** On timely motion, the court must permit anyone to intervene who:

(1) is given an unconditional right to intervene by a state or federal statute; or

(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

(b) **Permissive Intervention.**

(1) **In General.** On timely motion, the court may permit anyone to intervene who:

(A) is given a conditional right to intervene by a state or federal statute; or

(B) has a claim or defense that shares with the main action a common question of law or fact.

(2) **By a Government Officer or Agency.** On timely motion, the court may permit a state or federal governmental officer or agency to intervene if a party's claim or defense is based on:

(A) a statute or executive order administered by the officer or agency; or

(B) any regulation, order, requirement, or agreement issued or made under the statute or executive order.

(3) **Delay or Prejudice.** In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

(c) **Notice and Pleading Required.** A motion to intervene must be served on the parties as provided in Rule 5. The motion must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought.

[Amended; effective March 1, 2019.]

**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,

1 unenforceable or unconstitutional,

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

8 3. Notwithstanding any other law to the contrary, upon the filing of a motion or request to  
9 intervene pursuant to subsection 2, the Legislature has an unconditional right and standing to  
10 intervene in the action or proceeding and to present its arguments, claims, objections or defenses,  
11 in law or fact, whether or not the Legislature's interests are adequately represented by existing  
12 parties and whether or not the State or any agency, officer or employee of the State is an existing  
13 party. If the Legislature intervenes in the action or proceeding, the Legislature has all the rights of  
14 a party.

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

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

21 6. As used in this section:

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

24 (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.

1 CERTIFICATE OF SERVICE

2 I hereby certify that I am an employee of the Nevada Legislative Counsel Bureau, Legal Division,  
3 and that on the 6th day of November, 2019, pursuant to NRCP 5(b) and the parties' stipulation and  
4 consent to service by electronic mail, I served a true and correct copy of the Nevada Legislature's  
5 Motion to Intervene as Defendant, by electronic mail, directed to the following:

6 KAREN A. PETERSON, ESQ.  
7 JUSTIN TOWNSEND, ESQ.  
8 ALLISON MACKENZIE, LTD.  
9 402 N. Division St.  
10 Carson City, NV 89703  
11 [kpeterson@allisonmackenzie.com](mailto:kpeterson@allisonmackenzie.com)  
12 [jtownsend@allisonmackenzie.com](mailto:jtownsend@allisonmackenzie.com)  
13 *Attorneys for Plaintiffs*

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*Attorneys for Defendants State of Nevada ex rel.  
Governor Steve Sisolak, Lieutenant Governor Kate  
Marshall, Nevada Department of Taxation and  
Nevada Department of Motor Vehicles*

14   
15 \_\_\_\_\_  
16 An Employee of the Legislative Counsel Bureau  
17  
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19  
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24

INDEX OF EXHIBITS

Exhibit No.	Description	Number of Pages
1	Nevada Legislature's Proposed Answer to First Amended Complaint	11
2	Nevada Legislature's Proposed Order Granting Nevada Legislature's Motion to Intervene as Defendant	3

# Exhibit 1

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# Exhibit 1

1 BRENDA J. ERDOES, Legislative Counsel  
Nevada Bar No. 3644  
2 KEVIN C. POWERS, Chief Litigation Counsel  
Nevada Bar No. 6781  
3 LEGISLATIVE COUNSEL BUREAU, LEGAL DIVISION  
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*Attorneys for the Legislature of the State of Nevada*

7 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
8 **IN AND FOR CARSON CITY**

9 THE HONORABLE JAMES SETTELMEYER,  
10 THE HONORABLE JOE HARDY, THE  
11 HONORABLE HEIDI GANSERT, THE  
12 HONORABLE SCOTT HAMMOND, THE  
13 HONORABLE PETE GOICOECHEA, THE  
14 HONORABLE BEN KIECKHEFER, THE  
15 HONORABLE IRA HANSEN, and THE  
16 HONORABLE KEITH PICKARD, in their official  
capacities as members of the Senate of the State of  
Nevada and individually; et al.,

14 Plaintiffs,

15 vs.

16 STATE OF NEVADA ex rel. THE HONORABLE  
17 NICOLE CANNIZZARO, in her official capacity  
18 as Senate Majority Leader; THE HONORABLE  
19 KATE MARSHALL, in her official capacity as  
20 President of the Senate; CLAIRE J. CLIFT, in her  
official capacity as Secretary of the Senate; THE  
21 HONORABLE STEVE SISOLAK, in his official  
capacity as Governor of the State of Nevada;  
NEVADA DEPARTMENT OF TAXATION;  
NEVADA DEPARTMENT OF MOTOR  
VEHICLES; and DOES I-X, inclusive,

22 Defendants.

**Case No. 19 OC 00127 1B**  
**Dept. No. I**

23 **NEVADA LEGISLATURE'S PROPOSED ANSWER TO**  
24 **PLAINTIFFS' FIRST AMENDED COMPLAINT**

1                    **PROPOSED ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT**

2                    Proposed Intervenor-Defendant Legislature of the State of Nevada (Legislature), by and through  
3 its counsel the Legal Division of the Legislative Counsel Bureau under NRS 218F.720, hereby submits  
4 pursuant to NRCP 24(c) the Legislature's Proposed Answer to Plaintiffs' First Amended Complaint,  
5 which was filed on July 30, 2019.

6                    **ADMISSIONS AND DENIALS OF THE ALLEGATIONS**

7                    **PARTIES, JURISDICTION AND VENUE**

8                    ¶ 1. The Legislature admits that Plaintiffs, Senators James Settlemeyer, Joe Hardy, Heidi  
9 Gansert, Scott Hammond, Pete Goicoechea, Ben Kieckhefer, Ira Hansen and Keith Pickard, are duly  
10 elected members of the Legislature and were members of the Senate during the 80th (2019) Session of  
11 the Legislature. The Legislature lacks knowledge or information sufficient to form a belief about the  
12 truth of all other allegations in paragraph 1 of the First Amended Complaint and denies them.

13                    ¶ 2. The Legislature admits the allegations in paragraph 2 of the First Amended Complaint.

14                    ¶ 3. The Legislature admits that each of the Plaintiff Senators is a member of the Nevada Senate  
15 Republican Caucus. The Legislature denies all other allegations in paragraph 3 of the First Amended  
16 Complaint.

17                    ¶ 4. The Legislature denies the allegations in paragraph 4 of the First Amended Complaint.

18                    ¶ 5. The Legislature lacks knowledge or information sufficient to form a belief about the truth  
19 of the allegations in paragraph 5 of the First Amended Complaint and denies them.

20                    ¶ 6. The Legislature lacks knowledge or information sufficient to form a belief about the truth  
21 of the allegations in paragraph 6 of the First Amended Complaint and denies them.

22                    ¶ 7. The Legislature lacks knowledge or information sufficient to form a belief about the truth  
23 of the allegations in paragraph 7 of the First Amended Complaint and denies them.



1 ¶ 8. The Legislature lacks knowledge or information sufficient to form a belief about the truth  
2 of the allegations in paragraph 8 of the First Amended Complaint and denies them.

3 ¶ 9. The Legislature lacks knowledge or information sufficient to form a belief about the truth  
4 of the allegations in paragraph 9 of the First Amended Complaint and denies them.

5 ¶ 10. The Legislature lacks knowledge or information sufficient to form a belief about the truth  
6 of the allegations in paragraph 10 of the First Amended Complaint and denies them.

7 ¶ 11. The Legislature lacks knowledge or information sufficient to form a belief about the truth  
8 of the allegations in paragraph 11 of the First Amended Complaint and denies them.

9 ¶ 12. The Legislature lacks knowledge or information sufficient to form a belief about the truth  
10 of the allegations in paragraph 12 of the First Amended Complaint and denies them.

11 ¶ 13. The Legislature lacks knowledge or information sufficient to form a belief about the truth  
12 of the allegations in paragraph 13 of the First Amended Complaint and denies them.

13 ¶ 14. The Legislature lacks knowledge or information sufficient to form a belief about the truth  
14 of the allegations in paragraph 14 of the First Amended Complaint and denies them.

15 ¶ 15. The Legislature lacks knowledge or information sufficient to form a belief about the truth  
16 of the allegations in paragraph 15 of the First Amended Complaint and denies them.

17 ¶ 16. The Legislature admits that Defendant Nicole Cannizzaro is named in her official  
18 capacity, is a duly elected member of the Legislature, was a member of the Senate during the 80th  
19 (2019) Session of the Legislature, served as the Senate Majority Leader during the 80th (2019) Session  
20 of the Legislature and was the sponsor of SB 551. The Legislature denies all other allegations in  
21 paragraph 16 of the First Amended Complaint.

22 ¶ 17. The Legislature admits that Defendant Kate Marshall is named in her official capacity, is  
23 the duly elected Lieutenant Governor of the State of Nevada and served as President of the Senate  
24 during the 80th (2019) Session of the Legislature; and that her official duties include signing bills passed

1 by the Legislature. The Legislature denies all other allegations in paragraph 17 of the First Amended  
2 Complaint.

3 ¶ 18. The Legislature admits that Defendant Claire Clift is named in her official capacity and  
4 served as the Secretary of the Senate during the 80th (2019) Session of the Legislature; and that her  
5 official duties include transmitting bills passed by the Legislature to the Legislative Counsel for  
6 enrollment. The Legislature denies all other allegations in paragraph 18 of the First Amended  
7 Complaint.

8 ¶ 19. The Legislature admits that Defendant Steve Sisolak is named in his official capacity and  
9 is the duly elected Governor of the State of Nevada; and that his official duties include approving and  
10 signing bills passed by the Legislature and seeing that the laws of the State of Nevada are faithfully  
11 executed. The Legislature denies all other allegations in paragraph 19 of the First Amended Complaint.

12 ¶ 20. The Legislature admits the allegations in paragraph 20 of the First Amended Complaint.

13 ¶ 21. The Legislature admits the allegations in paragraph 21 of the First Amended Complaint.

14 ¶ 22. The Legislature lacks knowledge or information sufficient to form a belief about the truth  
15 of the allegations in paragraph 22 of the First Amended Complaint and denies them.

16 ¶ 23. The Legislature denies the allegations in paragraph 23 of the First Amended Complaint.

17 ¶ 24. The Legislature admits that at the general elections in 1994 and 1996, Nevada's voters  
18 approved constitutional amendments that added the two-thirds requirement to Article 4, Section 18 of  
19 the Nevada Constitution; and that the constitutional amendments were proposed by a ballot initiative.  
20 The Legislature denies all other allegations in paragraph 24 of the First Amended Complaint.

21 ¶ 25. The Legislature denies the allegations in paragraph 25 of the First Amended Complaint.

22 ¶ 26. The Legislature denies the allegations in paragraph 26 of the First Amended Complaint.

23 ¶ 27. The Legislature denies the allegations in paragraph 27 of the First Amended Complaint.  
24

1 ¶ 28. The Legislature admits that Senate Majority Leader Nicole Cannizzaro and Secretary of  
2 the Senate Claire Clift are residents of the State of the Nevada. The Legislature lacks knowledge or  
3 information sufficient to form a belief about the truth of all other allegations in paragraph 28 of the First  
4 Amended Complaint and denies them.

5 ¶ 29. The Legislature admits that SB 542 and SB 551 were introduced, debated, voted on,  
6 signed and enrolled in Carson City, Nevada. The Legislature lacks knowledge or information sufficient  
7 to form a belief about the truth of all other allegations in paragraph 29 of the First Amended Complaint  
8 and denies them.

9 ¶ 30. The Legislature admits that Senate Majority Leader Nicole Cannizzaro and Secretary of  
10 the Senate Claire Clift have offices in Carson City, Nevada. The Legislature lacks knowledge or  
11 information sufficient to form a belief about the truth of all other allegations in paragraph 30 of the First  
12 Amended Complaint and denies them.

13 ¶ 31. The Legislature admits that Senate Majority Leader Nicole Cannizzaro and Secretary of  
14 the Senate Claire Clift are public officers that keep offices in Carson City, Nevada. The Legislature  
15 lacks knowledge or information sufficient to form a belief about the truth of all other allegations in  
16 paragraph 31 of the First Amended Complaint and denies them.

17 **GENERAL ALLEGATIONS**

18 ¶ 32. The Legislature admits and denies the allegations incorporated by reference in  
19 paragraph 32 of the First Amended Complaint in the same manner expressly stated by the Legislature in  
20 paragraphs 1 to 31, inclusive, of this Answer.

21 ¶ 33. The Legislature admits the allegations in paragraph 33 of the First Amended Complaint  
22 only to the extent the allegations accurately state the text of Article 4, Section 18(2) of the Nevada  
23 Constitution. The Legislature denies all other allegations in paragraph 33 of the First Amended  
24 Complaint.

1 ¶ 34. The Legislature admits the allegations in paragraph 34 of the First Amended Complaint.

2 ¶ 35. The Legislature admits that during the 80th (2019) Session of the Legislature, if a bill  
3 required an affirmative vote of not fewer than two-thirds of all the members elected to the Senate in  
4 order to be passed by the Senate, the vote of at least fourteen Senators was required to pass the bill. The  
5 Legislature denies all other allegations in paragraph 35 of the First Amended Complaint.

6 ¶ 36. The Legislature admits the allegations in paragraph 36 of the First Amended Complaint.

7 ¶ 37. The Legislature admits the allegations in paragraph 37 of the First Amended Complaint.

8 ¶ 38. The Legislature admits the allegations in paragraph 38 of the First Amended Complaint.

9 ¶ 39. The Legislature admits that a constitutional majority of all the members elected to the  
10 Senate voted to pass SB 542. The Legislature denies all other allegations in paragraph 39 of the First  
11 Amended Complaint.

12 ¶ 40. The Legislature admits the allegations in paragraph 40 of the First Amended Complaint.

13 ¶ 41. The Legislature admits the allegations in paragraph 41 of the First Amended Complaint  
14 only to the extent the allegations accurately state the text of NRS 481.064. The Legislature denies all  
15 other allegations in paragraph 41 of the First Amended Complaint.

16 ¶ 42. The Legislature denies the allegations in paragraph 42 of the First Amended Complaint.

17 ¶ 43. The Legislature admits that sections 2, 3, 37 and 39 of SB 551: (1) eliminated a rate  
18 adjustment procedure used by the Department of Taxation to determine whether the rates of certain  
19 payroll taxes should be reduced in future fiscal years under certain circumstances; and (2) did not  
20 change the existing legally operative rates of those payroll taxes but maintained and continued the  
21 existing legally operative rates of those payroll taxes in future fiscal years. The Legislature denies all  
22 other allegations in paragraph 43 of the First Amended Complaint.

23 ¶ 44. The Legislature admits the allegations in paragraph 44 of the First Amended Complaint.  
24

1 ¶ 45. The Legislature admits the allegations in paragraph 45 of the First Amended Complaint.

2 ¶ 46. The Legislature admits that a constitutional majority of all the members elected to the  
3 Senate voted to pass SB 551. The Legislature denies all other allegations in paragraph 46 of the First  
4 Amended Complaint.

5 ¶ 47. The Legislature admits that sections 2 and 3 of SB 551 eliminated certain provisions of  
6 NRS 363A.130 and 363B.110; and that section 39 of SB 551 repealed the provisions of NRS 360.203.  
7 The Legislature denies all other allegations in paragraph 47 of the First Amended Complaint.

8 ¶ 48. The Legislature admits that, before the provisions of NRS 360.203 were repealed by  
9 section 39 of SB 551, NRS 360.203 included a rate adjustment procedure used by the Department of  
10 Taxation to determine whether the rates of certain payroll taxes should be reduced in future fiscal years  
11 under certain circumstances. The Legislature denies all other allegations in paragraph 48 of the First  
12 Amended Complaint.

13 ¶ 49. The Legislature lacks knowledge or information sufficient to form a belief about the truth  
14 of the allegations in paragraph 49 of the First Amended Complaint and denies them.

15 ¶ 50. The Legislature lacks knowledge or information sufficient to form a belief about the truth  
16 of the allegations in paragraph 50 of the First Amended Complaint and denies them.

17 ¶ 51. The Legislature admits that section 39 of SB 551 repealed the provisions of NRS 360.203.  
18 The Legislature denies all other allegations in paragraph 51 of the First Amended Complaint.

19 ¶ 52. The Legislature admits the allegations in paragraph 52 of the First Amended Complaint.

20 ¶ 53. The Legislature denies the allegations in paragraph 53 of the First Amended Complaint.

21 ¶ 54. The Legislature denies the allegations in paragraph 54 of the First Amended Complaint.

22 ¶ 55. The Legislature lacks knowledge or information sufficient to form a belief about the truth  
23 of the allegations in paragraph 55 of the First Amended Complaint and denies them.

1 ¶ 56. The Legislature lacks knowledge or information sufficient to form a belief about the truth  
2 of the allegations in paragraph 56 of the First Amended Complaint and denies them.

3 ¶ 57. The Legislature admits the allegations in paragraph 57 of the First Amended Complaint.

4 ¶ 58. The Legislature lacks knowledge or information sufficient to form a belief about the truth  
5 of the allegations in paragraph 58 of the First Amended Complaint and denies them.

6 ¶ 59. The Legislature lacks knowledge or information sufficient to form a belief about the truth  
7 of the allegations in paragraph 59 of the First Amended Complaint and denies them.

8 ¶ 60. The Legislature lacks knowledge or information sufficient to form a belief about the truth  
9 of the allegations in paragraph 60 of the First Amended Complaint and denies them.

10 ¶ 61. The Legislature denies the allegations in paragraph 61 of the First Amended Complaint.

11 **FIRST CLAIM FOR RELIEF**

12 ¶ 62. The Legislature admits and denies the allegations incorporated by reference in  
13 paragraph 62 of the First Amended Complaint in the same manner expressly stated by the Legislature in  
14 paragraphs 1 to 61, inclusive, of this Answer.

15 ¶ 63. The Legislature admits the allegations in paragraph 63 of the First Amended Complaint  
16 only to the extent the allegations accurately state the text of Article 4, Section 18(2) of the Nevada  
17 Constitution. The Legislature denies all other allegations in paragraph 63 of the First Amended  
18 Complaint.

19 ¶ 64. The Legislature denies the allegations in paragraph 64 of the First Amended Complaint.

20 ¶ 65. The Legislature denies the allegations in paragraph 65 of the First Amended Complaint.

21 ¶ 66. The Legislature denies the allegations in paragraph 66 of the First Amended Complaint.

22 ¶ 67. The Legislature denies the allegations in paragraph 67 of the First Amended Complaint.

1 **SECOND CLAIM FOR RELIEF**

2 ¶ 68. The Legislature admits and denies the allegations incorporated by reference in  
3 paragraph 68 of the First Amended Complaint in the same manner expressly stated by the Legislature in  
4 paragraphs 1 to 67, inclusive, of this Answer.

5 ¶ 69. The Legislature denies the allegations in paragraph 69 of the First Amended Complaint.

6 ¶ 70. The Legislature denies the allegations in paragraph 70 of the First Amended Complaint.

7 ¶ 71. The Legislature denies the allegations in paragraph 71 of the First Amended Complaint.

8 **THIRD CLAIM FOR RELIEF**

9 ¶ 72. The Legislature admits and denies the allegations incorporated by reference in  
10 paragraph 72 of the First Amended Complaint in the same manner expressly stated by the Legislature in  
11 paragraphs 1 to 71, inclusive, of this Answer.

12 ¶ 73. The Legislature denies the allegations in paragraph 73 of the First Amended Complaint.

13 ¶ 74. The Legislature denies the allegations in paragraph 74 of the First Amended Complaint.

14 ¶ 75. The Legislature denies the allegations in paragraph 75 of the First Amended Complaint.

15 ¶ 76. The Legislature denies the allegations in paragraph 76 of the First Amended Complaint.

16 ¶ 77. The Legislature denies the allegations in paragraph 77 of the First Amended Complaint.

17 ¶ 78. The Legislature denies the allegations in paragraph 78 of the First Amended Complaint.

18 ¶ 79. The Legislature denies the allegations in paragraph 79 of the First Amended Complaint.

19 **FOURTH CLAIM FOR RELIEF**

20 ¶ 80. The Legislature admits and denies the allegations incorporated by reference in  
21 paragraph 80 of the First Amended Complaint in the same manner expressly stated by the Legislature in  
22 paragraphs 1 to 79, inclusive, of this Answer.

23 ¶ 81. The Legislature denies the allegations in paragraph 81 of the First Amended Complaint.

24 ¶ 82. The Legislature denies the allegations in paragraph 82 of the First Amended Complaint.

1 ¶ 83. The Legislature denies the allegations in paragraph 83 of the First Amended Complaint.

2 ¶ 84. The Legislature denies the allegations in paragraph 84 of the First Amended Complaint.

3 ¶ 85. The Legislature denies the allegations in paragraph 85 of the First Amended Complaint.

4 ¶ 86. The Legislature denies the allegations in paragraph 86 of the First Amended Complaint.

5 ¶ 87. The Legislature denies the allegations in paragraph 87 of the First Amended Complaint.

6 **AFFIRMATIVE DEFENSES**

7 1. The Legislature pleads as an affirmative defense that the First Amended Complaint fails to  
8 state a claim upon which relief can be granted.

9 2. The Legislature pleads as affirmative defenses that Plaintiffs lack capacity to sue and  
10 standing; that Plaintiffs have failed to exhaust administrative remedies; that Plaintiffs' claims do not  
11 present a justiciable case or controversy; that Plaintiffs' claims are not ripe for adjudication; and that the  
12 Court lacks jurisdiction of the subject matter.

13 3. The Legislature pleads as an affirmative defense that Plaintiffs' claims are barred by the  
14 doctrine of immunity, including, without limitation, sovereign immunity, official immunity, legislative  
15 immunity, discretionary-function immunity, absolute immunity and qualified immunity.

16 4. The Legislature pleads as affirmative defenses that Plaintiffs' claims are barred by laches,  
17 estoppel and waiver.

18 5. The Legislature pleads as an affirmative defense that, pursuant to NRS 218F.720, the  
19 Legislature may not be assessed or held liable for any filing or other court fees or the attorney's fees or  
20 other fees, costs or expenses of any other parties.

21 6. The Legislature reserves its right to plead, raise or assert any additional affirmative defenses  
22 which are not presently known to the Legislature, following its reasonable inquiry under the  
23 circumstances, but which may become known to the Legislature as a result of discovery, further  
24 pleadings or the acquisition of information from any other source during the course of this litigation.



1 **PRAYER FOR RELIEF**

2 The Legislature prays for the following relief:

3 1. That the Court enter judgment in favor of Defendants and against Plaintiffs on all claims and  
4 prayers for relief directly or indirectly pled in the First Amended Complaint;

5 2. That the Court enter judgment in favor of Defendants and against Plaintiffs for Defendants'  
6 costs and attorney's fees as determined by law; and

7 3. That the Court grant such other relief in favor of Defendants and against Plaintiffs as the  
8 Court may deem just and proper.

9 **AFFIRMATION**

10 The undersigned hereby affirm that this document does not contain "personal information about  
11 any person" as defined in NRS 239B.030 and 603A.040.

12 DATED: This 6th day of November, 2019.

13 Respectfully submitted,

14 **BRENDA J. ERDOES**  
15 Legislative Counsel

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

  
17 **KEVIN C. POWERS**  
18 Chief Litigation Counsel  
19 Nevada Bar No. 6781  
20 LEGISLATIVE COUNSEL BUREAU, LEGAL DIVISION  
21 401 S. Carson St.  
22 Carson City, NV 89701  
23 Tel: (775) 684-6830; Fax: (775) 684-6761  
24 E-mail: [kpowers@lcb.state.nv.us](mailto:kpowers@lcb.state.nv.us)  
*Attorneys for the Legislature of the State of Nevada*

# Exhibit 2

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# Exhibit 2

1 BRENDA J. ERDOES, Legislative Counsel  
Nevada Bar No. 3644  
2 KEVIN C. POWERS, Chief Litigation Counsel  
Nevada Bar No. 6781  
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*Attorneys for the Legislature of the State of Nevada*

7 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
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14 HONORABLE BEN KIECKHEFER, THE  
15 HONORABLE IRA HANSEN, and THE  
16 HONORABLE KEITH PICKARD, in their official  
capacities as members of the Senate of the State of  
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14 Plaintiffs,

15 vs.

16 STATE OF NEVADA ex rel. THE HONORABLE  
17 NICOLE CANNIZZARO, in her official capacity  
18 as Senate Majority Leader; THE HONORABLE  
19 KATE MARSHALL, in her official capacity as  
20 President of the Senate; CLAIRE J. CLIFT, in her  
21 official capacity as Secretary of the Senate; THE  
22 HONORABLE STEVE SISOLAK, in his official  
capacity as Governor of the State of Nevada;  
NEVADA DEPARTMENT OF TAXATION;  
NEVADA DEPARTMENT OF MOTOR  
VEHICLES; and DOES I-X, inclusive,

22 Defendants.

Case No. 19 OC 00127 1B  
Dept. No. I

23 **ORDER GRANTING NEVADA LEGISLATURE'S**  
24 **MOTION TO INTERVENE AS DEFENDANT**

1 ORDER

2 This matter is before the Court on the Nevada Legislature’s Motion to Intervene as Defendant,  
3 which was filed on November 6, 2019. The Court, having read the papers and pleadings on file herein,  
4 finds and orders as follows:

5 1. Plaintiffs filed their original Complaint on July 19, 2019, and Plaintiffs filed their First  
6 Amended Complaint on July 30, 2019. In their First Amended Complaint, Plaintiffs are challenging the  
7 constitutionality of Senate Bill No. 542 (SB 542) and Senate Bill No. 551 (SB 551) of the 80th (2019)  
8 Session of the Nevada Legislature. Plaintiffs allege that SB 542 and SB 551 were each subject to the  
9 two-thirds majority requirement in Article 4, Section 18(2) of the Nevada Constitution and that, as a  
10 result, each bill is unconstitutional because the Senate passed each bill by a majority of all the members  
11 elected to the Senate, instead of a two-thirds majority of all the members elected to the Senate. Plaintiffs  
12 ask for a declaration that each bill is unconstitutional in violation of Article 4, Section 18(2), and  
13 Plaintiffs also ask for an injunction against enforcement of each bill.

14 2. On November 6, 2019, the Nevada Legislature filed a Motion to Intervene as Defendant to  
15 defend the constitutionality of SB 542 and SB 551. Among other grounds, the Legislature asserts that it  
16 qualifies for intervention of right under NRCP 24(a)(1) and NRS 218F.720 because the statute confers  
17 an unconditional right to intervene when a party alleges that the Legislature has violated the Nevada  
18 Constitution or alleges that any law is invalid, unenforceable or unconstitutional.

19 3. NRCP 24(a)(1) provides for intervention of right and states that:

20 (a) **Intervention of Right.** On timely motion, the court must permit anyone to  
21 intervene who:

22 (1) is given an unconditional right to intervene by a state or federal statute; or

23 \* \* \*

24 4. NRS 218F.720 provides that when a party alleges that the Legislature has violated the Nevada  
Constitution or alleges that any law is invalid, unenforceable or unconstitutional, “the Legislature may

1 elect to intervene in the action or proceeding by filing a motion or request to intervene in the form  
2 required by the rules, laws or regulations applicable to the action or proceeding.” NRS 218F.720(2).

3 The statute further provides that:

4 3. Notwithstanding any other law to the contrary, upon the filing of a motion or request  
5 to intervene pursuant to [NRS 218F.720(2)], the Legislature has *an unconditional right and*  
6 *standing to intervene* in the action or proceeding and to present its arguments, claims,  
7 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.

8 NRS 218F.720(3) (emphasis added).


9 5. The Court concludes that: (1) the Legislature qualifies for intervention of right under  
10 NRCF 24(a)(1) and NRS 218F.720; (2) the Legislature’s Motion to Intervene is timely; and (3) the  
11 Legislature’s intervention will not delay the proceedings, complicate management of the case or cause  
12 any prejudice to existing parties.

13 **IT IS HEREBY ORDERED THAT** the Legislature’s Motion to Intervene as Defendant is  
14 **GRANTED.**

15 DATED: This \_\_\_\_\_ day of \_\_\_\_\_, 2019.

16  
17 \_\_\_\_\_  
18 **DISTRICT COURT JUDGE**

18 Submitted by:

19 

20 KEVIN C. POWERS  
21 Chief Litigation Counsel  
22 Nevada Bar No. 6781  
23 LEGISLATIVE COUNSEL BUREAU, LEGAL DIVISION  
24 401 S. Carson St.  
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6 Attorneys for Plaintiffs  
7  
8

9 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
10 IN AND FOR CARSON CITY  
11

12 THE HONORABLE JAMES SETTELMAYER,  
13 THE HONORABLE JOE HARDY,  
14 THE HONORABLE HEIDI GANSERT,  
15 THE HONORABLE SCOTT HAMMOND,  
16 THE HONORABLE PETE GOICOCHEA,  
17 THE HONORABLE BEN KIECKHEFER,  
18 THE HONORABLE IRA HANSEN, and  
19 THE HONORABLE KEITH PICKARD,  
in their official capacities as members of the  
Senate of the State of Nevada and individually;  
20 GREAT BASIN ENGINEERING  
21 CONTRACTORS, LLC, a Nevada limited  
22 liability company; GOODFELLOW  
23 CORPORATION, a Utah corporation qualified  
24 to do business in the State of Nevada;  
25 KIMMIE CANDY COMPANY, a Nevada  
corporation; KEYSTONE CORP., a Nevada  
nonprofit corporation; NATIONAL FEDERATION  
OF INDEPENDENT BUSINESS, a California  
nonprofit corporation qualified to do business  
in the State of Nevada; NEVADA FRANCHISED  
AUTO DEALERS ASSOCIATION, a Nevada  
nonprofit corporation; NEVADA TRUCKING  
ASSOCIATION, INC., a Nevada nonprofit  
corporation; and RETAIL ASSOCIATION  
OF NEVADA, a Nevada nonprofit corporation,

26 Plaintiffs,

27 vs.

28 ///

///

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L. PETERSON  
C. TOWNSEND

Case No: 19 OC 00127 1B

Dept. No: I

**REPLY IN SUPPORT OF  
MOTION TO DISQUALIFY**

ALLISON MacKENZIE, LTD.  
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1 STATE OF NEVADA *ex rel.* THE  
2 HONORABLE NICOLE CANNIZZARO,  
3 in her official capacity as Senate Majority  
4 Leader; THE HONORABLE KATE  
5 MARSHALL, in her official capacity as  
6 President of the Senate; CLAIRE J. CLIFT,  
7 in her official capacity as Secretary of  
8 the Senate; THE HONORABLE STEVE  
9 SISOLAK, in his official capacity as  
10 Governor of the State of Nevada; NEVADA  
11 DEPARTMENT OF TAXATION;  
12 NEVADA DEPARTMENT OF MOTOR  
13 VEHICLES; and DOES I-X, inclusive,

8 Defendants.

9  
10 REPLY IN SUPPORT OF MOTION TO DISQUALIFY

11 Plaintiffs, THE HONORABLE JAMES SETTELMAYER, THE HONORABLE JOE  
12 HARDY, THE HONORABLE HEIDI GANSERT, THE HONORABLE SCOTT HAMMOND, THE  
13 HONORABLE PETE GOICOECHEA, THE HONORABLE BEN KIECKHEFER, THE  
14 HONORABLE IRA HANSEN and THE HONORABLE KEITH PICKARD in their official capacities  
15 as members of the Senate of the State of Nevada ("Plaintiff Senators") by and through their attorneys,  
16 ALLISON MacKENZIE, LTD., file this Reply in Support of their Motion to Disqualify the  
17 LEGISLATIVE COUNSEL BUREAU, LEGAL DIVISION ("LCB Legal") as counsel for Defendant  
18 THE HONORABLE NICOLE CANNIZZARO, in her official capacity as Senate Majority Leader and  
19 Defendant CLAIRE J. CLIFT, in her official capacity as Secretary of the Senate (sometimes referred  
20 to as "Legislative Defendants"). This Reply is made and based upon the following Memorandum of  
21 Points and Authorities and all other papers and pleadings on file in this matter.

22 MEMORANDUM OF POINTS AND AUTHORITIES

23 I.

24 INTRODUCTION

25 Noticeably absent from Legislative Defendants' Opposition is any mention of LCB Legal's  
26 duty of loyalty owed to its clients Plaintiff Senators. The allegation Legislative Defendants were  
27 named in this action to create a conflict for LCB Legal shows the lengths the opposing parties will go  
28 to ignore the duty of loyalty owed by LCB Legal to Plaintiff Senators so as to allow LCB Legal to

1 remain as counsel is this action for its other clients – Legislative Defendants. There is no way  
2 Legislative Defendants would or should know Plaintiff Senators’ legal reasons or basis, which are  
3 privileged under the attorney work product doctrine, for naming certain defendants in this action.  
4 Legislative Defendants’ allegations as to the reasons for including certain defendants in this action are  
5 wholly speculative, unfounded and frankly offensive. LCB Legal voluntarily determined it could  
6 represent the Legislative Defendants in this action. LCB Legal freely filed the Answer on behalf of  
7 Legislative Defendants. When LCB Legal accepted service on behalf of the Legislative Defendants,  
8 it was required under the Nevada Rules of Professional Conduct to determine if it had a concurrent  
9 conflict of interest. It obviously did not do so. Instead of reflecting on its own actions required under  
10 the Code of Professional Conduct, it is apparently the position of LCB Legal that *its* conflict is Plaintiff  
11 Senators’ fault. The fact that Legislative Defendants would make such a public unsupported allegation  
12 against Plaintiff Senators only underscores the egregious nature of LCB Legal’s concurrent conflict  
13 and its total abandonment of its fiduciary duty to maintain undivided loyalty to its clients. Because  
14 LCB Legal refuses to honor its ethical obligations, the Court must protect Plaintiff Senators’ legitimate  
15 expectations of loyalty in this instance and grant Plaintiff Senators’ motion to disqualify to avoid  
16 undermining public confidence in the legal profession and the judicial process.

17 II.

18 STATEMENT OF RELEVANT FACTS

19 A. Statements by Executive and Legislative Defendants Prior to May 8, 2019 LCB  
20 Opinion.

21 As early as January 2019, Defendant Governor Sisolak made public statements in the media  
22 that cancellation of a proposed reduction in the payroll tax rate worth \$48 million a year was not a tax  
23 increase and he was not convinced it would take a two-thirds majority to pass. *See* Megan Messerly,  
24 Jackie Valley and Jacob Solis, Sisolak Carves Out Liberal Positions, Defends Moderate Bona Fides  
25 in Wide-Ranging Discussion, The Nevada Independent (January 23, 2019),  
26 [https://thenevadaindependent.com/article/sisolak-carves-out-liberal-positions-defends-moderate-](https://thenevadaindependent.com/article/sisolak-carves-out-liberal-positions-defends-moderate-bona-fides-in-wide-ranging-discussion)  
27 [bona-fides-in-wide-ranging-discussion](https://thenevadaindependent.com/article/sisolak-carves-out-liberal-positions-defends-moderate-bona-fides-in-wide-ranging-discussion); Affidavit of Senator James Settlemeyer at ¶5. In addition,  
28 early in the 2019 Session, then Senate Majority Leader Atkinson and later Defendant Majority Leader



1 Cannizzaro made the same type of statements to Senator Settlemeyer. *See* Affidavit of Senator James  
2 Settlemeyer at ¶6. Minority Leader Settlemeyer and Minority Floor Leader Wheeler requested that  
3 LCB Legal issue a written opinion on the two thirds majority issue. *See* Affidavit of Senator James  
4 Settlemeyer at ¶7. Senator Settlemeyer is informed and believes the Majority Legislative Leadership  
5 made the same request to LCB Legal. *See* Affidavit of Senator James Settlemeyer at ¶7.

6 B. LCB Legal Opinion.

7 LCB Legal’s Opinion issued May 8, 2019 was addressed to “Legislature Leadership”. For the  
8 Senate, it was directed to Majority Leader Cannizzaro and Minority Leader Settlemeyer; for the  
9 Assembly, it was directed to Speaker Frierson and Minority Floor Leader Wheeler. Minority Leader  
10 Settlemeyer and Minority Floor Leader Wheeler each received a copy of the LCB Opinion on May 8,  
11 2019. *See* Affidavit of Senator James Settlemeyer at ¶8. Senator Settlemeyer is informed and believes  
12 Majority Leader Cannizzaro and Speaker Frierson also received a copy of the LCB Opinion on May  
13 8, 2019. *See* Affidavit of Senator James Settlemeyer at ¶8.

14 The opinions expressed in the LCB Opinion were not made in reference to any pending bill at  
15 the time - - the Opinion addressed two hypothetical questions. The first question was: “Whether the  
16 two-thirds majority requirement applied to a bill which extends until a later date—or revises or  
17 eliminates—a future decrease in or future expiration of existing state taxes when that future decrease  
18 or expiration is not legally operative and binding yet.” The second question was: “Whether the two-  
19 thirds majority requirement applies to a bill which reduces or eliminates available tax exemptions or  
20 tax credits applicable to existing state taxes.” *See* May 8, 2019, LCB Legal Opinion, p. 1. SB 542  
21 and SB 551 had not yet been introduced in the 2019 Legislative Session. Thus, not only did the LCB  
22 Opinion relate to SB 542 and SB 551 when they were subsequently introduced, the LCB Opinion also  
23 applied to future legislative action when an analysis under Article 4, Section 18(2) of the Nevada  
24 Constitution was required.

25 Senator Settlemeyer was very vocal in the media that the Nevada Senate Republican Caucus  
26 would sue because LCB Legal’s Opinion was contrary to the Nevada Constitution. *See* Affidavit of  
27 Senator James Settlemeyer at ¶10.

28 ///

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C. Named Defendants.

The persons named in their official capacities as Executive and Legislative Defendants in the First Amended Complaint all have constitutional or statutory duties to uphold the law. See First Amended Complaint ¶¶ 16, 17, 18, and 19.<sup>1</sup> In addition to her statements referenced above in Section B, Defendant Cannizzaro was the sponsor of SB 551, and brought both SB 542 and SB 551 to the Senate floor as the Majority Leader. See First Amended Complaint ¶¶ 38, 45. Notwithstanding the LCB Opinion she was provided, Defendant Majority Leader Cannizzaro first attempted to obtain a two thirds majority vote on SB 551. See First Amended Complaint at ¶ 45. When that first attempt failed, after a brief recess, Defendant Majority Leader Cannizzaro then brought SB 551 forward again on the Senate Floor and allowed the bill to pass with a simple majority vote. *Id.* at ¶ 46. Defendant Clift as Secretary of the Senate is responsible to Defendant Majority Leader Cannizzaro. Senate Standing Rule 3(2). The LCB Opinion at issue in this case was directed to Legislative Leadership which included Majority Leader Cannizzaro.

D. Legislative Defendants' Answer.

Defendants Cannizzaro and Clift did not file a motion to dismiss the First Amended Complaint pursuant to NRCP 12(b)(6) on the grounds it failed to state a claim against them as a matter of law or that said Defendants were not necessary parties to the action and should be dismissed. While the Answer includes a general affirmative defense the First Amended Complaint fails to state a claim for which relief can be granted, Defendants Cannizzaro and Clift did not raise any defenses that they were not necessary parties to this action and should be dismissed from the action. See Answer at 12. In addition, Defendants Cannizzaro and Clift admit all allegations regarding their statutory duties and that SB 542 and SB 551 did not require a two thirds majority to pass. See Answer at ¶¶ 39 and 46.

LCB Legal voluntarily determined it could represent the Legislative Defendants in this action. LCB Legal freely filed the Answer on behalf of Legislative Defendants.

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<sup>1</sup> The 2019 Assembly passed SB 542 and SB 551 with a two thirds majority. The Legislature acts through its duly authorized members and Plaintiff Senators had no intention of suing themselves in their First Amended Complaint.

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1 E. Discussions with LCB Legal Regarding Conflict and Authorization to File Motion  
2 to Disqualify.

3 On October 7, 2019, the undersigned met with Kevin Powers, Chief Litigation Counsel for  
4 LCB Legal. See Affidavit of Karen Peterson at ¶3. Mr. Powers indicated the Legislative Defendants  
5 wanted an extension of time until October 28, 2019 to file their opposition to Plaintiffs' motion for  
6 summary judgment and to file their own motion for summary judgment. See Affidavit of Karen  
7 Peterson at ¶4. The undersigned informed Mr. Powers that she and the Plaintiff Senators believed  
8 LCB Legal had a conflict of interest in this case and could not represent the Legislative Defendants  
9 against the Plaintiff Senators. See Affidavit of Karen Peterson at ¶4. Mr. Powers indicated a court  
10 order would be necessary to remove LCB Legal as counsel in this case. See Affidavit of Karen  
11 Peterson at ¶4. On October 8, 2019, the undersigned telephoned Mr. Powers and indicated the  
12 Plaintiffs would give Legislative Defendants their requested extension of time until October 28, 2019  
13 to file their opposition to Plaintiff's motion for summary judgment and to file their own motion for  
14 summary judgment. See Affidavit of Karen Peterson at ¶5. The undersigned also indicated to Mr.  
15 Powers the Plaintiff Senators were still discussing the disqualification motion. See Affidavit of Karen  
16 Peterson at ¶5.

17 On October 24, 2019 the undersigned was authorized by her Plaintiff Senator clients to file the  
18 motion to disqualify LCB Legal as counsel for the Legislative Defendants and filed the motion on that  
19 date. See Affidavit of Karen Peterson at ¶6. Between October 8, 2019 and October 24, 2019, several  
20 of the Plaintiff Senators had been unavailable to discuss the motion to disqualify. See Affidavit of  
21 Senator James Settelmeyer at ¶11.

22 III.  
23 SUMMARY OF THE ARGUMENT

24 In their Opposition, Legislative Defendants Cannizzaro and Clift make several arguments as  
25 to why LCB Legal should not be disqualified from representing them in this action. Legislative  
26 Defendants assert Plaintiff Senators are equitably estopped from disqualifying LCB Legal and further,  
27 Plaintiff Senators waived their right to raise the conflict of interest. Legislative Defendants' contention  
28 that Plaintiff Senators are equitably estopped from asserting a conflict of interest is not appropriate or

1 applicable in this case. Further, Plaintiff Senators did not waive their right to raise a conflict of interest  
2 against LCB Legal. Legislative Defendants argue that RPC 1.7 is not directly applicable to LCB Legal  
3 because NRS Chapter 218F, LCB Legal’s enabling statutes, provides express statutory authority to  
4 represent Defendants Cannizzaro and Clift. No provision within the statutes expressly or impliedly  
5 exempts LCB Legal from RPC 1.7. Moreover, the separation of powers doctrine prohibits the  
6 Legislature from providing an exemption to the Rules of Professional Conduct for LCB lawyers as it  
7 is within the Nevada Supreme Court’s purview to regulate the profession of law.

8 Legislative Defendants argue Plaintiff Senators do not have a confidential relationship with  
9 LCB Legal and therefore do not have standing to assert a disqualification motion. The language of  
10 LCB Legal’s enabling statute creates a confidential relationship between Plaintiff Senators and LCB  
11 Legal. In addition, LCB Legal holds itself out as legal counsel to Plaintiff Senators, thus creating both  
12 a subjective and objective appearance of representation. Plaintiff Senators therefore have standing to  
13 assert a conflict of interest.

14 Finally, Legislative Defendants have failed to show that the balance of equities weighs in favor  
15 of denying disqualification of LCB Legal as their counsel.

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IV.  
ARGUMENT

A. The Doctrines of Equitable Estoppel and Waiver are Not Applicable.

19 Legislative Defendants assert that Plaintiff Senators should be barred from seeking  
20 disqualification of LCB Legal for a conflict of interest under the doctrine of equitable estoppel and  
21 waiver because Plaintiff Senators knew a conflict of interest was present when Plaintiffs named  
22 Defendants Cannizzaro and Clift in their official capacities in their First Amended Complaint. Under  
23 this argument, Legislative Defendants assert they do not provide “statewide administrative functions  
24 under the challenged statutes in SB 542 and SB 551” (Opposition, p. 3) and, therefore, they are not  
25 necessary parties to the action.

26 Legislative Defendants continue that because Plaintiff Senators knew LCB Legal was  
27 statutorily authorized to represent Defendants Cannizzaro and Clift in their official capacities, naming  
28 them as Defendants was a “calculated and tactical litigation decision in order to gain an advantage in

1 the litigation” (Opposition, p. 8). Thus, according to the Legislative Defendants, Plaintiff Senators  
2 should be barred from asserting a conflict of interest on the basis of equitable estoppel.

3 The premise of Legislative Defendants’ argument is without support. Legislative Defendants  
4 were properly named as parties to this action as shown below. Further, the doctrine of equitable  
5 estoppel has no application to the facts at issue here. Finally, Plaintiff Senators did not waive their  
6 right to seek disqualification on the basis of a conflict of interest.

7 **1. Defendants Cannizzaro and Clift were Properly Named as Parties in this**  
8 **Action for Declaratory Relief.**

9 First and foremost, Legislative Defendants did not assert any claim or defense in their  
10 Answer to Plaintiffs’ First Amended Complaint that Defendants Cannizzaro and Clift were not  
11 necessary parties to this litigation. Moreover, at no time prior to the filing of their Opposition was any  
12 motion to dismiss filed to remove Defendants Cannizzaro and Clift from this action. Thus, the  
13 argument that Legislative Defendants are not necessary parties to this litigation is only raised in  
14 response to Plaintiff Senators’ Motion to Disqualify for the purposes of allowing LCB Legal to remain  
15 as counsel in this action notwithstanding its concurrent conflict of interest. Moreover, on the one  
16 hand, Legislative Defendants argue that Defendants Cannizzaro and Clift are not necessary parties as  
17 they do not perform “statewide administrative functions,” but on the other hand, in Nevada  
18 Legislature’s pending Motion to Intervene, the same legal counsel - - LCB Legal - - contends the  
19 Legislature has an absolute right to intervene and that LCB Legal must represent it, notwithstanding  
20 that the Legislature does not perform “statewide administrative functions”.<sup>2</sup>

21 Second, Defendants Cannizzaro and Clift were properly named as parties in this action for  
22 declaratory relief pursuant to NRS 30.130. A claim for declaratory relief is available if “1) a justiciable  
23 controversy exists between persons with adverse interests; 2) the party seeking declaratory relief has  
24 a legally protectable interest in the controversy; and 3) the issue is ripe for judicial determination.”  
25 *County of Clark, ex rel. University Medical Center v. Upchurch*, 114 Nev. 749, 752, 961 P.2d 754,  
26 756 (1998). NRS 30.130 provides in pertinent part: “When declaratory relief is sought, all persons

27  
28 <sup>2</sup> Likewise, the concurrent conflict of interest of LCB Legal exists in that instance as well between the proposed intervener  
Legislature and the instant Plaintiff Senators.

1 shall be made parties who have or claim any interest which would be affected by the declaration, and  
2 no declaration shall prejudice the rights of persons not parties to the proceeding. . . ." (Emphasis  
3 added).

4 As alleged in the Complaint, there is an actual justiciable controversy between Plaintiff  
5 Senators and Defendants Cannizzaro and Clift regarding the applicability of Article 4, Section 18(2)  
6 of the Nevada Constitution, which requires a two-thirds vote of the Legislature to approve a bill which  
7 creates, generates, or increases any public revenue in any form or changes in the computation bases  
8 for taxes fess, assessments and rates. Defendant Cannizzaro, as the Senate Majority Leader, brought  
9 SB 542 and SB 551 to the Senate Floor and allowed a vote of less than two-thirds of the Senate to  
10 approve both SB 542 and SB 551. Defendant Clift, as the Secretary of the Senate, deemed the bills  
11 constitutionally passed with less than a vote of two-thirds of the Senate.

12 The actions of Defendants Cannizzaro and Clift, in allowing passage of the bills without  
13 applying the two-thirds majority requirement under the Nevada Constitution, were directly adverse to  
14 the interests of Plaintiff Senators, whose votes on the bills were nullified thereby. Plaintiff Senators  
15 seek declarations from this Court regarding the actions of Defendants Cannizzaro and Clift and  
16 whether the Nevada Constitution prohibited those actions. See Complaint, ¶¶ 24, 33-39, 44-46, 56,  
17 and 74-78. The actions of Defendants Cannizzaro and Clift with respect to SB 542 and SB 551 and  
18 Plaintiff Senators' legitimate questions regarding the same present an actual justiciable controversy  
19 that is ripe for this Court's determination. Defendants Cannizzaro and Clift were properly named as  
20 parties to this action for declaratory relief.<sup>3</sup>

21 As set forth in the Affidavit of Karen Peterson filed herewith, counsel does not name  
22 Defendants as parties in an action based upon who the opposing lawyer might be. See Affidavit of  
23 Karen Peterson at ¶7. Legislative Defendants do not control this action filed by Plaintiff Senators and  
24 Plaintiffs are entitled to bring their claims and name the parties they deem appropriate in their  
25 litigation. Because of the arguments made in Legislative Defendants' Opposition, Plaintiff Senators  
26

27 <sup>3</sup> Legislative immunity only applies for actions performed within the sphere of legitimate legislative activity. NRS 41.071.  
28 If Plaintiffs are successful in this action they will obtain a declaratory judgment that the legislation passed by Legislative  
Defendants was not legitimate legislative activity.

1 and their counsel have been put in the difficult position of revealing their litigation strategy, which is  
2 privileged and protected from discovery, in order to address the unfounded and speculative allegations  
3 of Legislative Defendants that the Motion to Disqualify is a calculated and tactical litigation decision  
4 in order to gain an advantage in the litigation. *See Wardleigh v. Second Judicial District Court in and*  
5 *for County of Washoe*, 111 Nev. 345, 357, 891 P.2d 1180, 1188 (1995) (The attorney work-product  
6 doctrine "also protects an attorney's mental impressions, conclusions, or legal theories concerning the  
7 litigation."). Legislative Defendants' and its counsel, LCB Legal's unsupported and speculative  
8 arguments are offensive and should be rejected by the Court.

9                   2.       **Legislative Defendants Fail to Prove Equitable Estoppel Can be Applied to**  
10                   **Bar Plaintiff Senators' Motion to Disqualify.**

11                   "Equitable estoppel functions to prevent the assertion of legal rights that in equity and good  
12 conscience should not be available because of a party's conduct." *In re Harrison Living Trust*, 121  
13 Nev. 217, 223 112 P.3d 1058, 1060 (2005). Four elements must be present to give rise to an equitable  
14 estoppel defense: "(1) the party to be estopped must be apprised of the true facts; (2) he must intend  
15 that his conduct shall be acted upon, or must so act that the party asserting estoppel has the right to  
16 believe it was so intended; (3) the party asserting the estoppel must be ignorant of the true state of  
17 facts; and (4) he must have relied to his detriment on the conduct of the party to be estopped." *Cheger,*  
18 *Inc. v. Painters and Decorators Joint Committee, Inc.* 98 Nev. 609, 614, 655 P.2d 996, 998-999 (1982).  
19 A determination of "whether these elements are present, so that the doctrine of equitable estoppel  
20 should be applied, depends upon the particular facts and circumstances of a given case." *Id.*

21                   In its Opposition, Legislative Defendants fail to list the elements required for equitable  
22 estoppel or provide the Court with any analysis of the elements for application of the equitable estoppel  
23 defense. This is grounds alone to reject Legislative Defendants' argument. Further, there are no facts  
24 shown by Legislative Defendants sufficient to support a finding of equitable estoppel in this instance.  
25 Plaintiff Senators are aware of LCB Legal's statutory authority under NRS 218F.720, which provides  
26 that the Legislative Commission "may direct the Legislative Counsel and the Legal Division to appear  
27 in, commence, prosecute, defend or intervene in any action or proceeding before any Court."  
28 (Emphasis added). Plaintiff Senators did not know LCB Legal would represent Defendants

1 Cannizzaro and Clift in this action until LCB Legal filed the Answer on behalf of said Legislative  
2 Defendants on September 16, 2019. Indeed, the authorizing statute, NRS 218F.720, provides that  
3 LCB Legal has just as much authority to represent the Plaintiff Senators as it does to represent  
4 Defendants Cannizzaro, Clift, or any other current or former member, officer, or employee of the  
5 Legislature. *See* NRS 218F.720(6)(c)(2).

6 The naming of Cannizzaro and Clift as defendants was not calculated or done with the intent  
7 to disqualify LCB Legal. Moreover, the filing of the Motion to Disqualify was certainly not a litigation  
8 tactic to “block, harass, or otherwise hinder the other party’s case.” *Baltimore County v. Barnhart*, 30  
9 A. 3d 291, 309 (Md. App. 2011). In the *Barnhart* decision, cited by Legislative Defendants in their  
10 Opposition to the Motion to Disqualify, the Maryland Court of Appeals found the defendant’s delay  
11 of more than a year in filing a motion to disqualify the plaintiff’s attorney on the basis of a conflict of  
12 interest and the fact the motion to disqualify was filed shortly after the plaintiff’s attorney publicly  
13 announced she would file a class action against the defendant for the same type of claims was  
14 indicative of an improper tactical decision by the defendant. *Id.* at 310. In contrast, here, LCB Legal  
15 freely and voluntarily filed the Answer of Defendants Cannizzaro and Clift to Plaintiffs’ First  
16 Amended Complaint on September 16, 2019. In early October, counsel to Plaintiff Senators met with  
17 LCB Legal and raised the issue of a conflict of interest. *See* Affidavit of Karen Peterson at ¶3. LCB  
18 Legal declined to withdraw as counsel and Plaintiff Senators filed the Motion to Disqualify on October  
19 24, 2019. *See* Affidavit of Karen Peterson at ¶¶ 3 and 6 . The prompt notification to LCB Legal of the  
20 conflict issue and the prompt filing of the Motion to Disqualify indicate Plaintiff Senators’ genuine  
21 concern regarding LCB Legal’s conflict of interest. There is no delay to be held against Plaintiff  
22 Senators and in fact any disadvantage caused by the Motion to Disqualify runs against Plaintiff  
23 Senators’ interest in moving this case along. Plaintiff Senators have been delayed in pursuing their  
24 action because LCB Legal refuses to honor its duty of loyalty owed to Plaintiff Senators and properly  
25 withdraw as counsel for Legislative Defendants as required by RPC 1.7.

26 Legislative Defendants are unable to show any facts supporting an intent on the part of the  
27 Plaintiff Senators to cause Defendants Cannizzaro and Clift to act in any particular way or that  
28



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1 Cannizzaro and Clift relied to their detriment on the actions of Plaintiff Senators. The elements of  
2 equitable estoppel simply have no application here.

3 3. Plaintiff Senators did not Waive their Right to Seek Disqualification of  
4 LCB Legal.

5 Legislative Defendants also cite a Minnesota Supreme Court decision to support the idea that  
6 courts should not “countenance the strategic use of disqualification motions to delay judicial  
7 proceedings to gain an advantage in litigation.” *State ex rel. Swanson v. 3M Co.* 845 N.W.2d 808, 818  
8 (2014). The Minnesota court expounded on the factors to be considered in determining whether a  
9 party has waived a right to disqualify opposing counsel, “including but not limited to (1) the length of  
10 the delay in bringing the motion to disqualify, (2) whether the movant was represented by counsel  
11 during the delay, and (3) the reason for the delay.” *Id.* In *State ex rel. Swanson v. 3M Co.*, the Court  
12 could not determine if there had been a waiver because the factual record to support waiver was  
13 deficient and the Court rejected as without legal merit the State’s argument the equities weighed  
14 against disqualification. *Id.* at 820. In fact, the Court held where the Minnesota Rules of Professional  
15 Conduct used mandatory language such as “shall not represent” there was no need for the Court to  
16 weigh the equities in making a determination on a disqualification motion when the Rule of  
17 Professional Conduct was phrased in mandatory language. *Id.*<sup>4</sup>

18 Further, the Nevada Supreme Court has addressed the issue of waiver with regard to a motion  
19 to disqualify in *Nevada Yellow Cab Corp. v. Eighth Judicial Dist. Court ex rel. County of Clark*, 123  
20 Nev. 44, 49 152 P.3d 737, 741 (2007). As the Court noted: “Waiver requires the intentional  
21 relinquishment of a known right. If intent is to be inferred from conduct, the conduct must clearly  
22 indicate the party's intention. Thus, the waiver of a right may be inferred when a party engages in  
23 conduct so inconsistent with an intent to enforce the right as to induce a reasonable belief that the right  
24 has been relinquished. However, delay alone is insufficient to establish a waiver.” *Id.* In the *Nevada*  
25 *Yellow Cab* case, the Court held a delay of over two years in bringing a motion to disqualify counsel

26 <sup>4</sup> The Minnesota Court also made clear that even if a client waives the right to seek disqualification of opposing counsel,  
27 an attorney's ethical obligations are not diminished, and those obligations imposed under the RPC apply. A district court's  
28 finding of waiver in the context of ongoing litigation will not preclude other remedies for violating the RPC, including  
attorney disciplinary action or a separate lawsuit against the attorney for breach of fiduciary duty. *State ex rel. Swanson*  
*v. 3M Co.*, 845 N.W.2d 808, 818–19 (Minn. 2014).

1 did not result in waiver where the movant identified the potential conflict almost immediately and  
2 asked the attorney to withdraw, the movant postponed the disqualification motion during mediation  
3 but promptly filed the motion when the mediation failed and its conduct thus did not demonstrate clear  
4 intent to relinquish the right to challenge the opposing attorney and his firm. *Id.* at 49-50, 152 P.3d  
5 740-741.

6 As previously discussed, there was no delay in filing the Motion to Disqualify and Legislative  
7 Defendants do not complain of any delay in filing the Motion to Disqualify. Legislative Defendants  
8 provide no showing that Plaintiff Senators' conduct demonstrated any clear intent to relinquish the  
9 right to challenge LCB Legal and their equitable waiver argument is without merit.

10 Additionally, LCB Legal cites *Brown & Williamson Tobacco Corp. v. Pataki*, 152 F. Supp. 2d  
11 276 (S.D.N.Y, 2001) to support its argument that Plaintiff Senators made a tactical decision that bars  
12 LCB Legal's disqualification. The facts in *Brown & Williamson* are very different from the facts of  
13 this case. In *Brown & Williamson*, the Court found the defendant State's delay of two months in  
14 bringing a disqualification motion against plaintiff's counsel would greatly prejudice the plaintiff  
15 given the expedited discovery schedule requested by the defendant State and the fact a preliminary  
16 injunction hearing was only 2½ months away. *Id.* at 289. The Court noted the accelerated process  
17 was the result of the defendant State's request for expedited proceedings after the issuance of a  
18 temporary restraining order against it. The Court noted the defendant State was understandably  
19 reluctant to consent to the extension of the TRO and did so only to permit the minimum time for trial  
20 preparation. *Id.* at 290. The defendant State argued the plaintiff counsel's conflict was apparent but  
21 the Court noted if that was true, the defendant State must have made a tactical decision at the outset  
22 not to seek what it regarded as an obviously required disqualification (or at least raise the issue) and  
23 instead chose to pursue expedited proceedings. *Id.* The State allowed plaintiff's counsel to participate  
24 in the action virtually until the eve of trial before raising the issue of disqualification. *Id.* The Court  
25 held the two-month delay was not sufficient by itself to deny the motion, however consideration of  
26 the delay confirmed the conclusion reached by the Court regarding prejudice. *Id.* Finally, the Court  
27 noted a hint of tactical maneuvering in the filing of the motion because the defendant State had never  
28 moved to disqualify the law firm in any other case over the years involving the State notwithstanding

1 its arguments that it only recently discovered there may be conflict and after plaintiffs had moved to  
2 depose two attorneys in the Governor's office, which the State stated on more than one occasion  
3 caused "significant displeasure". *Id.* The Court did not find the motion to disqualify was inspired  
4 solely by tactical motives, but consideration of the motives led to the conclusion already reached  
5 regarding prejudice. *Id.* at 290-291.

6 In this instance, there is no prejudice alleged by Legislative Defendants regarding trial  
7 preparation or that Plaintiff Senators allowed LCB Legal to participate in the action until the eve of  
8 trial before raising the issue of disqualification. The first time counsel for Plaintiff Senators raised the  
9 conflict issue was on October 7, 2019 – her first communication with LCB Legal. Plaintiff Senators'  
10 counsel specifically went over to LCB Legal's office to meet to discuss the conflict issue. *See*  
11 Affidavit of Karen Peterson at ¶3. At the same time, LCB Legal asked Plaintiff Senators for an  
12 extension of time to respond to Plaintiff's motion for summary judgment. *See* Affidavit of Karen  
13 Peterson at ¶4. The next day, the Plaintiff Senators agreed to Legislative Defendants' requested  
14 extension and again stated the Plaintiff Senators were considering the motion to disqualify. *See*  
15 Affidavit of Karen Peterson at ¶5. When the Motion to Disqualify was filed because LCB Legal would  
16 not remove itself as counsel for Legislative Defendants, Plaintiff Senators agreed to suspend briefing  
17 on the dispositive issues so that the Legislative Defendants would not be prejudiced if their counsel  
18 was disqualified.

19 The improper tactical decision Legislative Defendants complain of purportedly occurred when  
20 Plaintiff Senators filed their First Amended Complaint on July 30, 2019. LCB Legal then voluntarily  
21 appeared in the action for Legislative Defendants and freely filed the Answer on behalf of said  
22 Legislative Defendants. The purpose of the motion for disqualification was to address a true  
23 concurrent conflict of interest between LCB Legal's representation of Defendants Cannizzaro and  
24 Clift and Plaintiff Senators. Plaintiff Senators were forced to file the Motion to Disqualify because  
25 LCB Legal indicated on October 7, 2019 a court order would be necessary to remove LCB Legal as  
26 counsel in this case. *See* Affidavit of Karen Peterson at ¶4.

27 The Nevada Legislature's pending Motion to Intervene admits the litigation is at an early stage  
28 and its intervention is appropriate because the briefing on the dispositive motions are stayed and its

1 participation will not delay the proceedings and complicate the management of the case. *See Nevada*  
2 *Legislature's Motion to Intervene* at 5-6. The Nevada Legislature is represented by LCB Legal, who  
3 again seeks to jump into this case notwithstanding the pending Motion to Disqualify against it. The  
4 pending Motion to Disqualify is equally applicable to LCB Legal's representation of the Nevada  
5 Legislature. From Plaintiff Senators viewpoint, LCB Legal's insistence on representing the Nevada  
6 Legislature in this proceeding against the Plaintiff Senators only exacerbates the concurrent conflict  
7 of interest.

8 Finally, Legislative Defendants' arguments that equitable estoppel and equitable waiver should  
9 be applied are implicit admissions there is a concurrent conflict of interest. Legislative Defendants  
10 cannot provide any facts to support a delay argument or use of the Motion to Disqualify as an improper  
11 litigation tactic by Plaintiff Senators in seeking to disqualify LCB Legal. Accordingly, such arguments  
12 must be rejected by the Court.

13 **B. Conflict of Interest Rules Apply to LCB Legal.**

14 Legislative Defendants argue Rule 1.7 of the Nevada Rules of Professional Conduct (RPC)  
15 does not apply to the attorneys working for LCB Legal, based on the enabling language of NRS  
16 218F.720. In support, Legislative Defendants offer strained readings of relevant provisions of the  
17 RPC and NRS 218F.720.

18 **1. there is no Express Statutory Authority or Unique Role Provided to LCB**  
19 **Legal that Exempts it from Conflicts of Interest or Limits the Application**  
**of the Rules of Professional Conduct.**

20 Legislative Defendants argue the RPC exempts government lawyers from RPC 1.7 or limits  
21 the application of RPC 1.7. Legislative Defendants rely on the provision of RPC 1.11 which provides  
22 that "except as law may otherwise *expressly* permit, a lawyer currently serving as a public officer or  
23 employee is subject to Rules 1.7 and 1.9." (Emphasis added). Legislative Defendants argue that "as  
24 applied to government lawyers—the conflict-of-interest rules in RPC 1.7 are limited by 'law,'  
25 including by the statutory duties of government lawyers to provide legal representation to their  
26 government clients." (Opposition p. 12) NRS Chapter 218F generally authorizes, but does not  
27 mandate, LCB Legal's representation of the Legislature, which is defined to include specific members  
28 of either legislative house, as well as officers and employees thereof. There is nothing, however, in

1 NRS Chapter 218F that expressly exempts LCB Legal from or limits the application of RPC 1.7's  
2 conflict of interest considerations. If anything, NRS Chapter 218F reinforces that LCB Legal's  
3 attorneys regularly encounter and are entrusted with confidential and privileged information that is  
4 "not subject to discovery or subpoena, unless the person entrusting the matter to the Legislative  
5 Counsel Bureau requests or consents to the disclosure." NRS 218F.150.

6 Legislative Defendants rely on the *ABA Model Rules of Professional Conduct*, Preamble and  
7 Scope Section 18 to support their argument. While Legislative Defendants cite to only a portion of  
8 Section 18 in their Opposition, Section 18 states in its entirety:

9 Under various legal provisions, including constitutional, statutory  
10 and common law, the responsibilities of government lawyers may  
11 include authority concerning legal matters that ordinarily reposes in  
12 the client in private client-lawyer relationships. For example, a  
13 lawyer for a government agency may have authority on behalf of the  
14 government to decide upon settlement or whether to appeal from an  
15 adverse judgment. Such authority in various respects is generally  
16 vested in the attorney general and the state's attorney in state  
17 government, and their federal counterparts, and the same may be  
18 true of other government law officers. Also, lawyers under the  
19 supervision of these officers may be authorized to represent several  
20 government agencies in intragovernmental legal controversies in  
21 circumstance where a private lawyer could not represent multiple  
22 private clients.

23 First, as Legislative Defendants note, RPC 1.0A, as enacted in Nevada, specifically notes that  
24 the preamble to the ABA Model Rules of Professional Conduct "are not enacted by this Rule" but may  
25 only be consulted for guidance in interpreting Nevada's RPC. The provisions of Section 18 of the  
26 preamble to the model rules, therefore, are not binding. Moreover, the examples contained in Section  
27 18 of the Preamble to the model rules do not apply to the facts at issue here and such an application  
28 was clearly not contemplated within the ABA's comments. LCB Legal is not representing multiple  
adverse legal agencies at one time. Here, LCB Legal is electing to represent certain members of the  
Legislature in an action directly adverse to other members of the Legislature. This situation is not  
acceptable under the Nevada RPC or the ABA Model Rules of Professional Conduct.

Legislative Defendants state that 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." (Opposition, 12). Legislative

1 Defendants also cite several cases each of which is distinguishable from LCB Legal's representation  
2 here. In *State ex rel. Comm'r of Transp. v. Med. Bird Black Bear White Eagle*, 63 S.W. 3d 734, 773  
3 (Tenn. Ct. App. 2001) the Court acknowledged "that the Attorney General, through his or her  
4 assistants, may represent adverse state agencies in intra-governmental disputes." Here, LCB Legal's  
5 role and position is vastly different from that of an Attorney General. Nevada's Attorney General is  
6 tasked with representing a wide variety of state agencies, officers, boards and commissions under  
7 various provisions of Nevada law. LCB Legal represents one client in civil actions – the Legislature  
8 as defined in NRS 218F.720 – and only "when deemed necessary or advisable." NRS 218F.720. The  
9 representation of one member of the Legislature adverse to another is not authorized anywhere in NRS  
10 Chapter 218F or by any case cited by Legislative Defendants.

11 Legislative Defendants cite *State v. Klattenhoff*, 801 P.2d 548 (Haw. 1990) for the proposition  
12 that mechanical application of the RPC to the attorney general is inappropriate where the attorney  
13 general is mandated by statute to undertake certain representation. The Plaintiff Senators note that  
14 general proposition has no application here. In *Klattenhoff*, the attorney general was mandated by  
15 statutes to represent adverse interests of two different state agencies in the same case. The Supreme  
16 Court of Hawaii noted that no conflict existed where the "AG can ensure independent representation  
17 for the competing parties." *Id.* at 551. Here, LCB Legal is representing one current client against  
18 another current client. The point of Plaintiff Senators' Motion to Disqualify it to ensure independent  
19 representation of competing parties because LCB Legal has a conflict. Again, LCB Legal has but one  
20 client – the Legislature as defined in NRS 218F.720. There is no statutory authorization for LCB  
21 Legal's representation of members of the Legislature against other members.

22 The Courts in *Environmental Protection Agency v. Pollution Control Bd.*, 372 N.E. 2d 50, 53  
23 (Ill. 1977) and *Gibson v. Johnson* 35 Or. App. 493, 499 (1978), made similar findings as the Tennessee  
24 and Hawaii courts noted above. Plaintiff Senators agree that LCB Legal's authority to represent the  
25 Legislature and its members is also conferred by statute. That is, however, where the similarities end.  
26 First, LCB Legal's representation of the Legislature or its members is not mandated. It is only when  
27 the Legislative Commission deems the representation to be "necessary or advisable to protect the  
28 official interests of the Legislature" that such representation is even triggered. Second, and more

1 importantly, again, LCB Legal represents just one client – the Legislature. While the Legislature is  
2 defined to include individual members, officers, and employees, there is no analogous statutory  
3 authorization or implication in NRS Chapter 218F that allows LCB Legal to represent some of the  
4 Legislature against other members of the Legislature. Thus, LCB Legal is subject to the conflict of  
5 interest rules under RPC 1.7.

6 Legislative Defendants cite Restatement (Third) of the Law Governing Lawyers § 97 & cmt.  
7 b (2000) in their Opposition at page 13. Again, they do not cite the entire provision. Comment g is  
8 specifically referenced at the end of their quote and provides:

9 *g. A government lawyer with powers of decision. A government*  
10 *lawyer may be empowered by law to make decisions in a*  
11 *representation that, as stated in §§ 21(2) and 22, are within the*  
12 *authority of a client. The lawyer must exercise such powers to*  
13 *advance the governmental and public objectives of the*  
*governmental client as defined in statutory, regulatory, and other*  
*law (see Comment f hereto). Such a lawyer is empowered to take*  
*partisan political considerations into account to the extent consistent*  
*with the objectives and responsibilities of the governmental client.*

14 Restatement (Third) of the Law Governing Lawyers § 97 & cmt. g (2000). There is nothing in the  
15 Restatement (Third) of the Law Governing Lawyers § 97 that provides any authority to support  
16 Legislative Defendants argument that when applying conflict of interest rules in RPC 1.7 to  
17 government lawyers, “courts must first consider whether those government lawyers have been given  
18 statutory powers to provide legal representation to their government clients that takes precedence over  
19 the conflict-of-interest rules in RPC 1.7 in order to ensure the proper functioning of state government  
20 and guarantee the separation of powers.” Opposition at page 13. In fact, § 97 specifically provides  
21 that conflict of interest requirements apply to lawyers representing a governmental client. *Id.* at cmt  
22 a (*Scope and cross-references. . . Many legal rules beyond those stated in the Section apply to a*  
23 *lawyer representing a governmental client. . . §§ 16(3) and 121 (duty to comply with conflict-of-*  
24 *interest requirements); cmt. e (Conflicts of interest. Government lawyers are generally subject to the*  
25 *conflict-of-interest requirements stated in Chapter 8). Legislative Defendants have cited no authority*  
26 *to support their argument that LCB Legal has some sort of supreme statutory power to ensure the*  
27 *proper functioning of state government and guarantee the separation of power that takes precedence*  
28 *over the conflict of interest rules in RPC 1.7.*

1                   2.     **The Separation of Powers Doctrine Prohibits the Legislature from**  
2                             **Exempting LCB Legal From or Limiting the Applicability of the Rules of**  
3                             **Professional Conduct.**

4                   Nev. Const. Art. 3, Section 1(1) states that,

5                             “the powers of the Government of the State of Nevada shall be  
6                             divided into three separate departments—the Legislative, the  
7                             Executive and the Judicial; and no persons charged with the exercise  
8                             of powers properly belonging to one of these departments shall  
9                             exercise any functions, appertaining to either of the others, except  
10                            in cases expressly directed or permitted in this constitution.

11                   Pursuant to the doctrine of the separation of powers, “the independence of one branch from the  
12                   others and requirement that one department cannot exercise powers of the other two is fundamental in  
13                   our system of government.” *Galloway v. Truesdell*, 83 Nev. 13, 19, 422 P.2d 237, 242 (1967). In  
14                   Nevada, pursuant to Rule 39 of the Supreme Court Rules, “attorneys being court officers and essential  
15                   aids in the administration of justice, the government of the legal profession is a judicial function.  
16                   Authority to admit to practice, and to discipline is inherent and exclusive in the Courts.” The Nevada  
17                   Supreme Court has found that “were the power of judging joined with the legislative, the life and  
18                   liberty of the subject would be exposed to arbitrary control, for the judge would be the legislator.”  
19                   *Berkson v. LePome*, 126 Nev. 492, 498 245 P.3d 560, 566 (2010).

20                   Legislative Defendants argue that its enabling statute exempts it from strictly adhering to the  
21                   Rules of Professional Conduct. If NRS Chapter 218F does indeed exempt or otherwise nullify the  
22                   requirements of RPC as it relates to legislative lawyers, such exemption or nullification would violate  
23                   the separation of powers doctrine. The Legislature has not been given the inherent power of the Courts  
24                   to regulate those members that practice before the Court. The Supreme Court of Nevada is enabled  
25                   with the ability to regulate the practice of law, not the Legislature. While there is no express or implied  
26                   exemption or limitation contained in NRS 218F, any such exemption or limitation which provides that  
27                   LCB Legal does not have to comply with the RPC or conflict of interest rules would violate the  
28                   separation of powers doctrine as the Legislature is not permitted to govern members of the legal  
                          profession in that manner.

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1 C. Plaintiff Senators Have an Established and Continuing Confidential Lawyer-  
2 Client Relationship with LCB Legal and Standing to Assert a Conflict of  
3 Interest.

4 “The existence of an attorney-client relationship is a question of law; however, the factual basis  
5 for that determination must first be determined and if there is a conflict in the evidence, that conflict  
6 is a question of fact to be evaluated by the district court.” *Cashill v. Second Judicial District Court of*  
7 *State ex rel. County of Washoe*, 128 Nev. 887 381 P.3d 600 (2012). In its Opposition, Legislative  
8 Defendants argue that LCB Legal “represents individual members of the Legislature in their official  
9 capacity as constituents of the organization and not as separate individuals.” (Opposition, 17). LCB  
10 Legal also points to case law from various other jurisdictions to argue that governmental lawyers  
11 represent the governmental entity as a whole and that LCB Legal does not have a separate attorney-  
12 client relationship with Plaintiff Senators.<sup>5</sup> These assertions are incorrect and all cases cited by  
13 Legislative Defendants are clearly distinguishable.

14 Legislative Defendants first cite *Ward v. Superior Court*, 138 Cal. Rptr. 532, 533-38 (1977) in  
15 which the California Court of Appeals found that there was no attorney-client relationship between  
16 counsel for Los Angeles County and the county assessor and thus counsel was not disqualified from  
17 representing a county board member and county employees in litigation against them by the assessor.  
18 The Court made its findings on two bases: 1) that no independent attorney-client relationship had been  
19 established with the assessor because County Counsel had “one client, namely the County of Los  
20 Angeles” and 2) that County Counsel had not obtained confidential information about the assessor  
21 through prior representation of him. *Id.* at 537, 539.

22 The facts relating to the current proceeding are wholly distinguishable. LCB Legal’s  
23 representation of the Legislature is specifically defined to include representation of the individual  
24 legislators. Thus, LCB Legal does, in fact, have an independent attorney-client relationship with each  
25 of the Plaintiff Senators. In addition, LCB Legal does obtain confidential information about and from  
26 individual legislators in its capacity as legal counsel to the Legislature. NRS 218F.150(1)(b) states  
27 that LCB Legal is not permitted to disclose “the nature and content of any matter entrusted to the

28 <sup>5</sup> This argument conflicts with Legislative Defendants’ arguments on pages 5-6 of their Opposition that LCB Legal is  
Senator Cannizzaro’s and Secretary Clift’s statutory authorized counsel under NRS 218F.720.

1 Legislative Counsel Bureau, and such matter is confidential and privileged and is not subject to the  
2 rules of discovery.” LCB Legal’s enabling statute specifically sets up a confidential relationship  
3 between all legislators and LCB Legal. This is different from the Court’s reasoning in *Ward* wherein  
4 the Court determined that “any communication between [the assessor] and the county counsel,  
5 pursuant to discharge of their respective duties, concerning the operation of the assessor’s office could  
6 not be considered a secret confidential communication so as to bar the county, acting through the board  
7 of supervisors, from obtaining that information.” *Id.* at 538.

8 The Supreme Court of Vermont ruled in *Handverger v. City of Winooksi*, 38 A.3d 1158 (Vt.  
9 2011), cited by Legislative Defendants, that an attorney-client relationship did not exist between the  
10 manager of a city and city attorney because the city charter established that a city attorney represents  
11 the city’s interests only. In another case cited by Legislative Defendants, the Supreme Court of Utah  
12 found similarly that upon a specific reading of the enabling statute there is “nothing explicit in the  
13 statutes suggesting that a county attorney has an attorney-client relationship with each individual  
14 commissioner, or with the commission as a group of individuals.” *Salt Lake County Com’n v. Salt*  
15 *Lake Co. Attny.* 985 P.2d 899, 905 (Utah 1999). Each of these cases suggest that a specific reading of  
16 the enabling statute is necessary in order to establish what duties a government lawyer has to members  
17 of its body and whether an attorney-client relationship amongst individual members can be  
18 established. Thus, a reading of the definition of “Legislature” is necessary when reading the statute  
19 enabling LCB Legal’s representation of the Legislature. NRS 218F.720(6)(c) specifically defines  
20 Legislature to include its individual members, officers, and employees.

21 Further, when NRS Chapter 218F was created as part Senate Bill 329 during the 1965  
22 legislative session, Russ McDonald, who was then the Director of the Legislative Counsel Bureau,  
23 stated in an Assembly Committee on Judiciary hearing with regard to the bill that the purpose was to  
24 move administrative services under the newly created administration department and that those  
25 administrative services included, “opinions from the legal division [and] any research legislators might  
26 want to have done without any questions as to why they want it.” Hearing on SB 329 Before the  
27 Nevada Assembly Committee on Judiciary, Fifty-Third Session (1965) (Statement of Legislative  
28 Director Russ McDonald). Legislators request confidential and private research and seek counsel of

1 LCB Legal with regard to any number of issues, including but not limited to ethics issues, bill drafts,  
2 open meeting law, conflicts between legislators, etc. *See* Affidavit of Senator James Settlemeyer at §  
3 3. The facts in this instance clearly indicate that there is a clear confidential relationship established  
4 between each legislator, in their official capacity, and LCB Legal. Moreover, there are a number of  
5 confidential pieces of information that LCB Legal has as it relates to the matters at the heart of this  
6 case. LCB Legal formed a lengthy opinion as it related to the constitutionality issue and had several  
7 communications with Plaintiff Senator Settlemeyer regarding the Opinion that relate directly to  
8 specific issues in this case. *See* Affidavit of Senator James Settlemeyer at §8.

9 In *Cole v. Ruidosos Mun. Schools*, 43 F. 3d 1373 (10<sup>th</sup> Cir. 1994), also cited by Legislative  
10 Defendants in their Opposition, the Tenth Circuit Court of Appeals, in determining whether an  
11 attorney-client relationship was created between a school principal and the school district's law firm,  
12 found that the principal's belief that the law firm represented her individually was unreasonable. The  
13 Court stated that "although the alleged former client's subjective belief can be considered by the court,  
14 this belief is not sufficient to establish an attorney-client relationship. In addition to having a  
15 subjective belief that there was an attorney-client relationship, the belief must have been reasonable."  
16 *Id.* at 1384 (internal citations omitted).

17 Here, it is not just Plaintiff Senators' subjective opinion that they were represented by LCB  
18 Legal. First and foremost, the specific language in NRS 218F.720, set forth above, clearly provides  
19 that LCB Legal represents individual members of the Legislature. In addition, LCB Legal holds itself  
20 out as legal counsel to the Legislature's individual members. *See* Affidavit of Senator James  
21 Settlemeyer at §3. During New Legislator Orientation which occurs every other year to provide  
22 practical and professional training to newly elected legislators, LCB Legal has repeatedly shown that  
23 it provides legal advice and consultation services to the legislators. In one such Legislator Orientation,  
24 Legislative Counsel, Brenda Erdoes provided a presentation entitled, "Legal Division: The  
25 Legislature's Lawyer." A copy of the agenda is attached hereto as Exhibit "1" and incorporated by  
26 reference as if set forth fully herein. In the November 2016 new legislator orientation, Ms. Erdoes  
27 made a presentation entitled "Legal Services" the presentation was part of a larger orientation to the  
28 Legislative Counsel Bureau and its various division. The overlying presentation, presented by

1 Director of LCB, Rick Combs noted that “LCB Staff works for both houses and all members.” A copy  
2 of November 2016 agenda and the Power Point Presentation by Rick Combs presentation are attached  
3 hereto as Exhibit “2” and fully incorporated by reference as if set forth fully herein. Such  
4 presentations indicate that LCB Legal was holding itself out as counsel and that legislators would  
5 reasonably believe that an attorney-client relationship existed. Such information relayed by LCB  
6 Legal to individual legislators would establish a confidential relationship as matters of ethics are very  
7 sensitive and often confidential for lawmakers. Moreover, LCB Legal has, on various occasions,  
8 represented individual legislators, including some of the Plaintiff Senators, in their official capacity in  
9 unrelated litigation. *See generally Guinn v. Legislature of State of Nev.*, 119 Nev. 460, 76 P.3d 22  
10 (2003); *Commission on Ethics v. Hardy*, 125 Nev. 285, 125 Nev. 1027 (2009); *Commission on Ethics*  
11 *v. Hansen*, 134 Nev. 304, 419 P.3d 140 (2018).

12 Legislative Defendants argue that “If [...] government lawyers were not able to provide [...]”  
13 representation, then every time such a lawsuit is filed, the governmental entity would be deprived of  
14 its statutorily authorized counsel.” (Opposition at 18). It is clear by its statement that Legislative  
15 Defendants are mischaracterizing the issue at hand. LCB Legal chose to represent one side of a certain  
16 dispute over another side in which a confidential attorney-client relationship exists. It is important to  
17 note that the facts here present a conflict of interest and that LCB Legal will not always or even often  
18 be disqualified on conflict of interest grounds in every Constitutional claim.

19 Legislative Defendants also present the issue of potential cherry-picking of plaintiffs and  
20 manipulation of a complaint for a lawsuit in order to deny legislators statutorily authorized counsel.  
21 Legislative Defendants forget a cardinal rule of litigation and that is in order to pass muster, a case  
22 must present a justiciable controversy or “a controversy in which a claim of right is asserted against  
23 one who has an interest in contesting it.” *Doe v. Bryan*, 102 Nev. 523, 525, 728 P.2d 443, 444 (1986).  
24 There are established legal procedures already in place to prevent the litigation tactics Legislative  
25 Defendants are concerned with as a possibility in the future. Again, there are no facts to suggest and  
26 it is not reasonable to conclude in this case that the naming of a legislator as a defendant in the First  
27 Amended Complaint was done in order to disqualify LCB Legal as counsel for the legislator.  
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