

D. The Balance of Equities Prevents LCB Legal From its Continued Representation of Defendants Cannizzaro and Clift.

The Court, in deciding a disqualification motion, may be faced with the task of balancing competing interests, including “the individual right to be represented by each party’s right to be free from the risk of even inadvertent disclosure of confidential information, and the public’s interest in the scrupulous administration of justice.” *Nevada Yellow Cab Corp. v. Eighth Judicial Dist. Court ex. rel. County of Clark*, 123 Nev. 44, 53 152 P.3d 737, 742 (2007). Any doubts, however, should be resolved in favor of disqualification. *Id.*

Furthermore, Legislative Defendants also cited *State ex rel. Swanson v. 3M Co.*, 845 N.W.2d 808 (Minn. 2014), discussed *supra*, in reference to the potential for disqualification motions to be abused as a litigation tactic. The Minnesota Supreme Court, in that case, however, also noted that the rule of professional conduct prohibiting representation where there is a concurrent conflict of interest governs and the text of the applicable rule is authoritative. 845 N.W.2d at 820-21. That Court concluded, therefore, that “the rule, which is now phrased in mandatory language, no longer permits courts to weigh the equities to determine whether disqualification should be imputed.” *Id.* Here, Nevada’s RPC 1.7 provides that a “lawyer *shall* not represent a client if the representation involves a concurrent conflict of interest.” (Emphasis added). Thus, the mandatory language of RPC 1.7 should control or, at the very least, tip the balance in favor of disqualification.

Even if the Court does consider other factors in balancing competing interests, the Legislative Defendants offer no persuasive arguments or authorities to support the idea that any factor weighs against disqualification. For instance, Legislative Defendants argue that “Plaintiff Senators’ speculative contentions about potential harms from LCB Legal’s representation do not justify disqualification of counsel.” (Opposition, p. 20). Legislative Defendants cite *Liapis v. Dist. Ct.*, 128 Nev. 414, 282 P.3d 733 (2012) to support their argument. In *Liapis*, a son was permitted to represent his father in a divorce proceeding involving both of his parents. The Supreme Court found that the mother was not a former client of her son’s and thus failed to establish an attorney-client relationship and also failed to establish specific examples of impropriety. *Id.* at 419. The Supreme Court found that “the appearance of impropriety may form a basis for attorney disqualification only in the limited circumstances of a public lawyer and only if the appearance is so extreme as to undermine public trust

1 and confidence in the judicial system.” *Id.* (citing *Brown v. Dist. Ct.*, 116 Nev. 1200, 1204 (2000)).
2 In *Brown*, the Nevada Supreme Court found that, “to prevail on a motion to disqualify opposing
3 counsel, the moving party must first establish at least a reasonable possibility that some specifically
4 identifiable impropriety did occur and then must also establish that the likelihood of public suspicion
5 or obloquy outweighs the social interest which will be served by a lawyer’s continued participation in
6 a particular case.” *Brown*, 116 Nev. at 1205 (internal quotations omitted). These cases are
7 distinguishable from the facts at issue here.

8 In the Motion to Disqualify and in this Reply, Plaintiff Senators have demonstrated specifically
9 identifiable improprieties with LCB Legal representing members of a legislative body in a dispute
10 directly adverse to other members of a legislative body. Additionally, the high likelihood of public
11 suspicion and the need for public confidence in the administration of government strongly outweighs
12 Defendants Cannizzaro’s and Clift’s interest in having LCB Legal represent them in this action.
13 Removal of counsel at this early stage in the litigation will not put Defendants Cannizzaro or Clift at
14 any great disadvantage as the litigation has yet to have begun in earnest and has been stayed pending
15 a determination of the Motion to Disqualify. Any societal interest in maintaining current counsel in
16 the proceeding is clearly outweighed by the necessity to maintain the appearance of impartial
17 administration of the government and public confidence of governmental institutions.

18 Legislative Defendants attempt to counter the assertion that LCB Legal’s representation will
19 create widespread public distrust in the neutral administration of government by citing the ABA Model
20 Rules of Professional Conduct 1.2(b) which provides, “a lawyer’s representation of a client, including
21 representation by appointment, does not constitute an endorsement of the client’s political, economic,
22 social or moral view or activities.” While that may be true, the actions of LCB Legal are still adverse
23 to its duty of loyalty owed to Plaintiff Senators under the Rules of Professional Conduct. RPC 1.7,
24 which prohibits LCB Legal from representing the Legislative Defendants adverse to the interests of
25 its other clients - - the Plaintiff Senators - - is mandatory.

26 Again, the Nevada Supreme Court has found that “doubts should generally be resolved in favor
27 of disqualification of counsel.” *Yellow Cab*, 123 Nev. at 53. In the present proceeding, the doctrines
28 of estoppel and waiver are not applicable and the conflict of interest rules as they relate to avoiding

1 conflicts apply directly to LCB Legal. Plaintiff Senators have standing to assert a conflict of interest
2 as a confidential attorney-client relationship clearly exists between Plaintiff Senators and LCB Legal.
3 Finally, Plaintiff Senators have demonstrated that the balance of equities weighs in favor of
4 disqualification. Thus, LCB Legal should be disqualified as counsel for Defendants Cannizzaro and
5 Clift.

6 V.

7 CONCLUSION

8 A distinct fundamental value of our legal system is the attorney's obligation of loyalty. *People*
9 *ex rel. Dep't of Corps. v. Speedee Oil Change Sys., Inc.*, 20 Cal. 4th 1135, 1146-47, 980 P.2d 371,
10 379 (1999). As the Court noted in *Speedee Oil Change*: "Attorneys have a duty to maintain undivided
11 loyalty to their clients to avoid undermining public confidence in the legal profession and the judicial
12 process. (cite omitted). The effective functioning of the fiduciary relationship between attorney and
13 client depends on the client's trust and confidence in counsel. (cite omitted) The courts will protect
14 clients' legitimate expectations of loyalty to preserve this essential basis for trust and security in the
15 attorney-client relationship. (*Ibid.*) . . . The loyalty the attorney owes one client cannot be allowed to
16 compromise the duty owed another. (cite omitted). *Id.* For all the foregoing reasons, Plaintiff Senators
17 respectfully request that their Motion to Disqualify be granted.

18 VI.

19 AFFIRMATION

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

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///


28 ///

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1 DATED this 12th day of November, 2019.

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6 By:

7 
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16 THE HONORABLE HEIDI GANSERT, THE
17 HONORABLE SCOTT HAMMOND, THE
18 HONORABLE PETE GOICOECHEA, THE
19 HONORABLE BEN KIECKHEFER, THE
20 HONORABLE IRA HANSEN and THE
21 HONORABLE KEITH PICKARD in their official
22 capacities as members of the Senate of the State of
23 Nevada
24
25
26
27
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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)]

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NANCY FONTENOT

INDEX OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>	<u>Number of Pages</u>
"1"	2012-2013 New Legislator Orientation Training Agenda	04
"2"	2016 New Legislator Orientation Training Agenda and Presentation by Rick Combs	13

4842-9537-1436, v. 1

EXHIBIT “1”



New Legislator Orientation and Training: 2012-2013

New Legislator Orientation is designed to instruct new legislators in legislative processes and offer insight into working with various participants.

2012-2013 Schedule

[11-28-2012](#)
[11-29-2012](#)
[11-30-2012](#)
[12-6-2012](#)
[12-13-2012](#)
[1-14-2013](#)
[1-15-2013](#)
[1-16-2013](#)
[1-17-2013](#)
[4-1-2013](#)
[5-8-2013](#)

2012-2013 Schedule

Phase I Orientation – November 28, 29, and 30 to be held in Carson City

Phase II Issue Briefs – December 6 and December 13 to be videoconferenced among Carson City, Elko, and Las Vegas

Phase III Academy – January 14, 15, 16, and 17 to be held in Carson City

Wednesday, November 28, 2012

9:30 a.m.—10:00 a.m.	Continental Breakfast—Room 3100
10:00 a.m.—10:15 a.m.	Welcome—Room 3100 <ul style="list-style-type: none"> Senate and Assembly Leadership
10:15 a.m.—10:45 a.m.	Overview of the Legislative Counsel Bureau—Room 3100 <ul style="list-style-type: none"> Rick Combs, Director Roger Wilkerson, Chief, Administrative Division Paul V. Townsend, Legislative Auditor, Audit Division Mark Krmpotic, Senate Fiscal Analyst, Fiscal Analysis Division Cindy Jones, Assembly Fiscal Analyst, Fiscal Analysis Division Brenda J. Erdoes, Legislative Counsel, Legal Division Donald O. Williams, Research Director, Research Division
10:45 a.m.—11:15 a.m.	Legislator Compensation, Benefits, and Travel—Room 3100 <ul style="list-style-type: none"> Chuck Mahoney, Chief Accountant, Accounting Unit, Administrative Division
11:15 a.m.—11:45 a.m.	Tour of the Legislative Building
11:45 a.m.—Noon	Break
Noon—1:45 p.m.	Senate Lunch—Office of the Secretary of the Senate <ul style="list-style-type: none"> David Byerman, Secretary of the Senate Assembly Lunch—Office of the Chief Clerk of the Assembly <ul style="list-style-type: none"> Susan Furlong, Chief Clerk of the Assembly
1:45 p.m.—2:00 p.m.	Break
2:00 p.m.—5:00 p.m.	Individual Legislator Activities—First Floor Foyer, Legislative Building

5:30 p.m.

Group Dinner (bus leaves at this time)

Thursday, November 29, 2012

7:45 a.m.—8:30 a.m.

Breakfast—Room 3100

8:30 a.m.—8:45 a.m.

Break

8:45 a.m.—11:45 a.m.

Legislative Counsel Bureau: Presentations from Divisions—
Room 4100

Legal Division: The Legislature's Lawyer

- Brenda J. Erdoes, Legislative Counsel

Audit Division: Assessing Performance

- Paul V. Townsend, Legislative Auditor Handout

Break

Fiscal Analysis Division: Preparing the Budget and Forecasting
Revenue

- Mark Krmpotic, Senate Fiscal Analyst
- Cindy Jones, Assembly Fiscal Analyst

Research Division

- Donald O. Williams, Research Director
 - Research Analysts: Linking Research to Policy Handout
 - Research Library and Research Publications: Preserving the Record Handout
 - Constituent Services Unit: Serving Your Constituents Handout

11:45 a.m.—12:15 p.m.

Break

12:15 p.m.—1:45 p.m.

Luncheon—Old Assembly Chamber

Table Topic:

What I Know Now That I Wish I Had Known Then
Roundtable Discussion with Returning Legislators

Program:

*Remembering Citizen Legislators: The Nevada
Legislature Oral History Project*
Dana R. Bennett, Ph.D., Bennett Historical Research
Services

2:00 p.m.—5:00 p.m.

Individual Legislator Activities

(4:00 p.m.—5:00 p.m.)

Optional Tour of Carson City

5:00 p.m.

Dinner (individual responsibility)

Friday, November 30, 2012

7:30 a.m.—8:30 a.m.

Breakfast—Room 3100

Invited Guests from the Office of the Governor and the Office of
the Lieutenant Governor

8:30 a.m.—8:45 a.m.

Break

8:45 a.m.—9:30 a.m.

Ethics Basic Training—Room 4100

- Eileen O'Grady, Chief Deputy Legislative Counsel, Legal
Division Handout

9:30 a.m.—10:00 a.m.

Annual Filings of Contribution and Expense Reports—Room
4100

Office of the Secretary of State

- Nicole Lamboley, Chief Deputy Secretary of State
- Scott Gilles, Deputy Secretary for Elections

10:00 a.m.—10:15 a.m.	Break
10:15 a.m.—11:15 a.m.	Introduction to the Legislature's Website and Electronic Legislative Tools—Room 4100 <ul style="list-style-type: none"> • Teresa Wilt, Assistant Librarian, Research Library
11:15 a.m.—11:45 a.m.	Safety and Security Procedures—Room 4100 <ul style="list-style-type: none"> • Bob Milby, Chief, Legislative Police
11:45 a.m.—Noon	Review and Preview of Issue Briefings and Academy—Room 4100 <ul style="list-style-type: none"> • Rick Combs, Director, LCB
Noon—1:30 p.m.	Luncheon—Room 3100
	Informal Discussion: Organizing Your Legislative Office for Session <ul style="list-style-type: none"> • Returning Legislators and Staff
1:30 p.m.	Individual Legislator Activities (by appointment)

Presession Orientation Program for New Legislators 2012

Briefings on Selected Policy Issues

Thursday, December 6, 2012

Location: Room 4401, Grant Sawyer State Office Building, Las Vegas, Nevada; videoconferenced to Room 3137, Legislative Building, Carson City, Nevada; and Great Basin College, Room 124, Greenhaw Technical Arts Building, 1500 College Parkway, Elko, Nevada.

9:00 a.m.—Public Employees: Benefits and Retirement

At this two-part briefing, legislators will receive information about the Public Employees' Retirement System and the Public Employees' Benefits Program.

The Public Employees' Retirement System (PERS) is a tax-qualified defined benefit plan that provides retirement and disability benefits to State and local government employees in Nevada, including nonprofessional staff of the Nevada System of Higher Education. The Legislature oversees PERS, but the day-to-day operations are handled by an independent board and its executive officer and staff. The Legislative Retirement System and the Judicial Retirement System are also within PERS. Both nationally and in Nevada, state legislatures and local governments are grappling with the issues associated with unfunded liabilities. The economic recession, baby boomers reaching retirement age, shrinking State and local government workforces, and more stringent accounting rules are some of the challenges currently faced by PERS.

The Public Employees' Benefits Program (PEBP) is the entity that offers health and other insurance benefits to State employees and employees of local governments who voluntarily elect to participate in the Program. In addition to providing insurance benefits to active State and participating local government employees, the Program also makes insurance available to non-Medicare-eligible retirees. In 2010, the PEBP Board took action to move Medicare-eligible retirees (generally those 65 years of age and older) to an Individual Market Medicare Exchange for the 2012 plan year—making Nevada the first state to do so. The Legislature oversees PEBP, but the day-to-day operations are handled by an independent board and its executive director and staff. State revenue constraints and budget issues are challenges for PEBP, along with continuing increases in the cost of health care and implementation of the federal Affordable Care Act. In the current biennium, in order to address a budget shortfall, the Board increased deductibles and gave active employees a subsidy on their monthly premiums in the form of a contribution to a Health Savings Account.

Presenters: James R. Wells, Executive Officer, PEBP; Dana K. Bilyeu, Executive Officer, PERS; and Susan E. Scholley, Chief Principal Research Analyst, Research Division, Legislative Counsel Bureau (LCB) **Presenters' Biographies | Handouts**

10:30 a.m.—Health and Human Services

In this session, legislators will briefly review major health and human services topics, including an update on the implementation of the Affordable Care Act (federal health care reforms); Medicaid and Nevada Check Up; caseload growth for certain supportive services; funding hospitals for the care of indigent patients; juvenile justice system reforms; and county assessments for certain human services that were approved by the 2011 Legislature. Legislators will also receive information concerning the Department of Health and Human Services (DHHS) reorganization plans.

Presenters: Michael J. Willden, Director, DHHS; Jane Gruner, Deputy Director, DHHS; Amber Howell, Administrator, Division of Child and Family Services, DHHS; Marsheilah D. Lyons, Supervising Principal Research

EXHIBIT “2”



New Legislator Orientation Program

Legislative Building, Carson City, Nevada

November 16 to 18, 2016

Wednesday, November 16

**9:30 a.m.
Room 3100**

Meet and Greet Fellow Legislators/Registration
Enjoy a continental breakfast networking with newly elected members of both Chambers.

**10:00 a.m.—11:00 a.m.
Room 3100**

Welcome to the Legislature
Members of the Senate and Assembly

*Moderator: Michael J. Stewart, Deputy Research Director, Research Division,
Legislative Counsel Bureau (LCB)*

- Transition from campaigning to governing.
- Legislative leadership positions and roles.
- Organization of the Senate and Assembly.
- Standing committees.

Putting the Nevada Legislature in Context

*Paul T. Mouritsen, Chief Principal Research Analyst for Special Projects,
Research Division, LCB*

- Three branches of State government.
- How Nevada's Legislature compares to other states.

**11:00 a.m.—11:10 a.m.
Room 3100**

Overview of the Nevada Legislature's Staff and Legislative Counsel Bureau
Rick Combs, Director, LCB

11:10 a.m.—11:30 a.m.

Break

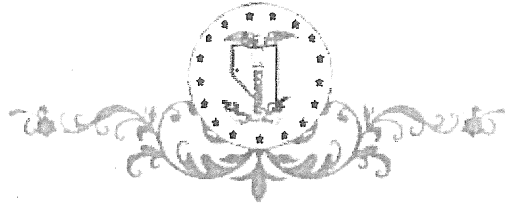
**11:30 a.m.—Noon
Room 4100**

Nevada Youth Legislature

*Beverly E. Mobley, Manager, Constituent Services Unit (CSU), Research
Division, LCB*

*Tina Ashdown, Research Assistant/Program Facilitator, CSU, Research
Division, LCB*

National Organizations to Which the Nevada Legislature Belongs
Rick Combs, Director, LCB



Noon—1:15 p.m.
Room 3100

Working Lunch—"What I Know Now That I Wish I Had Known Then"
Senator Patricia Farley
Assemblyman Tyrone Thompson
Assemblywoman Robin L. Titus, M.D.

*Moderator: Jennifer Ruedy, Principal Research Analyst,
Research Division, LCB*

- Returning members will offer reflections and advice for the new members on subjects such as building relationships, working with legislative staff, managing constituent requests, and personal time management.

1:15 p.m.—1:45 p.m.
Room 3100

Small Group Breakout with Sophomores
Sophomores meet with freshmen in small groups to answer questions about being a new legislator.

1:45 p.m.—2:00 p.m.

Break

2:00 p.m.—2:30 p.m.
Room 4100

Legislator Compensation, Benefits, and Travel
Jolanta Astronomo, Chief Accountant, Administrative Division, LCB
LuAnn Lehr, Account Technician, Administrative Division, LCB
Pati Stefonowicz, Accountant, Administrative Division, LCB

2:45 p.m.

Tour of Legislative Building and Capitol Complex
Ken Kruse, Safety Coordinator, Administrative Division, LCB

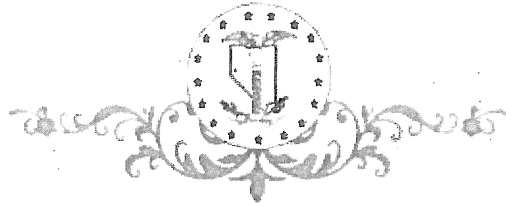
- Tour of Legislative Building.
- Location of agencies in the Capitol Complex.

Individual Legislator Activities (as scheduled)

5:45 p.m.

Group Dinner (gather outside Legislative Building for transportation)

- J.T. Basque Bar and Dining Room, Gardnerville.



Thursday, November 17

7:45 a.m.—8:30 a.m.
Room 3100

Breakfast Buffet with Legislative Staff Liaisons

8:30 a.m.—8:45 a.m.

Break

8:45 a.m.—10:30 a.m.
Room 4100

Staff Services Provided by the Legislative Counsel Bureau
Moderated by Rick Combs, Director, LCB

- Administrative Services
Roger Wilkerson, Chief, Administrative Division, LCB
- Audit Services
Rocky Cooper, Legislative Auditor, Audit Division, LCB
Daniel L. Crossman, Audit Supervisor, Audit Division, LCB

Break

- Legal Services
Brenda J. Erdoes, Legislative Counsel, Legal Division, LCB
- Fiscal Services
Mark Krmpotic, Senate Fiscal Analyst, Fiscal Analysis Division, LCB
Cindy Jones, Assembly Fiscal Analyst, Fiscal Analysis Division, LCB
- Research Services
Susan Scholley, Research Director, Research Division, LCB

10:30 a.m.—10:45 a.m.

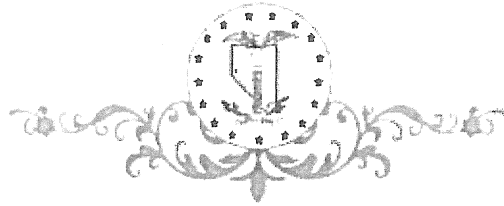
Break

10:45 a.m.—11:15 a.m.
Room 4100

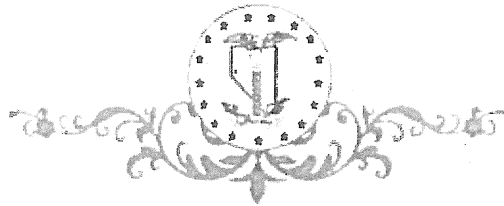
Annual Filings of Contribution and Expense Reports and Financial Disclosure Forms
Brenda J. Erdoes, Legislative Counsel, Legal Division, LCB
Eileen G. O'Grady, Chief Deputy Legislative Counsel, Legal Division, LCB
Kevin C. Powers, Chief Litigation Counsel, Legal Division, LCB

11:15 a.m.—11:45 a.m.
Room 4100

Safety and Security Procedures
John Drew, Chief, Legislative Police, Administrative Division, LCB



11:45 p.m.—Noon	Freshman Class Photograph (west entrance of Legislative Building)
Noon—1:15 p.m.	Luncheon Senate Lunch—Senate Caucus Room Hosted by the Secretary of the Senate and Senate Staff Assembly Lunch—Assembly Caucus Room Hosted by the Chief Clerk of the Assembly and Assembly Staff
1:15 p.m.—1:30 p.m.	Break
1:30 p.m.—2:15 p.m. Room 4100	Working with Constituents <i>Beverly E. Mobley, Manager, CSU, Research Division, LCB</i> <i>Craig Hoffercker, Senior Research Analyst, CSU, Research Division, LCB</i> <i>Julie Newman, Senate Liaison</i> <i>Marge Griffin, Assembly Liaison (tentative)</i>
2:15 p.m.—3:00 p.m. Room 4100	Roundtable: Working with the Media <i>Scott Magruder, Assignment Editor, KRNV News 4</i> <ul style="list-style-type: none">• Focus on how the print and broadcast media cover the Legislature and how legislators can effectively communicate with the media and maintain a good working relationship.
3:00 p.m.—3:15 p.m.	Break
3:15 p.m.—4:00 p.m. Room 4100	Roundtable: Working with Lobbyists <i>Jeanette Belz, J.K. Belz and Associates</i> <i>William Horne, Horne-Duarte Government and Public Affairs</i> <i>Rose McKinney-James, Energy Works LLC and McKinney-James & Associates</i> <ul style="list-style-type: none">• Focus on the role of the lobbyists, expectations lobbyists have of legislators, and the responsibilities of both lobbyists and legislators in their working relationship.
4:00 p.m.	Individual Legislator Activities (as scheduled)
5:00 p.m.	Group Dinner (gather outside east entrance of Legislative Building for transportation) <ul style="list-style-type: none">• Sponsored by the Senate and Assembly Caucuses.• Location to be announced.



Friday, November 18

8:00 a.m.—8:45 a.m.
Room 3100

Breakfast with Governor Sandoval's Staff
Enjoy breakfast while meeting the staff of the Governor's Office.

8:45 a.m.—9:00 a.m.

Break

9:00 a.m.—9:45 a.m.
Room 3138

Laptop Training

*Eric Dugger, Network Services Manager, Information Technology Services,
Administrative Division, LCB*

Brenda J. Erdoes, Legislative Counsel, Legal Division, LCB

Kevin C. Powers, Chief Litigation Counsel, Legal Division, LCB

- Learn "hands-on" how to log on to the legislative network, use e-mail, and other functions.
- Overview of technology and electronic communication: public records and safe computing (spam, viruses, worms, adware, spyware, et cetera).

9:45 a.m.—10:00 a.m.

Break

10:00 a.m.—11:30 a.m.
Room 3138

Introduction to the Official Nevada Law Library, Legislature's Website, Electronic Legislative Tools, and Publications

Brenda J. Erdoes, Legislative Counsel, Legal Division, LCB

*Michelle L. Van Geel, Administrator of Publications and Technical
Services, Research Division, LCB*

Teresa Wilt, Legislative Librarian, Research Library, Research Division, LCB

11:30 a.m.—Noon

Break

Noon—1:30 p.m.
Room 3100

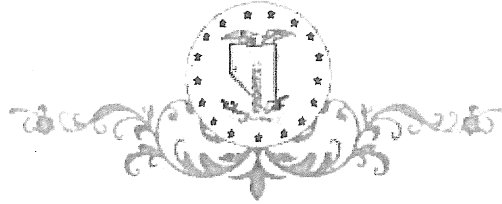
Working Lunch—Social Media Success

*Mick Bullock, Director of Public Affairs, National Conference of
State Legislatures*

- Review basic social media concepts.
- Share best practices that you can adopt—tools that improve communication and enhance the institution.

1:30 p.m.—1:45 p.m.

Break



1:45 p.m.—2:30 p.m.
Room 4100

Ethics

Brenda J. Erdoes, Legislative Counsel, Legal Division, LCB

Eileen G. O'Grady, Chief Deputy Legislative Counsel, Legal Division, LCB

Kevin C. Powers, Chief Litigation Counsel, Legal Division, LCB

2:30 p.m.—3:00 p.m.
Room 4100

Developing Ideas for Bills—The Beginning

Brenda J. Erdoes, Legislative Counsel, Legal Division, LCB

Susan Scholley, Research Director, Research Division, LCB

- I have an idea! What should I do about it?

3:00 p.m.

Preview of December Issue Briefings and January Academy

Questions and Adjournment



Legislative Counsel Bureau

New Legislator Orientation Program

November 17, 2016



LCB Overview

Non-partisan, central staff for the Legislature

- No paid political staff employed by the Bureau
- Lobbying Prohibited
- No campaign activities
- Cannot display items that advocate for candidate or partisan activity



LCB Overview

Creation

- Created in 1945
- Lawmakers recognized the need for assistance in obtaining information necessary to act on requests for action by the Executive Branch
- Legislature no longer required to rely on the AG, Governor or Executive Branch agencies for information



LCB Overview

Purpose of Design

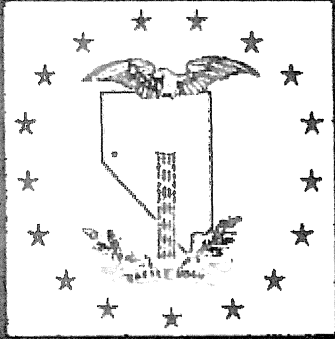
- To discourage interference and limit political pressure
- To give staff an independence that helps ensure lawmakers they are getting unbiased information
- In some States each House (even each party) have their own staff. LCB staff works for both Houses and all members



LCB Overview

The LCB Consists of:

- Legislative Commission
- Interim Finance Committee
- Five Divisions:
 - Administrative
 - Audit
 - Legal
 - Fiscal
 - Research



LCB Overview

- Legislative Commission appoints the Director.
- The Director appoints the chiefs of the various divisions, subject to approval by the Legislative Commission.
- Each Division provides a variety of services to legislators.

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Attorneys for Plaintiffs

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

THE HONORABLE JAMES SETTELMEYER,
THE HONORABLE JOE HARDY,
THE HONORABLE HEIDI GANSERT,
THE 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 and individually;
GREAT BASIN ENGINEERING
CONTRACTORS, LLC, a Nevada limited
liability company; GOODFELLOW
CORPORATION, a Utah corporation qualified
to do business in the State of Nevada;
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,

Plaintiffs,

vs.

///
///

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

AFFIDAVIT OF
KAREN PETERSON

REC'D & FILED
NOV 12 PM 4:47
AUDLEY H. COOPER
BY: C. COOPER
CLERK
DEPUTY

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 AFFIDAVIT OF KAREN PETERSON

16 STATE OF NEVADA)
17 : ss.
18 CARSON CITY)

19 KAREN PETERSON, under penalty of perjury, does solemnly swear and affirm that
20 the following assertions are true:

21 1. The undersigned is an attorney duly authorized and qualified to practice law in
22 the State of Nevada and represents Plaintiffs in the above-entitled action.

23 2. The undersigned has personal knowledge of the matters hereinafter set forth
24 and is competent to testify to matters concerning the same.

25 3. On October 7, 2019, I met with Kevin Powers, Chief Litigation Counsel for
26 LCB Legal. I went to his office to introduce myself and to discuss the early case conference required
27 to occur in the case and the conflict issue.

28 4. During our meeting, Mr. Powers indicated the Legislative Defendants wanted
an extension of time until October 28, 2019 to file their opposition to Plaintiffs' motion for summary
judgment and to file their own motion for summary judgment. I informed Mr. Powers that I and the
Plaintiff Senators believed LCB Legal had a conflict of interest in this case and could not represent
the Legislative Defendants against the Plaintiff Senators. Mr. Powers indicated a court order would
be necessary to remove LCB Legal as counsel in this case.

1 5. On October 8, 2019, the undersigned telephoned Mr. Powers and indicated the
2 Plaintiffs would give Legislative Defendants their requested extension of time until October 28, 2019
3 to file their opposition to Plaintiff's motion for summary judgment and to file their own motion for
4 summary judgment. I also told Mr. Powers the Plaintiff Senators were still discussing the
5 disqualification motion.

6 6. On October 24, 2019 the undersigned was authorized by her Plaintiff Senator
7 clients to file the motion to disqualify LCB Legal as counsel for the Legislative Defendants and filed
8 the motion on that date.

9 7. I don't name Defendants as parties in an action based upon who I think their
10 lawyer might be.

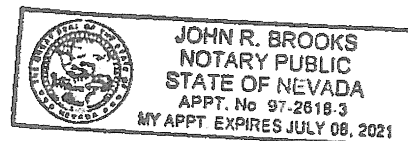
11 DATED this 12th day of November, 2019.

12
13 
14 KAREN PETERSON

15 STATE OF NEVADA)
16 CARSON CITY): ss.

17 On November 12, 2019, personally appeared before me, a Notary Public, KAREN
18 PETERSON, personally known (or proved) to me to be the person whose name is subscribed to the
19 foregoing document, and who acknowledged to me that she executed the foregoing document.

20
21
22 
23 NOTARY PUBLIC



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
kpowers@lcb.state.nv.us

Aaron D. Ford, Esq.
Craig A. Newby, Esq.
Office of the Attorney General
CNewby@ag.nv.gov

DATED this 12th day of November, 2019.


NANCY FONTENOT

4849-9502-9164, v. 1

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KAREN A. PETERSON, ESQ.
Nevada State Bar No. 366
JUSTIN TOWNSEND, ESQ.
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Email: jtownsend@allisonmackenzie.com

Attorneys for Plaintiffs

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

THE HONORABLE JAMES SETTELMAYER,
THE HONORABLE JOE HARDY,
THE HONORABLE HEIDI GANSERT,
THE 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 and individually;
GREAT BASIN ENGINEERING
CONTRACTORS, LLC, a Nevada limited
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CORPORATION, a Utah corporation qualified
to do business in the State of Nevada;
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AUTO DEALERS ASSOCIATION, a Nevada
nonprofit corporation; NEVADA TRUCKING
ASSOCIATION, INC., a Nevada nonprofit
corporation; and RETAIL ASSOCIATION
OF NEVADA, a Nevada nonprofit corporation,

Plaintiffs,

vs.

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///

Case No: 19 OC 00127 1B

Dept. No: I

**AFFIDAVIT OF SENATOR
JAMES SETTELMAYER**

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 AFFIDAVIT OF SENATOR JAMES SETTELMEYER

16 STATE OF NEVADA)
17 : ss.
18 CARSON CITY)

19 JAMES SETTELMEYER, under penalty of perjury, does solemnly swear and affirm
20 that the following assertions are true:

21 1. I am a member of the Nevada Senate representing Senate District 17. I am the
22 current Minority Leader of the Senate. I have been a member of the Legislature since 2006 first as an
23 Assemblyman and now a Senator. I am one of the named Plaintiffs in the above entitled action.

24 2. I make this affidavit in support of the Motion to Disqualify filed in this action
25 by the Plaintiff Senators on October 24, 2019. I have personal knowledge of all matters set forth herein
26 and I am competent to testify to the same.

27 3. Since 2006 when I became a member of the Legislature, LCB Legal has acted
28 as legal counsel to all members of the Legislature. LCB Legal is consulted by members and asks that
members consult it regarding legislative bills, legal opinions, member conflicts, research for
constituent issues and general legal questions that arise as the member serves in the Legislature. That
legal relationship continues with me as a member of the Senate and all members of the Legislature
during the interim session including now in 2019 and 2020.

4. Since 2006 when I became a member of the Legislature, all extensions of taxes
that were going to sunset or were to be extended required a two thirds majority of each house to pass.

1 5. In January 2019, I became aware of public statements by Defendant Governor
2 Sisolak in the media that cancellation of a proposed reduction in the payroll tax rate worth \$48 million
3 a year was not a tax increase and he was not convinced it would take a two-thirds majority to pass.
4 *See, Nevada Independent*, January 23, 2019 and video on *Nevada Independent* website of interview
5 with Defendant Governor Sisolak, [https://thenevadaindependent.com/article/sisolak-carves-out-](https://thenevadaindependent.com/article/sisolak-carves-out-liberal-positions-defends-moderate-bona-fides-in-wide-ranging-discussion)
6 [liberal-positions-defends-moderate-bona-fides-in-wide-ranging-discussion](https://thenevadaindependent.com/article/sisolak-carves-out-liberal-positions-defends-moderate-bona-fides-in-wide-ranging-discussion).

7 6. Early in the 2019 Legislative Session, then Senate Majority Leader Atkinson
8 made the same type of statements to me as made by Governor Sisolak – a two thirds majority may not
9 be required to cancel the proposed reduction in the payroll tax rate. Later when she became Majority
10 Leader, Defendant Majority Leader Cannizzaro made the same type of statements to me, that is, a two
11 thirds vote was not necessarily required to cancel the proposed reduction in the payroll tax.

12 7. Because of these statements by the Governor and Senate Majority Leaders,
13 early in the 2019 Legislative Session, I asked LCB Legal to issue an opinion on the issue of whether
14 cancellation of a proposed reduction in the payroll tax or extension of a tax rate would require a two
15 thirds majority to pass under the Nevada Constitution. Minority Floor Leader Wheeler requested that
16 LCB Legal issue a written opinion on the two thirds majority issue. I am informed and believe the
17 Majority Legislative Leadership made the same request to LCB Legal.

18 8. On May 8, 2019 LCB Legal finally issued its Opinion addressed to Legislative
19 Leadership. I received a copy and Minority Floor Leader Wheeler received a copy of the LCB Opinion
20 on May 8, 2019. I am informed and believe Majority Leader Cannizzaro and Speaker Frierson also
21 received a copy of the LCB Opinion on May 8, 2019.

22 9. After the LCB Opinion was issued, I had several conversations with LCB Legal
23 about the LCB Opinion issued May 8, 2019.

24 10. The next day after LCB Legal issued its Opinion, I started making statements
25 in the media that the Nevada Senate Republican Caucus would sue because LCB Legal's Opinion was
26 contrary to the Nevada Constitution.

27 11. Between October 8, 2019 and October 24, 2019, several of the Plaintiff Senators
28 had been unavailable to discuss the motion to disqualify because they were out of the country. On

1 October 24, 2019 I authorized Ms. Peterson on behalf of the Plaintiff Senators to file the motion to
2 disqualify LCB Legal as counsel for the Legislative Defendants.

3 12. The Legislature has the financial resources available to engage outside counsel
4 to represent Defendants Cannizzaro and Clift in this action because of LCB Legal's conflict.

5 DATED this 12th day of November, 2019.

6
7
8 
JAMES SETTELMEYER

9 STATE OF NEVADA)
10 CARSON CITY) : ss.

11 On November 12, 2019, personally appeared before me, a Notary Public, JAMES
12 SETTELMEYER, personally known (or proved) to me to be the person whose name is subscribed to
13 the foregoing document, and who acknowledged to me that he executed the foregoing document.

14
15 
16 NOTARY PUBLIC



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
kpowers@lcb.state.nv.us

Aaron D. Ford, Esq.
Craig A. Newby, Esq.
Office of the Attorney General
CNewby@ag.nv.gov

DATED this 12th day of November, 2019.


NANCY FONTENOT

4850-4955-5116, v. 1

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1 KAREN A. PETERSON, ESQ.
Nevada State Bar No. 366
2 JUSTIN TOWNSEND, ESQ.
Nevada State Bar No. 12293
3 ALLISON MacKENZIE, LTD.
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4 Carson City, NV 89703
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5 Email: kpeterson@allisonmackenzie.com
Email: jtownsend@allisonmackenzie.com

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,
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
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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,

25 Plaintiffs,

26 vs.

27 ///

28 ///

REC'D & FILED

2019 NOV 18 PM 3:14

AUBREY ROWLANDT

CLERK

BY J. HIGGINS
DEPUTY

Case No: 19 OC 00127 1B

Dept. No: I

**PLAINTIFFS' QUALIFIED
OPPOSITION TO MOTION
TO INTERVENE AND
PLAINTIFF SENATORS
MOTION TO DISQUALIFY**

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 **PLAINTIFFS' QUALIFIED OPPOSITION TO MOTION TO INTERVENE AND**
16 **PLAINTIFF SENATORS' MOTION TO DISQUALIFY**

17 Plaintiffs, by and through their attorneys, ALLISON MacKENZIE, LTD., file their Qualified
18 Opposition to the Nevada Legislative's Motion to Intervene as Defendant and Plaintiff Senators file
19 their Motion to Disqualify. This Qualified Opposition and Motion to Disqualify are made and based
20 upon the following Memorandum of Points and Authorities and all other papers and pleadings on file
21 in this matter.

22 **MEMORANDUM OF POINTS AND AUTHORITIES**

23 Plaintiffs acknowledge the Nevada Legislature is permitted to intervene as of right under NRS
24 218F.720(3) when the Nevada Legislature elects to intervene in an action by filing a motion to
25 intervene as provided in NRS 218F.720(2).¹ There are two issues which need to be addressed with
26 regard to the proposed intervention and these two issues are the basis for this Qualified Opposition
27 and Motion to Disqualify.

28 First, Plaintiffs object to the Nevada Legislature being named in the caption as a "Defendant"
instead of a "Defendant/Intervenor". Plaintiffs do not want any implication in this action that they
named the Nevada Legislature as a Defendant in this action. Accordingly, if the Court grants the

¹ Because NRS 218F.720 grants the Nevada Legislature the right to intervene, there is no need for Plaintiffs to otherwise address intervention pursuant to NRCP 24.

1 Nevada Legislature's Motion to Intervene, Plaintiffs respectfully request the Court order the Nevada
2 Legislature be styled as a "Defendant/Intervenor" in the caption.

3 Second, Plaintiff Senators refer to and incorporate by reference as if set forth in full herein
4 their Motion to Disqualify filed October 24, 2019 and all arguments and points and authorities
5 contained in their Motion to Disqualify, their Reply in Support of Motion to Disqualify filed
6 November 12, 2019 and the Affidavits of Senator James Settelmeyer and Karen Peterson filed
7 November 12, 2019. As set forth in their Motion to Disqualify filed October 24, 2019, it is a violation
8 of an attorney's ethical duty to represent a client if a conflict of interest exists. The attorneys of record
9 for the proposed Intervenor, Nevada Legislature, and Defendants Cannizzaro and Clift appearing in
10 this action are the Legal Division of the Legislative Counsel Bureau ("LCB Legal"). If the Nevada
11 Legislature desires to intervene in this action, it should be required to be represented by counsel other
12 than LCB Legal because of its conflict of interest in this case. As addressed in Plaintiff Senators'
13 Motion to Disqualify and Reply in Support of the Motion to Disqualify, there is an inherent conflict
14 of interest when LCB Legal represents certain members of the legislative body over other members,
15 and the same conflict still exists and is not eliminated by LCB Legal also endeavoring to represent the
16 Nevada Legislature in this action.

17 RPC 1.13(a) states a lawyer employed or retained by an organization represents the
18 organization acting through its duly authorized constituents. RPC 1.13(g) provides in relevant part:
19 "A lawyer representing an organization may also represent any of its directors, officers, employees,
20 members, shareholders or other constituents, subject to the provisions of Rule 1.7." LCB Legal's
21 representation of proposed Intervenor Nevada Legislature as a Defendant is directly adverse to the
22 Plaintiff Senators in this action, with whom LCB Legal has an ongoing attorney-client relationship in
23 violation of RPC 1.7. The Plaintiff Senators have not given their consent to waive this conflict of
24 interest as required by RPC 1.7(b) for LCB Legal to remain as counsel of record for either the Nevada
25 Legislature or Defendants Cannizzaro and Clift in this matter. The language of RPC 1.7 is mandatory:
26 ". . . a lawyer shall not represent a client if the representation involves a concurrent conflict of
27 interest." LCB Legal cannot further ignore its conflict and its duty of loyalty owed to Plaintiff Senators
28 by now also appearing for Intervenor Nevada Legislature as a Defendant in this action.

1 Thus, as LCB Legal has a conflict of interest, the Nevada Legislature, if allowed to intervene
2 as a Defendant/Intervenor, should also be represented by separate independent counsel. The
3 Legislature has the financial resources available to engage outside counsel for LCB Legal's conflict.
4 See Affidavit of Senator James Settelmeyer at ¶ 12 filed November 12, 2019. Moreover, so that all of
5 LCB Legal's clients are treated equally, the Legislature should also be paying the attorney's fees of
6 the Plaintiff Senators since they are suing in their official capacity to effectuate their votes on Senate
7 Bill ("SB") 542 and 551 notwithstanding the provisions of NRS 218F.720(1)(b).

8 Based on the foregoing, Plaintiffs respectfully request that if allowed to intervene, Intervenor
9 Nevada Legislature be styled as a "Defendant/Intervenor" in the caption of this action so there is no
10 suggestion Plaintiffs named the Nevada Legislature as a Defendant in this action.

11 Further, Plaintiff Senators respectfully request their Motion to Disqualify be granted as LCB
12 Legal has a concurrent conflict of interest which has not been waived by the Plaintiff Senators.

13 Pursuant to First Judicial District Court Rule 15(7), a proposed Order Granting Plaintiff
14 Senators Motion to Disqualify is attached hereto as Exhibit "1".

15 **AFFIRMATION**

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

18 DATED this 18th day of November 2019.

19 ALLISON MacKENZIE, LTD.
20 402 North Division Street
Carson City, NV 89703
21 Telephone: (775) 687-0202

22 By: 

23 KAREN A. PETERSON, ESQ.
Nevada State Bar No. 366
24 JUSTIN M. TOWNSEND, ESQ.
Nevada State Bar No. 12293
25 Email: kpeterson@allisonmackenzie.com
Email: jtownsend@allisonmackenzie.com

26 Attorneys for Plaintiffs
27
28

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:

- X 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)]
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fully addressed as follows:

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Kevin C. Powers, Esq.
Legislative Counsel Bureau, Legal Division
bierdoes@lcb.state.nv.us
kpowers@lcb.state.nv.us

Aaron D. Ford, Esq.
Craig A. Newby, Esq.
Office of the Attorney General
CNewby@ag.nv.gov

DATED this 18th day of November, 2019.


NANCY FONTENOT

ALLISON MacKENZIE, LTD.
402 North Division Street, P.O. Box 646, Carson City, NV 89702
Telephone: (775) 687-0202 Fax: (775) 882-7918
E-Mail Address: law@allisonmackenzie.com

INDEX OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>	<u>Number of Pages</u>
"1"	Proposed Order Granting Plaintiff Senators Motion to Disqualify	04
4852-0183-4925, v. 1		

EXHIBIT “1”

1 KAREN A. PETERSON, ESQ.
Nevada State Bar No. 366
2 JUSTIN TOWNSEND, ESQ.
Nevada State Bar No. 12293
3 ALLISON MacKENZIE, LTD.
402 North Division Street
4 Carson City, NV 89703
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5 Email: kpeterson@allisonmackenzie.com
Email: jtownsend@allisonmackenzie.com

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,
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16 THE HONORABLE PETE GOICOECHEA,
17 THE HONORABLE BEN KIECKHEFER,
18 THE HONORABLE IRA HANSEN, and
19 THE HONORABLE KEITH PICKARD,
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ASSOCIATION, INC., a Nevada nonprofit
24 corporation; and RETAIL ASSOCIATION
OF NEVADA, a Nevada nonprofit corporation,
25

26 Plaintiffs,

27 vs.

28 ///

///

Case No: 19 OC 00127 1B

Dept. No: I

**ORDER GRANTING
PLAINTIFF SENATORS
MOTION TO DISQUALIFY**

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 ORDER GRANTING PLAINTIFF SENATORS MOTION TO DISQUALIFY

16 This matter is before the Court on Plaintiff Senators Motion to Disqualify, filed on
17 November 18, 2019. The Court, having read the papers and pleadings on file herein, and good cause
18 appearing therefore, finds and orders as follows:

19 IT IS HEREBY ORDERED THAT Plaintiff Senators Motion to Disqualify is GRANTED
20 in its entirety as it appears that LEGISLATIVE COUNSEL BUREAU, LEGAL DIVISION has a
21 concurrent conflict of interest pursuant to Nevada Rules of Professional Conduct 1.7 in representing
22 Defendant/Intervenor the Nevada Legislature.

23 IT IS SO ORDERED.

24 DATED this _____ day of _____, 2019.

25 _____
26 DISTRICT COURT JUDGE

27 ///

28 ///

///

///


///

///

Submitted by:

ALLISON MacKENZIE, LTD.
402 North Division Street
Carson City, NV 89703
Telephone: (775) 687-0202
Email: kpeterston@allisonmackenzie.com
Email: jtownsend@allisonmackenzie.com

By:


KAREN A. PETERSON, ESQ.
Nevada State Bar No. 366
JUSTIN TOWNSEND, ESQ.
Nevada State Bar No. 12293

Attorneys for Plaintiffs

4834-0113-3481, v. 1

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E-Mail Address: law@allisonmackenzie.com

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CASE NO. 19 OC 00127 1B

DEPT. NO. 1

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

BEFORE THE HONORABLE DISTRICT COURT JUDGE, JAMES RUSSELL

THE HONORABLE JAMES SETTELMAYER,
THE HONORABLE JOE HARDY, THE
HONORABLE HEIDI GANSERT, et al.,

Plaintiffs,

vs.

STATE OF NEVADA ex rel. THE
HONORABLE NICOLE CANNIZZARO, in her
official capacity as Senate Majority
Leader; THE HONORABLE KATE MARSHALL,
in her official capacity as President
of the Senate, et al.,

Defendants.

_____ /

JAVS TRANSCRIPT OF PROCEEDINGS

ORAL ARGUMENT

NOVEMBER 19, 2019

Transcribed By: Kathy Jackson CSR

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A P P E A R A N C E S

On behalf of the Plaintiffs: ALLISON MACKENZIE
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For the Legislative Defendants: LEGISLATIVE COUNSEL BUREAU
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For the Executive Defendants: CRAIG NEWBY
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1 NOVEMBER 19, 2019, CARSON CITY, NEVADA

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3 THE COURT: For the record this is Case Number
4 19OC00127, the Honorable James Settelmeyer, et al versus
5 State of Nevada, the Honorable Nicole Cannizzaro. Is that
6 how you say her name?

7 MR. POWERS: Cannizzaro, Cannizzaro, Your Honor.

8 THE COURT: Cannizzaro, in respect to this
9 matter. This is the time set for hearing in respect to the
10 motion to disqualify the Legislative Counsel Bureau legal
11 division in respect to this particular matter.

12 Show the appearance of Karen Peterson or Justin
13 Townsend.

14 Who's going to argue it, do you know?

15 MS. PETERSON: I am, Your Honor.

16 THE COURT: Show the appearance of Karen Peterson
17 on behalf of the Honorable James Settelmeyer. Show Greg
18 Newby?

19 MR. NEWBY: Craig Newby, yes, Your Honor.

20 THE COURT: Craig Newby on behalf of the
21 executive defendants I guess is how they are referred to in
22 the briefs. Show the appearance of Mr. Kevin Powers.

23 MR. POWERS: That's correct, Your Honor.

24 THE COURT: On behalf of the legislative

1 defendants in respect to this particular matter. And, again,
2 it's important to note that the issue here today is not the
3 underlying issue of this matter in respect to the tax issue.
4 This really goes to the motion to disqualify the Legislative
5 Counsel Bureau in respect to this matter.

6 So, Ms. Peterson, are you ready to proceed?

7 MS. PETERSON: I am, Your Honor. Thank you.

8 THE COURT: Uh-huh.

9 MS. PETERSON: And, Your Honor, I would also like
10 the record to note that Plaintiff Senator Settlemeyer is here
11 also.

12 THE COURT: Thank you.

13 MS. PETERSON: And, Your Honor, I'm not going to
14 repeat the arguments that are in the motion. I'm not going
15 to repeat the arguments that are in the reply, but I have
16 some other thoughts that I wanted to provide to the Court.

17 And so just to start out, the first point is that
18 there is nothing in NRS 218F.720 that provides any kind of
19 express or limited applicability of the Nevada Rules of
20 Professional Conduct to Legislative Counsel Bureau lawyers.
21 This is a simple case of government lawyers representing an
22 organization, and then those government lawyers choosing
23 sides when the members of the organization's interest are
24 adverse.

1 THE COURT: Has -- has the LCB ever, and I'm
2 going to ask both of you the same question. Has the LCB ever
3 been in the position where -- where representing one member
4 of the legislature versus another member of the legislature?
5 Historically have they ever done that? And we'll give you a
6 chance but, Ms. Peterson, are you aware of that ever
7 happening?

8 MS. PETERSON: I'm not aware of that ever
9 happening, Your Honor. And, again, this -- I mean, this is a
10 very unique situation with very unique facts. And the
11 lawyers for -- well, the legislative defendants are arguing
12 that their lawyers are, you know, not required to comply with
13 the Nevada Rules of Professional Conduct and that they cite
14 cases in their opposition and they take snippets from those
15 cases and they try to weed together an argument that, again,
16 the rules don't apply to them or there's no individual
17 attorney-client relationship between the plaintiff senators
18 and the Legislative Counsel Bureau attorneys.

19 But, of course, the Nevada Rules of Professional
20 Conduct provide otherwise, and the cases that have been cited
21 by the legislative defendants are different factual
22 situations. There is no case that the legislative defendants
23 have cited that provides that a government attorney with a
24 duty of loyalty, undivided duty of loyalty to its clients can

1 choose one client over the other client, favor one client
2 over the other client when their interests are adverse.

3 And there are cases cited from other
4 jurisdictions by the legislative defendants of AG's. And,
5 again, in those other jurisdictions the Court held the AG's
6 in those situations could represent state agencies that were
7 adverse, and the reason that the Courts in those
8 jurisdictions held that the AG could represent state agencies
9 that were adverse and there was actually even one case where
10 the state employee was represented by the AG in civil matters
11 but then also was being prosecuted by the AG in a criminal
12 matter, and the Courts held that that was okay in that
13 situation because the AG in that case was providing through
14 its office and ensuring that there was independent
15 representation of the respective client. The AG was not
16 choosing one client over the other and not prejudicing one
17 client over the other, and that is not the situation that we
18 have here today.

19 The situation that we have here today is that the
20 attorney for the legislative defendant has taken the side and
21 chosen a side. And the -- the Legislative Counsel Bureau
22 attorneys are not contending that they can provide
23 independent representation to both the plaintiff senators and
24 also the legislative defendants. That's not the situation

1 that we have here today at all, and they are taking the side
2 and favoring one client over the other to the prejudice of
3 one client over the other. And there is no case or the AG's
4 in those cases never took the position that they were
5 entitled to choose one client over the other and then the
6 rules of professional conduct didn't apply.

7 And the same argument goes for the cases that are
8 cited by the Legislative Counsel Bureau with regard to
9 there's no individual attorney-client relationship between
10 the plaintiff senators and LCB legal. In those cases all of
11 those cases involve former employees that are now suing the
12 organization. They had personal claims, personal claims in
13 their individual capacity against the organization for tort
14 claims or employment discrimination claims, and the Court
15 ruled in those situations that, yes, the organization, you
16 know, the county school district, they represented the
17 organization and they didn't -- there was no attorney-client
18 relationship between the former employees regarding their
19 individual claims and the organization's attorney.

20 And, again, that's not the situation that we have
21 here. We don't have plaintiff senators suing legislative
22 defendants or the legislature I guess as an -- as an
23 organization in any personal capacity alleging personal
24 claims or tort claims and claiming that LCB legal has a

1 conflict. And the plaintiff senators brought their claims in
2 their official capacity which the legislative defendants have
3 recognized in their answer. They admitted in response to the
4 first amended complaint that the plaintiff senators, and they
5 are all named in paragraph one, are duly elected members of
6 the Senate of the 80th 2019 Session of the Nevada
7 Legislature. They admitted, paragraph two, that in the 80th
8 2019 Session of the Nevada Legislature each of the plaintiff
9 senators voted against Senate Bill 542 and voted against
10 Senate Bill 551 and all amendments thereto, and that they
11 admitted a portion of paragraph three that each of the
12 plaintiff senators is a member of the Nevada Senate
13 Republican Caucus.

14 And then again they also admitted in their
15 opposition at page two, page four and page 14 that these --
16 the action by the plaintiff senators is a constitutional
17 challenge or there's constitutional claims being made by the
18 plaintiff senators.

19 And then on page 17 of their opposition they
20 admit that LCB legal represents individual members of the
21 legislature in their official capacity as constituents of the
22 organization and there are no cases cited by the legislative
23 defendant that allege or show that LCB legal is allowed to
24 pick sides as to the individual members of the legislature it

1 represents in their official capacity as constituents of the
2 organization when the members interests are adverse.

3 The language of the rule of professional conduct
4 1.7 is mandatory. A lawyer shall not represent when there
5 are -- is a contrary conflict of interest. NRS 0.025
6 provides the words shall not impose a prohibition against
7 acting.

8 And it seems to me that the legislative
9 defendants are arguing. They seem to have blinders on, Your
10 Honor, because they argue the legislative defendants on the
11 (unintelligible) are entitled to statutory authorized
12 counsel. But on the other hand, they fail to recognize that
13 LCB legal is the statutory authorized counsel of the
14 plaintiff senators also.

15 And, again, the rules allow that there -- there
16 can be a conflict between members of an organization and the
17 lawyer can represent those members if their interests are
18 adverse, but there has to be written consent by all of the
19 members, and we don't have that here. Again, if there's any
20 doubt as to a conflict or if there's any doubt as to the
21 representation, that must be resolved in favor of
22 disqualification.

23 And then I would just like to end, Your Honor,
24 and say that we all make mistakes. Lawyers make mistakes.

1 It seems to me that maybe government lawyers don't have as
2 many dealings and conflicts as private attorneys do. And
3 when there are conflicts with government lawyers and there is
4 a conflict in this case, Your Honor, when there are conflicts
5 with government lawyers because those government lawyers
6 represent the interests of the public and represent the
7 interests of the citizens of the State of Nevada, they have
8 to be very firm in their representation as to who they
9 represent.

10 They have to acknowledge that if there is a
11 conflict between their members, they represent the
12 organization first, and they can't represent members if
13 there's any conflict between the members.

14 And in this case, Your Honor, when Senator
15 Settelmeyer went public and contended that he had a problem
16 with that Legislative Counsel Bureau opinion, and he thought
17 that it was unconstitutional and then after those bills were
18 passed and he indicated again publicly that there was a
19 problem passing those bills, they weren't constitutional,
20 that was a huge red flag that there was a conflict in this
21 case.

22 And to tell you the truth, the way this courtroom
23 is even set up today tells the story. We've got plaintiff
24 senators on this side represented on this side of the

1 courtroom we have by this counsel table, and then we have
2 their counsel sitting on the other side of the courtroom at
3 the other counsel table having an undivided duty of loyalty
4 not only to these plaintiff senators but also an undivided
5 duty of loyalty to those legislative defendants and it's not
6 right.

7 So, Your Honor, we are asking you to grant our
8 motion, and if you grant our motion we want you to ensure
9 that this never happens again. That it's clear that
10 government lawyers put the organization first, in this case
11 which is the legislature and if their members have conflicts
12 they are not entitled to represent those members adverse to
13 each other with regard to those conflicts.

14 THE COURT: Before you sit down, what about, and
15 I know you just filed your opposition in the motion to
16 intervene, it was kind of a non opposition in many ways.

17 MS. PETERSON: Qualified.

18 THE COURT: Huh?

19 MS. PETERSON: Qualified.

20 THE COURT: Qualified in respect to that. I did
21 read that in regards to that, and I have some comments on
22 that at the end. I'll talk about that and the motion to
23 intervene like that and everything else because I looked at
24 that.

1 And it seems to me whether LCB filed that motion
2 to intervene, it's kind of like, well, this -- maybe it's the
3 way we should have done it in the first place. I mean,
4 that's the second thought on my part. There's also you can
5 always file an amicus brief to support your position with
6 respect to that and we'll get to that and those issues in a
7 minute.

8 Those are other alternatives, aren't they? By
9 that, I mean they can file the motion to intervene, and I
10 know you qualified it with certain things in regards to
11 referring to him as defendant, intervener and some other
12 issues in respect to that, but we'll talk about that at the
13 end to some extent. But, again, that's I guess the position
14 I took from your brief so to speak.

15 MS. PETERSON: Correct. Your Honor, LCB legal
16 with regard to the legislative defendants, they -- there
17 should be outside counsel entirely to represent them.

18 THE COURT: Okay. Thank you.

19 Mr. Newby, you didn't file any brief on this
20 issue, didn't file anything on this issue. So I take it
21 you're standing quietly there; is that correct?

22 MR. NEWBY: I'm sitting quite actually at the
23 moment. I'll stand up as I'm getting addressed.

24 THE COURT: Okay.

1 MR. NEWBY: While I have a lot to say about the
2 underlying dispute if and when we get to that pending motion,
3 the executive defendants have not filed and are not arguing
4 on the motion to disqualify.

5 THE COURT: Right. I took that from not having
6 any brief and that.

7 Mr. Powers?

8 MR. POWERS: Thank you, Your Honor. For the
9 record Kevin Powers, chief litigation counsel of LCB legal
10 division representing the legislative defendants, Senator
11 Cannizzaro and Secretary of the Senate, Claire Clift.

12 The plaintiffs are characterizing this case as
13 plaintiff legislators versus defendant legislators, but the
14 plaintiffs aren't challenging the defendant legislators.
15 They are challenging the constitutionality of these two
16 pieces of legislation.

17 These two defendants are not proper parties and
18 they are not necessary parties. When you challenge a
19 constitutionality of legislation you challenge the state
20 official charge with administering the law, in this case the
21 department of motor vehicles and the department of taxation.

22 In addition, these are not necessary or proper
23 parties because both of these defendants are entitled to
24 legislative immunity. Now, absolute immunity, they can't be

1 subject to declaratory or injunctive action in their official
2 capacity for actions taken as legislators.

3 Now, on a footnote in their reply the plaintiffs
4 suggest that they are only entitled to legislative immunity
5 unless the plaintiffs prove the statute is unconstitutional.
6 That's not how legislative immunity works. Legislative
7 immunity is absolute immunity and they are entitled to be
8 dismissed and removed from this case --

9 THE COURT: Is there a --

10 MR. POWERS: -- regardless of --

11 THE COURT: Is there a motion pending with
12 respect to dismissing from this case?

13 MR. POWERS: There would have been. We're
14 getting to dispositive motions and --

15 THE COURT: There would have been, but is there a
16 pending motion right now to remove these people from this
17 case?

18 MR. POWERS: No, there is not.

19 THE COURT: Okay.

20 MR. POWERS: Because we were in the process of
21 briefing motions for summary judgment when the plaintiffs
22 filed their motion to disqualify. So we didn't get the
23 opportunity to make the arguments to dismiss our defendants
24 under that summary judgment motion.

1 But the important part here is because these are
2 not necessary and proper parties, this case is not
3 legislators versus legislators. It's legislators versus two
4 state departments administering statutes. Now, as a matter
5 of right under the statute, the legislature can intervene to
6 defend the constitutionality of these laws.

7 THE COURT: I couldn't agree more with you. I
8 think clearly they have a right to intervene under a motion
9 that you filed, motion to intervene. I think it's clear
10 under that statute in respect to that. When I read that I
11 thought, well, that makes sense.

12 And, again, back to my question I asked, I
13 started with. Has the legislature ever been in a position
14 where basically it was had two competing senators, basically
15 they both went to the LCB the way I understand it and asked
16 for an opinion in regards to the constitutionality or
17 whatever in respect to the tax issue. And the way I read it
18 Senator Settlemeyer went and asked, and then the defendant --
19 I mean the democrats went and asked too. The LCB is then put
20 in a position basically where they have a request from both
21 sides in respect to that, and you certainly have a right to
22 render your opinion, correct?

23 MR. POWERS: Correct. And I can give you an
24 example of a case. It involves the two-thirds issues. It

1 happened in 2003.

2 THE COURT: Okay.

3 MR. POWERS: A group of assemblywomen and men led
4 by Sharon Angle brought a lawsuit in federal district court
5 in 2003 and it challenged both. It names defendant so the
6 legislature and several legislative officers and other
7 members of the legislative branch. In that case they claim
8 that the legislature was trying to pass legislation without
9 two-thirds of the majority requirement.

10 Now, the federal district court found that it
11 wasn't proper for federal jurisdiction, but the LCB
12 represented the legislature and the legislative officers
13 against a group of legislators in that suit. That suit after
14 the federal district court appealed to the Ninth Circuit.
15 The LCB legal represented the legislature and the legislative
16 defendants in the Ninth Circuit where legislators were suing
17 both of those groups of defendants. And then that was
18 petitioned to the U.S. Supreme Court, and the LCB legal
19 represented again the legislature and the legislative
20 defendants was against a group of legislators before the U.S.
21 Supreme Court.

22 THE COURT: Was conflict of interest raised?

23 MR. POWERS: It was not raised. This case is
24 controlled as far as disqualification by Rule 1.11. That

1 deals with public lawyers. The plaintiffs want to rely on
2 1.7, but you don't get to 1.7 because of 1.11, and it says
3 except as law may otherwise expressly permit a lawyer
4 currently serving as a public officer employee is subject to
5 Rule 1.7, but that except clause the plaintiff is trying to
6 ignore, but it says except as law that otherwise expressly
7 permits. If law expressly permits the representation then
8 the conflict of interest rules in 1.7 don't apply, and the
9 comments to the ABA modeled rules make that clear too.

10 It acknowledges that lawyers may be authorized to
11 represent several government agencies in inter-governmental
12 legal controversies in circumstances where a private lawyer
13 could not represent multiple private clients. These rules,
14 the rules of professional conduct do not abrogate any such
15 authority.

16 The reason for this is an organization and its
17 constituents acting in their official capacity are entitled
18 to their statutorily authorized counsel. The drafters of the
19 rules of professional conduct understood that and put a
20 specific exception in there for that very purpose.

21 The problem here is that if you take the
22 plaintiffs' theory of Rule 1.7, it renders the LCB incapable
23 of providing legal representation to any legislator at any
24 time. According to them, if there's an adverse interest then

1 the LCB can't represent the legislature or legislative
2 defendants under any circumstances. Rule 1.7 is not under
3 the litigation. It supplies all representation.

4 For example, if one legislator voted no against a
5 piece of legislation, LCB couldn't represent the legislator
6 if that legislation was challenged as unconstitutional
7 because that would be adverse to the one legislator who voted
8 no.

9 In the bill drafting process, Rule 1.7 applies to
10 transactional representation. In the bill drafting process
11 LCB legal represents the legislators in bill drafting and
12 when we do, one legislative draft in legislation is mostly
13 adverse to another legislator's interest. That's the nature
14 of the political process. The only way LCB legal can provide
15 legal representation is how it's structured now. We
16 represent the organization and we represent legislators only
17 as constituents of that organization.

18 So when those legislators were talking to them
19 and representing them, it's not as individual legislators.
20 It's as constituents of the organization for the benefit of
21 the organization. The legislature decided to provide a
22 nonpartisan counsel of all legislators is beneficial to the
23 organization, but that doesn't create a separate
24 attorney-client with each legislator. It creates a separate

1 attorney-client relationship with the constituent members of
2 the legislature.

3 Every time we provide advice to the legislature
4 it's for the benefit of the organization. It's not for the
5 benefit of the individual legislator. It's for the benefit
6 of the democratic process, the organization, the legislative
7 machinery. So this idea --

8 THE COURT: But didn't you in this case come in
9 and defend two individuals? I mean, that's I guess the
10 issue.

11 MR. POWERS: But they are not only defendants.
12 They are not necessary proper parties. They --

13 THE COURT: Now you're back to --

14 MR. POWERS: But, Your Honor, they have the
15 choice of naming who they could. They should have named the
16 legislature as an institution or no defendants at all as
17 legislators because legislators are not proper and necessary
18 defendants. And these legislators are not being sued in an
19 individual capacity. They are being sued in an official
20 capacity as constituents of the organization. The plaintiffs
21 are claiming these two legislators passed unconstitutional
22 legislation.

23 Well, as you know -- I'm sorry, one of them is
24 the Secretary of the Senate. So this one legislator could

1 not have passed this legislation. This is a bicameral
2 legislature. So if these legislators were never necessary
3 parties, they need to name every member of the senate and
4 every member who voted in favor of this because if Senator
5 Cannizzaro is a necessary party, then all legislators are a
6 necessary party. But the reason people don't do that in
7 constitutional litigation is legislative immunity prohibits
8 that, and also it's clear by hundreds of years of case law
9 you sue the administrative officer charged with enforcing the
10 law.

11 So they want to bring these legislative
12 defendants in and only those two particular legislative
13 defendants as a tactical strategy, but this is not the way
14 the litigation should be conducted. The legislature should
15 be allowed to intervene and LCB in its normal role to
16 represent the organization and defend legislation that's
17 presumed to be constitutional.

18 This is not legislators versus legislators. This
19 is legislators versus the constitutionality of a piece of
20 legislation. The LCB is the proper statutorily authorized
21 counsel to defend the constitutionality of the statute on
22 behalf of the legislature, and the rules contemplate this
23 because it says except as law may otherwise expressly permit.
24 Under this statute, 218F.720, LCB legal has been authorized

1 by law to represent the interest of the -- of the legislature
2 not the interest of the individual members but the interest
3 of the legislature in defending the constitutionality of the
4 statute.

5 THE COURT: And I don't disagree with that
6 premise per se, but I do have an issue in respect to the LCB
7 coming in and representing these individuals even if they are
8 in a represented capacity. I'm just trying to understand
9 that. I understand you said they shouldn't be in there.
10 Therefore, we shouldn't be in this particular situation,
11 correct?

12 MR. POWERS: That's correct, and they made a
13 tactical decision to only name these two particular
14 legislative defendants. There was a reason for that. It was
15 tactical and calculated. They have to live with the
16 consequences. The consequences are they knew LCB legal would
17 represent these defendants.

18 When they filed their first amended complaint on
19 July 30th, they called LCB legal and asked if they could
20 serve the complaint on us and we would accept service on
21 behalf of Senator Cannizzaro and Secretary Clift. They knew
22 they filed the complaint who their attorneys were and how we
23 were authorized by 218F.720 to represent Cannizzaro and
24 Clift. They knew that going on in.

1 These are not necessary defendants. They're not
2 proper defendants. They named them knowing they would be
3 represented by LCB legal. It's a tactical calculated
4 decision to create a conflict that doesn't need to exist
5 because the rules say except as law may expressly permit.
6 We're expressly authorized to represent these legislators
7 because they are not individuals. They are constituents of
8 the organization. They are representing the organization
9 which passed this law which is presumed to be constitutional,
10 and that's why there's no conflict here.

11 The LCB didn't make a mistake. The plaintiffs
12 made the mistake by naming necessary -- I mean unnecessary
13 and improper parties. The plaintiffs made a mistake by not
14 naming the legislature if they wanted to make a point and
15 name the legislative defendant. The plaintiffs made a
16 mistake by simply not naming the state agencies charged with
17 enforcing the law. Had they done that, the legislature could
18 have decided if it wanted to intervene and we would have
19 intervened under the statute if that would have been
20 authorized. They are the ones who made the mistakes. They
21 need to live with the consequences of the mistakes.

22 THE COURT: Well, couldn't LCB have said wait a
23 minute. Senator or in respect we just are not going to get
24 involved in this matter. We are going to stay back and we're

1 just not going to come in and represent you. Go get your own
2 counsel. Could they have done that, LCB?

3 MR. POWERS: No, because we're statutorily
4 directed to provide representation when the legislative
5 commission or the chair of the commission authorizes us to
6 enter legislation. It says, the statute says that they may
7 direct the Legislative Counsel and the legal division to
8 prosecute, defend, intervene or represent in any other
9 legislation. It's a directive. We have a statutory duty to
10 be here because the legislative commission and in this case
11 the chair of the legislative commission authorized LCB legal
12 to represent these legislative defendants in their official
13 capacity and again it's not a lawsuit legislative versus
14 legislator. It's legislator versus the constitutionality of
15 the statute. These legislator defendants do not belong.
16 This conflict exists because of the plaintiffs' own
17 calculated and tactical litigation decisions.

18 We can solve this simply. We already proposed a
19 stipulation. What plaintiffs stipulate to the intervention
20 of the legislature, the dismissal of the legislative
21 defendants because they are not necessary and proper parties
22 and the dismissal against the Governor and Lieutenant
23 Governor because they're not necessary parties.

24 MS. PETERSON: You know what, Your Honor, I --

1 MR. POWERS: I believe I'm doing my argument
2 here.

3 MS. PETERSON: -- believe these are settlement
4 discussions.

5 THE COURT: That's -- settlement negotiations
6 are --

7 MR. POWERS: This wasn't a settlement. We
8 weren't trying to -- no. This was proposed stipulation. We
9 aren't settling the merits of the case. That's not a
10 settlement discussion. That's a proposed stipulation.

11 THE COURT: Well, proposed stipulations are
12 settlement negotiations, Mr. Powers. You're offering
13 basically a way to resolve something. Isn't that a
14 settlement?

15 MR. POWERS: No. That settlement is
16 (unintelligible) merits of the claim. A dispute as to
17 motions not a settlement.

18 THE COURT: I disagree with you. That's fine.

19 MR. POWERS: That doesn't resolve the case.

20 THE COURT: Are you done?

21 MR. POWERS: No, Your Honor. I want to continue
22 if I wasn't so rudely interrupted.

23 THE COURT: Keep going.

24 MR. POWERS: I appreciate the opportunity. I

1 will wrap it up, Your Honor. The bottom line here is LCB
2 legal historically has been able to represent the
3 legislature.

4 THE COURT: What would Frank (unintelligible)
5 think about this case?

6 MR. POWERS: Frank (unintelligible) represented
7 the legislature and each individual members in civil cases.
8 In 1992 there was a case with Senator O'Neil.

9 THE COURT: Would he think this is the proper way
10 for LCB to act?

11 MR. POWERS: Yes, because the legislature is
12 entitled to statutorily authorized counsel. Otherwise, every
13 time a legislator sues the legislature as a whole or its
14 members the legislature has to get outside counsel, and then
15 the taxpayers would have to pay for outside counsel. The
16 legislature already pays for in-house counsel. This is no
17 different than a corporation or any other organizational
18 client.

19 When -- when directors of corporations sue the
20 corporation, generally counsel for the corporation can
21 represent the corporation because the directors, they only
22 represent directors as constituents not as individuals and
23 when the individuals act contrary to the interest of the
24 organization in suing, then, of course, the organization is

1 entitled to its counsel, and in this case the statute makes
2 that clear.

3 We're here because their litigation strategy, LCB
4 legal is properly representing the interest of the
5 legislature through these two members who are not necessary
6 or proper parties to offer a way to resolve their concerns by
7 having the legislature intervene. This could be resolved in
8 that way and we can move on to the merits of the case
9 because ultimately the defendants claim they need to move
10 forward on the merits of the case. They have done everything
11 to stop moving forward on the merits of the case. Thank you,
12 Your Honor.

13 THE COURT: All right. Ms. Peterson, any
14 comments?

15 MS. PETERSON: Your Honor, just to point out that
16 under the, this is an action for declaratory relief and under
17 NRS 30.130 with regard to parties, the statute provides that
18 when declaratory relief is sought all persons shall be made
19 parties who have a claim and interest which would be effected
20 by the declaration, and no declaration shall prejudice the
21 rights of persons who are not parties to the proceedings.

22 THE COURT: What about the argument that the
23 rules of professional conduct don't apply to the LCB in
24 respect to as he's argued?

1 MS. PETERSON: Your Honor, there -- the rule says
2 unless expressly provided. Otherwise, in statute the rules
3 apply and there is no expressed division in Nevada law that
4 says rules of professional conduct don't apply to LCB. There
5 is nothing there. There's nothing that's been pointed to by
6 legislative legal counsel that supports that. If there's
7 section and the only cases they did cite are the AG's --
8 those AG cases that we've already gone over where the rules,
9 the Court determined that the AG had statutory duties to
10 represent again separate parties with adverse interest, but
11 the AG was able to provide independent representations so no
12 party was prejudiced.

13 That's not the situation that we have here. LCB
14 legal wants to pick one side and then wants to -- to the
15 prejudice of the plaintiff senators and -- and then say the
16 rules -- the rules don't apply to them.

17 And, Your Honor, I mean, I do find it offensive.
18 I really do find it offensive that they are contending that
19 their conflict are as a result of my actions. I had no idea
20 when we named those legislative defendants who would be
21 representing them. The statute specifically says that the
22 legislative commission or the chair of the legislative
23 commission may direct the Legislative Counsel and the legal
24 division to appear.

1 And I had no idea, number one, who even the chair
2 of the legislative commission was, and I guess it is a
3 majority leader, Defendant Senator Cannizzaro. So I didn't
4 know that they were going to direct the Legislative Counsel
5 and legal division to appear in this action, and we meet all
6 of the defendants because they were statutory and
7 constitutional duties as we set forth in our allegations of
8 our complaint, and we want those constitutional officers
9 bound and the legislative defendants bound if this Court
10 makes a determination that's in favor of the plaintiff
11 senators. It's our action. We have the ability to name who
12 we want. They only raise the issue of the legislative
13 defendants not being necessary parties in response to our
14 motion to disqualify. And I believe that's all I have.

15 THE COURT: Thank you.

16 Mr. Powers, anything further?

17 MR. POWERS: Oh, thank you, Your Honor, for the
18 opportunity.

19 As I mentioned, they called us to ask if we would
20 accept service on behalf of the legislative defendants. So
21 they knew who was going to be representing, and they assumed.
22 They called us and then we send an accepted service on our
23 behalf. So they knew that immediately after filing the
24 complaint. So that just is contradictory to the record.

1 The bigger issue here though is the legislature
2 is entitled to a statutorily authorized counsel. These
3 plaintiffs are acting contrary to the organization's
4 interest. The LCB legal does not represent plaintiff
5 legislators or acting contrary to the organization's
6 interests. They represent legislators who are constituents
7 with the organization acting in the best interest of the
8 legislative organization. This is not unusual for LCB legal
9 to represent the legislature when defending the
10 constitutionality of legislation.

11 Their argument means that LCB would have to
12 question all representation it provides. You heard them.
13 They want to, not just this case, they want you to set a
14 precedent and establish a rule showing all the government
15 lawyers you can't do this. Well, how can we provide legal
16 advice to one legislator on bill drafting and not adverse to
17 another legislator's interest?

18 We're, according to them, barred by Rule 1.27
19 from providing any legal representation. It renders the
20 agency obsolete as a legal agency. What can we possibly do?
21 As has been mentioned in their briefs, legislators seek
22 opinions on conflicts of interest, with regard to the ethics
23 law, as they seek opinion letters from us. Every time a
24 legislator asks for one of those things, it's contrary to

1 another legislator's interest.

2 By statute the legislature has established the
3 LCB, realizing those conflicts of interest that exist and
4 nonetheless that expressly authorized statutes authority for
5 the Legislative Counsel Bureau to provide legal
6 representation in bill draft and legal opinions in
7 litigation. It's no different. If you say we can't
8 represent these legislators here, how can we represent these
9 legislators in bill drafting? It would be adverse to the
10 interest of other legislators. You render LCB legal an
11 obsolete agency. So this case is huge when it comes to the
12 operation of a legislative branch of government and,
13 therefore, raises separation of powers issues.

14 The legislature has chosen using its power to
15 determine its own internal affairs and how to administer its
16 own internal affairs. Each branch has constitutional powers
17 how to administer its own internal affairs to direct LCB
18 legal as the correct legal agency to represent the interests
19 of the legislature. That's what this ultimately comes down
20 to. This is not unusual. This is not a unique case. It's
21 not different. It's happened before. LCB legal properly
22 defends the constitutionality of legislation. We would do
23 that here. If they feel more comfortable with the
24 legislature as a defendant than these improper and

1 unnecessary parties, we're more than willing to proceed under
2 that approach. Thank you, Your Honor.

3 THE COURT: Okay. Thank you.

4 MS. PETERSON: Your Honor, I'm sorry. Just,
5 there is one thing that needs to be clarified because Mr.
6 Townsend is an attorney from our office. He called
7 Legislative Counsel Bureau about service of the defendants.
8 I think that that needs to be on the record accurately what
9 happened in that conversation. So I would ask with the
10 Court's indulgence if Mr. Townsend could just say what
11 happened.

12 THE COURT: Well, Mr. Townsend obviously is put
13 on the spot. You can tell the Court so it's on the record.

14 MR. TOWNSEND: Sure.

15 THE COURT: If it's contrary to what Mr. Powers
16 just indicated.

17 MR. TOWNSEND: So after we filed the first
18 amended complaint I called the LCB. I called the main
19 telephone number for the LCB and whoever answered the phone,
20 I said I'm calling to get direction on how and where we serve
21 Senator Cannizzaro and Secretary Clift. I was transferred to
22 Mr. Powers, who volunteered that he would accept service on
23 behalf of those defendants. I did not ask the LCB or
24 Mr. Powers to accept service on behalf of those defendants.

1 THE COURT: Okay. Thank you.

2 Mr. Powers, do you disagree with that
3 representation? That's a little different than what you
4 represented.

5 MR. POWERS: No. He asked whether we would
6 accept service on behalf --

7 MR. TOWNSEND: Absolutely.

8 MR. POWERS: -- of the legislative defendants.

9 MR. TOWNSEND: Absolutely.

10 MR. POWERS: But the bottom line is they accepted
11 our acceptance of service. If they thought it was improper
12 for LCB to represent, they could have served them, the
13 legislative defendants under normal means. They didn't have
14 to accept our acceptance of service. Then the question is
15 raised because we were conflicted and we accepted service
16 then service was improper here. So that raises that issue
17 because how can we accept service if we are conflicted.

18 But the bottom line is LCB is not conflicted. We
19 do this historically. We do this regularly. This is not a
20 conflict of interest. Under the rules LCB legal can defend
21 the constitutionality of this statute. We are properly
22 representing the interest of the legislature. Thank you.

23 THE COURT: Well, again, I do think this is a
24 very important issue in respect to the LCB, I really do. I

1 think it's a significant issue in this particular case. I
2 think it has great impact in regards to the future in regards
3 to a lot of things.

4 And, additionally, I am incorporating the motion
5 to intervene in this, in my thoughts here because I think the
6 motion to intervene is the correct way the LCB should have
7 gotten involved in this case. I believe that. I think -- I
8 think you have an absolute right to come in and defend your
9 opinion that you put in place or that you gave in respect to
10 that.

11 But here I guess, again, in starting out, both
12 parties basically appears to me state senators sought legal
13 advice from the LCB on the same issue which is the underlying
14 subject matter of this case. I mean, it seems both sides
15 went to LCB and raised the issue and that in regards to that.

16 It appears to this Court that there's a need for
17 LCB to maintain its neutrality as to representation of all
18 individual members of the legislature. That does not mean it
19 cannot take a position to support or defend an interpretation
20 that is given. I think you can either by filing your motion
21 to intervene or filing an amicus brief. I think that clearly
22 applied.

23 I have concern, however, about, and I think LCB
24 should be concerned about the future effect its position

D. The Balance of Equities Prevents LCB Legal From its Continued Representation of Defendants Cannizzaro and Clift.

The Court, in deciding a disqualification motion, may be faced with the task of balancing competing interests, including “the individual right to be represented by each party’s right to be free from the risk of even inadvertent disclosure of confidential information, and the public’s interest in the scrupulous administration of justice.” *Nevada Yellow Cab Corp. v. Eighth Judicial Dist. Court ex. rel. County of Clark*, 123 Nev. 44, 53 152 P.3d 737, 742 (2007). Any doubts, however, should be resolved in favor of disqualification. *Id.*

Furthermore, Legislative Defendants also cited *State ex rel. Swanson v. 3M Co.*, 845 N.W.2d 808 (Minn. 2014), discussed *supra*, in reference to the potential for disqualification motions to be abused as a litigation tactic. The Minnesota Supreme Court, in that case, however, also noted that the rule of professional conduct prohibiting representation where there is a concurrent conflict of interest governs and the text of the applicable rule is authoritative. 845 N.W.2d at 820-21. That Court concluded, therefore, that “the rule, which is now phrased in mandatory language, no longer permits courts to weigh the equities to determine whether disqualification should be imputed.” *Id.* Here, Nevada’s RPC 1.7 provides that a “lawyer *shall* not represent a client if the representation involves a concurrent conflict of interest.” (Emphasis added). Thus, the mandatory language of RPC 1.7 should control or, at the very least, tip the balance in favor of disqualification.

Even if the Court does consider other factors in balancing competing interests, the Legislative Defendants offer no persuasive arguments or authorities to support the idea that any factor weighs against disqualification. For instance, Legislative Defendants argue that “Plaintiff Senators’ speculative contentions about potential harms from LCB Legal’s representation do not justify disqualification of counsel.” (Opposition, p. 20). Legislative Defendants cite *Liapis v. Dist. Ct.*, 128 Nev. 414, 282 P.3d 733 (2012) to support their argument. In *Liapis*, a son was permitted to represent his father in a divorce proceeding involving both of his parents. The Supreme Court found that the mother was not a former client of her son’s and thus failed to establish an attorney-client relationship and also failed to establish specific examples of impropriety. *Id.* at 419. The Supreme Court found that “the appearance of impropriety may form a basis for attorney disqualification only in the limited circumstances of a public lawyer and only if the appearance is so extreme as to undermine public trust

1 and confidence in the judicial system.” *Id.* (citing *Brown v. Dist. Ct.*, 116 Nev. 1200, 1204 (2000)).
2 In *Brown*, the Nevada Supreme Court found that, “to prevail on a motion to disqualify opposing
3 counsel, the moving party must first establish at least a reasonable possibility that some specifically
4 identifiable impropriety did occur and then must also establish that the likelihood of public suspicion
5 or obloquy outweighs the social interest which will be served by a lawyer’s continued participation in
6 a particular case.” *Brown*, 116 Nev. at 1205 (internal quotations omitted). These cases are
7 distinguishable from the facts at issue here.

8 In the Motion to Disqualify and in this Reply, Plaintiff Senators have demonstrated specifically
9 identifiable improprieties with LCB Legal representing members of a legislative body in a dispute
10 directly adverse to other members of a legislative body. Additionally, the high likelihood of public
11 suspicion and the need for public confidence in the administration of government strongly outweighs
12 Defendants Cannizzaro’s and Clift’s interest in having LCB Legal represent them in this action.
13 Removal of counsel at this early stage in the litigation will not put Defendants Cannizzaro or Clift at
14 any great disadvantage as the litigation has yet to have begun in earnest and has been stayed pending
15 a determination of the Motion to Disqualify. Any societal interest in maintaining current counsel in
16 the proceeding is clearly outweighed by the necessity to maintain the appearance of impartial
17 administration of the government and public confidence of governmental institutions.

18 Legislative Defendants attempt to counter the assertion that LCB Legal’s representation will
19 create widespread public distrust in the neutral administration of government by citing the ABA Model
20 Rules of Professional Conduct 1.2(b) which provides, “a lawyer’s representation of a client, including
21 representation by appointment, does not constitute an endorsement of the client’s political, economic,
22 social or moral view or activities.” While that may be true, the actions of LCB Legal are still adverse
23 to its duty of loyalty owed to Plaintiff Senators under the Rules of Professional Conduct. RPC 1.7,
24 which prohibits LCB Legal from representing the Legislative Defendants adverse to the interests of
25 its other clients - - the Plaintiff Senators - - is mandatory.

26 Again, the Nevada Supreme Court has found that “doubts should generally be resolved in favor
27 of disqualification of counsel.” *Yellow Cab*, 123 Nev. at 53. In the present proceeding, the doctrines
28 of estoppel and waiver are not applicable and the conflict of interest rules as they relate to avoiding

1 conflicts apply directly to LCB Legal. Plaintiff Senators have standing to assert a conflict of interest
2 as a confidential attorney-client relationship clearly exists between Plaintiff Senators and LCB Legal.
3 Finally, Plaintiff Senators have demonstrated that the balance of equities weighs in favor of
4 disqualification. Thus, LCB Legal should be disqualified as counsel for Defendants Cannizzaro and
5 Clift.

6 V.

7 CONCLUSION

8 A distinct fundamental value of our legal system is the attorney's obligation of loyalty. *People*
9 *ex rel. Dep't of Corps. v. Speedee Oil Change Sys., Inc.*, 20 Cal. 4th 1135, 1146-47, 980 P.2d 371,
10 379 (1999). As the Court noted in *Speedee Oil Change*: "Attorneys have a duty to maintain undivided
11 loyalty to their clients to avoid undermining public confidence in the legal profession and the judicial
12 process. (cite omitted). The effective functioning of the fiduciary relationship between attorney and
13 client depends on the client's trust and confidence in counsel. (cite omitted) The courts will protect
14 clients' legitimate expectations of loyalty to preserve this essential basis for trust and security in the
15 attorney-client relationship. (*Ibid.*) . . . The loyalty the attorney owes one client cannot be allowed to
16 compromise the duty owed another. (cite omitted). *Id.* For all the foregoing reasons, Plaintiff Senators
17 respectfully request that their Motion to Disqualify be granted.

18 VI.

19 AFFIRMATION

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

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

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1 DATED this 12th day of November, 2019.

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6 By:



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14 SETTELMAYER, THE HONORABLE JOE HARDY,
15 THE HONORABLE HEIDI GANSERT, THE
16 HONORABLE SCOTT HAMMOND, THE
17 HONORABLE PETE GOICOECHEA, THE
18 HONORABLE BEN KIECKHEFER, THE
19 HONORABLE IRA HANSEN and THE
20 HONORABLE KEITH PICKARD in their official
21 capacities as members of the Senate of the State of
22 Nevada
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27
28

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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:

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DATED this 12th day of November, 2019.


NANCY FONTENOT

INDEX OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>	<u>Number of Pages</u>
"1"	2012-2013 New Legislator Orientation Training Agenda	04
"2"	2016 New Legislator Orientation Training Agenda and Presentation by Rick Combs	13

4842-9537-1436, v. 1

EXHIBIT “1”



New Legislator Orientation and Training: 2012-2013

New Legislator Orientation is designed to instruct new legislators in legislative processes and offer insight into working with various participants.

2012-2013 Schedule

[11-28-2012](#)
[11-29-2012](#)
[11-30-2012](#)
[12-6-2012](#)
[12-13-2012](#)
[1-14-2013](#)
[1-15-2013](#)
[1-16-2013](#)
[1-17-2013](#)
[4-1-2013](#)
[5-8-2013](#)

2012-2013 Schedule

Phase I Orientation – November 28, 29, and 30 to be held in Carson City

Phase II Issue Briefs – December 6 and December 13 to be videoconferenced among Carson City, Elko, and Las Vegas

Phase III Academy – January 14, 15, 16, and 17 to be held in Carson City

Wednesday, November 28, 2012

9:30 a.m.—10:00 a.m.	Continental Breakfast—Room 3100
10:00 a.m.—10:15 a.m.	Welcome—Room 3100 <ul style="list-style-type: none"> Senate and Assembly Leadership
10:15 a.m.—10:45 a.m.	Overview of the Legislative Counsel Bureau—Room 3100 <ul style="list-style-type: none"> Rick Combs, Director Roger Wilkerson, Chief, Administrative Division Paul V. Townsend, Legislative Auditor, Audit Division Mark Krmpotic, Senate Fiscal Analyst, Fiscal Analysis Division Cindy Jones, Assembly Fiscal Analyst, Fiscal Analysis Division Brenda J. Erdoes, Legislative Counsel, Legal Division Donald O. Williams, Research Director, Research Division
10:45 a.m.—11:15 a.m.	Legislator Compensation, Benefits, and Travel—Room 3100 <ul style="list-style-type: none"> Chuck Mahoney, Chief Accountant, Accounting Unit, Administrative Division
11:15 a.m.—11:45 a.m.	Tour of the Legislative Building
11:45 a.m.—Noon	Break
Noon—1:45 p.m.	Senate Lunch—Office of the Secretary of the Senate <ul style="list-style-type: none"> David Byerman, Secretary of the Senate Assembly Lunch—Office of the Chief Clerk of the Assembly <ul style="list-style-type: none"> Susan Furlong, Chief Clerk of the Assembly
1:45 p.m.—2:00 p.m.	Break
2:00 p.m.—5:00 p.m.	Individual Legislator Activities—First Floor Foyer, Legislative Building

5:30 p.m.

Group Dinner (bus leaves at this time)

Thursday, November 29, 2012

7:45 a.m.—8:30 a.m.

Breakfast—Room 3100

8:30 a.m.—8:45 a.m.

Break

8:45 a.m.—11:45 a.m.

Legislative Counsel Bureau: Presentations from Divisions—
Room 4100

Legal Division: The Legislature's Lawyer

- Brenda J. Erdoes, Legislative Counsel

Audit Division: Assessing Performance

- Paul V. Townsend, Legislative Auditor Handout

Break

Fiscal Analysis Division: Preparing the Budget and Forecasting
Revenue

- Mark Krmpotic, Senate Fiscal Analyst
- Cindy Jones, Assembly Fiscal Analyst

Research Division

- Donald O. Williams, Research Director
 - Research Analysts: Linking Research to Policy Handout
 - Research Library and Research Publications: Preserving the Record Handout
 - Constituent Services Unit: Serving Your Constituents Handout

11:45 a.m.—12:15 p.m.

Break

12:15 p.m.—1:45 p.m.

Luncheon—Old Assembly Chamber

Table Topic:

What I Know Now That I Wish I Had Known Then
Roundtable Discussion with Returning Legislators

Program:

*Remembering Citizen Legislators: The Nevada
Legislature Oral History Project*
Dana R. Bennett, Ph.D., Bennett Historical Research
Services

2:00 p.m.—5:00 p.m.

Individual Legislator Activities

(4:00 p.m.—5:00 p.m.)

Optional Tour of Carson City

5:00 p.m.

Dinner (individual responsibility)

Friday, November 30, 2012

7:30 a.m.—8:30 a.m.

Breakfast—Room 3100

Invited Guests from the Office of the Governor and the Office of
the Lieutenant Governor

8:30 a.m.—8:45 a.m.

Break

8:45 a.m.—9:30 a.m.

Ethics Basic Training—Room 4100

- Eileen O'Grady, Chief Deputy Legislative Counsel, Legal
Division Handout

9:30 a.m.—10:00 a.m.

Annual Filings of Contribution and Expense Reports—Room
4100

Office of the Secretary of State

- Nicole Lamboley, Chief Deputy Secretary of State
- Scott Gilles, Deputy Secretary for Elections

10:00 a.m.—10:15 a.m.	Break
10:15 a.m.—11:15 a.m.	Introduction to the Legislature's Website and Electronic Legislative Tools—Room 4100 <ul style="list-style-type: none"> • Teresa Wilt, Assistant Librarian, Research Library
11:15 a.m.—11:45 a.m.	Safety and Security Procedures—Room 4100 <ul style="list-style-type: none"> • Bob Milby, Chief, Legislative Police
11:45 a.m.—Noon	Review and Preview of Issue Briefings and Academy—Room 4100 <ul style="list-style-type: none"> • Rick Combs, Director, LCB
Noon—1:30 p.m.	Luncheon—Room 3100
	Informal Discussion: Organizing Your Legislative Office for Session <ul style="list-style-type: none"> • Returning Legislators and Staff
1:30 p.m.	Individual Legislator Activities (by appointment)

Presession Orientation Program for New Legislators 2012

Briefings on Selected Policy Issues

Thursday, December 6, 2012

Location: Room 4401, Grant Sawyer State Office Building, Las Vegas, Nevada; videoconferenced to Room 3137, Legislative Building, Carson City, Nevada; and Great Basin College, Room 124, Greenhaw Technical Arts Building, 1500 College Parkway, Elko, Nevada.

9:00 a.m.—Public Employees: Benefits and Retirement

At this two-part briefing, legislators will receive information about the Public Employees' Retirement System and the Public Employees' Benefits Program.

The Public Employees' Retirement System (PERS) is a tax-qualified defined benefit plan that provides retirement and disability benefits to State and local government employees in Nevada, including nonprofessional staff of the Nevada System of Higher Education. The Legislature oversees PERS, but the day-to-day operations are handled by an independent board and its executive officer and staff. The Legislative Retirement System and the Judicial Retirement System are also within PERS. Both nationally and in Nevada, state legislatures and local governments are grappling with the issues associated with unfunded liabilities. The economic recession, baby boomers reaching retirement age, shrinking State and local government workforces, and more stringent accounting rules are some of the challenges currently faced by PERS.

The Public Employees' Benefits Program (PEBP) is the entity that offers health and other insurance benefits to State employees and employees of local governments who voluntarily elect to participate in the Program. In addition to providing insurance benefits to active State and participating local government employees, the Program also makes insurance available to non-Medicare-eligible retirees. In 2010, the PEBP Board took action to move Medicare-eligible retirees (generally those 65 years of age and older) to an Individual Market Medicare Exchange for the 2012 plan year—making Nevada the first state to do so. The Legislature oversees PEBP, but the day-to-day operations are handled by an independent board and its executive director and staff. State revenue constraints and budget issues are challenges for PEBP, along with continuing increases in the cost of health care and implementation of the federal Affordable Care Act. In the current biennium, in order to address a budget shortfall, the Board increased deductibles and gave active employees a subsidy on their monthly premiums in the form of a contribution to a Health Savings Account.

Presenters: James R. Wells, Executive Officer, PEBP; Dana K. Bilyeu, Executive Officer, PERS; and Susan E. Scholley, Chief Principal Research Analyst, Research Division, Legislative Counsel Bureau (LCB) **Presenters' Biographies | Handouts**

10:30 a.m.—Health and Human Services

In this session, legislators will briefly review major health and human services topics, including an update on the implementation of the Affordable Care Act (federal health care reforms); Medicaid and Nevada Check Up; caseload growth for certain supportive services; funding hospitals for the care of indigent patients; juvenile justice system reforms; and county assessments for certain human services that were approved by the 2011 Legislature. Legislators will also receive information concerning the Department of Health and Human Services (DHHS) reorganization plans.

Presenters: Michael J. Willden, Director, DHHS; Jane Gruner, Deputy Director, DHHS; Amber Howell, Administrator, Division of Child and Family Services, DHHS; Marsheilah D. Lyons, Supervising Principal Research

EXHIBIT “2”



New Legislator Orientation Program

Legislative Building, Carson City, Nevada

November 16 to 18, 2016

Wednesday, November 16

**9:30 a.m.
Room 3100**

Meet and Greet Fellow Legislators/Registration
Enjoy a continental breakfast networking with newly elected members of both Chambers.

**10:00 a.m.—11:00 a.m.
Room 3100**

Welcome to the Legislature
Members of the Senate and Assembly

*Moderator: Michael J. Stewart, Deputy Research Director, Research Division,
Legislative Counsel Bureau (LCB)*

- Transition from campaigning to governing.
- Legislative leadership positions and roles.
- Organization of the Senate and Assembly.
- Standing committees.

Putting the Nevada Legislature in Context

*Paul T. Mouritsen, Chief Principal Research Analyst for Special Projects,
Research Division, LCB*

- Three branches of State government.
- How Nevada's Legislature compares to other states.

**11:00 a.m.—11:10 a.m.
Room 3100**

Overview of the Nevada Legislature's Staff and Legislative Counsel Bureau
Rick Combs, Director, LCB

11:10 a.m.—11:30 a.m.

Break

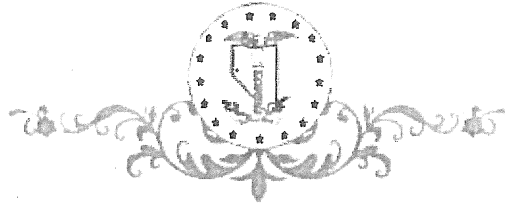
**11:30 a.m.—Noon
Room 4100**

Nevada Youth Legislature

*Beverly E. Mobley, Manager, Constituent Services Unit (CSU), Research
Division, LCB*

*Tina Ashdown, Research Assistant/Program Facilitator, CSU, Research
Division, LCB*

National Organizations to Which the Nevada Legislature Belongs
Rick Combs, Director, LCB



Noon—1:15 p.m.
Room 3100

Working Lunch—"What I Know Now That I Wish I Had Known Then"
Senator Patricia Farley
Assemblyman Tyrone Thompson
Assemblywoman Robin L. Titus, M.D.

*Moderator: Jennifer Ruedy, Principal Research Analyst,
Research Division, LCB*

- Returning members will offer reflections and advice for the new members on subjects such as building relationships, working with legislative staff, managing constituent requests, and personal time management.

1:15 p.m.—1:45 p.m.
Room 3100

Small Group Breakout with Sophomores
Sophomores meet with freshmen in small groups to answer questions about being a new legislator.

1:45 p.m.—2:00 p.m.

Break

2:00 p.m.—2:30 p.m.
Room 4100

Legislator Compensation, Benefits, and Travel
Jolanta Astronomo, Chief Accountant, Administrative Division, LCB
LuAnn Lehr, Account Technician, Administrative Division, LCB
Pati Stefonowicz, Accountant, Administrative Division, LCB

2:45 p.m.

Tour of Legislative Building and Capitol Complex
Ken Kruse, Safety Coordinator, Administrative Division, LCB

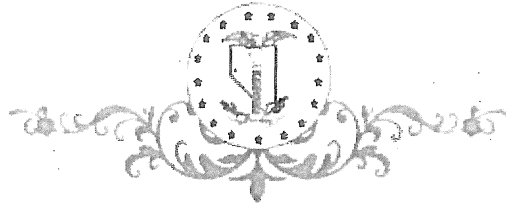
- Tour of Legislative Building.
- Location of agencies in the Capitol Complex.

Individual Legislator Activities (as scheduled)

5:45 p.m.

Group Dinner (gather outside Legislative Building for transportation)

- J.T. Basque Bar and Dining Room, Gardnerville.



Thursday, November 17

7:45 a.m.—8:30 a.m.
Room 3100

Breakfast Buffet with Legislative Staff Liaisons

8:30 a.m.—8:45 a.m.

Break

8:45 a.m.—10:30 a.m.
Room 4100

Staff Services Provided by the Legislative Counsel Bureau
Moderated by Rick Combs, Director, LCB

- **Administrative Services**
Roger Wilkerson, Chief, Administrative Division, LCB
- **Audit Services**
Rocky Cooper, Legislative Auditor, Audit Division, LCB
Daniel L. Crossman, Audit Supervisor, Audit Division, LCB

Break

- **Legal Services**
Brenda J. Erdoes, Legislative Counsel, Legal Division, LCB
- **Fiscal Services**
Mark Krmpotic, Senate Fiscal Analyst, Fiscal Analysis Division, LCB
Cindy Jones, Assembly Fiscal Analyst, Fiscal Analysis Division, LCB
- **Research Services**
Susan Scholley, Research Director, Research Division, LCB

10:30 a.m.—10:45 a.m.

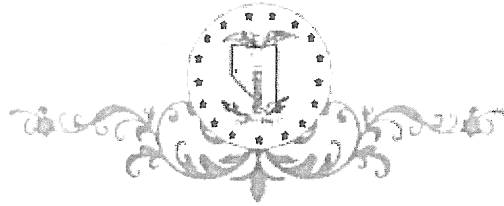
Break

10:45 a.m.—11:15 a.m.
Room 4100

Annual Filings of Contribution and Expense Reports and Financial Disclosure Forms
Brenda J. Erdoes, Legislative Counsel, Legal Division, LCB
Eileen G. O'Grady, Chief Deputy Legislative Counsel, Legal Division, LCB
Kevin C. Powers, Chief Litigation Counsel, Legal Division, LCB

11:15 a.m.—11:45 a.m.
Room 4100

Safety and Security Procedures
John Drew, Chief, Legislative Police, Administrative Division, LCB



11:45 p.m.—Noon

Freshman Class Photograph (west entrance of Legislative Building)

Noon—1:15 p.m.

Luncheon

Senate Lunch—Senate Caucus Room

Hosted by the Secretary of the Senate and Senate Staff

Assembly Lunch—Assembly Caucus Room

Hosted by the Chief Clerk of the Assembly and Assembly Staff

1:15 p.m.—1:30 p.m.

Break

1:30 p.m.—2:15 p.m.
Room 4100

Working with Constituents

Beverly E. Mobley, Manager, CSU, Research Division, LCB

Craig Hoffercker, Senior Research Analyst, CSU, Research Division, LCB

Julie Newman, Senate Liaison

Marge Griffin, Assembly Liaison (tentative)

2:15 p.m.—3:00 p.m.
Room 4100

Roundtable: Working with the Media

Scott Magruder, Assignment Editor, KRNV News 4

- Focus on how the print and broadcast media cover the Legislature and how legislators can effectively communicate with the media and maintain a good working relationship.

3:00 p.m.—3:15 p.m.

Break

3:15 p.m.—4:00 p.m.
Room 4100

Roundtable: Working with Lobbyists

Jeanette Belz, J.K. Belz and Associates

William Horne, Horne-Duarte Government and Public Affairs

Rose McKinney-James, Energy Works LLC and McKinney-James & Associates

- Focus on the role of the lobbyists, expectations lobbyists have of legislators, and the responsibilities of both lobbyists and legislators in their working relationship.

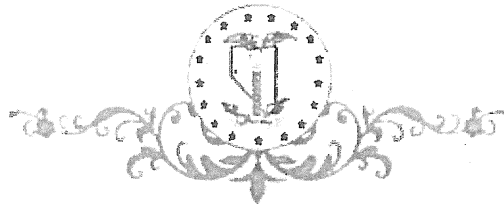
4:00 p.m.

Individual Legislator Activities (as scheduled)

5:00 p.m.

Group Dinner (gather outside east entrance of Legislative Building for transportation)

- Sponsored by the Senate and Assembly Caucuses.
- Location to be announced.



Friday, November 18

8:00 a.m.—8:45 a.m.
Room 3100

Breakfast with Governor Sandoval's Staff
Enjoy breakfast while meeting the staff of the Governor's Office.

8:45 a.m.—9:00 a.m.

Break

9:00 a.m.—9:45 a.m.
Room 3138

Laptop Training

*Eric Dugger, Network Services Manager, Information Technology Services,
Administrative Division, LCB*

Brenda J. Erdoes, Legislative Counsel, Legal Division, LCB

Kevin C. Powers, Chief Litigation Counsel, Legal Division, LCB

- Learn "hands-on" how to log on to the legislative network, use e-mail, and other functions.
- Overview of technology and electronic communication: public records and safe computing (spam, viruses, worms, adware, spyware, et cetera).

9:45 a.m.—10:00 a.m.

Break

10:00 a.m.—11:30 a.m.
Room 3138

Introduction to the Official Nevada Law Library, Legislature's Website, Electronic Legislative Tools, and Publications

Brenda J. Erdoes, Legislative Counsel, Legal Division, LCB

*Michelle L. Van Geel, Administrator of Publications and Technical
Services, Research Division, LCB*

Teresa Wilt, Legislative Librarian, Research Library, Research Division, LCB

11:30 a.m.—Noon

Break

Noon—1:30 p.m.
Room 3100

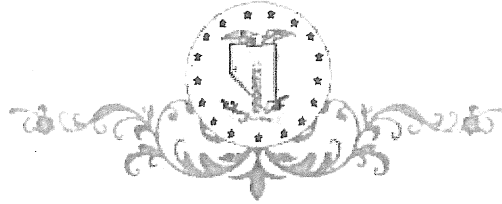
Working Lunch—Social Media Success

*Mick Bullock, Director of Public Affairs, National Conference of
State Legislatures*

- Review basic social media concepts.
- Share best practices that you can adopt—tools that improve communication and enhance the institution.

1:30 p.m.—1:45 p.m.

Break



1:45 p.m.—2:30 p.m.
Room 4100

Ethics

Brenda J. Erdoes, Legislative Counsel, Legal Division, LCB

Eileen G. O'Grady, Chief Deputy Legislative Counsel, Legal Division, LCB

Kevin C. Powers, Chief Litigation Counsel, Legal Division, LCB

2:30 p.m.—3:00 p.m.
Room 4100

Developing Ideas for Bills—The Beginning

Brenda J. Erdoes, Legislative Counsel, Legal Division, LCB

Susan Scholley, Research Director, Research Division, LCB

- I have an idea! What should I do about it?

3:00 p.m.

Preview of December Issue Briefings and January Academy

Questions and Adjournment



Legislative Counsel Bureau

New Legislator Orientation Program

November 17, 2016



LCB Overview

Non-partisan, central staff for the Legislature

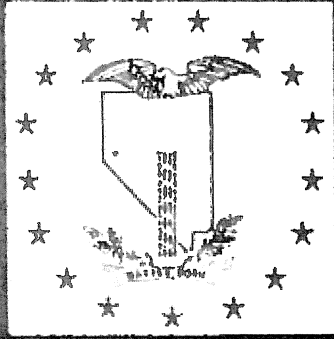
- No paid political staff employed by the Bureau
- Lobbying Prohibited
- No campaign activities
- Cannot display items that advocate for candidate or partisan activity



LCB Overview

Creation

- Created in 1945
- Lawmakers recognized the need for assistance in obtaining information necessary to act on requests for action by the Executive Branch
- Legislature no longer required to rely on the AG, Governor or Executive Branch agencies for information



LCB Overview

Purpose of Design

- To discourage interference and limit political pressure
- To give staff an independence that helps ensure lawmakers they are getting unbiased information
- In some States each House (even each party) have their own staff. LCB staff works for both Houses and all members



LCB Overview

The LCB Consists of:

- Legislative Commission
- Interim Finance Committee
- Five Divisions:
 - Administrative
 - Audit
 - Legal
 - Fiscal
 - Research



LCB Overview

- Legislative Commission appoints the Director.
- The Director appoints the chiefs of the various divisions, subject to approval by the Legislative Commission.
- Each Division provides a variety of services to legislators.

ALLISON MacKENZIE, LTD.
402 North Division Street, P.O. Box 646, Carson City, NV 89702
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Attorneys for Plaintiffs

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

THE HONORABLE JAMES SETTELMEYER,
THE HONORABLE JOE HARDY,
THE HONORABLE HEIDI GANSERT,
THE 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 and individually;
GREAT BASIN ENGINEERING
CONTRACTORS, LLC, a Nevada limited
liability company; GOODFELLOW
CORPORATION, a Utah corporation qualified
to do business in the State of Nevada;
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,

Plaintiffs,

vs.

///
///

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

AFFIDAVIT OF
KAREN PETERSON

REC'D & FILED
NOV 12 PM 4:47
AUGUST 12 2019
BY: C. COOPER
CLERK
DEPUTY

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 AFFIDAVIT OF KAREN PETERSON

16 STATE OF NEVADA)
17 : ss.
18 CARSON CITY)

19 KAREN PETERSON, under penalty of perjury, does solemnly swear and affirm that
20 the following assertions are true:

21 1. The undersigned is an attorney duly authorized and qualified to practice law in
22 the State of Nevada and represents Plaintiffs in the above-entitled action.

23 2. The undersigned has personal knowledge of the matters hereinafter set forth
24 and is competent to testify to matters concerning the same.

25 3. On October 7, 2019, I met with Kevin Powers, Chief Litigation Counsel for
26 LCB Legal. I went to his office to introduce myself and to discuss the early case conference required
27 to occur in the case and the conflict issue.

28 4. During our meeting, Mr. Powers indicated the Legislative Defendants wanted
an extension of time until October 28, 2019 to file their opposition to Plaintiffs' motion for summary
judgment and to file their own motion for summary judgment. I informed Mr. Powers that I and the
Plaintiff Senators believed LCB Legal had a conflict of interest in this case and could not represent
the Legislative Defendants against the Plaintiff Senators. Mr. Powers indicated a court order would
be necessary to remove LCB Legal as counsel in this case.

1 5. On October 8, 2019, the undersigned telephoned Mr. Powers and indicated the
2 Plaintiffs would give Legislative Defendants their requested extension of time until October 28, 2019
3 to file their opposition to Plaintiff's motion for summary judgment and to file their own motion for
4 summary judgment. I also told Mr. Powers the Plaintiff Senators were still discussing the
5 disqualification motion.

6 6. On October 24, 2019 the undersigned was authorized by her Plaintiff Senator
7 clients to file the motion to disqualify LCB Legal as counsel for the Legislative Defendants and filed
8 the motion on that date.

9 7. I don't name Defendants as parties in an action based upon who I think their
10 lawyer might be.

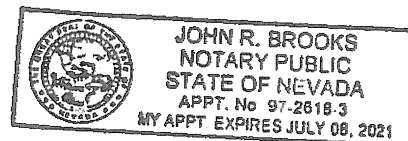
11 DATED this 12th day of November, 2019.

12
13 
14 KAREN PETERSON

15 STATE OF NEVADA)
16 : ss.
17 CARSON CITY)

18 On November 12, 2019, personally appeared before me, a Notary Public, KAREN
19 PETERSON, personally known (or proved) to me to be the person whose name is subscribed to the
20 foregoing document, and who acknowledged to me that she executed the foregoing document.

21
22 
23 NOTARY PUBLIC



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
kpowers@lcb.state.nv.us

Aaron D. Ford, Esq.
Craig A. Newby, Esq.
Office of the Attorney General
CNewby@ag.nv.gov

DATED this 12th day of November, 2019.


NANCY FONTENOT

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Email: jtownsend@allisonmackenzie.com

Attorneys for Plaintiffs

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

THE HONORABLE JAMES SETTELMAYER,
THE HONORABLE JOE HARDY,
THE HONORABLE HEIDI GANSERT,
THE 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 and individually;
GREAT BASIN ENGINEERING
CONTRACTORS, LLC, a Nevada limited
liability company; GOODFELLOW
CORPORATION, a Utah corporation qualified
to do business in the State of Nevada;
KIMMIE CANDY COMPANY, a Nevada
corporation; KEYSTONE CORP., a Nevada
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AUTO DEALERS ASSOCIATION, a Nevada
nonprofit corporation; NEVADA TRUCKING
ASSOCIATION, INC., a Nevada nonprofit
corporation; and RETAIL ASSOCIATION
OF NEVADA, a Nevada nonprofit corporation,

Plaintiffs,

vs.

///

///

Case No: 19 OC 00127 1B

Dept. No: I

**AFFIDAVIT OF SENATOR
JAMES SETTELMAYER**

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 AFFIDAVIT OF SENATOR JAMES SETTELMEYER

16 STATE OF NEVADA)
17 : ss.
18 CARSON CITY)

19 JAMES SETTELMEYER, under penalty of perjury, does solemnly swear and affirm
20 that the following assertions are true:

21 1. I am a member of the Nevada Senate representing Senate District 17. I am the
22 current Minority Leader of the Senate. I have been a member of the Legislature since 2006 first as an
23 Assemblyman and now a Senator. I am one of the named Plaintiffs in the above entitled action.

24 2. I make this affidavit in support of the Motion to Disqualify filed in this action
25 by the Plaintiff Senators on October 24, 2019. I have personal knowledge of all matters set forth herein
26 and I am competent to testify to the same.

27 3. Since 2006 when I became a member of the Legislature, LCB Legal has acted
28 as legal counsel to all members of the Legislature. LCB Legal is consulted by members and asks that
members consult it regarding legislative bills, legal opinions, member conflicts, research for
constituent issues and general legal questions that arise as the member serves in the Legislature. That
legal relationship continues with me as a member of the Senate and all members of the Legislature
during the interim session including now in 2019 and 2020.

4. Since 2006 when I became a member of the Legislature, all extensions of taxes
that were going to sunset or were to be extended required a two thirds majority of each house to pass.

1 5. In January 2019, I became aware of public statements by Defendant Governor
2 Sisolak in the media that cancellation of a proposed reduction in the payroll tax rate worth \$48 million
3 a year was not a tax increase and he was not convinced it would take a two-thirds majority to pass.
4 *See, Nevada Independent*, January 23, 2019 and video on *Nevada Independent* website of interview
5 with Defendant Governor Sisolak, [https://thenevadaindependent.com/article/sisolak-carves-out-](https://thenevadaindependent.com/article/sisolak-carves-out-liberal-positions-defends-moderate-bona-fides-in-wide-ranging-discussion)
6 [liberal-positions-defends-moderate-bona-fides-in-wide-ranging-discussion](https://thenevadaindependent.com/article/sisolak-carves-out-liberal-positions-defends-moderate-bona-fides-in-wide-ranging-discussion).

7 6. Early in the 2019 Legislative Session, then Senate Majority Leader Atkinson
8 made the same type of statements to me as made by Governor Sisolak – a two thirds majority may not
9 be required to cancel the proposed reduction in the payroll tax rate. Later when she became Majority
10 Leader, Defendant Majority Leader Cannizzaro made the same type of statements to me, that is, a two
11 thirds vote was not necessarily required to cancel the proposed reduction in the payroll tax.

12 7. Because of these statements by the Governor and Senate Majority Leaders,
13 early in the 2019 Legislative Session, I asked LCB Legal to issue an opinion on the issue of whether
14 cancellation of a proposed reduction in the payroll tax or extension of a tax rate would require a two
15 thirds majority to pass under the Nevada Constitution. Minority Floor Leader Wheeler requested that
16 LCB Legal issue a written opinion on the two thirds majority issue. I am informed and believe the
17 Majority Legislative Leadership made the same request to LCB Legal.

18 8. On May 8, 2019 LCB Legal finally issued its Opinion addressed to Legislative
19 Leadership. I received a copy and Minority Floor Leader Wheeler received a copy of the LCB Opinion
20 on May 8, 2019. I am informed and believe Majority Leader Cannizzaro and Speaker Frierson also
21 received a copy of the LCB Opinion on May 8, 2019.

22 9. After the LCB Opinion was issued, I had several conversations with LCB Legal
23 about the LCB Opinion issued May 8, 2019.

24 10. The next day after LCB Legal issued its Opinion, I started making statements
25 in the media that the Nevada Senate Republican Caucus would sue because LCB Legal's Opinion was
26 contrary to the Nevada Constitution.

27 11. Between October 8, 2019 and October 24, 2019, several of the Plaintiff Senators
28 had been unavailable to discuss the motion to disqualify because they were out of the country. On

1 October 24, 2019 I authorized Ms. Peterson on behalf of the Plaintiff Senators to file the motion to
2 disqualify LCB Legal as counsel for the Legislative Defendants.

3 12. The Legislature has the financial resources available to engage outside counsel
4 to represent Defendants Cannizzaro and Clift in this action because of LCB Legal's conflict.

5 DATED this 12th day of November, 2019.

6
7
8 
JAMES SETTELMEYER

9 STATE OF NEVADA)
10 CARSON CITY) : ss.

11 On November 12, 2019, personally appeared before me, a Notary Public, JAMES
12 SETTELMEYER, personally known (or proved) to me to be the person whose name is subscribed to
13 the foregoing document, and who acknowledged to me that he executed the foregoing document.

14
15 
16 NOTARY PUBLIC



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)]
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fully addressed as follows:

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Kevin C. Powers, Esq.
Legislative Counsel Bureau, Legal Division
bjerdoes@lcb.state.nv.us
kpowers@lcb.state.nv.us

Aaron D. Ford, Esq.
Craig A. Newby, Esq.
Office of the Attorney General
CNewby@ag.nv.gov

DATED this 12th day of November, 2019.


NANCY FONTENOT

4850-4955-5116, v. 1

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Nevada State Bar No. 12293
3 ALLISON MacKENZIE, LTD.
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4 Carson City, NV 89703
Telephone: (775) 687-0202
5 Email: kpeterson@allisonmackenzie.com
Email: jtownsend@allisonmackenzie.com

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,
THE HONORABLE JOE HARDY,
13 THE HONORABLE HEIDI GANSERT,
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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
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18 liability company; GOODFELLOW
CORPORATION, a Utah corporation qualified
19 to do business in the State of Nevada;
KIMMIE CANDY COMPANY, a Nevada
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21 OF INDEPENDENT BUSINESS, a California
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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,

25 Plaintiffs,

26 vs.

27 ///

28 ///

REC'D & FILED

2019 NOV 18 PM 3:14

AUBREY ROWLAND

CLERK

BY J. HIGGINS

DEPUTY

Case No: 19 OC 00127 1B

Dept. No: I

**PLAINTIFFS' QUALIFIED
OPPOSITION TO MOTION
TO INTERVENE AND
PLAINTIFF SENATORS
MOTION TO DISQUALIFY**

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
16
17 **PLAINTIFFS' QUALIFIED OPPOSITION TO MOTION TO INTERVENE AND**
18 **PLAINTIFF SENATORS' MOTION TO DISQUALIFY**

19 Plaintiffs, by and through their attorneys, ALLISON MacKENZIE, LTD., file their Qualified
20 Opposition to the Nevada Legislative's Motion to Intervene as Defendant and Plaintiff Senators file
21 their Motion to Disqualify. This Qualified Opposition and Motion to Disqualify are made and based
22 upon the following Memorandum of Points and Authorities and all other papers and pleadings on file
23 in this matter.

24 **MEMORANDUM OF POINTS AND AUTHORITIES**

25 Plaintiffs acknowledge the Nevada Legislature is permitted to intervene as of right under NRS
26 218F.720(3) when the Nevada Legislature elects to intervene in an action by filing a motion to
27 intervene as provided in NRS 218F.720(2).¹ There are two issues which need to be addressed with
28 regard to the proposed intervention and these two issues are the basis for this Qualified Opposition
and Motion to Disqualify.

First, Plaintiffs object to the Nevada Legislature being named in the caption as a "Defendant"
instead of a "Defendant/Intervenor". Plaintiffs do not want any implication in this action that they
named the Nevada Legislature as a Defendant in this action. Accordingly, if the Court grants the

¹ Because NRS 218F.720 grants the Nevada Legislature the right to intervene, there is no need for Plaintiffs to otherwise address intervention pursuant to NRCP 24.

1 Nevada Legislature's Motion to Intervene, Plaintiffs respectfully request the Court order the Nevada
2 Legislature be styled as a "Defendant/Intervenor" in the caption.

3 Second, Plaintiff Senators refer to and incorporate by reference as if set forth in full herein
4 their Motion to Disqualify filed October 24, 2019 and all arguments and points and authorities
5 contained in their Motion to Disqualify, their Reply in Support of Motion to Disqualify filed
6 November 12, 2019 and the Affidavits of Senator James Settelmeyer and Karen Peterson filed
7 November 12, 2019. As set forth in their Motion to Disqualify filed October 24, 2019, it is a violation
8 of an attorney's ethical duty to represent a client if a conflict of interest exists. The attorneys of record
9 for the proposed Intervenor, Nevada Legislature, and Defendants Cannizzaro and Clift appearing in
10 this action are the Legal Division of the Legislative Counsel Bureau ("LCB Legal"). If the Nevada
11 Legislature desires to intervene in this action, it should be required to be represented by counsel other
12 than LCB Legal because of its conflict of interest in this case. As addressed in Plaintiff Senators'
13 Motion to Disqualify and Reply in Support of the Motion to Disqualify, there is an inherent conflict
14 of interest when LCB Legal represents certain members of the legislative body over other members,
15 and the same conflict still exists and is not eliminated by LCB Legal also endeavoring to represent the
16 Nevada Legislature in this action.

17 RPC 1.13(a) states a lawyer employed or retained by an organization represents the
18 organization acting through its duly authorized constituents. RPC 1.13(g) provides in relevant part:
19 "A lawyer representing an organization may also represent any of its directors, officers, employees,
20 members, shareholders or other constituents, subject to the provisions of Rule 1.7." LCB Legal's
21 representation of proposed Intervenor Nevada Legislature as a Defendant is directly adverse to the
22 Plaintiff Senators in this action, with whom LCB Legal has an ongoing attorney-client relationship in
23 violation of RPC 1.7. The Plaintiff Senators have not given their consent to waive this conflict of
24 interest as required by RPC 1.7(b) for LCB Legal to remain as counsel of record for either the Nevada
25 Legislature or Defendants Cannizzaro and Clift in this matter. The language of RPC 1.7 is mandatory:
26 ". . . a lawyer shall not represent a client if the representation involves a concurrent conflict of
27 interest." LCB Legal cannot further ignore its conflict and its duty of loyalty owed to Plaintiff Senators
28 by now also appearing for Intervenor Nevada Legislature as a Defendant in this action.

1 Thus, as LCB Legal has a conflict of interest, the Nevada Legislature, if allowed to intervene
2 as a Defendant/Intervenor, should also be represented by separate independent counsel. The
3 Legislature has the financial resources available to engage outside counsel for LCB Legal's conflict.
4 See Affidavit of Senator James Settelmeyer at ¶ 12 filed November 12, 2019. Moreover, so that all of
5 LCB Legal's clients are treated equally, the Legislature should also be paying the attorney's fees of
6 the Plaintiff Senators since they are suing in their official capacity to effectuate their votes on Senate
7 Bill ("SB") 542 and 551 notwithstanding the provisions of NRS 218F.720(1)(b).

8 Based on the foregoing, Plaintiffs respectfully request that if allowed to intervene, Intervenor
9 Nevada Legislature be styled as a "Defendant/Intervenor" in the caption of this action so there is no
10 suggestion Plaintiffs named the Nevada Legislature as a Defendant in this action.

11 Further, Plaintiff Senators respectfully request their Motion to Disqualify be granted as LCB
12 Legal has a concurrent conflict of interest which has not been waived by the Plaintiff Senators.

13 Pursuant to First Judicial District Court Rule 15(7), a proposed Order Granting Plaintiff
14 Senators Motion to Disqualify is attached hereto as Exhibit "1".

15 **AFFIRMATION**

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

18 DATED this 18th day of November 2019.

19 ALLISON MacKENZIE, LTD.
20 402 North Division Street
Carson City, NV 89703
21 Telephone: (775) 687-0202

22 By: 

23 KAREN A. PETERSON, ESQ.
Nevada State Bar No. 366
24 JUSTIN M. TOWNSEND, ESQ.
Nevada State Bar No. 12293
25 Email: kpeterson@allisonmackenzie.com
Email: jtownsend@allisonmackenzie.com

26 Attorneys for Plaintiffs
27
28

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:

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Kevin C. Powers, Esq.
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DATED this 18th day of November, 2019.


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INDEX OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>	<u>Number of Pages</u>
"1"	Proposed Order Granting Plaintiff Senators Motion to Disqualify	04
4852-0183-4925, v. 1		

EXHIBIT “1”

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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 GOICOECHEA,
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
CONTRACTORS, LLC, a Nevada limited
liability company; GOODFELLOW
CORPORATION, a Utah corporation qualified
to do business in the State of Nevada;
21 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
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,
25

26 Plaintiffs,

27 vs.

28 ///

///

Case No: 19 OC 00127 1B

Dept. No: I

ORDER GRANTING
PLAINTIFF SENATORS
MOTION TO DISQUALIFY

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 ORDER GRANTING PLAINTIFF SENATORS MOTION TO DISQUALIFY

16 This matter is before the Court on Plaintiff Senators Motion to Disqualify, filed on
17 November 18, 2019. The Court, having read the papers and pleadings on file herein, and good cause
18 appearing therefore, finds and orders as follows:

19 IT IS HEREBY ORDERED THAT Plaintiff Senators Motion to Disqualify is GRANTED
20 in its entirety as it appears that LEGISLATIVE COUNSEL BUREAU, LEGAL DIVISION has a
21 concurrent conflict of interest pursuant to Nevada Rules of Professional Conduct 1.7 in representing
22 Defendant/Intervenor the Nevada Legislature.

23 IT IS SO ORDERED.

24 DATED this _____ day of _____, 2019.

25 _____
26 DISTRICT COURT JUDGE

27 ///

28 ///

///

///


///

///

Submitted by:

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By:


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Attorneys for Plaintiffs

4834-0113-3481, v. 1

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ORIGINAL COPY

1 CASE NO. 19 OC 00127 1B

2 DEPT. NO. 1

3 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

4 IN AND FOR CARSON CITY

5 BEFORE THE HONORABLE DISTRICT COURT JUDGE, JAMES RUSSELL

6

7 THE HONORABLE JAMES SETTELMAYER,
8 THE HONORABLE JOE HARDY, THE
9 HONORABLE HEIDI GANSERT, et al.,

10 Plaintiffs,

11 vs.

12 STATE OF NEVADA ex rel. THE
13 HONORABLE NICOLE CANNIZZARO, in her
14 official capacity as Senate Majority
15 Leader; THE HONORABLE KATE MARSHALL,
16 in her official capacity as President
17 of the Senate, et al.,

18 Defendants.

19 _____/

20

21 JAVS TRANSCRIPT OF PROCEEDINGS

22 ORAL ARGUMENT

23 NOVEMBER 19, 2019

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Transcribed By: Kathy Jackson CSR

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A P P E A R A N C E S

On behalf of the Plaintiffs: ALLISON MACKENZIE
BY: KAREN A. PETERSON
BY: JUSTIN TOWNSEND
402 North Division Street
Carson City, Nevada 89703

For the Legislative Defendants: LEGISLATIVE COUNSEL BUREAU
LEGAL DIVISION
BY: KEVIN POWERS
402 South Carson Street
Carson City, Nevada 89701

For the Executive Defendants: CRAIG NEWBY
Deputy Attorney General

1 NOVEMBER 19, 2019, CARSON CITY, NEVADA

2 -oOo-

3 THE COURT: For the record this is Case Number
4 19OC00127, the Honorable James Settelmeyer, et al versus
5 State of Nevada, the Honorable Nicole Cannizzaro. Is that
6 how you say her name?

7 MR. POWERS: Cannizzaro, Cannizzaro, Your Honor.

8 THE COURT: Cannizzaro, in respect to this
9 matter. This is the time set for hearing in respect to the
10 motion to disqualify the Legislative Counsel Bureau legal
11 division in respect to this particular matter.

12 Show the appearance of Karen Peterson or Justin
13 Townsend.

14 Who's going to argue it, do you know?

15 MS. PETERSON: I am, Your Honor.

16 THE COURT: Show the appearance of Karen Peterson
17 on behalf of the Honorable James Settelmeyer. Show Greg
18 Newby?

19 MR. NEWBY: Craig Newby, yes, Your Honor.

20 THE COURT: Craig Newby on behalf of the
21 executive defendants I guess is how they are referred to in
22 the briefs. Show the appearance of Mr. Kevin Powers.

23 MR. POWERS: That's correct, Your Honor.

24 THE COURT: On behalf of the legislative

1 defendants in respect to this particular matter. And, again,
2 it's important to note that the issue here today is not the
3 underlying issue of this matter in respect to the tax issue.
4 This really goes to the motion to disqualify the Legislative
5 Counsel Bureau in respect to this matter.

6 So, Ms. Peterson, are you ready to proceed?

7 MS. PETERSON: I am, Your Honor. Thank you.

8 THE COURT: Uh-huh.

9 MS. PETERSON: And, Your Honor, I would also like
10 the record to note that Plaintiff Senator Settlemeyer is here
11 also.

12 THE COURT: Thank you.

13 MS. PETERSON: And, Your Honor, I'm not going to
14 repeat the arguments that are in the motion. I'm not going
15 to repeat the arguments that are in the reply, but I have
16 some other thoughts that I wanted to provide to the Court.

17 And so just to start out, the first point is that
18 there is nothing in NRS 218F.720 that provides any kind of
19 express or limited applicability of the Nevada Rules of
20 Professional Conduct to Legislative Counsel Bureau lawyers.
21 This is a simple case of government lawyers representing an
22 organization, and then those government lawyers choosing
23 sides when the members of the organization's interest are
24 adverse.

1 THE COURT: Has -- has the LCB ever, and I'm
2 going to ask both of you the same question. Has the LCB ever
3 been in the position where -- where representing one member
4 of the legislature versus another member of the legislature?
5 Historically have they ever done that? And we'll give you a
6 chance but, Ms. Peterson, are you aware of that ever
7 happening?

8 MS. PETERSON: I'm not aware of that ever
9 happening, Your Honor. And, again, this -- I mean, this is a
10 very unique situation with very unique facts. And the
11 lawyers for -- well, the legislative defendants are arguing
12 that their lawyers are, you know, not required to comply with
13 the Nevada Rules of Professional Conduct and that they cite
14 cases in their opposition and they take snippets from those
15 cases and they try to weed together an argument that, again,
16 the rules don't apply to them or there's no individual
17 attorney-client relationship between the plaintiff senators
18 and the Legislative Counsel Bureau attorneys.

19 But, of course, the Nevada Rules of Professional
20 Conduct provide otherwise, and the cases that have been cited
21 by the legislative defendants are different factual
22 situations. There is no case that the legislative defendants
23 have cited that provides that a government attorney with a
24 duty of loyalty, undivided duty of loyalty to its clients can

1 choose one client over the other client, favor one client
2 over the other client when their interests are adverse.

3 And there are cases cited from other
4 jurisdictions by the legislative defendants of AG's. And,
5 again, in those other jurisdictions the Court held the AG's
6 in those situations could represent state agencies that were
7 adverse, and the reason that the Courts in those
8 jurisdictions held that the AG could represent state agencies
9 that were adverse and there was actually even one case where
10 the state employee was represented by the AG in civil matters
11 but then also was being prosecuted by the AG in a criminal
12 matter, and the Courts held that that was okay in that
13 situation because the AG in that case was providing through
14 its office and ensuring that there was independent
15 representation of the respective client. The AG was not
16 choosing one client over the other and not prejudicing one
17 client over the other, and that is not the situation that we
18 have here today.

19 The situation that we have here today is that the
20 attorney for the legislative defendant has taken the side and
21 chosen a side. And the -- the Legislative Counsel Bureau
22 attorneys are not contending that they can provide
23 independent representation to both the plaintiff senators and
24 also the legislative defendants. That's not the situation

1 that we have here today at all, and they are taking the side
2 and favoring one client over the other to the prejudice of
3 one client over the other. And there is no case or the AG's
4 in those cases never took the position that they were
5 entitled to choose one client over the other and then the
6 rules of professional conduct didn't apply.

7 And the same argument goes for the cases that are
8 cited by the Legislative Counsel Bureau with regard to
9 there's no individual attorney-client relationship between
10 the plaintiff senators and LCB legal. In those cases all of
11 those cases involve former employees that are now suing the
12 organization. They had personal claims, personal claims in
13 their individual capacity against the organization for tort
14 claims or employment discrimination claims, and the Court
15 ruled in those situations that, yes, the organization, you
16 know, the county school district, they represented the
17 organization and they didn't -- there was no attorney-client
18 relationship between the former employees regarding their
19 individual claims and the organization's attorney.

20 And, again, that's not the situation that we have
21 here. We don't have plaintiff senators suing legislative
22 defendants or the legislature I guess as an -- as an
23 organization in any personal capacity alleging personal
24 claims or tort claims and claiming that LCB legal has a

1 conflict. And the plaintiff senators brought their claims in
2 their official capacity which the legislative defendants have
3 recognized in their answer. They admitted in response to the
4 first amended complaint that the plaintiff senators, and they
5 are all named in paragraph one, are duly elected members of
6 the Senate of the 80th 2019 Session of the Nevada
7 Legislature. They admitted, paragraph two, that in the 80th
8 2019 Session of the Nevada Legislature each of the plaintiff
9 senators voted against Senate Bill 542 and voted against
10 Senate Bill 551 and all amendments thereto, and that they
11 admitted a portion of paragraph three that each of the
12 plaintiff senators is a member of the Nevada Senate
13 Republican Caucus.

14 And then again they also admitted in their
15 opposition at page two, page four and page 14 that these --
16 the action by the plaintiff senators is a constitutional
17 challenge or there's constitutional claims being made by the
18 plaintiff senators.

19 And then on page 17 of their opposition they
20 admit that LCB legal represents individual members of the
21 legislature in their official capacity as constituents of the
22 organization and there are no cases cited by the legislative
23 defendant that allege or show that LCB legal is allowed to
24 pick sides as to the individual members of the legislature it

1 represents in their official capacity as constituents of the
2 organization when the members interests are adverse.

3 The language of the rule of professional conduct
4 1.7 is mandatory. A lawyer shall not represent when there
5 are -- is a contrary conflict of interest. NRS 0.025
6 provides the words shall not impose a prohibition against
7 acting.

8 And it seems to me that the legislative
9 defendants are arguing. They seem to have blinders on, Your
10 Honor, because they argue the legislative defendants on the
11 (unintelligible) are entitled to statutory authorized
12 counsel. But on the other hand, they fail to recognize that
13 LCB legal is the statutory authorized counsel of the
14 plaintiff senators also.

15 And, again, the rules allow that there -- there
16 can be a conflict between members of an organization and the
17 lawyer can represent those members if their interests are
18 adverse, but there has to be written consent by all of the
19 members, and we don't have that here. Again, if there's any
20 doubt as to a conflict or if there's any doubt as to the
21 representation, that must be resolved in favor of
22 disqualification.

23 And then I would just like to end, Your Honor,
24 and say that we all make mistakes. Lawyers make mistakes.

1 It seems to me that maybe government lawyers don't have as
2 many dealings and conflicts as private attorneys do. And
3 when there are conflicts with government lawyers and there is
4 a conflict in this case, Your Honor, when there are conflicts
5 with government lawyers because those government lawyers
6 represent the interests of the public and represent the
7 interests of the citizens of the State of Nevada, they have
8 to be very firm in their representation as to who they
9 represent.

10 They have to acknowledge that if there is a
11 conflict between their members, they represent the
12 organization first, and they can't represent members if
13 there's any conflict between the members.

14 And in this case, Your Honor, when Senator
15 Settelmeyer went public and contended that he had a problem
16 with that Legislative Counsel Bureau opinion, and he thought
17 that it was unconstitutional and then after those bills were
18 passed and he indicated again publicly that there was a
19 problem passing those bills, they weren't constitutional,
20 that was a huge red flag that there was a conflict in this
21 case.

22 And to tell you the truth, the way this courtroom
23 is even set up today tells the story. We've got plaintiff
24 senators on this side represented on this side of the

1 courtroom we have by this counsel table, and then we have
2 their counsel sitting on the other side of the courtroom at
3 the other counsel table having an undivided duty of loyalty
4 not only to these plaintiff senators but also an undivided
5 duty of loyalty to those legislative defendants and it's not
6 right.

7 So, Your Honor, we are asking you to grant our
8 motion, and if you grant our motion we want you to ensure
9 that this never happens again. That it's clear that
10 government lawyers put the organization first, in this case
11 which is the legislature and if their members have conflicts
12 they are not entitled to represent those members adverse to
13 each other with regard to those conflicts.

14 THE COURT: Before you sit down, what about, and
15 I know you just filed your opposition in the motion to
16 intervene, it was kind of a non opposition in many ways.

17 MS. PETERSON: Qualified.

18 THE COURT: Huh?

19 MS. PETERSON: Qualified.

20 THE COURT: Qualified in respect to that. I did
21 read that in regards to that, and I have some comments on
22 that at the end. I'll talk about that and the motion to
23 intervene like that and everything else because I looked at
24 that.

1 And it seems to me whether LCB filed that motion
2 to intervene, it's kind of like, well, this -- maybe it's the
3 way we should have done it in the first place. I mean,
4 that's the second thought on my part. There's also you can
5 always file an amicus brief to support your position with
6 respect to that and we'll get to that and those issues in a
7 minute.

8 Those are other alternatives, aren't they? By
9 that, I mean they can file the motion to intervene, and I
10 know you qualified it with certain things in regards to
11 referring to him as defendant, intervener and some other
12 issues in respect to that, but we'll talk about that at the
13 end to some extent. But, again, that's I guess the position
14 I took from your brief so to speak.

15 MS. PETERSON: Correct. Your Honor, LCB legal
16 with regard to the legislative defendants, they -- there
17 should be outside counsel entirely to represent them.

18 THE COURT: Okay. Thank you.

19 Mr. Newby, you didn't file any brief on this
20 issue, didn't file anything on this issue. So I take it
21 you're standing quietly there; is that correct?

22 MR. NEWBY: I'm sitting quite actually at the
23 moment. I'll stand up as I'm getting addressed.

24 THE COURT: Okay.

1 MR. NEWBY: While I have a lot to say about the
2 underlying dispute if and when we get to that pending motion,
3 the executive defendants have not filed and are not arguing
4 on the motion to disqualify.

5 THE COURT: Right. I took that from not having
6 any brief and that.

7 Mr. Powers?

8 MR. POWERS: Thank you, Your Honor. For the
9 record Kevin Powers, chief litigation counsel of LCB legal
10 division representing the legislative defendants, Senator
11 Cannizzaro and Secretary of the Senate, Claire Clift.

12 The plaintiffs are characterizing this case as
13 plaintiff legislators versus defendant legislators, but the
14 plaintiffs aren't challenging the defendant legislators.
15 They are challenging the constitutionality of these two
16 pieces of legislation.

17 These two defendants are not proper parties and
18 they are not necessary parties. When you challenge a
19 constitutionality of legislation you challenge the state
20 official charge with administering the law, in this case the
21 department of motor vehicles and the department of taxation.

22 In addition, these are not necessary or proper
23 parties because both of these defendants are entitled to
24 legislative immunity. Now, absolute immunity, they can't be

1 subject to declaratory or injunctive action in their official
2 capacity for actions taken as legislators.

3 Now, on a footnote in their reply the plaintiffs
4 suggest that they are only entitled to legislative immunity
5 unless the plaintiffs prove the statute is unconstitutional.
6 That's not how legislative immunity works. Legislative
7 immunity is absolute immunity and they are entitled to be
8 dismissed and removed from this case --

9 THE COURT: Is there a --

10 MR. POWERS: -- regardless of --

11 THE COURT: Is there a motion pending with
12 respect to dismissing from this case?

13 MR. POWERS: There would have been. We're
14 getting to dispositive motions and --

15 THE COURT: There would have been, but is there a
16 pending motion right now to remove these people from this
17 case?

18 MR. POWERS: No, there is not.

19 THE COURT: Okay.

20 MR. POWERS: Because we were in the process of
21 briefing motions for summary judgment when the plaintiffs
22 filed their motion to disqualify. So we didn't get the
23 opportunity to make the arguments to dismiss our defendants
24 under that summary judgment motion.

1 But the important part here is because these are
2 not necessary and proper parties, this case is not
3 legislators versus legislators. It's legislators versus two
4 state departments administering statutes. Now, as a matter
5 of right under the statute, the legislature can intervene to
6 defend the constitutionality of these laws.

7 THE COURT: I couldn't agree more with you. I
8 think clearly they have a right to intervene under a motion
9 that you filed, motion to intervene. I think it's clear
10 under that statute in respect to that. When I read that I
11 thought, well, that makes sense.

12 And, again, back to my question I asked, I
13 started with. Has the legislature ever been in a position
14 where basically it was had two competing senators, basically
15 they both went to the LCB the way I understand it and asked
16 for an opinion in regards to the constitutionality or
17 whatever in respect to the tax issue. And the way I read it
18 Senator Settlemeyer went and asked, and then the defendant --
19 I mean the democrats went and asked too. The LCB is then put
20 in a position basically where they have a request from both
21 sides in respect to that, and you certainly have a right to
22 render your opinion, correct?

23 MR. POWERS: Correct. And I can give you an
24 example of a case. It involves the two-thirds issues. It

1 happened in 2003.

2 THE COURT: Okay.

3 MR. POWERS: A group of assemblywomen and men led
4 by Sharon Angle brought a lawsuit in federal district court
5 in 2003 and it challenged both. It names defendant so the
6 legislature and several legislative officers and other
7 members of the legislative branch. In that case they claim
8 that the legislature was trying to pass legislation without
9 two-thirds of the majority requirement.

10 Now, the federal district court found that it
11 wasn't proper for federal jurisdiction, but the LCB
12 represented the legislature and the legislative officers
13 against a group of legislators in that suit. That suit after
14 the federal district court appealed to the Ninth Circuit.
15 The LCB legal represented the legislature and the legislative
16 defendants in the Ninth Circuit where legislators were suing
17 both of those groups of defendants. And then that was
18 petitioned to the U.S. Supreme Court, and the LCB legal
19 represented again the legislature and the legislative
20 defendants was against a group of legislators before the U.S.
21 Supreme Court.

22 THE COURT: Was conflict of interest raised?

23 MR. POWERS: It was not raised. This case is
24 controlled as far as disqualification by Rule 1.11. That

1 deals with public lawyers. The plaintiffs want to rely on
2 1.7, but you don't get to 1.7 because of 1.11, and it says
3 except as law may otherwise expressly permit a lawyer
4 currently serving as a public officer employee is subject to
5 Rule 1.7, but that except clause the plaintiff is trying to
6 ignore, but it says except as law that otherwise expressly
7 permits. If law expressly permits the representation then
8 the conflict of interest rules in 1.7 don't apply, and the
9 comments to the ABA modeled rules make that clear too.

10 It acknowledges that lawyers may be authorized to
11 represent several government agencies in inter-governmental
12 legal controversies in circumstances where a private lawyer
13 could not represent multiple private clients. These rules,
14 the rules of professional conduct do not abrogate any such
15 authority.

16 The reason for this is an organization and its
17 constituents acting in their official capacity are entitled
18 to their statutorily authorized counsel. The drafters of the
19 rules of professional conduct understood that and put a
20 specific exception in there for that very purpose.

21 The problem here is that if you take the
22 plaintiffs' theory of Rule 1.7, it renders the LCB incapable
23 of providing legal representation to any legislator at any
24 time. According to them, if there's an adverse interest then

1 the LCB can't represent the legislature or legislative
2 defendants under any circumstances. Rule 1.7 is not under
3 the litigation. It supplies all representation.

4 For example, if one legislator voted no against a
5 piece of legislation, LCB couldn't represent the legislator
6 if that legislation was challenged as unconstitutional
7 because that would be adverse to the one legislator who voted
8 no.

9 In the bill drafting process, Rule 1.7 applies to
10 transactional representation. In the bill drafting process
11 LCB legal represents the legislators in bill drafting and
12 when we do, one legislative draft in legislation is mostly
13 adverse to another legislator's interest. That's the nature
14 of the political process. The only way LCB legal can provide
15 legal representation is how it's structured now. We
16 represent the organization and we represent legislators only
17 as constituents of that organization.

18 So when those legislators were talking to them
19 and representing them, it's not as individual legislators.
20 It's as constituents of the organization for the benefit of
21 the organization. The legislature decided to provide a
22 nonpartisan counsel of all legislators is beneficial to the
23 organization, but that doesn't create a separate
24 attorney-client with each legislator. It creates a separate

1 attorney-client relationship with the constituent members of
2 the legislature.

3 Every time we provide advice to the legislature
4 it's for the benefit of the organization. It's not for the
5 benefit of the individual legislator. It's for the benefit
6 of the democratic process, the organization, the legislative
7 machinery. So this idea --

8 THE COURT: But didn't you in this case come in
9 and defend two individuals? I mean, that's I guess the
10 issue.

11 MR. POWERS: But they are not only defendants.
12 They are not necessary proper parties. They --

13 THE COURT: Now you're back to --

14 MR. POWERS: But, Your Honor, they have the
15 choice of naming who they could. They should have named the
16 legislature as an institution or no defendants at all as
17 legislators because legislators are not proper and necessary
18 defendants. And these legislators are not being sued in an
19 individual capacity. They are being sued in an official
20 capacity as constituents of the organization. The plaintiffs
21 are claiming these two legislators passed unconstitutional
22 legislation.

23 Well, as you know -- I'm sorry, one of them is
24 the Secretary of the Senate. So this one legislator could

1 not have passed this legislation. This is a bicameral
2 legislature. So if these legislators were never necessary
3 parties, they need to name every member of the senate and
4 every member who voted in favor of this because if Senator
5 Cannizzaro is a necessary party, then all legislators are a
6 necessary party. But the reason people don't do that in
7 constitutional litigation is legislative immunity prohibits
8 that, and also it's clear by hundreds of years of case law
9 you sue the administrative officer charged with enforcing the
10 law.

11 So they want to bring these legislative
12 defendants in and only those two particular legislative
13 defendants as a tactical strategy, but this is not the way
14 the litigation should be conducted. The legislature should
15 be allowed to intervene and LCB in its normal role to
16 represent the organization and defend legislation that's
17 presumed to be constitutional.

18 This is not legislators versus legislators. This
19 is legislators versus the constitutionality of a piece of
20 legislation. The LCB is the proper statutorily authorized
21 counsel to defend the constitutionality of the statute on
22 behalf of the legislature, and the rules contemplate this
23 because it says except as law may otherwise expressly permit.
24 Under this statute, 218F.720, LCB legal has been authorized

1 by law to represent the interest of the -- of the legislature
2 not the interest of the individual members but the interest
3 of the legislature in defending the constitutionality of the
4 statute.

5 THE COURT: And I don't disagree with that
6 premise per se, but I do have an issue in respect to the LCB
7 coming in and representing these individuals even if they are
8 in a represented capacity. I'm just trying to understand
9 that. I understand you said they shouldn't be in there.
10 Therefore, we shouldn't be in this particular situation,
11 correct?

12 MR. POWERS: That's correct, and they made a
13 tactical decision to only name these two particular
14 legislative defendants. There was a reason for that. It was
15 tactical and calculated. They have to live with the
16 consequences. The consequences are they knew LCB legal would
17 represent these defendants.

18 When they filed their first amended complaint on
19 July 30th, they called LCB legal and asked if they could
20 serve the complaint on us and we would accept service on
21 behalf of Senator Cannizzaro and Secretary Clift. They knew
22 they filed the complaint who their attorneys were and how we
23 were authorized by 218F.720 to represent Cannizzaro and
24 Clift. They knew that going on in.

1 These are not necessary defendants. They're not
2 proper defendants. They named them knowing they would be
3 represented by LCB legal. It's a tactical calculated
4 decision to create a conflict that doesn't need to exist
5 because the rules say except as law may expressly permit.
6 We're expressly authorized to represent these legislators
7 because they are not individuals. They are constituents of
8 the organization. They are representing the organization
9 which passed this law which is presumed to be constitutional,
10 and that's why there's no conflict here.

11 The LCB didn't make a mistake. The plaintiffs
12 made the mistake by naming necessary -- I mean unnecessary
13 and improper parties. The plaintiffs made a mistake by not
14 naming the legislature if they wanted to make a point and
15 name the legislative defendant. The plaintiffs made a
16 mistake by simply not naming the state agencies charged with
17 enforcing the law. Had they done that, the legislature could
18 have decided if it wanted to intervene and we would have
19 intervened under the statute if that would have been
20 authorized. They are the ones who made the mistakes. They
21 need to live with the consequences of the mistakes.

22 THE COURT: Well, couldn't LCB have said wait a
23 minute. Senator or in respect we just are not going to get
24 involved in this matter. We are going to stay back and we're

1 just not going to come in and represent you. Go get your own
2 counsel. Could they have done that, LCB?

3 MR. POWERS: No, because we're statutorily
4 directed to provide representation when the legislative
5 commission or the chair of the commission authorizes us to
6 enter legislation. It says, the statute says that they may
7 direct the Legislative Counsel and the legal division to
8 prosecute, defend, intervene or represent in any other
9 legislation. It's a directive. We have a statutory duty to
10 be here because the legislative commission and in this case
11 the chair of the legislative commission authorized LCB legal
12 to represent these legislative defendants in their official
13 capacity and again it's not a lawsuit legislative versus
14 legislator. It's legislator versus the constitutionality of
15 the statute. These legislator defendants do not belong.
16 This conflict exists because of the plaintiffs' own
17 calculated and tactical litigation decisions.

18 We can solve this simply. We already proposed a
19 stipulation. What plaintiffs stipulate to the intervention
20 of the legislature, the dismissal of the legislative
21 defendants because they are not necessary and proper parties
22 and the dismissal against the Governor and Lieutenant
23 Governor because they're not necessary parties.

24 MS. PETERSON: You know what, Your Honor, I --

1 MR. POWERS: I believe I'm doing my argument
2 here.

3 MS. PETERSON: -- believe these are settlement
4 discussions.

5 THE COURT: That's -- settlement negotiations
6 are --

7 MR. POWERS: This wasn't a settlement. We
8 weren't trying to -- no. This was proposed stipulation. We
9 aren't settling the merits of the case. That's not a
10 settlement discussion. That's a proposed stipulation.

11 THE COURT: Well, proposed stipulations are
12 settlement negotiations, Mr. Powers. You're offering
13 basically a way to resolve something. Isn't that a
14 settlement?

15 MR. POWERS: No. That settlement is
16 (unintelligible) merits of the claim. A dispute as to
17 motions not a settlement.

18 THE COURT: I disagree with you. That's fine.

19 MR. POWERS: That doesn't resolve the case.

20 THE COURT: Are you done?

21 MR. POWERS: No, Your Honor. I want to continue
22 if I wasn't so rudely interrupted.

23 THE COURT: Keep going.

24 MR. POWERS: I appreciate the opportunity. I

1 will wrap it up, Your Honor. The bottom line here is LCB
2 legal historically has been able to represent the
3 legislature.

4 THE COURT: What would Frank (unintelligible)
5 think about this case?

6 MR. POWERS: Frank (unintelligible) represented
7 the legislature and each individual members in civil cases.
8 In 1992 there was a case with Senator O'Neil.

9 THE COURT: Would he think this is the proper way
10 for LCB to act?

11 MR. POWERS: Yes, because the legislature is
12 entitled to statutorily authorized counsel. Otherwise, every
13 time a legislator sues the legislature as a whole or its
14 members the legislature has to get outside counsel, and then
15 the taxpayers would have to pay for outside counsel. The
16 legislature already pays for in-house counsel. This is no
17 different than a corporation or any other organizational
18 client.

19 When -- when directors of corporations sue the
20 corporation, generally counsel for the corporation can
21 represent the corporation because the directors, they only
22 represent directors as constituents not as individuals and
23 when the individuals act contrary to the interest of the
24 organization in suing, then, of course, the organization is

1 entitled to its counsel, and in this case the statute makes
2 that clear.

3 We're here because their litigation strategy, LCB
4 legal is properly representing the interest of the
5 legislature through these two members who are not necessary
6 or proper parties to offer a way to resolve their concerns by
7 having the legislature intervene. This could be resolved in
8 that way and we can move on to the merits of the case
9 because ultimately the defendants claim they need to move
10 forward on the merits of the case. They have done everything
11 to stop moving forward on the merits of the case. Thank you,
12 Your Honor.

13 THE COURT: All right. Ms. Peterson, any
14 comments?

15 MS. PETERSON: Your Honor, just to point out that
16 under the, this is an action for declaratory relief and under
17 NRS 30.130 with regard to parties, the statute provides that
18 when declaratory relief is sought all persons shall be made
19 parties who have a claim and interest which would be effected
20 by the declaration, and no declaration shall prejudice the
21 rights of persons who are not parties to the proceedings.

22 THE COURT: What about the argument that the
23 rules of professional conduct don't apply to the LCB in
24 respect to as he's argued?

1 MS. PETERSON: Your Honor, there -- the rule says
2 unless expressly provided. Otherwise, in statute the rules
3 apply and there is no expressed division in Nevada law that
4 says rules of professional conduct don't apply to LCB. There
5 is nothing there. There's nothing that's been pointed to by
6 legislative legal counsel that supports that. If there's
7 section and the only cases they did cite are the AG's --
8 those AG cases that we've already gone over where the rules,
9 the Court determined that the AG had statutory duties to
10 represent again separate parties with adverse interest, but
11 the AG was able to provide independent representations so no
12 party was prejudiced.

13 That's not the situation that we have here. LCB
14 legal wants to pick one side and then wants to -- to the
15 prejudice of the plaintiff senators and -- and then say the
16 rules -- the rules don't apply to them.

17 And, Your Honor, I mean, I do find it offensive.
18 I really do find it offensive that they are contending that
19 their conflict are as a result of my actions. I had no idea
20 when we named those legislative defendants who would be
21 representing them. The statute specifically says that the
22 legislative commission or the chair of the legislative
23 commission may direct the Legislative Counsel and the legal
24 division to appear.

1 And I had no idea, number one, who even the chair
2 of the legislative commission was, and I guess it is a
3 majority leader, Defendant Senator Cannizzaro. So I didn't
4 know that they were going to direct the Legislative Counsel
5 and legal division to appear in this action, and we meet all
6 of the defendants because they were statutory and
7 constitutional duties as we set forth in our allegations of
8 our complaint, and we want those constitutional officers
9 bound and the legislative defendants bound if this Court
10 makes a determination that's in favor of the plaintiff
11 senators. It's our action. We have the ability to name who
12 we want. They only raise the issue of the legislative
13 defendants not being necessary parties in response to our
14 motion to disqualify. And I believe that's all I have.

15 THE COURT: Thank you.

16 Mr. Powers, anything further?

17 MR. POWERS: Oh, thank you, Your Honor, for the
18 opportunity.

19 As I mentioned, they called us to ask if we would
20 accept service on behalf of the legislative defendants. So
21 they knew who was going to be representing, and they assumed.
22 They called us and then we send an accepted service on our
23 behalf. So they knew that immediately after filing the
24 complaint. So that just is contradictory to the record.

1 The bigger issue here though is the legislature
2 is entitled to a statutorily authorized counsel. These
3 plaintiffs are acting contrary to the organization's
4 interest. The LCB legal does not represent plaintiff
5 legislators or acting contrary to the organization's
6 interests. They represent legislators who are constituents
7 with the organization acting in the best interest of the
8 legislative organization. This is not unusual for LCB legal
9 to represent the legislature when defending the
10 constitutionality of legislation.

11 Their argument means that LCB would have to
12 question all representation it provides. You heard them.
13 They want to, not just this case, they want you to set a
14 precedent and establish a rule showing all the government
15 lawyers you can't do this. Well, how can we provide legal
16 advice to one legislator on bill drafting and not adverse to
17 another legislator's interest?

18 We're, according to them, barred by Rule 1.27
19 from providing any legal representation. It renders the
20 agency obsolete as a legal agency. What can we possibly do?
21 As has been mentioned in their briefs, legislators seek
22 opinions on conflicts of interest, with regard to the ethics
23 law, as they seek opinion letters from us. Every time a
24 legislator asks for one of those things, it's contrary to

1 another legislator's interest.

2 By statute the legislature has established the
3 LCB, realizing those conflicts of interest that exist and
4 nonetheless that expressly authorized statutes authority for
5 the Legislative Counsel Bureau to provide legal
6 representation in bill draft and legal opinions in
7 litigation. It's no different. If you say we can't
8 represent these legislators here, how can we represent these
9 legislators in bill drafting? It would be adverse to the
10 interest of other legislators. You render LCB legal an
11 obsolete agency. So this case is huge when it comes to the
12 operation of a legislative branch of government and,
13 therefore, raises separation of powers issues.

14 The legislature has chosen using its power to
15 determine its own internal affairs and how to administer its
16 own internal affairs. Each branch has constitutional powers
17 how to administer its own internal affairs to direct LCB
18 legal as the correct legal agency to represent the interests
19 of the legislature. That's what this ultimately comes down
20 to. This is not unusual. This is not a unique case. It's
21 not different. It's happened before. LCB legal properly
22 defends the constitutionality of legislation. We would do
23 that here. If they feel more comfortable with the
24 legislature as a defendant than these improper and

1 unnecessary parties, we're more than willing to proceed under
2 that approach. Thank you, Your Honor.

3 THE COURT: Okay. Thank you.

4 MS. PETERSON: Your Honor, I'm sorry. Just,
5 there is one thing that needs to be clarified because Mr.
6 Townsend is an attorney from our office. He called
7 Legislative Counsel Bureau about service of the defendants.
8 I think that that needs to be on the record accurately what
9 happened in that conversation. So I would ask with the
10 Court's indulgence if Mr. Townsend could just say what
11 happened.

12 THE COURT: Well, Mr. Townsend obviously is put
13 on the spot. You can tell the Court so it's on the record.

14 MR. TOWNSEND: Sure.

15 THE COURT: If it's contrary to what Mr. Powers
16 just indicated.

17 MR. TOWNSEND: So after we filed the first
18 amended complaint I called the LCB. I called the main
19 telephone number for the LCB and whoever answered the phone,
20 I said I'm calling to get direction on how and where we serve
21 Senator Cannizzaro and Secretary Clift. I was transferred to
22 Mr. Powers, who volunteered that he would accept service on
23 behalf of those defendants. I did not ask the LCB or
24 Mr. Powers to accept service on behalf of those defendants.

1 THE COURT: Okay. Thank you.

2 Mr. Powers, do you disagree with that
3 representation? That's a little different than what you
4 represented.

5 MR. POWERS: No. He asked whether we would
6 accept service on behalf --

7 MR. TOWNSEND: Absolutely.

8 MR. POWERS: -- of the legislative defendants.

9 MR. TOWNSEND: Absolutely.

10 MR. POWERS: But the bottom line is they accepted
11 our acceptance of service. If they thought it was improper
12 for LCB to represent, they could have served them, the
13 legislative defendants under normal means. They didn't have
14 to accept our acceptance of service. Then the question is
15 raised because we were conflicted and we accepted service
16 then service was improper here. So that raises that issue
17 because how can we accept service if we are conflicted.

18 But the bottom line is LCB is not conflicted. We
19 do this historically. We do this regularly. This is not a
20 conflict of interest. Under the rules LCB legal can defend
21 the constitutionality of this statute. We are properly
22 representing the interest of the legislature. Thank you.

23 THE COURT: Well, again, I do think this is a
24 very important issue in respect to the LCB, I really do. I

1 think it's a significant issue in this particular case. I
2 think it has great impact in regards to the future in regards
3 to a lot of things.

4 And, additionally, I am incorporating the motion
5 to intervene in this, in my thoughts here because I think the
6 motion to intervene is the correct way the LCB should have
7 gotten involved in this case. I believe that. I think -- I
8 think you have an absolute right to come in and defend your
9 opinion that you put in place or that you gave in respect to
10 that.

11 But here I guess, again, in starting out, both
12 parties basically appears to me state senators sought legal
13 advice from the LCB on the same issue which is the underlying
14 subject matter of this case. I mean, it seems both sides
15 went to LCB and raised the issue and that in regards to that.

16 It appears to this Court that there's a need for
17 LCB to maintain its neutrality as to representation of all
18 individual members of the legislature. That does not mean it
19 cannot take a position to support or defend an interpretation
20 that is given. I think you can either by filing your motion
21 to intervene or filing an amicus brief. I think that clearly
22 applied.

23 I have concern, however, about, and I think LCB
24 should be concerned about the future effect its position

1 being taken here will have on the request for opinions,
2 advice being sought and its relations with all members of the
3 legislature. I think it -- I think you're neutrality, LCB in
4 my opinion has always been very neutral to everybody. It
5 always had everybody come in, give their opinions. Right,
6 wrong or indifferent it takes the opinions and gives the law
7 the way it feels is correct. I just don't think you can pick
8 sides by representing individual senators against other
9 senators. For the good of the legislature in the State of
10 Nevada, it needs basically to maintain its neutrality in
11 respect to things.

12 And I understand representing certain kinds of
13 cases or different cases, but this is a unique case where
14 suddenly at the very beginning of it, LCB suddenly was
15 representing a state senator and I guess the chief of the
16 senate I guess in respect to this matter. The precedent that
17 this would establish is a concern. The LCB needs to be an
18 independent entity that it is to render its opinion without
19 any political inference on either side of the fence. It
20 represents, you know, basically all of the senators.

21 And I know you say that you represent the entity.
22 In the capacity of representing the entity you are
23 representing all of members of that entity. I think it's a
24 conflict under rule -- the rules of professional conduct 1.7.

1 I think -- I think you put yourself and whether you were put
2 in that position by the way the lawsuit was filed and how it
3 came about or whether or not it transcended, I think we need
4 to put this back on the right track because I think
5 essentially that you have the right to intervene. I think
6 you have an absolute right to protect your opinions that you
7 give. I think you have an absolute right to do that, but I
8 think that there is a real issue in regards to the
9 representing senators on both sides of it, the issue to a
10 certain extent.

11 Again, I don't think equitable estoppel applies.
12 Waiver, there clearly wasn't any waiver in regards to this
13 particular matter. There was no intentional relinquishment
14 or known right was argued in respect to that.

15 And, again -- again, I read the cases. I've
16 looked at the cases. Most of the cases that were indicated
17 were inner-agency cases fighting with each other, not the
18 same entity. Here we're concerned with the exact same
19 entity. We're concerned with the exact same members of that
20 entity with respect to that.

21 NRS 218F.720 goes both ways. It applies to
22 both -- both parties in respect to it. It applies to the
23 legislature looking out for the people in respect to that in
24 regards to that. So I think the individual members name

1 either should be dismissed, if the parties want to dismiss
2 them or indicate they want to be dismissed or whatever they
3 want to do or they need to get separate counsel, separate and
4 apart from the Legislative Counsel Bureau. That's what I
5 think.

6 I think LCB can remain in the case. I think LCB
7 has a right to defend its opinion. I think you have an
8 absolute right to do that. I think under the NRS 218F.722 I
9 think you should be involved, and I think you should provide
10 briefs accordingly in respect to the opinions that you gave
11 in respect to this matter.

12 I just think that somehow you shouldn't be in the
13 middle of this in representing one state senator and the
14 other state senator on the other side. I just don't think
15 it's good precedent. I don't think it's good for the LCB.
16 What's the future going to hold? So they change basically
17 the parties and suddenly republicans have control or whatever
18 else in respect to that. It just jeopardizes the entire
19 nature of the LCB in my opinion.

20 And I know you disagree, Mr. Powers, and I
21 understand and respect your opinions. You've always argued
22 well, and I've always thought you applied things well in
23 respect to that, but I really, I truly believe that in
24 respect to that in looking at the rule of professional

1 conduct 1.13 G supports this to some extent because the
2 organization is the LCB and members and clients are all
3 members of the legislature unless there's an exception to
4 some extent in regards to that.

5 So based upon that the Court is going to grant
6 the motion with the understanding that essentially LCB can
7 stay in this particular action under the motion to intervene
8 which I'm going to allow you to stay under and I'm granting
9 the motion to intervene in respect to this manner, and it's
10 my belief that this needs to move on. And that essentially
11 if either senator -- the senator is dismissed and the
12 secretary is dismissed or they get separate independent
13 counsel, they can choose.

14 MR. POWERS: Your Honor, they -- in response to
15 the motion to intervene, they filed the motion to disqualify
16 LCB as counsel to the legislature. Are you denying that
17 motion to disqualify then?

18 THE COURT: I didn't --

19 MR. POWERS: Your Honor, again, when they filed
20 their opposition or qualified opposition to the motion to
21 intervene, they also filed a motion to disqualify LCB legal
22 as counsel for the legislature.

23 THE COURT: And I'm not granting that portion of
24 it.

1 MR. POWERS: You're denying that?

2 THE COURT: I'm denying that portion.

3 MR. POWERS: Thank you.

4 THE COURT: I'm allowing LCB to stay in because I
5 think LCB has an absolute right to defend it. Although, I
6 don't think, you didn't file in the merits per se or hadn't
7 done anything on the merits yet. So based upon that I'm
8 allowing them to stay in, so.

9 MS. PETERSON: I have a question, Your Honor.

10 THE COURT: Yes.

11 MS. PETERSON: With regard to dismissing certain
12 defendants or allowing them to stay in with separate counsel,
13 that would be the plaintiffs' choice to make that?

14 THE COURT: It's their choice to a certain
15 extent. They can either -- plaintiffs can -- you can make a
16 determination whether or not you think you need them or not
17 need them. He's already not a necessary party. There's no
18 motion pending of that in front of me. If there was I would
19 make a decision on that issue but there isn't so I can't.

20 All as I'm saying in this case is I truly believe
21 that essentially we're at a point where I think the
22 legislature has put itself, LCB put itself in a conflict
23 position. I think from that standpoint though, however, I
24 believe truly that it has a right to come in, defend itself

1 in regards to the opinions given, I believe that.

2 But I think somehow you got in the cross hairs
3 here. You -- I don't think you should have represented the
4 two individuals and I know you believe you should have and
5 under the statute but not when you have other state senators
6 suing, so.

7 MS. PETERSON: So just one more question, Your
8 Honor.

9 THE COURT: Yeah.

10 MS. PETERSON: Sorry. So could it be defendant
11 intermediary legislative?

12 THE COURT: What?

13 MS. PETERSON: Legislature, could it be on the
14 caption defendant.

15 THE COURT: They can be defendant interveners
16 absolutely.

17 MS. PETERSON: So there's no inference.

18 THE COURT: No. No. I'm granting that part of
19 it. I wrote that down earlier.

20 MS. PETERSON: Okay. Thank you.

21 THE COURT: In that. So LCB is going to stay in
22 the action stay as defendant intervener in respect to this
23 matter. And, again, you have an absolute right under that
24 statute to defend your opinion in my opinion.

1 Mr. Newby?

2 MR. NEWBY: Your Honor, now that we've kind of
3 cleaned up and dealt with this motion, to set since we're all
4 here --

5 THE COURT: We're going to set this matter for a
6 hearing.

7 MR. NEWBY: At this point what has been briefed,
8 and I'll just make the -- we filed a motion to dismiss as a
9 responsive pleading. An opposition was filed to it. The
10 parties back under a different version of the NRS, had a
11 briefing schedule, if can we could have a briefing schedule
12 such that there's a reasonable amount of time for the LCB to
13 file the brief that you're contemplating they are allowed to
14 file as intervenor, a reply brief I'm entitled to file, as
15 well as the final word from the --

16 MR. POWERS: But, Your Honor, the legislative
17 defendants, Cannizzaro and Clift, need to get outside
18 counsel.

19 THE COURT: Correct.

20 MR. POWERS: We are not willing to dismiss them.
21 So they need to get outside counsel. We're not sending them
22 any briefing schedule until they have an opportunity to get
23 outside counsel, review the case, determine how they want to
24 proceed. So I'm going to argue that this case stays stayed

1 until there's a stipulation between the parties resolving the
2 timetable of how to proceed now that they have to get outside
3 counsel because they're going to have to go to the
4 legislative commission. The legislative commission is going
5 to have to approve the cost for outside counsel. We don't
6 know when the next legislative commission meeting will be
7 held. So we need this case stayed until all of that is
8 resolved.

9 THE COURT: I'm not staying anything. I want you
10 to know that. Basically, it's my intent to set this out for
11 -- these things can happen fairly quickly. There needs to be
12 a resolution in respect to this in regards to the taxpayers
13 or whatever and either the funds stay or somehow there needs
14 to be a resolution. I think that's your point. We need to
15 get to some point in regards to that.

16 How long did does it take basically to get new
17 counsel, how long does it take to set and resolve this thing?
18 I'm prepared to set this thing out, you know, 60 days. I
19 mean, I'm going out a ways and trying to come out.

20 MR. POWERS: Your Honor, can I consult with
21 Legislative Counsel quickly because she's going to have to
22 determine how we go about funding outside counsel, selecting
23 outside counsel and determining how that's going to work.

24 THE COURT: You can certainly talk to her.

1 Who's the solicitor general now?

2 MR. NEWBY: The solicitor is Heidi Stern.

3 THE COURT: Okay.

4 MR. NEWBY: She was in charge of our post
5 conviction unit prior to taking this position.

6 MR. POWERS: Thank you for that, Your Honor.
7 After consulting with Legislative Counsel, if the Court wants
8 to establish a briefing schedule which dispositive motion
9 starts 60 days from now and we're willing to work with that,
10 but that's when the briefing schedule starts not when the
11 hearing is.

12 We -- this is going to be complex to figure out
13 how these legislative defendants are going to get outside
14 counsel and how it's going to be funded by the legislative
15 commission. This is a new experience. This is -- we haven't
16 done it before, and we're going to need time to make it
17 happen, and we're entering into the holiday period as well.
18 So we have to assemble the legislative commission to have a
19 meeting and I'm not so sure we're going to have a meeting
20 before January.

21 MS. PETERSON: Your Honor, this has been pending
22 since October 24th. So they have known that there's this
23 possibility since October 24th. And under the statute the
24 legislative -- the chair of the legislative commission can --

1 can authorize payment of the funds under the statute for
2 representation of the LCB.

3 MR. POWERS: That's not actually correct. If you
4 look at the authorizations part of the statute down below and
5 over subsection, it says the legislative commission can
6 authorize expenditures. It doesn't say the chair can
7 authorize expenditures. So the statute actually requires.

8 THE COURT: Okay. What I'm going to do is I'm
9 going to establish a schedule, and the reason we're going to
10 establish the schedule is because it's always subject to
11 change. If it can't be done within a time period somebody
12 can file a motion, okay?

13 MR. POWERS: Thank you, Your Honor.

14 THE COURT: That makes sense to me. What we're
15 going to do basically is -- I got to see my calendar if you
16 don't mind real quick.

17 MR. POWERS: And is someone directed to prepare
18 an order from this hearing?

19 THE COURT: Ms. Peterson is going to prepare the
20 order.

21 MR. POWERS: Thank you.

22 THE COURT: And that -- in regards to the motion
23 to intervene you can prepare the order.

24 MR. POWERS: Okay. And then their motion to

1 disqualify, their second motion?

2 THE COURT: Correct.

3 MR. POWERS: Okay.

4 THE COURT: I granted one part of it, denying the
5 other part and granting your part in respect to that.

6 MS. PETERSON: And circulate it so that counsel
7 has an opportunity.

8 THE COURT: Everybody has a right to review it in
9 respect to that.

10 MR. POWERS: Thank you.

11 THE COURT: What I'm going to do is set a date
12 and then we're going to work backwards, and I don't know, we
13 had this previously set for half a day. I don't believe it's
14 going to take any longer than a half day because it's a legal
15 argument, primary legal arguments with respect to that. Do
16 you think it's going to take more than half day?

17 MR. NEWBY: I think this is a -- the Court is
18 correct, half day at most.

19 MR. POWERS: Correct, Your Honor, I would agree
20 with that.

21 THE COURT: Ms. Peterson?

22 MS. PETERSON: Yes.

23 THE COURT: Okay. We're going to set the hearing
24 for April 1st, and then we're going to work backwards.

1 That's the only date I have. I tried to find one earlier
2 than that. April 1st. We're going to set it for
3 9:00 o'clock. And what we're going to do is have all briefs
4 filed to -- well, we already have your brief. We have your
5 motion for summary judgment. We have the opposition filed.
6 Well, we have your motion to dismiss. We have the opposition
7 to motion to dismiss, in the alternative summary judgment in
8 respect to that.

9 So I want all briefs in this case filed no later
10 than February 28th and any reply briefs or anything else that
11 needs to be done by March 20th. I know we've gone out a ways
12 and that's as good as we're going to get on the calendar to
13 be honest with you.

14 MS. PETERSON: So --

15 THE COURT: April 1st is the date that we're
16 going to have the hearing. Again, all briefs and, again, the
17 standard rules will apply, file your motion, reply or
18 anything else. There's a time period so provided under our
19 local rules and everything else in respect to that. If you
20 file something, then you have a reply time and everything. I
21 just want all of the briefs done and filed by the 28th of
22 February and then if we have to, we can extend up to the
23 March date I gave you, March 20th.

24 MS. PETERSON: So I thought LCB maybe wanted to

1 file their own motion for summary judgment?

2 MR. POWERS: LCB will be filing as counsel for
3 the legislature and motion for summary judgment on behalf of
4 the legislature.

5 THE COURT: Okay. That will be filed.

6 MS. PETERSON: So that would be first brief I
7 think. Wasn't that how our schedule was, that we had you
8 filing first, then us and then the reply?

9 MR. POWERS: What I propose, Your Honor, given
10 these dates, I believe the parties can work out a briefing
11 schedule with them and come up with a stipulation so that all
12 briefs are filed by that particular date.

13 THE COURT: Yeah. I'm just trying to come up
14 with a date.

15 MR. POWERS: Yes. We will work with that date
16 and work backwards.

17 THE COURT: Right.

18 MR. NEWBY: That works for me. Thank you.

19 THE COURT: Again, if something changes and we
20 get all of the briefs done earlier we can have a hearing
21 earlier. That's the earliest date I had on the calendar for
22 a criminal trial in respect to that, but I wanted to give you
23 a number one setting in respect to that so we have a
24 definitive date. Plus Mr. Powers wanted sufficient time to

1 go get funds and get other counsel and everything else. This
2 gives us ample time so there won't be any further
3 continuance. This gives us basically 120 days in the Court's
4 mind. We can't get everything done in 120 days and again
5 when did the taxes, I know one set of taxes, when do they go
6 into effect? I was looking at that.

7 MR. NEWBY: Your Honor, the taxes collected by
8 taxation, the first payments due under those taxes took place
9 in the October time period. It was a deadline. It was for
10 the end of September time period, payment by the end of
11 October. The DMV technology fee at issue in the case is not
12 effective. It's already in effect under prior statute
13 through the end of June 2020. The statute being challenged
14 by plaintiffs is effective July 1, 2020.

15 MS. PETERSON: But, Your Honor, Mr. Newby, you're
16 supposed to continue. So we get a discussion about this,
17 Your Honor, and it's my understanding the department of
18 taxation, the modified business tax, that's the tax that's in
19 effect right now, and that Mr. Newby I believe told me that
20 the tax department had procedures in place so that if there
21 are refunds that needed to be made or credits that needed to
22 be made for taxes that were unlawfully collected, that the
23 tax department has those procedures in place so that they are
24 able to return or credit those taxpayers with taxes that were

1 not supposed to be collected. Maybe Mr. Newby can confirm
2 that on the record.

3 MR. NEWBY: I can confirm that if this -- if the
4 ultimate order from the Court is that the statutes are
5 unconstitutional, the State is not going to keep the money,
6 and I cannot speak to the, specifically to the exact
7 technique used or the exact administrative regulations by the
8 department of taxation or if this case carries on long enough
9 how the department of motor vehicles will deal with it with
10 the technology fee.

11 But I am authorized and can assure the Court that
12 if the order is that the taxes have been collected and should
13 not have been collected they will be returned to the
14 taxpayer, as I'm sure the Court would insist as part of
15 pending judgment on this opinion.

16 THE COURT: Well, obviously pending any appeal
17 whatever happens. I'm sure there will be an appeal.

18 So, again, I understand the time period. I'm
19 just trying, if, in fact, Mr. Powers, I'm trying to give you
20 enough time to get everything done that you want done in
21 respect to that, file your briefs and everything else. If
22 for some chance things get filed earlier and we can, I'm more
23 than willing to have a hearing if something goes off calendar
24 earlier if we can. MR. POWERS: Your Honor, it can't be

1 earlier than that. Thank you.

2 THE COURT: Okay.

3 MR. POWERS: This is a good schedule. We can
4 make this work, and we'll ensure that all briefs are filed
5 with this Court on or before February 28th, 2019, and we have
6 a hearing on April 1st, 2019.

7 THE COURT: Ms. Peterson, anything else?

8 MS. PETERSON: Nothing, Your Honor.

9 THE COURT: Okay. Thank you.

10 Again, I appreciate the arguments. I appreciate
11 obviously the briefs in respect to this matter. I do think
12 and I understand, Mr. Powers, how important this issue is to
13 the LCB in respect to that. But, again, I have deep concerns
14 about the future in respect to this, as I'm sure you can
15 imagine in respect to that and how you got here, and I don't
16 know how you got in this position, but you got in this
17 position, and fortunately I think there's a way out. So
18 hopefully this will take care of it.

19 MR. POWERS: Thank you, Your Honor.

20 THE COURT: Thank you.

21 MS. PETERSON: Thank you.

22 MR. NEWBY: Thank you.

23

24

1 STATE OF NEVADA,)
2 CARSON CITY.)

3

4 I, KATHY JACKSON, do hereby certify:

5 That on November 19, 2019, a hearing was held in
6 the within-entitled matter in the Carson City, Nevada
7 District Court, Department No. 1;

8 That said hearing was recorded on CD-ROM, and
9 said CD-ROM was delivered to me for transcription;

10 That the foregoing transcript, consisting of
11 pages 1 through 50 is a full, true and correct transcript of
12 said recorded CD-ROM performed to the best of my ability.

13

14 Dated at Carson City, Nevada, this 25th day of
15 November, 2019.

16

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19


KATHY JACKSON, CCR

20

21

22

23

24

RECD & FILED

2019 DEC 19 AM 9:58

ADAMANT COURT
CLERK
BY 

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

THE HONORABLE JAMES SETTELMEYER,
THE HONORABLE JOE HARDY,
THE HONORABLE HEIDI GANSERT,
THE 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 and individually;
GREAT BASIN ENGINEERING
CONTRACTORS, LLC, a Nevada limited
liability company; GOODFELLOW
CORPORATION, a Utah corporation qualified
to do business in the State of Nevada;
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,

Plaintiffs,

vs.

STATE OF NEVADA *ex rel.* THE
HONORABLE NICOLE CANNIZZARO,
in her official capacity as Senate Majority
Leader; THE HONORABLE 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

Case No: 19 OC 00127 1B

Dept. No: I

**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**

1 SISOLAK, in his official capacity as
2 Governor of the State of Nevada; NEVADA
3 DEPARTMENT OF TAXATION;
4 NEVADA DEPARTMENT OF MOTOR
5 VEHICLES; and DOES I-X, inclusive,

6 Defendants,

7 and

8 THE LEGISLATURE OF THE
9 STATE OF NEVADA,

10 Defendant-Intervenor.
11 /

12 **ORDER GRANTING PLAINTIFF SENATORS' MOTION TO DISQUALIFY**
13 **LCB LEGAL AS COUNSEL FOR LEGISLATIVE DEFENDANTS**
14 **SENATOR CANNIZZARO AND SECRETARY OF THE SENATE CLIFT;**
15 **ORDER DENYING STAY; ORDER SETTING PROCEDURAL SCHEDULE**

16 This matter is before the Court on the Plaintiff Senators' Motion to Disqualify, filed on
17 October 24, 2019. The Court, having read the papers and pleadings on file herein, having heard oral
18 argument on November 19, 2019, and good cause appearing therefore, finds and orders as follows:

19 **Relevant Procedural History**

20 Plaintiffs, a group of Republican State Senators ("Plaintiff Senators"), in their official
21 capacity and individually, and various business interests, filed a First Amended Complaint herein on
22 July 30, 2019, challenging the constitutionality of Senate Bill No. 542 (SB 542) and Senate Bill No.
23 551 (SB 551) of the 80th (2019) Session of the Nevada Legislature. Plaintiffs allege, among other
24 things, that SB 542 and SB 551 were each subject to the two-thirds majority requirement in Article
25 4, Section 18(2) of the Nevada Constitution and that each bill is unconstitutional because the Senate
26 passed each bill by a majority of all the members elected to the Senate, instead of a two-thirds
27 majority of all the members elected to the Senate. Plaintiffs ask for a declaration that each bill is
28 unconstitutional in violation of Article 4, Section 18(2), and Plaintiffs also ask for an injunction
against enforcement of each bill.

Plaintiffs named state officers and agencies of the executive branch and legislative branch as
defendants in the First Amended Complaint. The executive branch defendants are: (1) the
Honorable Kate Marshall, in her official capacity as Lieutenant Governor of the State of Nevada and
President of the Senate; (2) the Honorable Steve Sisolak, in his official capacity as Governor of the

1 State of Nevada; (3) the Nevada Department of Taxation; and (4) the Nevada Department of Motor
2 Vehicles (collectively the "Executive Defendants"). The Executive Defendants are represented by
3 the Office of the Attorney General.

4 The legislative branch defendants are the Honorable Nicole Cannizzaro, in her official
5 capacity as Senate Majority Leader, and Claire Clift, in her official capacity as the Secretary of the
6 Senate (collectively the "Legislative Defendants"). The Legislative Defendants are represented by
7 the Legislative Counsel Bureau, Legal Division ("LCB Legal"), under NRS 218F.720. This Order
8 concerns the Plaintiff Senators' Motion to Disqualify LCB Legal as counsel for the Legislative
9 Defendants.

10 On July 30, 2019, counsel for Plaintiffs called the LCB to discuss service of the Summons
11 and Complaint on the Legislative Defendants. The call was directed to LCB Legal which indicated
12 it would accept service on behalf of the Legislative Defendants. On July 31, 2019, counsel for
13 Plaintiffs delivered to LCB Legal the Summons, Complaint, Order Denying Temporary Restraining
14 Order Without Prejudice, Peremptory Challenge of Judge, Notice of Assignment by Clerk, First
15 Amended Summons and the First Amended Complaint and an Acceptance and Acknowledgement of
16 Service on behalf of each Legislative Defendant in their official capacity. On that same date, Brenda
17 J. Erdoes, Legislative Counsel and Chief of LCB Legal, signed the Acceptance and
18 Acknowledgement of Service on behalf of each Legislative Defendant in their official capacity and
19 mailed each to counsel for Plaintiffs. On August 5, 2019, counsel for Plaintiffs filed each
20 Acceptance and Acknowledgement of Service with the Clerk of Court.

21 The Legislative Defendants first appeared in this matter under NRCP 12 when LCB Legal
22 filed an Answer on behalf of the Legislative Defendants on September 16, 2019. On that same date,
23 the Executive Defendants filed a Motion to Dismiss the First Amended Complaint under NRCP 12.
24 On September 30, 2019, Plaintiffs filed their Opposition to Executive Defendants' Motion to
25 Dismiss or, in the Alternative, Plaintiffs' Motion for Summary Judgment.

26 On October 7, 2019, counsel for Plaintiffs met in person with LCB Legal. During the
27 meeting, LCB Legal requested an extension of time until October 28, 2019, for the Legislative
28 Defendants to file their Opposition to Plaintiffs' Motion for Summary Judgment and to file their own

1 Counter-Motion for Summary Judgment. Also during the meeting, counsel for Plaintiffs informed
2 LCB Legal that the Plaintiff Senators and counsel believed that LCB Legal had a conflict of interest
3 and could not represent the Legislative Defendants against the Plaintiff Senators. LCB Legal
4 indicated that a court order would be necessary to remove LCB Legal as counsel for the Legislative
5 Defendants in this case.

6 On October 8, 2019, counsel for Plaintiffs telephoned LCB Legal and indicated that the
7 Plaintiffs would agree to the Legislative Defendants' requested extension of time. Counsel for
8 Plaintiffs also told LCB Legal that the Plaintiff Senators were still discussing a Motion to Disqualify
9 LCB Legal as counsel for the Legislative Defendants.

10 On October 10, 2019, the Court approved a Stipulation and entered its Order Regarding
11 Briefing Schedule for Dispositive Motions, Hearing Date for Oral Argument and Related Procedural
12 Matters, which established specific dates for the completion of briefing relating to the parties'
13 dispositive motions and which set a hearing before the Court for oral argument on the parties'
14 dispositive motions.

15 On October 24, 2019, the Plaintiff Senators filed a Motion to Disqualify LCB Legal from
16 representing the Legislative Defendants because of a conflict of interest under Nevada Rules of
17 Professional Conduct ("RPC") 1.7. On October 29, 2019, the Court approved a Stipulation and
18 entered its Order Regarding Stay of Proceedings Pending Resolution of the Motion to Disqualify
19 Counsel for Defendants Senate Majority Leader Nicole Cannizzaro and Secretary of the Senate
20 Claire Clift, which stayed all briefing for the parties' dispositive motions pending entry of a written
21 order by the Court resolving the Motion to Disqualify and which vacated the hearing before the
22 Court for oral argument on the parties' dispositive motions. On November 4, 2019, the Legislative
23 Defendants filed their Opposition to the Motion to Disqualify, and on November 12, 2019, the
24 Plaintiff Senators filed their Reply in Support of the Motion to Disqualify, the Affidavit of Senator
25 James Settelmeyer and the Affidavit of Karen Peterson.

26 On November 6, 2019, the Nevada Legislature ("Legislature"), also represented by LCB
27 Legal, filed a Motion to Intervene as a Defendant under NRCP 24 and NRS 218F.720 to protect the
28 official interests of the Legislature and defend the constitutionality of SB 542 and SB 551. On

1 November 18, 2019, Plaintiffs collectively filed a Qualified Opposition to the Legislature's Motion
2 to Intervene, and the Plaintiff Senators additionally filed a Motion to Disqualify LCB Legal as
3 counsel for the Legislature as a Defendant-Intervenor.

4 On November 19, 2019, the Court heard oral argument on the Motion to Disqualify LCB
5 Legal as counsel for the Legislative Defendants. The Court incorporated its ruling on the
6 Legislature's Motion to Intervene at the hearing. In a separate Order entered in this case, the Court
7 granted the Legislature's Motion to Intervene and denied the Plaintiff Senators' Motion to
8 Disqualify LCB Legal as counsel for the Legislature as a Defendant-Intervenor.

9 **Findings of Fact and Conclusions of Law**

10 The question of whether LCB Legal should be disqualified from representing the Legislative
11 Defendants is significant, and the answer will have a great impact on the future of the judiciary's
12 consideration of cases like this one. LCB Legal has the absolute right to defend the interests of the
13 Legislature as a whole and to defend the written opinion it issued prior to the Legislature's vote on
14 SB 542 and SB 551. *See* NRS 218F.720(2).¹ However, with regard to LCB Legal's representation
15 of the Legislative Defendants, the Court concludes that LCB Legal has a disqualifying conflict of
16 interest under RPC 1.7.

17 During the 2019 legislative session, both the Majority and Minority Leadership approached
18 LCB Legal and requested advice regarding the applicability of the Nevada Constitution's two-thirds
19 majority requirement to potential legislation affecting state revenues. *See* NRS 218F.710(2).² As
20 required by NRS 218F.710(2), LCB Legal provided the requested opinion, which was directed to
21 Legislative Leadership, including both Plaintiff, the Honorable James Settlemeyer, in his official
22 capacity as Senate Minority Leader, and Defendant, the Honorable Nicole Cannizzaro, in her official
23 capacity as Senate Majority Leader.

24 In deciding this Motion to Disqualify, the Court finds that the Nevada Rules of Professional
25 Conduct contain several relevant provisions governing conflicts of interest for government lawyers

26
27 ¹ *See also* the Court's Order granting the Legislature's Motion to Intervene and denying the Plaintiff Senators' Motion to
Disqualify LCB Legal as counsel for the Legislature as a Defendant-Intervenor.

28 ² NRS 218F.710(2) provides that "[u]pon 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."

1 serving as public officers or employees. The first relevant provisions are set forth in RPC 1.11(d),
2 which provides, in pertinent part, “[e]xcept as law may otherwise expressly permit, a lawyer
3 currently serving as a public officer or employee...[i]s subject to Rules 1.7 and 1.9.” Thus, RPC
4 1.11(d) applies the conflict-of-interest provisions of RPC 1.7 to government lawyers “[e]xcept as
5 law may otherwise expressly permit.”

6 Second, as relevant here, the conflict-of-interest provisions of RPC 1.7(a) provide, in
7 pertinent part, “a lawyer shall not represent a client if the representation involves a concurrent
8 conflict of interest” and “a concurrent conflict of interest exists if...[t]he representation of one client
9 will be directly adverse to another client.”

10 Finally, the provisions of RPC 1.13, which govern a lawyer’s representation of an
11 organizational client, including a governmental entity, are also relevant here. RPC 1.13(a) states “[a]
12 lawyer employed or retained by an organization represents the organization acting through its duly
13 authorized constituents.” Because a lawyer employed or retained by an organization represents the
14 organization, “the lawyer’s client is the organization rather than the constituent.” RPC 1.13(f).
15 However, under certain circumstances, RPC 1.13(g) provides a lawyer representing an organization
16 may also represent any of its directors, officers, employees, members, shareholders or other
17 constituents, subject to the conflict-of-interest provisions of RPC 1.7.

18 The Legislative Defendants acknowledged that LCB Legal’s government lawyers are subject
19 to the Nevada Rules of Professional Conduct. LCB Legal represents the Legislature, including all of
20 its members and officers. NRS 218F.720(6)(c). LCB Legal is counsel for both the Plaintiff Senators
21 and the Legislative Defendants and, thus, a concurrent conflict of interest exists in this case. The
22 Court finds that there is a need for LCB Legal to maintain its neutrality as to the representation of all
23 individual members and officers of the Legislature. That does not mean LCB Legal cannot take a
24 position to support or defend an interpretation it has given. The mechanism to do so, however, is
25 through intervention on behalf of the Legislature or the submission of an amicus brief. Therefore,
26 LCB may represent the Legislature as a defendant-intervenor in this litigation.

27 The Court is concerned, moreover, about the effects on LCB Legal’s ability to respond to
28 requests for opinions and requests for advice by members of the Legislature if LCB Legal is allowed

1 to represent one set of members and officers of the Legislature adverse to other members of the
2 Legislature. The Court believes LCB Legal should share these concerns.

3 LCB Legal has, historically, been politically neutral. The Court finds that LCB Legal must
4 maintain its neutrality in this litigation in order that all members and officers of the Legislature will
5 have confidence in coming to LCB Legal to request legal opinions and advice. Furthermore, the
6 Court finds it is not appropriate that LCB Legal pick sides by representing individual legislative
7 members and officers against other legislative members. For the good of the Legislature in the State
8 of Nevada, LCB Legal needs to maintain its neutrality. The nature of LCB Legal is jeopardized
9 when LCB Legal picks sides. LCB Legal may not represent the Legislative Defendants in this
10 matter. To hold otherwise would set a dangerous precedent. Again, LCB Legal must remain a
11 politically neutral entity that is to render its legal opinions without political interference from either
12 side of the political aisle.

13 The Legislative Defendants also argued that the Plaintiff Senators were barred from asserting
14 a conflict of interest on the bases of waiver and equitable estoppel. The Court does not find that the
15 Plaintiff Senators have waived asserting a conflict of interest here. The Court finds no evidence to
16 support the idea that the Plaintiff Senators intended to relinquish any rights to assert a conflict of
17 interest in this case. Again, the First Amended Complaint was filed on July 30, 2019, and the
18 Legislative Defendants first appeared in this matter when LCB Legal filed an Answer on their behalf
19 on September 16, 2019. The Motion to Disqualify was filed promptly on October 24, 2019, after
20 counsel for the Plaintiff Senators first discussed the conflict with LCB Legal.

21 Similarly, the Court does not find that the doctrine of equitable estoppel has any application
22 to this matter.

23 Finally, the Court notes that it has read each of the cases cited by LCB Legal in opposition to
24 the Motion to Disqualify. None of the cases cited by LCB Legal support the idea that LCB Legal
25 can represent one legislative member adverse to another legislative member. Indeed, most of the
26 cases cited involved one state agency adverse to another state agency. Here, the concern is that the
27 Legislature is but one agency and representation of any member or officer of the Legislature adverse
28

1 to another is not analogous to the permissible situation where one state agency is adverse to another
2 state agency and both are represented by the Office of the Attorney General.

3 Therefore, LCB Legal is disqualified from representing the Legislative Defendants in this
4 matter. The Plaintiff Senators may, in their sole discretion, voluntarily dismiss the Legislative
5 Defendants. Absent that, however, the Legislative Defendants must obtain separate outside counsel
6 to represent them in this matter.

7 **IT IS HEREBY ORDERED THAT** the Plaintiff Senators' Motion to Disqualify is
8 GRANTED and LCB Legal is disqualified from representing the Legislative Defendants in this
9 matter. The Legislative Defendants must obtain separate outside counsel to represent them in this
10 matter.

11 At oral argument, LCB Legal requested a stay of the proceedings in this case until there is a
12 stipulation between the parties resolving the timetable of how to proceed based upon the Legislative
13 Defendants having to obtain separate outside counsel to represent them in this matter.

14 **IT IS HEREBY FURTHER ORDERED THAT** LCB Legal's request for a stay of these
15 proceedings is DENIED. The Court intends to set a procedural schedule, such that the case can be
16 resolved and determined.

17 **IT IS HEREBY FURTHER ORDERED THAT** the following procedural schedule is set in
18 this case:

19 1. Not later than January 21, 2020, Executive Defendants shall file and serve their Reply
20 in Support of their Motion to Dismiss and their Opposition to Plaintiffs' Motion for Summary
21 Judgment, and Legislative Defendants and Defendant-Intervenor Nevada Legislature shall file and
22 serve their respective Oppositions to Plaintiffs' Motion for Summary Judgment and Counter-
23 Motions for Summary Judgment.

24 2. Not later than February 12, 2020, Plaintiffs shall file and serve their Reply in Support of
25 their Motion for Summary Judgment and their Opposition to Legislative Defendants' and Defendant-
26 Intervenor Nevada Legislature's respective Counter-Motions for Summary Judgment.

27 ///

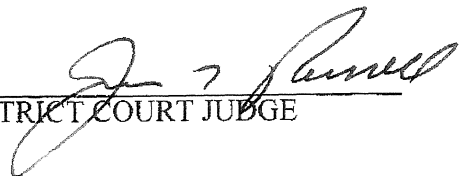
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1 3. Not later than February 26, 2020, Legislative Defendants and Defendant-Intervenor
2 Nevada Legislature shall file and serve their respective Replies in Support of their Counter-Motions
3 for Summary Judgment.

4 4. A hearing before the Court for oral argument on the parties' dispositive motions is set for
5 March 9, 2020, at 1:30 p.m.

6 **IT IS SO ORDERED.**

7 DATED this 19th day of December, 2019.

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11 DISTRICT COURT JUDGE
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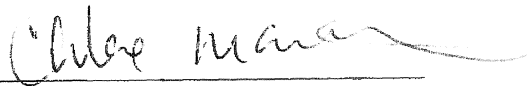
CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 19 day of December, 2019, I deposited for mailing, postage paid, at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

Karen A. Peterson, Esq.
Justin Townsend, Esq.
Allison MacKenzie, LTD.
PO BOX 646
Carson City, NV 89702

Kevin C. Powers, Esq.
Legislative Counsel Bureau
401 S. Carson St.
Carson City, NV 89701

Craig A. Newby, Esq.
Nevada Office of the Attorney General
100 N. Carson Street, 10th Floor
Carson City, NV 89701


Chloe McClintick, Esq.
Law Clerk, Dept. 1

REC'D & FILED

2019 DEC 19 AM 9:58

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

THE HONORABLE JAMES SETTELMAYER,
THE HONORABLE JOE HARDY, THE
HONORABLE HEIDI GANSERT, THE
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 and individually; GREAT
BASIN ENGINEERING CONTRACTORS,
LLC, a Nevada limited liability company;
GOODFELLOW CORPORATION, a Utah
corporation qualified to do business in the State
of Nevada; 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,

Plaintiffs,

vs.

STATE OF NEVADA ex rel. THE
HONORABLE NICOLE CANNIZZARO, in her
official capacity as Senate Majority Leader; THE
HONORABLE KATE MARSHALL, in her

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

**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**

1 official capacity as President of the Senate;
2 CLAIRE J. CLIFT, in her official capacity as
3 Secretary of the Senate; THE HONORABLE
4 STEVE SISOLAK, in his official capacity as
5 Governor of the State of Nevada; NEVADA
6 DEPARTMENT OF TAXATION; NEVADA
7 DEPARTMENT OF MOTOR VEHICLES; and
8 DOES I-X, inclusive,

9 Defendants,

10 and

11 THE LEGISLATURE OF THE
12 STATE OF NEVADA,

13 Defendant-Intervenor.

14
15 **ORDER GRANTING NEVADA LEGISLATURE'S MOTION TO INTERVENE AS**
16 **DEFENDANT-INTERVENOR AND DENYING PLAINTIFF SENATORS' MOTION TO**
17 **DISQUALIFY LCB LEGAL AS COUNSEL FOR NEVADA LEGISLATURE**

18 This matter is before the Court on: (1) the Nevada Legislature's Motion to Intervene as a
19 Defendant-Intervenor, which was filed on November 6, 2019; and (2) the Plaintiff Senators' Motion to
20 Disqualify LCB Legal as counsel for the Legislature as a Defendant-Intervenor, which was filed on
21 November 18, 2019. The Court, having read the papers and pleadings on file herein, having heard oral
22 argument on November 19, 2019, and good cause appearing therefore, finds and orders as follows:

23 **Relevant Procedural History**

24 Plaintiffs, a group of Republican State Senators ("Plaintiff Senators"), in their official capacity and
individually, and various business interests, filed a First Amended Complaint herein on July 30, 2019,
challenging the constitutionality of Senate Bill No. 542 (SB 542) and Senate Bill No. 551 (SB 551) of
the 80th (2019) Session of the Nevada Legislature. Plaintiffs allege, among other things, that SB 542
and SB 551 were each subject to the two-thirds majority requirement in Article 4, Section 18(2) of the
Nevada Constitution and that each bill is unconstitutional because the Senate passed each bill by a

1 majority of all the members elected to the Senate, instead of a two-thirds majority of all the members
2 elected to the Senate. Plaintiffs ask for a declaration that each bill is unconstitutional in violation of
3 Article 4, Section 18(2), and Plaintiffs also ask for an injunction against enforcement of each bill.

4 Plaintiffs named state officers and agencies of the executive branch and legislative branch as
5 defendants in the First Amended Complaint. The executive branch defendants are: (1) the Honorable
6 Kate Marshall, in her official capacity as Lieutenant Governor of the State of Nevada and President of
7 the Senate; (2) the Honorable Steve Sisolak, in his official capacity as Governor of the State of Nevada;
8 (3) the Nevada Department of Taxation; and (4) the Nevada Department of Motor Vehicles (collectively
9 the "Executive Defendants"). The Executive Defendants are represented by the Office of the Attorney
10 General.

11 The legislative branch defendants are the Honorable Nicole Cannizzaro, in her official capacity as
12 Senate Majority Leader, and Claire Clift, in her official capacity as the Secretary of the Senate
13 (collectively the "Legislative Defendants"). The Legislative Defendants were initially represented by
14 the Legislative Counsel Bureau, Legal Division ("LCB Legal"), under NRS 218F.720. As will be
15 discussed in greater detail below, in a separate Order entered in this case, the Court granted the Plaintiff
16 Senators' Motion to Disqualify LCB Legal as counsel for the Legislative Defendants and thereby
17 determined that the Legislative Defendants must obtain separate outside counsel to represent them in
18 this matter.

19 This Order concerns the Nevada Legislature's Motion to Intervene as a Defendant-Intervenor and
20 the Plaintiff Senators' Motion to Disqualify LCB Legal as counsel for the Nevada Legislature
21 ("Legislature") as a Defendant-Intervenor. To fully understand the Court's decision on these two
22 motions, it is necessary to review the relevant procedural history leading up to the hearing on November
23 19, 2019, where the Court heard oral argument on these two motions in conjunction with the Plaintiff
24 Senators' Motion to Disqualify LCB Legal as counsel for the Legislative Defendants.

1 On July 30, 2019, counsel for Plaintiffs called the LCB to discuss service of the Summons and
2 Complaint on the Legislative Defendants. The call was directed to LCB Legal which indicated it would
3 accept service on behalf of the Legislative Defendants. On July 31, 2019, counsel for Plaintiffs
4 delivered to LCB Legal the Summons, Complaint, Order Denying Temporary Restraining Order
5 Without Prejudice, Peremptory Challenge of Judge, Notice of Assignment by Clerk, First Amended
6 Summons and the First Amended Complaint and an Acceptance and Acknowledgement of Service on
7 behalf of each Legislative Defendant in their official capacity. On that same date, Brenda J. Erdoes,
8 Legislative Counsel and Chief of LCB Legal, signed the Acceptance and Acknowledgement of Service
9 on behalf of each Legislative Defendant in their official capacity and mailed each to counsel for
10 Plaintiffs. On August 5, 2019, counsel for Plaintiffs filed each Acceptance and Acknowledgement of
11 Service with the Clerk of Court.

12 The Legislative Defendants first appeared in this matter under NRCP 12 when LCB Legal filed an
13 Answer on behalf of the Legislative Defendants on September 16, 2019. On that same date, the
14 Executive Defendants filed a Motion to Dismiss the First Amended Complaint under NRCP 12. On
15 September 30, 2019, Plaintiffs filed their Opposition to Executive Defendants' Motion to Dismiss or, in
16 the Alternative, Plaintiffs' Motion for Summary Judgment.

17 On October 7, 2019, counsel for Plaintiffs met in person with LCB Legal. During the meeting,
18 LCB Legal requested an extension of time until October 28, 2019, for the Legislative Defendants to file
19 their Opposition to Plaintiffs' Motion for Summary Judgment and to file their own Counter-Motion for
20 Summary Judgment. Also during the meeting, counsel for Plaintiffs informed LCB Legal that the
21 Plaintiff Senators and counsel believed that LCB Legal had a conflict of interest and could not represent
22 the Legislative Defendants against the Plaintiff Senators. LCB Legal indicated that a court order would
23 be necessary to remove LCB Legal as counsel for the Legislative Defendants in this case.

24 On October 8, 2019, counsel for Plaintiffs telephoned LCB Legal and indicated that the Plaintiffs

1 would agree to the Legislative Defendants' requested extension of time. Counsel for Plaintiffs also told
2 LCB Legal that the Plaintiff Senators were still discussing a Motion to Disqualify LCB Legal as counsel
3 for the Legislative Defendants.

4 On October 10, 2019, the Court approved a Stipulation and entered its Order Regarding Briefing
5 Schedule for Dispositive Motions, Hearing Date for Oral Argument and Related Procedural Matters,
6 which established specific dates for the completion of briefing relating to the parties' dispositive
7 motions and which set a hearing before the Court for oral argument on the parties' dispositive motions.

8 On October 24, 2019, the Plaintiff Senators filed a Motion to Disqualify LCB Legal from
9 representing the Legislative Defendants because of a conflict of interest under Nevada Rules of
10 Professional Conduct ("RPC") 1.7. On October 29, 2019, the Court approved a Stipulation and entered
11 its Order Regarding Stay of Proceedings Pending Resolution of the Motion to Disqualify Counsel for
12 Defendants Senate Majority Leader Nicole Cannizzaro and Secretary of the Senate Claire Clift, which
13 stayed all briefing for the parties' dispositive motions pending entry of a written order by the Court
14 resolving the Motion to Disqualify and which vacated the hearing before the Court for oral argument on
15 the parties' dispositive motions. On November 4, 2019, the Legislative Defendants filed their
16 Opposition to the Motion to Disqualify, and on November 12, 2019, the Plaintiff Senators filed their
17 Reply in Support of the Motion to Disqualify, the Affidavit of Senator James Settelmeyer and the
18 Affidavit of Karen Peterson.

19 On November 6, 2019, the Legislature, also represented by LCB Legal, filed a Motion to
20 Intervene as a Defendant-Intervenor under NRCP 24 and NRS 218F.720 to protect the official interests
21 of the Legislature and defend the constitutionality of SB 542 and SB 551. On November 18, 2019,
22 Plaintiffs collectively filed a Qualified Opposition to the Legislature's Motion to Intervene, and the
23 Plaintiff Senators additionally filed a Motion to Disqualify LCB Legal as counsel for the Legislature as a
24 Defendant-Intervenor.

1 On November 19, 2019, the Court heard oral argument on: (1) the Plaintiff Senators' Motion to
2 Disqualify LCB Legal as counsel for the Legislative Defendants; (2) the Legislature's Motion to
3 Intervene as a Defendant-Intervenor; and (3) the Plaintiff Senators' Motion to Disqualify LCB Legal as
4 counsel for the Legislature as a Defendant-Intervenor.

5 Findings of Fact and Conclusions of Law

6 1. The Legislature's Motion to Intervene as a Defendant-Intervenor.

7 In its Motion to Intervene, the Legislature asserts, among other grounds, that it qualifies for
8 intervention of right under NRCP 24(a)(1) and NRS 218F.720 because the statute confers an
9 unconditional right to intervene when a party alleges that the Legislature has violated the Nevada
10 Constitution or alleges that any law is invalid, unenforceable or unconstitutional. In their Qualified
11 Opposition to the Motion to Intervene, Plaintiffs acknowledge that the Legislature is permitted to
12 intervene as of right under NRS 218F.720(3) when the Legislature elects to intervene in an action by
13 filing a motion to intervene as provided in NRS 218F.720(2). However, Plaintiffs object to the
14 Legislature being named in the caption of this action as a "Defendant" instead of a "Defendant-
15 Intervenor" because Plaintiffs do not want any suggestion or implication in the caption that Plaintiffs
16 named the Legislature as a Defendant in this action. Therefore, Plaintiffs request that if allowed to
17 intervene, the Legislature be named in the caption of this action as a "Defendant-Intervenor" instead of a
18 "Defendant."

19 NRCP 24 governs intervention and provides for both intervention of right and permissive
20 intervention. *Am. Home Assurance Co. v. Eighth Jud. Dist. Ct.*, 122 Nev. 1229, 1235, 147 P.3d 1120,
21 1124 (2006). The Court concludes that the Legislature qualifies for intervention of right under
22 NRCP 24(a)(1) and NRS 218F.720.¹

23
24 ¹ The Legislature argues that it also qualifies for intervention of right under NRCP 24(a)(2) and permissive intervention under NRCP 24(b). Because the Court concludes that the Legislature qualifies for intervention of right under NRCP 24(a)(1) and NRS 218F.720, the Court does not need to address the Legislature's additional arguments regarding intervention.

1 Relevant here, NRCP 24(a)(1) states that “[o]n timely motion, the court must permit anyone to
2 intervene who...is given an unconditional right to intervene by a state or federal statute.” The Court
3 finds that NRS 218F.720 gives the Legislature such an unconditional right to intervene. Under NRS
4 218F.720(2), when a party alleges that the Legislature violated the Nevada Constitution or alleges that
5 any law is invalid, unenforceable or unconstitutional, “the Legislature may elect to intervene in the
6 action or proceeding by filing a motion or request to intervene in the form required by the rules, laws or
7 regulations applicable to the action or proceeding.” The statute further provides that:

8 3. Notwithstanding any other law to the contrary, upon the filing of a motion or request
9 to intervene pursuant to [NRS 218F.720(2)], the Legislature has *an unconditional right and*
10 *standing to intervene* in the action or proceeding and to present its arguments, claims,
11 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.

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

13 In the First Amended Complaint, Plaintiffs allege that SB 542 and SB 551 were each subject to the
14 two-thirds majority requirement in Article 4, Section 18(2) of the Nevada Constitution and that each bill
15 is unconstitutional because the Senate passed each bill by a majority of all the members elected to the
16 Senate, instead of a two-thirds majority of all the members elected to the Senate. Plaintiffs ask for a
17 declaration that each bill is unconstitutional in violation of Article 4, Section 18(2), and Plaintiffs also
18 ask for an injunction against enforcement of each bill. Because Plaintiffs challenge each bill as invalid,
19 unenforceable and unconstitutional, the Court concludes that the Legislature has an unconditional right
20 to intervene in this action as a Defendant-Intervenor under NRCP 24(a)(1) and NRS 218F.720, and the
21 Court grants the Legislature’s Motion to Intervene as a Defendant-Intervenor. In granting the motion,
22 the Court orders that the caption of this action must be styled so the Legislature is named in the caption
23 as a “Defendant-Intervenor” instead of a “Defendant.”

24 ///

1 **2. The Plaintiff Senators' Motion to Disqualify LCB Legal as Counsel for the Legislature as**
2 **a Defendant-Intervenor.**

3 In their Motion to Disqualify LCB Legal as counsel for the Legislature as a Defendant-Intervenor,
4 the Plaintiff Senators refer to and incorporate by reference their Motion to Disqualify filed on
5 October 24, 2019, and all arguments and points and authorities contained in their Motion to Disqualify,
6 their Reply in Support of Motion to Disqualify filed on November 12, 2019, and the Affidavit of Senator
7 James Settlemeyer and the Affidavit of Karen Peterson filed on November 12, 2019. Plaintiff Senators
8 argue that if the Legislature intervenes in this action, it should be required to be represented by separate
9 outside counsel, instead of LCB Legal, because LCB Legal's representation of the Legislature as a
10 Defendant-Intervenor is directly adverse to the Plaintiff Senators, with whom LCB Legal has an ongoing
11 attorney-client relationship, and thereby creates a concurrent conflict of interest in violation of RPC 1.7.
12 The Plaintiff Senators also argue: (1) the Legislature has the financial resources available to engage
13 separate outside counsel as a result of LCB Legal's disqualifying conflict of interest; and (2) so that all
14 of LCB Legal's clients are treated equally. the Legislature should also be paying the attorney's fees of
15 the Plaintiff Senators since they are suing in their official capacity to effectuate their votes on SB 542
16 and SB 551, notwithstanding the provisions of NRS 218F.720(1)(b) that prohibit the Legislature from
17 being "assessed or held liable for...[t]he attorney's fees or any other fees, costs or expenses of any other
18 parties."

19 In deciding this Motion to Disqualify, the Court finds that the Nevada Rules of Professional
20 Conduct contain several relevant provisions governing conflicts of interest for government lawyers
21 serving as public officers or employees. The first relevant provisions are set forth in RPC 1.11(d),
22 which provides, in pertinent part, "[e]xcept as law may otherwise expressly permit, a lawyer currently
23 serving as a public officer or employee...[i]s subject to Rules 1.7 and 1.9." Thus, RPC 1.11(d) applies
24 the conflict-of-interest provisions of RPC 1.7 to government lawyers "[e]xcept as law may otherwise

1 expressly permit.”

2 Second, as relevant here, the conflict-of-interest provisions of RPC 1.7(a) provide, in pertinent
3 part, “a lawyer shall not represent a client if the representation involves a concurrent conflict of interest”
4 and “a concurrent conflict of interest exists if...[t]he representation of one client will be directly adverse
5 to another client.”

6 Finally, the provisions of RPC 1.13, which govern a lawyer’s representation of an organizational
7 client, including a governmental entity, are also relevant here. RPC 1.13(a) states “[a] lawyer employed
8 or retained by an organization represents the organization acting through its duly authorized
9 constituents.” Because a lawyer employed or retained by an organization represents the organization,
10 “the lawyer’s client is the organization rather than the constituent.” RPC 1.13(f). Under certain
11 circumstances, the lawyer for an organization may also represent any of its directors, officers,
12 employees or members who are duly authorized constituents of the organization, but RPC 1.13(g)
13 provides that such representation is subject to the conflict-of-interest provisions of RPC 1.7.

14 The Plaintiff Senators argue that LCB Legal’s representation of the Legislature as a Defendant-
15 Intervenor is directly adverse to the Plaintiff Senators, with whom LCB Legal has an ongoing attorney-
16 client relationship, and thereby creates a concurrent conflict of interest in violation of RPC 1.7. The
17 Plaintiff Senators further argue that there is an inherent conflict of interest when LCB Legal represents
18 certain members of the legislative body over other members, and the same conflict of interest still exists
19 and is not eliminated by LCB Legal also endeavoring to represent the Legislature as a Defendant-
20 Intervenor in this action.

21 The Court disagrees. As discussed previously, the Court finds that the Legislature as an
22 organization has an unconditional right to intervene in this action as a Defendant-Intervenor under
23 NRCP 24(a)(1) and NRS 218F.720. The Court further finds that LCB Legal has the absolute right to
24 defend the interests of the Legislature as an organization in this action and to defend the written opinion

1 it issued prior to the Legislature's vote on SB 542 and SB 551. *See* NRS 218F.720(1)-(3).

2 In the Court's Order granting the Plaintiff Senators' Motion to Disqualify LCB Legal as counsel
3 for the Legislative Defendants, the Court found that there is a need for LCB Legal to maintain its
4 neutrality in this litigation as to the representation of all members and officers of the Legislature.
5 However, the Court also found that this does not mean LCB Legal cannot take a position to support or
6 defend an interpretation it has given, but the mechanism to do so is through intervention on behalf of the
7 Legislature or the submission of an amicus brief. Thus, having granted the Legislature's Motion to
8 Intervene, the Court concludes that LCB Legal is able to maintain its neutrality in this litigation and that
9 its nature as a nonpartisan agency is not jeopardized because the Legislature as an organization has
10 elected to exercise its unconditional right to intervene in this action under NRCP 24(a)(1) and
11 NRS 218F.720.

12 The Court concludes that LCB Legal may represent the Legislature as an organization that has an
13 unconditional right to intervene in this action as a Defendant-Intervenor under NRCP 24(a)(1) and NRS
14 218F.720. Accordingly, the Court denies the Plaintiff Senators' Motion to Disqualify LCB Legal as
15 counsel for the Legislature as a Defendant-Intervenor.

16 **IT IS HEREBY ORDERED THAT** the Legislature's Motion to Intervene as a Defendant-
17 Intervenor is GRANTED.

18 **IT IS HEREBY FURTHER ORDERED THAT** the caption of this action must be styled so the
19 Legislature is named in the caption as a "Defendant-Intervenor" instead of a "Defendant."

20 **IT IS HEREBY FURTHER ORDERED THAT** the Legislature shall file its Answer to the First
21 Amended Complaint not later than 7 days after service of written notice of entry of this Order.

22 **IT IS HEREBY FURTHER ORDERED THAT** the Plaintiff Senators' Motion to Disqualify
23 LCB Legal as counsel for the Legislature as a Defendant-Intervenor is DENIED.

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J. R. Russell
DISTRICT COURT JUDGE

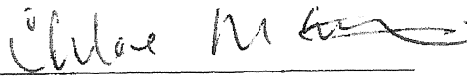
CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 19 day of December, 2019, I deposited for mailing, postage paid, at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

Karen A. Peterson, Esq.
Justin Townsend, Esq.
Allison MacKenzie, LTD.
PO BOX 646
Carson City, NV 89702

Kevin C. Powers, Esq.
Legislative Counsel Bureau
401 S. Carson St.
Carson City, NV 89701

Craig A. Newby, Esq.
Nevada Office of the Attorney General
100 N. Carson Street, 10th Floor
Carson City, NV 89701


Chloe McClintick, Esq.
Law Clerk, Dept. 1

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402 North Division Street, P.O. Box 646, Carson City, NV 89702
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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 SETTELMEYER,
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,

25 Plaintiffs,

26 vs.

27 ///

28 ///

REC'D & FILED
2019 DEC 19 PM 12:00
AUBREY ROWLAND
CLERK
BY C. C. C. C. C. C.
DEPUTY

Case No: 19 OC 00127 1B

Dept. No: I

**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**

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 **NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFF SENATORS'
16 MOTION TO DISQUALIFY LCB LEGAL AS COUNSEL FOR
17 LEGISLATIVE DEFENDANTS SENATOR CANNIZZARO AND
18 SECRETARY OF THE SENATE CLIFT; ORDER DENYING STAY;
19 ORDER SETTING PROCEDURAL SCHEDULE**

20 NOTICE IS HEREBY given that on the 19th day of December, 2019, the Court duly entered
21 an ORDER GRANTING PLAINTIFF SENATORS' MOTION TO DISQUALIFY LCB LEGAL
22 AS COUNSEL FOR LEGISLATIVE DEFENDANTS SENATOR CANNIZZARO AND
23 SECRETARY OF THE SENATE CLIFT; ORDER DENYING STAY; ORDER SETTING
24 PROCEDURAL SCHEDULE in the above-entitled matter. A copy of said Order is attached hereto
25 as Exhibit "1".

26 **AFFIRMATION**

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

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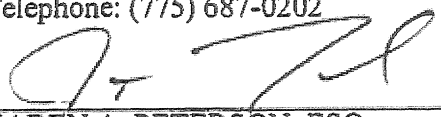
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1 DATED this 19th day of December, 2019.

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4 Carson City, NV 89703
5 Telephone: (775) 687-0202

6 By:

7 
8 KAREN A. PETERSON, ESQ.
9 Nevada State Bar No. 366
10 JUSTIN M. TOWNSEND, ESQ.
11 Nevada State Bar No. 12293
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14 Attorneys for Plaintiffs
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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.
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Aaron D. Ford, Esq.
Craig A. Newby, Esq.
Office of the Attorney General
CNewby@ag.nv.gov

DATED this 19th day of December, 2019.


NANCY FONTENOT

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INDEX OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>	<u>Number of Pages</u>
"1"	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	11

4849-9173-3679, v. 1

EXHIBIT “1”

REC'D & FILED

2019 DEC 19 AM 9:58

AUGUSTY J. CLIFT
CLERK

BY

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

THE HONORABLE JAMES SETTELMEYER,
THE HONORABLE JOE HARDY,
THE HONORABLE HEIDI GANSERT,
THE 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 and individually;
GREAT BASIN ENGINEERING
CONTRACTORS, LLC, a Nevada limited
liability company; GOODFELLOW
CORPORATION, a Utah corporation qualified
to do business in the State of Nevada;
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.

Plaintiffs,

vs.

STATE OF NEVADA *ex rel.* THE
HONORABLE NICOLE CANNIZZARO,
in her official capacity as Senate Majority
Leader; THE HONORABLE 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

Case No: 19 OC 00127 1B

Dept. No: I

**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**

1 SISOLAK, in his official capacity as
Governor of the State of Nevada; NEVADA
2 DEPARTMENT OF TAXATION;
NEVADA DEPARTMENT OF MOTOR
3 VEHICLES; and DOES I-X, inclusive,

4 Defendants,

5 and

6 THE LEGISLATURE OF THE
STATE OF NEVADA,

7 Defendant-Intervenor.
8 /

9 **ORDER GRANTING PLAINTIFF SENATORS' MOTION TO DISQUALIFY**
LCB LEGAL AS COUNSEL FOR LEGISLATIVE DEFENDANTS
10 **SENATOR CANNIZZARO AND SECRETARY OF THE SENATE CLIFT;**
ORDER DENYING STAY; ORDER SETTING PROCEDURAL SCHEDULE

11 This matter is before the Court on the Plaintiff Senators' Motion to Disqualify, filed on
12 October 24, 2019. The Court, having read the papers and pleadings on file herein, having heard oral
13 argument on November 19, 2019, and good cause appearing therefore, finds and orders as follows:

14 **Relevant Procedural History**

15 Plaintiffs, a group of Republican State Senators ("Plaintiff Senators"), in their official
16 capacity and individually, and various business interests, filed a First Amended Complaint herein on
17 July 30, 2019, challenging the constitutionality of Senate Bill No. 542 (SB 542) and Senate Bill No.
18 551 (SB 551) of the 80th (2019) Session of the Nevada Legislature. Plaintiffs allege, among other
19 things, that SB 542 and SB 551 were each subject to the two-thirds majority requirement in Article
20 4, Section 18(2) of the Nevada Constitution and that each bill is unconstitutional because the Senate
21 passed each bill by a majority of all the members elected to the Senate, instead of a two-thirds
22 majority of all the members elected to the Senate. Plaintiffs ask for a declaration that each bill is
23 unconstitutional in violation of Article 4, Section 18(2), and Plaintiffs also ask for an injunction
24 against enforcement of each bill.

25 Plaintiffs named state officers and agencies of the executive branch and legislative branch as
26 defendants in the First Amended Complaint. The executive branch defendants are: (1) the
27 Honorable Kate Marshall, in her official capacity as Lieutenant Governor of the State of Nevada and
28 President of the Senate; (2) the Honorable Steve Sisolak, in his official capacity as Governor of the

1 State of Nevada; (3) the Nevada Department of Taxation; and (4) the Nevada Department of Motor
2 Vehicles (collectively the "Executive Defendants"). The Executive Defendants are represented by
3 the Office of the Attorney General.

4 The legislative branch defendants are the Honorable Nicole Cannizzaro, in her official
5 capacity as Senate Majority Leader, and Claire Clift, in her official capacity as the Secretary of the
6 Senate (collectively the "Legislative Defendants"). The Legislative Defendants are represented by
7 the Legislative Counsel Bureau, Legal Division ("LCB Legal"), under NRS 218F.720. This Order
8 concerns the Plaintiff Senators' Motion to Disqualify LCB Legal as counsel for the Legislative
9 Defendants.

10 On July 30, 2019, counsel for Plaintiffs called the LCB to discuss service of the Summons
11 and Complaint on the Legislative Defendants. The call was directed to LCB Legal which indicated
12 it would accept service on behalf of the Legislative Defendants. On July 31, 2019, counsel for
13 Plaintiffs delivered to LCB Legal the Summons, Complaint, Order Denying Temporary Restraining
14 Order Without Prejudice, Peremptory Challenge of Judge, Notice of Assignment by Clerk, First
15 Amended Summons and the First Amended Complaint and an Acceptance and Acknowledgement of
16 Service on behalf of each Legislative Defendant in their official capacity. On that same date, Brenda
17 J. Erdoes, Legislative Counsel and Chief of LCB Legal, signed the Acceptance and
18 Acknowledgement of Service on behalf of each Legislative Defendant in their official capacity and
19 mailed each to counsel for Plaintiffs. On August 5, 2019, counsel for Plaintiffs filed each
20 Acceptance and Acknowledgement of Service with the Clerk of Court.

21 The Legislative Defendants first appeared in this matter under NRCP 12 when LCB Legal
22 filed an Answer on behalf of the Legislative Defendants on September 16, 2019. On that same date,
23 the Executive Defendants filed a Motion to Dismiss the First Amended Complaint under NRCP 12.
24 On September 30, 2019, Plaintiffs filed their Opposition to Executive Defendants' Motion to
25 Dismiss or, in the Alternative, Plaintiffs' Motion for Summary Judgment.

26 On October 7, 2019, counsel for Plaintiffs met in person with LCB Legal. During the
27 meeting, LCB Legal requested an extension of time until October 28, 2019, for the Legislative
28 Defendants to file their Opposition to Plaintiffs' Motion for Summary Judgment and to file their own

1 Counter-Motion for Summary Judgment. Also during the meeting, counsel for Plaintiffs informed
2 LCB Legal that the Plaintiff Senators and counsel believed that LCB Legal had a conflict of interest
3 and could not represent the Legislative Defendants against the Plaintiff Senators. LCB Legal
4 indicated that a court order would be necessary to remove LCB Legal as counsel for the Legislative
5 Defendants in this case.

6 On October 8, 2019, counsel for Plaintiffs telephoned LCB Legal and indicated that the
7 Plaintiffs would agree to the Legislative Defendants' requested extension of time. Counsel for
8 Plaintiffs also told LCB Legal that the Plaintiff Senators were still discussing a Motion to Disqualify
9 LCB Legal as counsel for the Legislative Defendants.

10 On October 10, 2019, the Court approved a Stipulation and entered its Order Regarding
11 Briefing Schedule for Dispositive Motions, Hearing Date for Oral Argument and Related Procedural
12 Matters, which established specific dates for the completion of briefing relating to the parties'
13 dispositive motions and which set a hearing before the Court for oral argument on the parties'
14 dispositive motions.

15 On October 24, 2019, the Plaintiff Senators filed a Motion to Disqualify LCB Legal from
16 representing the Legislative Defendants because of a conflict of interest under Nevada Rules of
17 Professional Conduct ("RPC") 1.7. On October 29, 2019, the Court approved a Stipulation and
18 entered its Order Regarding Stay of Proceedings Pending Resolution of the Motion to Disqualify
19 Counsel for Defendants Senate Majority Leader Nicole Cannizzaro and Secretary of the Senate
20 Claire Clift, which stayed all briefing for the parties' dispositive motions pending entry of a written
21 order by the Court resolving the Motion to Disqualify and which vacated the hearing before the
22 Court for oral argument on the parties' dispositive motions. On November 4, 2019, the Legislative
23 Defendants filed their Opposition to the Motion to Disqualify, and on November 12, 2019, the
24 Plaintiff Senators filed their Reply in Support of the Motion to Disqualify, the Affidavit of Senator
25 James Settelmeyer and the Affidavit of Karen Peterson.

26 On November 6, 2019, the Nevada Legislature ("Legislature"), also represented by LCB
27 Legal, filed a Motion to Intervene as a Defendant under NRCP 24 and NRS 218F.720 to protect the
28 official interests of the Legislature and defend the constitutionality of SB 542 and SB 551. On

1 November 18, 2019, Plaintiffs collectively filed a Qualified Opposition to the Legislature's Motion
2 to Intervene, and the Plaintiff Senators additionally filed a Motion to Disqualify LCB Legal as
3 counsel for the Legislature as a Defendant-Intervenor.

4 On November 19, 2019, the Court heard oral argument on the Motion to Disqualify LCB
5 Legal as counsel for the Legislative Defendants. The Court incorporated its ruling on the
6 Legislature's Motion to Intervene at the hearing. In a separate Order entered in this case, the Court
7 granted the Legislature's Motion to Intervene and denied the Plaintiff Senators' Motion to
8 Disqualify LCB Legal as counsel for the Legislature as a Defendant-Intervenor.

9 **Findings of Fact and Conclusions of Law**

10 The question of whether LCB Legal should be disqualified from representing the Legislative
11 Defendants is significant, and the answer will have a great impact on the future of the judiciary's
12 consideration of cases like this one. LCB Legal has the absolute right to defend the interests of the
13 Legislature as a whole and to defend the written opinion it issued prior to the Legislature's vote on
14 SB 542 and SB 551. *See* NRS 218F.720(2).¹ However, with regard to LCB Legal's representation
15 of the Legislative Defendants, the Court concludes that LCB Legal has a disqualifying conflict of
16 interest under RPC 1.7.

17 During the 2019 legislative session, both the Majority and Minority Leadership approached
18 LCB Legal and requested advice regarding the applicability of the Nevada Constitution's two-thirds
19 majority requirement to potential legislation affecting state revenues. *See* NRS 218F.710(2).² As
20 required by NRS 218F.710(2), LCB Legal provided the requested opinion, which was directed to
21 Legislative Leadership, including both Plaintiff, the Honorable James Settlemeyer, in his official
22 capacity as Senate Minority Leader, and Defendant, the Honorable Nicole Cannizzaro, in her official
23 capacity as Senate Majority Leader.

24 In deciding this Motion to Disqualify, the Court finds that the Nevada Rules of Professional
25 Conduct contain several relevant provisions governing conflicts of interest for government lawyers

26
¹ *See also* the Court's Order granting the Legislature's Motion to Intervene and denying the Plaintiff Senators' Motion to Disqualify LCB Legal as counsel for the Legislature as a Defendant-Intervenor.

² NRS 218F.710(2) provides that "[u]pon 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."

1 serving as public officers or employees. The first relevant provisions are set forth in RPC 1.11(d),
2 which provides, in pertinent part, "[e]xcept as law may otherwise expressly permit, a lawyer
3 currently serving as a public officer or employee...[i]s subject to Rules 1.7 and 1.9." Thus, RPC
4 1.11(d) applies the conflict-of-interest provisions of RPC 1.7 to government lawyers "[e]xcept as
5 law may otherwise expressly permit."

6 Second, as relevant here, the conflict-of-interest provisions of RPC 1.7(a) provide, in
7 pertinent part, "a lawyer shall not represent a client if the representation involves a concurrent
8 conflict of interest" and "a concurrent conflict of interest exists if...[t]he representation of one client
9 will be directly adverse to another client."

10 Finally, the provisions of RPC 1.13, which govern a lawyer's representation of an
11 organizational client, including a governmental entity, are also relevant here. RPC 1.13(a) states "[a]
12 lawyer employed or retained by an organization represents the organization acting through its duly
13 authorized constituents." Because a lawyer employed or retained by an organization represents the
14 organization, "the lawyer's client is the organization rather than the constituent." RPC 1.13(f).
15 However, under certain circumstances, RPC 1.13(g) provides a lawyer representing an organization
16 may also represent any of its directors, officers, employees, members, shareholders or other
17 constituents, subject to the conflict-of-interest provisions of RPC 1.7.

18 The Legislative Defendants acknowledged that LCB Legal's government lawyers are subject
19 to the Nevada Rules of Professional Conduct. LCB Legal represents the Legislature, including all of
20 its members and officers. NRS 218F.720(6)(c). LCB Legal is counsel for both the Plaintiff Senators
21 and the Legislative Defendants and, thus, a concurrent conflict of interest exists in this case. The
22 Court finds that there is a need for LCB Legal to maintain its neutrality as to the representation of all
23 individual members and officers of the Legislature. That does not mean LCB Legal cannot take a
24 position to support or defend an interpretation it has given. The mechanism to do so, however, is
25 through intervention on behalf of the Legislature or the submission of an amicus brief. Therefore,
26 LCB may represent the Legislature as a defendant-intervenor in this litigation.

27 The Court is concerned, moreover, about the effects on LCB Legal's ability to respond to
28 requests for opinions and requests for advice by members of the Legislature if LCB Legal is allowed

1 to represent one set of members and officers of the Legislature adverse to other members of the
2 Legislature. The Court believes LCB Legal should share these concerns.

3 LCB Legal has, historically, been politically neutral. The Court finds that LCB Legal must
4 maintain its neutrality in this litigation in order that all members and officers of the Legislature will
5 have confidence in coming to LCB Legal to request legal opinions and advice. Furthermore, the
6 Court finds it is not appropriate that LCB Legal pick sides by representing individual legislative
7 members and officers against other legislative members. For the good of the Legislature in the State
8 of Nevada, LCB Legal needs to maintain its neutrality. The nature of LCB Legal is jeopardized
9 when LCB Legal picks sides. LCB Legal may not represent the Legislative Defendants in this
10 matter. To hold otherwise would set a dangerous precedent. Again, LCB Legal must remain a
11 politically neutral entity that is to render its legal opinions without political interference from either
12 side of the political aisle.

13 The Legislative Defendants also argued that the Plaintiff Senators were barred from asserting
14 a conflict of interest on the bases of waiver and equitable estoppel. The Court does not find that the
15 Plaintiff Senators have waived asserting a conflict of interest here. The Court finds no evidence to
16 support the idea that the Plaintiff Senators intended to relinquish any rights to assert a conflict of
17 interest in this case. Again, the First Amended Complaint was filed on July 30, 2019, and the
18 Legislative Defendants first appeared in this matter when LCB Legal filed an Answer on their behalf
19 on September 16, 2019. The Motion to Disqualify was filed promptly on October 24, 2019, after
20 counsel for the Plaintiff Senators first discussed the conflict with LCB Legal.

21 Similarly, the Court does not find that the doctrine of equitable estoppel has any application
22 to this matter.

23 Finally, the Court notes that it has read each of the cases cited by LCB Legal in opposition to
24 the Motion to Disqualify. None of the cases cited by LCB Legal support the idea that LCB Legal
25 can represent one legislative member adverse to another legislative member. Indeed, most of the
26 cases cited involved one state agency adverse to another state agency. Here, the concern is that the
27 Legislature is but one agency and representation of any member or officer of the Legislature adverse
28

1 to another is not analogous to the permissible situation where one state agency is adverse to another
2 state agency and both are represented by the Office of the Attorney General.

3 Therefore, LCB Legal is disqualified from representing the Legislative Defendants in this
4 matter. The Plaintiff Senators may, in their sole discretion, voluntarily dismiss the Legislative
5 Defendants. Absent that, however, the Legislative Defendants must obtain separate outside counsel
6 to represent them in this matter.

7 **IT IS HEREBY ORDERED THAT** the Plaintiff Senators' Motion to Disqualify is
8 GRANTED and LCB Legal is disqualified from representing the Legislative Defendants in this
9 matter. The Legislative Defendants must obtain separate outside counsel to represent them in this
10 matter.

11 At oral argument, LCB Legal requested a stay of the proceedings in this case until there is a
12 stipulation between the parties resolving the timetable of how to proceed based upon the Legislative
13 Defendants having to obtain separate outside counsel to represent them in this matter.

14 **IT IS HEREBY FURTHER ORDERED THAT** LCB Legal's request for a stay of these
15 proceedings is DENIED. The Court intends to set a procedural schedule, such that the case can be
16 resolved and determined.

17 **IT IS HEREBY FURTHER ORDERED THAT** the following procedural schedule is set in
18 this case:

19 1. Not later than January 21, 2020, Executive Defendants shall file and serve their Reply
20 in Support of their Motion to Dismiss and their Opposition to Plaintiffs' Motion for Summary
21 Judgment, and Legislative Defendants and Defendant-Intervenor Nevada Legislature shall file and
22 serve their respective Oppositions to Plaintiffs' Motion for Summary Judgment and Counter-
23 Motions for Summary Judgment.

24 2. Not later than February 12, 2020, Plaintiffs shall file and serve their Reply in Support of
25 their Motion for Summary Judgment and their Opposition to Legislative Defendants' and Defendant-
26 Intervenor Nevada Legislature's respective Counter-Motions for Summary Judgment.

27 ///

28 ///

3. Not later than February 26, 2020, Legislative Defendants and Defendant-Intervenor Nevada Legislature shall file and serve their respective Replies in Support of their Counter-Motions for Summary Judgment.

4. A hearing before the Court for oral argument on the parties' dispositive motions is set for March 9, 2020, at 1:30 p.m.

IT IS SO ORDERED.

DATED this 19th day of December, 2019.

DISTRICT COURT JUDGE


CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 19 day of December, 2019, I deposited for mailing, postage paid, at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

Karen A. Peterson, Esq.
Justin Townsend, Esq.
Allison MacKenzie, LTD.
PO BOX 646
Carson City, NV 89702

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Legislative Counsel Bureau
401 S. Carson St.
Carson City, NV 89701

Craig A. Newby, Esq.
Nevada Office of the Attorney General
100 N. Carson Street, 10th Floor
Carson City, NV 89701


Chloe McClintick, Esq.
Law Clerk, Dept. 1

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Nevada State Bar No. 366
2 JUSTIN TOWNSEND, ESQ.
Nevada State Bar No. 12293
3 ALLISON MacKENZIE, LTD.
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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,
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,
25

26 Plaintiffs,

27 vs.
28 ///

REC'D & FILED

2019 DEC 19 PM 2:02

AUBREY KOWLATT
CLERK

BY

C. COOPER

Case No: 19 OC 00127 1B

Dept. No: I

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

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
16 **AMENDED NOTICE OF ENTRY OF ORDER GRANTING NEVADA LEGISLATURE'S
17 MOTION TO INTERVENE AS DEFENDANT-INTERVENOR AND
18 DENYING PLAINTIFF SENATORS' MOTION TO DISQUALIFY LCB
19 LEGAL AS COUNSEL FOR NEVADA LEGISLATURE**

20 NOTICE IS HEREBY given that on the 19th day of December, 2019, the Court duly entered
21 an ORDER GRANTING NEVADA LEGISLATURE'S MOTION TO INTERVENE AS
22 DEFENDANT-INTERVENOR AND DENYING PLAINTIFF SENATORS' MOTION TO
23 DISQUALIFY LCB LEGAL AS COUNSEL FOR NEVADA LEGISLATURE in the above-
24 entitled matter. A copy of said Order is attached hereto as Exhibit "1". The previous Notice of Entry
25 of Order had an incorrect attachment.

26 **AFFIRMATION**

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

29 ///

30 ///

31 ///

32 ///

33 ///

34 ///


35 ///

ALLISON MacKENZIE, LTD.
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E-Mail Address: law@allisonmackenzie.com

1 DATED this 19th day of December, 2019.

2 ALLISON MacKENZIE, LTD.
3 402 North Division Street
4 Carson City, NV 89703
5 Telephone: (775) 687-0202

6 By:

7 
8 KAREN A. PETERSON, ESQ.
9 Nevada State Bar No. 366
10 JUSTIN M. TOWNSEND, ESQ.
11 Nevada State Bar No. 12293
12 Email: kpeterson@allisonmackenzie.com
13 Email: jtownsend@allisonmackenzie.com

14 Attorneys for Plaintiffs
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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
kpowers@lcb.state.nv.us

Aaron D. Ford, Esq.
Craig A. Newby, Esq.
Office of the Attorney General
CNewby@ag.nv.gov

DATED this 19th day of December, 2019.


NANCY FONTENOT

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INDEX OF EXHIBITS

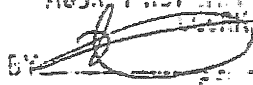
<u>Exhibit No.</u>	<u>Description</u>	<u>Number of Pages</u>
"1"	Order Granting Nevada Legislature's Motion to Intervene as Defendant-Intervenor and Denying Plaintiff Senators' Motion to Disqualify LCB Legal as Counsel for Nevada Legislature	13

4831-6157-6111, v. 1

EXHIBIT “1”

REC'D & FILED

2019 DEC 19 AM 9:58

AUSBY REC'D
BY 

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

THE HONORABLE JAMES SETTELMAYER,
THE HONORABLE JOE HARDY, THE
HONORABLE HEIDI GANSERT, THE
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 and individually; GREAT
BASIN ENGINEERING CONTRACTORS,
LLC, a Nevada limited liability company;
GOODFELLOW CORPORATION, a Utah
corporation qualified to do business in the State
of Nevada; 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,

Plaintiffs,

vs.

STATE OF NEVADA ex rel. THE
HONORABLE NICOLE CANNIZZARO, in her
official capacity as Senate Majority Leader; THE
HONORABLE KATE MARSHALL, in her

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

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

1 official capacity as President of the Senate;
2 CLARE J. CLIFT, in her official capacity as
3 Secretary of the Senate; THE HONORABLE
4 STEVE SISOLAK, in his official capacity as
5 Governor of the State of Nevada; NEVADA
6 DEPARTMENT OF TAXATION; NEVADA
7 DEPARTMENT OF MOTOR VEHICLES; and
8 DOES I-X, inclusive,

9 Defendants,

10 and

11 THE LEGISLATURE OF THE
12 STATE OF NEVADA,

13 Defendant-Intervenor.

14 **ORDER GRANTING NEVADA LEGISLATURE'S MOTION TO INTERVENE AS**
15 **DEFENDANT-INTERVENOR AND DENYING PLAINTIFF SENATORS' MOTION TO**
16 **DISQUALIFY LCB LEGAL AS COUNSEL FOR NEVADA LEGISLATURE**

17 This matter is before the Court on: (1) the Nevada Legislature's Motion to Intervene as a
18 Defendant-Intervenor, which was filed on November 6, 2019; and (2) the Plaintiff Senators' Motion to
19 Disqualify LCB Legal as counsel for the Legislature as a Defendant-Intervenor, which was filed on
20 November 18, 2019. The Court, having read the papers and pleadings on file herein, having heard oral
21 argument on November 19, 2019, and good cause appearing therefore, finds and orders as follows:

22 **Relevant Procedural History**

23 Plaintiffs, a group of Republican State Senators ("Plaintiff Senators"), in their official capacity and
24 individually, and various business interests, filed a First Amended Complaint herein on July 30, 2019,
challenging the constitutionality of Senate Bill No. 542 (SB 542) and Senate Bill No. 551 (SB 551) of
the 80th (2019) Session of the Nevada Legislature. Plaintiffs allege, among other things, that SB 542
and SB 551 were each subject to the two-thirds majority requirement in Article 4, Section 18(2) of the
Nevada Constitution and that each bill is unconstitutional because the Senate passed each bill by a

1 majority of all the members elected to the Senate, instead of a two-thirds majority of all the members
2 elected to the Senate. Plaintiffs ask for a declaration that each bill is unconstitutional in violation of
3 Article 4, Section 18(2), and Plaintiffs also ask for an injunction against enforcement of each bill.

4 Plaintiffs named state officers and agencies of the executive branch and legislative branch as
5 defendants in the First Amended Complaint. The executive branch defendants are: (1) the Honorable
6 Kate Marshall, in her official capacity as Lieutenant Governor of the State of Nevada and President of
7 the Senate; (2) the Honorable Steve Sisolak, in his official capacity as Governor of the State of Nevada;
8 (3) the Nevada Department of Taxation; and (4) the Nevada Department of Motor Vehicles (collectively
9 the "Executive Defendants"). The Executive Defendants are represented by the Office of the Attorney
10 General.

11 The legislative branch defendants are the Honorable Nicole Cannizzaro, in her official capacity as
12 Senate Majority Leader, and Claire Clift, in her official capacity as the Secretary of the Senate
13 (collectively the "Legislative Defendants"). The Legislative Defendants were initially represented by
14 the Legislative Counsel Bureau, Legal Division ("LCB Legal"), under NRS 218F.720. As will be
15 discussed in greater detail below, in a separate Order entered in this case, the Court granted the Plaintiff
16 Senators' Motion to Disqualify LCB Legal as counsel for the Legislative Defendants and thereby
17 determined that the Legislative Defendants must obtain separate outside counsel to represent them in
18 this matter.

19 This Order concerns the Nevada Legislature's Motion to Intervene as a Defendant-Intervenor and
20 the Plaintiff Senators' Motion to Disqualify LCB Legal as counsel for the Nevada Legislature
21 ("Legislature") as a Defendant-Intervenor. To fully understand the Court's decision on these two
22 motions, it is necessary to review the relevant procedural history leading up to the hearing on November
23 19, 2019, where the Court heard oral argument on these two motions in conjunction with the Plaintiff
24 Senators' Motion to Disqualify LCB Legal as counsel for the Legislative Defendants.

1 On July 30, 2019, counsel for Plaintiffs called the LCB to discuss service of the Summons and
2 Complaint on the Legislative Defendants. The call was directed to LCB Legal which indicated it would
3 accept service on behalf of the Legislative Defendants. On July 31, 2019, counsel for Plaintiffs
4 delivered to LCB Legal the Summons, Complaint, Order Denying Temporary Restraining Order
5 Without Prejudice, Peremptory Challenge of Judge, Notice of Assignment by Clerk, First Amended
6 Summons and the First Amended Complaint and an Acceptance and Acknowledgement of Service on
7 behalf of each Legislative Defendant in their official capacity. On that same date, Brenda J. Erdoes,
8 Legislative Counsel and Chief of LCB Legal, signed the Acceptance and Acknowledgement of Service
9 on behalf of each Legislative Defendant in their official capacity and mailed each to counsel for
10 Plaintiffs. On August 5, 2019, counsel for Plaintiffs filed each Acceptance and Acknowledgement of
11 Service with the Clerk of Court.

12 The Legislative Defendants first appeared in this matter under NRCP 12 when LCB Legal filed an
13 Answer on behalf of the Legislative Defendants on September 16, 2019. On that same date, the
14 Executive Defendants filed a Motion to Dismiss the First Amended Complaint under NRCP 12. On
15 September 30, 2019, Plaintiffs filed their Opposition to Executive Defendants' Motion to Dismiss or, in
16 the Alternative, Plaintiffs' Motion for Summary Judgment.

17 On October 7, 2019, counsel for Plaintiffs met in person with LCB Legal. During the meeting,
18 LCB Legal requested an extension of time until October 28, 2019, for the Legislative Defendants to file
19 their Opposition to Plaintiffs' Motion for Summary Judgment and to file their own Counter-Motion for
20 Summary Judgment. Also during the meeting, counsel for Plaintiffs informed LCB Legal that the
21 Plaintiff Senators and counsel believed that LCB Legal had a conflict of interest and could not represent
22 the Legislative Defendants against the Plaintiff Senators. LCB Legal indicated that a court order would
23 be necessary to remove LCB Legal as counsel for the Legislative Defendants in this case.

24 On October 8, 2019, counsel for Plaintiffs telephoned LCB Legal and indicated that the Plaintiffs

1 would agree to the Legislative Defendants' requested extension of time. Counsel for Plaintiffs also told
2 LCB Legal that the Plaintiff Senators were still discussing a Motion to Disqualify LCB Legal as counsel
3 for the Legislative Defendants.

4 On October 10, 2019, the Court approved a Stipulation and entered its Order Regarding Briefing
5 Schedule for Dispositive Motions, Hearing Date for Oral Argument and Related Procedural Matters,
6 which established specific dates for the completion of briefing relating to the parties' dispositive
7 motions and which set a hearing before the Court for oral argument on the parties' dispositive motions.

8 On October 24, 2019, the Plaintiff Senators filed a Motion to Disqualify LCB Legal from
9 representing the Legislative Defendants because of a conflict of interest under Nevada Rules of
10 Professional Conduct ("RPC") 1.7. On October 29, 2019, the Court approved a Stipulation and entered
11 its Order Regarding Stay of Proceedings Pending Resolution of the Motion to Disqualify Counsel for
12 Defendants Senate Majority Leader Nicole Cannizzaro and Secretary of the Senate Claire Clift, which
13 stayed all briefing for the parties' dispositive motions pending entry of a written order by the Court
14 resolving the Motion to Disqualify and which vacated the hearing before the Court for oral argument on
15 the parties' dispositive motions. On November 4, 2019, the Legislative Defendants filed their
16 Opposition to the Motion to Disqualify, and on November 12, 2019, the Plaintiff Senators filed their
17 Reply in Support of the Motion to Disqualify, the Affidavit of Senator James Settelmeyer and the
18 Affidavit of Karen Peterson.

19 On November 6, 2019, the Legislature, also represented by LCB Legal, filed a Motion to
20 Intervene as a Defendant-Intervenor under NRCP 24 and NRS 218F.720 to protect the official interests
21 of the Legislature and defend the constitutionality of SB 542 and SB 551. On November 18, 2019,
22 Plaintiffs collectively filed a Qualified Opposition to the Legislature's Motion to Intervene, and the
23 Plaintiff Senators additionally filed a Motion to Disqualify LCB Legal as counsel for the Legislature as a
24 Defendant-Intervenor.

1 On November 19, 2019, the Court heard oral argument on: (1) the Plaintiff Senators' Motion to
2 Disqualify LCB Legal as counsel for the Legislative Defendants; (2) the Legislature's Motion to
3 Intervene as a Defendant-Intervenor; and (3) the Plaintiff Senators' Motion to Disqualify LCB Legal as
4 counsel for the Legislature as a Defendant-Intervenor.

5 Findings of Fact and Conclusions of Law

6 1. The Legislature's Motion to Intervene as a Defendant-Intervenor.

7 In its Motion to Intervene, the Legislature asserts, among other grounds, that it qualifies for
8 intervention of right under NRCP 24(a)(1) and NRS 218F.720 because the statute confers an
9 unconditional right to intervene when a party alleges that the Legislature has violated the Nevada
10 Constitution or alleges that any law is invalid, unenforceable or unconstitutional. In their Qualified
11 Opposition to the Motion to Intervene, Plaintiffs acknowledge that the Legislature is permitted to
12 intervene as of right under NRS 218F.720(3) when the Legislature elects to intervene in an action by
13 filing a motion to intervene as provided in NRS 218F.720(2). However, Plaintiffs object to the
14 Legislature being named in the caption of this action as a "Defendant" instead of a "Defendant-
15 Intervenor" because Plaintiffs do not want any suggestion or implication in the caption that Plaintiffs
16 named the Legislature as a Defendant in this action. Therefore, Plaintiffs request that if allowed to
17 intervene, the Legislature be named in the caption of this action as a "Defendant-Intervenor" instead of a
18 "Defendant."

19 NRCP 24 governs intervention and provides for both intervention of right and permissive
20 intervention. *Am. Home Assurance Co. v. Eighth Jud. Dist. Ct.*, 122 Nev. 1229, 1235, 147 P.3d 1120.
21 1124 (2006). The Court concludes that the Legislature qualifies for intervention of right under
22 NRCP 24(a)(1) and NRS 218F.720.¹

23
24 ¹ The Legislature argues that it also qualifies for intervention of right under NRCP 24(a)(2) and permissive intervention under NRCP 24(b). Because the Court concludes that the Legislature qualifies for intervention of right under NRCP 24(a)(1) and NRS 218F.720, the Court does not need to address the Legislature's additional arguments regarding intervention.

1 Relevant here, NRCP 24(a)(1) states that “[o]n timely motion, the court must permit anyone to
2 intervene who...is given an unconditional right to intervene by a state or federal statute.” The Court
3 finds that NRS 218F.720 gives the Legislature such an unconditional right to intervene. Under NRS
4 218F.720(2), when a party alleges that the Legislature violated the Nevada Constitution or alleges that
5 any law is invalid, unenforceable or unconstitutional, “the Legislature may elect to intervene in the
6 action or proceeding by filing a motion or request to intervene in the form required by the rules, laws or
7 regulations applicable to the action or proceeding.” The statute further provides that:

8 3. Notwithstanding any other law to the contrary, upon the filing of a motion or request
9 to intervene pursuant to [NRS 218F.720(2)], the Legislature has *an unconditional right and*
10 *standing to intervene* in the action or proceeding and to present its arguments, claims,
11 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.

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

13 In the First Amended Complaint, Plaintiffs allege that SB 542 and SB 551 were each subject to the
14 two-thirds majority requirement in Article 4, Section 18(2) of the Nevada Constitution and that each bill
15 is unconstitutional because the Senate passed each bill by a majority of all the members elected to the
16 Senate, instead of a two-thirds majority of all the members elected to the Senate. Plaintiffs ask for a
17 declaration that each bill is unconstitutional in violation of Article 4, Section 18(2), and Plaintiffs also
18 ask for an injunction against enforcement of each bill. Because Plaintiffs challenge each bill as invalid,
19 unenforceable and unconstitutional, the Court concludes that the Legislature has an unconditional right
20 to intervene in this action as a Defendant-Intervenor under NRCP 24(a)(1) and NRS 218F.720, and the
21 Court grants the Legislature’s Motion to Intervene as a Defendant-Intervenor. In granting the motion,
22 the Court orders that the caption of this action must be styled so the Legislature is named in the caption
23 as a “Defendant-Intervenor” instead of a “Defendant.”

24 ///

1 **2. The Plaintiff Senators' Motion to Disqualify LCB Legal as Counsel for the Legislature as**
2 **a Defendant-Intervenor.**

3 In their Motion to Disqualify LCB Legal as counsel for the Legislature as a Defendant-Intervenor,
4 the Plaintiff Senators refer to and incorporate by reference their Motion to Disqualify filed on
5 October 24, 2019, and all arguments and points and authorities contained in their Motion to Disqualify,
6 their Reply in Support of Motion to Disqualify filed on November 12, 2019, and the Affidavit of Senator
7 James Settelmeyer and the Affidavit of Karen Peterson filed on November 12, 2019. Plaintiff Senators
8 argue that if the Legislature intervenes in this action, it should be required to be represented by separate
9 outside counsel, instead of LCB Legal, because LCB Legal's representation of the Legislature as a
10 Defendant-Intervenor is directly adverse to the Plaintiff Senators, with whom LCB Legal has an ongoing
11 attorney-client relationship, and thereby creates a concurrent conflict of interest in violation of RPC 1.7.
12 The Plaintiff Senators also argue: (1) the Legislature has the financial resources available to engage
13 separate outside counsel as a result of LCB Legal's disqualifying conflict of interest; and (2) so that all
14 of LCB Legal's clients are treated equally, the Legislature should also be paying the attorney's fees of
15 the Plaintiff Senators since they are suing in their official capacity to effectuate their votes on SB 542
16 and SB 551, notwithstanding the provisions of NRS 218F.720(1)(b) that prohibit the Legislature from
17 being "assessed or held liable for...[t]he attorney's fees or any other fees, costs or expenses of any other
18 parties."

19 In deciding this Motion to Disqualify, the Court finds that the Nevada Rules of Professional
20 Conduct contain several relevant provisions governing conflicts of interest for government lawyers
21 serving as public officers or employees. The first relevant provisions are set forth in RPC 1.11(d),
22 which provides, in pertinent part, "[e]xcept as law may otherwise expressly permit, a lawyer currently
23 serving as a public officer or employee...[i]s subject to Rules 1.7 and 1.9." Thus, RPC 1.11(d) applies
24 the conflict-of-interest provisions of RPC 1.7 to government lawyers "[e]xcept as law may otherwise

1 expressly permit.”

2 Second, as relevant here, the conflict-of-interest provisions of RPC 1.7(a) provide, in pertinent
3 part, “a lawyer shall not represent a client if the representation involves a concurrent conflict of interest”
4 and “a concurrent conflict of interest exists if...[t]he representation of one client will be directly adverse
5 to another client.”

6 Finally, the provisions of RPC 1.13, which govern a lawyer’s representation of an organizational
7 client, including a governmental entity, are also relevant here. RPC 1.13(a) states “[a] lawyer employed
8 or retained by an organization represents the organization acting through its duly authorized
9 constituents.” Because a lawyer employed or retained by an organization represents the organization,
10 “the lawyer’s client is the organization rather than the constituent.” RPC 1.13(f). Under certain
11 circumstances, the lawyer for an organization may also represent any of its directors, officers,
12 employees or members who are duly authorized constituents of the organization, but RPC 1.13(g)
13 provides that such representation is subject to the conflict-of-interest provisions of RPC 1.7.

14 The Plaintiff Senators argue that LCB Legal’s representation of the Legislature as a Defendant-
15 Intervenor is directly adverse to the Plaintiff Senators, with whom LCB Legal has an ongoing attorney-
16 client relationship, and thereby creates a concurrent conflict of interest in violation of RPC 1.7. The
17 Plaintiff Senators further argue that there is an inherent conflict of interest when LCB Legal represents
18 certain members of the legislative body over other members, and the same conflict of interest still exists
19 and is not eliminated by LCB Legal also endeavoring to represent the Legislature as a Defendant-
20 Intervenor in this action.

21 The Court disagrees. As discussed previously, the Court finds that the Legislature as an
22 organization has an unconditional right to intervene in this action as a Defendant-Intervenor under
23 NRCP 24(a)(1) and NRS 218F.720. The Court further finds that LCB Legal has the absolute right to
24 defend the interests of the Legislature as an organization in this action and to defend the written opinion

1 it issued prior to the Legislature's vote on SB 542 and SB 551. *See* NRS 218F.720(1)-(3).

2 In the Court's Order granting the Plaintiff Senators' Motion to Disqualify LCB Legal as counsel
3 for the Legislative Defendants, the Court found that there is a need for LCB Legal to maintain its
4 neutrality in this litigation as to the representation of all members and officers of the Legislature.
5 However, the Court also found that this does not mean LCB Legal cannot take a position to support or
6 defend an interpretation it has given, but the mechanism to do so is through intervention on behalf of the
7 Legislature or the submission of an amicus brief. Thus, having granted the Legislature's Motion to
8 Intervene, the Court concludes that LCB Legal is able to maintain its neutrality in this litigation and that
9 its nature as a nonpartisan agency is not jeopardized because the Legislature as an organization has
10 elected to exercise its unconditional right to intervene in this action under NRCP 24(a)(1) and
11 NRS 218F.720.

12 The Court concludes that LCB Legal may represent the Legislature as an organization that has an
13 unconditional right to intervene in this action as a Defendant-Intervenor under NRCP 24(a)(1) and NRS
14 218F.720. Accordingly, the Court denies the Plaintiff Senators' Motion to Disqualify LCB Legal as
15 counsel for the Legislature as a Defendant-Intervenor.

16 **IT IS HEREBY ORDERED THAT** the Legislature's Motion to Intervene as a Defendant-
17 Intervenor is GRANTED.

18 **IT IS HEREBY FURTHER ORDERED THAT** the caption of this action must be styled so the
19 Legislature is named in the caption as a "Defendant-Intervenor" instead of a "Defendant."

20 **IT IS HEREBY FURTHER ORDERED THAT** the Legislature shall file its Answer to the First
21 Amended Complaint not later than 7 days after service of written notice of entry of this Order.

22 **IT IS HEREBY FURTHER ORDERED THAT** the Plaintiff Senators' Motion to Disqualify
23 LCB Legal as counsel for the Legislature as a Defendant-Intervenor is DENIED.

24 ///

1 IT IS SO ORDERED.

2 DATED: This 19th day of December, 2019.

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4 
5 DISTRICT COURT JUDGE
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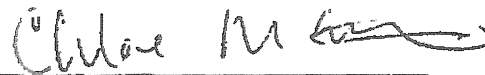
CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 19 day of December, 2019, I deposited for mailing, postage paid, at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

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Allison MacKenzie, LTD.
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Attorneys for Defendant-Intervenor Legislature of the State of Nevada

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2019 DEC 26 PM 2:28
AUBREY PO' LAIT
CLERK
BY P. O'KEEFE
DEPUTY

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

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

14 vs.

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

and

THE LEGISLATURE OF THE
STATE OF NEVADA,
Defendant-Intervenor.

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

NEVADA LEGISLATURE'S ANSWER
TO PLAINTIFFS' FIRST AMENDED
COMPLAINT

1 **NEVADA LEGISLATURE'S ANSWER**
2 **TO PLAINTIFFS' FIRST AMENDED COMPLAINT**

3 Defendant-Intervenor Legislature of the State of Nevada (Legislature), by and through its counsel
4 the Legal Division of the Legislative Counsel Bureau under NRS 218F.720, hereby submits the
5 Legislature's Answer to Plaintiffs' First Amended Complaint, 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 Settelmeyer, 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.

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FIRST CLAIM FOR RELIEF

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

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

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

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

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

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

SECOND CLAIM FOR RELIEF

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

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

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

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

THIRD CLAIM FOR RELIEF

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

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

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

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

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

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

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

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

FOURTH CLAIM FOR RELIEF

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

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

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

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

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

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

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

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

AFFIRMATIVE DEFENSES

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

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

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

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

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

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

PRAYER FOR RELIEF

The Legislature prays for the following relief:

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

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

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

DATED: This 26th day of December, 2019.

Respectfully submitted,

BRENDA J. ERDOES
Legislative Counsel

By:

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*Attorneys for Defendant-Intervenor
Legislature of the State of Nevada*

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Nevada Legislative Counsel Bureau, Legal Division, and that on the 26th day of December, 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 Nevada Legislature's Answer to Plaintiffs' First Amended Complaint, by electronic mail, directed to the following:

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