

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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

Petitioners,

vs.

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

Respondents, and

Electronically Filed  
Jan 06 2020 04:53 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**Case No. 80313**

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

**OPPOSITION TO  
PETITIONERS'  
EMERGENCY MOTION  
FOR STAY**

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JAMES A. SETTELMAYER, JOSEPH P. HARDY, HEIDI SEEVERS GANSERT, SCOTT T. HAMMOND, PETE GOICOECHEA, BEN KIECKHEFER, IRA D. HANSEN, and KEITH F. PICKARD, in their official capacities as members of the Senate of the State of Nevada and individually,

Real Parties in Interest.

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### **OPPOSITION TO PETITIONERS' EMERGENCY MOTION FOR STAY**

Real Parties in Interest JAMES A. SETTELMAYER, JOSEPH P. HARDY, HEIDI SEEVERS GANSERT, SCOTT T. HAMMOND, PETE GOICOECHEA, BEN KIECKHEFER, IRA D. HANSEN, and KEITH F. PICKARD in their official capacities as members of the Senate of the State of Nevada and individually<sup>1</sup> (“Real Parties in Interest Senators”), by and through their undersigned counsel, oppose the Emergency Motion for Stay (“Emergency Motion”) filed by Petitioners. This Opposition is based upon the following points and authorities, exhibits filed herewith, and all pleadings and papers on file in this case.

#### **A. FACTS AND PROCEDURAL BACKGROUND**

On November 19, 2019, the district court issued its ruling in open court at the conclusion of the hearing on Real Parties in Interest Senators’ Motion to Disqualify

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<sup>1</sup> It is not clear why the Senators are named individually by the Petitioners in this proceeding since the Senators’ Motion to Disqualify was filed in their official capacities. PA Vol. 2 at 395.

and the Intervenor Legislature's Motion to Intervene. PA Vol. 3 at 578-586. Counsel for Petitioners Nicole J. Cannizzaro ("Cannizzaro") and Claire J. Clift ("Clift") requested a stay of the district court proceedings at the November 19, 2019 hearing for purposes of getting outside counsel and how that was to be funded by the Legislative Commission. PA Vol. 3 at 586-589. After consultation with Legislative Counsel who was present in the courtroom, the district court was informed that said Petitioners' counsel was willing to work with a briefing schedule that started 60 days out. PA Vol. 3 at 587-588, 595. To date, counsel for said Petitioners has never moved for a stay in the district court of the district court proceedings for purposes of appealing the district court's order or pending resolution of Petitioners' writ petition. At the hearing, it was clear the District Court wanted the case resolved on the merits as soon as practicable. PA Vol. 3 at 587. However, the district court indicated if the schedule needed to be changed a motion could be made to the district court. PA Vol. 3 at 589. Counsel were directed to submit proposed orders to the district court after review by other counsel. PA Vol. 3 at 589-590.

The district court's oral pronouncement on November 19, 2019 mirrored the four matters in the district court's December 19, 2019 order Petitioners seek to appeal by their writ petition and seek to stay by their Emergency Motion filed January 3, 2020 in this case. *See* Emergency Motion at 4; PA Vol. 3 at 582-583,

586-587, 589-590, 592, 604. Immediately after the conclusion of the hearing on November 19, 2019 after the district court's pronouncement of its ruling and on or about approximately December 13, 2019, undersigned counsel for Real Parties in Interest Senators asked Petitioner Kevin C. Powers ("Powers") if the district court's order would be appealed. Exhibit 1 at ¶¶ 3, 4. Petitioner Powers responded he did not know or that the decision had not been made. Exhibit 1 at ¶¶ 3, 4. On December 3, 2019 Petitioners' counsel received a draft of the Real Parties in Interest Senators' proposed written order to be submitted to the district court based upon its November 19, 2019 ruling, which included a proposed procedural schedule. Exhibit 1 at ¶ 5. Petitioners did not oppose the procedural schedule set forth in the December 3, 2019 proposed order and included that procedural schedule in their proposed competing order provided to the District Court on December 18, 2019. Exhibit 1 at ¶ 6. The district court adopted that procedural schedule in its order issued December 19, 2019. PA Vol. 3 at 604-605; Exhibit 1 at ¶ 7.

Legislative Commission meetings can be set at any time by the Chair of the Legislative Commission. Exhibit 2 at ¶ 4. The Legislative Commission meeting held on December 30, 2019 was not set until on or about December 24, 2019. Exhibit 2 at ¶ 4. Petitioner, Senate Majority Leader Cannizzaro, is the Chair of the Legislative Commission.

At the Legislative Commission meeting held on December 30, 2019, the motion made and approved by a majority of the Legislative Commission was “to direct the LCB to take whatever legal action necessary to represent the State and represent the Legislature in this action as set forth by Mr. Powers”. Exhibit 3 at ¶ 4. The Legislature is a separate and distinct party from Petitioners Cannizzaro and Clift, known as the Legislative Defendants in the district court proceedings (see Emergency Motion at 3), and also a separate and distinct party from the other Petitioners in this proceeding named as the Legislative Counsel Bureau, Legal Division, Brenda J. Erdoes, Esq. and Kevin C. Powers, Esq. No copy of the District Court’s December 19, 2019 order was provided to members of the Legislative Commission prior to their vote to appeal nor was the order included as part of the December 30, 2019 Meeting Material Packet on the Legislative Counsel Bureau’s website for the meeting. Exhibit 2 at ¶ 5; See <https://www.leg.state.nv.us/App/InterimCommittee/REL/Document/14471>.

**B. ANY PURPORTED EMERGENCY BASED UPON THE BRIEFING SCHEDULE HAS BEEN CREATED BY PETITIONERS OWN ACTIONS AND THEIR EMERGENCY MOTION SHOULD BE DENIED.**

Petitioners have known the district court’s ruling on the four matters identified in their writ petition and Emergency Motion since November 19, 2019 yet waited until December 30, 2019 to seek direction from the Legislative Commission regarding this appeal. NRS 218F.720(1) provides the Chair of the Legislative

Commission may take action in cases where action is required before a meeting of the Legislative Commission is scheduled to be held.<sup>2</sup> Meetings of the Legislative Committee are called by the Chair. NRS 218E.155(1); Exhibit 2 at ¶4. Further, it is not clear Petitioners specifically were provided authorization from the Legislative Commission to appeal nor were Legislative Commission members provided a copy of the district court's December 19, 2019 order in making any decision to appeal. If the Petitioners' writ petition is defective because it was not properly authorized by the Legislative Commission, this Court lacks jurisdiction to consider the instant writ petition. *Commission on Ethics v. Hansen*, 134 Nev. 304, 308, 419 P.3d 140, 143 (2018).

Petitioners waited approximately 41 days to seek direction to file this appeal, in the meantime agreeing to the procedural schedule set forth in the district court's December 19, 2019 order and now ask this Court to rule on their motion in 10 days based upon "emergency circumstances" and to prevent irreparable harm. Emergency Motion at 6-7. By their actions, Petitioners have created any purported emergency circumstances now before this Court and their Emergency Motion should be denied on that ground.

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<sup>2</sup> In cases where the Chair may have a conflict, it is presumed the Vice-Chair or alternate may act.

Moreover, Petitioners failed to move first for a stay of the district court proceedings in the district court as required by NRAP 8(a)(1). This is also grounds to deny the Emergency Motion. *Fritz Hansen A/S v. Dist. Ct*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000).

C. **PETITIONERS ARE NOT ABLE TO SHOW THEY WILL PREVAIL ON THE MERITS OF THEIR WRIT PETITION AND THE EMERGENCY MOTION SHOULD BE DENIED ON THAT GROUND.**

Petitioners are not able to show they will prevail on the merits and seem to acknowledge the weakness of this factor in their Emergency Motion by arguing the first and second stay factors are entitled to added significance in the stay analysis. Emergency Motion at 12-13. Instead of arguing they are likely to prevail on the merits of their writ petition as required by NRAP 8(c), Petitioners argue in their Emergency Motion because the writ petition involves important and unsettled issues of law and presents a substantial case on the merits, the balance of equities weighs in favor of granting a stay. Emergency Motion at 18-22. *See, Fritz Hansen A/S v. Dist. Ct*, 116 Nev. 650, 659, 6 P.3d 982, 987 (2000). The strength of any irreparable harm argument Petitioners make is necessarily based upon a showing they will prevail on the merits. Because Petitioners cannot show they are likely to prevail on the merits of their writ petition, the Emergency Motion must be denied. *Id.*

Petitioners argue LCB Legal “must” be allowed to represent Petitioners Cannizzaro and Clift (the Legislative Defendants) in their official capacities as

directed by law under the statutory provisions in NRS 218F.720. Emergency Motion at 19-20. However, NRS 218F.720 likewise requires LCB Legal to represent the Real Parties in Interest Senators in their official capacities. There is no statutory authorization for LCB Legal's representation of members of the Legislature against other members. NRS 218F.720 does not allow LCB Legal to pick one group of legislators over another for purposes of statutory representation. That is the heart of this conflict issue: LCB Legal chose to represent one group of legislative members over another group while holding duties of loyalty as current counsel to both groups of legislative members. Petitioners LCB Legal's, Erdoes' and Powers' representation of clients directly adverse to its other current clients is prohibited because there has been no written consent by Real Parties in Interest Senators as required by Nevada Rule of Professional Conduct ("RPC") 1.7.<sup>3</sup>

RPC 1.11(d) provides that "except as law may otherwise *expressly permit*, a lawyer currently serving as a public officer or employee is subject to Rules 1.7 and 1.9." Nowhere in the Emergency Motion, or the writ petition for that matter, do Petitioners identify the "except" clause in NRS 218F.720 which purportedly *expressly permits* that LCB lawyers may have concurrent conflicts of interest, may

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<sup>3</sup> Based upon that choice at the onset of the district court proceedings, Real Parties in Interest Senators contend said Petitioners are also prohibited from now representing the Legislature in the district court proceedings. See PA Vol. 3 at 539-540.



represent one legislator against another legislator and are not required to comply with RPC 1.7 and 1.9.

Further, while NRS Chapter 218F.720 generally authorizes, it does not mandate, LCB Legal's representation of the Legislature, which is defined to include specific members of either legislative house, as well as officers and employees thereof. The statute is permissive and provides Legislative Counsel or the Legal Division "may" be directed to appear in, commence, prosecute, defend or intervene in any action or proceeding. Again, there is no express statutory authorization or implication in NRS 218F.720 that allows LCB Legal to represent some members of the Legislature against other members of the Legislature. Thus, LCB Legal is subject to the conflict of interest rules under RPC 1.7 and Petitioners are not able to show they will prevail on the merits of their writ petition as required by NRAP 8(c).

Petitioners' argument that NRS 218F.720 provides an "except" clause to RPC 1.11(d) violates the separation of powers doctrine contained in Article 3, Section 1(1) of the Nevada Constitution. Pursuant to the separation of powers doctrine, "the independence of one branch from the others and requirement that one department cannot exercise powers of the other two is fundamental in our system of government." *Galloway v. Truesdell*, 83 Nev. 13, 19, 422 P.2d 237, 242 (1967). Pursuant to Rule 39 of the Supreme Court Rules, "attorneys being court officers and essential aids in the administration of justice, the government of the legal profession

is a judicial function. Authority to admit to practice, and to discipline is inherent and exclusive in the Courts.” *See also*, NRS Chapter 7 under Title 1, State Judicial Department of the Nevada Revised Statutes. This Court has found that “were the power of judging joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for the judge would be the legislator.” *Berkson v. LePome*, 126 Nev. 492, 498, 245 P.3d 560, 566 (2010).

If NRS 218F.720 does indeed exempt or otherwise nullify the requirements of the RPC as they relate to legislative lawyers as Petitioners argue, such exemption or nullification would violate the separation of powers doctrine. The Legislature has not been given the inherent or exclusive powers as the Courts have to govern members of the legal profession. This Court regulates the practice of law, not the Legislature. While there is no express or implied exemption or limitation contained in NRS 218F.720, any such exemption or limitation which provides that LCB Legal does not have to comply with the RPC or conflict of interest rules would violate the separation of powers doctrine.

In their Emergency Motion, Petitioners argue Real Parties in Interest Senators did not have standing to bring a disqualification motion because LCB Legal “represents individual members of the Legislature in their official capacity as constituents of the organization and not as separate individuals.” Emergency Motion at 20-21. This argument is without merit. The specific language in NRS

218F.720 clearly provides that LCB Legal represents individual members of the Legislature. The Emergency Motion acknowledges as much and LCB has done so in the past. Emergency Motion at 21; *See generally Commission on Ethics v. Hardy*, 125 Nev. 285, 125 Nev. 1027 (2009); *Commission on Ethics v. Hansen*, 134 Nev. 304, 419 P.3d 140 (2018).

In addition, LCB Legal holds itself out as legal counsel to the Legislature's individual members. PA Vol. 3 at 533, ¶ 3. Legislators request confidential and private research and seek counsel of LCB Legal with regard to any number of issues, including but not limited to ethics issues, bill drafts, open meeting law, conflicts between legislators, etc. PA Vol. 3 at 533, ¶3. During New Legislator Orientation which occurs every other year to provide practical and professional training to newly elected legislators, LCB Legal has repeatedly shown that it provides legal advice and consultation services to the legislators. PA Vol. 3 at 512-527. LCB Legal does obtain confidential information about and from individual legislators in its capacity as legal counsel to the Legislature. NRS 218F.150(1)(b) states that LCB Legal is not permitted to disclose "the nature and content of any matter entrusted to the Legislative Counsel Bureau, and such matter is confidential and privileged and is not subject to the rules of discovery." LCB Legal's enabling statute specifically sets up a confidential relationship between all legislators and LCB Legal. The facts in the record indicate there is a clear confidential relationship established between each

legislator, in their official capacity, and LCB Legal. Moreover, there are a number of confidential pieces of information that LCB Legal has as it relates to the matters at the heart of this case. LCB Legal formed a lengthy opinion as it related to the constitutionality issue and had several communications with Real Party in Interest Senator Settlemeyer regarding the LCB Opinion that relate directly to specific issues in this case. PA Vol. 3 at 534, ¶¶ 7, 8, 9.

The district court found the equitable doctrines of estoppel and waiver did not bar the Real Parties in Interest Senators from challenging the conflict. PA Vol. 3 at 631-632. Real Parties in Interest Senators addressed those issues below and incorporate their points and authorities found at PA Vol. 3 at 482-535 in response to the Emergency Motion at 21-22.

“It is within the inherent power of the court to govern the conduct of the members appearing before it.” *Ryan’s Express v. Amador Stage Lines*, 128 Nev. 289, 294, 279 P.3d 166, 169 (2012). The district court has broad discretion in determining whether to disqualify a lawyer in a particular case and that determination will not be overruled by the Supreme Court absent a manifest abuse of discretion. *Nevada Yellow Cab Corp. v. Eighth Judicial Dist. Court*, 123 Nev. 44, 52-54, 152 P.3d 737, 742-743 (2007). The Nevada Court of Appeals has found that “a conflict of interest arises when counsel’s loyalty to, or efforts on behalf of, a client are threatened by his responsibilities to another client or a third person or by

his own interests.” *Jefferson v. State*, 133 Nev. 874, 876, 410 P.3d 1000, 1003 (2017). The district court did not abuse its discretion in this instance and Petitioners have not presented a substantial case on the merits.

Finally, this Court has held that “doubts should generally be resolved in favor of disqualification of counsel.” *Nevada Yellow Cab Corp. v. Eighth Judicial Dist. Court ex. rel. County of Clark*, 123 Nev. 44, 53 152 P.3d 737, 742 (2007).

**D. IRREPARABLE INJURY TO REAL PARTIES IN INTEREST SENATORS IF THE STAY IS GRANTED.**

As set forth above, Petitioners have not shown they are likely to succeed on the merits nor have they presented a substantial case on the merits for the legal question involved. The underlying district court proceedings will be unnecessarily delayed by a stay. *See Fritz Hansen A/S v. Dist. Ct*, 116 Nev. 650, 658, 6 P.3d 982, 987 (2000). As the district court noted, Real Parties in Interest Senators’ underlying action has strong implications for taxpayers and should be resolved for them. PA Vol. 3 at 587. Likewise, all Executive and Legislative officers of the State need resolution of the constitutional issue involving Article 4, Section 18(2) of the Nevada Constitution before the next legislative session. Finally, Real Parties in Interest Senators are entitled and owed an undivided duty of loyalty by their legislative counsel. Because their legislative counsel refuses to honor its ethical obligations, the Court must protect Real Parties in Interest Senators’ legitimate expectations of loyalty in this instance and uphold the district court’s

order disqualifying legislative counsel to avoid undermining public confidence in the legal profession and the judicial process.

**E. OTHER ARGUMENTS OF PETITIONERS.**

Petitioners contend the Legislative branch defendants are not proper parties to this litigation because they are entitled to absolute legislative immunity from declaratory and injunctive relief. Emergency Motion at 17-18. Legislative immunity only applies for actions performed within the sphere of legitimate legislative activity. NRS 41.071. If Real Parties in Interest Senators are successful in their underlying action they will obtain a declaratory judgment that the legislation passed by Petitioners Cannizzaro and Clift was not legitimate legislative activity.

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

would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. . . .” (Emphasis added).

As alleged in the First Amended Complaint, there is an actual justiciable controversy between Real Parties in Interests Senators and Petitioners Cannizzaro and Clift regarding the applicability of Article 4, Section 18(2) of the Nevada Constitution, which requires a two-thirds vote of the Legislature to approve a bill which creates, generates, or increases any public revenue in any form or changes in the computation bases for taxes, fees, assessments and rates. Petitioner Cannizzaro, as the Senate Majority Leader, brought SB 542 and SB 551 to the Senate Floor and allowed a vote of less than two-thirds of the Senate to approve both SB 542 and SB 551. Petitioner Clift, as the Secretary of the Senate, deemed the bills constitutionally passed with less than a vote of two-thirds of the Senate. The actions of Petitioners Cannizzaro and Clift, in allowing passage of the bills without applying the two-thirds majority requirement under the Nevada Constitution, were directly adverse to the interests of Real Parties in Interest Senators, whose votes on the bills were nullified thereby. Real Parties in Interest Senators seek declarations from this Court regarding the actions of Petitioners Cannizzaro and Clift and whether the Nevada Constitution prohibited those actions. *See* PA Vol. 1 at 29, 30, 31, 32, 35. First Amended Complaint, ¶¶ 24, 33-39, 44-46, 56, and 74-78. The actions of Petitioners Cannizzaro and Clift with

respect to SB 542 and SB 551 and Real Parties in Interest Senators' legitimate questions regarding the same present an actual justiciable controversy that is ripe for the lower court's determination. Petitioners Cannizzaro and Clift were properly named as parties to this action for declaratory relief.

Petitioners argue they are entitled to a stay because LCB will be irreparable harmed if it is required to incur expenses for attorney's fees for separate outside counsel which it will not be able to recover if this Court later vacates the district court's disqualification order. Emergency Motion at 8. Litigation expenses do not constitute irreparable or serious harm. *Fritz Hansen A/S v. Dist. Ct*, 116 Nev. 650, 658, 6 P.3d 982, 986-987 (2000); *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 253, 89 P.3d 36, 39 (2004).

**F. CONCLUSION.**

For all the foregoing reasons Petitioners' Emergency Motion for Stay should be denied.

DATED this 6<sup>th</sup> day of January, 2020.

**ALLISON, MacKENZIE, LTD.**  
402 North Division Street  
Carson City, NV 89703  
(775) 687-0202

By: /s/ Karen A. Peterson  
KAREN A. PETERSON, NSB 366  
JUSTIN M. TOWNSEND, NSB 12293  
Attorneys for Parties in Interest,  
JAMES A. SETTELMEYER, et al.



## **CERTIFICATE OF SERVICE**

Pursuant to NRAP 25(1)(c), 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 by:

✓ **Court's electronic notification system**

as follows:

Brenda J. Erdoes, Esq.  
Kevin C. Powers, Esq.

✓ **United States Mail, Postage prepaid**

Honorable James T. Russell  
First Judicial District Court  
855 E. Musser Street, Room 3061  
Carson City, NV 89701

DATED this 6<sup>th</sup> day of January, 2020.

/s/ Nancy Fontenot  
NANCY FONTENOT

## **LIST OF EXHIBITS**

- Exhibit 1:** Affidavit of Karen Peterson
- Exhibit 2:** Affidavit of Senator James Settlemeyer
- Exhibit 3:** Affidavit of Justin M. Townsend

# **EXHIBIT 1**

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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

Petitioners,

vs.

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

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**AFFIDAVIT OF  
KAREN PETERSON**

JAMES A. SETTELMAYER, JOSEPH P.  
HARDY, HEIDI SEEVERS GANSERT,  
SCOTT T. HAMMOND, PETE  
GOICOECHEA, BEN KIECKHEFER,  
IRA D. HANSEN, and KEITH F.  
PICKARD, in their official capacities as  
members of the Senate of the State of  
Nevada and individually,

Real Parties in Interest.

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**AFFIDAVIT OF KAREN PETERSON**

STATE OF NEVADA     )  
                                      : ss.  
CARSON CITY             )

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

1.     The undersigned is an attorney duly authorized and qualified to practice  
law in the State of Nevada and represents Real Parties in Interest Senators in the in  
the above-entitled action.

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

3.     Immediately after the conclusion of the hearing on November 19, 2019  
after the district court's pronouncement of its ruling, I asked Petitioner Kevin C.  
Powers ("Powers") if the district court's disqualification order would be appealed.  
Mr. Powers responded he did not know.

4. On or about December 13, 2019 I had a telephone conversation with Mr. Powers regarding the proposed orders to be submitted to the district court based upon the district court's November 19, 2019 ruling. During that phone conversation I asked Mr. Powers if the district court's disqualification order would be appealed. Mr. Powers responded a decision had not been made.

5. On December 3, 2019 Mr. Powers received a draft of the Real Parties in Interest Senators' proposed written order to be submitted to the district court based upon its November 19, 2019 ruling, which included a proposed procedural schedule.

6. Petitioners Nicole J. Cannizzaro and Claire J. Clift did not oppose the procedural schedule set forth in the December 3, 2019 proposed order and included that procedural schedule in their proposed competing order provided to the District Court on December 18, 2019.

7. The district court adopted that procedural schedule in its order issued December 19, 2019.

DATED this 6<sup>th</sup> day of January, 2020.

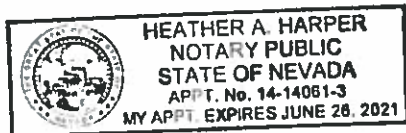
  
KAREN PETERSON

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STATE OF NEVADA     )  
                                      : ss.  
CARSON CITY             )

On January 6, 2020, personally appeared before me, a Notary Public, KAREN PETERSON, personally known (or proved) to me to be the person whose name is subscribed to the foregoing document, and who acknowledged to me that she executed the foregoing document.



  
NOTARY PUBLIC

# **EXHIBIT 2**



**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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

Petitioners,

vs.

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

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**AFFIDAVIT OF SENATOR  
JAMES SETTELMAYER**

JAMES A. SETTELMAYER, JOSEPH P.  
HARDY, HEIDI SEEVERS GANSERT,  
SCOTT T. HAMMOND, PETE  
GOICOECHEA, BEN KIECKHEFER,  
IRA D. HANSEN, and KEITH F.  
PICKARD, in their official capacities as  
members of the Senate of the State of  
Nevada and individually,

Real Parties in Interest.

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**AFFIDAVIT OF SENATOR JAMES SETTELMAYER**

STATE OF NEVADA     )  
                                      : ss.  
CARSON CITY            )

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

1.     I am a member of the Nevada Senate representing Senate District 17. I  
am the current Minority Leader of the Senate. I have been a member of the  
Legislature since 2006 first as an Assemblyman and now a Senator. I am one of the  
named Real Parties in Interest in the above captioned proceeding.

2.     I make this affidavit in support of the Opposition to Petitioners'  
Emergency Motion for Stay filed in this action by Real Parties in Interest Senators.  
I have personal knowledge of all matters set forth herein and I am competent to  
testify to the same.

3. I am currently a member of the Legislative Commission and have been a member of the Legislative Commission for the 2007/2008, 2009/2010, 2011/2012, 2013/2014, 2015/2016 and 2019/2020 Sessions and Interims.

4. Since I have been a member of the Legislative Commission, the Chair of the Legislative Commission has called meetings at the pleasure of the Chair. In my experience, the Chair can call a meeting whenever he or she wants. I was informed on or about December 24, 2019 the Legislative Commission meeting had been scheduled for December 30, 2019.

5. I attended the Legislative Commission meeting on December 30, 2019. I reviewed all materials sent to me by the Legislative Staff for the meeting prior to December 30, 2019. I did not receive a copy of the District Court's 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 issued December 19, 2019 in Case No. 19 OC 00127 1B in the First Judicial District Court of the State of Nevada, In and For Carson City, from Legislative Staff prior to or at the meeting. I am informed and believe that no other members of the Legislative Commission received a copy of the District Court's December 19, 2019 Order prior to or at the December 30, 2019 meeting of the Legislative Commission.

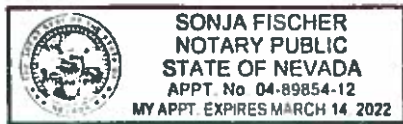
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DATED this 6<sup>th</sup> day of January, 2020.

  
JAMES SETTELMEYER

STATE OF NEVADA     )  
                                      : ss.  
CARSON CITY            )

On January 6, 2020, personally appeared before me, a Notary Public, JAMES SETTELMEYER, personally known (or proved) to me to be the person whose name is subscribed to the foregoing document, and who acknowledged to me that he executed the foregoing document.



  
NOTARY PUBLIC

# **EXHIBIT 3**

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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

Petitioners,

vs.

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

Respondents, and

**Case No. 80313**

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

**AFFIDAVIT OF  
JUSTIN M. TOWNSEND**

JAMES A. SETTELMAYER, JOSEPH P.  
HARDY, HEIDI SEEVERS GANSERT,  
SCOTT T. HAMMOND, PETE  
GOICOECHEA, BEN KIECKHEFER,  
IRA D. HANSEN, and KEITH F.  
PICKARD, in their official capacities as  
members of the Senate of the State of  
Nevada and individually,

Real Parties in Interest.

**AFFIDAVIT OF JUSTIN M. TOWNSEND**

STATE OF NEVADA     )  
                                      : ss.  
CARSON CITY             )

JUSTIN M. TOWNSEND, under penalty of perjury, does solemnly swear and  
affirm that the following assertions are true:

1.     The undersigned is an attorney duly authorized and qualified to practice  
law in the State of Nevada and represents Real Parties in Interest Senators in the in  
the above-entitled action.

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

3.     I attended the Legislative Commission meeting at the Legislature in  
Carson City, Nevada, held on December 30, 2019 and was present for the entire  
discussion of these proceedings and the deliberations had by said Commission on

whether to authorize the Legislative Counsel Bureau to appeal the district court's December 19, 2019 Order.

4. Following the discussion of these proceedings at the December 30, 2019 Legislative Commission meeting, Speaker of the Assembly, Jason Frierson, a member of the Legislative Commission, made a motion "to direct the LCB to take whatever legal action necessary to represent the State and represent the Legislature in this action as set forth by Mr. Powers."

5. I heard the motion made by Speaker Frierson and was present when the Commission voted, with five nay votes, to approve the motion.

DATED this 6<sup>th</sup> day of January, 2020.

  
JUSTIN M. TOWNSEND

STATE OF NEVADA     )  
                                      : ss.  
CARSON CITY            )

On January 6, 2020, personally appeared before me, a Notary Public, JUSTIN M. TOWNSEND, personally known (or proved) to me to be the person whose name is subscribed to the foregoing document, and who acknowledged to me that she executed the foregoing document.



  
NOTARY PUBLIC