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Electronically Filed
Jun 08 2020 10:56 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

8 **TIMOTHY D. KELLER**
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17 Las Vegas, NV 89134
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18 Attorneys for Plaintiffs

20 **DISTRICT COURT**
21 **CLARK COUNTY, NEVADA**

22 * * *

23 FLOR MORENCY; KEYSHA
24 NEWELL; BONNIE YBARRA;
25 AAA SCHOLARSHIP
26 FOUNDATION, INC.; SKLAR
27 WILLIAMS PLLC;
28 ENVIRONMENTAL DESIGN
GROUP, LLC,

Plaintiffs,

vs.

CASE NO. A-19-800267-C

DEPT NO. XXXII

NOTICE OF APPEAL

STATE OF NEVADA ex rel. the
DEPARTMENT OF EDUCATION;
JHONE EBERT, in her official
capacity as executive head of the
Department of Education; the
DEPARTMENT OF TAXATION;
JAMES DEVOLLD, in his official
capacity as a member of the
Nevada Tax Commission; SHARON
RIGBY, in her official capacity as a
member of the Nevada Tax
Commission; CRAIG WITT, in his
official capacity as a member of the
Nevada Tax Commission; GEORGE
KELESIS, in his official capacity as
a member of the Nevada Tax
Commission; ANN BERSI, in her
official capacity as a member of the
Nevada Tax Commission; RANDY
BROWN, in his official capacity as
a member of the Nevada Tax
Commission; FRANCINE LIPMAN,
in her official capacity as a member
of the Nevada Tax Commission;
ANTHONY WREN, in his official
capacity as a member of the
Nevada Tax Commission;
MELANIE YOUNG, in her official
capacity as the Executive Director
and Chief Administrative Officer of
the Department of Taxation,
Defendants,

and

THE LEGISLATURE OF THE
STATE OF NEVADA,
Intervenor-
Defendant.

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DATED this 29th day of May, 2020.

TIMOTHY D. KELLER
Arizona Bar No. 019844
Admitted Pro Hac Vice
398 S. Mill Ave., Suite 301
Tempe, AZ 85281

Attorneys for Plaintiffs

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Attorneys for Executive Defendants

Attorneys for Intervenor-Defendant Legislature of the State of Nevada

4

EIGHTH JUDICIAL DISTRICT COURT





CASE SUMMARY**CASE NO. A-19-800267-C****Flor Morency, Plaintiff(s)****vs.****State of Nevada - Department of Education, Defendant
(s)**§
§
§
§
§Location: **Department 32**
Judicial Officer: **Bare, Rob**
Filed on: **08/15/2019**
Cross-Reference Case Number: **A800267****CASE INFORMATION****Statistical Closures**

05/20/2020 Summary Judgment

Case Type: **Other Civil Matters**Case Status: **05/20/2020 Closed****DATE****CASE ASSIGNMENT****Current Case Assignment**Case Number A-19-800267-C
Court Department 32
Date Assigned 08/15/2019
Judicial Officer Bare, Rob**PARTY INFORMATION**

		<i>Lead Attorneys</i>
Plaintiff	AAA Scholarship Foundation, Inc.	House, Joshua A. <i>Retained</i> 775-684-1542(W)
	Environmental Design Group, LLC	House, Joshua A. <i>Retained</i> 775-684-1542(W)
	Morency, Flor	House, Joshua A. <i>Retained</i> 775-684-1542(W)
	Newell, Keysha	House, Joshua A. <i>Retained</i> 775-684-1542(W)
	Sklar Williams PLLC	House, Joshua A. <i>Retained</i> 775-684-1542(W)
	Ybarra, Bonnie	House, Joshua A. <i>Retained</i> 775-684-1542(W)
Defendant	Bersi, Ann	Newby, Craig A. <i>Retained</i> 7028734100(W)
	Brown, Randy	Newby, Craig A. <i>Retained</i> 7028734100(W)
	Department of Taxation	Newby, Craig A. <i>Retained</i> 7028734100(W)
	Devolld, James	Newby, Craig A. <i>Retained</i> 7028734100(W)

CASE SUMMARY**CASE NO. A-19-800267-C****Ebert, Jhone****Kelesis, George****Lipman, Francine****Rigby, Sharon****State of Nevada - Department of Education****Witt, Craig****Wren, Anthony****Young, Melanie****Intervenor
Defendant****Nevada Legislature****Newby, Craig A.**
Retained
7028734100(W)**Newby, Craig A.**
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7028734100(W)**Newby, Craig A.**
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7028734100(W)**Newby, Craig A.**
Retained
7028734100(W)**Newby, Craig A.**
Retained
7028734100(W)**Powers, Kevin C.**
Retained

DATE	EVENTS & ORDERS OF THE COURT	INDEX
	<u>EVENTS</u>	
08/15/2019	 Complaint Filed By: Plaintiff Morency, Flor; Plaintiff Newell, Keysha; Plaintiff Ybarra, Bonnie; Plaintiff AAA Scholarship Foundation, Inc.; Plaintiff Sklar Williams PLLC; Plaintiff Environmental Design Group, LLC <i>Complaint</i>	
08/15/2019	 Initial Appearance Fee Disclosure Filed By: Plaintiff Morency, Flor; Plaintiff Newell, Keysha; Plaintiff Ybarra, Bonnie; Plaintiff AAA Scholarship Foundation, Inc.; Plaintiff Sklar Williams PLLC; Plaintiff Environmental Design Group, LLC <i>Plaintiffs' Initial Fee Disclosure</i>	
08/15/2019	 Disclosure Statement Party: Plaintiff Morency, Flor; Plaintiff Newell, Keysha; Plaintiff Ybarra, Bonnie; Plaintiff AAA Scholarship Foundation, Inc.; Plaintiff Sklar Williams PLLC; Plaintiff Environmental Design Group, LLC <i>Plaintiffs' Rule 7.1 Disclosure</i>	
08/15/2019	 Summons Electronically Issued - Service Pending Party: Plaintiff Morency, Flor; Plaintiff Newell, Keysha; Plaintiff Ybarra, Bonnie; Plaintiff AAA Scholarship Foundation, Inc.; Plaintiff Sklar Williams PLLC; Plaintiff Environmental Design Group, LLC <i>Summons - Third-Party Defendant Ann Bersi in her Official Capacity as a Member of the Nevada Tax Commission</i>	

CASE SUMMARY

CASE NO. A-19-800267-C

08/15/2019



Summons Electronically Issued - Service Pending

Party: Plaintiff Morency, Flor; Plaintiff Newell, Keysha; Plaintiff Ybarra, Bonnie; Plaintiff AAA Scholarship Foundation, Inc.; Plaintiff Sklar Williams PLLC; Plaintiff Environmental Design Group, LLC

Summons - Third-Party Defendant Anthony Wren in His Official Capacity as a Member of the Nevada Tax Commission

08/15/2019



Summons Electronically Issued - Service Pending

Party: Plaintiff Morency, Flor; Plaintiff Newell, Keysha; Plaintiff Ybarra, Bonnie; Plaintiff AAA Scholarship Foundation, Inc.; Plaintiff Sklar Williams PLLC; Plaintiff Environmental Design Group, LLC

Summons - Third-Party Defendant Craig Witt in His Official Capacity as a Member of the Nevada Tax Commission

08/15/2019



Summons Electronically Issued - Service Pending

Party: Plaintiff Morency, Flor; Plaintiff Newell, Keysha; Plaintiff Ybarra, Bonnie; Plaintiff AAA Scholarship Foundation, Inc.; Plaintiff Sklar Williams PLLC; Plaintiff Environmental Design Group, LLC

Summons - Third-Party Defendant Department of Taxation

08/15/2019



Summons Electronically Issued - Service Pending

Party: Plaintiff Morency, Flor; Plaintiff Newell, Keysha; Plaintiff Ybarra, Bonnie; Plaintiff AAA Scholarship Foundation, Inc.; Plaintiff Sklar Williams PLLC; Plaintiff Environmental Design Group, LLC

Summons - Third-Party Defendant Francine Lipman in her Official Capacity as a Member of the Nevada Tax Commission

08/15/2019



Summons Electronically Issued - Service Pending

Party: Plaintiff Morency, Flor; Plaintiff Newell, Keysha; Plaintiff Ybarra, Bonnie; Plaintiff AAA Scholarship Foundation, Inc.; Plaintiff Sklar Williams PLLC; Plaintiff Environmental Design Group, LLC

Summons - Third-Party Defendant George Kelesis in his Official Capacity as a Member of the Nevada Tax Commission

08/15/2019



Summons Electronically Issued - Service Pending

Party: Plaintiff Morency, Flor; Plaintiff Newell, Keysha; Plaintiff Ybarra, Bonnie; Plaintiff AAA Scholarship Foundation, Inc.; Plaintiff Sklar Williams PLLC; Plaintiff Environmental Design Group, LLC

Summons - Third-Party Defendant James Devolld in his Official Capacity as a Member of the Nevada Tax Commission

08/15/2019



Summons Electronically Issued - Service Pending

Party: Plaintiff Morency, Flor; Plaintiff Newell, Keysha; Plaintiff Ybarra, Bonnie; Plaintiff AAA Scholarship Foundation, Inc.; Plaintiff Sklar Williams PLLC; Plaintiff Environmental Design Group, LLC

Summons - Third-Party Defendant Jhone Ebert in her Official Capacity as a Member of the Nevada Tax Commission

08/15/2019



Summons Electronically Issued - Service Pending

Party: Plaintiff Morency, Flor; Plaintiff Newell, Keysha; Plaintiff Ybarra, Bonnie; Plaintiff AAA Scholarship Foundation, Inc.; Plaintiff Sklar Williams PLLC; Plaintiff Environmental Design Group, LLC

Summons - Third-Party Defendant Melanie Young in her Official Capacity as a Member of the Nevada Tax Commission

08/15/2019



Summons Electronically Issued - Service Pending

Party: Plaintiff Morency, Flor; Plaintiff Newell, Keysha; Plaintiff Ybarra,

CASE SUMMARY

CASE NO. A-19-800267-C

Bonnie; Plaintiff AAA Scholarship Foundation, Inc.; Plaintiff Sklar Williams PLLC; Plaintiff Environmental Design Group, LLC
Summons - Third-Party Defendant Randy Brown in his Official Capacity as a Member of the Nevada Tax Commission

08/15/2019



Summons Electronically Issued - Service Pending

Party: Plaintiff Morency, Flor; Plaintiff Newell, Keysha; Plaintiff Ybarra, Bonnie; Plaintiff AAA Scholarship Foundation, Inc.; Plaintiff Sklar Williams PLLC; Plaintiff Environmental Design Group, LLC

Summons - Third-Party Defendant Sharon Rigby in her Official Capacity as a Member of the Nevada Tax Commission

08/15/2019



Summons Electronically Issued - Service Pending

Party: Plaintiff Morency, Flor; Plaintiff Newell, Keysha; Plaintiff Ybarra, Bonnie; Plaintiff AAA Scholarship Foundation, Inc.; Plaintiff Sklar Williams PLLC; Plaintiff Environmental Design Group, LLC

Summons - Third-Party- State of Nevada Ex Rel. the Department of Education

09/03/2019



Affidavit of Service

Filed By: Plaintiff Morency, Flor; Plaintiff Newell, Keysha; Plaintiff Ybarra, Bonnie; Plaintiff AAA Scholarship Foundation, Inc.; Plaintiff Sklar Williams PLLC; Plaintiff Environmental Design Group, LLC

Ann Bersi Affidavit of Service

09/03/2019



Affidavit of Service

Filed By: Plaintiff Morency, Flor; Plaintiff Newell, Keysha; Plaintiff Ybarra, Bonnie; Plaintiff AAA Scholarship Foundation, Inc.; Plaintiff Sklar Williams PLLC; Plaintiff Environmental Design Group, LLC

Anthony Wren Affidavit of Service

09/03/2019



Affidavit of Service

Filed By: Plaintiff Morency, Flor; Plaintiff Newell, Keysha; Plaintiff Ybarra, Bonnie; Plaintiff AAA Scholarship Foundation, Inc.; Plaintiff Sklar Williams PLLC; Plaintiff Environmental Design Group, LLC

Craig Witt Affidavit of Service

09/03/2019



Affidavit of Service

Filed By: Plaintiff Morency, Flor; Plaintiff Newell, Keysha; Plaintiff Ybarra, Bonnie; Plaintiff AAA Scholarship Foundation, Inc.; Plaintiff Sklar Williams PLLC; Plaintiff Environmental Design Group, LLC

Department of Taxation Affidavit of Service

09/03/2019



Affidavit of Service

Filed By: Plaintiff Morency, Flor; Plaintiff Newell, Keysha; Plaintiff Ybarra, Bonnie; Plaintiff AAA Scholarship Foundation, Inc.; Plaintiff Sklar Williams PLLC; Plaintiff Environmental Design Group, LLC

Francine Lipman Affidavit of Service

09/03/2019



Affidavit of Service

Filed By: Plaintiff Morency, Flor; Plaintiff Newell, Keysha; Plaintiff Ybarra, Bonnie; Plaintiff AAA Scholarship Foundation, Inc.; Plaintiff Sklar Williams PLLC; Plaintiff Environmental Design Group, LLC

George Kelesis Affidavit of Service

09/03/2019



Affidavit of Service

Filed By: Plaintiff Morency, Flor; Plaintiff Newell, Keysha; Plaintiff Ybarra, Bonnie; Plaintiff AAA Scholarship Foundation, Inc.; Plaintiff Sklar Williams PLLC; Plaintiff Environmental Design Group, LLC

CASE SUMMARY

CASE NO. A-19-800267-C

James Devolld Affidavit of Service

09/03/2019



Affidavit of Service

Filed By: Plaintiff Morency, Flor; Plaintiff Newell, Keysha; Plaintiff Ybarra, Bonnie; Plaintiff AAA Scholarship Foundation, Inc.; Plaintiff Sklar Williams PLLC; Plaintiff Environmental Design Group, LLC

Jhone Ebert Affidavit of Service

09/03/2019



Affidavit of Service

Filed By: Plaintiff Morency, Flor; Plaintiff Newell, Keysha; Plaintiff Ybarra, Bonnie; Plaintiff AAA Scholarship Foundation, Inc.; Plaintiff Sklar Williams PLLC; Plaintiff Environmental Design Group, LLC

Melanie Young Affidavit of Service

09/03/2019



Affidavit of Service

Filed By: Plaintiff Morency, Flor; Plaintiff Newell, Keysha; Plaintiff Ybarra, Bonnie; Plaintiff AAA Scholarship Foundation, Inc.; Plaintiff Sklar Williams PLLC; Plaintiff Environmental Design Group, LLC

Office of the Attorney General Affidavit of Service

09/03/2019



Affidavit of Service

Filed By: Plaintiff Morency, Flor; Plaintiff Newell, Keysha; Plaintiff Ybarra, Bonnie; Plaintiff AAA Scholarship Foundation, Inc.; Plaintiff Sklar Williams PLLC; Plaintiff Environmental Design Group, LLC

Randy Brown Affidavit of Service

09/03/2019



Affidavit of Service

Filed By: Plaintiff Morency, Flor; Plaintiff Newell, Keysha; Plaintiff Ybarra, Bonnie; Plaintiff AAA Scholarship Foundation, Inc.; Plaintiff Sklar Williams PLLC; Plaintiff Environmental Design Group, LLC

Sharon Rigby Affidavit of Service

09/03/2019



Affidavit of Service

Filed By: Plaintiff Morency, Flor; Plaintiff Newell, Keysha; Plaintiff Ybarra, Bonnie; Plaintiff AAA Scholarship Foundation, Inc.; Plaintiff Sklar Williams PLLC; Plaintiff Environmental Design Group, LLC

State of Nevada ex rel. The Department of Education Affidavit of Service

09/13/2019



Motion to Associate Counsel

Filed By: Plaintiff Morency, Flor; Plaintiff Newell, Keysha; Plaintiff Ybarra, Bonnie; Plaintiff AAA Scholarship Foundation, Inc.; Plaintiff Sklar Williams PLLC; Plaintiff Environmental Design Group, LLC

Plaintiffs' Motion to Associate Counsel Pursuant to SCR 42

09/13/2019



Exhibits

Filed By: Plaintiff Morency, Flor; Plaintiff Newell, Keysha; Plaintiff Ybarra, Bonnie; Plaintiff AAA Scholarship Foundation, Inc.; Plaintiff Sklar Williams PLLC; Plaintiff Environmental Design Group, LLC

Exhibits

09/23/2019



Motion to Intervene

Party: Intervenor Defendant Nevada Legislature

Nevada Legislature's Motion to Intervene as Defendant

09/23/2019



Exhibits

Filed By: Intervenor Defendant Nevada Legislature

Exhibit A to Nevada Legislature's Motion to Intervene as Defendant

CASE SUMMARY

CASE NO. A-19-800267-C

09/24/2019	 Amended Certificate of Service Party: Intervenor Defendant Nevada Legislature <i>Nevada Legislature's Amended Certificate of Service for Motion to Intervene as Defendant</i>
09/26/2019	 Notice of Non Opposition Filed By: Plaintiff Morency, Flor; Plaintiff Newell, Keysha; Plaintiff Ybarra, Bonnie; Plaintiff AAA Scholarship Foundation, Inc.; Plaintiff Sklar Williams PLLC; Plaintiff Environmental Design Group, LLC <i>Plaintiffs' Notice of Non-Opposition to Nevada Legislature's Motion to Intervene as Defendant</i>
10/07/2019	 Motion to Dismiss Filed By: Defendant State of Nevada - Department of Education <i>Motion to Dismiss</i>
10/07/2019	 Notice of Non Opposition Filed By: Defendant State of Nevada - Department of Education <i>Notice of Non-Opposition to Intervene</i>
10/09/2019	 Order Granting Motion Filed By: Intervenor Defendant Nevada Legislature <i>Order Granting Nevada Legislature's Motion to Intervene as Defendant</i>
10/10/2019	 Notice of Entry of Order Filed By: Intervenor Defendant Nevada Legislature <i>Notice of Entry of Order Granting Nevada Legislature's Motion to Intervene as Defendant</i>
10/10/2019	 Answer to Complaint Filed by: Intervenor Defendant Nevada Legislature <i>Defendant Nevada Legislature's Answer to Plaintiffs' Complaint</i>
10/11/2019	 Notice <i>Notice of Request for Hearing on Defendants' Motion to Dismiss</i>
10/14/2019	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
10/21/2019	 Opposition to Motion to Dismiss Filed By: Plaintiff Morency, Flor; Plaintiff Newell, Keysha; Plaintiff Ybarra, Bonnie; Plaintiff AAA Scholarship Foundation, Inc.; Plaintiff Sklar Williams PLLC; Plaintiff Environmental Design Group, LLC <i>Plaintiffs' Opposition to Defendants' Motion to Dismiss</i>
10/22/2019	 Amended Certificate of Service Party: Plaintiff Morency, Flor; Plaintiff Newell, Keysha; Plaintiff Ybarra, Bonnie; Plaintiff AAA Scholarship Foundation, Inc.; Plaintiff Sklar Williams PLLC; Plaintiff Environmental Design Group, LLC <i>Plaintiffs' Amended Certificate of Service to Plaintiffs' Opposition to Defendants' Motion to Dismiss</i>
11/26/2019	 Reply in Support Filed By: Defendant State of Nevada - Department of Education; Defendant Department of Taxation <i>States' Reply Supporting Motion to Dismiss</i>

CASE SUMMARY

CASE NO. A-19-800267-C

12/16/2019	 Recorders Transcript of Hearing <i>Recorders Transcript of Hearing Re: Notice of Request for Hearing on Defendants' Motion to Dismiss</i>
12/27/2019	 Order Denying Motion Filed By: Plaintiff Morency, Flor <i>Order Denying Defendants' Motion to Dismiss</i>
12/27/2019	 Notice of Entry of Order Filed By: Plaintiff Morency, Flor <i>Notice of Entry of Order Denying Defendants' Motion to Dismiss</i>
01/08/2020	 Clerk's Notice of Nonconforming Document <i>Clerk's Notice of Nonconforming Document</i>
01/14/2020	 Answer to Complaint Filed by: Defendant State of Nevada - Department of Education <i>Executive Defendants' Answer to Plaintiffs' Complaint</i>
01/14/2020	 Stipulation and Order Filed by: Plaintiff Morency, Flor; Plaintiff Newell, Keysha; Plaintiff Ybarra, Bonnie; Plaintiff AAA Scholarship Foundation, Inc.; Plaintiff Sklar Williams PLLC; Plaintiff Environmental Design Group, LLC <i>Stipulation and Order Continuing Early Case Conference and Establishing Summary Judgment Briefing Schedule</i>
02/05/2020	 Stipulation and Order Filed by: Intervenor Defendant Nevada Legislature <i>Stipulation and Order Revising Summary Judgment Briefing Schedule</i>
02/14/2020	 Motion for Summary Judgment Filed By: Plaintiff Morency, Flor; Plaintiff Newell, Keysha; Plaintiff Ybarra, Bonnie; Plaintiff AAA Scholarship Foundation, Inc.; Plaintiff Sklar Williams PLLC; Plaintiff Environmental Design Group, LLC <i>Plaintiffs' Motion for Summary Judgment</i>
02/14/2020	 Motion for Summary Judgment Filed By: Defendant State of Nevada - Department of Education <i>Executive Defendants' Motion for Summary Judgment</i>
02/14/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
02/14/2020	 Motion for Summary Judgment Filed By: Intervenor Defendant Nevada Legislature <i>Intervenor-Defendant Nevada Legislature's Motion for Summary Judgment</i>
02/18/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
02/21/2020	 Joinder to Motion For Summary Judgment <i>EXECUTIVE DEFENDANTS JOINDER TO INTERVENOR-DEFENDANT NEVADA LEGISLATURE S MOTION FOR SUMMARY JUDGMENT</i>

CASE SUMMARY

CASE NO. A-19-800267-C

03/06/2020	 Opposition to Motion For Summary Judgment Filed By: Plaintiff Morency, Flor; Plaintiff Newell, Keysha; Plaintiff Ybarra, Bonnie; Plaintiff AAA Scholarship Foundation, Inc.; Plaintiff Sklar Williams PLLC; Plaintiff Environmental Design Group, LLC <i>Plaintiffs' Opposition to Defendants' Motion for Summary Judgment</i>
03/06/2020	 Opposition to Motion For Summary Judgment Filed By: Defendant State of Nevada - Department of Education <i>Executive Defendants' Opposition to Plaintiff's Motion for Summary Judgment</i>
03/06/2020	 Opposition to Motion For Summary Judgment Filed By: Intervenor Defendant Nevada Legislature <i>Intervenor-Defendant Nevada Legislature's Opposition to Plaintiffs Motion for Summary Judgment</i>
03/18/2020	 Clerk's Notice of Nonconforming Document <i>Clerk's Notice of Nonconforming Document</i>
03/19/2020	 Stipulation and Order Filed by: Defendant State of Nevada - Department of Education <i>Stipulation and Order Revising Summary Judgment Briefing Schedule</i>
03/19/2020	 Notice of Entry of Order Filed By: Defendant State of Nevada - Department of Education <i>Notice of Entry of Order For Stipulation And Order Revising Summary Judgment Briefing Schedule</i>
03/27/2020	 Reply in Support Filed By: Plaintiff Morency, Flor; Plaintiff Newell, Keysha; Plaintiff Ybarra, Bonnie; Plaintiff AAA Scholarship Foundation, Inc.; Plaintiff Sklar Williams PLLC; Plaintiff Environmental Design Group, LLC <i>Plaintiffs' Reply in Support of Plaintiffs' Motion for Summary Judgment</i>
03/27/2020	 Reply in Support Filed By: Defendant State of Nevada - Department of Education <i>Executive Defendant's Reply Supporting Their Motion for Summary Judgment</i>
03/27/2020	 Reply in Support Filed By: Intervenor Defendant Nevada Legislature <i>Intervenor-Defendant Nevada Legislature's Reply in Support of Motion for Summary Judgment</i>
05/20/2020	 Order Granting Summary Judgment <i>Order Granting Summary Judgment in Favor of All Defendants</i>
05/21/2020	 Recorders Transcript of Hearing <i>Recorders Transcript of Hearing Re: All Pending Motions, April 23, 2020</i>
05/29/2020	 Notice of Appeal Filed By: Plaintiff Morency, Flor; Plaintiff Newell, Keysha; Plaintiff Ybarra, Bonnie; Plaintiff AAA Scholarship Foundation, Inc.; Plaintiff Sklar Williams PLLC; Plaintiff Environmental Design Group, LLC <i>Notice of Appeal</i>
05/20/2020	<u>DISPOSITIONS</u> Summary Judgment (Judicial Officer: Bare, Rob)

CASE SUMMARY

CASE NO. A-19-800267-C

Debtors: Flor Morency (Plaintiff), Keysha Newell (Plaintiff), Bonnie Ybarra (Plaintiff), AAA Scholarship Foundation, Inc. (Plaintiff), Sklar Williams PLLC (Plaintiff), Environmental Design Group, LLC (Plaintiff)

Creditors: State of Nevada - Department of Education (Defendant), Jhone Ebert (Defendant), Department of Taxation (Defendant), James Devolld (Defendant), Sharon Rigby (Defendant), Craig Witt (Defendant), George Kelesis (Defendant), Ann Bersi (Defendant), Randy Brown (Defendant), Francine Lipman (Defendant), Anthony Wren (Defendant), Melanie Young (Defendant)

Judgment: 05/20/2020, Docketed: 05/21/2020

HEARINGS

10/03/2019



Minute Order (3:00 AM) (Judicial Officer: Bare, Rob)

Minute Order - No Hearing Held;

Journal Entry Details:

Having examined Plaintiff's Motion to Associate Counsel regarding Timothy D. Keller, Esq., noting no Oppositions filed, and good cause appearing pursuant to Nevada Supreme Court Rule 42, the Motion is GRANTED. CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. /mt;

12/05/2019



Motion to Dismiss (9:30 AM) (Judicial Officer: Bare, Rob)

Events: 10/11/2019 Notice

Hearing on Defendants' Motion to Dismiss

Denied; Hearing on Defendants' Motion to Dismiss

Journal Entry Details:

COURT stated its Findings - Public importance; involves a provision of the statute; and, appropriate party. COURT FINDS parties have standing and ORDERED, Defendants' Motion to Dismiss is DENIED. Mr. House to prepare the order within 10 days have opposing counsel to review as to form and content and distribute a filed copy to all parties involved in this matter.;

03/12/2020



Minute Order (3:00 AM) (Judicial Officer: Bare, Rob)

Minute Order - No Hearing Held;

Journal Entry Details:

At the request of Court, for judicial economy, (1) Plaintiff's Motion for Summary Judgment, presently set for a hearing on March 17, 2020 at 9:30 a.m., (2) Executive Defendants' Motion for Summary Judgment, presently set for a hearing on March 17, 2020 at 9:30 a.m., (3) Intervenor-Defendant Legislature of the State of Nevada's Motion for Summary Judgment, presently set for a hearing on March 17, 2020 at 9:30 a.m., and (4) Executive Defendants' Joinder to Intervenor-Defendant Legislature of the State of Nevada's Motion for Summary Judgment, presently set for a hearing on March 24, 2020 at 9:30 a.m. shall be CONSOLIDATED AND CONTINUED to April 14, 2020 at 1:30 p.m. CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. /cj 03-12-20 ;

04/06/2020



Minute Order (3:00 AM) (Judicial Officer: Bare, Rob)

Minute Order - No Hearing Held;

Journal Entry Details:

Pursuant to Governor Steve Sisolak's declaration of a state of emergency in Nevada on March 12, 2020 in response to the recent outbreak of the Coronavirus (COVID-19), the Eighth Judicial District Court issued Administrative Order: 20-01 (AO 20-01). Pursuant to AO 20-01, effective March 16, 2020, all currently scheduled non-essential District Court hearings, at the discretion of the Court, may be decided on the papers. In addition, EDCR 2.23(c) states: "the judge may consider the motion on its merits at anytime with or without oral argument, and grant or deny it." The Court notes following matters are set for a hearing on April 14, 2020: (1) Plaintiffs' Motion for Summary Judgment, (2) Executive Defendants' Motion for Summary Judgment, (3) Intervenor-Defendant Nevada Legislature's Motion for Summary Judgment, and (4) Executive Defendants' Joinder to Intervenor-Defendant Nevada Legislature's Motion for Summary Judgment. After review of this case, the instant matter is deemed "non-essential" under AO 20-01. Thus, pursuant to AO 20-01 and EDCR 2.23(c), all motions, currently scheduled for April 14, 2020 at 1:30 p.m. are RESCHEDULED to April 23, 2020 at 1:30 p.m. Counsel are to contact chambers to make arrangements for video or telephonic appearance in

CASE SUMMARY

CASE NO. A-19-800267-C

accordance with the Administrative Order 20-10. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Carolyn Jackson, to all registered parties for Odyssey File & Serve. /cj 04/06/20 ;

04/23/2020



All Pending Motions (9:30 AM) (Judicial Officer: Bare, Rob)

Matter Heard;

Journal Entry Details:

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT...EXECUTIVE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT...INTERVENOR- DEFENDANT NEVADA LEGISLATURE'S MOTION FOR SUMMARY JUDGMENT Court provided a brief overview of the case. Arguments by counsel regarding the motions. **COURT ORDERED**, matter **TAKEN UNDER ADVISEMENT**; Court stated an Order would be issued in a week or two. ;

04/23/2020

Motion for Summary Judgment (1:30 PM) (Judicial Officer: Bare, Rob)

Plaintiffs' Motion for Summary Judgment

Motion Denied; See 05/04/2020 Minute Order

04/23/2020

Motion for Summary Judgment (1:30 PM) (Judicial Officer: Bare, Rob)

Executive Defendants' Motion for Summary Judgment

See 04/06/2020 Minute Order

Motion Granted; See 05/04/2020 Minute Order

04/23/2020

Motion for Summary Judgment (1:30 PM) (Judicial Officer: Bare, Rob)

Intervenor-Defendant Nevada Legislature's Motion for Summary Judgment

Motion Granted; See 05/04/2020 Minute Order

04/23/2020

Joinder (1:30 PM) (Judicial Officer: Bare, Rob)

Executive Defendant's Joinder to Intervenor-Defendant Nevada Legislature's Motion for Summary Judgment

Motion Granted; See 05/04/2020 Minute Order

05/04/2020



Minute Order (3:00 AM) (Judicial Officer: Bare, Rob)

Minute Order - No Hearing Held;

Journal Entry Details:

This matter came before the Court for a hearing on the following matters: (1) Plaintiffs' Motion for Summary Judgment, (2) Executive Defendants' Motion for Summary Judgment, (3) Intervenor Defendant Nevada Legislature's Motion for Summary Judgment, and (4) Executive Defendants' Joinder to Intervenor Defendant Nevada Legislature's Motion for Summary Judgment. After hearing the oral arguments, the Court took the matter UNDER ADVISEMENT. After a review of the pleadings, oral arguments at the hearing, and good cause shown, the court FINDS and ORDERS as follows. Factual and Procedural Background Nevada Constitution, Article 4, Section 18(2) states: "an affirmative vote of not fewer than two-thirds of the members elected to each House is necessary to pass a bill or joint resolution which creates, generates, or increases any public revenue in any form, including but not limited to taxes, fees, assessments and rates, or changes in the computation bases for taxes, fees, assessments and rates." ("Nevada Supermajority Provision"). Under NRS 363A.130 and 363B.110, certain employers (e.g. financial institutions, mining companies, etc) are obligated to pay an excise tax equal to a percentage of the total amount of the wages they pay to their employees in connection with their business activities in Nevada. This excise tax is better known as the Modified Business Tax, or MBT. However, under NRS 363A.139 and 363B.119, in lieu of paying the MBT, these employers may donate to certain scholarship organization through the Nevada Educational Choice Scholarship Program and receive a tax credit ("scholarship credit") from their MBT obligation in the amount equal to their contribution. However, the amount these employers can donate in scholarships and receive a tax credit is capped by statute. This scholarship program was established by the 2015 Nevada Legislature. The 2015 Nevada Legislature set a cap on the total amount of scholarship credit the employers can claim as tax credit on first come, first serve basis. For Fiscal Year ("FY") 2015-2016, the cap was \$5 million. For FY 2016-2017, the cap was \$5.5 million. For each succeeding FY, the cap was to increase by 10% from the immediately preceding FY. For the purposes of this order, this is known as the "subsection 4 scholarship credit." The 2017 Nevada Legislature permitted, for FY 2017-2018 only, additional \$20 million scholarship credit, in addition to what was already appropriated. The special appropriations such as this, is known as "subsection 5 scholarship

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credit." The 2019 Nevada Legislature, per SB 551 modified the subsection 5 scholarship credit by permitting additional \$4.745 million credit for FY 2019-2020 and another \$4.745 million credit for FY 2020-2021 only. The 2019 Nevada Legislature, per AB 458, modified the subsection 4 scholarship credit by freezing the annual credit cap at \$6.655 million effective FY 2019-2020 and eliminating the annual 10% increase to the cap. AB 458 did not pass the Nevada Legislature with the supermajority of 2/3 in both the Assembly and the Senate. Prior to the passage of AB 458, the Nevada Legislature sought the opinion of the Legislative Counsel Bureau ("LCB") on whether the Nevada Supermajority Provision applies to a bill that which extends, revises or eliminates a future decrease in or future expiration of existing state taxes when that future decrease or expiration is not legally operative and binding yet. Furthermore, the Nevada Legislature also sought an opinion of the LCB on whether the Nevada Supermajority Provision applies to a bill which reduces or eliminates available tax exemptions or credit applicable to existing state taxes. Per its May 8, 2019 letter, LCB opined that Nevada Supermajority Provision does not apply on either of such events. Plaintiffs, consisting of parents of scholarship-recipient students, scholarship-funding organization, and business donors, filed a Complaint on August 15, 2019 against the Executive Defendants (State of Nevada ex rel. the Department of Education, Department of Taxation, etc.). Nevada Legislature sought and received permission to intervene and filed an Answer on October 10, 2019. Executive Defendants then filed a motion to dismiss, which was heard on December 5, 2019. Pursuant to the December 27, 2019 order, the Court found that Plaintiffs have standing to challenge the constitutionality of AB 458 and that the issue is ripe for adjudication based on purported harm to the Plaintiffs. There is no dispute that AB 458 did not pass the Nevada Legislature with supermajority. Plaintiffs allege that AB 458 is subject to the Nevada Supermajority Provision. Executive Defendants and Intervenor-Defendant Nevada Legislature both argue that Nevada Supermajority Provision is not applicable to AB 458. Parties' Main Arguments Plaintiffs argue that AB 458 is subject to the Nevada Supermajority Provision because, by repealing the subsection 4 scholarship credit, the bills raised revenue, as evidenced by the Department of Taxation, fiscal notes on AB 458. Thus, Plaintiffs argue this raising of the revenue falls squarely within the definition of "any public revenue in any form" found in the Nevada Supermajority Provision. Plaintiffs argue that plain text of the Nevada Supermajority Provision cannot lead to any other reasonable interpretation. Plaintiffs also argue that Nevada Supermajority Provision is uniquely broad in comparison with other states' supermajority provisions and it should be interpreted as broadly as possible based on the history behind the adoption of the Nevada Supermajority Provision. Furthermore, Plaintiffs argue that as a taxing statute, AB 458 should be construed in favor of the taxpayer. Executive Defendants disagree with this interpretation. They argue that AB 458 should be read together with SB 551, because together they both modify the scholarship credit statute, albeit different subsections; by reading these related bills together, the Court can correctly interpret the intent of the 2019 Nevada Legislature. They cite to Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 252-55 (2012) for that proposition. Thus, the combined effect of the AB 458 and SB 551 resulted in an increase to the total amount of available tax credit for FY 2019-2020 and FY 2020-2021 then what was previously available. Executive Defendants focus on "creates, generates, or increases" phrase found in the Nevada Supermajority Provision and argue that since the AB 458 only affects the amount of tax credit available, the MBT and its rate structure is not affected. Thus, they argue that Nevada Supermajority Provision is not implicated. Furthermore, Executive Defendants call for a narrow interpretation of the Nevada Supermajority Provision based on the history and other state cases on their respective supermajority provisions contained in their respective state constitutions. Lastly, Executive Defendants argue that the Nevada Legislature is entitled to deference in their constitutional construction citing *Nev. Mining Ass'n v. Erdoes*, 117 Nev. 531, 26 P.3d 753 (2001). Nevada Legislature argues that it reasonably concluded that AB 458 was not subject to the Nevada Supermajority Provision because the bill froze the subsection 4 scholarship credit at \$6.655 million, which was legally in effect before the bill was passed. Similar to the Executive Defendants' argument, Nevada Legislature also focuses on the phrase "creates, generates, or increases" found in the Nevada Supermajority Provision, as well as the "computation bases". Because the AB 458 does not bring into existence, produce or enlarge any public revenue in any form or change the formula of a number that is multiplied by a rate or form which a percentage is calculated, Nevada Legislature argues that Nevada Supermajority Provision is not implicated. Furthermore, even if the Court concludes that AB 458 indeed changed or reduced the subsection 4 scholarship credit amount, Nevada Legislature argues that Nevada Supermajority Provision is still not applicable because bill does not modify the existing "computation bases" used to calculate the underlying MBT; rather, AB 458 takes away the total amount of credits certain employers can contribute to in lieu of the MBT. Nevada Legislature echoes Executive Defendants' argument that the Nevada Supermajority Provision must be narrowly interpreted and Nevada Legislature's constitutional construction of the bill should be given deference, again under *Nev. Mining* and citing to the history and other state cases interpreting their respective supermajority provisions. Summary

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Judgment Appropriate at this Stage? Who has the Burden of Proof? Under NRCP 56 and Wood v. Safeway, Inc., 121 Nev. 724, 121 P.3d 1026 (2005), summary judgment is proper if there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Parties agree that there is little dispute over the facts and the main dispute is the question of law; i.e. the constitutionality of AB 458. See Flamingo Paradise Gaming v. Chanos, 125 Nev. 502, 217 P.3d 546 (2009). Thus, all parties stipulate that summary judgment is appropriate at this stage. Plaintiffs cite to Shetakis Dist. v. State, Dep't Taxation, 108 Nev. 901, 839 P.2d 1315 (1992), Dept. of Taxation v. Visual Communications, Inc., 108 Nev. 721, 836 P.2d 1245 (1992), and Harrah's Operating Co. v. Dep't of Taxation, 130 Nev. 129, 321 P.3d 850 (2014) for the proposition that any dispute over a tax statute is to be construed in favor of the taxpayer. Thus, Plaintiffs claim that Defendants have the burden of proof. The Court cannot agree. The central question in this case is the constitutionality of AB 458. There is long line of cases that establishes that statutes are presumed to be valid and the burden is on the challenging party to demonstrate that a statute is unconstitutional. See Schwartz v. Lopez, 132 Nev. 732 (2016). Cornellia v. Justice Court, 132 Nev. 587, 377 P.3d 97 (2016). Deja Vu Showgirls v. Nev. Dep't of Tax'n, 130 Nev. 719, 334 P.3d 392 (2014). State v. Castaneda, 126 Nev. 478, 245 P.3d 550 (2010). List v. Whisler, 99 Nev. 133, 660 P.2d 104 (1983). Thus, this Court "must start with the presumption in favor of constitutionality and therefore, the court will interfere only when the Constitution is clearly violated." Schwartz. Accordingly, the burden of proof is on the Plaintiffs to show that AB 458 is unconstitutional. Is the Nevada Legislature Entitled to Judicial Deference as to its Construction of the Constitutionality of its Bill? The Courts are undoubtedly endowed with the duty of constitutional interpretation. Nevadans for Nev. v. Beers, 122 Nev. 930, 142 P.3d 339, n. 20 (2006). Although Plaintiffs object to the Nev. Mining's applicability in this case, the Court cannot ignore the Nevada Supreme Court's clear guidance: if the Nevada Legislature acted on the Legislative Counsel's opinion on the reasonable construction of the Constitutional provision, the "Legislature is entitled to deference in its counseled selection of this interpretation." Plaintiffs cite to Clean Water Coal. v. The M Resort, LLC, 127 Nev. 301, 255 P.3d 247 (2011) for the proposition that Nevada Supreme Court limited the application of Nev. Mining. However, Clean Water Coal. case did not expressly overturn, or even cite to Nev. Mining. It did caution against "unqualified deference to the Legislature," but did not overturn Nev. Mining's rule that Nevada Legislature is entitled to deference to its "reasonable construction." Thus, Nev. Mining is controlling and if the Court finds that both Plaintiffs and Defendants' interpretations are reasonable, but inconsistent or contradictory, the Court must give deference to the Nevada Legislature's reasonable interpretation. Here, as described below, at the very minimum, the Nevada Legislature's interpretation is reasonable, even if the Court does not agree with the wisdom of the Nevada Legislature. Thus, the Nevada Legislature is entitled to deference on its reasonable construction of the Nevada Supermajority Provision over Plaintiff's reasonable interpretation. Does the AB 458 Increase Revenue? Executive Defendants urge this Court to consider AB 458 in conjunction with SB 551 as the combined effect, which indisputably would increase the amount of tax credits available under subsections 4 and 5 of the NRS 363A.1396 and 363B.119. Thus, the Nevada Supermajority Provision would not be applicable. Executive Defendants argue that such interpretation truly reflects the intent of the 2019 Nevada Legislature. However, the Court cannot adopt this interpretation as reasonable. The Nevada Supermajority Provision clearly limits its application to a single "bill or joint resolution" and thus, the Court cannot interpret the AB 458 in conjunction with SB 551 to gauge the intent of the 2019 Nevada Legislature. As Plaintiffs argue, if a bill is held to be unconstitutional, "it is null and void ab initio; it is of no effect, affords no protection, and confers no rights." Nev. Power Co. v. Metro. Dev. Co., 104 Nev. 684, 765 P.2d 1162 (1988). Thus, AB 458 must be reviewed separately and on its own. The Court notes that Department of Taxation, in the Executive Agency Fiscal Note prepared on April 4, 2019, states that reduction in available scholarship credits taken against the MBT "would increase general fund revenue." Thus, Plaintiffs argue that AB 458 increases revenue. Nevada Legislature disputes this, arguing that when it passed AB 458 during the 2019 legislative session, the potential future tax credits under subsection 4 of NRS 363A.139 and 363B.119 were not legally operative and binding yet because they would not go into effect and become legally operative and binding until the commencement of the FY 2019-2020 on July 1, 2019. Under the Nevada Constitution, Article 9, Sections 2-3, the Nevada Legislature can only commit or bind public funds for each fiscal year and cannot enact statutory provision committing or binding future Legislatures to make successive appropriations or expenditures of public funds in future fiscal years. See Employers Ins. Co. v. State Bd. of Exam'rs, 117 Nev. 249, 21 p.3d 628 (2001). Prior to the passage of AB 458, for FY 2018-2019, the Department of Taxation was authorized to approve subsection 4 scholarship credit up to \$6.655 million and it would have increased by 10% per annum for the subsequent FYs. The 2019 Nevada Legislature, with the passage of AB 458, the future 10% increases in the subsection 4 scholarship credit were not yet legally operative and binding because it would not lawfully go into effect and become legally operative and binding until July 1, 2019, the beginning of FY 2019-2020. AB 458 froze the subsection 4 scholarship credit

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amount at \$6.655 million and thus, it did not modify the overall revenue. Accordingly, the Court FINDS AB 458 does not increase revenue. Thus, the Nevada Supermajority Provision does not apply to AB 458. However, in the alternative, even if the Court finds that AB 458 increases revenue, this does not change the ultimate outcome of the Court's decision. Thus, summary judgment is still proper under NRCP 56. For reasons set forth below, the Court FINDS that Nevada Supermajority Provision does not apply to any bill that repeals or freezes an existing tax credit, as is the case in AB 458, even if the bill has the effect of increasing the overall revenue. Interpretation of the Nevada Supermajority Provision Under Guinn v. Legislature, 119 Nev. 460, 76 P.3d 22 (2003), the Nevada Supreme Court ruled, in construing the Nevada Constitution, the primary objective of the court is "to discern the intent of those who enacted the provisions at issue and to fashion an interpretation consistent with that objective." To determine the meaning of the constitutional provision, the court must first turn to the provision's language and give that language its plain effect, unless it is ambiguous. If the language is ambiguous, because it is susceptible to two or more reasonable but inconsistent interpretations, the court is to look to the provisions' history, public policy, and reason to determine what the votes intended. *Miller v. Burk*, 124 Nev. 579, 188 P.3d 1112 (2008). See *Landreth v. Malik*, 127 Nev. 175, 251 P.3d 163 (2011). See *Guinn*. In the present matter, the Court cannot find that the plain reading of the Nevada Supermajority Provision is unambiguous in this context. Plaintiffs focus on the phrase "any public revenue in any form" to argue that a bill that increases the revenue is subject to the Nevada Supermajority Provision. However, both Executive Defendants and Nevada Legislature instead focus on "creates, generates, or increases", and "computation bases", to argue that a bill that does not impose new taxes or increase the existing taxes by changing the tax rate is not subject to the Nevada Supermajority Provision. Both of these interpretations are reasonable, but inconsistent. Thus, under *Miller*, the Court must consider the "history, public policy, and reason" behind the Nevada Supermajority Provision. Here, the Parties agree that the Court should look into the Legislative History of Assembly Joint Resolution 21 (1993). Although AJR 21, spearheaded by then-Assemblyman Jim Gibbons, was unsuccessful, he led the ballot initiative in 1994 and 1996 elections and this led to the adoption of the Nevada Supermajority Provision. He is previously recognized as the Nevada Supermajority Provision's prime sponsor by the Nevada Supreme Court in *Guinn*. Assemblyman Gibbons stated that the Nevada Supermajority Provision was modeled on similar supermajority provisions from other states, including Arizona, Arkansas, California, Colorado, Delaware, Florida, Louisiana, Mississippi, Oklahoma and South Dakota. Assemblyman Gibbons also stated that the Nevada Supermajority Provision is intended to require a supermajority in the Nevada Legislature "to increase certain existing taxes or to impose certain new taxes." However, the Nevada Supermajority Provision "would not impair any existing revenues." Thus, the Nevada Supreme Court previously concluded that the legislative intent of the supermajority provision "was intended to make it more difficult for the Legislature to pass new taxes." *Guinn*. Because the Nevada Supermajority Provision was modeled after other states, under *Advanced Sports Info. v. Novotnak*, 114 Nev. 336, 956 P.2d 806 (1998), it would be prudent for this court to review the construction placed on the supermajority provisions in those states. See *State ex rel. Harvey v. Second Jud. Dist. Ct.*, 117 Nev. 754, 32 P.3d 1263 (2001). Arizona's supermajority provision is found in its Constitution, Article 9, Section 2. It requires that a 2/3 majority in each house of the Arizona legislature is necessary to "any act that provides for a net increase in state revenues in the form of: [t]he imposition of any new tax, [a]n increase in a tax rate or rates, [and a] reduction or elimination of a tax deduction, exemption, exclusion, credit or other tax exemption feature in computing tax liability." Thus, the notable difference between the supermajority provisions of Nevada and Arizona is that Arizona specifically mandates that its supermajority provision be applied to a bill that eliminates or reduce a tax credit, such as the one found in AB 458. Thus, had AB 458 been an Arizona bill, that Arizona's supermajority provision would be applied. Delaware's supermajority provision is found in its Constitution, Article 9, Sections 10 and 11. It mandates a supermajority provision apply for an increase to the "effective rate of any tax levied". In *re Opinion of the Justices*, 575 A.2d 1186 (Del. 1990), the Delaware Supreme Court ruled that the plain language of the word "any" is obvious and an absurd result, relative to the separate provision of the Delaware Constitution, specifically the balanced budget requirement, cannot be found. This case is cited favorably by the Plaintiffs. Louisiana's supermajority provision is found in its Constitution, Article 8, Section 2. It mandates a supermajority of 2/3 in each house of the Louisiana's legislature for "the levy of a new tax, an increase in an existing tax, or a repeal of an existing tax exemption." The Louisiana Court of Appeals reviewed the constitutionality of a bill that suspended the tax exemption for sales of steam, water, electric power or energy and natural gas for a period of 1 year, but failed to pass with supermajority. This court ruled that the suspension is a temporary delay and the bill did not repeal the existing law. *La. Chem. Ass'n v. State ex rel. La. Dep't of Revenue*, 217 So.3d 455 (La.Ct.App. 2017), writ of review denied, 227 So.3d 826 (La. 2017). "Since the tax levy raises the revenues and since the granting of the exemption does not change the underlying tax levy suspending an exemption is not a revenue raising measure." *Id.* The Court notes, similar to the Arizona

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supermajority provision, Louisiana also specifically requires a supermajority passage for a repeal of an existing tax exemption. Oklahoma's supermajority provision is found in its Constitution, Article 5, Section 33. It states that a 3/4 majority in each house of the Oklahoma legislature is necessary to pass "any revenue bill". The Oklahoma Supreme Court reviewed the constitutionality of a bill, which did not pass with supermajority, that removed the automobile sale excise tax exemption. It ruled that there is "a constitutional distinction between measures levying new taxes and measures removing exemptions to already levied taxes. Instant bill merely revokes the special exemption from the sales tax that car buyers would receive if it does not levy a tax, but rather make car sales subject to the sales tax that was previously levied." Okla. Auto. Dealers Ass'n v. State ex rel. Okla. Tax Comm'n, 401 P.3d 1152, 2017 OK 64 (Okla. 2017). Although the opponents of the said bill argued that the bill is a revenue bill because the people have to pay more in taxes, the Oklahoma Supreme Court ruled that "to say that removal of an exemption from taxation causes those previously exempt from the tax to pay more taxes is merely to state the effect of removing an exemption. It does not, however, transform the removal of the exemption into the levy of a tax, and it begs the dispositive question of whether removal of an exemption is the levy of a tax in the strict sense." Id. Here, the Court notes the inclusion of the word "any" is also found in the Oklahoma supermajority provision. Thus, the Oklahoma supermajority provision is just as broad as the Nevada Supermajority Provision and appears to contradict the interpretation given in Delaware. Oregon's supermajority provision is found in its Constitution, Article 4, Section 25. It mandates a 3/5 majority in each house of the Oregon legislature to "pass bills for raising revenue". Oregon Supreme Court, in interpreting this provision, ruled that "not every bill that collects or brings in money to the treasury is a bill for raising revenue; revenue is limited to bills to levy taxes and similar exactions." Bobo v. Kulongoski, 338 Or. 111, 107 P.3d 18 (OR, 2005). Thus, the Oregon courts, to determine the applicability of the its supermajority provision, must first determine whether the bill collects or brings money into the treasury. If the bill does so, the Oregon courts must then determine whether the bill possesses the essential features of a bill levying a tax. Bills that assess a fee for a specific purpose are not bills raising revenue even though they collect or bring money into the treasury. Id. Oregon Supreme Court later found that a bill, which eliminated a tax exemption for foreign municipal corporations, and brought money into its treasury, does not constitute a bill for raising revenue because the effect of the bill was to place the foreign municipal corporations on the same footing as domestic electric cooperatives. City of Seattle v. Department of Revenue, 357 Or. 718, 357 P.3d 979 (OR 2015). After the review of the history of the Nevada Supermajority Provision and supermajority provisions from other states, the Court FINDS the intent of the Nevada Supermajority Provision is limit to the Nevada Legislature from raising new taxes or increasing the tax rate to the existing taxes. Nevada Supermajority Provision does not apply to any bill that reduces or freezes the existing tax credit. As contemplated by Assemblyman Gibbons, the Nevada Supermajority Provision was to apply in circumstances that "increase certain existing taxes or to impose certain new taxes." Nevada Supermajority Provision does not require its application for any bills that specifically repeal a tax credit or exemption, as is the case in Arizona and Louisiana. Although Plaintiffs argue that Nevada Supermajority Provision is uniquely broad and focus on the word "any" and the meaning given by the Delaware Supreme Court, the Court finds that this interpretation is inconsistent with the interpretation by the Oklahoma Supreme Court. Oklahoma's supermajority provision is at least as equally as broad as the Nevada Supermajority Provision since it requires supermajority passage for "any revenue bill". Yet, the Oklahoma Supreme Court has explicitly ruled that there is a distinction between raising new taxes versus removing exemptions from already levied taxes. Likewise, AB 458 does not raise new taxes, or increase existing taxes; rather, it removes or freezes the subsection 4 scholarship credit available from already levied MBT. If the word "any" is given the broad interpretation as suggested by the Plaintiffs, it would mean that revenue increases resulting from Nevada's population and business growth would also require invoking the Nevada Supermajority Provision. Thus, the Court FINDS that Nevada Supermajority Provision does not apply to any bill that repeals or freezes an existing tax credit, as is the case in AB 458. The Court ORDERS Plaintiffs' Motion shall be DENIED. Executive Defendants and Nevada Legislature's Motions shall be GRANTED. LCB is directed to submit a proposed Order consistent with this Minute Order and the submitted briefing. Counsel may add language to further supplement the proposed Order in accordance with the Court's findings and any submitted arguments. Plaintiffs' counsel is to review and countersign as to form and content. Counsel is directed to have the proposed Order submitted to chambers within 10 days. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Carolyn Jackson, to all registered parties for Odyssey File & Serve. /cj 05/05/20;

DATE

FINANCIAL INFORMATION

Defendant State of Nevada - Department of Education
Total Charges

623.00

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Total Payments and Credits	623.00
Balance Due as of 6/1/2020	0.00
Intervenor Defendant Nevada Legislature	
Total Charges	423.00
Total Payments and Credits	423.00
Balance Due as of 6/1/2020	0.00
Plaintiff Morency, Flor	
Total Charges	644.00
Total Payments and Credits	644.00
Balance Due as of 6/1/2020	0.00

DISTRICT COURT CIVIL COVER SHEET

Clark

County, Nevada

Case No. _____

(Assigned by Clerk's Office)

I. Party Information *(provide both home and mailing addresses if different)*

Plaintiff(s) (name/address/phone):

see attached sheet

Defendant(s) (name/address/phone):

see attached sheet

CASE NO: A-19-800267-C

Department 32

Attorney (name/address/phone):

see attached sheet

Attorney (name/address/phone):

Information will be provided pending the appearance of
Defendants' counsel.

II. Nature of Controversy *(please select the one most applicable filing type below)*

Civil Case Filing Types

<p style="text-align: center;">Real Property</p> <p>Landlord/Tenant</p> <p><input type="checkbox"/> Unlawful Detainer</p> <p><input type="checkbox"/> Other Landlord/Tenant</p> <p>Title to Property</p> <p><input type="checkbox"/> Judicial Foreclosure</p> <p><input type="checkbox"/> Other Title to Property</p> <p>Other Real Property</p> <p><input type="checkbox"/> Condemnation/Eminent Domain</p> <p><input type="checkbox"/> Other Real Property</p>	<p style="text-align: center;">Negligence</p> <p><input type="checkbox"/> Auto</p> <p><input type="checkbox"/> Premises Liability</p> <p><input type="checkbox"/> Other Negligence</p> <p style="text-align: center;">Malpractice</p> <p><input type="checkbox"/> Medical/Dental</p> <p><input type="checkbox"/> Legal</p> <p><input type="checkbox"/> Accounting</p> <p><input type="checkbox"/> Other Malpractice</p>	<p style="text-align: center;">Torts</p> <p>Other Torts</p> <p><input type="checkbox"/> Product Liability</p> <p><input type="checkbox"/> Intentional Misconduct</p> <p><input type="checkbox"/> Employment Tort</p> <p><input type="checkbox"/> Insurance Tort</p> <p><input type="checkbox"/> Other Tort</p>
<p style="text-align: center;">Probate</p> <p><i>(select case type and estate value)</i></p> <p><input type="checkbox"/> Summary Administration</p> <p><input type="checkbox"/> General Administration</p> <p><input type="checkbox"/> Special Administration</p> <p><input type="checkbox"/> Set Aside</p> <p><input type="checkbox"/> Trust/Conservatorship</p> <p><input type="checkbox"/> Other Probate</p> <p>Estate Value</p> <p><input type="checkbox"/> Over \$200,000</p> <p><input type="checkbox"/> Between \$100,000 and \$200,000</p> <p><input type="checkbox"/> Under \$100,000 or Unknown</p> <p><input type="checkbox"/> Under \$2,500</p>	<p style="text-align: center;">Construction Defect & Contract</p> <p>Construction Defect</p> <p><input type="checkbox"/> Chapter 40</p> <p><input type="checkbox"/> Other Construction Defect</p> <p style="text-align: center;">Contract Case</p> <p><input type="checkbox"/> Uniform Commercial Code</p> <p><input type="checkbox"/> Building and Construction</p> <p><input type="checkbox"/> Insurance Carrier</p> <p><input type="checkbox"/> Commercial Instrument</p> <p><input type="checkbox"/> Collection of Accounts</p> <p><input type="checkbox"/> Employment Contract</p> <p><input type="checkbox"/> Other Contract</p>	<p style="text-align: center;">Judicial Review/Appeal</p> <p>Judicial Review</p> <p><input type="checkbox"/> Foreclosure Mediation Case</p> <p><input type="checkbox"/> Petition to Seal Records</p> <p><input type="checkbox"/> Mental Competency</p> <p style="text-align: center;">Nevada State Agency Appeal</p> <p><input type="checkbox"/> Department of Motor Vehicle</p> <p><input type="checkbox"/> Worker's Compensation</p> <p><input type="checkbox"/> Other Nevada State Agency</p> <p style="text-align: center;">Appeal Other</p> <p><input type="checkbox"/> Appeal from Lower Court</p> <p><input type="checkbox"/> Other Judicial Review/Appeal</p>
<p style="text-align: center;">Civil Writ</p> <p>Civil Writ</p> <p><input type="checkbox"/> Writ of Habeas Corpus</p> <p><input type="checkbox"/> Writ of Mandamus</p> <p><input type="checkbox"/> Writ of Quo Warrant</p> <p><input type="checkbox"/> Writ of Prohibition</p> <p><input type="checkbox"/> Other Civil Writ</p>		<p style="text-align: center;">Other Civil Filing</p> <p>Other Civil Filing</p> <p><input type="checkbox"/> Compromise of Minor's Claim</p> <p><input type="checkbox"/> Foreign Judgment</p> <p><input checked="" type="checkbox"/> Other Civil Matters</p>

Business Court filings should be filed using the Business Court civil coversheet.

8/13/19

Date

Signature of initiating party or representative

See other side for family-related case filings.

DISTRICT COURT CIVIL COVER SHEET ATTACHMENT

Clark County, Nevada

Case No. Pending

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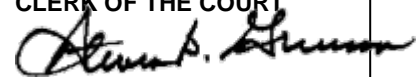
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

FLOR MORENCY; KEYSHA NEWELL;
BONNIE YBARRA; AAA SCHOLARSHIP
FOUNDATION, INC.; SKLAR WILLIAMS
PLLC; ENVIRONMENTAL DESIGN GROUP,
LLC,

Plaintiffs,

vs.

STATE OF NEVADA ex rel. the DEPARTMENT
OF EDUCATION; JHONE EBERT, in her official
capacity as executive head of the Department of
Education; the DEPARTMENT OF TAXATION;
JAMES DEVOLLD, SHARON RIGBY, CRAIG
WITT, GEORGE KELESIS, ANN BERSI,
RANDY BROWN, FRANCINE LIPMAN, and
ANTHONY WREN, in their official capacity as
members of the Nevada Tax Commission;
MELANIE YOUNG, in her official capacity as the
Executive Director and Chief Administrative
Officer of the Department of Taxation,

Defendants,

and

THE LEGISLATURE OF THE STATE OF
NEVADA,

Intervenor-Defendant.

Case No. A-19-800267-C

Dept. No. XXXII

**ORDER GRANTING SUMMARY
JUDGMENT IN FAVOR OF ALL
DEFENDANTS**

<input type="checkbox"/>	Voluntary Dismissal	<input checked="" type="checkbox"/>	Summary Judgment
<input type="checkbox"/>	Involuntary Dismissal	<input type="checkbox"/>	Stipulated Judgment
<input type="checkbox"/>	Stipulated Dismissal	<input type="checkbox"/>	Default Judgment
<input type="checkbox"/>	Motion to Dismiss by Deft(s)	<input type="checkbox"/>	Judgment of Arbitration

1 **Introduction.**

2 This action involves a state constitutional challenge to Assembly Bill No. 458 (AB 458) of the
3 2019 legislative session, which amended provisions in subsection 4 of NRS 363A.139 and 363B.119
4 governing certain tax credits available under the Nevada Educational Choice Scholarship Program.
5 AB 458, 2019 Nev. Stat., ch. 366, at 2295-99. The Plaintiffs claim that the Nevada Legislature passed
6 AB 458 in violation of the Supermajority Provision in the Nevada Constitution, Article 4, Section 18(2)
7 (“Nevada Supermajority Provision”), which requires a two-thirds supermajority vote in both Houses of
8 the Nevada Legislature to pass certain legislative measures.

9 The Plaintiffs brought this action against the State of Nevada and several state agencies and
10 officers of the Executive Branch (“Executive Defendants”) charged with administering the tax credits
11 and the scholarship program, including the Department of Education and Department of Taxation. The
12 Court granted the Nevada Legislature’s Motion to Intervene as an Intervenor-Defendant to defend the
13 constitutionality of AB 458.

14 The parties submitted this action to the Court on the following motions: (1) the Plaintiffs’ Motion
15 for Summary Judgment; (2) the Executive Defendants’ Motion for Summary Judgment; (3) Intervenor-
16 Defendant Nevada Legislature’s Motion for Summary Judgment; and (4) the Executive Defendants’
17 Joinder to Intervenor-Defendant Nevada Legislature’s Motion for Summary Judgment. The Court also
18 heard oral arguments on the motions on April 23, 2020. After a review of the pleadings, motions and
19 exhibits and the oral arguments at the hearing, and for the reasons set forth in this order, the Court
20 FINDS that the Nevada Supermajority Provision does not apply to AB 458 and the Defendants are
21 entitled to summary judgment as a matter of law under NRCP 56. Therefore, the Court ORDERS that:
22 (1) the Plaintiffs’ Motion for Summary Judgment is DENIED; (2) the Executive Defendants’ and the
23 Nevada Legislature’s Motions for Summary Judgment are GRANTED; and (3) FINAL JUDGMENT is
24 entered in favor of all Defendants as a matter of law on all causes of action and claims for relief.

1 **Factual and Procedural Background.**

2 The Nevada Supermajority Provision states that “an affirmative vote of not fewer than two-thirds
3 of the members elected to each House is necessary to pass a bill or joint resolution which creates,
4 generates, or increases any public revenue in any form, including but not limited to taxes, fees,
5 assessments and rates, or changes in the computation bases for taxes, fees, assessments and rates.” Nev.
6 Const. art. 4, § 18(2).

7 Under NRS 363A.130 and 363B.110, certain employers (e.g., financial institutions, mining
8 companies, etc.) are obligated to pay an excise tax equal to a percentage of the total amount of the wages
9 they pay to their employees in connection with their business activities in Nevada. This excise tax is
10 better known as the Modified Business Tax, or MBT. However, under NRS 363A.139 and 363B.119, in
11 lieu of paying the MBT, these employers may donate to certain scholarship organizations through the
12 Nevada Educational Choice Scholarship Program and receive a tax credit (“scholarship credit”) from
13 their MBT obligation in the amount equal to their contribution. But the amount these employers can
14 donate in scholarships and receive as a tax credit is capped by statute.

15 This scholarship program was established by the 2015 Nevada Legislature. Assembly Bill
16 No. 165, 2015 Nev. Stat., ch. 22, at 85-89. The 2015 Nevada Legislature set a cap on the total amount
17 of scholarship credit the employers can claim as a tax credit on a first come, first served basis. For
18 Fiscal Year (“FY”) 2015-2016, the cap was \$5 million. For FY 2016-2017, the cap was \$5.5 million.
19 For each succeeding FY, the cap was to increase by 10% from the immediately preceding FY. For the
20 purposes of this order, this is known as the “subsection 4 scholarship credit” because it is codified in
21 subsection 4 of NRS 363A.139 and 363B.119.

22 The 2017 Nevada Legislature permitted, for FY 2017-2018 only, an additional \$20 million in
23 scholarship credit in addition to what was already appropriated. Senate Bill No. 555, 2017 Nev. Stat.,
24 ch. 600, at 4365-69. For the purposes of this order, such special appropriations for the scholarship

1 program, like this one in 2017, are known as the “subsection 5 scholarship credit” because they are
2 codified in subsection 5 of NRS 363A.139 and 363B.119. The 2019 Nevada Legislature, per Senate Bill
3 No. 551 (SB 551), modified the subsection 5 scholarship credit by permitting an additional \$4.745
4 million credit for FY 2019-2020 and another \$4.745 million credit for FY 2020-2021 only. SB 551,
5 2019 Nev. Stat., ch. 537, at 3271-77.

6 The 2019 Nevada Legislature, per AB 458, modified the subsection 4 scholarship credit by
7 freezing the annual credit cap at \$6.655 million effective FY 2019-2020 and eliminating the annual 10%
8 increase to the cap. The Nevada Assembly passed AB 458 by a vote of two-thirds of all the members
9 elected to the Assembly. *Assembly Daily Journal*, 80th Sess., at 90 (Nev. Apr. 16, 2019). However,
10 although the Nevada Senate passed AB 458 by a vote of more than a majority of all the members elected
11 to the Senate, the vote in the Senate was fewer than two-thirds of all the members elected to the Senate.
12 *Senate Daily Journal*, 80th Sess., at 28 (Nev. May 23, 2019).

13 Prior to the passage of AB 458, the Nevada Legislature sought the opinion of the Legislative
14 Counsel Bureau (“LCB”) on whether the Nevada Supermajority Provision applies to a bill which
15 extends, revises or eliminates a future decrease in or future expiration of existing state taxes when that
16 future decrease or expiration is not legally operative and binding yet. Furthermore, the Nevada
17 Legislature also sought an opinion of the LCB on whether the Nevada Supermajority Provision applies
18 to a bill which reduces or eliminates available tax exemptions or tax credits applicable to existing state
19 taxes. Per its May 8, 2019 letter, the LCB opined that the Nevada Supermajority Provision does not
20 apply to a bill in either of such events.

21 The Plaintiffs, consisting of parents of scholarship-recipient students, a scholarship-funding
22 organization registered with the Department of Education, and businesses that have donated to registered
23 scholarship-funding organizations and received tax credits, filed a Complaint on August 15, 2019,
24 against the Executive Defendants. The Nevada Legislature sought and received permission to intervene

1 and filed an Answer on October 10, 2019. The Executive Defendants then filed a motion to dismiss,
2 which was heard on December 5, 2019. Pursuant to the December 27, 2019 order, the Court found that
3 the Plaintiffs have standing to challenge the constitutionality of AB 458 and that the issue is ripe for
4 adjudication based on purported harm to the Plaintiffs from AB 458.

5 There is no dispute that AB 458 did not pass the Nevada Senate with a two-thirds supermajority
6 vote. The Plaintiffs allege that AB 458 is subject to the Nevada Supermajority Provision. The
7 Executive Defendants and Intervenor-Defendant Nevada Legislature both argue that the Nevada
8 Supermajority Provision is not applicable to AB 458.

9 **Parties' Main Arguments.**

10 The Plaintiffs argue that AB 458 is subject to the Nevada Supermajority Provision because, by
11 repealing the subsection 4 scholarship credit, the bill raised revenue, as evidenced by the Department of
12 Taxation's fiscal notes on AB 458 that it submitted to the Nevada Legislature. Thus, the Plaintiffs argue
13 that this raising of the revenue falls squarely within the definition of "any public revenue in any form"
14 found in the Nevada Supermajority Provision. The Plaintiffs argue that the plain text of the Nevada
15 Supermajority Provision cannot lead to any other reasonable interpretation. The Plaintiffs also argue
16 that the Nevada Supermajority Provision is uniquely broad in comparison with other states'
17 supermajority provisions and that it should be interpreted as broadly as possible based on the history
18 behind the adoption of the Nevada Supermajority Provision. Furthermore, the Plaintiffs argue that as a
19 taxing statute, AB 458 should be construed in favor of the taxpayer.

20 The Executive Defendants disagree with this interpretation. They argue that AB 458 should be
21 read together with SB 551, because together both bills modify the scholarship credit statute, albeit
22 different subsections. The Executive Defendants argue that, by reading these related bills together, the
23 Court can correctly interpret the intent of the 2019 Nevada Legislature. They cite to Antonin Scalia &
24 Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 252-55 (2012), for that proposition.

1 Thus, the Executive Defendants argue that the combined effect of AB 458 and SB 551 resulted in an
2 increase to the total amount of available tax credits for FY 2019-2020 and FY 2020-2021 than the
3 amount that was previously available. The Executive Defendants focus on the “creates, generates, or
4 increases” phrase found in the Nevada Supermajority Provision and argue that since AB 458 only affects
5 the amount of tax credits available, the MBT and its rate structure are not affected. Thus, they argue that
6 the Nevada Supermajority Provision is not implicated. Furthermore, the Executive Defendants call for a
7 narrow interpretation of the Nevada Supermajority Provision based on its history and cases from other
8 states interpreting their respective supermajority provisions contained in their respective state
9 constitutions. Lastly, the Executive Defendants argue that the Nevada Legislature is entitled to
10 deference in its constitutional construction, citing *Nev. Mining Ass’n v. Erdoes*, 117 Nev. 531, 540, 26
11 P.3d 753, 758 (2001).

12 The Nevada Legislature argues that it reasonably concluded that AB 458 was not subject to the
13 Nevada Supermajority Provision because the bill froze the subsection 4 scholarship credit at \$6.655
14 million, which was the amount legally in effect before the bill was passed. Similar to the Executive
15 Defendants’ argument, the Nevada Legislature also focuses on the phrase “creates, generates, or
16 increases” found in the Nevada Supermajority Provision, as well as the phrase “computation bases” in
17 that constitutional provision. Because AB 458 does not bring into existence, produce or enlarge any
18 public revenue in any form or change the MBT’s existing tax formula—which consists of a number
19 (wages paid by certain employers) that is multiplied by a tax rate or from which a percentage is
20 calculated—the Nevada Legislature argues that Nevada Supermajority Provision is not implicated.
21 Furthermore, even if the Court concludes that AB 458 indeed changed or reduced the subsection 4
22 scholarship credit amount, the Nevada Legislature argues that the Nevada Supermajority Provision is
23 still not applicable because the bill does not modify the existing “computation bases” used to calculate
24 the underlying MBT; rather, AB 458 merely changed or reduced the total amount of tax credits available

1 to certain employers without modifying the MBT’s existing tax formula. The Nevada Legislature also
2 echoes the Executive Defendants’ argument that the Nevada Supermajority Provision must be narrowly
3 interpreted and that the Nevada Legislature’s constitutional construction of the bill should be given
4 deference—again under *Nev. Mining*—and the Nevada Legislature likewise cites to the history of the
5 Nevada Supermajority Provision and cases from other states interpreting their respective supermajority
6 provisions.

7 **Is Summary Judgment Appropriate at this Stage? Who has the Burden of Proof?**

8 Under NRCP 56 and *Wood v. Safeway, Inc.*, 121 Nev. 724, 121 P.3d 1026 (2005), summary
9 judgment is proper if there is no genuine dispute as to any material fact and the moving party is entitled
10 to judgment as a matter of law. The parties agree that there is little dispute over the facts and that the
11 main dispute is the question of law regarding the constitutionality of AB 458. *See Flamingo Paradise*
12 *Gaming v. Chanos*, 125 Nev. 502, 217 P.3d 546 (2009). Thus, all parties stipulate that summary
13 judgment is appropriate at this stage.

14 The Plaintiffs cite to *Shetakis Distrib. Co. v. State, Dep’t of Taxation*, 108 Nev. 901, 839 P.2d
15 1315 (1992), *State, Dep’t of Taxation v. Visual Commc’ns, Inc.*, 108 Nev. 721, 836 P.2d 1245 (1992),
16 and *Harrah’s Operating Co. v. State, Dep’t of Taxation*, 130 Nev. 129, 321 P.3d 850 (2014), for the
17 proposition that any dispute over a tax statute is to be construed in favor of the taxpayer. Thus, the
18 Plaintiffs claim that the Defendants have the burden of proof. The Court cannot agree. The central
19 question in this case is the constitutionality of AB 458. There is a long line of cases which establishes
20 that statutes are presumed to be valid and the burden is on the challenging party to demonstrate that a
21 statute is unconstitutional. *See Schwartz v. Lopez*, 132 Nev. 732, 382 P.3d 886 (2016); *Cornella v.*
22 *Justice Court*, 132 Nev. 587, 377 P.3d 97 (2016); *Deja Vu Showgirls v. Nev. Dep’t of Taxation*, 130
23 Nev. 719, 334 P.3d 392 (2014); *State v. Castaneda*, 126 Nev. 478, 245 P.3d 550 (2010); *List v. Whisler*,
24 99 Nev. 133, 660 P.2d 104 (1983). Thus, the Court “must start with the presumption in favor of

1 constitutionality, and therefore [the Court] ‘will interfere only when the Constitution is clearly
2 violated.’” *Schwartz*, 132 Nev. at 745, 382 P.3d at 895 (quoting *List*, 99 Nev. at 137, 660 P.2d at 106).
3 Accordingly, the burden of proof is on the Plaintiffs to show that AB 458 is unconstitutional.

4 **Is the Nevada Legislature Entitled to Judicial Deference as to its Construction of the**
5 **Constitutionality of its Bill?**

6 The courts are undoubtedly endowed with the duty of constitutional interpretation. *Nevadans for*
7 *Nev. v. Beers*, 122 Nev. 930, 943 n.20, 142 P.3d 339, 347 n.20 (2006). Although the Plaintiffs object to
8 *Nev. Mining’s* applicability in this case, the Court cannot ignore the Nevada Supreme Court’s clear
9 guidance: if the Nevada Legislature acted on the Legislative Counsel’s opinion on the reasonable
10 construction of the constitutional provision, “the Legislature is entitled to deference in its counseled
11 selection of this interpretation.” *Nev. Mining*, 117 Nev. at 540, 26 P.3d at 758. The Plaintiffs cite to
12 *Clean Water Coal. v. The M Resort, LLC*, 127 Nev. 301, 255 P.3d 247 (2011), for the proposition that
13 the Nevada Supreme Court limited the application of *Nev. Mining*. However, the *Clean Water Coal.*
14 case did not expressly overturn, or even cite to *Nev. Mining*. It did caution against “unqualified
15 deference” to the Legislature, *Clean Water Coal.*, 127 Nev. at 309, 255 P.3d at 253, but it did not
16 overturn *Nev. Mining’s* rule that the Nevada Legislature is entitled to deference in its “reasonable
17 construction of the [constitutional] provision.” *Nev. Mining*, 117 Nev. at 540, 26 P.3d at 758.

18 Thus, *Nev. Mining* is controlling and if the Court finds that both the Plaintiffs’ and the
19 Defendants’ interpretations are reasonable, but inconsistent or contradictory, the Court must give
20 deference to the Nevada Legislature’s reasonable interpretation. Here, as described below, at the very
21 minimum, the Nevada Legislature’s interpretation is reasonable, even if the Court does not agree with
22 the wisdom of the Nevada Legislature. Thus, the Nevada Legislature is entitled to deference in its
23 reasonable construction of the Nevada Supermajority Provision over the Plaintiffs’ reasonable
24 interpretation.

1 **Does AB 458 Increase Revenue?**

2 The Executive Defendants urge the Court to consider AB 458 in conjunction with SB 551 based
3 on their combined effect, which indisputably would increase the amount of tax credits available under
4 subsections 4 and 5 of NRS 363A.139 and 363B.119. Thus, the Nevada Supermajority Provision would
5 not be applicable. The Executive Defendants argue that such an interpretation truly reflects the intent of
6 the 2019 Nevada Legislature. However, the Court cannot adopt this interpretation as reasonable. The
7 Nevada Supermajority Provision clearly limits its application to a single “bill or joint resolution” and
8 thus, the Court cannot interpret AB 458 in conjunction with SB 551 to gauge the intent of the 2019
9 Nevada Legislature. As the Plaintiffs argue, if a bill is held to be unconstitutional, “it is null and void *ab*
10 *initio*; it is of no effect, affords no protection, and confers no rights.” *Nev. Power Co. v. Metro. Dev.*
11 *Co.*, 104 Nev. 684, 686, 765 P.2d 1162, 1163-64 (1988). Thus, AB 458 must be reviewed separately
12 and on its own.

13 The Court notes that the Department of Taxation, in the Executive Agency Fiscal Note prepared
14 on April 4, 2019, states that reduction in available scholarship credits taken against the MBT “would
15 increase general fund revenue.” Thus, the Plaintiffs argue that AB 458 increases revenue. The Nevada
16 Legislature disputes this, arguing that when it passed AB 458 during the 2019 legislative session, the
17 potential future tax credits under subsection 4 of NRS 363A.139 and 363B.119 were not legally
18 operative and binding yet because they would not go into effect and become legally operative and
19 binding until the commencement of FY 2019-2020 on July 1, 2019, and the commencement of each
20 fiscal year thereafter.

21 Under the Nevada Constitution, Article 9, Sections 2-3, the Nevada Legislature can only commit
22 or bind public funds for each fiscal year and cannot enact statutory provisions committing or binding
23 future Legislatures to make successive appropriations or expenditures of public funds in future fiscal
24 years. *See Employers Ins. Co. v. State Bd. of Exam’rs*, 117 Nev. 249, 254-58, 21 P.3d 628, 631-33

1 (2001). Prior to the passage of AB 458, the Department of Taxation was authorized for FY 2018-2019
2 to approve subsection 4 scholarship credit up to \$6.655 million, and that amount would have increased
3 by 10% per annum for subsequent FYs. When the 2019 Nevada Legislature passed AB 458, the future
4 10% increases in the subsection 4 scholarship credit were not yet legally operative and binding because
5 they would not lawfully go into effect and become legally operative and binding until July 1, 2019, the
6 beginning of FY 2019-2020. Consequently, AB 458 froze the subsection 4 scholarship credit amount at
7 \$6.655 million and thus, it did not modify the overall revenue.

8 Accordingly, the Court FINDS that AB 458 does not increase revenue. Thus, the Nevada
9 Supermajority Provision does not apply to AB 458, and the Defendants are entitled to summary
10 judgment as a matter of law under NRCP 56. However, in the alternative, even if the Court were to find
11 that AB 458 increases revenue, this finding would not change the ultimate outcome of the Court's
12 decision, and the Defendants are still entitled to summary judgment as a matter of law under NRCP 56.
13 For the reasons set forth below, the Court FINDS that the Nevada Supermajority Provision does not
14 apply to any bill that repeals or freezes an existing tax credit, as is the case in AB 458, even if the bill
15 has the effect of increasing the overall revenue.

16 **Interpretation of the Nevada Supermajority Provision.**

17 In *Guinn v. Legislature*, 119 Nev. 460, 471, 76 P.3d 22, 29 (2003), the Nevada Supreme Court
18 ruled that, in construing the Nevada Constitution, the primary objective of the Court is "to discern the
19 intent of those who enacted the provisions at issue, and to fashion an interpretation consistent with that
20 objective." To determine the meaning of the constitutional provision, the Court must first turn to the
21 provision's language and give that language its plain effect, unless it is ambiguous. If the language is
22 ambiguous, because it is susceptible to two or more reasonable but inconsistent interpretations, the Court
23 must look to the provision's history, public policy, and reason to determine what the votes intended.
24 *Miller v. Burk*, 124 Nev. 579, 590, 188 P.3d 1112, 1119-20 (2008); *Landreth v. Malik*, 127 Nev. 175,

1 180, 251 P.3d 163, 166 (2011); *Guinn*, 119 Nev. at 471, 76 P.3d at 29.

2 In the present matter, the Court cannot find that the plain reading of the Nevada Supermajority
3 Provision is unambiguous in this context. The Plaintiffs focus on the phrase “any public revenue in any
4 form” to argue that a bill which has the effect of raising revenue is subject to the Nevada Supermajority
5 Provision. However, both the Executive Defendants and the Nevada Legislature instead focus on the
6 phrase “creates, generates, or increases,” and the phrase “computation bases,” to argue that a bill which
7 does not impose new taxes or increase existing taxes by changing computation bases, such as tax rates,
8 is not subject to the Nevada Supermajority Provision. Both of these interpretations are reasonable, but
9 inconsistent. Thus, under *Miller*, the Court must consider the “history, public policy, and reason”
10 behind the Nevada Supermajority Provision. *Miller*, 124 Nev. at 590, 188 P.3d at 1119-20.

11 Here, the parties agree that the Court should look to the Legislative History of Assembly Joint
12 Resolution No. 21 (AJR 21) of the 1993 legislative session in considering the history, public policy, and
13 reason behind the Nevada Supermajority Provision. See *Legislative History of AJR 21*, 67th Leg. (Nev.
14 LCB Research Library 1993). Although AJR 21, spearheaded by then-Assemblyman Jim Gibbons, was
15 unsuccessful in passing the Nevada Legislature, Assemblyman Gibbons nonetheless led the ballot-
16 initiative effort for the 1994 and 1996 elections that resulted in the adoption of the Nevada
17 Supermajority Provision, and he was recognized as the provision’s “prime sponsor” by the Nevada
18 Supreme Court in *Guinn* in its discussion of the history of the Nevada Supermajority Provision. *Guinn*,
19 119 Nev. at 471-72, 76 P.3d at 30.

20 In his legislative testimony on AJR 21 in 1993, Assemblyman Gibbons stated that the Nevada
21 Supermajority Provision was modeled on similar supermajority provisions from other states, including
22 Arizona, Arkansas, California, Colorado, Delaware, Florida, Louisiana, Mississippi, Oklahoma and
23 South Dakota. *Legislative History of AJR 21, supra* (Hearing on AJR 21 before Assembly Comm. on
24 Taxation, 67th Leg., at 11-13 (Nev. May 4, 1993)). Assemblyman Gibbons also stated that the Nevada

1 Supermajority Provision is intended to require a supermajority in the Nevada Legislature “to increase
2 certain existing taxes or to impose certain new taxes.” *Id.* However, the Nevada Supermajority
3 Provision “would not impair any existing revenues.” *Id.* Thus, in *Guinn*, the Nevada Supreme Court
4 concluded that the legislative intent of the Nevada Supermajority Provision “was intended to make it
5 more difficult for the Legislature to pass new taxes.” *Guinn*, 119 Nev. at 471, 76 P.3d at 29.

6 Because the Nevada Supermajority Provision was modeled after supermajority provisions in other
7 states, under *Advanced Sports Info. v. Novotnak*, 114 Nev. 336, 340, 956 P.2d 806, 809 (1998), it would
8 be prudent for the Court to review the construction placed on the supermajority provisions in those
9 states. *See State ex rel. Harvey v. Second Jud. Dist. Ct.*, 117 Nev. 754, 763, 32 P.3d 1263, 1269 (2001).

10 Arizona’s supermajority provision is found in its Constitution, Article 9, Section 22, and it
11 requires that a two-thirds majority in each House of the Arizona Legislature is necessary to pass “any act
12 that provides for a net increase in state revenues in the form of: [t]he imposition of any new tax, [a]n
13 increase in a tax rate or rates, [and a] reduction or elimination of a tax deduction, exemption, exclusion,
14 credit or other tax exemption feature in computing tax liability.” Thus, the notable difference between
15 the supermajority provisions of Nevada and Arizona is that Arizona specifically mandates that its
16 supermajority provision be applied to a bill which eliminates or reduces a tax credit, such as the one
17 found in AB 458. Thus, had AB 458 been an Arizona bill, then Arizona’s supermajority provision
18 would be applied.

19 Delaware’s supermajority provisions are found in its Constitution, Article 8, Sections 10 and 11,
20 which mandate that “[n]o tax or license fee may be imposed or levied” by the State and that “[t]he
21 effective rate of any tax levied or license fee imposed by the State may not be increased,” except by a
22 three-fifths supermajority vote of each House of the Delaware Legislature. In interpreting Delaware’s
23 supermajority provisions in the context of proposals to impose new license fees and to increase existing
24 license fees, the Delaware Supreme Court rejected the argument that the supermajority provisions “only

1 affected [license] fees adopted as an exercise of the general taxing power, and were not intended to
2 abrogate prior statutes delegating authority to establish [license] fees attendant to an exercise of the
3 police power.” *In re Opinion of the Justices*, 575 A.2d 1186, 1189 (Del. 1990). The Delaware Supreme
4 Court stated that the supermajority provisions:

5 do not distinguish between licensing (permit) fees which can be categorized as de facto
6 taxes and fees which can be attributed to an exercise of the police power. The use of the
7 words “any” in Section 10(a) and “no” in Section 11(a), to modify the word “license,”
8 evidences an inclusive intent by the General Assembly to make those Constitutional
9 provisions applicable to all license fees of any nature. We find that the language in both
10 Section 10(a) and 11 is unambiguous.

11 *Id.* This case is cited favorably by the Plaintiffs for the proposition that the Nevada Supermajority
12 Provision is intended to be broadly interpreted because its use of the phrase “any public revenue in any
13 form,” and in particular its use of the word “any,” evidences an inclusive intent to make the Nevada
14 Supermajority Provision applicable to any bill which has the effect of raising revenue in any form.

15 Louisiana’s supermajority provision is found in its Constitution, Article 7, Section 2, and it
16 mandates a supermajority of two-thirds in each House of the Louisiana Legislature for “[t]he levy of a
17 new tax, an increase in an existing tax, or a repeal of an existing tax exemption.” In a challenge under
18 Louisiana’s supermajority provision, the Louisiana Court of Appeals reviewed the constitutionality of
19 legislation which suspended an existing tax exemption for sales of steam, water, electric power or
20 energy and natural gas for a period of 1 year, but which failed to pass with a supermajority. The
21 Louisiana court ruled that the suspension was a temporary delay and that the legislation did not repeal
22 the law authorizing the existing tax exemption. *La. Chem. Ass’n v. State ex rel. La. Dep’t of Revenue*,
23 217 So.3d 455, 462-63 (La. Ct. App. 2017), *writ of review denied*, 227 So.3d 826 (La. 2017). The
24 Louisiana court stated that “[s]ince the tax levy raises the revenues and since the granting of the
exemption does not change the underlying tax levy, we find that suspending an exemption is not a
revenue raising measure.” *Id.* at 463. In reviewing the Louisiana case, the Court notes that, similar to

1 the Arizona supermajority provision, the Louisiana provision also specifically requires supermajority
2 passage for the repeal of an existing tax exemption.

3 Oklahoma's supermajority provision is found in its Constitution, Article 5, Section 33, and it
4 states that a supermajority of three-fourths in each House of the Oklahoma Legislature is necessary to
5 pass "[a]ny revenue bill." In a challenge under Oklahoma's supermajority provision, the Oklahoma
6 Supreme Court reviewed the constitutionality of a bill which removed an existing automobile exemption
7 from the state's sales tax, but which did not pass with a supermajority. The Oklahoma court ruled that
8 there is an "important constitutional distinction between measures levying new taxes and measures
9 removing exemptions to already levied taxes." *Okla. Auto. Dealers Ass'n v. State ex rel. Okla. Tax*
10 *Comm'n*, 401 P.3d 1152, 1155 (Okla. 2017). The Oklahoma court held that the state's supermajority
11 provision did not apply to the bill (HB 2433) removing the special automobile exemption from the
12 already levied sales tax, explaining that:

13 HB 2433 merely revokes a portion of that special exemption from sales tax such that car
14 buyers now receive only a partial exemption from sales tax, rather than the complete
15 exemption they have long enjoyed. HB 2433 thus does not levy a tax; it merely makes
automobile sales subject to the sales tax that was levied on automobile sales many decades
prior.

16 *Id.* at 1156.

17 Although the opponents of the bill argued that it was a "revenue bill" under Oklahoma's
18 supermajority provision because the people have to pay more in taxes without the exemption, the
19 Oklahoma court rejected that argument, stating that:

20 to say that removal of an exemption from taxation causes those previously exempt from the
21 tax to pay more taxes is merely to state the effect of removing an exemption. It does not,
22 however, transform the removal of the exemption into the levy of a tax, and it begs the
dispositive question of whether removal of an exemption is the "levy of a tax in the strict
sense."

23 *Id.* at 1158.

24 //

1 In reviewing the Oklahoma case, the Court notes the inclusion of the word “any” is also found in
2 the Oklahoma supermajority provision which applies to “[a]ny revenue bill.” Okla. Const. art. 5,
3 § 33(D). Thus, the language in the Oklahoma supermajority provision is just as broad as the language in
4 the Nevada Supermajority Provision, but the Oklahoma Supreme Court adopted an interpretation that
5 appears to contradict the interpretation given by the Delaware Supreme Court to its supermajority
6 provision.

7 Finally, Oregon’s supermajority provision is found in its Constitution, Article 4, Section 25, and it
8 mandates a three-fifths majority in each House of the Oregon Legislature to “pass bills for raising
9 revenue.” In interpreting Oregon’s supermajority provision, the Oregon Supreme Court ruled that “not
10 every bill that collects or brings in money to the treasury is a ‘bil[l] for raising revenue.’ Rather, the
11 definition of ‘revenue’ suggests that the framers had a specific type of bill in mind—bills to levy taxes
12 and similar exactions.” *Bobo v. Kulongoski*, 107 P.3d 18, 23 (Or. 2005). Thus, to determine the
13 applicability of Oregon’s supermajority provision, the Oregon courts must first determine whether the
14 bill collects or brings money into the treasury. *Id.* at 23-24. If the bill does so, the Oregon courts must
15 then determine whether the bill possesses the essential features of a bill levying a tax. *Id.*

16 Under this two-part test, the Oregon Supreme Court found that bills which assess a fee for a
17 specific purpose are not bills for raising revenue even though they collect or bring money into the
18 treasury. *Id.* The Oregon Supreme Court also found that even though a bill eliminated a tax exemption
19 for foreign municipal corporations and brought money into the state treasury, the bill did not constitute a
20 bill for raising revenue because the effect of the bill was to place the foreign municipal corporations on
21 the same footing as domestic electric cooperatives. *City of Seattle v. Or. Dep’t of Revenue*, 357 P.3d
22 979, 985-88 (Or. 2015).

23 After the review of the history of the Nevada Supermajority Provision and the supermajority
24 provisions from other states, the Court FINDS that the intent of the Nevada Supermajority Provision is

1 to limit the Nevada Legislature in enacting bills raising new taxes or increasing the tax rate of existing
2 taxes. The Nevada Supermajority Provision does not apply to any bill that repeals, reduces or freezes
3 existing tax credits, as is the case in AB 458. As contemplated by Assemblyman Gibbons, the Nevada
4 Supermajority Provision applies in circumstances where the Nevada Legislature wants “to increase
5 certain existing taxes or to impose certain new taxes.” *Legislative History of AJR 21, supra* (Hearing on
6 AJR 21 before Assembly Comm. on Taxation, 67th Leg., at 11-13 (Nev. May 4, 1993)). The Nevada
7 Supermajority Provision does not require its application for any bills that specifically repeal a tax credit
8 or exemption, as is the case with the language in the supermajority provisions in Arizona and Louisiana.

9 Although the Plaintiffs argue that the Nevada Supermajority Provision is uniquely broad and they
10 focus on the word “any” and the meaning given to that term by the Delaware Supreme Court, the Court
11 FINDS that this interpretation is inconsistent with the interpretation by the Oklahoma Supreme Court.
12 Oklahoma’s supermajority provision is at least as equally as broad as the Nevada Supermajority
13 Provision since it requires supermajority passage for “[a]ny revenue bill.” Okla. Const. art. 5, § 33(D).
14 Yet, the Oklahoma Supreme Court has explicitly ruled that there is a distinction between raising new
15 taxes versus removing exemptions from already levied taxes. Likewise, AB 458 does not raise new
16 taxes, or increase existing taxes; rather, it removes or freezes the subsection 4 scholarship credit
17 available from already levied MBT. If the word “any” is given the broad interpretation suggested by the
18 Plaintiffs, it would mean that any revenue increases resulting from Nevada’s population and business
19 growth would also require invoking the Nevada Supermajority Provision.

20 Thus, the Court FINDS that the Nevada Supermajority Provision does not apply to any bill that
21 repeals or freezes an existing tax credit, as is the case in AB 458.

22 **Conclusion, Order and Judgment.**

23 The Court FINDS that the Nevada Supermajority Provision does not apply to AB 458 and the
24 Defendants are entitled to summary judgment as a matter of law under NRCP 56.

Therefore, the Court ORDERS that:

1. The Plaintiffs' Motion for Summary Judgment is DENIED.

2. The Executive Defendants' and the Nevada Legislature's Motions for Summary Judgment are GRANTED.

3. Having considered all causes of action and claims for relief alleged in the Plaintiffs' Complaint filed on August 15, 2019, FINAL JUDGMENT is entered in favor of all Defendants as a matter of law on all such causes of action and claims for relief.

4. Pursuant to NRCP 58, the Nevada Legislature is designated as the party required to: (1) serve written notice of entry of the Court's order and judgment, together with a copy of the order and judgment, upon each party who has appeared in this case; and (2) file such notice of entry with the Clerk of Court.

DATED: This 20th day of May, 2020.



ROB BARE
DISTRICT JUDGE

HGL

Submitted by:
LEGISLATIVE COUNSEL BUREAU, LEGAL DIVISION

/s/ Kevin C. Powers
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Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

October 03, 2019

A-19-800267-C	Flor Morency, Plaintiff(s)
	vs.
	State of Nevada - Department of Education, Defendant(s)

October 03, 2019 3:00 AM Minute Order

HEARD BY: Bare, Rob **COURTROOM:** Chambers

COURT CLERK: Michaela Tapia

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Having examined Plaintiff's Motion to Associate Counsel regarding Timothy D. Keller, Esq., noting no Oppositions filed, and good cause appearing pursuant to Nevada Supreme Court Rule 42, the Motion is GRANTED.

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. /mt

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

December 05, 2019

A-19-800267-C Flor Morency, Plaintiff(s)
vs.
State of Nevada - Department of Education, Defendant(s)

**December 05, 2019 9:30 AM Motion to Dismiss Hearing on
Defendants' Motion
to Dismiss**

HEARD BY: Bare, Rob

COURTROOM: RJC Courtroom 03C

COURT CLERK: Alan Castle

RECORDER: Kaihla Berndt

REPORTER:

PARTIES

PRESENT: House, Joshua A. Attorney
Newby, Craig A. Attorney
Powers, Kevin C. Attorney

JOURNAL ENTRIES

- COURT stated its Findings - Public importance; involves a provision of the statute; and, appropriate party. COURT FINDS parties have standing and ORDERED, Defendants' Motion to Dismiss is DENIED. Mr. House to prepare the order within 10 days have opposing counsel to review as to form and content and distribute a filed copy to all parties involved in this matter.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

March 12, 2020

A-19-800267-C Flor Morency, Plaintiff(s)
vs.
State of Nevada - Department of Education, Defendant(s)

March 12, 2020 3:00 AM Minute Order

HEARD BY: Bare, Rob **COURTROOM:** Chambers

COURT CLERK: Carolyn Jackson

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- At the request of Court, for judicial economy, (1) Plaintiff's Motion for Summary Judgment, presently set for a hearing on March 17, 2020 at 9:30 a.m., (2) Executive Defendants' Motion for Summary Judgment, presently set for a hearing on March 17, 2020 at 9:30 a.m., (3) Intervenor-Defendant Legislature of the State of Nevada's Motion for Summary Judgment, presently set for a hearing on March 17, 2020 at 9:30 a.m., and (4) Executive Defendants' Joinder to Intervenor-Defendant Legislature of the State of Nevada's Motion for Summary Judgment, presently set for a hearing on March 24, 2020 at 9:30 a.m. shall be CONSOLIDATED AND CONTINUED to April 14, 2020 at 1:30 p.m.

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. /cj 03-12-20

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters**COURT MINUTES****April 06, 2020**

A-19-800267-C Flor Morency, Plaintiff(s)
 vs.
 State of Nevada - Department of Education, Defendant(s)

April 06, 2020 3:00 AM Minute Order

HEARD BY: Bare, Rob **COURTROOM:** Chambers

COURT CLERK: Carolyn Jackson

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Pursuant to Governor Steve Sisolak's declaration of a state of emergency in Nevada on March 12, 2020 in response to the recent outbreak of the Coronavirus (COVID-19), the Eighth Judicial District Court issued Administrative Order: 20-01 (AO 20-01). Pursuant to AO 20-01, effective March 16, 2020, all currently scheduled non-essential District Court hearings, at the discretion of the Court, may be decided on the papers. In addition, EDCR 2.23(c) states: "the judge may consider the motion on its merits at anytime with or without oral argument, and grant or deny it."

The Court notes following matters are set for a hearing on April 14, 2020: (1) Plaintiffs' Motion for Summary Judgment, (2) Executive Defendants' Motion for Summary Judgment, (3) Intervenor-Defendant Nevada Legislature's Motion for Summary Judgment, and (4) Executive Defendants' Joinder to Intervenor-Defendant Nevada Legislature's Motion for Summary Judgment.

After review of this case, the instant matter is deemed "non-essential" under AO 20-01. Thus, pursuant to AO 20-01 and EDCR 2.23(c), all motions, currently scheduled for April 14, 2020 at 1:30 p.m. are RESCHEDULED to April 23, 2020 at 1:30 p.m. Counsel are to contact chambers to make arrangements for video or telephonic appearance in accordance with the Administrative Order 20-10.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Carolyn Jackson, to all registered parties for Odyssey File & Serve. /cj 04/06/20

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters

COURT MINUTES

April 23, 2020

A-19-800267-C Flor Morency, Plaintiff(s)
vs.
State of Nevada - Department of Education, Defendant(s)

April 23, 2020

9:30 AM

All Pending Motions

HEARD BY: Bare, Rob

COURTROOM: RJC Courtroom 03C

COURT CLERK: Elizabeth Vargas

RECORDER: Kaihla Berndt

REPORTER:

PARTIES

PRESENT: House, Joshua A. Attorney
Newby, Craig A. Attorney
Powers, Kevin C. Attorney

JOURNAL ENTRIES

- PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT...EXECUTIVE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT...INTERVENOR- DEFENDANT NEVADA LEGISLATURE'S MOTION FOR SUMMARY JUDGMENT

Court provided a brief overview of the case. Arguments by counsel regarding the motions. COURT ORDERED, matter TAKEN UNDER ADVISEMENT; Court stated an Order would be issued in a week or two.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Matters**COURT MINUTES****May 04, 2020**

A-19-800267-C Flor Morency, Plaintiff(s)
 vs.
 State of Nevada - Department of Education, Defendant(s)

May 04, 2020 3:00 AM Minute Order

HEARD BY: Bare, Rob **COURTROOM:** Chambers

COURT CLERK: Carolyn Jackson

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- This matter came before the Court for a hearing on the following matters: (1) Plaintiffs' Motion for Summary Judgment, (2) Executive Defendants' Motion for Summary Judgment, (3) Intervenor Defendant Nevada Legislature's Motion for Summary Judgment, and (4) Executive Defendants' Joinder to Intervenor Defendant Nevada Legislature's Motion for Summary Judgment. After hearing the oral arguments, the Court took the matter UNDER ADVISEMENT. After a review of the pleadings, oral arguments at the hearing, and good cause shown, the court FINDS and ORDERS as follows.

Factual and Procedural Background

Nevada Constitution, Article 4, Section 18(2) states: "an affirmative vote of not fewer than two-thirds of the members elected to each House is necessary to pass a bill or joint resolution which creates, generates, or increases any public revenue in any form, including but not limited to taxes, fees, assessments and rates, or changes in the computation bases for taxes, fees, assessments and rates." ("Nevada Supermajority Provision").

Under NRS 363A.130 and 363B.110, certain employers (e.g. financial institutions, mining companies, etc) are obligated to pay an excise tax equal to a percentage of the total amount of the wages they pay to their employees in connection with their business activities in Nevada. This excise tax is better

known as the Modified Business Tax, or MBT. However, under NRS 363A.139 and 363B.119, in lieu of paying the MBT, these employers may donate to certain scholarship organization through the Nevada Educational Choice Scholarship Program and receive a tax credit ("scholarship credit") from their MBT obligation in the amount equal to their contribution. However, the amount these employers can donate in scholarships and receive a tax credit is capped by statute.

This scholarship program was established by the 2015 Nevada Legislature. The 2015 Nevada Legislature set a cap on the total amount of scholarship credit the employers can claim as tax credit on first come, first serve basis. For Fiscal Year ("FY") 2015-2016, the cap was \$5 million. For FY 2016-2017, the cap was \$5.5 million. For each succeeding FY, the cap was to increase by 10% from the immediately preceding FY. For the purposes of this order, this is known as the "subsection 4 scholarship credit." The 2017 Nevada Legislature permitted, for FY 2017-2018 only, additional \$20 million scholarship credit, in addition to what was already appropriated. The special appropriations such as this, is known as "subsection 5 scholarship credit." The 2019 Nevada Legislature, per SB 551 modified the subsection 5 scholarship credit by permitting additional \$4.745 million credit for FY 2019-2020 and another \$4.745 million credit for FY 2020-2021 only.

The 2019 Nevada Legislature, per AB 458, modified the subsection 4 scholarship credit by freezing the annual credit cap at \$6.655 million effective FY 2019-2020 and eliminating the annual 10% increase to the cap. AB 458 did not pass the Nevada Legislature with the supermajority of 2/3 in both the Assembly and the Senate. Prior to the passage of AB 458, the Nevada Legislature sought the opinion of the Legislative Counsel Bureau ("LCB") on whether the Nevada Supermajority Provision applies to a bill that which extends, revises or eliminates a future decrease in or future expiration of existing state taxes when that future decrease or expiration is not legally operative and binding yet. Furthermore, the Nevada Legislature also sought an opinion of the LCB on whether the Nevada Supermajority Provision applies to a bill which reduces or eliminates available tax exemptions or credit applicable to existing state taxes. Per its May 8, 2019 letter, LCB opined that Nevada Supermajority Provision does not apply on either of such events.

Plaintiffs, consisting of parents of scholarship-recipient students, scholarship-funding organization, and business donors, filed a Complaint on August 15, 2019 against the Executive Defendants (State of Nevada ex rel. the Department of Education, Department of Taxation, etc). Nevada Legislature sought and received permission to intervene and filed an Answer on October 10, 2019. Executive Defendants then filed a motion to dismiss, which was heard on December 5, 2019. Pursuant to the December 27, 2019 order, the Court found that Plaintiffs have standing to challenge the constitutionality of AB 458 and that the issue is ripe for adjudication based on purported harm to the Plaintiffs.

There is no dispute that AB 458 did not pass the Nevada Legislature with supermajority. Plaintiffs allege that AB 458 is subject to the Nevada Supermajority Provision. Executive Defendants and Intervenor-Defendant Nevada Legislature both argue that Nevada Supermajority Provision is not applicable to AB 458.

Parties' Main Arguments

Plaintiffs argue that AB 458 is subject to the Nevada Supermajority Provision because, by repealing the subsection 4 scholarship credit, the bills raised revenue, as evidenced by the Department of Taxation, fiscal notes on AB 458. Thus, Plaintiffs argue this raising of the revenue falls squarely within the definition of "any public revenue in any form" found in the Nevada Supermajority Provision. Plaintiffs argue that plain text of the Nevada Supermajority Provision cannot lead to any other reasonable interpretation. Plaintiffs also argue that Nevada Supermajority Provision is uniquely broad in comparison with other states' supermajority provisions and it should be interpreted as broadly as possible based on the history behind the adoption of the Nevada Supermajority Provision. Furthermore, Plaintiffs argue that as a taxing statute, AB 458 should be construed in favor of the taxpayer.

Executive Defendants disagree with this interpretation. They argue that AB 458 should be read together with SB 551, because together they both modify the scholarship credit statute, albeit different subsections; by reading these related bills together, the Court can correctly interpret the intent of the 2019 Nevada Legislature. They cite to Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 252-55 (2012) for that proposition. Thus, the combined effect of the AB 458 and SB 551 resulted in an increase to the total amount of available tax credit for FY 2019-2020 and FY 2020-2021 then what was previously available. Executive Defendants focus on "creates, generates, or increases" phrase found in the Nevada Supermajority Provision and argue that since the AB 458 only affects the amount of tax credit available, the MBT and its rate structure is not affected. Thus, they argue that Nevada Supermajority Provision is not implicated. Furthermore, Executive Defendants call for a narrow interpretation of the Nevada Supermajority Provision based on the history and other state cases on their respective supermajority provisions contained in their respective state constitutions. Lastly, Executive Defendants argue that the Nevada Legislature is entitled to deference in their constitutional construction citing *Nev. Mining Ass'n v. Erdoes*, 117 Nev. 531, 26 P.3d 753 (2001).

Nevada Legislature argues that it reasonably concluded that AB 458 was not subject to the Nevada Supermajority Provision because the bill froze the subsection 4 scholarship credit at \$6.655 million, which was legally in effect before the bill was passed. Similar to the Executive Defendants' argument, Nevada Legislature also focuses on the phrase "creates, generates, or increases" found in the Nevada Supermajority Provision, as well as the "computation bases". Because the AB 458 does not bring into existence, produce or enlarge any public revenue in any form or change the formula of a number that is multiplied by a rate or form which a percentage is calculated, Nevada Legislature argues that Nevada Supermajority Provision is not implicated. Furthermore, even if the Court concludes that AB 458 indeed changed or reduced the subsection 4 scholarship credit amount, Nevada Legislature argues that Nevada Supermajority Provision is still not applicable because bill does not modify the existing "computation bases" used to calculate the underlying MBT; rather, AB 458 takes away the total amount of credits certain employers can contribute to in lieu of the MBT. Nevada Legislature echoes Executive Defendants' argument that the Nevada Supermajority Provision must be narrowly interpreted and Nevada Legislature's constitutional construction of the bill should be given deference, again under *Nev. Mining* and citing to the history and other state cases interpreting their

respective supermajority provisions.

Summary Judgment Appropriate at this Stage? Who has the Burden of Proof?

Under NRCP 56 and *Wood v. Safeway, Inc.*, 121 Nev. 724, 121 P.3d 1026 (2005), summary judgment is proper if there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Parties agree that there is little dispute over the facts and the main dispute is the question of law; i.e. the constitutionality of AB 458. See *Flamingo Paradise Gaming v. Chanos*, 125 Nev. 502, 217 P.3d 546 (2009). Thus, all parties stipulate that summary judgment is appropriate at this stage.

Plaintiffs cite to *Shetakis Dist. v. State, Dep't Taxation*, 108 Nev. 901, 839 P.2d 1315 (1992), *Dept. of Taxation v. Visual Communications, Inc.*, 108 Nev. 721, 836 P.2d 1245 (1992), and *Harrah's Operating Co. v. Dep't of Taxation*, 130 Nev. 129, 321 P.3d 850 (2014) for the proposition that any dispute over a tax statute is to be construed in favor of the taxpayer. Thus, Plaintiffs claim that Defendants have the burden of proof. The Court cannot agree. The central question in this case is the constitutionality of AB 458. There is long line of cases that establishes that statutes are presumed to be valid and the burden is on the challenging party to demonstrate that a statute is unconstitutional. See *Schwartz v. Lopez*, 132 Nev. 732 (2016). *Cornellia v. Justice Court*, 132 Nev. 587, 377 P.3d 97 (2016). *Deja Vu Showgirls v. Nev. Dep't of Tax'n*, 130 Nev. 719, 334 P.3d 392 (2014). *State v. Castaneda*, 126 Nev. 478, 245 P.3d 550 (2010). *List v. Whisler*, 99 Nev. 133, 660 P.2d 104 (1983). Thus, this Court "must start with the presumption in favor of constitutionality and therefore, the court will interfere only when the Constitution is clearly violated." *Schwartz*. Accordingly, the burden of proof is on the Plaintiffs to show that AB 458 is unconstitutional.

Is the Nevada Legislature Entitled to Judicial Deference as to its Construction of the Constitutionality of its Bill?

The Courts are undoubtedly endowed with the duty of constitutional interpretation. Nevadans for Nev. v. *Beers*, 122 Nev. 930, 142 P.3d 339, n. 20 (2006). Although Plaintiffs object to the Nev. Mining's applicability in this case, the Court cannot ignore the Nevada Supreme Court's clear guidance: if the Nevada Legislature acted on the Legislative Counsel's opinion on the reasonable construction of the Constitutional provision, the "Legislature is entitled to deference in its counseled selection of this interpretation." Plaintiffs cite to *Clean Water Coal. v. The M Resort, LLC*, 127 Nev. 301, 255 P.3d 247 (2011) for the proposition that Nevada Supreme Court limited the application of Nev. Mining. However, *Clean Water Coal.* case did not expressly overturn, or even cite to Nev. Mining. It did caution against "unqualified deference to the Legislature," but did not overturn Nev. Mining's rule that Nevada Legislature is entitled to deference to its "reasonable construction."

Thus, Nev. Mining is controlling and if the Court finds that both Plaintiffs and Defendants' interpretations are reasonable, but inconsistent or contradictory, the Court must give deference to the Nevada Legislature's reasonable interpretation. Here, as described below, at the very minimum, the Nevada Legislature's interpretation is reasonable, even if the Court does not agree with the wisdom of the Nevada Legislature. Thus, the Nevada Legislature is entitled to deference on its reasonable construction of the Nevada Supermajority Provision over Plaintiff's reasonable interpretation.

Does the AB 458 Increase Revenue?

Executive Defendants urge this Court to consider AB 458 in conjunction with SB 551 as the combined effect, which indisputably would increase the amount of tax credits available under subsections 4 and 5 of the NRS 363A.1396 and 363B.119. Thus, the Nevada Supermajority Provision would not be applicable. Executive Defendants argue that such interpretation truly reflects the intent of the 2019 Nevada Legislature. However, the Court cannot adopt this interpretation as reasonable. The Nevada Supermajority Provision clearly limits its application to a single "bill or joint resolution" and thus, the Court cannot interpret the AB 458 in conjunction with SB 551 to gauge the intent of the 2019 Nevada Legislature. As Plaintiffs argue, if a bill is held to be unconstitutional, "it is null and void ab initio; it is of no effect, affords no protection, and confers no rights." *Nev. Power Co. v. Metro. Dev. Co.*, 104 Nev. 684, 765 P.2d 1162 (1988). Thus, AB 458 must be reviewed separately and on its own.

The Court notes that Department of Taxation, in the Executive Agency Fiscal Note prepared on April 4, 2019, states that reduction in available scholarship credits taken against the MBT "would increase general fund revenue." Thus, Plaintiffs argue that AB 458 increases revenue. Nevada Legislature disputes this, arguing that when it passed AB 458 during the 2019 legislative session, the potential future tax credits under subsection 4 of NRS 363A.139 and 363B.119 were not legally operative and binding yet because they would not go into effect and become legally operative and binding until the commencement of the FY 2019-2020 on July 1, 2019. Under the Nevada Constitution, Article 9, Sections 2-3, the Nevada Legislature can only commit or bind public funds for each fiscal year and cannot enact statutory provision committing or binding future Legislatures to make successive appropriations or expenditures of public funds in future fiscal years. See *Employers Ins. Co. v. State Bd. of Exam'rs*, 117 Nev. 249, 21 p.3d 628 (2001). Prior to the passage of AB 458, for FY 2018-2019, the Department of Taxation was authorized to approve subsection 4 scholarship credit up to \$6.655 million and it would have increased by 10% per annum for the subsequent FYs. The 2019 Nevada Legislature, with the passage of AB 458, the future 10% increases in the subsection 4 scholarship credit were not yet legally operative and binding because it would not lawfully go into effect and become legally operative and binding until July 1, 2019, the beginning of FY 2019-2020. AB 458 froze the subsection 4 scholarship credit amount at \$6.655 million and thus, it did not modify the overall revenue.

Accordingly, the Court FINDS AB 458 does not increase revenue. Thus, the Nevada Supermajority Provision does not apply to AB 458. However, in the alternative, even if the Court finds that AB 458 increases revenue, this does not change the ultimate outcome of the Court's decision. Thus, summary judgment is still proper under NRCP 56. For reasons set forth below, the Court FINDS that Nevada Supermajority Provision does not apply to any bill that repeals or freezes an existing tax credit, as is the case in AB 458, even if the bill has the effect of increasing the overall revenue.

Interpretation of the Nevada Supermajority Provision

Under *Guinn v. Legislature*, 119 Nev. 460, 76 P.3d 22 (2003), the Nevada Supreme Court ruled, in construing the Nevada Constitution, the primary objective of the court is "to discern the intent of those who enacted the provisions at issue and to fashion an interpretation consistent with that

objective." To determine the meaning of the constitutional provision, the court must first turn to the provision's language and give that language its plain effect, unless it is ambiguous. If the language is ambiguous, because it is susceptible to two or more reasonable but inconsistent interpretations, the court is to look to the provisions' history, public policy, and reason to determine what the votes intended. *Miller v. Burk*, 124 Nev. 579, 188 P.3d 1112 (2008). See *Landreth v. Malik*, 127 Nev. 175, 251 P.3d 163 (2011). See *Guinn*.

In the present matter, the Court cannot find that the plain reading of the Nevada Supermajority Provision is unambiguous in this context. Plaintiffs focus on the phrase "any public revenue in any form" to argue that a bill that increases the revenue is subject to the Nevada Supermajority Provision. However, both Executive Defendants and Nevada Legislature instead focus on "creates, generates, or increases", and "computation bases", to argue that a bill that does not impose new taxes or increase the existing taxes by changing the tax rate is not subject to the Nevada Supermajority Provision. Both of these interpretations are reasonable, but inconsistent. Thus, under *Miller*, the Court must consider the "history, public policy, and reason" behind the Nevada Supermajority Provision. Here, the Parties agree that the Court should look into the Legislative History of Assembly Joint Resolution 21 (1993). Although AJR 21, spearheaded by then-Assemblyman Jim Gibbons, was unsuccessful, he led the ballot initiative in 1994 and 1996 elections and this led to the adoption of the Nevada Supermajority Provision. He is previously recognized as the Nevada Supermajority Provision's prime sponsor by the Nevada Supreme Court in *Guinn*. Assemblyman Gibbons stated that the Nevada Supermajority Provision was modeled on similar supermajority provisions from other states, including Arizona, Arkansas, California, Colorado, Delaware, Florida, Louisiana, Mississippi, Oklahoma and South Dakota. Assemblyman Gibbons also stated that the Nevada Supermajority Provision is intended to require a supermajority in the Nevada Legislature "to increase certain existing taxes or to impose certain new taxes." However, the Nevada Supermajority Provision "would not impair any existing revenues." Thus, the Nevada Supreme Court previously concluded that the legislative intent of the supermajority provision "was intended to make it more difficult for the Legislature to pass new taxes." *Guinn*.

Because the Nevada Supermajority Provision was modeled after other states, under *Advanced Sports Info. v. Novotnak*, 114 Nev. 336, 956 P.2d 806 (1998), it would be prudent for this court to review the construction placed on the supermajority provisions in those states. See *State ex rel. Harvey v. Second Jud. Dist. Ct.*, 117 Nev. 754, 32 P.3d 1263 (2001).

Arizona's supermajority provision is found in its Constitution, Article 9, Section 22. It requires that a 2/3 majority in each house of the Arizona legislature is necessary to "any act that provides for a net increase in state revenues in the form of: [t]he imposition of any new tax, [a]n increase in a tax rate or rates, [and a] reduction or elimination of a tax deduction, exemption, exclusion, credit or other tax exemption feature in computing tax liability." Thus, the notable difference between the supermajority provisions of Nevada and Arizona is that Arizona specifically mandates that its supermajority provision be applied to a bill that eliminates or reduce a tax credit, such as the one found in AB 458. Thus, had AB 458 been an Arizona bill, that Arizona's supermajority provision would be applied.

Delaware's supermajority provision is found in its Constitution, Article 9, Sections 10 and 11. It mandates a supermajority provision apply for an increase to the "effective rate of any tax levied". In *re Opinion of the Justices*, 575 A.2d 1186 (Del. 1990), the Delaware Supreme Court ruled that the plain language of the word "any" is obvious and an absurd result, relative to the separate provision of the Delaware Constitution, specifically the balanced budget requirement, cannot be found. This case is cited favorably by the Plaintiffs.

Louisiana's supermajority provision is found in its Constitution, Article 8, Section 2. It mandates a supermajority of 2/3 in each house of the Louisiana's legislature for "the levy of a new tax, an increase in an existing tax, or a repeal of an existing tax exemption." The Louisiana Court of Appeals reviewed the constitutionality of a bill that suspended the tax exemption for sales of steam, water, electric power or energy and natural gas for a period of 1 year, but failed to pass with supermajority. This court ruled that the suspension is a temporary delay and the bill did not repeal the existing law. *La. Chem. Ass'n v. State ex rel. La. Dep't of Revenue*, 217 So.3d 455 (La.Ct.App. 2017), writ of review denied, 227 So.3d 826 (La. 2017). "Since the tax levy raises the revenues and since the granting of the exemption does not change the underlying tax levy suspending an exemption is not a revenue raising measure." *Id.* The Court notes, similar to the Arizona supermajority provision, Louisiana also specifically requires a supermajority passage for a repeal of an existing tax exemption.

Oklahoma's supermajority provision is found its Constitution, Article 5, Section 33. It states that a 3/4 majority in each house of the Oklahoma legislature is necessary to pass "any revenue bill". The Oklahoma Supreme Court reviewed the constitutionality of a bill, which did not pass with supermajority, that removed the automobile sale excise tax exemption. It ruled that there is "a constitutional distinction between measures levying new taxes and measures removing exemptions to already levied taxes. Instant bill merely revokes the special exemption from the sales tax that car buyers would receive it does not levy a tax, but rather make car sales subject to the sales tax that was previously levied." *Okla. Auto. Dealers Ass'n v. State ex rel. Okla. Tax Comm'n*, 401 P.3d 1152, 2017 OK 64 (Okla. 2017). Although the opponents of the said bill argued that the bill is a revenue bill because the people have to pay more in taxes, the Oklahoma Supreme Court ruled that "to say that removal of an exemption from taxation causes those previously exempt from the tax to pay more taxes is merely to state the effect of removing an exemption. It does not, however, transform the removal of the exemption into the levy of a tax, and it begs the dispositive question of whether removal of an exemption is the levy of a tax in the strict sense." *Id.* Here, the Court notes the inclusion of the word "any" is also found in the Oklahoma supermajority provision. Thus, the Oklahoma supermajority provision is just as broad as the Nevada Supermajority Provision and appears to contradict the interpretation given in Delaware.

Oregon's supermajority provision is found in its Constitution, Article 4, Section 25. It mandates a 3/5 majority in each house of the Oregon legislature to "pass bills for raising revenue". Oregon Supreme Court, in interpreting this provision, ruled that "not every bill that collects or brings in money to the treasury is a bill for raising revenue; revenue is limited to bills to levy taxes and similar exactions." *Bobo v. Kulongoski*, 338 Or. 111, 107 P.3d 18 (OR, 2005). Thus, the Oregon courts, to determine the

applicability of the its supermajority provision, must first determine whether the bill collects or brings money into the treasury. If the bill does so, the Oregon courts must then determine whether the bill possesses the essential features of a bill levying a tax. Bills that assess a fee for a specific purpose are not bills raising revenue even though they collect or bring money into the treasury. *Id.* Oregon Supreme Court later found that a bill, which eliminated a tax exemption for foreign municipal corporations, and brought money into its treasury, does not constitute a bill for raising revenue because the effect of the bill was to place the foreign municipal corporations on the same footing as domestic electric cooperatives. *City of Seattle v. Department of Revenue*, 357 Or. 718, 357 P.3d 979 (OR 2015).

After the review of the history of the Nevada Supermajority Provision and supermajority provisions from other states, the Court FINDS the intent of the Nevada Supermajority Provision is limit to the Nevada Legislature from raising new taxes or increasing the tax rate to the existing taxes. Nevada Supermajority Provision does not apply to any bill that reduces or freezes the existing tax credit. As contemplated by Assemblyman Gibbons, the Nevada Supermajority Provision was to apply in circumstances that "increase certain existing taxes or to impose certain new taxes." Nevada Supermajority Provision does not require its application for any bills that specifically repeal a tax credit or exemption, as is the case in Arizona and Louisiana. Although Plaintiffs argue that Nevada Supermajority Provision is uniquely broad and focus on the word "any" and the meaning given by the Delaware Supreme Court, the Court finds that this interpretation is inconsistent with the interpretation by the Oklahoma Supreme Court. Oklahoma's supermajority provision is at least as equally as broad as the Nevada Supermajority Provision since it requires supermajority passage for "any revenue bill". Yet, the Oklahoma Supreme Court has explicitly ruled that there is a distinction between raising new taxes versus removing exemptions from already levied taxes. Likewise, AB 458 does not raise new taxes, or increase existing taxes; rather, it removes or freezes the subsection 4 scholarship credit available from already levied MBT. If the word "any" is given the broad interpretation as suggested by the Plaintiffs, it would mean that revenue increases resulting from Nevada's population and business growth would also require invoking the Nevada Supermajority Provision.

Thus, the Court FINDS that Nevada Supermajority Provision does not apply to any bill that repeals or freezes an existing tax credit, as is the case in AB 458.

The Court ORDERS Plaintiffs' Motion shall be DENIED. Executive Defendants and Nevada Legislature's Motions shall be GRANTED. LCB is directed to submit a proposed Order consistent with this Minute Order and the submitted briefing. Counsel may add language to further supplement the proposed Order in accordance with the Court's findings and any submitted arguments. Plaintiffs' counsel is to review and countersign as to form and content. Counsel is directed to have the proposed Order submitted to chambers within 10 days.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Carolyn Jackson, to all registered parties for Odyssey File & Serve. /cj 05/05/20



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

MATTHEW T. DUSHOFF, ESQ.
1835 VILLAGE CENTER CIRCLE
LAS VEGAS, NV 89134

DATE: June 1, 2020
CASE: A-19-800267-C

RE CASE: FLOR MORENCY; KEYSHA NEWELL; BONNIE YBARRA; AAA SCHOLARSHIP FOUNDATION, INC.; SKLAR WILLIAMS PLLC; ENVIORNMENT DESIGN GROUP, LLC vs. STATE OF NEVADA; DEPARTMENT OF EDUCATION; JHONE EBERT; DEPARTMENT OF TAXATION JAMES DEVOLLD; SHARON RIGBY; CRAIG WITT; GEORGE KELESIS; ANN BERSI; RANDY BROWN; FRANCINE LIPMAN; ANTHONY WREN; MELANIE YOUNG

NOTICE OF APPEAL FILED: May 29, 2020

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☒ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☒ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

***Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.*

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER GRANTING SUMMARY JUDGMENT IN FAVOR OF ALL DEFENDANTS; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

FLOR MORENCY; KEYSHA NEWELL;
BONNIE YBARRA; AAA SCHOLARSHIP
FOUNDATION, INC.; SKLAR WILLIAMS
PLLC; ENVIORNMENT DESIGN GROUP,
LLC,

Plaintiff(s),

vs.

STATE OF NEVADA; DEPARTMENT OF
EDUCATION; JHONE EBERT;
DEPARTMENT OF TAXATION JAMES
DEVOLLD; SHARON RIGBY; CRAIG WITT;
GEORGE KELESIS; ANN BERSI; RANDY
BROWN; FRANCINE LIPMAN; ANTHONY
WREN; MELANIE YOUNG,

Defendant(s),

Case No: A-19-800267-C

Dept No: XXXII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 1 day of June 2020.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk