

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

See attached Tab 1 for full caption.

No. 81281

Electronically Filed
Jun 15 2020 02:17 p.m.

DOCKETING Elizabeth A. Brown
CIVIL APPEALS Clerk of Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department 32
County Clark Judge Rob Bare
District Ct. Case No. A-19-800267-C

2. Attorney filing this docketing statement:

Attorney Joshua House Telephone 703-682-9320
Firm Institute for Justice
Address 901 North Glebe Road
Suite 900
Arlington, VA 22203

Client(s) See attached Tab 1 for full list of clients.

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Craig Newby Telephone (775) 684-1100
Firm Office of the Attorney General
Address 100 N. Carson St.
Carson City, NV 89701

Client(s) See attached Tab 1 for full list of clients.

Attorney Kevin Powers Telephone (775) 684-6830
Firm Legislative Counsel Bureau, Legal Division
Address 401 S. Carson St.
Carson City, NV 89701

Client(s) Legislature of the State of Nevada

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|--|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input checked="" type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input checked="" type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input checked="" type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Not applicable.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

The case originating below is Morency, et al. v. State, Department of Education, et al., No. A-19-800267-C (Nev. Eighth Judicial District Court), disposed on May 20, 2020.

8. Nature of the action. Briefly describe the nature of the action and the result below:

This case is a constitutional challenge, under Article 4, Section 18(2) of the Nevada Constitution, to the recently enacted Assembly Bill 458 (2019). Plaintiffs-Appellants sought an injunction against the enforcement of A.B. 458—which raised revenue by repealing tax credits—because it did not receive the requisite two-thirds supermajority vote in the Nevada Senate.

Below, the parties cross-moved for summary judgment. On May 20, 2020, the Eighth Judicial District Court granted Defendants-Respondents' motions for summary judgment, denied Plaintiffs' motion for summary judgment, and entered final judgment in favor of Defendants-Respondents. Plaintiffs-Appellants now appeal that May 20, 2020 order.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Whether Assembly Bill 458 (2019) is unconstitutional, under Article 4, Section 18(2) of the Nevada Constitution, because it raised revenue by repealing tax credits but it did not receive a two-thirds supermajority vote in the Nevada Senate.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

Not applicable.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☒ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: See attached at Tab 1.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

See attached at Tab 1.

14. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? N/A

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
Not applicable.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from May 20, 2020

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served Jun 1, 2020

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed May 29, 2020

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:
Not applicable.

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)(1)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:
Under NRAP 3A(b)(1), this Court has jurisdiction over this appeal because, in the proceeding below, final judgment was entered in favor of all Defendants as a matter of law on all causes of action and claims for relief.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Plaintiffs: Flor Morency, Keysha Newell, Bonnie Ybarra, AAA Scholarship Foundation, Inc., Sklar Williams PLLC, and Environmental Design Group, LLC
Defendants: State of Nevada ex rel. the Department of Education, Jhone Ebert, the Department of Taxation, James Devolld, Sharon Rigby, Craig Witt, George Kelesis, Ann Bersi, Randy Brown, Francine Lipman, Anthony Wren, Melanie Young
Intervenor-Defendants: Legislature of the State of Nevada

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

Not applicable.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

All Plaintiffs: Injunctive and Declaratory Relief under Nevada Constitution
All Defendants: N/A
Intervenor-Defendants: N/A

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

Not applicable.

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Flor Morency, et al.
Name of appellant

Joshua House
Name of counsel of record

6/15/2020
Date

/s/ Joshua House
Signature of counsel of record

Arlington, VA
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 15th day of June, 2020, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Craig A. Newby
Office of the Attorney General
100 N. Carson St.
Carson City, NV 89701

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

Dated this 15th day of June, 2020

/s/ Joshua House
Signature

TABLE OF CONTENTS

Docketing Statement

Attachment to Docketing Statement Tab 1

Complaint..... Tab 2

Order Granting Summary Judgment in Favor of All Defendants... Tab 3

Notice of Entry of Order Granting Summary Judgment in Favor
of Defendants..... Tab 4

TAB 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Plaintiffs-Appellants,

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, 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

Case No. 81281

District Court Case No. A-19-
800267-C
Dept. No. 32

**ATTACHMENT TO
APPELLANTS' DOCKETING
STATEMENT**

Commission; MELANIE YOUNG, in
her official capacity as the Executive
Director and Chief Administrative
Officer of the Department of
Taxation,

Defendants-Appellees,

and

The LEGISLATURE OF THE
STATE OF NEVADA,

Intervenor-Defendants-
Appellees.

ATTACHMENT TO APPELLANTS' DOCKETING STATEMENT

Full Caption:

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

Plaintiffs-Appellants,

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, 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-Respondents,

and

The LEGISLATURE OF THE STATE OF NEVADA,

Intervenor-Defendants-Respondents.

Question #2: Full List of Appellants:

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

Question #3: Full List of Respondents:

State of Nevada, *ex rel.* the 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, the Legislature of the State of Nevada

Question #12 Explanation:

This case arises under Article 4, Section 18(2) of the Nevada Constitution, which requires a two-thirds supermajority in each legislative house “to pass a bill or joint resolution which creates, generates, or increases any public revenue in any form.”

This case presents a substantial issue of first impression because this Court has never considered whether a particular bill should have received a supermajority under Article 4, Section 18(2).

This case presents important issues of public policy because it concerns whether the Legislature needs a two-thirds supermajority to raise revenue by repealing tax credits, and because it concerns whether the Legislature may repeal tax credits that support Nevada's Educational Choice Scholarship Program.

Question #13:

Under NRAP 17(a), this case shall be retained by the Supreme Court for two reasons:

First, this matter raises as a principal issue a question of first impression involving Article 4, Section 18(2) of the Nevada Constitution. *See* NRAP 17(a)(11). This Court has never considered whether a particular bill should have received a supermajority under Article 4, Section 18(2).

Second, this matter raises as a principal issue a question of statewide public importance, because it concerns whether the Legislature needs a two-thirds supermajority to raise revenue by repealing tax credits, and because it concerns whether the Legislature may repeal tax credits that support Nevada's Educational Choice Scholarship Program. *See* NRAP 17(a)(12).

TAB 2



CASE NO: A-19-800267-C
Department 32

Code: COMP (CIV)
INSTITUTE FOR JUSTICE
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Attorneys for Plaintiffs

**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

Case No.
Dept. No.
Docket

1 head of the Department of Education; the
2 DEPARTMENT OF TAXATION; JAMES
3 DEVOLLD, in his official capacity as a member
4 of the Nevada Tax Commission; SHARON
5 RIGBY, in her official capacity as a member of
6 the Nevada Tax Commission; CRAIG WITT, in
7 his official capacity as a member of the Nevada
8 Tax Commission; GEORGE KELESIS, in his
9 official capacity as a member of the Nevada Tax
10 Commission; ANN BERSI, in her official
11 capacity as a member of the Nevada Tax
12 Commission; RANDY BROWN, in his official
13 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,

14 Defendants.

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16 **COMPLAINT**

17 Arbitration Exemption Claimed
18 Declaratory and Injunctive Relief Sought
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INTRODUCTION

1. This action challenges the constitutionality of A.B. 458, a recently enacted statute that, over the next biennium, results in the loss of over \$2,000,000 of scholarship funding for low-income families. Plaintiffs are the parents of scholarship-recipient students, a scholarship-funding organization, and business donors who all wish to see the scholarship funding restored.

2. Nevada incentivizes private donations to fund K-12 scholarships to low-income families through a tax-credit program called the Nevada Educational Choice Scholarship Program (the “Scholarship Program”). The Scholarship Program allows Nevada businesses to donate to registered scholarship organizations and to receive tax credits for those donations. Those donations are then used by the private scholarship organizations to provide scholarships to low-income families.

3. A.B. 458 eliminates over \$2,000,000 of tax credits in the next biennium, and many more millions in future biennia, thereby depriving the Scholarship Program of millions in revenue. Without that funding, many scholarships will not be available. Indeed, some families, including some of the Plaintiffs here, have already lost scholarships because of A.B. 458.

4. By eliminating tax credits, A.B. 458 increases revenue for Nevada’s general fund. A.B. 458 is therefore a revenue-raising bill that must receive a two-thirds supermajority of votes in each house of the Nevada Legislature.¹ But A.B. 458 did not receive a supermajority of votes in the Nevada Senate. Therefore, A.B. 458 is unconstitutional and unenforceable.

JURISDICTION AND VENUE

5. Plaintiffs bring this lawsuit under Article 4, Section 18(2) of the Constitution of the State of Nevada (supermajority required to raise revenue) and under the Nevada Declaratory Judgments Uniform Act, NRS §§ 30.010 *et seq.* Plaintiffs seek declaratory and injunctive relief against unconstitutional legislation, A.B. 458 (2019), effective July 1, 2019, that impairs

¹ See Nev. Const. art. 4, § 18(2) (requiring “an affirmative vote of not fewer than two-thirds of the members elected to each house . . . to pass a bill or joint resolution which creates, generates, or increases any public revenue in any form”).

1 Plaintiffs' rights to receive scholarships, provide scholarships, or donate money to be used for
2 scholarships through Nevada's Educational Choice Scholarship Program.

3 6. The challenged legislation amends, and is codified at, NRS §§ 363A.139 and
4 363B.119.

5 7. This Court has jurisdiction over Defendants under NRS § 41.031 because they
6 are political subdivisions or agents of the State of Nevada.

7 8. This Court has jurisdiction over Defendants under NRS § 14.065 because they
8 reside in Nevada.

9 9. This Court has jurisdiction over this action under Article 6, Section 6 of the
10 Nevada Constitution and the Nevada Declaratory Judgments Uniform Act, NRS § 30.010 *et seq.*

11 10. This Court is the proper venue for this action under NRS §§ 13.020 and 41.031
12 because Defendants Department of Education and Department of Taxation maintain offices in
13 Clark County and the present cause of action arises in Clark County.

14 **PARTIES**

15 11. Plaintiff Flor Morency resides in Las Vegas and is the mother of two children
16 who, until A.B. 458 was enacted and caused a loss of funding, received scholarships under the
17 Scholarship Program. Her children will be attending public school this year if she cannot
18 receive a scholarship.

19 12. Plaintiff Bonnie Ybarra resides in Las Vegas and is the mother of five children
20 who, until A.B. 458 was enacted and caused a loss of funding, received full scholarships under
21 the Scholarship Program. Her children will now receive only partial scholarships.

22 13. Plaintiff Keysha Newell resides in North Las Vegas and is the mother of two
23 children. Until A.B. 458 caused a loss of funding, her oldest child received a full scholarship
24 under the Scholarship Program, but now receives a smaller scholarship. Keysha intends to apply
25 for a scholarship for her youngest child in 2020.

26 14. Plaintiff AAA Scholarship Foundation, Inc. ("AAA") is a scholarship
27 organization registered with the Nevada Department of Education to accept tax-credit-eligible
28

1 donations and provide scholarships under the Scholarship Program. AAA maintains a mailing
2 address in Henderson and is incorporated in Georgia.

3 15. Plaintiff Sklar Williams PLLC is a Nevada professional limited liability
4 company located in Las Vegas.

5 16. Plaintiff Environmental Design Group, LLC, is a Nevada limited liability
6 company located in Las Vegas.

7 17. Defendant Nevada Department of Education is a state agency with offices in
8 both Carson City and Las Vegas. The Department of Education is responsible for administering
9 the Scholarship Program by adopting regulations necessary to carry out the Scholarship
10 Program² and by enforcing violations of the relevant statutes and regulations.³

11 18. Defendant Jhone Ebert is sued in her official capacity as the Superintendent of
12 Public Instruction and executive head of the Department of Education.⁴

13 19. Defendant Nevada Department of Taxation is a state agency with offices in
14 Carson City, Reno, Henderson, and Las Vegas. The Department of Taxation is responsible for
15 administering and enforcing the excise tax imposed by NRS § 363B.110.⁵ The Department of
16 Taxation is responsible for approving or denying applications for tax credits for donations to
17 scholarship organizations.⁶ The Department of Taxation may bring an action to collect the
18 nonpayment of taxes that it administers.⁷

19 20. Defendants James Devolld, Sharon Rigby, Craig Witt, George Kelesis, Ann
20 Bersi, Randy Brown, Francine Lipman, and Anthony Wren are sued in their official capacity as
21 members of the Nevada Tax Commission and, on information and belief, all reside in Nevada.
22 The Tax Commission is the head of the Department of Taxation.⁸

23
24
25 ² NRS § 388D.270(7).

26 ³ NAC § 385.607(3).

27 ⁴ NRS § 385.010(3).

28 ⁵ NRS § 363B.060.

⁶ NRS § 363B.119.

⁷ NRS § 360.4193(1).

⁸ NRS § 360.120(2).

21. Defendant Melanie Young is sued in her official capacity as the Executive Director and Chief Administrative Officer of the Department of Taxation.⁹

ALLEGATIONS OF FACT

I. The Nevada Educational Choice Scholarship Program

22. In 2015 Nevada enacted A.B. 165, which created a need-based, K-12 scholarship program called the “Nevada Educational Choice Scholarship Program” (the “Scholarship Program”).

23. The Scholarship Program provides scholarships to students to attend a Nevada private school chosen by their parents or guardians.

24. Under the Scholarship Program, scholarships are awarded based on financial need. Eligible families have household incomes not more than 300 percent of the federally designated poverty level.

25. Under the Scholarship Program, the total amount of a scholarship provided by a registered scholarship organization may not exceed \$8,262 for the 2019-20 fiscal year. Defendant Department of Education may annually adjust this amount to account for inflation.

26. Scholarships are funded and awarded by privately run scholarship organizations registered with Defendant Department of Education.

27. Scholarship organizations fund scholarships using donations received from private individuals or businesses.

28. Under the Scholarship Program, private donors to scholarship organizations are eligible for a state tax credit. The tax credit applies toward payment of employer excise taxes.

29. Prospective donors to registered scholarship organizations must submit an application for a tax credit with a registered scholarship organization.

30. After a prospective donor applies for a tax credit with a scholarship organization, the scholarship organization then transmits the donor’s application to Defendant Department of Taxation.

⁹ *Id.*

1 31. The Scholarship Program caps the annual amount of tax credits available to
2 business donors each year. Credits are approved on a first-come, first-served basis.

3 32. If Defendant Department of Taxation approves a donor’s application for a tax
4 credit, it will issue a receipt reflecting the amount of money to be donated to the registered
5 scholarship organization.

6 33. When it was enacted in 2015, the Scholarship Program provided \$5,000,000 in
7 available tax credits for the 2015-16 fiscal year.¹⁰

8 34. The Scholarship Program also provided that the amount of credits available was
9 to grow by 10 percent each succeeding fiscal year (the “Escalator Provision”).

10 35. For the 2018-19 fiscal year, the cap was \$6,655,000 and, under the Escalator
11 Provision, was set to increase to \$7,320,500 for the 2019-20 fiscal year and to \$8,052,550 for
12 the 2020-21 fiscal year.

13 36. A.B. 458 repealed the Escalator Provision, thereby repealing \$665,500 in tax
14 credits for the 2019-20 fiscal year and \$1,397,550 in tax credits for the 2020-21 fiscal year, for a
15 total of over \$2,000,000 worth of tax credits over the next biennium and many more millions in
16 subsequent biennia.

17 **II. A.B. 458 Passed Without the Required Two-Thirds Supermajority**

18 37. Because A.B. 458 repealed tax credits, A.B. 458 will increase public revenue.

19 38. Defendant Department of Taxation, in its fiscal note on A.B. 458, determined
20 that A.B. 458 would raise \$2,063,050 in revenue over the next biennium and \$5,291,391 in
21 future biennia.¹¹

22 39. Defendant Department of Taxation therefore labeled the bill as a “revenue” item.

23 40. A.B. 458 was referred to the “revenue and economic development” committee of
24 the Senate. There, the bill’s original sponsor in the Nevada Assembly testified that, without the
25 planned tax credits, additional money would “otherwise be in the General Fund.” He also
26

27 ¹⁰ 2015 Nev. Laws Ch. 22, § 4 (A.B. 165).

28 ¹¹ Dep’t of Tax’n, Fiscal Note on A.B. 458 (Nev. Apr. 4, 2019).

1 testified that each dollar of tax credits “is a dollar we deplete from the General Fund” and that
2 “we still have an obligation to fund our budget responsibly.”¹²

3 41. Article 4, Section 18 of the Nevada Constitution requires that any bill that
4 “increases any public revenue in any form” either (1) be passed by “an affirmative vote of not
5 fewer than two-thirds of the members elected to each house” or, (2) after an affirmative vote by
6 simple majority, be submitted for approval by the voters in a general election referendum.

7 42. A.B. 458 did not receive a two-thirds supermajority affirmative vote in the
8 Nevada Senate, receiving only 13 of 21 votes.

9 43. A.B. 458 was not referred to the people of Nevada for approval at a general
10 election referendum.

11 44. A.B. 458 was therefore not validly enacted and is not the enforceable law of
12 Nevada.

13 **III. Injury to Plaintiffs**

14 **A. Parent Plaintiffs**

15 45. Flor Morency is an immigrant from El Salvador and resides in Las Vegas. She is
16 the mother of two children.

17 46. Morency’s twin children are in fifth grade and participated in the Scholarship
18 Program until July 2019.

19 47. In public school Morency’s son suffered from bullying-induced stress. Other
20 children bullied Morency’s son because he was small compared to other boys in the class.

21 48. Morency’s son often came home from public school with headaches and his
22 grades were getting progressively worse.

23 49. In public school, Morency’s children were in crowded classes of around 36
24 students per classroom.

25 50. Morency applied to receive a scholarship under the Scholarship Program from
26 the Education Fund of Northern Nevada (“EFNN”) and her application was granted.

27 ¹² Minutes of S. Comm. on Revenue & Econ. Dev. at 4, 80th Leg. (Nev., May 2, 2019).
28

1 51. After placing her children into a private Catholic school using the scholarship
2 from EFNN, Morency saw a marked improvement in her son's grades.

3 52. On July 10, 2019, Morency was told by EFNN that her children could no longer
4 receive scholarships because A.B. 458 has made it "statistically impossible" to grant
5 scholarships to all renewing students under the ninth grade.

6 53. A.B. 458 has made it impossible to grant scholarships to all renewing students
7 under the ninth grade because it removes long-term funding from the tax-credit-funded
8 scholarship program.

9 54. But for A.B. 458, EFNN would not have faced the "statistical impossibility" and
10 could have renewed Morency's children's scholarships.

11 55. If A.B. 458 were not in force, an additional \$665,500 in funding would be
12 available to fund scholarships for Morency's children for the 2019-20 school year.

13 56. If A.B. 458 were not in force, an additional \$1,397,550 in funding would be
14 available to fund scholarships for Morency's children for the 2020-21 school year.

15 57. Plaintiff Bonnie Ybarra resides in Las Vegas.

16 58. Ybarra is the mother of five children. Two of her children are adults and no
17 longer live in her house. The other three children do live at home and are 9, 7, and 4 years old.

18 59. Ybarra's 9-year-old and 7-year-old children enrolled in their neighborhood
19 public school when they were kindergarteners.

20 60. Ybarra's 9-year-old, E.Y., did not do well in the public school and received
21 mostly D's and F's.

22 61. Ybarra's 7-year-old, T.Y., was bullied and physically assaulted in the public
23 school. She was also failing her classes and was accused by her teachers of "working at the
24 speed of a snail."

25 62. Ybarra tried working with the public school's classroom teachers, the school's
26 principal, and other members of the school's administration. Her efforts to identify supports,
27 both inside and outside the classroom, to try and turn her children's educations in a positive
28 direction were unsuccessful.

1 63. Under the Scholarship Program, Ybarra applied and received a scholarship from
2 EFNN. This enabled her to send her children to a private school, Mountain View Christian
3 School.

4 64. For the past two years, E.Y. and T.Y. have received partial scholarships under
5 the Scholarship Program. These partial scholarships have covered most of the cost of tuition at
6 the children's private school.

7 65. Since transferring to Mountain View Christian School, E.Y. is doing much
8 better. Her study habits have improved significantly, and she now earns mostly A's and B's.
9 She still faces learning challenges, but Ybarra is confident E.Y. will succeed at Mountain View.

10 66. Since transferring to Mountain View Christian School, T.Y. is thriving. She is a
11 straight-A student and has responded positively to the school's academic rigor.

12 67. Ybarra's 4-year-old, N.Y., is entering kindergarten for the first time at Mountain
13 View Christian School and never attended a public school.

14 68. In July 2019, Ybarra received notice from EFNN that the partial scholarships
15 they had previously received would not be renewed.

16 69. EFNN's letter to Ybarra stated that A.B. 458's elimination of the Escalator
17 Provision "has made it statistically impossible" to grant scholarships to renewing students under
18 the ninth grade.

19 70. Ybarra's renewing students are entering the third and fifth grade, respectively.
20 Ybarra's young child is entering kindergarten for the first time.

21 71. All three children were accepted to attend Mountain View Christian School this
22 year.

23 72. All three of Ybarra's younger children are participating in the Scholarship
24 Program and will receive small, partial scholarships from AAA Scholarship Foundation under
25 the Scholarship Program.

26 73. The partial scholarships from AAA will not come close to covering the full
27 amount of tuition. Indeed, the tuition gap for all three kids is approximately \$16,000.
28

1 74. Ybarra does not possess the financial ability to pay \$16,000 for her children to
2 continue attending Mountain View.

3 75. Not expecting to be able to maintain enrollment for her children at Mountain
4 View, Ybarra visited the public school her children are currently zoned to attend, which is not
5 the same public school they previously attended. Ybarra was informed that 96 percent of the
6 students at their zoned public school are not at grade level. Upon learning this information,
7 Ybarra inquired with the school about the possibility of obtaining a boundary exception in order
8 attend a better performing public school. Ybarra was informed no boundary exceptions would
9 be granted.

10 76. This year the administration at Mountain View has offered to enroll all three of
11 Ybarra's children at a significantly reduced rate and with an agreement that Ybarra volunteer at
12 the school. However, there is no guarantee that the children will be able to remain at the school
13 next year without financial aid.

14 77. Ybarra's children have received a merciful reprieve this year, but A.B. 458 has
15 jeopardized their ability to continue attending Mountain View.

16 78. The reason A.B. 458 has made it impossible for EFNN to grant scholarships to
17 all renewing students under the ninth grade is because it removes long-term funding from the
18 tax-credit-funded scholarship program.

19 79. But for A.B. 458, EFNN would not have faced the "statistical impossibility" and
20 could have renewed Ybarra's children's scholarships.

21 80. But for A.B. 458, an additional \$665,500 in funding would be available to fund
22 scholarships for Ybarra's children for the 2019-20 school year.

23 81. But for A.B. 458, an additional \$1,397,550 in funding would be available to fund
24 scholarships for Ybarra's children for the 2020-21 school year.

25 82. Plaintiff Keysha Newell resides in North Las Vegas and is the mother of two
26 children.

27 83. Newell's oldest, T.N., is currently enrolled in a private school using a
28 scholarship received from AAA Scholarship Foundation.

1 84. While in public school, T.N. struggled to develop her social and interpersonal
2 abilities.

3 85. T.N. has a learning disability for which Newell receives supplemental Social
4 Security income.

5 86. T.N. received special education and related services in preschool but was
6 mainstreamed in kindergarten. T.N. required additional learning assistance but Newell's
7 requests for services went unheeded.

8 87. Now, at a private Montessori school, T.N. has excelled, both academically and
9 socially.

10 88. If the tuition goes up, but scholarship funding stays level, Newell will not be able
11 to keep T.N. in the Montessori setting she has excelled in. Newell cannot afford to spend any
12 additional personal income on T.N.'s tuition.

13 89. A.B. 458 has therefore caused Newell uncertainty regarding whether she can
14 keep T.N. in the Montessori school for the long term.

15 90. Newell plans to enroll her youngest child, who is currently in preschool, in a
16 private school beginning in 2020.

17 91. But for A.B. 458, an additional \$665,500 in funding would be available to fund
18 scholarships for Newell's children for the 2019-20 school year.

19 92. But for A.B. 458, an additional \$1,397,550 in funding would be available to fund
20 scholarships for Newell's children for the 2020-21 school year.

21 **B. The Scholarship Organization Plaintiff**

22 93. Plaintiff AAA Scholarship Foundation, Inc. ("AAA") is a Scholarship
23 Organization registered with the Nevada Department of Education to accept tax-credit-eligible
24 donations and distribute scholarships under the Scholarship Program.

25 94. AAA filed its mid-year report with the Department of Education for the 2018-
26 2019 school year on December 31, 2018.

27 95. As of December 31, 2018, AAA had received \$1,609,076.71 in total donations,
28 gifts, and grants.

- 1 96. As of December 31, 2018, AAA had awarded scholarships to 910 students.
- 2 97. As of December 31, 2018, AAA had paid out scholarships on behalf of 888
- 3 students.
- 4 98. As of December 31, 2018, AAA had awarded scholarships in the total amount of
- 5 \$6,086,250.
- 6 99. As of December 31, 2018, AAA had paid out \$2,420,784.66 in scholarships.
- 7 100. As of December 31, 2018, AAA had paid scholarships on behalf of students
- 8 attending 61 different private schools.
- 9 101. Of the families served by AAA last year, a majority were ethnic or racial
- 10 minorities.
- 11 102. Of the families served by AAA last year, approximately 75 percent were at or
- 12 below 185 percent of the federal poverty line, meaning they would qualify for the National
- 13 School Lunch Program.
- 14 103. Most of AAA's donors in Nevada would not donate to AAA if the donors would
- 15 not qualify for a tax credit.
- 16 104. On information and belief, each year since the Scholarship Program's enactment,
- 17 all the allocated tax credits have been claimed by business donors.
- 18 105. But for A.B. 458, an additional \$665,500 in tax credits would be available to
- 19 business donors and AAA would be legally permitted to receive additional tax-credit-eligible
- 20 donations to fund scholarships for the 2019-20 school year.
- 21 106. But for A.B. 458, an additional \$1,397,550 in tax credits would be available to
- 22 business donors and AAA would be legally permitted to receive additional tax-credit-eligible
- 23 donations to fund scholarships for the 2020-21 school year.
- 24 107. Without additional tax-credit-eligible donations, AAA will be forced to cut
- 25 families from the scholarship program because full-tuition scholarships increase each year with
- 26 inflation and rising education costs.
- 27 108. But for A.B. 458, AAA could in the future provide millions of dollars in
- 28 additional scholarships to families in need.

1
2 **C. The Business Donor Plaintiffs**

3 109. Plaintiff Sklar Williams PLLC qualifies as an “employer” under NRS
4 § 363B.030 and must pay the excise tax imposed by NRS § 363B.110.

5 110. Sklar Williams has in the past donated to scholarship organizations participating
6 in the Scholarship Program and has received tax credits for such donations under NRS
7 § 363.119. Its most recent donation was for \$18,000.

8 111. If A.B. 458 were not in force, an additional \$665,500 in tax credits would be
9 available for fiscal year 2019-20 and Sklar Williams would donate additional money in order to
10 receive those tax credits.

11 112. Sklar Williams wishes to donate more to scholarship organizations in 2020 and it
12 wishes to receive fiscal year 2020-21 tax credits for those donations.

13 113. If A.B. 458 were not in force, an additional \$1,397,550 in tax credits would be
14 available for fiscal year 2020-21, thereby increasing the chances that Sklar Williams would
15 qualify for a tax credit under the first-come, first-served distribution of tax credits.

16 114. If Sklar Williams were to donate to a scholarship organization under the
17 Scholarship Program without being granted a tax credit, Sklar Williams would be forced to
18 remit additional taxes to Defendant Department of Taxation.

19 115. Plaintiff Environmental Design Group qualifies as an “employer” under NRS
20 § 363B.030 and must pay the excise tax imposed by NRS § 363B.110.

21 116. Environmental Design Group has in the past donated to scholarship
22 organizations participating in the Scholarship Program and has received tax credits for such
23 donations under NRS § 363.119. Its most recent donation was for \$10,000.

24 117. If A.B. 458 were not in force, an additional \$665,500 in tax credits would be
25 available for fiscal year 2019-20 and Environmental Design Group would donate additional
26 money in order to receive those tax credits.

27 118. Environmental Design Group wishes to donate more to scholarship organizations
28 in 2020 and it wishes to receive fiscal year 2020-21 tax credits for those donations.

119. If A.B. 458 were not in force, an additional \$1,397,550 in tax credits would be available for fiscal year 2020-21, thereby increasing the chances that Environmental Design Group would qualify for a tax credit under the first-come, first-served distribution of tax credits.

120. If Environmental Design Group were to donate to a scholarship organization under the Scholarship Program without being granted a tax credit, Environmental Design Group would be forced to remit additional taxes to Defendant Department of Taxation.

CAUSE OF ACTION

(Violation of Article 4, Section 18 of the Nevada Constitution)

121. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 120 as if fully set forth in this section.

122. Article 4, Section 18 of the Nevada Constitution requires that any bill that “increases any public revenue in any form” either (1) be passed by “an affirmative vote of not fewer than two-thirds of the members elected to each house” or, (2) after an affirmative vote by simple majority, be submitted for approval by the voters in a general election referendum.

123. A.B. 458 is a bill that increases public revenue.

124. A.B. 458 did not receive a two-thirds supermajority affirmative vote in the Nevada Senate.

125. A.B. 458 was not referred to the people of Nevada for approval at a general election referendum.

126. A.B. 458 was therefore not validly enacted and is not the enforceable law of Nevada.

127. Plaintiffs therefore seek a declaration that A.B. 458 is unconstitutional and unenforceable.

128. Plaintiffs also therefore seek an injunction against any future enforcement of A.B. 458.

REQUEST FOR RELIEF

Wherefore, Plaintiffs respectfully request that this Court:

1. Declare that A.B. 458 is unconstitutional and unenforceable because it did not receive the requisite number of votes for passage;
2. Enjoin any future enforcement of A.B. 458;
3. Award Plaintiffs their reasonable attorneys' fees and costs; and
4. Order any other relief as this Court may deem just and proper.

AFFIRMATION

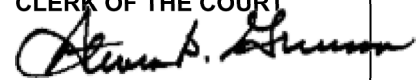
The undersigned hereby affirm that the foregoing document submitted for filing does not contain the social security number of any person.

/s/ Joshua A. House
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TAB 3



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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 - 1 -	<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:
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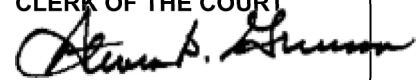
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

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

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DATED: This 1st day of June, 2020.

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